

# SUCCESSION DUTIES ORDINANCE, 1913-1941.<sup>(1)</sup>

## An Ordinance to amend the Law imposing Duties in respect of Estates Transmitted upon Death.

**B**E it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Succession Duties Ordinance, 1913-1941.*<sup>(1)</sup>

2. This Ordinance shall commence on a day to be fixed by the Lieutenant-Governor by Proclamation<sup>(1)</sup> published in the *Gazette* and so far as the same relates to duties in respect of property derived from deceased persons shall apply only where the person from whom the property is derived shall have died on or after the day when this Ordinance commences.

3. The enactment mentioned in the First Schedule hereto is repealed except so far as regards the application of such enactment to the estates of persons dying or to successions becoming chargeable with duty before the commencement of this Ordinance.

4. In this Ordinance unless the contrary intention appears—

“Treasurer” means the Treasurer of the Territory;

“Registrar”<sup>(2)</sup> means the Registrar of the Central Court;<sup>(3)</sup>

Short title.  
**Amended by**  
No. 2 of 1930,  
s. 2.  
Commencement.  
Application of  
Ordinance.  
Cf. Q. 50 Vic.  
No. 12, s. 2.  
S.A. No. 567 of  
1893, s. 2.

Repeal and  
saving.  
First Schedule.

Interpretation.  
S.A. *Ib.* s. 4.  
Cf. Q. *Ib.* s. 3.

(1) The *Succession Duties Ordinance, 1913-1941*, comprises the *Succession Duties Ordinance, 1913*, as amended by the other Ordinances referred to in the following Table:—

TABLE.

ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY  
OF PAPUA.

Short title, number and year.	Date of assent by Lieut.-Gov. or Administrator.	Date notified in Papua <i>Govt. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Succession Duties Ordinance, 1913</i> (No. 12 of 1913)	14.8.1913	4.3.1914	1.5.1914 ( <i>Papua Govt. Gaz.</i> of 16.3.1914)
<i>Succession Duties Ordinance, 1915</i> (No. 4 of 1915)	12.8.1915	1.3.1916	12.8.1915 ( <i>Statute Law of Papua, Vol. III, p. 1050</i> )
<i>Succession Duties Ordinance, 1941</i> (No. 6 of 1941)	25.7.1941	16.10.1941	25.7.1941 ( <i>Ordinances etc. of Papua, 1941, p. 14</i> )

(2) Regulation 22A of the *National Security (External Territories) Regulations* of the Commonwealth provides that the Registrar of the Supreme Court of the Australian Capital Territory shall have and may exercise all the powers and functions of the Registrar of the Supreme Court of the Territory of Papua under the *Succession Duties Ordinance, 1913-1941*, and any reference in either of those Ordinances to the Registrar shall be read as a reference to the Registrar of the Supreme Court of the Australian Capital Territory.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance, 1911-1940*.

## WILLS AND INTESTACY—

“Curator” means the Curator of Intestate Estates;

“Administration” means any probate or letters of administration with or without a will annexed and whether granted for general special or limited purposes any order to the Curator to administer and any rule or order of any court or judge and any deed or document of any kind whatsoever whereby any person becomes entitled at law to administer take charge of or become receiver of any real or personal property of a deceased person;

“Administrator” means any executor to whom probate of a will has been granted or any person to whom letters of administration with or without the will annexed have been granted and also any person who by virtue of any administration becomes entitled to administer take charge of or become receiver of any real or personal estate of a deceased person;

“Property” includes any interest in property;

“Court” means the Central Court;<sup>(3)</sup>

“Duty” or “Duties” means succession duty or duties under this Ordinance;

“Real Property Ordinance” means “*Real Property Act of 1861*”<sup>(4)</sup> (Queensland adopted), “*The Real Property Act of 1877*”<sup>(4)</sup> (Queensland adopted) and any Ordinance adopting or amending the same or substituted therefor.

