

FINANCE ACT, 1894

[Death Duties (England).]

J. AUSTEN-CARTMELL.



James Gray
with kind regards from
The Author.

THE FINANCE ACT, 1894,
SO FAR AS IT RELATES TO
THE NEW ESTATE DUTY
AND OTHER DEATH DUTIES
IN ENGLAND.

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THE

FINANCE ACT, 1894

(57 & 58 Vict. c. 30)

SO FAR AS IT RELATES TO

THE NEW ESTATE DUTY

AND OTHER DEATH DUTIES

IN ENGLAND.

WITH

AN INTRODUCTION AND NOTES.

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BY

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PREFACE.



THE object of this volume is, if possible, to afford immediate assistance to Practitioners in interpreting what is admittedly one of the most complicated measures that has ever been passed with reference to Death Duties. The short time that has elapsed since the Act was passed must be the Author's apology for any errors that have crept into the text.

The Author had special advantages during the passage of the Act through Parliament of becoming acquainted with its provisions, having been engaged by the Incorporated Law Society to report to them upon its general aspects, and to examine and criticise it in detail.

Through the kindness of Sir R. E. WEBSTER, G.C.M.G., Q.C., the Author was enabled to be

constantly present in the House throughout the whole of the discussions in Committee, and during the Report stage of the Measure.

The Forms, &c., to be used under the Act have not, up to the present time, been published by the Inland Revenue Authorities.

6, NEW SQUARE, LINCOLN'S INN,

August, 1894.

CONTENTS.



INTRODUCTION.

	PAGE
The Estate duty - - - - -	xiii
Of what an estate consists - - - - -	xiii
Definition of property passing on death - - - - -	xiii
Exemptions from Estate duty - - - - -	xiv—xvi
How the value of property is to be ascertained - - - - -	xvi
Allowances to be made - - - - -	xvii
Value of agricultural property - - - - -	xvii
Valuations by the Commissioners - - - - -	xviii
The principle of aggregation - - - - -	xviii
Exemptions from aggregation - - - - -	xviii
Settled property - - - - -	xix
Foreign property - - - - -	xx
Colonial property - - - - -	xxi
Reversionary interests sold or mortgaged before 1st August, 1894 - - - - -	xxi
Estate duty can be commuted on reversionary interests -	xxi
Collection and recovery of Estate duty - - - - -	xxi
Persons accountable for Estate duty - - - - -	xxii
Estate duty a charge on what property - - - - -	xxii
Payment of duty on real property may be by instalments	xxiii
Certificates of discharge - - - - -	xxiii
Small estates - - - - -	xxiv
The rate of Estate duty - - - - -	xxiv
The duties superseded - - - - -	xxiv
To what extent - - - - -	xxv
Appeals - - - - -	xxv
Succession duty on successions of which the successor is competent to dispose to be calculated on the principal value - - - - -	xxv—xxvi

THE FINANCE ACT, 1894

(57 & 58 VICT. c. 30).

SECT.	PAGE
Preamble - - - - -	1
1. Grant of Estate duty - - - - -	2
2. What property is deemed to pass - - - - -	5
3. Exception for transactions for money consideration - - - - -	16
4. Aggregation of property to form one estate for purpose of duty - - - - -	17
5. Settled property - - - - -	20
6. Collection and recovery of Estate duty - - - - -	28
7. Value of property - - - - -	34
8. Supplemental provisions as to collection, recovery, and repayment of and exemption from Estate duty - - - - -	45
9. Charge of Estate duty on property and facilities for raising it - - - - -	56
10. Appeal from Commissioners - - - - -	59
11. Release of persons paying Estate duty - - - - -	62
12. Commutation of duty on interest in expectancy - - - - -	65
13. Powers to accept composition for Death duties - - - - -	66
14. Apportionment of duty - - - - -	67
15. Exemptions from Estate duty - - - - -	69
16. Provision for estates not exceeding 1,000 <i>l.</i> - - - - -	71
17. Scale of rates of Estate duty - - - - -	74
18. Value of real successions for Succession duty - - - - -	75
19. Adaptation of law as to Probate duty grant - - - - -	77
20. Exception as to property in British Possessions - - - - -	77
21. Savings - - - - -	79
22. Definitions - - - - -	82
23. Application of part of Act to Scotland - - - - -	87
24. Commencement of part of Act - - - - -	91
42. Short Title - - - - -	91
SCHEDULES - - - - -	91

APPENDIX.

Extract from Sir William Harcourt's Budget Speech on 16th April, 1894 - - - - -	95
--	----

INDEX - - - - -	107
-----------------	-----

LIST OF CASES CITED.

