

DEATH DUTIES BILL

MEMORANDUM.

THIS Bill imposes two descriptions of duty—namely, death duty, in respect of the estates of deceased persons; and gift duty, in respect of gifts made by a person in his lifetime. The former is substituted for the duty imposed by the Death Duties Act, 1908, while the latter takes the place of the deed-of-gift duty imposed by the Stamp Duties Act, 1908.

Death duty is itself of two kinds—namely, estate duty and succession duty. The former corresponds to the estate duty payable in England, while the latter corresponds to the two distinct duties known in England as succession duty and legacy duty.

Some estates will pay estate duty and no succession duty; others will pay succession duty and no estate duty; while many will pay both of those duties.

ESTATE DUTY.

Estate duty is imposed on the aggregate value of the whole estate of the deceased after deducting debts and liabilities. It is assessed at a graduated rate rising from 1 per cent. in the case of estates of £500, to 7 per cent. in the case of estates of £20,000, and increasing thereafter by increases of $\frac{1}{3}$ per cent. for every additional £5,000 until a maximum rate of 15 per cent. is reached. No estate duty is payable on estates not exceeding £500.

The rate of estate duty does not depend in any manner upon the persons who are entitled to the property under the will or intestacy of the deceased; it depends solely upon the total value of the estate. This rule, however, is subject to the exception that if the whole estate does not exceed £5,000 and is left absolutely to the widow of the deceased, it is exempt even from estate duty.

Estate duty is imposed only upon property situated in New Zealand, but for this purpose personal property is deemed to be situated in New Zealand if the deceased owner was domiciled in New Zealand at the time of his death, even though in fact the property may be situated elsewhere. This is in conformity with English law. Due provision is made to insure that the same property will not be subjected to double taxation, in New Zealand and also in some other country.

Where the deceased leaves property both in New Zealand and elsewhere, his debts and liabilities are apportioned between the New Zealand assets and the foreign assets, and the value of the New Zealand estate is determined accordingly.

Estate duty is imposed not merely upon the property of the deceased which vests in his executor or administrator under his will or intestacy, but also on certain other property which for this purpose is deemed to form part of his estate: for example, an entailed estate, property over which the deceased possessed a general power of appointment, life-insurance policies maintained by the deceased out of his own moneys but in the name of another person, gifts made by the deceased within three years of his death, and settlements of property to take effect on the death of the deceased. Similar provisions are contained in English law, and are necessary in order to safeguard this duty against successful evasions.

SUCCESSION DUTY.

Unlike estate duty, succession duty is imposed not upon the aggregate property of the deceased, but upon each separate interest taken in that property by the several persons who succeed to the estate, whether as legatees, devisees, or otherwise. The rate of the duty depends upon the relationship between the successor and the deceased. A widow, child, or grandchild pays no succession duty unless the value of the succession exceeds £20,000, in which case succession duty at 2 per cent. is payable; a man who succeeds to his wife's property pays 2 per cent.; other relatives not more remote than a cousin pay 5 per cent.; more remote relatives, and strangers in blood, pay 10 per cent.; and in all those cases, if the value of the succession exceeds £20,000, duty is payable at

double those rates on the surplus above £20,000. No succession duty is payable on any property left on trust for any charitable, educational, religious, or other public purpose in New Zealand—that is to say, on any “charitable trust” within the technical meaning of that term.

Although estates under £500 are exempt from estate duty, they pay succession duty in the same manner as larger estates. Thus, if the deceased leaves his whole estate worth £500 to a stranger in blood, it will pay succession duty at 10 per cent. ; but if he leaves it to his widow or children, it will pay neither estate nor succession duty. If he leaves an estate worth £20,000 to his widow and children or to a charity, it will pay estate duty at 7 per cent., but no succession duty ; but if he leaves such an estate to a remote relative or to a stranger in blood, it will pay both estate duty at 7 per cent. and succession duty at 10 per cent.

GIFT DUTY.

Gift duty is imposed upon all gifts made by any person in his lifetime, with the exception of gifts less than £500 in value and of gifts on any charitable trust. The rate of duty is 5 per cent. of the value of the gift. This duty differs from the existing deed-of-gift duty in two chief respects,—

- (1.) The new duty is imposed on all gifts whether made by an instrument in writing or not, whereas the existing duty is merely a stamp duty imposed upon the instrument of gift (if any). Consequently gifts of money and other gifts without writing, however great in value, now escape duty altogether.
- (2.) The existing duty is levied at the same rate as the existing death duty, and therefore depends partly on the aggregate value of the donor's estate and partly on the relationship between him and the beneficiary, instead of depending solely on the amount of the gift.

NATIVE SUCCESSION DUTY.

Instead of estate duty and succession duty, Native land is made subject to a special duty called Native Succession Duty, at the rate of 2 per cent. of the value of the property included in each succession order issued by the Native Land Court. Successions under the value of £200 are exempt.

JOHN W. SALMOND,
Counsel to the Law Drafting Office.

DEATH DUTIES.

ANALYSIS.

- Title.
1. Short Title and commencement.
2. Interpretation.

PART I.

ESTATE DUTY.

3. Estate duty imposed.
4. Graduated rate of estate duty.
5. Property subject to estate duty.
6. Final balance of estate.
7. Personal property of persons domiciled in New Zealand to be liable to estate duty wherever situated.
8. Mode of determining situation of property.
9. Allowance to be made for debts.
10. Apportionment of debts between dutiable estate and foreign assets.
11. Funeral and administration expenses.
12. Certain estates exempted from estate duty.

PART II.

SUCCESSION DUTY.

13. Succession duty imposed.
14. Property liable to succession duty.
15. Wife and children exempt from succession duty in certain cases.
16. Charitable trusts exempt from succession duty.
17. Rates of succession duty.
18. Illegitimate relationship to be taken into account for succession duty.
19. Effect of adoption on succession duty.
20. Valuation of contingent interests for purposes of succession duty.
21. Valuation of property subject to incumbrances for purposes of succession duty.
22. Apportionment of successions between the dutiable estate and foreign assets.

PART III.

ASSESSMENT AND COLLECTION OF ESTATE AND SUCCESSION DUTY.

23. Death duties to be payable by the administrator.
24. Death duties to become due six months after death of deceased.
25. Penalty for default in payment of death duties.
26. Death duties to be payable although no grant of administration.
27. Death duties to be a charge on the dutiable estate.
28. Succession duty to be also recoverable from each successor.
29. Proportion of estate duty also to be recoverable from each successor.
30. Companies to be liable in certain cases for duty payable on shares.

31. Deduction to be made of duty paid in any other country on property situated in that country.
32. Statements to be delivered to Commissioner by administrator.
33. Death duties to be assessed by Commissioner.
34. Commissioner may assess duty although no statement delivered by administrator.
35. Administration to be sent by Court to the Commissioner.

PART IV.

GIFT DUTY.

36. Gift duty imposed.
37. Meaning of "gift."
38. Meaning of "disposition of property."
39. Voluntary contracts to be deemed gifts in certain cases.
40. No gift duty except on property situated in New Zealand.
41. No gift duty on antenuptial marriage settlements.
42. No gift duty on charitable trusts.
43. No gift duty on gifts of a less value than £500.
44. Single disposition of property to be deemed a single gift.
45. Rate of gift duty.
46. Valuation of contingent interests for purposes of gift duty.
47. Valuation of property subject to incumbrances for purposes of gift duty.
48. Gift duty to be a debt due by the donor and a charge upon the property.
49. Gift duty to be also a debt due by the beneficiary.
50. And by a trustee for a beneficiary.
51. Statement to be delivered by the donor to the Commissioner.
52. Stamp duty on instruments of gift.
53. Beneficiary to deliver statement in default of donor.
54. Gift made out of New Zealand to be liable to gift duty.
55. Penalty on failure to deliver statement.
56. Additional duty to be paid in case of default with intent to evade duty.
57. Commissioner may assess gift duty although no statement delivered.
58. Gift duty to be deducted from death duty payable on same property.

PART V.

MISCELLANEOUS.

