



ANNO TRICESIMO NONO ET QUADRAGESIMO

# VICTORIÆ REGINÆ.

A.D. 1876.

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## No. 35.

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*An Act to impose Probate and Succession Duties.*

[Assented to 20th September, 1876.]

Preamble.

**W**HEREAS it is expedient that a portion of the Public Revenue should be raised by means of Probate and Succession Duties—  
Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said Province, in this present Parliament assembled, as follows :

## PRELIMINARY.

Short title and commencement.

1. This Act may be cited for all purposes as “The Probate and Succession Duty Act, 1876,” and shall come into force on a day to be fixed by the Governor by Proclamation, not being earlier than twenty-one days after the publication of such Proclamation in the *Government Gazette*.

Interpretation.

2. In the construction and for the purposes of this Act the following terms have the meanings hereby assigned to them, unless it is otherwise provided, or there be something in the context repugnant thereto—

“Administrator” means any person to whom letters of administration (with or without a will annexed) of the goods, chattels, rights, credits, and effects of any deceased person shall be or shall have been granted by the Supreme Court: or the Curator of Intestate Estates :

“Executor” means any person to whom probate of the will of any deceased person shall be or shall have been granted by the Supreme Court: or the Curator of Intestate Estates :

“Letters of administration” means any letters of administration  
or

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or other instrument granted by the Supreme Court in respect of the real and personal estate, or either, of any deceased person, including any order giving the Curator of Intestate Estates power to collect, manage, administer, take charge of, or become receiver of any such estates :

“Probate” means any probate or other instrument granted by the Supreme Court in respect of the real and personal estate, or either, of any deceased person, including any order giving the Curator of Intestate Estates power to collect, manage, administer, take charge of, or become receiver of, any such estate :

“Person” includes body corporate, company, and society :

“Personal property” does not include leaseholds, but includes money payable under any engagement, and all other property not comprised in the definition of real property hereinafter contained :

“Property,” alone, includes real property and personal property :

“Real property” includes all freehold, leasehold, and other hereditaments, whether corporeal or incorporeal, in the said Province :

“Succession” means any property chargeable with duty under this Act :

“Trustee” includes executor and administrator, and any person having or taking on himself the administration of property affected by any express or implied trust.

3. The duties imposed by this Act shall be under the care and management of an officer to be appointed by the Governor, to be styled the Commissioner of Inland Revenue, hereinafter called the “Commissioner,” who, as well as any other officials who may be appointed under this Act, shall have all necessary powers and authorities for the collection, recovery, and management of the said duties; and the Commissioner shall have all other powers and authorities requisite for carrying this Act into execution: Provided that, until such Commissioner shall be appointed, it shall be lawful for the Registrar of Probates to exercise all powers and authorities vested by this Act in the Commissioner, and until such appointment the seal of the Supreme Court shall be substituted for, and have the same effect as evidence of the payment of duty as, the seal of the Commissioner.

Duties to be under management of Inland Revenue Commissioner, or Registrar of Probates.

4. From and after the coming into operation of this Act there shall be levied, collected, and paid for the use of Her Majesty, for and in respect of the several matters described and mentioned in this Act and in the several Schedules of duties hereto annexed, the several duties or sums of money and at the several rates set down in figures against the same respectively, as set forth in the said Schedules.

Duties to be levied.

PROBATE

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## PROBATE AND ADMINISTRATION DUTIES.

Probate and administration duties to be levied.

5. Duties shall be charged, levied, and paid upon probates and letters of administration according to the respective scales set forth in the First Schedule to this Act, and the amount of such duties shall be assessed in manner hereinafter provided, and the payment of such duties shall be denoted by a certificate written or printed upon the paper or parchment upon which the probates or letters of administration shall be written or engrossed, and signed by the Commissioner, and sealed with his seal.

Applications to obtain probates and letters of administration.

6. Upon application by any person to obtain probate or letters of administration in respect of the estate of any person dying after the coming into operation of this Act, the person so applying shall lodge therewith an affidavit that the real and personal estate of the deceased person within the Province, exclusive of what the said deceased was possessed of or entitled to as a trustee and not beneficially, and exclusive of the amount of the debts and liabilities of the deceased which his estate (if any) out of the said Province shall be insufficient to pay and liquidate, are under the value of a certain sum to be therein specified to the best of the knowledge, information, and belief of the person so applying; and the Registrar of Probates of the Supreme Court shall transmit to the Commissioner every such affidavit, together with a copy of the will or letters of administration to which it relates, and the duty shall be assessed upon the sum specified in such affidavit according to the rates specified in the First Schedule hereto.

Statement to be filed.

7. Every executor and administrator shall, within the period of twelve months from the grant of probate or letters of administration to him, or such further term as the Commissioner may allow, and also whenever thereunto required by an order of a Judge of the Supreme Court, file in the office of the Commissioner a statement specifying particulars of the real and personal estate of or to which the deceased was at his death possessed or entitled within the said Province, and of the administration and value thereof, and also (if any deduction has been made from such value as hereinbefore provided for or in respect of any debts or liabilities of the deceased) particulars of such debts and liabilities, and of the payment and satisfaction thereof, and of the real and personal estate of the deceased out of the said Province, and of the administration and value thereof, and all other particulars necessary to show with certainty the duty payable under this Act in respect of the estate of the deceased. Every such statement shall be in such form and shall be verified by the oaths of such persons or in such other manner as the Commissioner may require, or as may be provided by any regulations made under this Act.

Where too little duty paid.

8. Where, on the filing of any statement required by the last preceding section, or in any other manner, it shall appear that too little duty has been paid on any probate or letters of administration, the executor or administrator shall pay the additional duty within six months, or be liable to a penalty of Fifty Pounds, together with  
the

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the additional duty payable, and the payment of such additional duty shall be denoted by another certificate as aforesaid on such probate or letters of administration.