	PAGE
Att.-Gen. <i>v.</i> Chapman	12
——— <i>v.</i> Gell	7
——— <i>v.</i> Gosling	12, 13
——— <i>v.</i> Heywood	12
——— <i>v.</i> Hubbuck	15
——— <i>v.</i> Lord Sefton	40
——— <i>v.</i> Sibthorp	36
Austin <i>v.</i> Mead	9
Barnes <i>v.</i> London Assurance Co.	61
Blake <i>v.</i> Attersoll	17
Blount <i>v.</i> Burrow	9
Bradley <i>v.</i> Bayliss	61
Bridge <i>v.</i> Brown	35
Byng, <i>Re</i>	83
Cigala, <i>Re</i>	15
Clement <i>v.</i> Cheeseman	9
Coulson, <i>Re</i>	45
Crossman <i>v.</i> The Queen	13
Dashwood <i>v.</i> Magniac	42
Drury <i>v.</i> Smith	9
Duffield <i>v.</i> Elwes	9
Duffin <i>v.</i> Duffin	9
Edwards <i>v.</i> Jones	9
Ewin, <i>Re</i>	15
Farquharson <i>v.</i> Cave	9
Floyer <i>v.</i> Bankes	17
Forbes <i>v.</i> Stevens	15
Ford & Hill, <i>Re</i>	34
Gardner <i>v.</i> Parker	9
Gilchrist, <i>Ex parte</i>	61
Hawkins <i>v.</i> Blewitt	9
James <i>v.</i> James	17
Johnson <i>v.</i> Baker	35

	PAGE
Jones <i>v.</i> Selby	9
Kirby <i>v.</i> Biffen	61
Marlborough, Duke of, <i>Re</i>	23
Miller <i>v.</i> Miller	9
Moore <i>v.</i> Cochrane	10
Moore <i>v.</i> Darnton	9
Mundy, <i>Re</i>	83
Mustapha <i>v.</i> Wedlake	9
Ring <i>v.</i> Jarman	7
Snellgrove <i>v.</i> Baily	9
Staniland <i>v.</i> Willott	9
Tate <i>v.</i> Hilbert	9
Tetley <i>v.</i> Tetley	17
Thompson <i>v.</i> The Advocate-Gen.	15
Trimmer <i>v.</i> Danby	9
Veal <i>v.</i> Veal	9
Walter <i>v.</i> Hodge	9
Ward <i>v.</i> Turner	9
Witt <i>v.</i> Amis	9

STATUTES.

	PAGE
34 & 35 Hen. 8, c. 20	28
36 Geo. 3, c. 52, s. 22	44
s. 33	67
45 Geo. 3, c. 28, s. 4	71
55 Geo. 3, c. 184, s. 37	51
s. 38	92
Sch. pt. 3	45
56 Geo. 3, c. 56, s. 117	92, 93
5 & 6 Vict. c. 35, s. 60	41
16 & 17 Vict. c. 51	40
s. 14	76
s. 21	28, 75, 76
s. 22	41
s. 23	41
s. 24	70
s. 25	28
s. 26	28
s. 28	28, 41
ss. 31, 32	28
s. 34	41, 76, 84
s. 37	41
s. 39	67
s. 41	65
s. 44	45, 50
s. 50	60
20 & 21 Vict. c. 77, s. 46	73
26 & 27 Vict. c. 57	46
28 & 29 Vict. c. 104	45
28 & 29 Vict. c. 111, s. 6	46
31 & 32 Vict. c. 90	46
31 & 32 Vict. c. 124, s. 9	52
33 & 34 Vict. c. 35	32
33 & 34 Vict. c. 93	11
38 & 39 Vict. c. 60, s. 15 (4)	45

	PAGE
43 Vict. c. 14, s. 10	92, 93
s. 11	67
44 & 45 Vict. c. 12	4, 29
s. 21	74
s. 28	34, 35, 37
s. 29	92, 94
s. 30	54, 55
s. 33	72
s. 34	92, 94
s. 35	73
s. 36	73
s. 38	5, 8, 11, 91
s. 40	51
s. 41	15
s. 43	67
45 & 46 Vict. c. 38, s. 2 (1)	83
ss. 7 (2), 11, 16, 18	59
ss. 31—33	59
s. 35	59
s. 37	59
s. 58	28
45 & 46 Vict. c. 39, s. 3	56
50 & 51 Vict. c. 40, s. 3 (2)	46
51 Vict. c. 8, s. 21	5, 23, 92
s. 22 (2)	76
52 & 53 Vict. c. 7, s. 5	5, 82, 92
s. 6	5, 23, 76, 82, 92
s. 11	5, 8, 11
s. 12	46
s. 13	47
s. 14	48
52 & 53 Vict. c. 36, s. 3	59

INTRODUCTION.

THE Estate Duty imposed by this Act is in substitution for, and in extension of, the Probate Duty, and Account Duty (under the Customs and Inland Revenue Act, 1881) as at present existing, and is charged at a graduated rate upon all estates exceeding 100%.

The estate in respect of which Estate Duty is leviable, consists not merely of the free personal estate left, or which for the purpose of Account Duty was deemed to be left, by the deceased, but includes the deceased's real estate, and also property, or interests in property, which by force of the provisions of the Act are to be considered as passing on his death. The rate of the duty charged is made to depend upon the principal value of the aggregated estate. The estate.

Property passing on the death of the deceased (see sect. 2, p. 5, *infra*) consists, speaking generally, of:— Property passing on death.