59. Appeal to Supreme Court from assessment of Commissioner.

60. Commissioner may obtain inquiry before a Magistrate.	71. Minister may refund duty paid in excess.
61. Right of Commissioner to inspect books, registers, &c.	72. Refunds of duty payable out of Consolidated Fund.
62. Supreme Court may order statement to be delivered.	73. Registration of charge for duty.
63. Delivery of false statement an offence.	74. Enforcement of charge for duty by the Supreme Court.
64. Commissioner may compromise a claim for duty.	75. Duties to be denoted by stamps.
65. Duty chargeable at the higher rate in case of coincident provisions.	76. Governor may remit penalties.
66. Valuation of land for purposes of duty under this Act.	77. Statutory declarations exempt from stamp-duty.
67. Valuation of other property.	78. Regulations.
68. Further claim may be made in case of payment of too little duty.	79. Native succession duty.
69. Duty recoverable by Commissioner in his official name.	<i>Repeals.</i>
70. Refund of duty paid in excess.	80. Repeal.
	81. Repeal.
	82. Repeal.
	83. Amendments of certain Acts. Schedules.

A BILL INTITULED

Title.	AN ACT to make Better Provision for the Payment of Duties on the Estates of Deceased Persons and on Property disposed of by way of Gift.	
	BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—	5
Short Title and commencement.	1. This Act may be cited as the Death Duties Act, 1909, and shall come into operation on the first day of January, nineteen hundred and <i>ten</i> .	10
Interpretation.	2. In this Act, unless a contrary intention appears,— “Administration” means any probate, letters of administration, rule or order of any Court, or any other document whereby any person becomes entitled at law to administer the estate of a deceased person, or any part of his estate; and includes all probates or letters of administration granted out of New Zealand, and all exemplifications thereof, if those probates, letters of administration, or exemplifications have been resealed in New Zealand under the provisions of the Administration Act, 1908: “Administrator” means any person to whom probate or letters of administration have been granted, or who is entitled by virtue of any other administration to administer the estate of a deceased person, or any part of his estate: “Commissioner” means the Commissioner of Stamps, and includes a Deputy Commissioner, appointed under the Stamp Duties Act, 1908: “Death duty” means estate duty or succession duty as imposed by this Act: “Debt” includes any pecuniary liability, charge, or incumbrance: “Deceased person” or “the deceased” means a person dying after the commencement of this Act: “General power of appointment” includes any power or authority which enables the donee or other holder thereof, or would enable him if he was of full capacity, to appoint or dispose of any property, or to charge any sum of money upon any property, as he thinks fit for his own	15 20 25 30 35

- benefit, whether exercisable by instrument *inter vivos* or by will, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself, or exercisable as tenant for life under the Settled Land Act, 1908, or as mortgagee :
- 5 "Personal property" does not include leaseholds or other chattel interests in land :
- "Real property" includes leaseholds and other chattel interests in land :
- 10 "Will" includes any testamentary instrument.

PART I.

ESTATE DUTY.

3. In the case of every person who dies after the commencement of this Act, whether in New Zealand or elsewhere, and wherever the deceased was domiciled, there shall be payable to the Crown on the final balance of the estate of the deceased, as determined in accordance with this Act, a duty, hereinafter called estate duty, at the rate and in accordance with the provisions prescribed by this Act.

15

Est te duty imposed.

4. Estate duty shall be charged and assessed as a percentage of the amount of the final balance of the estate, in accordance with the graduated scale of percentages set out in the *First* Schedule hereto.

20

Graduated rate of estate duty.

5. (1.) In computing for the purposes of this Act the final balance of the estate of a deceased person his estate shall be deemed to include and consist of the following classes of property :—

25

Property subject to estate duty.

(a.) All property of the deceased which is situated in New Zealand at his death, and to which any person becomes entitled under the will or intestacy of the deceased, except property held by the deceased as trustee for another person :

30

(b.) Any property comprised in any gift, within the meaning of Part IV of this Act, made by the deceased within three years before his death, and whether before or after the commencement of this Act, if the property was situated in New Zealand at the time of the gift :

35

(c.) Any property comprised in any gift, within the meaning of Part IV of this Act, made by the deceased at any time whether before or after the commencement of this Act, unless *bona fide* possession and enjoyment has been assumed by the donee not less than three years before the death of the deceased, and has been thenceforth retained to the entire exclusion of the deceased or of any benefit to him by contract or otherwise, if the property was situated in New Zealand at the time of the gift :

40

Provided that this and the last preceding paragraph shall not apply to any gift which by reason of the smallness of the value thereof is exempt from gift duty under Part IV of this Act, or would be so exempt had it been made after the commencement of this Act :

45

(d.) Any property comprised in a *donatio mortis causa* made by the deceased at any time, whether before or after the

50

- commencement of this Act, if the property was situated in New Zealand at the time of the gift; and for the purposes of this Act every gift made by a person within one month before his death and exceeding twenty pounds in value shall be conclusively deemed and taken to have been intended as a *donatio mortis causa* : 5
- (e.) Any property which the deceased has at any time, whether before or after the commencement of this Act, caused to be transferred to or vested in himself and any other person jointly, so that the beneficial interest therein passes or accrues by survivorship to any person on the death of the deceased, if the property was situated in New Zealand at the time of such transfer or vesting as aforesaid: 10
- (f.) Any money payable under a policy of assurance effected by the deceased on his life, whether before or after the commencement of this Act, where the policy is wholly kept up by him for the benefit of a donee (whether nominee or assignee), or a part of that money in proportion to the premiums paid by him where the policy is partially kept up by him for such benefit, if (in either case) the money so payable is property situated in New Zealand at the death of the deceased : 15 20
- (g.) Any annuity or other interest purchased or provided by the deceased, whether before or after the commencement of this Act, either by himself alone or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased, if that annuity or other interest is property situated in New Zealand at the death of the deceased : 25 30
- (h.) Any property situated in New Zealand at the death of the deceased over which the deceased had at the time of his death a general power of appointment :
- (i.) Any estate tail, whether legal or equitable, vested in the deceased at the time of his death in land situated in New Zealand, whether that estate is in possession or not : 35
- (j.) Any property comprised in any settlement, trust, or other disposition of property made by the deceased, whether before or after the commencement of this Act,— 40
- (i.) By which an interest in that property, or in the proceeds of the sale thereof, is reserved either expressly or by implication to the deceased for his life or for the life of any other person, or for any period determined by reference to the death of the deceased or of any other person ; or 45
- (ii.) Which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person, or for any period determined by reference to the death of the deceased or of any other person ; or 50

(iii.) By which the deceased has reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim that property or the proceeds of the sale thereof.

5 (2.) The estate of a deceased person computed and constituted as provided in this section is in this Act referred to as his dutiable estate.

6. (1.) The final balance of the estate of the deceased shall be computed as being the total value of his dutiable estate, after making such allowances as are hereinafter authorised in respect of the debts of the deceased, and in respect of other charges. Final balance of estate.

10 (2.) All such property shall be valued as at the date of the death of the deceased, save that where by the *last preceding* section it is provided that the local situation of any such property shall be determined as at any other date, the value of that property shall be determined as at the same date.

15 7. Where the deceased was domiciled in New Zealand at the date by reference to which the local situation of any personal property forming part of his dutiable estate is to be determined, such personal property shall be deemed for the purposes of this Act to be situated in New Zealand at that date. Personal property of persons domiciled in New Zealand to be liable to estate duty wherever situated.

20 8. Subject to the provisions of the *last preceding* section, the local situation of property shall be determined for the purposes of this Act in manner set forth in this section, in respect of the classes of property hereinafter in this section referred to:— Mode of determining situation of property.

25 (a.) A seagoing ship, or any share or interest in such a ship, shall be deemed to be property situated in New Zealand if the ship is registered in New Zealand, and in all other cases shall be deemed to be property situated out of New Zealand.

30 (b.) Property at sea (other than a sea-going ship) shall be deemed to be situated in New Zealand if in course of transit, directly or indirectly, to New Zealand, and in other cases shall be deemed to be situated out of New Zealand.

35 (c.) The local situation of a debt payable under a bond or other deed shall in no case be determined by reference to the local situation of the bond or deed.

