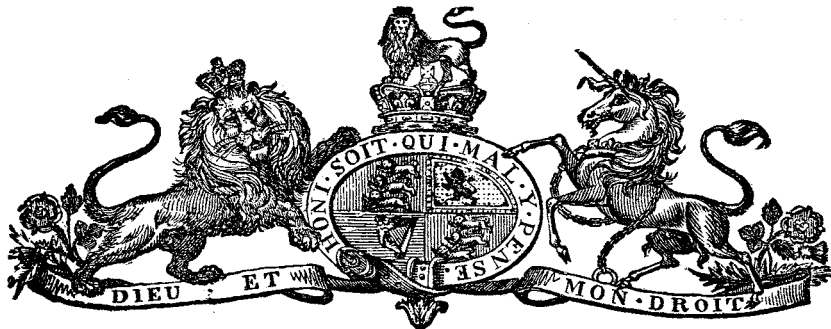


T A S M A N I A.



1868.

ANNO TRICESIMO-SECUNDO

VICTORIÆ REGINÆ,

No. 1.



AN ACT to repeal *The Succession Duty Act*, and in lieu thereof to impose Duties on Probates and Letters of Administration.

[14 September, 1868.]

**W**HEREAS it is expedient to repeal *The Succession Duty Act*, and in lieu thereof to impose Duties on Probates and Letters of Administration: Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PREAMBLE.  
29 Vict. No. 34.

**1** In the construction and for the purposes of this Act the word "Officer" shall mean such person as the Governor may, from time to time, appoint to collect the Duties payable by virtue of this Act, and the word "Property" shall mean real and personal estate.

Interpretation.

**2** Before the Supreme Court of *Tasmania* grants to any person Probate of the Will or Letters of Administration of the estate and effects of any person deceased, Duty at the following rate shall be paid by such first-mentioned person to the Officer:—

Duty to be paid on obtaining Probate or Letters of Administration.

Duty at the rate of £2 *per centum* upon the net value of the Personal estate of the Testator or Intestate when such net value is less than £500, and at the rate of £3 *per centum* upon such net value in case the same is £500 or upwards:

Provided that nothing herein contained shall apply to any case where the net value of the Personal estate is less than £100.

*Probate Duties.*

Penalty for unlawfully administering.

**3** If any person takes possession of and in any manner administers any part of the Personal estate and effects of any person deceased without obtaining Probate of the Will or Letters of Administration of the estate and effects of the deceased within Six months after his decease or within Two months after the determination of any suit or dispute respecting the Will or the right to Letters of Administration, if there shall be any such, which shall not be ended within Four months after the death of the deceased, every person so offending shall forfeit the sum of One hundred Pounds, and also a further sum at the rate of Ten Pounds per centum on the amount of Duty payable under this Act on the Probate of the Will or Letters of Administration of the estate and effects of the deceased, and every sum so forfeited may be recovered by action of debt in the Supreme Court in the name of the Attorney-General.

Supreme Court not to grant Probate or Letters of Administration without affidavit of value of effects.

**4** The Supreme Court shall not grant Probate of the Will or Letters of Administration of the estate and effects of any Testator or Intestate without first requiring and receiving from the person applying for the Probate or Letters of Administration, or from some other competent person, an affidavit that the Personal estate of the Testator or Intestate, for or in respect of which the Probate or Letters of Administration is or are to be granted, exclusive of what the Testator or Intestate has been possessed of or entitled to as a Trustee for any other person or persons and not beneficially, but including the leasehold estates for years of the Testator or Intestate, whether absolute or determinable on lives, if any, and without deducting anything on account of the debts due and owing from the Testator or Intestate, are under the value of a certain sum, to be therein specified to the best of the deponent's knowledge, information, and belief, and a like affidavit may also be filed of the debts, if any, chargeable on the Personal estate of the deceased, setting out a schedule thereof; and in case of such affidavit of debts being filed, the amount of such debts shall, in estimating the net value of the Personal estate of the deceased for the purposes of this Act, be deducted from the value of such Personal estate, and Duty shall be paid upon the value of such Personal estate when so ascertained as aforesaid, or where an affidavit of debts is filed, then on the value of such Personal estate after deducting therefrom the amount of such debts.

After Probate, &c. granted, person obtaining same to file account of assets and liabilities.

**5** Within Twelve months after the Supreme Court grants Probate of any Will or Letters of Administration to any person, such person or other the representative for the time being of the deceased person shall file with the Officer an account of the Personal assets and liabilities of such deceased person; and every such Account, and also every Account which Administrators are now by law required to file in the Supreme Court, shall be verified by the affidavit of the person filing the same; and if any Executor or Administrator fails to file an Account in accordance with the provisions of this Section, he shall for every such offence forfeit a penalty of not less than Forty Shillings nor more than Twenty-five Pounds.

Where too little Duty paid.