9. The Commissioner, on proof being given to his satisfaction that too much duty has been paid under this Act, may, if he shall think fit, cancel or expunge the certificate on the probate or letters of administration, and may substitute another certificate for denoting the duty thereon, and may make a deduction or repayment for the difference between the correct amount of duty and that previously paid. Where too much duty paid.

10. Any duty payable as aforesaid in respect of the property of any deceased person by any executor or administrator shall be deemed to be a debt due by the estate of such person to Her Majesty, and shall be payable rateably out of the various portions of such property according to the value of such portions respectively; and if the person entitled to any portion of the real property of any testator or person dying intestate shall not pay to such executor or administrator a sufficient sum to defray the duty payable in respect of such real estate within the time within which such duty is payable, it shall be lawful for such executor or administrator to apply to the Supreme Court, which may order that a sufficient part of such real estate may be sold to pay the said duty, with the cost of such order and sale. Duties, how payable.

11. Whenever any order shall have been made for the sale of any lands under the next preceding section of this Act, every person seized or possessed of such lands, or entitled to a contingent interest therein, shall be deemed to be so seized, possessed, or entitled upon a trust within the meaning of "The Trustee Act, 1855": And the Supreme Court may make an order vesting such lands or any part thereof 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 seized, possessed, or entitled had been free from all disability, and had duly executed all proper conveyances and assignments. Vesting orders.

12. No probate or letters of administration shall be issued by the Registrar of Probates until the duty thereon shall have been paid or security given for the same, and the proper certificate made thereon as aforesaid. Probates not to be issued until payment of duty.

13. Section 31 of "The Property Act of 1860" is hereby repealed, and no will or codicil or other instrument in respect of or dealing with the estate of any deceased person, who shall die after the coming into operation of this Act, shall be registered, or capable of being registered, or be admissible or receivable in evidence (except in criminal proceedings), or be available or effectual for any purpose whatsoever at law or in equity, until such will or codicil shall have been proved in the Supreme Court. Wills not to be registered until proved.

14. Upon

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Property conveyed  
for purpose of evasion  
to be part of estate.

14. Upon the death of any person who shall hereafter make any conveyance or gift of any real or personal property with intent to evade the payment of duty under this Act (and every voluntary conveyance or gift made within one year prior to the death of such person, shall be presumed to be made with such intent, unless the contrary be proved), such property shall, if in the hands of the person to whom the same shall be so conveyed or given, or in the hands of any person to whom he may have voluntarily conveyed or given the same with the like intent to evade the payment of duty, or of his devisee or real or personal representative, be deemed part of the property of such deceased person for the purposes of this Act: And any voluntary conveyance or gift of property which may hereafter be made, 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 any property being the subject-matter of a *donatio mortis causa* shall, upon the death of the person making such *donatio mortis causa*, be deemed part of his property for the purposes of this Act.

Penalty on personal  
representatives not  
paying full duty.

15. Where too little duty shall have been paid on any probate or letters of administration in consequence of any mistake or misapprehension, or of its not being known at the time that some particular part of the estate and effects belonged to the deceased, if any executor or administrator acting under such probate or letters of administration shall not, within six months after the discovery of the mistake or misapprehension, or of any estate or effects not known at the time to have belonged to the deceased, apply to the Commissioner, and pay what shall be wanting to make up the duty which ought to have been paid at first on such probate or letters of administration, he shall incur a penalty not exceeding One Hundred Pounds, and also a further penalty at and after the rate of Ten Pounds per centum on the amount of the sum wanting to make up the proper duty.

Credit for probate  
duty may be given in  
certain cases.

16. The Commissioner, on satisfactory proof upon oath, may give the necessary certificate in respect of any probate or letters of administration so as to denote the duty which ought to have been paid thereon, and may give credit for the duty, either upon payment of the before-mentioned penalty, or without in cases of probate or letters of administration already obtained and upon which too little duty shall have been paid, and either with or without allowance of the duty already paid thereon, as the case may require under the provisions of this Act: Provided that in all such cases of credit security be first given by the executor or administrator, together with two or more sufficient sureties to be approved of by the Commissioner, by a bond to Her Majesty in double the amount of the duty for the due payment of the sum for which credit shall be given within six months, and of interest for the same at the rate of Ten Pounds per centum per annum from the expiration of such period until payment thereof, in case of any default of payment at the time appointed; and

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and such probate or letters of administration having the proper certificate as to payment of duty attached thereto in the manner aforesaid shall be as valid as if the proper duty had been first paid thereon, and the necessary certificate given accordingly.

17. If, at the expiration of the time to be allotted for payment of the duty on any probate or letters of administration referred to in the next preceding section, it shall appear to the satisfaction of the Commissioner that the executor or administrator to whom such credit shall be given as aforesaid shall not have recovered effects of the deceased to an amount sufficient for the payment of the duty, he may give such further time for the payment thereof, and upon such terms and conditions, as he shall think expedient.

Such credit may be extended if necessary.

18. The probate or letters of administration so to be certified on credit as aforesaid shall be deposited with the Commissioner, and shall not be delivered up to the executor or administrator until payment of the duty, together with such interest as aforesaid, if any shall become due; but the same shall nevertheless be produced, or caused to be produced, in evidence by the Commissioner, at the expense of the executor or administrator, as occasion shall require.

In case of credit, probate or administration to be deposited.

19. Where it shall be proved by oath or proper vouchers to the satisfaction of the Commissioner that an executor or administrator had paid debts owing from the deceased and payable by law out of his estate to such an amount as, being deducted from the amount or value of the estate and effects of the deceased for or in respect of which a probate or letters of administration has been granted, shall reduce the same to a sum which, if it had been the whole amount or value of such estate and effects, would have occasioned a less duty to be paid on such probate or letters of administration than shall have been actually paid thereon under this Act, the Commissioner may return the difference: Provided that the same shall be claimed within three years after the date of such probate or letters of administration: Provided also, that where by reason of any proceeding in law or in equity the debts due from the deceased shall not have been ascertained and paid, or the effects of the deceased shall not have been recovered and made available, and in consequence thereof the executor or administrator shall be prevented from claiming such return of duty as aforesaid within the said term of three years, the Governor may allow such further time for making the claim as may appear to him to be reasonable under the circumstances of the case.