40 (d.) A debt owing by a corporation, whether incorporated in New Zealand or elsewhere, shall be deemed to be property situated in New Zealand if the debt was incurred or is payable in New Zealand, and the corporation has any office or place of business in New Zealand, and in other cases shall be deemed to be property situated out of New Zealand.

45 (e.) A debt owing by any person or persons other than a corporation shall be deemed to be property situated in New Zealand if the debtor or any of the debtors is resident in New Zealand, and in other cases shall be deemed to be property situated out of New Zealand.

50 (f.) A debt owing by the Crown in respect of the Government of New Zealand shall be deemed to be property situated in New Zealand if it is incurred or payable in New Zealand.

land, and in other cases shall be deemed property situated out of New Zealand.

- (g.) Notwithstanding anything hereinbefore in this section contained, a debt represented by an instrument which is negotiable in New Zealand shall be deemed to be property situated in the country in which the instrument is or is deemed to be situated. 5
- (h.) Notwithstanding anything hereinbefore in this section contained, a debt which is secured by mortgage, charge, or otherwise on any property situated, or deemed to be situated, in New Zealand shall itself be deemed to be property situated in New Zealand; but if the value of the security is less than the value of the debt, the debt shall not by reason of the existence of the security be deemed to be situated in New Zealand except to the extent of the value of the security. 10 15
- (i.) Shares in a company incorporated in New Zealand shall be deemed to be property situated in New Zealand, save in the case of shares registered in a branch register in any other place in His Majesty's dominions in accordance with the Companies Act, 1908. 20
- (j.) Shares in a company incorporated out of New Zealand shall be deemed to be property situated out of New Zealand, save in the case of shares registered in a colonial or branch register in New Zealand under the Imperial Companies (Consolidation) Act, 1908, or under any other law in force in any other part of His Majesty's dominions. 25
- (k.) Notwithstanding anything in the *two* last preceding paragraphs, shares in a company engaged in mining for gold, coal, or any other mineral in New Zealand shall in all cases be deemed to be property situated in New Zealand. 30

Allowance to be made for debts.

9. (1.) In computing the final balance of the estate of the deceased allowance shall, save so far as otherwise provided by this Act, be made for all debts owing by the deceased at his death. 35

(2.) No such allowance shall be made—

- (a.) For debts incurred by the deceased otherwise than for full consideration in money or money's worth wholly for his own use and benefit; or 40
- (b.) For debts in respect whereof there is a right of reimbursement from any other estate or person, except to the extent to which reimbursement cannot be obtained; or
- (c.) More than once for the same debt charged upon different portions of the estate; or 45
- (d.) For contingent debts or any other debts the amount of which is in the opinion of the Commissioner incapable of estimation.

(3.) If any debt for which by reason of the provisions of paragraph (d) of this section an allowance has not been made becomes at any time within three years after the death of the deceased actually payable or, in the opinion of the Commissioner, capable of 50

estimation, an allowance shall be made therefor, and a refund of any estate or other duty paid in excess under this Act shall be made to the person entitled thereto, but no action for the recovery of any such refund shall be commenced except within three years after
5 the payment of the duty so paid in excess.

10. (1.) The allowance so to be made for debts shall extend to all debts, whether incurred or payable in New Zealand or elsewhere, save that where there are any foreign assets the total debts of the deceased in respect of which an allowance would otherwise be made
10 shall be apportioned between those foreign assets and the dutiable estate of the deceased in proportion to their respective values, and an allowance shall be made only in respect of the proportion so apportioned to the dutiable estate.

Apportionment of debts between dutiable estate and foreign assets.

(2.) In this Act the term "foreign assets" means any property
15 which is available or which the deceased might by his will have made available for the payment of his debts upon his death, but which by reason of its local situation is not part of the dutiable estate of the deceased.

(3.) The apportionment provided for in this section shall be
20 irrespective of the fact that the debts of the deceased, or any of them, are charged by mortgage or otherwise upon any part of the dutiable estate or foreign assets, and the apportionment shall in any such case be made in the same manner as if no such charge existed.

11. In computing the final balance of the estate of the deceased
25 an allowance shall be made for the reasonable expenses of the funeral of the deceased in the same manner and to the same extent as if those expenses constituted a debt of the deceased; but no allowance shall be made in respect of the expenses of the administration of the estate, or in respect of commission or other remuneration payable to
30 an administrator, or in respect of the amount of estate or other duty payable under this Act.

Funeral and administration expenses.

12. No estate duty shall be payable—

- (a.) On any estate the final balance of which does not exceed
35 five hundred pounds; or
- (b.) On any estate the final balance of which does not exceed five thousand pounds if the whole of that estate has been by the will of the deceased left absolutely and beneficially to his widow.

Certain estates exempted from estate duty.

PART II.

SUCCESSION DUTY.

40 13. On the death of any person who dies after the commencement of this Act, whether in New Zealand or elsewhere, and wherever the deceased was domiciled, there shall be payable, in addition to the estate duty imposed on the final balance of his
45 estate by Part I of this Act, a further duty, in this Act called succession duty, in respect of every interest acquired or possessed by any person as the successor of the deceased within the meaning of this Act.

Succession duty imposed.

14. (1.) In this Act the term "successor" means, with respect
50 to any deceased person, any person who on the death of the deceased—

Property liable to succession duty

- (a.) Acquires under the will of the deceased, whether by way

- of pecuniary legacy, the exercise of a power of appointment, or otherwise howsoever, a beneficial interest in the dutiable estate of the deceased ; or
- (b.) Acquires any beneficial interest in the dutiable estate of the deceased under his complete or partial intestacy ; or 5
- (c.) Is beneficially entitled in default of appointment to any property which forms part of the dutiable estate of the deceased and over which the deceased possessed and has failed to exercise a general power of appointment ; or
- (d.) Is beneficially entitled under a voluntary bond or covenant, or in any other manner whatever, to any debt which is payable out of the dutiable estate of the deceased, and the payment of which by the deceased himself would have constituted a gift within the meaning of Part IV of this Act ; or 10 15
- (e.) Becomes beneficially entitled to any moneys payable under any policy of life assurance effected by the deceased on his own life, so far as those moneys are included in the dutiable estate of the deceased ; or
- (f.) Becomes beneficially entitled by way of survivorship to any property included in the dutiable estate of the deceased ; or 20
- (g.) Is beneficially entitled to an interest in the dutiable estate of the deceased by virtue of any settlement, trust, or other disposition of property made by the deceased, whether before or after the commencement of this Act, — 25
- (i.) By which an interest in that property, or in the proceeds of the sale thereof, for the life of the deceased or of any other person, or for any other period determined by reference to the death of the deceased or of any other person, is reserved either expressly or by implication to the deceased ; or 30
- (ii.) Which is accompanied by the reservation or assurance of, or a contract for, any benefit to the deceased for the term of his life or of the life of any other person, or for any period determined by reference to the death of the deceased or of any other person ; or 35
- (iii.) By which the deceased has reserved to himself the right, by the exercise of any power, to restore to himself or to reclaim that property or the proceeds of the sale thereof. 40

(2.) In this Act the term "succession" means the interest to which a successor is entitled as such.

15. If the successor is the wife of the deceased, or a child, grandchild, or other descendant of the deceased, no succession duty shall be payable in respect of any such succession the value of which does not exceed twenty thousand pounds ; and in the case of any such succession the value of which exceeds twenty thousand pounds, succession duty shall be payable at the rate of two per centum of the total value thereof, save that the succession duty so payable shall not in any case exceed the amount by which the value of the succession exceeds twenty thousand pounds. 50

Wife and children
exempt from
succession duty in
certain cases.

16. No succession duty shall be payable on any property left by the will of the deceased on any charitable trust in New Zealand.

Charitable trusts exempt from succession duty.
Rates of succession duty.

17. (1.) In all cases other than those mentioned in the two last preceding sections succession duty shall be payable on every 5 succession, and shall be a percentage of the value of the succession varying in manner provided in this section.

(2.) If the successor is the husband of the deceased (whether or not he is also a relative of the deceased by blood) the rate of succession duty shall be two per centum.