### SUCCESSION DUTIES ON PROPERTY DERIVED FROM DECEASED PERSONS.

Succession  
duties payable  
by  
administrator.  
S.A. No. 567 of  
1893, s. 6.  
Q. 50 Vic.  
No. 12, ss. 7, 8.  
Second Schedule.

5. Every administrator shall pay to the Registrar<sup>(2)</sup> succession duties to be assessed by the Registrar according to the rates mentioned in the Second Schedule to this Ordinance; but where any such duty shall have been paid in respect of any property derived from any deceased person no further duty shall be paid by reason of any additional administration subsequent to such payment.

Property on  
which duty  
payable.  
Cf. S.A. *Ib.* s. 7.  
Q. *Ib.* ss. 7, 8.

6. For the purposes of this Ordinance property derived from a deceased person shall be subject to duty in so far as it comprises or is portion of or is payable out of—

(a) his real property in the Territory (including real property over which he has a general power of appointment exercised by his will);

(2) See footnote (2) printed on p. 4357.

(3) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(4) Repealed and replaced in the Territory of Papua by the *Real Property Ordinance*, 1913-1939.

- (b) his personal property in the Territory (including personal property over which he had a general power of appointment exercised by his will) including all debts money and choses in action receivable or recoverable by the administrator in the Territory.

6A.—(1.) No duty shall be leviable in the Territory in respect of property situate in the United Kingdom when passing on death.

Exemptions from duty.  
Section 6A inserted by No. 4 of 1915, s. 2.

(2.) For the purpose of Section 20 of the *Finance Act, 1894*<sup>(5)</sup> (57 and 58 Vic. ch. 30) the local situation in the United Kingdom of any property shall be determined in accordance with the law of England.

6B. Where the net present value of the whole estate in the Territory of a member of the Naval Military or Air Forces of the Commonwealth or of any part of the King's Dominions or of any Ally of Great Britain who during the present war between His Majesty the King and Germany or within one year after its termination dies on active service or as a result of injuries received or disease contracted on active service does not exceed the sum of Five thousand pounds no part of that estate shall be liable to succession duty under this Ordinance.

Exemption of estates of persons dying on active service.  
Inserted by No. 6 of 1941, s. 2.

7. The duty payable under this Ordinance shall be a first charge upon the property derived from the deceased person.

Duty to be first charge on real and personal estate.  
S.A. No. 567 of 1893, s. 8.  
Cf. Q. 50 Vic. No. 12, s. 10.

#### HOW DUTY ASCERTAINED.

8.—(1.) For the purpose of ascertaining the amount of duty every administrator shall within the prescribed period from the grant of administration file with the Registrar a statement in the prescribed form specifying full particulars of—

Administrator to file statement.  
S.A. *Ib.* s. 9.  
Cf. Q. *Ib.* ss. 6, 18.

- (a) the net present value of any property derived from the deceased person to which any person is beneficially entitled and the relationship (if any) of such person to the deceased person;
- (b) the net present value of any property given to an uncertain person or on an uncertain event including property over which a special power of appointment is given such value to be estimated as if such property had been given by way of vested remainder to a certain person;

(5) By Order in Council dated 10.5.1916 His Majesty ordered "that Section 20 of the *Finance Act, 1894* shall apply to the Territory of Papua." Section 20 of the *Finance Act, 1894* (United Kingdom), provides for relief against double duty in certain circumstances.

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(c) all such further information as the Registrar shall demand for the purpose of enabling him to ascertain the duty.

(2.) If the administration is limited to any particular property the statement shall be limited to such particular property.

Property disposed of by way of *donatio mortis causa* liable to duty.  
S.A. No. 567 of 1893, s. 10.  
Cf. Q. 50 Vic. No. 12, s. 26.

9. All property the subject-matter of a gift by way of a *donatio mortis causa* shall upon the death of the person making such gift be deemed to be the property derived from him for the purpose of estimating the duty and shall vest in the administrator until such duty shall have been paid and shall have been refunded to the administrator. The administrator shall include such property in his statement and shall pay duty upon its net value.

Registrar may extend time for filing statement.  
S.A. *Ib.* s. 11.  
Registrar's approval.