Return of duty on the ground of debts reducing estate.

## DUTIES ON SUCCESSIONS TO REAL AND PERSONAL ESTATE.

### *How Duties to be Charged.*

20. There shall be charged, levied, and paid upon every succession, according to the value thereof, the duties mentioned and specified in the Second Schedule to this Act annexed.

Succession duties to be levied.

*Manner*

*The Probate and Succession Duty Act.—1876.**Manner of conferring Successions.*

What dispositions of property shall confer successions.

21. Every past or future disposition of property by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death of any person dying after the commencement of this Act, either immediately or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and every devolution by law of any beneficial interest in property or the income thereof upon the death of any person dying after the commencement of this Act to any other person in possession or expectancy, shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession," and the term "successor" shall denote the person so entitled, and the term "predecessor" shall denote the settlor, disponent, testator, obligor, ancestor, or other person from whom the interest of the successor is or shall be derived.

Joint tenants taking by survivorship to be deemed successors.

22. Where any persons shall, at or after the coming into operation of this Act, have any property vested in them jointly by any title not conferring on them a succession, any beneficial interest in such property accruing to any of them by survivorship shall be deemed to be a "succession," and every person to whom any such interest shall accrue shall be deemed to be the "successor," and the person upon whose death such accruer shall take place shall be deemed to be the predecessor; and where any persons after the commencement of this Act shall take any succession jointly, they shall pay the duty, if any, chargeable thereon by this part of this Act, in proportion to their respective interests in the succession; and any beneficial interests in such succession accruing to any of them by survivorship shall be deemed to be a new succession derived from the predecessor from whom the joint title shall have been derived.

General powers of appointment to confer successions.

23. Where any person shall have a general power of appointment over property under any disposition of property taking effect upon the death of any person dying after the coming into operation of this Act, he shall, in the event of his making any appointment thereunder, be deemed to be entitled at the time of his exercising such power to the property or interest thereby appointed as a succession derived from the donor of the power; and where any person shall have a limited power of appointment under a disposition taking effect upon any such death over property, any person taking any property by the exercise of such power shall be deemed to take the same as a succession derived from the person creating the power as predecessor.

Extinction of determinable charges to confer successions.

24. Where any property shall, at or after the commencement of this Act, be subject to any charge, estate, or interest determinable by the death of any person, or at any period ascertainable only by reference to death, the increase of benefit accruing to any person upon the extinction or determination of such charge, estate, or interest shall be deemed to be a succession accruing



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accruing to the person then entitled beneficially to the property or income thereof, according to his estate or interest therein or beneficial enjoyment thereof; and the person from whom such successor shall have derived title to the property so charged shall be deemed to be the predecessor.

25. Provided that no person entitled at the commencement of this Act to the immediate reversion in any real property expectant upon the determination of any lease for life, or for years determinable on life, shall be chargeable with duty in respect of such determination in the event of the same occurring in his lifetime.

Persons now entitled to real property subject to leases for life not liable to duty.

26. Where any disposition of property, not being a *bonâ fide* sale, and not conferring an interest expectant on death on the person in whose favor the same shall be made, shall be accompanied by the reservation, or assurance of, or contract for, any benefit to the grantor or any other person for any term of life, or for any period ascertainable only by reference to death, such disposition shall be deemed to confer at the time appointed for the determination of such benefit an increase of beneficial interest in such property, as a succession equal in annual value to the yearly amount or yearly value of the benefit so reserved, assured, or contracted for on the person in whose favor such disposition shall be made.

Dispositions accompanied by the reservation of a benefit to the grantor to confer successions.

27. Where any disposition of property shall be made to take effect at a period ascertainable only by reference to the date of the death of any person dying after the commencement of this Act, such disposition shall be deemed to confer a succession on the person in whose favor the same shall be made; and where any disposition of property shall purport to take effect presently, or under such circumstances as not to confer a succession, but by the effect or in consequence of any engagement, secret trust, or arrangement, capable of being enforced in a Court of Law or Equity, the beneficial ownership of such property shall not *bonâ fide* pass according to such disposition, but shall in fact devolve to any person on death, or at some period ascertainable only by reference to death, then such last-mentioned person shall be deemed to acquire the property so passing as a succession derived from the person making the disposition as predecessor: And where any Court of competent jurisdiction shall declare any disposition to have been fraudulent, and made for the purpose of evading the duty imposed by this Act, such Court may declare a succession to have been conferred on such person at such time and to such an extent as such Court shall think just, and such last-mentioned person shall be deemed to have taken a succession accordingly, derived from the person making such disposition as predecessor.

Dispositions to take effect at periods depending on death or made for evading duty to confer successions.

28. Where any person chargeable with duty under this Act in respect of any succession shall have been married to any wife or husband of nearer consanguinity than himself or herself to the predecessor, testator, or deceased person, then the person taking such

Provision as to married persons chargeable with duty.

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succession shall pay in respect thereof the same rate of duty only as that with which his wife or her husband would have been chargeable if he or she had taken the same.

*Rules as to payment of Duties.*

What duties are payable when the successor is also the predecessor.

29. Where any person shall take a succession under a disposition made by himself, then, if at the date of such disposition he shall have been entitled to the property comprised in the succession expectantly on the death of any person dying after the commencement of this Act, and such person shall have died during the continuance of such disposition, he shall be chargeable with duty on his succession at the same rate as he would have been chargeable with if no such disposition had been made: But a successor shall not in any other case be chargeable with duty upon a succession taken under a disposition made by himself; and no person shall be chargeable with duty upon the extinction or determination of any charge, estate, or interest created by himself, unless at the date of the creation thereof he shall have been entitled to the property subjected thereto expectantly on the death of some person dying after the commencement of this Act.