10 (3.) If the successor is a relative of the deceased in any degree not more remote than the fourth, the rate of succession duty shall be five per centum.

(4.) In all other cases the rate of succession duty shall be ten per centum.

15 (5.) If, in any case mentioned in this section, the value of the succession of any successor exceeds twenty thousand pounds, succession duty shall, in respect of the amount by which that value exceeds twenty thousand pounds, be payable at twice the rate hereinbefore in this section provided.

20 18. For the purposes of succession duty illegitimate relationship shall be recognised as equivalent to legitimate relationship in all cases in which the successor is entitled, on the intestacy of the deceased, to succeed by virtue of that illegitimate relationship to any part of the estate of the deceased, or would have been so entitled if 25 the deceased had died intestate.

Illegitimate relationship to be taken into account for succession duty.

19. For the purposes of succession duty an adoption under the Infants Act, 1908, or any other Act relating to the adoption of children, shall be deemed to constitute the relation of parent and child between the adopting parent and the adopted child; but shall 30 not be deemed to destroy that relation as between the natural parents and that child, or to create or destroy any other relationship between any persons.

Effect of adoption on succession duty.

35 20. (1.) For the purposes of succession duty every contingency affecting the succession shall be deemed to have determined in the manner in which, in the opinion of the Commissioner, it probably will determine, and the succession shall be valued and succession duty assessed and paid accordingly.

Valuation of contingent interests for purposes of succession duty.

40 (2.) An appeal to the Supreme Court by way of case stated shall lie from any decision of the Commissioner under the *last preceding* subsection in the same manner as if that decision was the determination of a question of law, and all the provisions hereinafter contained as to appeals to the Supreme Court shall apply accordingly. If no such appeal is commenced and duly prosecuted, the decision of the Commissioner shall be final and conclusive.

45 (3.) If in the actual event the contingency determines in a manner different from that so assumed as the basis of assessment, succession duty shall thereupon be reassessed by the Commissioner on the basis of the actual event, and as of the date of the death of the deceased.

50 (4.) If on that reassessment it appears that too much has been paid by way of succession duty, a refund of the excess, together with compound interest thereon computed with annual rests at the rate of

four per centum per annum from the date of payment of the duty shall be made to the person who would have been entitled to recover the excess of duty had it been paid in error.

(5.) If on any such reassessment as aforesaid it appears that too little succession duty has been paid, the deficiency, together with compound interest thereon computed with annual rests at the rate of four per centum per annum as from the date upon which the duty originally paid became due, shall thereupon become due and payable, and shall for all purposes be deemed to be succession duty which has remained unpaid in error: 5

Provided that the administrator shall not be personally liable for any such additional duty by reason of having administered and distributed the estate of the deceased before the determination of the said contingency without retaining assets sufficient to satisfy that duty. 10

(6.) Subject to the provisions of this Part of this Act, the value of any succession shall be deemed and taken to be the present value thereof at the death of the deceased. 15

Valuation of property subject to incumbrances for purposes of succession duty.

21. For the purpose of computing the value of any succession no deduction shall be allowed in respect of any mortgage, charge, incumbrance, or liability affecting or incident to the property comprised in the succession, if and so far as the successor is entitled as against any other person or property to any available right of contribution or indemnity in respect of that mortgage, charge, incumbrance, or liability. 20

Apportionment of successions between the dutiable estate and foreign assets.

22. (1.) If the interest of a successor consists in a pecuniary legacy or other pecuniary claim which may be lawfully paid or satisfied either out of the dutiable estate of the deceased or out of foreign assets, the value of that interest shall, for the purpose of succession duty, be apportioned between the dutiable estate so available to satisfy the same and the foreign assets so available to satisfy the same in proportion to their relative values, and succession duty shall be assessed and payable only on that part of the interest which is so apportioned to the dutiable estate. 25

(2.) The burden of proving the existence and value of any such foreign assets shall lie on the persons who are liable for succession duty and not upon the Commissioner. 30

PART III.

ASSESSMENT AND COLLECTION OF ESTATE AND SUCCESSION DUTY.

Death duties to be payable by the administrator.

23. (1.) The aggregate amount of the death duties payable under this Act shall constitute a debt payable to the Crown out of the estate of the deceased in the same manner as the debts of the deceased, and those duties shall be paid by the administrator accordingly out of all real or personal property vested in him and forming part of the dutiable estate of the deceased, whether that property is available for the payment of the other debts of the deceased or not, and whether the property in respect of which the duty or any part thereof has been assessed is vested in the administrator or not. 35

(2.) For the purpose of paying such duties the administrator shall have the same power of selling any real or personal property vested in him as in the case of a sale for the payment of the debts of the deceased.

5 24. Death duties shall become due and payable on the expiration of six months from the death of the deceased, whether those duties have then been duly assessed by the Commissioner or not.

Death duties to become due six months after death of deceased.

25. If the full amount of death duties is not paid within one month after notice has been given to the administrator of the assessment thereof by the Commissioner, or within such extended period as the Commissioner thinks fit to allow on the application of the administrator made before the expiration of the said period of one month, there shall be added by way of penalty a further sum equal to five per centum of the total duty so unpaid, and the additional sum shall be deemed to be estate duty, and shall be chargeable and recoverable accordingly.

Penalty for default in payment of death duties.

26. The estate of a deceased person shall not be exempt from death duties by reason merely of the fact that no grant of administration has been, or need be, or can be made in New Zealand in respect of that estate; and in any such case all the provisions of this Act shall, so far as applicable, apply notwithstanding the fact that there is no administrator of the estate.

Death duties to be payable although no grant of administration.

27. (1.) The aggregate amount of death duties payable under this Act shall constitute, as from the death of the deceased, a charge upon the whole dutiable estate of the deceased and upon all property included in that estate, whether vested in the administrator or not; but no such charge shall affect the title of any purchaser for value (whether before or after the death of the deceased) without actual notice of the existence of the charge.

Death duties to be a charge on the dutiable estate.

(2.) Any successor or other person whose interest is affected by the realisation or enforcement of any such charge shall, save so far as otherwise provided by this Act, have a right of indemnity as against the administrator of the estate to the extent of all assets which are or have been available in the hands of the administrator for the payment of death duties.

28. (1.) Without excluding the liability of the administrator under the foregoing provisions, succession duty payable in respect of the interest of any successor shall constitute a debt due to the Crown by that successor, and by any trustee for that successor, save that the successor shall not become so liable in respect of any future interest until it becomes an interest in possession.

Succession duty to be also recoverable from each successor.

(2.) A successor or trustee who pays succession duty shall be entitled, save so far as otherwise provided by the will of the deceased, to be indemnified by the administrator of the deceased to the extent of any assets which are or have been available for the payment of such duty.

29. (1.) Without excluding the liability of the administrator under the foregoing provisions, the estate duty payable on the dutiable estate of the deceased shall constitute a debt due to the Crown by every successor of the deceased and by the trustee of any such successor:

Proportion of estate duty also to be recoverable from each successor.

Provided that each successor and his trustee shall be so liable only for the same proportion of the estate duty as the value of the succession bears to the total value of the dutiable estate:

Provided also that where the interest of any successor is a future interest, he shall not become so liable for estate duty until his interest becomes an interest in possession.

(2.) A successor or trustee who so pays estate duty shall be entitled, save so far as otherwise provided by the will of the deceased, to be indemnified by the administrator of the deceased to the extent of any assets which are or have been available for the payment of such duty. 5

Companies to be liable in certain cases for duty payable on shares.