10. The Registrar may extend the time within which the administrator is to file the statement and after the statement has been filed he may permit the administrator to add to alter or vary it. When such statement with such addition alteration or variation (if any) shall have been approved by the Registrar he shall certify such approval in the prescribed form. Such certificate shall except as herein otherwise provided be final and conclusive.

If statement not filed or Registrar dissatisfied therewith &c. the Registrar may assess duty.  
S.A. *Ib.* s. 12.

11. If the administrator of the estate of any deceased person shall not file the statement within the prescribed time or such extended time as the Registrar may allow or if administration shall not be obtained in respect of the estate of any deceased person within six months after his death or if the Registrar shall be dissatisfied with any statement filed in respect of the estate of any deceased person or any property derived from him the Registrar may assess the duties in the prescribed manner.

Registrar may deliver administration upon receiving security.  
S.A. *Ib.* s. 13.  
Cf. Q. *Ib.* s. 12.

12.—(1.) Every administration shall immediately upon the grant thereof be delivered by the Registrar to the administrator upon payment of the duties. The Registrar may however deliver the administration to the administrator upon his giving security either by mortgage over the property of the deceased person or some portion thereof or by bond with or without sureties or in any other manner which may be prescribed as the Registrar may think fit or in any other manner to the satisfaction of the Registrar for payment of the duties.

No security from Curator.

(2.) It shall not be necessary for the Curator to give any such security.

As to administration during minority or absence.  
S.A. *Ib.* s. 14.  
Q. *Ib.* s. 17.

13. Every administrator appointed during the minority or absence from the Territory of any person shall file the said statement and pay the duty.

SETTLEMENTS AND DEEDS OF GIFT.

14. For the purposes of this Ordinance "settlement" shall mean and include every conveyance transfer appointment under power declaration of trust or other non-testamentary disposition of property made by any person either before or after the commencement of this Ordinance containing trusts of dispositions to take effect after the death of the settlor or any other person when such settlor or other person shall not have died before the coming into operation of this Ordinance.

Settlement.  
S.A. No. 567 of  
1893, s. 15.  
Cf. Q. 50 Vic.  
No. 12, s. 22.

15. For the purposes of this Ordinance "deed of gift" shall mean and include every deed of gift absolute and every deed of conveyance transfer appointment under power declaration of trust or other non-testamentary disposition of property made by any person after the date of the coming into operation of this Ordinance and containing trusts or dispositions to take effect during his lifetime and not being a settlement within the meaning of this Ordinance and not being made before and in consideration of marriage or in pursuance of a binding contract entered into before and in consideration of marriage or in favour of a *bonâ fide* purchaser or incumbrancee for valuable consideration and whether or not the property comprised in such deed is subject to any limitation.

Deed of gift.  
S.A. *Ib.* s. 16.

16.—(1.) The property given or accruing to any person under any settlement shall upon the death of the settlor or other person upon whose death the trusts or dispositions are to take effect be chargeable with succession duty according to the scale in the Third Schedule hereto.

Property  
comprised in  
settlements and  
deeds of  
gift liable to  
succession duty.  
S.A. *Ib.* s. 17.  
Cf. Q. *Ib.*  
s. 22.

(2.) The property given or accruing to any person under any deed of gift shall in the event of the death of the donor within three months from the date of the deed of gift be chargeable immediately after such death with succession duty according to the scale in the Third Schedule hereto except in cases of death by accident.

Third Schedule.

(3.) Such duty shall be a first charge upon the property on which the same is imposed but subject to any moneys secured or charged before such settlement or deed of gift upon the property comprised therein.

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Property in settlements and deeds of gift on which duty payable.  
Cf. S.A.No. 567 of 1893, s. 18.  
Cf. Q. 50 Vic. No. 12, s. 22.

17. For the purposes of this Ordinance property comprised in a settlement or deed of gift shall be subject to duty in so far as it comprises or is portion of or is payable out of—

- (a) the real property in the Territory of the settlor or donor (including real property over which he had a general power of appointment exercised by the settlement or deed of gift);
- (b) his personal property in the Territory (including personal property over which he had a general power of appointment exercised by the settlement or deed of gift) including all debts moneys and choses in action receivable or recoverable by him in the Territory.