Provision as to joint predecessors.

30. Where the successor shall derive his succession from more predecessors than one, and the proportional interest derived from each of them shall not be distinguishable, the Commissioner may agree with the successor as to the duty payable; but if no such agreement shall be made, the successor shall be deemed to have derived his succession in equal proportions from each predecessor, and shall be chargeable with duty accordingly.

Duty on transmitted successions.

31. When the interest of any successor in any personal property shall, before he shall have become entitled thereto in possession, have passed by reason of death to any other successor, then one duty only shall be paid in respect of such interest, and shall be due from the successor who shall first become entitled thereto in succession; but such duty shall be at the highest rate which if every such successor had been subject to duty would have been payable by any one of them.

Duties payable in respect of transferred interests.

32. Where at the commencement of this Act any reversionary property expectant on death shall be vested by alienation or other derivative title in any person other than the person who shall have been originally entitled thereto under any such disposition or devolution as aforesaid, then the person in whom such property shall be so vested shall be chargeable with duty in respect thereof as a succession at the same time and at the same rate as the person so originally entitled would have been chargeable with if no such alienation had been made or derivative title created; and where after the commencement of this Act any succession shall, before the successor shall have become entitled thereto or to the income thereof in possession, have become vested by alienation or by any title not conferring a new succession in any other person, then the duty payable

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payable in respect thereof shall be paid at the same rate and time as the same would have been payable if no such alienation had been made or derivative title created; and where the title to any succession shall be accelerated by the surrender or extinction of any prior interests, then the duty thereon shall be payable at the same time and in the same manner as such duty would have been payable if no such acceleration had taken place.

33. No policy of insurance on the life of any person shall create the relation of predecessor and successor between the insurers and the assured, or between the insurers and any assignee of the assured; and no bond or contract made by any person *bonâ fide* for valuable consideration in money or money's worth for the payment of money or money's worth after the death of any other person shall create the relation of predecessor and successor between the person making such bond or contract and the person to or with whom the same shall be made; but any disposition or devolution of the moneys payable under such policy, bond, or contract, if otherwise such as in itself to create a succession within the provisions of this Act, shall be deemed to confer a succession.

Provision for life policies and post obit bonds.

34. No succession duty shall be payable—

Exemptions.

- i. Upon any property given to or passing to, or for the benefit of, the husband or wife of the predecessor:
- ii. Where the succession, which as estimated according to the provisions of this Act, shall be of less value than Twenty Pounds:
- iii. Upon any moneys applied to the payment of the duty on any succession according to any trust for that purpose:
- iv. Upon any legacy consisting of books, prints, pictures, statues, gems, coins, medals, specimens of natural history, and other specific articles, given or bequeathed to or in trust for any body corporate, aggregate, or sole, or any university or endowed school, or any museum, in order to be kept and preserved by such body corporate, university, school, or museum, and not for the purpose of sale:
- v. Upon any estate where the whole of such estate and effects does not exceed the sum of Fifty Pounds.

35. The succession duties imposed by this Act shall be paid at the time when the successor, or any person in his right or on his behalf, shall become entitled in possession to his succession or to the receipt of the income and profits thereof: Provided that if there shall be any prior charge, estate, or interest, not created by the successor himself, upon or in the succession, by reason whereof the successor shall not be presently entitled to the full enjoyment or value thereof, the duty in respect of the increased value accruing upon

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upon the determination of such charge, estate, or interest shall, if not previously paid, compounded for, or commuted, be paid at the time of such determination: Provided also, that in case of an annuity or property hereby made chargeable as an annuity, the duties shall be paid by such instalments as are herein directed or referred to: Provided further, that no duty shall be payable upon the determination of any lease purporting at the date thereof to be a lease at rack rent in respect of the increase accruing to the successor upon such determination.

*Duties on Real Property.*

The interest of a successor in real property to be considered as an annuity.

36. The interest of every successor, except as herein provided, in real property shall be considered to be of the value of an annuity equal to the annual value of such property, after making such allowances as are hereinafter directed, and payable from the date of his becoming entitled thereto in possession, or to the receipt of the income or profits thereof during the residue of his life, or for any less period during which he shall be entitled thereto; and every such annuity, for the purposes of this Act, shall be valued according to the probable duration of the life of the successor in the manner provided by this Act, and the duty chargeable thereon shall be paid by eight equal half-yearly instalments, the first of such instalments to be paid at the expiration of twelve months next after the successor shall have become entitled to the beneficial enjoyment of the real property in respect whereof the same shall be payable, and the seven following instalments at half-yearly intervals of six months each, to be computed from the day on which the first instalment shall become due: Provided that if the successor shall die before all such instalments shall have become due, then any instalments not due at his decease shall cease to be payable, except in the case of a successor who shall have been competent to dispose by will of a continuing interest in such property, in which case the instalments unpaid at his death shall be a continuing charge on such interest in exoneration of his other property, and shall be payable by the owner for the time being of such interest.

Rules for valuing lands.

37. In estimating the annual value of lands used for agricultural purposes, houses, buildings, rent-charges, and other property yielding and capable of yielding incomes not of a fluctuating character, an allowance shall be made for all necessary outgoings.

Rules as to land subject to beneficial leases.

38. Where a successor entitled to any real property subject to any lease, by reason whereof he shall not be presently entitled to the full enjoyment thereof, shall not have paid duty in respect of the full yearly value of such property, he shall be chargeable with duty upon his interest in any fine or other consideration which may be received during his life for the renewal of any such lease or the grant of reversionary lease of the same property.