- (1.) The deceased's free real and personal estate, including property which, by the exercise of a power, the deceased was in his lifetime able to make his own.
- (2.) Property settled upon either the deceased or some other person during the deceased's life.

- (3.) Property which would, if personal property, have been subject to Account Duty under the Customs and Inland Revenue Act, 1881, sect. 38, and the Customs and Inland Revenue Act, 1889, sect. 11; and, for the purpose of this Act, the words “voluntary,” and “voluntarily,” and a reference to a “volunteer,” are to be considered as omitted from those sections. Under this heading will fall property which is not included under the last heading, *e. g.*, property settled by the deceased within a year of his death, by way of gift, upon a son.
- (4.) Annuities and other interests purchased or provided by the deceased in his lifetime, and arising or surviving on his death.

Property in which the deceased was interested merely as the holder of an office, or the recipient of the benefits of a charity, or as a corporation sole (see *notes* to sect. 2 (1) (b), p. 6, *infra*), and property held by the deceased as trustee for another person (except in certain cases when the settlement was effected by the deceased himself) is not to be considered as passing on his death.

The following property, though falling within the category of property passing on the death of the deceased, is exempted from Estate Duty:—

- (1.) Personal property settled by a will or disposition made by a person dying on or before the 1st August, 1894, in respect of which Probate or Account Duty has been paid or is payable, unless in either case the deceased was, at the time of his death, or had been at any time since

- the will or disposition took effect, competent to dispose of the property. (See sect. 21 (1), p. 79, *infra*, and sect. 22 (2) (a), p. 85, *infra*.)
- (2.) Settled property of every description in respect of which Estate Duty has been paid since the date of the settlement, unless the deceased was, at the time of his death, or had been at any time during the continuance of the settlement, competent to dispose of the property. (See sect. 5 (2), p. 22, *infra*.)
 - (3.) Property passing under or by virtue of transactions for full money consideration. (See sect. 3, p. 16, *infra*.)
 - (4.) The property of common seamen, marines, or soldiers who are slain or die in the service of Her Majesty. (Sect. 8 (1), p. 45, *infra*.)
 - (5.) Sums of less than 100*l.* which may, under the Friendly Societies Act, 1875, the Savings Bank Act, 1887, and the Acts 26 & 27 Vict. c. 57, 28 & 29 Vict. c. 111, and 31 & 32 Vict. c. 90, be paid to the representatives of the deceased without requiring representation. (See sect. 8 (1), p. 45, *infra*.)
 - (6.) Reversionary interests, the Estate Duty upon which has been commuted under sect. 12. (See p. 65, *infra*.)
 - (7.) Survivorship annuities of less than 25*l.* (See sect. 15 (1), p. 69, *infra*.)
 - (8.) Pictures, prints, books, manuscripts, works of art, and scientific collections given or be-

queathed for national scientific purposes, or to any university, or to any county council, or any municipal corporation, the duty in respect of which has been remitted by the Treasury. (See sect. 15 (2), p. 69, *infra*.)

- (9.) Pensions and annuities payable by the Indian Government to the widows or children of deceased Indian officers. (See sect. 15 (3), p. 69, *infra*.)
- (10.) Advowsons or church patronages which would have been free from succession duty under the Succession Duty Act, 1853, sect. 24. (See sect. 15 (4), p. 70, *infra*.)
- (11.) Reversionary interests *bonâ fide* sold or mortgaged before the 1st of August, 1894.
- (12.) Property settled by a husband on a wife, or *vice versâ*, before 1st August, 1894, and reverting to the settlor. (See sect. 21 (5), p. 81, *infra*.)

Value.

The value of property liable to duty is to be ascertained as provided by sect. 7, p. 34, *infra*. In estimating such value it must be borne in mind that the duty is payable upon the principal value of the property passing. No difficulty arises in the case of the deceased's free realty or personalty, as obviously in that case it is the corpus or principal of the property that passes on his death. There is, however, a little difficulty in the case of property settled upon the deceased, or some other person during the deceased's life, which, by virtue of this Act, is deemed to pass on his death. In such a case the rules for estimating the principal

value of the property passing are as follows :—If the deceased's or other person's interest in the property extended to the whole income of the property, the principal value of the property passing is the principal value of the property. If, on the other hand, the deceased's or other person's interest extended to less than the whole income of the property, the principal value of the property passing is the principal value of an addition to the property equal to the income to which the interest extended. (Sect. 7 (7).)

Allowance may be made for funeral expenses and for certain debts and incumbrances. In the case of debts and incumbrances, the provisions of former Acts are considerably modified. (See *notes* to sect. 7 (1), p. 34, *infra*.) An allowance is also made in certain cases for debts due from the deceased to persons resident abroad. (See sect. 7 (2), p. 37, *infra*.)

The guiding rule by which the actual value of the property is to be estimated is that such value shall be the price which, in the opinion of the Commissioners, the property would fetch if sold in the open market at the death of the deceased. (Sect. 7 (5).)