Settlements and deeds of gift to be registered.  
S.A. *Ib.* s. 19.  
Q. *Ib.* s. 22.

18. Every settlement and every deed of gift shall be registered either within the prescribed time or within such further time as the Registrar may allow after the duty in respect of any property accruing thereunder shall become chargeable as hereinbefore provided.

Mode of registering.  
S.A. *Ib.* s. 20.  
Q. *Ib.* s. 22.

19. The registration of every settlement and every deed of gift shall be effected by the trustee or some person interested thereunder producing the same to the Registrar and leaving an attested copy thereof with him which copy the Registrar shall cause to be examined with the original. If he shall find the same to be correct he shall indorse and sign a certificate of registration on the original settlement or deed of gift to the effect that the same was produced to him and that an attested copy was left with him and specifying the date when the same was so produced and the attested copy so left with him as aforesaid. The Registrar shall charge upon every such registration a fee of Ten shillings.

If settlement or deed of gift registered under the "Real Property Ordinance" a certified copy may be produced in lieu of original.  
S.A. *Ib.* s. 21.

20. In case of any settlement or deed of gift being a registered document under the "Real Property Ordinance" a copy certified under the hand of the Registrar of Titles or any deputy registrar of titles and the seal of office of the Registrar of Titles may be produced instead of the original for registration under this Ordinance; and a certificate of registration indorsed thereon shall have the same effect as if indorsed on the original.

Trustee or other person to file statement.  
S.A. *Ib.* s. 22.  
Cf. Q. *Ib.* s. 22.

21. The trustee of every settlement or deed of gift or such other person interested thereunder as the Registrar shall in the prescribed manner direct so to do shall within the prescribed time or within such further time as the Registrar shall allow after the duty shall become chargeable on any property accruing thereunder file with the Registrar a statement in the prescribed form setting forth—

- (a) the net present value at the time of the duty becoming chargeable of any property given or accruing to any person under the settlement or deed of gift;
- (b) the net present value of any property given or accruing under the settlement or deed of gift to an uncertain person or on an uncertain event including property over which a special power of appointment is given such value to be estimated as if such property had been given by way of vested remainder to a certain person;
- (c) all such further information as the Registrar shall demand for the purpose of enabling him to ascertain the duty payable.

After such statement has been filed the Registrar may permit the trustee or any other person interested under the settlement or deed of gift to add to alter or vary it.

22. When such statement with such addition alteration or variation (if any) shall have been approved by the Registrar he shall certify such approval in the prescribed form. Such certificate shall except as herein otherwise provided be final and conclusive.

Registrar's approval of statement.  
S.A. No. 567 of 1893, s. 23.

23. After such approval the trustee or such person interested under the settlement or deed of gift as shall in the prescribed manner be required by the Registrar so to do shall pay out of the property comprised in the settlement or deed of gift the duty or duties to be assessed by the Registrar. Such duty or duties shall be payable immediately after the Registrar shall have made assessment. The Registrar may extend the time for payment.

After approval trustee or other person to pay duty out of property.  
S.A. *Ib.* s. 24.  
Q. 50 Vic.  
No. 12, s. 22.

24. The Registrar may if he deems it desirable require payment from the trustee or such other person as in the last preceding section mentioned of the duty appearing by the statement to be chargeable before he has certified his approval. The duty shall thereupon immediately become payable but the amount thereof shall be subject to adjustment by the Registrar when he has certified his approval of the statement.

Registrar may require payment before he finally approves statement.  
S.A. *Ib.* s. 25.

25. If such settlement or deed of gift be not registered within the prescribed time or such further time as the Registrar may allow or if the statement in Section 21 mentioned shall not be filed within the prescribed time or such further time as the Registrar shall allow or if the Registrar shall be dissatisfied with any such statement the Registrar may assess in the prescribed manner the duty in respect of any property accruing to any person under such settlement or deed of gift.