Duty payable by corporations taking real estate.

39. Where any body corporate, company, or society shall become entitled as successors to any real property, the duty in respect thereof shall

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shall be assessed upon the principal value of such property, but shall be payable by such instalments at such times and in such manner as the same would be payable if assessed in respect of property devolving on a successor in fee simple; and such body corporate, company, or society, or any trustee thereof, may raise the amount of any duty due in respect of their succession upon the security thereof, at interest, with power for them to give effectual discharges for the money so raised.

40. The interest of any successor in moneys to arise from the sale of real property under any trust for the sale thereof shall be deemed to be personal property chargeable with duty: Provided that where such moneys shall be subject to any trust for the investment thereof in the purchase of other real property to which the successor would not be absolutely entitled, such moneys shall be deemed to be real property, and for the purposes of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall then be the real property subject to the trust or direction for sale, or any property purchased in substitution for it, or any intermediate investment of the produce of the sale of the original property.

Real property directed to be sold to be charged as personalty.

41. The interest of any successor in personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would be absolutely entitled shall be chargeable with duty under this Act as personal property; and personal property subject to any trust for the investment thereof in the purchase of real property to which the successor would not be absolutely entitled shall be chargeable with duty under this Act as real property; and for the purposes of this Act each successor's interest therein shall be considered to be of the value of an annuity, payable during his life, or for any less period during which he shall be entitled, equal in amount to the annual produce of the actual trust property at the time of his becoming entitled in possession, whether the same shall be the real property directed to be purchased, or any intermediate investment of the personal property directed to be invested in such purchase.

Personal property to be invested in real property how to be charged.

*Duties on Personal Property.*

42. The value of any personal property given by way of annuity, whether payable annually or upon any contingency, shall be assessed in the manner hereinafter provided, and the duty chargeable thereon shall be charged according to the value as so assessed, and the duty chargeable on such annuity shall be paid by four equal payments, the first of which payments shall be made before or on completing the payment of the first year's annuity, and the three others of such payments of such duty shall be made in like manner successively before or on completing the respective payments of the three succeeding

How value of annuities to be computed and the duty paid thereon.

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ceeding years' annuity respectively; and the value of any such annuity, if determinable upon any contingency except the death of any person, shall be calculated without regard to such contingency: Provided that if any such annuity shall determine by the death of any person before four years' payment of such annuity shall become due and payable, the duty shall be payable in proportion only to so many of the payments of the said annuity as actually accrued and became due and payable; and in case any such annuity shall at any time determine upon any other contingency than the death of any person, then not only all payments of duty which would otherwise become due after the happening of such contingency shall cease, but the person who shall have paid any duties previously due may apply for and obtain a return of so much of the duty so paid as will reduce the same to the like duty as would have been payable by such person for such annuity calculated according to the term for which the same shall have endured, and the Commissioner shall settle and determine such abatement by valuation as hereinafter provided, and shall cause the amount of such abatement to be paid to the person entitled to the same out of any moneys in his hands arising from the duties imposed by this Act.

Duty on personalty given to purchase annuities how to be calculated.

43. The duty payable upon any personal property given by direction to purchase with any personal estate of the testator, or any part thereof, an annuity of a certain amount for any life or lives, or other term, shall be calculated upon the sum necessary to purchase such annuity according to the assessment or valuation hereinbefore referred to, and shall be deducted from such sum and paid as in the case of other pecuniary successions; and the person paying or satisfying such succession, and the person for whose benefit the same shall be paid or satisfied, shall be discharged by payment of such duty so calculated from all other demands in respect of the duty payable on such legacy, and the annuity to be purchased for the benefit of the person entitled to the benefit of such legacy shall be reduced in proportion to the amount of the duty payable thereon as aforesaid, such reduction to be calculated in the same manner as this duty so payable is hereby directed to be calculated; and the purchase of such reduced annuity, together with the payment of such duty, shall satisfy and discharge such succession as fully as if an annuity had been purchased equal in amount to the annuity so directed to be purchased.

Duty on successions, the value of which can only be ascertained by application of the allotted fund.

44. If any benefit shall be given by any instrument in such terms that the amount or value of such benefit can only be ascertained from time to time by actual application for that purpose of the fund allotted for such purpose or made chargeable therewith, or if the amount or value of any benefit given by any instrument cannot by reason of the form and manner of the gift be so ascertained that the duty can be charged thereon under any other of the directions herein contained, then and in every such case such duty shall be charged upon the several sums of money or effects which shall be applied from time to time for the purposes directed by such instrument

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ment as separate and distinct successions, and shall be paid out of the fund applicable for such purposes or charged with answering the same.

45. The duty payable on a succession being personal property given to or for the benefit of, or so that the same shall be enjoyed by, different persons in succession, who shall be chargeable with the duties hereby imposed at one and the same rate, shall be charged upon and paid out of the personal property so given as in the case of a legacy to one person; and where any personal property shall be given to or for the benefit of, or so that the same shall be enjoyed by, different persons in succession, some or one of whom shall be chargeable with no duty, or some of whom shall be chargeable with different rates of duty, so that one rate of duty cannot be immediately charged thereon, all persons who under or in consequence of any such bequest shall be entitled for life only, or any other temporary interest, shall be chargeable with the duty in respect of such personal property in the same manner as if the annual produce thereof had been given by way of annuity, and such persons respectively shall be so chargeable with such duty, and the same shall be payable, when they shall respectively become entitled to and begin to receive such produce, and shall be paid by equal portions during the aforesaid term of four years, if they shall so long continue to receive such produce; and where any other partial interest shall be given or shall arise out of such property so to be enjoyed in succession, the duty on such partial interest shall be charged and paid in the same manner as the duty is hereinbefore directed to be charged and paid in like cases of partial interest charged on any property given otherwise than to different persons in succession.

Duty on personal property enjoyed by different persons in succession.