In the case of agricultural property (see the definition contained in sect. 22 (1) (g), p. 83, *infra*), where no part of the principal value is due to the expectation of an increased income from the property, the principal value is not to exceed twenty-five times the annual value as assessed under Schedule A. of the Income Tax Acts, after making such deductions as have not been allowed in that assessment, and are allowed under the Succession Duty Act, 1853. (See sect. 7 (5), p. 40, *infra*.)

A deduction may also be made in this case for expenses of management not exceeding five per cent. on the annual value. If the property, though strictly speaking agricultural, has a prospective value (*e.g.*, for building purposes), the value is not to be estimated upon the basis of the annual value, but will in that case be ascertained in the same manner as other property not being agricultural property.

The Commissioners have power to require a valuation to be made, but the reasonable costs of such a valuation have to be defrayed by them. (Sect. 7 (9).)

If any person is dissatisfied with the valuation put upon the property by the Commissioners, he may appeal to the High Court, or, if the value of the property in dispute is less than 10,000*l.*, to the County Court. (See sect. 10, p. 59, *infra*.)

Aggregation.

It has already been stated that all property passing on the death of the deceased is to be aggregated, and that the duty is to be at a graduated rate upon the principal value of the aggregated estate. (See sects. 4 and 17, pp. 17 and 74, *infra*.) In certain cases, however, property passing on the death of the deceased is not aggregated with other property, but devolves as an estate by itself; *e.g.*,

- (a) Property in which the deceased never had an interest. (Sect. 4.)
- (b) Property which, under a disposition not made by the deceased, passes immediately on his death away from his immediate family. (*Ibid.*)
- (c) The whole of the deceased's real and personal estate if, excluding property settled otherwise

than by the deceased's will, it does not exceed 1,000*l.*

- (d) Property not chargeable with Estate Duty (see p. xiv, *supra*) is not brought into account for the purpose of aggregation; but *quære* as to reversions the duty on which has been commuted under sect. 12. (See p. 66, *infra*.)

Under sect. 5 (2), one payment of Estate Duty in respect of settled property clears it of duty down to the death of a person who, though entitled to the property under the trusts or limitations of the settlement, is competent to dispose of the property. (See *notes* to sect. 5 (2), p. 22, *infra*.) In order to counterbalance the advantage thus given to settled property, an additional duty of one per cent. has to be paid upon the property on the first death on which Estate Duty is payable. This additional duty is called Settlement Estate Duty. It is not, however, payable if the property passes to some person competent to dispose of the property, or if the only life interest arising on the death of the deceased is that of his or her wife or husband (see *notes* to sect. 5 (1) (a), p. 20, *infra*); or if the property was settled by a disposition taking effect on or before the 1st August, 1894 (sect. 21 (4)).

Settled
property.

Estate Duty will be paid on the death of the settlor, even though he has divested himself of all interest in the property, unless the settlement was made more than twelve months before his death (sect. 2 (1) (c) and (3)), and the possession and enjoyment of the property *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust and thenceforward retained to the

entire exclusion of the settlor, or of any benefit to him by contract or otherwise. (See the *notes* on the section last quoted, p. 15, *infra*.) The exclusion of the settlor must be so complete, that if he retains merely a fiduciary power of sale (see sect. 22 (2) (a), p. 85, *infra*) duty will, apparently, be payable on his death. The result is, that in future settlors will be well advised not to constitute themselves trustees under settlements made by themselves.

In the case of property settled by a husband on a wife or a wife on a husband, by a disposition taking effect on or before 1st August, 1894, Estate Duty is not payable upon the property reverting to the settlor if he or she happens to be the survivor, but the payment of the duty is in that case postponed till after the settlor's death. (Sect. 21 (5).)

Foreign
property.

Property passing on the death of the deceased situate out of the United Kingdom, is for the first time made liable to a duty, which is analogous to Probate Duty. By sect. 2 (2) (see p. 14, *infra*), Estate Duty is leviable in respect of such last-mentioned property, provided that it is liable to Legacy or Succession Duty, or would be so liable but for the relationship to the deceased of the person to whom it passes. Only personal or moveable property situate abroad is liable to Legacy or Succession Duty, and then not unless the testator, or intestate, or predecessor, as the case might be, was domiciled in the United Kingdom, or the property is comprised in an English settlement and vested in trustees subject to the jurisdiction of the Courts of the United Kingdom. The share of a deceased partner who died domiciled in

the United Kingdom, in real estate belonging to the partnership, is considered in equity to be personalty, and is, accordingly, liable to duty.

The Commissioners are by sect. 20 (see p. 77, *infra*) Colonial property. authorized, in the case of a colony to which that section is applied by an Order of the Queen in Council, to allow the amount of the death duties payable in that colony in respect of any property situate therein to be deducted from the Estate Duty. The section can, however, only be applied to colonies in which no Death Duty is leviable in respect of property situate in the United Kingdom, or which have a law to the like effect as sect. 20 of this Act.

Property situate in colonies to which sect. 20 has not been applied, is in the same position as property situate in a foreign country properly so called.

In the case of reversions which have been *bonâ fide* Reversions. sold or mortgaged before the 1st August, 1894, no other duty is to be payable by the purchaser or the mortgagee, when the reversion falls in, than would have been payable if the Act had not passed. (Sect. 21 (3).)