If not registered Registrar may assess duty.  
S.A. *Ib.* s. 26.  
Q. *Ib.* s. 22.

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Property conveyed or assigned in anticipation of passing of Ordinance or to evade duty liable to duty.  
S.A. No. 567 of 1893, s. 27.  
Q. 50 Vic.  
No. 12, s. 25.

26.—(1.) If any person has made or shall hereafter make any conveyance assignment gift delivery transfer declaration of trust or other non-testamentary disposition whether in writing or otherwise of any property real or personal or of any money or securities for money or has given or shall give any mortgage or incumbrance or has incurred or shall incur any debt with intent to evade the payment of duty hereunder such disposition mortgage or incumbrance or the incurring of such debt shall be deemed so far as the circumstances will admit to be a deed of gift under Section 15 hereof and any property accruing to any person thereunder shall be liable to duty as if the donor had died within three months after the date thereof but double duty shall be payable in respect of such property.

(2.) In any case within this section the court may on the application of the Registrar by summons or petition declare the disposition mortgage incumbrance or debt in question to have been made given or incurred with intent to evade the payment of duty hereunder 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. Upon such declaration and order being made all the provisions of this Ordinance shall so far as circumstances will admit be applicable to such case as if such person were trustee of a deed of gift under this Ordinance and the donor had died within three months from the date of such deed of gift and such disposition mortgage or incumbrance or the creation of such debt were the deed of gift under which he took the property comprised therein.

### SALES FOR NON-PAYMENT OF DUTY.

Property may be ordered to be sold.  
S.A. *Ib.* s. 28.  
Cf. Q. *Ib.* ss. 9, 10, 22.

27.—(1.) The administrator or trustee or any person required to pay duty under Section 23 may if he shall require 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.

Registrar may obtain order for sale of property to pay duty.

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

Court may thereupon order sale.

(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 times for such prices and in such manner and subject to such terms and conditions in all respects as it may deem advisable and may make such order as to the costs of and consequent upon such application proceedings and sale as it may deem advisable.

Application of moneys arising from sale.

(4.) The money arising from such sale shall be applied in the first place towards paying the costs and expenses if so ordered of and consequent upon any such application proceedings or sale and



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in the next place towards the payment of the said duty; and the balance shall subject to the provisions of the next following subsection be paid to or held or disposed of by the 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 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.

Court may make order as to disposal of surplus moneys.

28. No purchaser from any person required to pay duty under Section 23 or from any trustee in any case where such person or trustee shall make a sale purporting to be made under the last preceding section hereof and no purchaser at any sale purporting to be made under any order obtained under this Ordinance shall be bound or concerned to see or inquire whether such trustee or person has power to sell or as to the necessity of such sale or whether such order was properly obtained or whether such 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 Registrar effecting the same.

Purchaser not bound to inquire.  
S.A. No. 567 of 1893, s. 29.

29. When any real or personal property shall be sold under any order of the court obtained under this Ordinance the court may make an order vesting such real or personal property in such person or persons in such manner and for such estate or interest as the court shall think fit; and every such order shall have the same effect as if the administrator trustee Registrar or other person obtaining such order had been seized or possessed of or entitled to such real and personal property for the estate or interest vested in such person or persons by the vesting order and had been freed from all disability and had duly executed all proper conveyances and memoranda of transfer assignments and assurances of such real and personal property for such estate or interest. The court may for the purposes of the "Real Property Ordinance" direct any transfer of any real property under the provisions of the said Ordinance to be executed by such person as the court shall direct.

When land sold under order court may make vesting order.  
S.A. *Ib.* s. 30.  
Q. 50 Vic.  
No. 12, s. 24.

ADJUSTMENT OF DUTY.

30.—(1.) Subject to any specific direction appearing in any will deed of gift or settlement to the contrary every administrator or trustee shall adjust any duties and the incidence of any duties payable or paid by him so as to throw the burden thereof upon the respective properties on which the same shall be ultimately chargeable.