46. No duty shall be paid on any articles of plate, furniture, or other things not yielding any income, and devolving for the benefit of, or so as that the same be enjoyed by, different persons in succession, whilst the same shall be so enjoyed in kind only by any person not having any power of selling or disposing thereof so as to convert the same into money or other property yielding an income; but if the same shall be actually sold or disposed of, or shall come to any person having power to sell or dispose thereof, or having an absolute interest therein, then the same duty shall be chargeable and paid thereon as if the same had been originally given absolutely and with full power to sell or dispose thereof, and shall be chargeable and paid by the person for whose benefit the same shall be sold, or who shall have power to sell or dispose thereof, or an absolute interest therein, and shall become the debt of such person, but shall not be a charge on any person by reason of his having assented to such devolution as the person having or taking the burden of the execution of the instrument by virtue whereof such devolution shall have been effected.

Chattels not liable to duty until in possession of persons having power to dispose thereof.

*Allowances.*

47. Where the donee of a general power of appointment shall become chargeable with duty in respect of the property appointed by him

Allowance to donee of general power.

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him under such power, he shall be allowed to deduct from the duty so payable any duty he may have already paid in respect of any limited interest taken by him in such property.

What allowance to be made for incumbrances.

48. In estimating the value of a succession, no allowance shall be made in respect of any incumbrance thereon created or incurred by the successor not made in execution of a prior special power of appointment; but an allowance shall be made in respect of all other incumbrances, and also in respect of any moneys which the successor may previously to his possession have laid out in the substantial repairs or permanent improvement of real property comprised in his successions: Provided that upon any successor becoming entitled to real property subject to any prior principal charge, an allowance shall be made to him in respect only of the yearly sums payable by way of interest or otherwise on such charge as reducing the annual value *pro tanto* of such real property.

No allowance to be made in respect of contingent incumbrances unless they take effect.

49. In estimating the value of a succession, no allowance shall be made in respect of any contingent incumbrance thereon; but in the event of such incumbrance taking effect as an actual burden on the interest of the successor, he shall be entitled to a return of a proportionate amount of the duty so paid by him in respect of the amount or value of the incumbrance when taking effect.

The duty on successions to be calculated without regard to contingencies.

50. In estimating the value of a succession, no allowance shall be made in respect of any contingency upon the happening of which the property may pass to some other person; but in the event of the same so passing, the successor shall be entitled to a return of so much of the duty paid by him as will reduce the same to the amount which would have been payable by him if such duty had been assessed in respect of the actual duration or extent of his interest.

Provision for allowance or return of duty.

51. Where a successor shall not have obtained the whole of his succession at the time of the duty becoming payable, he shall be chargeable only with duty on the value of the property or benefit from time to time obtained by him; and whenever any duty shall have been paid on account of any succession, and it shall afterwards be proved to the satisfaction of the Commissioner that such duty, not being due from the person paying the same, was paid by mistake, or was paid in respect of property which the successor shall have been unable to recover, or from or of which he shall have been evicted and deprived by any superior title, or that for any other reason it ought to be refunded, the same shall thereupon be refunded to the person entitled thereto.

Allowances to be made to successor in respect of relinquishing property.

52. Where any successor upon taking a succession shall be bound to relinquish or be deprived of any other property, the Commissioner shall, upon the computation of the assessable value of the succession, make such allowance to him as may be just in respect of the value of such property.



*The Probate and Succession Duty Act.—1876.**Compounding of Duties.*

53. Where in the opinion of the Commissioner any succession shall be of such a nature or so disposed or circumstanced that the value thereof shall not be fairly ascertainable under any of the preceding directions, or where from the complication of circumstances affecting the value of a succession or affecting the assessment or recovery of the duty thereon he shall think it expedient to exercise this present authority, he may compound the duty payable on the succession upon such terms as he shall think fit, and may give discharges to the successor upon payment of duty according to such composition, and may in any special cases in which it may be deemed expedient enlarge the time for payment of any duty.

Power to compound duties.

54. The Commissioner may receive any duty tendered in advance, and may allow discount thereon at such rate as may from time to time be directed by the Governor; and no person by reason of his having made any payment of duty in advance shall be prejudiced in his right to have any repayment of duty made to him to which he may become entitled under any of the provisions of this Act.

Power to receive duties in advance.

55. The Commissioner, upon application made by any person who shall be entitled to a succession in expectancy, may commute the duty presumptively payable in respect of such succession for a certain sum to be presently paid; and for assessing the amount which shall be so payable, he shall cause a present value to be set upon such presumptive duty, regard being had to the contingencies affecting the liability to such duty, and the interest of money involved in such calculation being reckoned at the rate for the time being allowed by him in respect of duties paid in advance, and upon the receipt of such certain sum he shall give discharges to the successor accordingly.

Power to commute future duties.

## MISCELLANEOUS.

56. The duty imposed by this Act upon any succession shall be a first charge on the interest of the successor, and of all persons claiming in his right, in all the real property in respect whereof such duty shall be assessed; and such duty shall also be a first charge on the interest of the successor in the personal property in respect whereof the same shall be assessed while the same shall remain in the ownership or control of the successor, or of any trustee for him, or for his guardian, or committee, or tutor, or curator, or of the husband of any wife who shall be the successor; and the said duty shall be a debt due to Her Majesty from the successor, having in the case of real property comprised in any succession priority over all charges and interests created by him; but such duty shall not charge or affect any other real property of the successor than the property comprised in such succession: Provided that where any settled real property comprised in a succession shall be subject to any power of sale, exchange, or partition exercisable with the consent of the successor, or by the successor with the consent of another person, he

Duty to be a first charge on property.