In the case of reversions generally, sect. 12 (see p. 65, *infra*) enables the Commissioners to commute the Estate Duty which will or may become payable in respect thereof.

By sect. 8 (1), the existing law and practice relating to the death duties (*i.e.*, the Probate, Account, Legacy, and Succession Duties) are, so far as applicable, continued for the purposes of the collection, recovery, and repayment of Estate Duty. Collection and recovery of Estate Duty. The exact result of this provision cannot be precisely stated, but the reader is

referred to the *notes* on sect. 6 (2) and (3), and sect. 8 (1). The persons who are made accountable for Estate Duty are as follows:—The executor is made accountable for the duty in respect of all personal property wheresoever situate, of which the deceased was competent to dispose at his death. This property consists of the deceased's free personalty, whether situate in the United Kingdom or abroad, and also personalty over which he had an unexercised power of appointment. The liability of the executor is, however, confined to the extent of the assets which come, or might but for his default have come, into his hands as executor. (Sects. 6 (2), and 8 (3).)

No charge is created for the duty on property passing to the executor, nor is any person besides the executor made accountable for the duty. It will, therefore, be safe for persons to deal with executors in the same manner as heretofore.

Various persons are made accountable for the duty on property for the duty on which the executor is not accountable, viz., beneficiaries, trustees, guardians, committees, voluntary alienees, and purchasers for value with notice. (Sect. 8 (4).) In the case, however, of each of these persons (except beneficiaries), the liability for duty is limited to the property actually received or disposed of by him, and the provisions of the Act of 1889, as to the time within which the liability is in certain cases made to cease, are incorporated into the Act. Purchasers for value without notice (sect. 8 (16)), and bailiffs and agents (sect. 8 (4)), are exempted from liability. The duty is also made a charge on the property (sect. 9 (1)), but this

charge does not affect the property in the hands of a *bonâ fide* purchaser for value without notice (*ibid.*); nor does it attach to any property situate in a colony but liable to Estate Duty so long as it remains so situate (sect. 20 (2)). Power is given to the executor, in certain cases, to pay the duty on other property besides that for the duty on which he is made accountable. (Sect. 6 (2).)

Means are provided by which persons paying the duty can raise or recover the same from the persons ultimately liable. (See sect. 9 (4) (5) (6) and (7) and sect. 14.) The Commissioners themselves will recover the duty under the provisions of 28 & 29 Vict. c. 104. (See *note* on sect. 8 (1), "Recovery," p. 45, *infra*.)

In the case of real property, duty may be paid by eight equal yearly instalments or sixteen half-yearly instalments, with interest at three per cent. per annum from the expiration of twelve months from the death, that being the date on which the first instalment is due.

If in the case of any property the Commissioners are satisfied that the duty cannot be raised at once without excessive sacrifice, they may allow payment to be postponed on certain terms. (Sect. 8 (9).)

Under sect. 11 certificates of discharge may be given by the Commissioners. Such certificates do not, however, discharge any person except purchasers for value without notice, if obtained by means of fraud or failure to disclose material facts. Certificates of discharge can only be granted as of course if the full Estate Duty has been paid. At the expiration of two years from the

Certificate of
discharge.

death the Commissioners are empowered, under certain circumstances, to grant such certificates in respect of specific items of property. (See sect. 11 (2).)

Small estates. By sect. 16 (1) (see p. 71, *infra*), the scope of sects. 33, 35 and 36 of the Customs and Inland Revenue Act, 1881, is extended. If the gross value of the real and personal estate of the deceased, exclusive of property settled otherwise than by his will, exceeds 300*l.*, but does not exceed 500*l.*, a fixed duty of 50*s.* is payable. If such gross value does not exceed 300*l.*, a fixed duty of 30*s.* is payable. In neither case is representation required to the personal estate; and if the estate is less than 100*l.* no Estate Duty is payable at all. If the *net* value of the property, real and personal, exclusive of property settled otherwise than by the deceased's will, does not exceed 1,000*l.*, then if the fixed duty or Estate Duty has been paid, Settlement Estate Duty and Legacy and Succession Duty are not payable under the will or intestacy of the deceased. (Sect. 16 (3).)

The rate of duty.

The rates of Estate Duty are given in sect. 17, and rise from 1*l.* to 8*l.* per cent., according to the value of the estate.

The duties superseded.

If property is chargeable with Estate Duty, the following duties are not payable:—

- (1.) Probate Duty.
- (2.) Account Duty under the Customs and Inland Revenue Act, 1881.
- (3.) The additional Succession Duties imposed by the Customs and Inland Revenue Act, 1881, sect. 21.
- (4.) The temporary Estate Duties imposed by the

Customs and Inland Revenue Act, 1889, sects. 5 and 6.

(5) The one per cent. Legacy or Succession Duty.

This last duty is not payable in respect of settled property which has been already charged with Estate Duty since the date of the settlement. In such a case, however, it would appear that the Duties numbered (3) and (4) would be payable. (See *notes* to section 1, "Existing Duties," p. 4, *infra*, and sect. 5 (2), p. 22, *infra*.)