Administrator or trustee to adjust duties.  
S.A. *Ib.* s. 31.  
Cf. Q. *Ib.* s. 11.

(2.) For the purpose of carrying such adjustment into effect or

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for the purpose of raising money for the payment of any duty the administrator or trustee 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 in all respects as in his discretion may seem proper.

(3.) The administrator or trustee may also for the purpose aforesaid by any instrument in writing impose any charge upon any property in favour of any person whether then ascertained or not entitled contingently or otherwise to any other property. As to land under the provisions of the "Real Property Ordinance" such charge may be effected by encumbrance under such Ordinance upon such terms and conditions as the administrator or trustee may think proper; but no covenant by the encumbrancer shall be implied in any such encumbrance.

(4.) The powers and discretions conferred by this section shall be subject to the control and direction of the court and the court may also 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 Ordinance.

**31.** Where by reason of there being no trustee of any settlement or deed of gift or because of the neglect of any administrator or trustee or for any other reason no adjustment of duties shall be made within a reasonable time the court may upon 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 such application and adjustment and for sale or charge or encumbrance of any part of the real or personal property concerned for the purpose of such adjustment and for payment of such costs as shall be just.

### GENERAL PROVISIONS.

**32.—(1.)** In the case of any property given or accruing under a will settlement or deed of gift 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 a certain person and such duty shall be assessed on the highest scale applicable on any vesting possible under the will settlement or deed of gift.

(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 Registrar upon being satisfied that such is the case shall order that the difference between the smaller duty afore-

Where duties not adjusted court may make order.  
S.A. No. 567 of 1893, s. 32.

How duty ascertained in case of property given to an uncertain person or on an uncertain event.  
S.A. 7b. s. 34.

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said and the duty actually paid with interest on such difference at the rate of three per centum per annum from the time of payment of duty under this section shall be paid to such person or persons and upon such order the Treasurer shall pay the same out of moneys legally available.

33. Where in the opinion of the Registrar any property shall be of such a nature or so disposed of or circumstanced that the value thereof is not fairly ascertainable under this Ordinance or the regulations 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 such property upon such terms as he shall think fit and may give a discharge to the administrator or trustee or any other person interested in the property upon payment of the duty according to such composition.

Power to  
compromise  
duties.  
S.A. No. 567  
of 1893, s. 35.

34. If after any assessment of duty has been made it shall be discovered that the duty thereby fixed is too small or if after a statement has been filed it shall be discovered that any net value thereby shown is too small or if the Registrar shall be dissatisfied on any ground with the statement filed the person by whom the statement shall or would have been filed and the duty paid or the person whose duty at the time of such discovery it would be either with or without the direction or requirement of the Registrar to file such statement or pay such duty if not already filed or paid shall immediately upon such discovery being made and upon being required by the Registrar so to do amend the statement and shall pay such duty or additional duty as may be assessed by the Registrar: Provided that if such requirement be made by the Registrar after giving his certificate of final approval of the statement any 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 such duty unless it shall be 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.

When too little  
duty paid.  
S.A. *Ib.* s. 36.  
Q. 50 Vic.  
No. 12, s. 14.

35. If after any duty has been paid under this Ordinance it shall be found that too much duty has been paid the Registrar upon being satisfied by examination of the parties or otherwise as he may think fit that too much duty has been paid shall order that the amount overpaid shall be returned to the person entitled to receive the same and upon such order the Treasurer shall pay the same out of moneys legally available.

When too much  
duty paid.  
S.A. *Ib.* s. 37.  
Q. *Ib.* s. 16.

## WILLS AND INTESTACY—

No will to be registered or admissible in evidence until proved.

S.A. No. 567 of 1893, s. 38.

36. No will or codicil of any person dying after the coming into operation of this Ordinance shall be registered or be admissible or receivable in evidence except in criminal proceedings or upon application for probate or letters of administration or for an order to the Curator to administer until administration in respect of the estate comprised therein shall have been issued or obtained.

No settlement or deed of gift admissible in evidence except in criminal proceedings until registered.

S.A. *Ib.* s. 39.