30. (1.) When any person dies domiciled elsewhere than in New Zealand, and his dutiable estate comprises shares in any company incorporated elsewhere than in New Zealand and engaged in carrying on in New Zealand the business of mining for gold, coal, or any other minerals, the company shall (without excluding the liability of any other person) be liable to the Crown for the payment of the death duties payable on the dutiable estate of the deceased, so far as those duties are attributable to the shares so forming part of that estate, and any such duty shall be recoverable as a debt due by the company accordingly. 10 15

(2.) Any duty so paid by a company shall be recoverable by the company as a debt from the administrator of the deceased, or (to the extent of the liability of any successor of the deceased, or of any trustee of any such successor, in respect of the duty so paid by the company) from that successor or trustee. 20

(3.) So often as any such company registers in New Zealand or elsewhere any transfer or other transmission of any shares in that company held by a deceased member, it shall be the duty of the attorney of that company, under Part IX of the Companies Act, 1908, within three months after the date of that registration to transmit to the Commissioner a statement, in the prescribed form, of the fact of that registration, together with all particulars necessary to enable the Commissioner to assess the duty payable under this section in respect of those shares. 25 30

(4.) If any such attorney makes default in transmitting any such statement in accordance with this section he shall be liable on summary conviction to a fine of *twenty* pounds. 35

Deduction to be made of duty paid in any other country on property situated in that country.

31. (1.) On the death of any person domiciled in New Zealand there shall be deducted from the aggregate amount of death duty payable in respect of any property then situated out of New Zealand the amount of any duty which by reason of the death of the deceased is payable in respect of that property in the country in which the property is situated at the death of the deceased. 40

(2.) Every such deduction shall be made in the first place from the estate duty (if any) so payable, and thereafter, as to any residue, from the succession duty (if any) so payable.

(3.) For the purposes of this section the local situation of property shall be determined in the same manner as hereinbefore provided in this Act, save that the local situation of property shall not be determined for this purpose by reference to the domicile of the deceased. 45

(4.) No such deduction as is provided for in this section shall be made until and unless the duty so payable in another country has been actually paid, and in the meantime the full amount of 50

death duty shall be assessed and payable; and on payment of the duty in that other country a refund of the amount thereof shall be made accordingly in the same manner as in the case of duty paid in excess.

5 32. (1.) In order to ascertain the amount payable as death duty under this Act every administrator shall, within six months from the grant of administration, deliver to the Commissioner a statement in writing in the prescribed form, containing the prescribed particulars with respect to the dutiable estate of the deceased, and with respect
10 to the interests of the several successors of the deceased, and containing such other particulars (if any) as may be prescribed for the purposes of this Act.

Statements to be delivered to Commissioner by administrator.

(2.) The Commissioner may, upon application, extend the time within which such statement must be delivered, and may also
15 permit the statement to be amended.

(3.) Every such statement and every amendment thereof shall be verified by statutory declaration in the prescribed form and manner.

(4.) Any administrator who fails to deliver a statement to the
20 Commissioner within the time prescribed by this section shall be liable on summary conviction to a fine of *fifty* pounds.

(5.) No administrator shall be exempt from the requirements of this section on the ground that no death duty is payable.

25 33. On the delivery of the aforesaid statement by the administrator the Commissioner shall proceed to assess the death duties payable, and shall give notice of his assessment to the administrator. If the Commissioner is of opinion that no such duty is payable, he shall certify to the administrator accordingly.

Death duties to be assessed by Commissioner.

30 34. If the administrator fails to deliver a statement within the time limited by this Act in that behalf, or if no grant of administration is made within six months after the death of the deceased, the Commissioner may proceed to assess the death duties payable, and to recover payment of the duties so assessed, in the same manner, with all necessary modifications, as if a statement had been duly filed
35 by an administrator.

Commissioner may assess duty although no statement delivered by administrator.

40 35. (1.) Every administration shall immediately upon the grant thereof be sent to the Commissioner by the Registrar or other proper officer of the Court by which the same is granted, and the Commissioner shall issue the same to the person entitled to receive it on payment of the death duties assessed and payable.

Administration to be sent by Court to the Commissioner.

(2.) The Commissioner, if he thinks fit, may issue an administration before payment of duty if the administrator gives security by bond to His Majesty the King, with two sureties approved by the Commissioner, for the payment of the full duty within six months from the date of the grant of administration or such further time as is agreed to by the Commissioner and set forth in the bond.

45 (3.) The penalty of any such bond shall be twice the estimated duty, computed upon the approximate value of the dutiable estate and of the interests of the successors, as verified, if the Commissioner so requires, by the statutory declaration of the administrator.

50 (4.) Where the Public Trustee is the administrator, it shall not be necessary for him to give any such security; and the Commissioner may, if he thinks fit, issue the administration without payment of duty accordingly.

P A R T IV.

GIFT DUTY.

- Gift duty imposed. 36. Subject to the exceptions hereinafter provided, a duty (in this Act referred to as gift duty) shall be chargeable in respect of every gift, within the meaning of this Act, which is made after the commencement of this Act. 5
- Meaning of "gift." 37. (1.) In this Act the term "gift" means any disposition of property (as hereinafter defined) which is made otherwise than by will, whether with or without an instrument in writing, without fully adequate consideration in money or money's worth. 10
- (2.) If any such disposition is made for a consideration in money or money's worth which is inadequate, the disposition shall be deemed to be a gift to the extent of that inadequacy. 15
- (3.) In this Act the term "donor" means the maker of a gift, and the term "beneficiary" means any person acquiring any beneficial interest under a gift. 15
- Meaning of "disposition of property." 38. In this Act the term "disposition of property" means—
- (a.) Any conveyance, transfer, assignment, settlement, delivery, payment, or other alienation of property, whether at law or in equity: 20
- (b.) The creation of a trust:
- (c.) The grant or creation of any lease, mortgage, charge, servitude, license, power, or other right, estate, or interest in or over any property, whether at law or in equity: 25
- (d.) The release, discharge, or surrender, at law or in equity, of any debt, contract, or chose in action, or of any right, estate, or interest in or over any property; and for this purpose a debt shall be deemed to have been released by the creditor when it has become irrecoverable by action through the lapse of time: 30
- (e.) The exercise of a general power of appointment in favour of any person other than the donee of the power:
- (f.) Any transaction entered into by any person with intent thereby to diminish, directly or indirectly, the value of his own estate and to increase the value of the estate of any other person. 35
- Voluntary contracts to be deemed gifts in certain cases. 39. (1.) In this Act the term "voluntary contract" means a contract entered into, whether with or without an instrument in writing, without fully adequate consideration in money or money's worth. If any contract is made for a consideration in money or money's worth which is inadequate, the contract shall be deemed to be voluntary to the extent of that inadequacy. 40
- (2.) A disposition of property made in performance or satisfaction of a voluntary contract shall be deemed to be a gift, whether the contract or disposition was made before or after the commencement of this Act. 45
- (3.) A voluntary contract, whether made before or after the commencement of this Act, shall not in itself constitute a gift within the meaning of this Act, but shall become or be deemed to have become a gift so soon and so far as it has attached to and affected the legal or equitable title to any property to which it relates. 50

40. (1.) No gift duty shall be payable except in respect of property situated in New Zealand at the time at which the gift is made.

No gift duty except on property situated in New Zealand.

(2.) For the purposes of gift duty the local situation of property shall be determined in manner following :—

5 (a.) If the donor is domiciled in New Zealand at the date of the gift, all personal property comprised in the gift shall be deemed to be situated in New Zealand :

10 (b.) Subject to the *last preceding* paragraph, the local situation of any property shall be determined in the same manner as is provided in section *eight* of this Act with respect to estate duty.

15 41. (1.) No marriage settlement made before and in consideration of marriage by either party to the marriage, or made after marriage by either party thereto in pursuance of a binding antenuptial contract, shall be deemed to constitute a gift within the meaning of this Act with respect to any beneficial interest acquired thereunder by the other party to the marriage or by the children or remoter issue of the marriage.

No gift duty on antenuptial marriage settlements.

20 (2.) Notwithstanding anything in this section, a covenant or contract contained in a marriage settlement, whether before or after the commencement of this Act, to pay money or to make any disposition of future-acquired property shall be deemed to be a voluntary contract ; and all the provisions of section *thirty-nine* of this Act shall apply thereto accordingly.

25 42. No gift duty shall be payable on the creation of any charitable trust in New Zealand.

No gift duty on charitable trusts.

30 43. (1.) No gift duty shall be payable on any gift the value of which, together with the value of all other gifts made at the same time or within six months previously or subsequently by the same donor to the same beneficiary, does not exceed five hundred pounds.

No gift duty on gifts of a less value than £500.