All the above-mentioned duties remain payable in respect of personal property settled by a will or disposition made by a person dying on or before 1st August, 1894, in respect of which Probate or Account Duty has been paid or is payable. (Sect. 21 (1).)

Sect. 10 (see p. 59, *infra*), contains full provisions for Appeals from appeals from decisions of the Commissioners on almost every point. As already stated, if the property in respect of which the dispute arises does not exceed 10,000*l.*, the appeal may be made to the County Court. (Sect. 10 (5).)

Valuers are to be appointed by county councils and county boroughs, to whom the Court may refer for arbitration any question of disputed value. Appeals cannot be brought unless the duty claimed has been paid, or if, with the leave of the Court, security has been given for the same. (Sect. 10 (1) and (4).)

Sect. 18 (see p. 75, *infra*), introduces a considerable change into the law relating to Succession Duty upon successions to real estate. Under the Succession Duty Act, 1853, sect. 21, Succession Duty is payable upon

the interest of the successor, which is taken to be of the value of an annuity equal to the annual value of the property (after making certain deductions), and payable from the time of his coming into possession during the residue of his life, or for any less period during which he shall be entitled thereto.

By sect. 18 of this Act (see p. 75, *infra*), Succession Duty is, if the successor is competent to dispose of the property, to be assessed on the principal value of the property (after deducting the Estate Duty payable in respect thereof), and is to be payable by the same instalments as are authorized by sect. 6 (8) of the Act for the payment of Estate Duty upon real property. Succession Duty is not, however, to be paid unless the successor comes into possession of his succession. The principal value of the property is to be ascertained in the same manner as it would be ascertained for the purpose of Estate Duty.

FINANCE ACT, 1894.

[DEATH DUTIES (ENGLAND).]

57 & 58 VICT. CAP. 30.

An Act to grant certain Duties of Customs and Inland Revenue, to alter other Duties, and to amend the Law relating to Customs and Inland Revenue, and to make other provision for the financial arrangements of the year.

[31st July, 1894.]

Most Gracious Sovereign,

WE, Your Majesty's most dutiful and loyal subjects, Preamble.
the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled, towards raising the necessary supplies to defray Your Majesty's public expenses, and making an addition to the public revenue, have freely and voluntarily resolved to give and grant unto Your Majesty the several duties hereinafter mentioned; and do therefore most humbly beseech Your Majesty that it may be enacted, and be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal,

§ 1. and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

PART I.

ESTATE DUTY.

Grant of Estate Duty.

Grant of
estate duty.

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided, of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "Estate duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such estate duty.

Estate Duty. Estate duty is a duty charged on the death of a person at a graduated rate upon the principal value of his estate. The estate of a deceased person is, speaking broadly, the aggregate of all property, real and personal, whether settled or unsettled, in which the deceased had any interest. But other property, *e.g.* property in which the deceased himself had no interest, but an interest in which passes upon his death to some other person, is also liable to the duty as an estate by itself. (See sect. 4, p. 17, *infra*.)

In some respects the new duty is the analogue of probate duty, *e.g.* it is charged on all free property, real and personal, belonging to the deceased. In other respects it resembles succession duty, *e.g.* it is charged on property in which the deceased had only a limited interest.

Person dying after the commencement of this part of the Act. *I.e.* after the 1st August, 1894. Such a person is throughout the Act described as "a deceased person," or "the deceased." (Sect. 22 (1) (a), p. 82, *infra*.)

The commencement of this part of the Act. *I.e.* the expiration of the 1st August, 1894. (Sect. 24, p. 91, *infra*.)

Save as hereinafter provided. The following classes of property are exempted from estate duty :—

- (i) Personal property settled by a will or disposition made by a person dying on or before the 1st August, 1894, in respect of which probate or account duty has been paid or is payable, unless in either case "the deceased" was

§ 1.