37. No settlement or deed of gift requiring registration under this Ordinance shall be admissible or receivable in evidence except in criminal proceedings until the same has been registered and the certificate of registration has been indorsed thereon.

Certificate of registration to be *prima facie* evidence of registration.

S.A. *Ib.* s. 40.

38. A certificate for<sup>(6)</sup> registration indorsed on any settlement or deed of gift and purporting to be signed by the Registrar shall be *primâ facie* evidence that such settlement or deed of gift has been duly registered under this Ordinance.

Appeal from Registrar.

S.A. *Ib.* s. 41.

39. There shall be an appeal by any person interested to the court in the prescribed manner from or against any assessment order direction decision or act of the Registrar; and the court may make such order upon such appeal as shall seem just. Except for the purposes of such appeal every assessment order direction decision requirement or act of the Registrar under this Ordinance shall be conclusive against all persons affected thereby.

Except on appeal Registrar's decision final.

Registrar to keep book and give receipt for duty.

S.A. *Ib.* s. 42.

40. Whenever any payment of duty shall be made under this Ordinance the same shall be entered in a book to be kept by the Registrar for this purpose and he shall give a receipt therefor. The Registrar shall from time to time deliver to any person interested in any property affected by such duty on application to him for any reasonable purpose a certificate of such payment or that no duty is payable in respect of such property in the prescribed form.

Regulations.

S.A. *Ib.* s. 43.

Q. 50 Vic. No. 12, s. 5.

41. The Lieutenant-Governor<sup>(2)</sup> may from time to time make alter and revoke any regulations<sup>(7)</sup> for the following purposes or any of them that is to say:—

- (a) prescribing the duties of all persons employed in the administration of this Ordinance;
- (b) regulating the security to be given by any such persons;
- (c) prescribing tables and rules for fixing values of any property;

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(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(6) The word "for" appeared in the original Ordinance. It has now been omitted and the word "of" inserted in its stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

(7) See the *Succession Duties Regulations*, printed on p. 4372.

*Succession Duties Ordinance, 1913-1941.*

- (d) prescribing forms and contents of statements and modes of adjustment of duties and the incidence of duties under this Ordinance and providing for verification of statements by oath or statutory declaration;
- (e) for the compulsory examination under oath or declaration of persons by or on behalf of the Registrar for obtaining information to aid in carrying out the objects of this Ordinance;
- (f) for carrying out the objects and purposes of this Ordinance and to meet any particular case that may arise;
- (g) imposing a penalty not exceeding Fifty pounds for a breach of any regulation.

In the construction of this section general words shall not be limited or controlled by any particular words.

Until such regulations are made the regulations in force under the enactment hereby repealed at the time of such repeal shall be deemed to have been made under the authority of this Ordinance.

42. Where the inspection of any deeds or other documents in the office of the Registrar of Titles is required by the Registrar for the purposes of this Ordinance the Registrar of Titles shall produce such deeds or documents to the Registrar or any person appointed by him in writing to make such inspection.

Inspection of documents in office of Registrar of Titles.

S.A. No. 567 of 1893, s. 45.

43. 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 Ordinance the court may on application of the Registrar or any other person affected thereby order such person to deliver such statement or account adjust such duties or the incidence of such duties or perform such duty.

If any person makes default in delivering statement &c. court may order same to be done.

S.A. *Ib.* s. 46.

44. 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 this Ordinance or the regulations thereunder with intent to evade the payment of duty under this Ordinance or to lessen the amount thereof such person 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.

Making a false statement or fraudulent alteration in a statement a misdemeanour.

S. A. *Ib.* s. 47. Q. 50 Vic. No. 12, s. 19.

45. Any person who—

- (a) fails or neglects to file or amend any statement required to be filed or amended by him under this Ordinance;
- or

Failing or omitting to file statements accounts &c. to involve penalty.

S.A. *Ib.* s. 48.

WILLS AND INTESTACY—

(b) fails or neglects to pay any duty payable by him under this Ordinance; or

(c) fails or neglects to register any settlement or deed of gift requiring registration under this Ordinance

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

Affidavits.  
S.A. No. 567  
of 1898, s. 49.