**6** If upon the filing of any such Account it appears that too little Duty has been paid on any Probate or Letters of Administration, the difference between the sum paid and the sum that ought to have been paid for such Duty shall be forthwith paid to the Officer; and the duty, if not duly paid, shall be recoverable in an action of debt in the Supreme Court in the name of the Attorney-General.

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*Probate Duties.*


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- 7** If upon the filing of any such Account it appears that too much Duty has been paid thereon, the said Officer, on being satisfied by voucher or otherwise of the value of the Personal estate of the deceased, and of the amount of his debts, shall cause the amount of Duty to be accordingly reduced, and repay the amount of Duty that has been overpaid. Repayment of Duty overpaid.
- 8** In case at any time within Three years after the filing of such Account it is made to appear to the satisfaction of the Officer that any error has taken place in estimating the value of the estate of any deceased person under this Act, the Officer shall adjust the Duty accordingly, and receive or pay the sum necessary for such adjustment; and such sum, if not duly paid, shall be recoverable in an Action of debt in the Supreme Court in the name of the Attorney-General. Adjustment of Duty on discovery of errors within Three years.
- 9** When any money is by this Act required to be repaid by the Officer, he shall grant a Certificate stating the amount to be so repaid, and the same shall be repaid to the Executor or Administrator out of the General Revenue, by Warrant under the hand of the Governor. Repayment how made.
- 10** In case after filing any such account an executor or administrator receives or discovers Personal estate of the deceased not included in such account, he shall forthwith give notice thereof to the Officer and pay Duty thereon; and in case he fails to give notice thereof within Six months after such receipt or discovery, he shall forfeit the sum of Twenty-five Pounds and twice the amount of the Duty on the value of the Personal estate so received or discovered. Discovery of assets after account filed.
- 11** Except where otherwise provided, all penalties may be recovered in a summary way before any Two Justices of the Peace, in the mode prescribed by *The Magistrates Summary Procedure Act*. Penalties how recovered.
- 12** The Officer may, for the purposes of this Act, receive evidence by affidavit or otherwise, and every affidavit shall be made before a Commissioner of the Supreme Court. Affidavits, before whom made.
- 13** The Curator of Intestate Estates shall retain in his hands, out of the proceeds received by him of all estates committed to his management and administration as such Curator after the commencement of this Act, the same Duty that such Estates would be liable to in case Letters of Administration thereof were granted. Curator of Intestate Estates to retain 3 per cent. upon value of estates hereafter administered.
- 14** The said Curator shall retain the sum of Three Pounds *per centum* upon all sums in his hands as such Curator at the time of the commencement of this Act, or which shall hereafter be received by him in respect of estates, exceeding the value of £100, committed to his management and administration as such Curator before the commencement of this Act, and which have not paid Duty under the Act of the 21st *Victoria*, No. 37. Curator to retain 3 per cent. upon sums received in estates now under administration.
- 15** All amounts of Duty paid to the said Officer, and all sums so retained by the Curator of Intestate Estates, and all penalties imposed by this Act, shall be paid over to the Colonial Treasurer and shall form part of the General Revenue. Appropriates moneys received under Act.
- 16** No Duty shall be payable on the amount received under any Policy on the life of any deceased person where, at the time of his No Duty on life Policies.

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*Probate Duties.*


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decease, the same was held by him, or was held by trustees for such person or for the wife or child of any such person.

*Succession Duty.*

Duty chargeable in respect of property where Will proved since 1st January, 1866.

**17** From and after the passing of this Act *The Succession Duty Act* is hereby repealed: And in respect of the Personal estate of every deceased person whose Will has been proved, or of whose estate and effects Letters of Administration have been granted since the First day of *January*, 1866, there shall be paid a Duty at the same rate and recoverable as nearly as may be in the same manner as if such Will was proved, or such Letters of Administration were granted after the passing of this Act: Provided that where the full amount of Succession Duty has been paid before the First day of *September*, 1868, on any Personalty, or where such Personalty is not liable to Duty, the amount of such Personalty shall be deducted in estimating the net value of the Personal estate of the Testator: Provided also, that a further charge of One Pound per centum be added in every case in which Duty is not paid hereunder within Three months after the passing of this Act.

Executor, &c. empowered to pay Duty out of Assets.

**18** Every trustee, executor, and administrator of the property of any deceased person is hereby authorised and required, out of the Personal assets of any such deceased person, to make such payments of Duty as in the preceding Section is mentioned; and any trustee, executor, or administrator, or any person beneficially interested in any Personal property of such deceased person who pays duty hereunder, may claim contribution from every person beneficially interested in the property of such deceased person liable to pay Succession Duties in proportion to his interest therein.

Commencement of Act.

**19** This Act shall commence and take effect on the passing hereof.

Short title.

**20** This Act may be cited as "The Probate Duties Act."