- at the time of his death, or had at any time since the will or disposition took effect been, "competent to dispose of the property." (Sect. 21 (1), p. 79, *infra*.) The expression "competent to dispose of" is defined in sect. 22 (2) (a), p. 85, *infra*. (See also sect. 2 (1) (a), p. 5, *infra*.)
- (ii) Property passing on death by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, including property passing upon the determination of an annuity or lease for lives, where the same was granted for full consideration in money or money's worth. (Sect. 3, p. 16, *infra*.)
 - (iii) Settled property of every description in respect of which estate duty has been paid since the date of the settlement, and of which the deceased was not at the time of his death, or had been at any time during the continuance of the settlement, "competent to dispose." (Sect. 5 (2) p. 22, *infra*.)
 - (iv) The property of common seamen, marines, or soldiers who are slain or die in the service of Her Majesty, and sums under 100*l.*, which under the existing law may be paid to the representatives of the deceased without requiring representation. (Sect. 8 (1), p. 45, *infra*.)
 - (v) Reversionary interests expectant upon the death of the deceased, the duty on which has been commuted under sect. 12 (p. 65, *infra*), or which, before the 1st August, 1894, have been sold or mortgaged for full consideration in money or money's worth. (Sect. 21 (3), p. 80, *infra*.)
 - (vi) A survivorship annuity or an annuity to arise on the death of the deceased not exceeding 25*l.* (Sect. 15 (1), p. 69, *infra*.)
 - (vii) Pictures, prints, books, manuscripts, works of art, and scientific collections given or bequeathed for national scientific purposes, or to any university, county council, or municipal corporation, the estate duty on which has been remitted by the Treasury. (Sect. 15 (2), p. 69, *infra*.)
 - (viii) Pensions and annuities payable by the Government of British India to the widows or children of deceased officers of such government. (Sect. 15 (3), p. 69, *infra*.)
 - (ix) Advowsons or church patronages which would have been free from succession duty under the Succession Duty Act, 1853, s. 24. (Sect. 15 (4), p. 70, *infra*.)
 - (x) Property settled on or before 1st August, 1894, by one spouse upon the other, if the settlor succeeds to the life interest in his or her own property. (Sect. 21 (5), p. 81, *infra*.)
 - (xi) Property in which a person was interested as holder of an office or recipient of the benefits of a charity, or as a corporation sole. (Sect. 2 (1) (b), p. 6, *infra*.)

§ 1.

Levied and paid. (See sects. 6 to 9, pp. 28 to 59, *infra*.)

The principal value ascertained as hereinafter provided.

What is charged with duty under this Act is the *corpus* of the "property passing on the death of the deceased." Such property is defined in sect. 2. In each case it must be determined what exactly is the "property passing," and if the deceased was not competent to dispose of the property, the *corpus* will have to be ascertained as provided by sect. 7 (7), (p. 43, *infra*). Sect. 7 provides machinery for determining the pecuniary value of the *corpus* to be charged. The rate of estate duty payable in respect of any property will be graduated according to the value of the estate of which it forms part. (Sect. 17, p. 74, *infra*.)

Property, real or personal. No distinction is made between real and personal property, so long as it can be reached by the English Courts. Thus, all property of every kind or description, situate within the United Kingdom, is, except as above mentioned (p. 2, *supra*), liable to the duty; and property situate without the United Kingdom is also liable, if it is subject to succession or legacy duty. (As to this, see sect. 2 (2), p. 14, *infra*; sect. 20, p. 77, *infra*.) "Property" (by sect. 22 (1) (f), p. 83, *infra*), includes "real and personal property, and the proceeds of sale thereof, and any money or investments for the time being representing the proceeds of sale."

Settled or not settled. So long as property passes on the death of a person, it is immaterial in what instrument it is comprised.

"Settled property" means "property comprised in a settlement," and "a settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of sect. 2 of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust. (Sect. 22 (1) (h) and (i), p. 83, *infra*.)

Which passes on the death of such person. Only property passing on the death of a person dying after the 1st August, 1894, is liable to estate duty. The nature of property passing on a person's death is defined in sect. 2 (p. 5, *infra*). "On the death," in addition to its literal signification, means "at a period ascertainable only by reference to the death," and property is said to pass if it passes either immediately or after an interval, either certainly or contingently, and either originally or by way of substitutive limitation. (Sect. 22 (1) (l), p. 84, *infra*; and note to sect. 2 (1) (b), "Property in which the deceased, &c." (p. 6, *infra*)).

Graduated rates hereinafter mentioned. (See sect. 17, p. 74, *infra*.)

The existing duties. *I.e.* :

(i) Probate duty. (The Customs and Inland Revenue Act, 1881).

- (ii) The Account duty. (The Customs and Inland Revenue Act, 1881, sect. 38; amended by The Customs and Inland Revenue Act, 1889, sect. 11, sub-sect. (1)).
- (iii) The additional succession duties imposed by The Customs and Inland Revenue Act, 1888, sect. 21 (*i.e.*, $\frac{1}{2}$ per cent. for lineals, and $1\frac{1}{2}$ per cent. for other persons).
- (iv) The temporary estate duties imposed by The Customs and Inland Revenue Act, 1889, sects. 5 and 6 (*i.e.*, the additional 1 per cent. upon personal estates and successions exceeding 10,000*l.*).
- (v) The 1 per cent. legacy and succession duties payable by lineal ancestors or descendants of the deceased under his will or intestacy, or, on his death, under his disposition or any devolution from him under which estate duty has been paid, or under any other disposition under which estate duty has been paid.

§ 1.

These duties remain payable upon property passing on the death of a person dying on or before the 1st August, 1894 (sect. 21 (2), p. 80, *infra*). The temporary estate duties, imposed by The Customs, &c., Act, 1889, sects. 5 and 6, and the additional succession duties imposed by the Customs, &c., Act, 1888, sect. 21, remain, it would appear, payable in respect of: (a) property settled by a will or disposition made by a person dying on or before the 1st August, 1894, in respect of which probate or account duty has been paid or is payable; (b) settled property upon which estate duty has already been paid upon some death occurring since the date of the settlement. As to cases falling under (b), see, however, sect. 5 (2), *note* "Nor shall any of the duties mentioned in the fifth paragraph, &c." (p. 23, *infra*).