35 (2.) When any gift of a less value than five hundred pounds becomes subject to gift duty in accordance with this section by reason of another gift made subsequently thereto, the statement required by this Act to be delivered to the Commissioner in respect of the later gift shall include particulars as to the earlier gift in the same manner as if that gift had been dutiable when made, and gift duty shall be assessed and payable accordingly.

40 44. For the purposes of this Act a single disposition of property shall be deemed to constitute a single gift, although distinct interests are acquired thereunder by different beneficiaries.

Single disposition of property to be deemed a single gift.

45 45. The rate of gift duty shall be five per centum of the value of the gift, and the duty shall be payable on the making of the gift, notwithstanding the fact that the interests of the beneficiaries or of any of them may be future interests.

Rate of gift duty.

50 46. (1.) For the purpose of computing the value of a gift the interests of beneficiaries, so far as those interests are affected by any contingency, shall be valued in the same manner as the contingent interests of successors in the case of succession duty ; and the provisions of Part II of this Act with respect to reassessment, payment of deficient duty, and refund of duty paid in excess shall extend and apply accordingly to gift duty, with all necessary modifications.

Valuation of contingent interests for purposes of gift duty.

(2.) Subject to the provisions of this Part of this Act, the value of a gift shall be deemed and taken to be the present value thereof at the time of the making of the gift.

Valuation of property subject to incumbrances for purposes of gift duty.

47. For the purpose of computing the value of a gift no deduction shall be allowed in respect of any mortgage, charge, incumbrance, or liability affecting or incident to the property included in the gift, if and so far as the beneficiary is entitled as against the donor or any other person, or as against any other property, to any available right of indemnity or contribution in respect of that mortgage, charge, incumbrance, or liability.

Gift duty to be a debt due by the donor and a charge upon the property.

48. (1.) Gift duty shall constitute a debt due and payable by the donor to the Crown on the making of the gift.

(2.) The duty shall also constitute a charge on all property comprised in the gift.

(3.) Unless it is otherwise provided by the terms of the gift, a beneficiary shall be entitled to be indemnified by the donor against the operation of any such charge.

(4.) No such charge shall prevail against the title of a purchaser for value and in good faith without actual notice of the existence of the charge.

Gift duty to be also a debt due by the beneficiary.

49. (1.) Without excluding the liability of the donor under the foregoing provisions, gift duty shall constitute a debt due to the Crown by the beneficiary on the making of the gift :

Provided that where there is more than one beneficiary under the same gift, each of them shall be liable only for the same proportion of the gift duty as the value of his interest bears to the total value of the gift :

Provided also that where the interest of a beneficiary is a future interest, he shall not become personally liable until it becomes an interest in possession.

(2.) Unless it is otherwise provided by the terms of the gift, a beneficiary shall be entitled to be indemnified by the donor against all liability under this section.

And by a trustee for a beneficiary.

50. (1.) When a gift has been made by way of trust for any beneficiary the gift duty shall, without excluding the liability of the donor or beneficiary under the foregoing provisions, constitute a debt due to the Crown by the trustee on the making of the gift.

(2.) Unless it is otherwise provided by the terms of the gift, the trustee shall be entitled to be indemnified by the donor against all liability under this section.

Statement to be delivered by the donor to the Commissioner.

51. (1.) Within one month after the making of any gift which is subject to gift duty, the donor shall deliver to the Commissioner a statement in the prescribed form, verified by statutory declaration in the prescribed form and manner, and containing all such particulars with respect to the gift as are necessary to enable the Commissioner to assess the duty thereon ; and the Commissioner shall thereupon proceed to assess and recover gift duty accordingly.

(2.) If the gift has been created or is evidenced by any written instrument, the donor shall deposit with the Commissioner, along with the statement aforesaid, the said instrument or a copy thereof verified as a true copy by statutory declaration.

(3.) After the delivery of the aforesaid statement it shall be the duty of the donor, and of every beneficiary or trustee of a beneficiary, to furnish the Commissioner with such additional evidence as he reasonably requires for the purposes of this Act with respect to the gift.

52. (1.) Notwithstanding anything to the contrary in the Stamp Duties Act, 1908, the stamp duty chargeable on any instrument of gift in respect of which gift duty is payable, shall be ten shillings, but this stamp duty shall be in addition to and not in substitution for any other stamp duty to which the instrument is liable so far as it operates otherwise than as an instrument of gift exclusively.

Stamp duty on instruments of gift.

(2.) When an instrument is presented to the Commissioner for stamping under the Stamp Duties Act, 1908, and is an instrument creating or evidencing a gift chargeable with gift duty under this Act, the Commissioner shall impound the instrument until the full amount of gift duty has been paid in accordance with this Act.

53. If the donor makes default in delivering the prescribed statement of particulars to the Commissioner within one month after the making of the gift, it shall be the duty of every beneficiary, and of the trustees (if any) of any beneficiary, within fourteen days after such default, to deliver the same statement which the donor ought to have delivered, and also to deposit with the Commissioner the instrument of gift (if any) or a copy thereof verified by statutory declaration, and at all times thereafter to furnish the Commissioner with such additional evidence as he reasonably requires for the purposes of this Act with respect to the gift.

Beneficiary to deliver statement in default of donor.

54. The provisions of this Act as to gift duty shall apply to every gift, whether made in New Zealand or elsewhere; but if the gift is made out of New Zealand, the period of three months from the making thereof shall be substituted for the period of one month from the making thereof wherever the last-mentioned period is fixed for any purpose in this Act.

Gift made out of New Zealand to be liable to gift duty.

55. If a donor, beneficiary, or trustee of a beneficiary makes default in delivering to or depositing with the Commissioner any statement or other document which he is hereby required to deliver or deposit, or in furnishing the Commissioner with any evidence which he is hereby required to furnish, he shall be liable on summary conviction to a fine not exceeding *two* pounds for every day during which he so makes default, or *one* hundred pounds in the whole.

Penalty on failure to deliver statement.

56. (1.) If a donor, with intent to evade or delay the payment of gift duty, makes default in delivering to the Commissioner any statement or document required by this Act to be so delivered, or in furnishing the Commissioner with any evidence which he is lawfully required to furnish, or if, with the like intent, he continues any such default, the gift duty payable shall, by way of penalty, be increased by one-half, and this additional duty shall be assessable and recoverable in all respects as ordinary gift duty.

Additional duty to be paid in case of default with intent to evade duty.

(2.) The said penalty shall be in addition to and not in substitution for any fine to which the donor or any other person is liable under this Act.

57. If a donor makes default in delivering to the Commissioner, within one month after the making of the gift, the statement required

Commissioner may assess gift duty although no statement delivered

by this Act to be so delivered, the Commissioner may thereupon proceed to assess and recover the duty payable on the gift in the same manner as if the statement had been duly delivered.

Gift duty to be deducted from death duty payable on same property.

58. (1.) When the same property is liable both to gift duty and also (upon the death of the donor) to death duty, the amount paid or payable by way of gift duty shall be deducted from the sum which would otherwise be payable in respect of that property by way of death duty, and only the residue (if any) of that sum shall be payable as death duty. 5

(2.) Every such deduction shall be made in the first place from the estate duty (if any), and thereafter, as to any residue, from the succession duty (if any). 10

(3.) This section shall extend and apply to deed-of-gift duty under the Stamp Duties Act, 1908, or under any former Act relating to deed-of-gift duty, in the same manner as to gift duty under this Act. 15

PART V.

MISCELLANEOUS.

Appeal to Supreme Court from assessment of Commissioner.