46. All affidavits or statutory declarations to be made under this Ordinance or the rules or regulations shall be sworn or made before the Registrar notary public or commissioner for taking affidavits in the Central Court<sup>(2)</sup> or justice of the peace.

Legacies to  
certain public  
bodies.  
S.A. *Ib.* s. 57.

47. No duty shall be payable upon any legacy consisting of books prints pictures statues gems coins (not being current coin of the realm) medals specimens of natural history and other specific articles given or bequeathed to or in trust for any institution under the control of the Government or board appointed or partly appointed by the Government in order to be kept and preserved by such institution and not for the purpose of sale.

General  
jurisdiction of  
court under  
this  
Ordinance.  
Q. 50 Vic.  
No. 12, s. 28.

48.—(1.) Upon any application to the court under this Ordinance all such persons as would be necessary or proper parties if such application were made in an action instituted by a creditor for the administration of a testator's or intestate's estate shall be entitled to notice and may be heard; but the court may order substituted service or dispense with service upon any such person as it may think fit.

(2.) For the purpose of any such application the court may appoint guardians or refer any question to the Registrar as it may deem expedient.

(3.) The court shall subject to the provisions of this Ordinance decide any such application upon the same principles as if the order were to be made in an action instituted by creditors to obtain payment of their debts out of the estate of a deceased person; and the court shall have and may exercise for the purposes of this Ordinance all or any of the powers it now possesses including the power to make rules of practice.

Penalties how  
recovered.  
S.A. *Ib.* s. 51.

49. All fines and pecuniary penalties for any offence against this Ordinance or the regulations may be recovered before a magistrate in a summary way.

Imprisonment  
on  
non-payment  
of penalties.  
S.A. *Ib.* s. 53.

50. In every case of the imposition of a fine or pecuniary penalty under this Ordinance and of the non-payment thereof any magistrate may commit the person making default in payment to any

(2) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

*Succession Duties Ordinance, 1913-1941.*

gaol for any term not exceeding three months; the imprisonment to cease on payment of the sum due and the costs of such proceedings as may have been taken for the recovery thereof; but this section shall not affect any remedy under the *Justices Ordinance, 1912*<sup>(8)</sup>, for the recovery of any pecuniary penalty.

FIRST SCHEDULE.

Reference to Enactment.	Short Title.	Extent of Repeal.
50 Vic. No. 12 (Queensland adopted)	<i>“The Succession Duties Act of 1886”</i>	The whole enactment.

SECOND SCHEDULE.

Section 5.

DUTIES ON PROPERTY DERIVED BY ANY PERSON FROM A DECEASED PERSON  
TO BE ASSESSED UPON THE NET PRESENT VALUE OF SUCH PROPERTY.

Where the net present value of the property derived from the deceased person is—

Less than £100 .. .. .	No duty.
£100 and less than £1,000 .. .. .	2 per cent.
£1,000 and less than £10,000 .. .. .	3 per cent.
£10,000 and less than £20,000 .. .. .	4 per cent.
£20,000 or over .. .. .	5 per cent.

Provided that where the person taking is the widow widower or child of the deceased person the duty shall be charged at one-half the foregoing rates.

THIRD SCHEDULE.

Section 16.

DUTIES ON PROPERTY GIVEN OR ACCRUING TO ANY PERSON UNDER A SETTLEMENT OR DEED OF GIFT TO BE ASSESSED UPON THE NET PRESENT VALUE  
OF SUCH PROPERTY.

Where the net present value of the property is—

Less than £100 .. .. .	No duty.
£100 and less than £1,000 .. .. .	2 per cent.
£1,000 and less than £10,000 .. .. .	3 per cent.
£10,000 and less than £20,000 .. .. .	4 per cent.
£20,000 or over .. .. .	5 per cent.

Provided that where the person taking the property is a widow widower or child of the settlor or donor the duty shall be charged at one-half the foregoing rates.

(8) Now the *Justices Ordinance, 1912-1940.*