*The Probate and Succession Duty Act.—1876.*

shall not be disqualified by the charge of duty on his succession from effectually authorizing by his consent the exercise of such power, or exercising any power with proper consent, as the case may be, and in such case the duty shall be charged substitutively upon the successor's interest in all real property acquired in substitution for the real property before comprised in the succession, and in the meantime upon his interest also in all moneys arising from the exercise of any such powers, and in all investments of such moneys.

Provision for the separate assessment of properties.

57. The Commissioner shall, at the request of any successor, or of any person claiming in his right, accept or cause to be made so many separate assessments of the duty payable in respect of the interest of the successor in any separate properties, or in defined portions of the same property, as shall be reasonably required, and in such cases the respective properties shall be chargeable only with the amount of duty separately assessed in respect thereof; and the Commissioner may by his certificate, to be issued in such form as shall be approved by the Governor, declare that any duties already assessed, whether collectively or distributively, in respect of any succession, shall thenceforth be charged as to any unpaid instalments according to any further distribution thereof upon separate parts only of the property in respect of which such assessment shall have been made, in which case the charge of such duties shall be thenceforth limited according to such distribution.

What persons accountable for duty.

58. The following persons besides the successor shall be personally accountable to Her Majesty for the duty payable in respect of any succession, but to the extent only of the property or funds actually received or disposed of by them respectively after the time appointed for the commencement of this Act, that is to say, every trustee, guardian, committee, tutor, curator, or husband in whom respectively any property or the management of any property subject to such duty shall be vested; and every person in whom the same shall be vested by alienation or other derivative title at the same time of the succession becoming an interest in possession, and all such trustees, guardians, committees, tutors, curators, husbands, and persons shall be authorized to compound, or pay in advance, or commute any duty, and retain out of the property subject to any such duty the amount thereof, or to raise such amount and the expenses incident thereto at interest on the security of such property, with power to give effectual discharges for the same, and such security shall have priority over any charge or incumbrance created by the successor; and in the event of the non-payment of such duty as aforesaid, every person hereby made accountable shall be a debtor to Her Majesty in the amount of the unpaid duty for which he shall be so accountable.

Notice of the succession to be given, and a return of the property made.

59. The person hereby made accountable for the payment of duty in respect of any succession or some of them shall, in case of personal property, at the time of the first payment, delivery, retainer, satisfaction, or other discharge of the same or any part thereof to or  
for

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for the successor, or any person in his right; and in the case of real property when any duty in respect thereof shall first become payable, give notice to the Commissioner of their liability to such duty, and shall at the same time deliver to the Commissioner a full and true account of the property for the duty whereon they shall be respectively accountable, and of the value thereof, and of the deductions not claimed by them, together with the names of the successors and predecessor, and their relation to each other, and all such other particulars as shall be necessary or proper for enabling the Commissioner fully and correctly to ascertain the duties due; and the Commissioner, if satisfied with such account and estimate as originally delivered, or with any amendments that may be made therein upon their requisition, may assess the succession duty on the footing of such account and estimate; but if dissatisfied with such account and estimate, he may cause an account and estimate to be taken by any person to be appointed by himself for that purpose, and to assess the duty on the footing of such last-mentioned account and estimate, subject to appeal as hereinafter provided; and if the duty so assessed shall exceed the duty assessable, according to the return made to the Commissioner, and with which he shall have been dissatisfied, and if there shall be no appeal against such assessment, then it shall be in the discretion of the Commissioner, having regard to the merits of each case, to charge the whole or any part of the expenses incident to the taking of such last-mentioned account and estimate on the interest of the successor in respect whereof the duty shall be due in increase of such duty, and to recover the same forthwith accordingly; and if there shall be an appeal against such last-mentioned assessment, then the payment of such expenses shall be in the discretion of the Tribunal of Appeal hereinafter appointed.

60. If any person required to give any such notice or deliver such account as aforesaid shall wilfully neglect to do so at the prescribed period, he shall incur a penalty at the rate of Ten Pounds per centum upon the amount of duty payable, or in case of a succession chargeable with a higher rate of duty than One Pound per centum upon the value thereof, upon such less sum as such duty if assessable at the rate of One Pound per centum upon the value of the succession would amount to, and a like penalty for every month after the first month during which such neglect shall continue; and if any person liable under this Act to pay any duty shall, after such duty shall have been finally ascertained, wilfully neglect to do so within twenty-one days, he shall also incur a penalty at the rate of Ten Pounds per centum upon the amount of duty so unpaid, or upon such less sum as such duty, if assessable at the rate of One Pound per centum on the value of the succession, would amount to, and a like penalty for every month after the first month during which such neglect shall continue.

Penalty on not giving notice of succession or account.

61. Every receipt and certificate purporting to be in discharge of the whole duty payable for the time being in respect of any succession or any part thereof, shall exonerate a *bonâ fide* purchaser for

Protection to *bonâ fide* purchasers.

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for valuable consideration and without notice from such duty, notwithstanding any suppression or misstatement in the account upon the footing whereat the same may have been assessed, or any insufficiency of such assessment, and no *bonâ fide* purchaser of property, for valuable consideration under a title, not appearing to confer a succession, shall be subject to any duty with which such property shall be chargeable under the provisions of this Act, by reason of any extrinsic circumstances of which he shall not have had notice at the time of such purchase.

Proceeding if return not made.

62. If any accountable party required by the Commissioner to deliver any account, required by this Act to be delivered, shall make default in doing so, the Commissioner may sue out of the Supreme Court a writ of summons, in such form as the Judge of such Court shall direct, commanding the party so in default to deliver such account within such period as may be appointed in the writ, or to show cause to the contrary, and on cause being shown, such order shall be made as shall be just.

Power to enforce returns from executors and administrators.

63. The Commissioner may, for any of the purposes of this Act, require and enforce the delivery of accounts from executors, administrators, and trustees of property and legatees chargeable with duty, and for the duty whereon they shall be accountable, in the same manner as they are by the next preceding section empowered, to require and enforce the delivery of accounts for the purposes of this Act.