59. (1.) Any administrator who is dissatisfied in point of law with any assessment of death duty made by the Commissioner, and any donor who is dissatisfied in point of law with any assessment of gift duty so made, may, within twenty-one days after notice of the assessment has been given to him, deliver to the Commissioner a notice in writing requiring him to state a case for the opinion of the Supreme Court. 20 25

(2.) The Commissioner shall thereupon state and sign a case accordingly setting forth the facts, the question of law to be decided, and the assessment made by him, and shall deliver the case so signed to the administrator or donor (hereinafter referred to as the appellant). In this subsection the term "Commissioner" does not include a Deputy Commissioner. 30

(3.) The appellant shall, within fourteen days after receiving the case, transmit the same to a Registrar of the Supreme Court in such judicial district as the appellant thinks fit; and the Registrar shall thereupon enter the case for hearing at the first practicable sitting of the Court, and shall give notice thereof to the appellant and to the Commissioner. 35

(4.) On the hearing of the case the Supreme Court shall determine the question submitted, and the Commissioner shall thereupon assess the duty payable in accordance with that determination. 40

(5.) The Supreme Court may, if it thinks fit, cause the case to be sent back to the Commissioner for amendment, and thereupon the case shall be amended accordingly; and the Court shall thereupon proceed to hear and determine the question so submitted. 45

(6.) The costs of any such appeal to the Supreme Court shall be in the discretion of the Court, having regard to the extent to which the Commissioner's assessment exceeds the amount admitted by the appellant before the appeal commenced, and the extent to which the Commissioner's assessment is upheld or varied. 50

60. (1.) In any case in which the Commissioner deems it necessary to hold an inquiry for the purpose of obtaining information respecting any claim for duty under this Act, he may make application in writing to a Magistrate to hold an inquiry under the provisions of this section.

Commissioner may obtain inquiry before a Magistrate.

(2.) For the purposes of the inquiry the Magistrate may summon before him, and examine on oath touching any matter which is relevant to the claim for duty, all persons whom the Commissioner or any other person interested requires to be so called and examined.

(3.) The Magistrate shall have all such jurisdiction and authority touching the summoning and examination of any such person as he would have in respect of a witness in a civil action within his ordinary jurisdiction; and the person so summoned and examined shall, subject to this Act, have all such rights and be subject to all such liabilities as he would have and be subject to if he was such a witness as aforesaid.

(4.) The Commissioner and every person who is interested in the claim for duty may be represented by counsel or solicitor, who may examine, cross-examine, and re-examine, in accordance with the ordinary practice, any person so summoned.

(5.) The statement of every person so examined shall be taken down in writing and signed by him in the presence of the Magistrate.

(6.) No person summoned or examined under this section shall be excused from answering any question on the ground that the answer may criminate or tend to criminate him or render him liable to any penalty or forfeiture.

(7.) No statement made by any such person in answer to any question put to him shall in criminal proceedings be admissible in evidence against him, except upon a charge of perjury against him in respect of his testimony upon that examination.

61. (1.) All public officers and all other persons and bodies corporate whatsoever, having in their custody or possession any rolls, books, records, registers, papers, or other documents, the inspection whereof may tend to secure the payment of any duty under this Act or to the proof or discovery of any fraud or omission in relation to any such duty, shall at all reasonable times, notwithstanding anything to the contrary in any other Act, permit any person thereunto authorised by the Commissioner to inspect all such rolls, books, records, registers, papers, and documents, and to take such notes, copies, or extracts thereof or therefrom as he may deem necessary, without fee or reward.

Right of Commissioner to inspect books, registers, &c.

(2.) Every person or body corporate refusing to permit or obstructing any such inspection or any such taking of notes, copies, or extracts is liable on summary conviction to a fine of *fifty* pounds.

62. (1.) If any person makes default in delivering to the Commissioner any statement required by this Act to be so delivered for the purposes of any duty under this Act, the Commissioner may apply to the Supreme Court by motion for an order directing the person so in default to deliver the statement within such period as the Court may order; and on the hearing of the

Supreme Court may order statement to be delivered.

motion the Court may make such order in that behalf as is thought just, and any order so made for the delivery of a statement may be enforced by attachment in accordance with the practice of the Supreme Court.

(2.) The Commissioner may apply to the Supreme Court for such an order as is referred to in the *last preceding* subsection, although the time allowed by this Act for the delivery of the statement has not expired; and if the Court is of opinion that sufficient reason has been shown for requiring delivery of the statement before the said time has expired, it may make an order accordingly. 10

Delivery of false statement an offence.

63. Every person who, with intent to evade the payment of any duty under this Act, delivers to the Commissioner any document which that person knows to be false in any particular shall be guilty of an indictable offence punishable by imprisonment with or without hard labour for any period not exceeding *three* years or by a fine not exceeding *five* hundred pounds. 15

Commissioner may compromise a claim for duty.

64. (1.) Where by reason of the complexity or uncertainty of the facts, or from any other cause, it is difficult or impracticable to ascertain exactly the amount of any duty payable under this Act, or so to ascertain the same without undue delay or expense, the Commissioner may, with the consent of the Minister of Stamp Duties, assess by way of composition for the duty so payable such sum as the Commissioner thinks proper under the circumstances, and may accept payment of the sum so assessed in full discharge of all claims for that duty. 20 25

(2.) No such composition shall constitute a good discharge from duty if it has been procured by fraud or by a wilful failure to disclose material facts.

Duty chargeable at the higher rate in case of coincident provisions.

65. Where by reason of coincident provisions in this Act the same description of duty may be assessed and charged in different ways, it shall be assessed and charged in that manner which is estimated to produce the greatest amount of duty. 30

Valuation of land for purposes of duty under this Act.

66. For the purposes of assessing any duty under this Act the value of any land shall be determined either by agreement between the Commissioner and the administrator in the case of death duty, or the donor in the case of gift duty, or by a valuation made in accordance with the provisions of section twenty-nine of the Valuation of Land Act, 1908, and the Valuation of Land Amendment Act, 1908; and any such agreement or valuation shall be conclusive. 35

Valuation of other property.

67. Subject to the provisions of the *last preceding* section, the value of any property shall, for the purpose of assessing any duty under this Act, be ascertained by the Commissioner in such manner as he thinks fit. 40

Further claim may be made in case of payment of too little duty.

68. (1.) Notwithstanding any assessment or payment of any duty under this Act, or any certificate of the Commissioner that no such duty is payable, it shall be lawful for the Commissioner at any time thereafter, if it is discovered that any duty payable has not been fully assessed and paid, to make a further assessment of the duty so unpaid, and to recover the same in the same manner as if no previous assessment or payment had been made. 45

(2.) Except in the case of fraud, an administrator shall not be personally liable for any death duty under any such further assess- 50

ment by reason of having administered or distributed the estate of the deceased without retaining sufficient assets to satisfy the duty.

(3.) Nothing in this section shall affect the operation of any settlement of a claim for duty expressed to be made by way of composition under the provisions of this Act in that behalf.

69. Any duty under this Act may be recovered by the Commissioner, on behalf of the Crown, by action in his official name in any Court of competent jurisdiction against any person liable to pay the same.

Duty recoverable by Commissioner in his official name.

70. (1.) Any claim for a refund of duty paid in excess under this Act may be enforced by action against the Commissioner in his official name as nominal defendant on behalf of the Crown, in any Court of competent jurisdiction, and not otherwise.

Refund of duty paid in excess.

(2.) No such action shall be brought after the expiration of three years from the date of payment of the duty so paid in excess.

(3.) In this and the *last preceding* section the term "Commissioner" does not include a Deputy Commissioner.

71. At any time within three years after the payment of any duty the Minister of Stamp Duties may, on proof to his satisfaction that the duty has been paid in excess, order that the amount overpaid be returned to the person entitled thereto.

Minister may refund duty paid in excess.

72. All moneys payable under this Act by way of refund of duty shall, without further appropriation than this Act, be paid by the Minister of Finance out of the Consolidated Fund.

Refunds of duty payable out of Consolidated Fund.

73. (1.) When any death duty or gift duty constitutes a charge on any real property, the Commissioner may file with the District Land Registrar or the Registrar of Deeds, as the case may require, a memorandum under the hand of the Commissioner setting forth the description of the land so charged and the amount of duty payable; and the said Registrar shall, without fee, register the memorandum against the title of the land charged.

Registration of charge for duty.

(2.) Upon the registration of any such memorandum it shall be deemed and taken to be actual notice to all persons of the existence of the charge, and the charge shall have operation and priority accordingly.

(3.) When any such charge has been satisfied, the Commissioner shall deposit with the said Registrar a memorandum of satisfaction; and the Registrar shall, without fee, register the same against the title to the land.

74. (1.) If any death duty or gift duty is in arrear and unpaid, and constitutes by virtue of this Act a charge on any property, the Commissioner may apply by petition to the Supreme Court for the enforcement of that charge; and the Court may make such order in the premises as it thinks just either for the sale of that property or any part thereof, or for the appointment of a receiver of the rents, profits, or income thereof, and for the payment of the duty and the costs of the Commissioner out of the proceeds of the sale or out of the said rents, profits, or income.

Enforcement of charge for duty by the Supreme Court.

(2.) Where any property has been sold under any such order, the Supreme Court may, on the application of the purchaser or the Commissioner, make an order vesting the property in the purchaser.

(3.) Every such vesting order shall have the same effect as if all persons entitled to the property had been free from all disability and had duly executed all proper conveyances, transfers, and assignments of the property for such estate or interest as is specified in the order, and the order shall be subject to stamp duty accordingly; and in the case of land which is subject to the Land Transfer Act, 1908, the purchaser's title thereto shall be registered accordingly. 5

Duties to be denoted by stamps.

75. (1.) The payment of all duties under this Act shall be denoted by adhesive stamps affixed by the Commissioner and impressed with the seal of the Minister of Stamp Duties. 10

(2.) When the duty is paid in respect of the property included in any administration, instrument of gift, or succession order, the said stamps shall be affixed to that administration, instrument of gift, or order, or to a copy or duplicate thereof delivered to the Commissioner in accordance with this Act. 15

(3.) When there is no such administration, instrument of gift, or succession order, the said stamps shall be affixed to the statement delivered to the Commissioner in pursuance of this Act in respect of the duty so paid; or, if there is no such statement, then to the written certificate of the Commissioner as to the duty payable, or to a copy or duplicate of that certificate. 20

Governor may remit penalties.

76. The Governor may, in his discretion, remit the whole or any part of any fine or penalty incurred under this Act.

Statutory declarations exempt from stamp duty.

77. Every statutory declaration required or authorised by this Act or by any regulations thereunder shall be exempt from stamp duty. 25

Regulations.

78. The Governor may from time to time by Order in Council make regulations, consistent with this Act,—

- (a.) Prescribing the duties of the Commissioner and all other officers acting under this Act: 30
- (b.) Prescribing forms of statements and other documents required or authorised by this Act:
- (c.) Prescribing the procedure to be adopted in the assessment and collection of any duty under this Act:
- (d.) Making any other provisions which he deems necessary in order to give full effect to this Act. 35

Native Succession Duty.

Native succession duty.

79. (1.) Notwithstanding anything in this Act to the contrary, no death duty shall be payable in respect of any property included in a succession order made by the Native Land Court or Native Appellate Court on the death of a Native, nor shall any such property be included as part of the dutiable estate of the deceased Native. 40

(2.) When any succession order is so made in respect of the property of a deceased Native, the property included in that succession order shall be subject to a duty (hereinafter called Native succession duty) payable to the Crown. 45

(3.) Native succession duty shall be assessed and payable at the rate of two per centum of the value of the property included in the succession order. 50

(4.) The value of that property shall be computed in the same manner as if that property was part of the dutiable estate of the deceased within the meaning of this Act.

(5.) No Native succession duty shall be payable on any succession order if the property included therein is of a less value than two hundred pounds.

5 (6.) A duplicate of every succession order made by the Native Land Court or Native Appellate Court shall be forthwith sent by the Registrar of that Court to the Commissioner of Stamps, who shall thereupon proceed to assess the Native succession duty payable in respect thereof, and to certify under his hand (upon the face of the order) the amount of the duty so assessed and payable,
10 and shall return the order to the Registrar.

(7.) Native succession duty shall, as from the death of the deceased, constitute a charge upon the property in respect of which it is payable; and at any time after the assessment of that duty in manner aforesaid the Native Land Court may, on the application of
15 the Commissioner of Stamps, enforce the charge by the appointment of a receiver in respect of the property so charged. A receiver so appointed shall have the same rights, powers, duties, and liabilities as a receiver appointed by the Supreme Court in the exercise of its jurisdiction in that behalf.

(8.) No duplicate of a succession order shall be transmitted by
20 the Native Land Court or Native Appellate Court for registration, or issued to any successor, until and unless the Native succession duty has been assessed and certified in manner aforesaid; and every duplicate so transmitted or issued shall have written on the face thereof a statement of the amount of duty so assessed.

25 (9.) No succession order which bears upon the face thereof any such statement of duty payable thereon shall be registered under the Land Transfer Act, 1908, until and unless there has been delivered to the District Land Registrar a certificate under the hand of the Commissioner of Stamps that all such duty has been paid.

30 (10.) Every certificate of assessment of Native succession duty made by the Commissioner of Stamps shall be final and conclusive, both as to questions of law and fact, save that at any time within two months after the certificate has been received from the Commissioner by the Native Land Court any person interested therein
35 may appeal from the assessment of the Commissioner to the Native Appellate Court, which may vary the assessment so made, and the order of the Native Appellate Court on any such appeal shall be final and conclusive as against all persons whether parties to that appeal or not.

40 (11.) Every such appeal shall be brought and prosecuted in the manner, and shall be subject to the conditions, prescribed by regulations under this Act; and, so far as such regulations do not extend, every such appeal shall be subject to the same rules as an appeal to the Native Appellate Court from the Native Land Court.

45 (12.) The Governor may from time to time by Order in Council make such regulations as he thinks necessary for the purpose of carrying into full effect the provisions of this section.

Repeals.

50 80. The Death Duties Act, 1908, is hereby repealed, but shall continue to apply to the estates of all persons who have died before the commencement of this Act. Repeal.

Repeal.

81. Sections ninety-two and ninety-three of the Stamp Duties Act, 1908, are hereby repealed, but shall continue to apply to all deeds of gift, as therein defined, which have been executed before the commencement of this Act.

Repeal.

82. The Charitable Gifts Duties Exemption Act, 1908, is hereby repealed, but shall continue to apply to the estates of all persons who have died, and to all deeds of gift as defined by the Stamp Duties Act, 1908, which have been executed before the commencement of this Act. 5

Amendments of certain Acts.

83. The enactments mentioned in the *Second* Schedule hereto are hereby amended in the manner therein indicated. 10

Schedules.

SCHEDULES.

FIRST SCHEDULE.

SCALE OF RATES OF ESTATE DUTY.

Final Balance of Estate.							Rate per Cent.
Exceeding	£500 but not exceeding	£1,000	...	...	...	...	1
"	£1,000	£2,000	...	...	...	...	2
"	£2,000	£3,000	...	...	...	...	2½
"	£3,000	£4,000	...	...	...	...	3
"	£4,000	£5,000	...	...	...	...	3½
"	£5,000	£6,000	...	...	...	...	3¾
"	£6,000	£7,000	...	...	...	...	4
"	£7,000	£8,000	...	...	...	...	4½
"	£8,000	£9,000	...	...	...	...	4¾
"	£9,000	£10,000	...	...	...	...	5
"	£10,000	£12,000	...	...	...	...	5½
"	£12,000	£14,000	...	...	...	...	5¾
"	£14,000	£16,000	...	...	...	...	6
"	£16,000	£18,000	...	...	...	...	6½
"	£18,000	£20,000	...	...	...	...	6¾
"	£20,000	£25,000	...	...	...	...	7
"	£25,000, 7 per cent., together with an additional percentage of one-third per cent. for every £5,000 or part of £5,000 in excess of the sum of £25,000, but so that the rate of estate duty shall not in any case exceed 15 per cent.						

SECOND SCHEDULE.

Acts amended.	Nature of Amendment.
1908, No. 3.—The Administration Act, 1908	By repealing section 34. By omitting from section 44 the words "probate, stamp, succession, and other duties, and." By repealing subsection (4) of section 47.
1908, No. 26.—The Companies Act, 1908	By repealing section 119. By omitting from section 120 the words "domiciled elsewhere than in the United Kingdom."
1908, No. 97.—The Land for Settlements Act, 1908	By omitting from subsection (7) of section 31 the words "and of the assessment of duties under the Death Duties Act, 1908."