Accounting party to verify his accounts.

64. Every person who, under the provisions of this Act, may deliver any account or estimate of any property of which an account is required by virtue thereof to be rendered shall, if required by the Commissioner, produce before him such books and documents in the custody or control of such person, so far as the same relate to such account or estimate, as may afford any necessary information for the purpose of ascertaining such property, and the duty payable thereon; and the Commissioner may, without payment of any fee, inspect and take copies of any public book, but all such information shall be deemed to be confidential, and the Commissioner shall not disclose the same or the contents of any document or book to any person otherwise than for the purposes of this Act.

Power to value annuities for assessment of duty.

65. Where a valuation of any interest acquired by way of annuity is necessary for the purpose of assessing the duty chargeable thereon, the value of such interest shall be determined by the Commissioner, who may, at the request of the party chargeable, submit the valuation of such annuity to the arbitration of two indifferent persons, one to be appointed by the Commissioner, and the other by the person chargeable, and such arbitrators shall have power to appoint an umpire, and the award of the said arbitrators, or of such umpire, shall be final and conclusive.

Power for accountable party to appeal.

66. Any accountable party dissatisfied with the assessment of the duty payable under any of the provisions of this Act, upon giving, within

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within twenty-one days after the date of such assessment, notice in writing to the Commissioner of his intention to appeal against such assessment, and a statement of the grounds of such appeal, such statement to be furnished within the further period of thirty days, may appeal by petition accordingly to the Supreme Court, and such Court or any Judge thereof, sitting in chambers, shall have jurisdiction to hear and determine the matter of such appeal, and the costs thereof, with power to direct for the purposes of such appeal, any inquiry, valuation, or report to be made by any officer of the Court, or other person as such Court or Judge may think fit.

67. 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 for the same, in such form as shall be provided by the regulations to be issued under the authority of this Act; the Commissioner shall, from time to time, deliver to any person interested in any property affected by such duty, on applying for the same for any reasonable purpose approved by them, a certificate of such payment in such form as in the said regulations may be directed. Books to be kept and receipts given.

68. All affidavits made under this Act shall be sworn before the Commissioner, or any Commissioner for taking affidavits in the Supreme Court, and any person who shall wilfully make a false affidavit, concerning any matter in this Act contained, shall be liable to the punishment imposed by law for wilful and corrupt perjury. Affidavits.

69. Whenever any suit is pending in the Supreme Court for the administration of any property chargeable with duty under this Act, the said Court shall provide out of any property which may be in the possession or control of the Court for the payment of this duty. Duty in administration suits.

70. All penalties imposed by this Act may be recovered in a summary way before any two Justices of the Peace, under the provisions of an Ordinance of the Governor and Legislative Council, No. 6 of 1850, intituled "To Facilitate the Performance of the Duties of Justices of the Peace out of Sessions with respect to Summary Convictions and Orders," or of any Act now in force or hereafter to be in force relating to the duties of Justices of the Peace with respect to summary convictions and orders, and all convictions and orders made by such Justices may be enforced as in the said Ordinance, or in any other Act as aforesaid, as shall be provided. Recovery of penalties.

71. There shall be an appeal to the Local Court of Adelaide of Full Jurisdiction only from every conviction by any Justices for any offences under this Act, or from every order dismissing any information or complaint, or from any other order made by any such Justices under this Act, and the proceedings on such appeal shall be conducted in manner appointed by the said Ordinance, No. 6 of 1850, for appeals to Local Courts, or any Act to be hereafter in force regulating Appeal.

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regulating such appeal, but the Local Court of Adelaide aforesaid shall also have the power to make such order as to the payment of the costs of the appeal as it shall think fit, although such costs may exceed Ten Pounds.

**Regulations.**

72. The Governor may frame all such regulations and forms as may be necessary for carrying out the provisions of this Act; and all such regulations and forms, when published in the *Government Gazette*, shall have the force of law, and they shall be laid before both Houses of Parliament forthwith if Parliament be then sitting; and if not, then within twenty-one days after the commencement of the next Session.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

A. MUSGRAVE, Governor.

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**FIRST SCHEDULE.**

*Duties on Probate of Wills and Letters of Administration.*

Probate of a will, or letters of administration with a will annexed, when the effects are sworn to by the executor or administrator, shall be—

	£	s.	d.
Under the value of £100 .....	1	0	0
Above the value of £100, and under £200.....	2	0	0
Do. £200, “ £300.....	3	0	0
Do. £300, “ £400.....	4	0	0
Do. £400, “ £500.....	5	0	0
Above £500, 1 per cent.			

Letters of administration without a will annexed, when the effects are sworn to by the administrator, shall be—

	£	s.	d.
Under the value of £100 .....	1	10	0
Above the value of £100, and under £200.....	3	0	0
Do. £200, “ £300.....	4	10	0
Do. £300, “ £400.....	6	0	0
Do. £400, “ £500.....	7	10	0
Above £500, one and a half per cent.			

**SECOND SCHEDULE.**

*Succession to Real and Personal Estate.*

When the successor shall be the lineal descendant or lineal ancestor of the predecessor, a duty upon the value of the succession at the rate of .....	}	£1 per centum.
Where the successor shall be a brother or sister, or a lineal descendant of a brother or sister of the predecessor, a duty upon the value of the succession of.....	}	£3 per centum.
When the successor shall be a brother or sister of the father or mother, or the descendant of the brother or sister of the father or mother of the predecessor, a duty upon the value of the succession of .....	}	£5 per centum.
When the successor shall be a brother or sister of the grandfather or grandmother of the predecessor, a duty upon the value of the succession of .....	}	£6 per centum.
When the successor shall be in any other degree of collateral consanguinity to the predecessor than is heretofore described, or shall be a stranger in blood to him, a duty upon the value of the succession of .....	}	£10 per centum.