2.—(1.) Property passing on the death of the deceased shall be deemed to include the property following, that is to say:—

What property is deemed to pass.

- (a) Property of which the deceased was at the time of his death competent to dispose.

Shall be deemed to include. The definition is not in terms inclusive, but it is framed so as practically to include every form of property or interest in property passing on death.

Property. (See sect. 22 (1) (f), p. 83, *infra*).

Competent to dispose. (See sect. 22 (2), (a) and (c).)

Property of which a person is competent to dispose consists of—
 (i) His free realty and personalty. (ii) Real property of which he is tenant in tail in possession or remainder. (iii) Property over which he has a general power of appointment, whether exercisable by deed or will, or both, provided such power is not of a fiduciary character, *i.e.*, vested in him as trustee (under a dis-

§ 2.

position not made by himself) or mortgagee, or as tenant for life under the Settled Land Acts. (iv) Money which he has a general power to charge on property. (v) Property which would fall under the above categories if he were *sui juris*.

With regard to (ii), a person is to be deemed competent to dispose of property if he is tenant in tail in remainder. Under sect. 5 (3) (p. 26, *infra*), it is enacted that if the interest of any person under a settlement fails, by reason of his death, before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death. See *note* on sect. 5 (3) for the effect of that provision in the case of an estate tail in remainder limited to B. under a settlement (with remainders over), which fails by reason of B.'s death *sine prole* before his estate tail falls into possession.

With regard to (iii), the imposition of a death duty upon property over which the deceased had a general power of appointment that he did not exercise, is new. Under the existing law neither probate, legacy, or succession duty is payable in respect of property over which the deceased had a general power of appointment unless he exercised the power. With regard to fiduciary powers see *note* to sect. 22 (2) (a), (p. 85, *infra*).

Under (v) estates of infants, lunatics, &c., are put on the same footing as those of persons *sui juris*.

- (b) Property in which the deceased or any other person had an interest ceasing on the death of the deceased to the extent to which a benefit accrues or arises by the cesser of such interest but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office or recipient of the benefits of a charity or as a corporation sole.

Property in which the deceased, &c. This sub-section deals with property in which the person *from* whom the property passed on the death of the deceased, had only a limited interest. This property falls under two heads:—(1) Property in which the deceased had an interest ceasing on his death. (2) Property in which some person, other than the deceased, had an interest ceasing on the death of the deceased.

Under (1) fall life estates and interests under settlements, life annuities and rent-charges charged on or issuing out of any property, the "life," in these cases, being that of "the deceased." The test is that, upon the falling-in of the life in question, a benefit must accrue or arise to some person. No duty is therefore chargeable in respect of an annuity payable during the life of the deceased and ceasing on his death, if it is merely secured by a covenant, and is not charged on or does

not issue out of property. (See 27 Hansard, 4th Ser., pp. 56 & 57.) "The benefit accruing or arising" on the death of the deceased may, by virtue of sect. 22 (1) (1), p. 84, *infra*, accrue or arise either *immediately* (e. g., where property is settled on the deceased for life, with remainder to his children), or *after any interval* (e. g., where there is a trust for accumulation of income during a limited period before the next interest arises; *Att.-Gen. v. Gell*, 3 Hurlst. & Colt. 615; *King v. Jarman*, L. R. 14 Eq. 357; or where an interest is to arise upon the happening of some event, as, for instance, the marriage of a prior life tenant), or *certainly or contingently* (e. g., where property is limited after the death of the deceased to some person upon his attaining twenty-one years), or *originally or by way of substitutive limitation* (e. g., where property is limited after the deceased's death to A. in fee, but should A. die *sine prole*, to B. in fee, and A. dies before the deceased *sine prole*). The instances above given deal with cases in which the interest arising on the death of the deceased is an interest in the *whole* property. They are, however, *mutatis mutandis*, equally applicable to cases in which the interest arising on the deceased's death is the value of an annuity or rent-charge charged upon or issuing out of some property, and payable to the deceased during his life.

Under (2) fall cases in which estates and interests are limited to third persons during the life of the deceased, or annuities and rent-charges charged upon or issuing out of property, are made payable to third persons during the life of the deceased. In these cases, equally with cases falling under (1), the benefit accruing or arising may be either immediate or after an interval, certain or contingent, original or by way of substitutive limitation.

The expression "on the death" includes "at a period ascertainable only by reference to the death" (sect. 22 (1) (1), p. 84, *infra*). The following is a typical example of cases falling under this heading:—

A. (a father) settles 10,000*l.* on B. (his eldest son) during A.'s life, with remainder, on A.'s death, to C. (A.'s second son). Estate duty is paid on A.'s death.

Leases for lives, of which the deceased was the last life, fall under this heading; but as to these see sect. 3 (p. 16, *infra*).

To the extent to which a benefit, &c.—This is explained by sect. 7 (7) (p. 43, *infra*), by which it is provided as follows:—If the interest, ceasing on the death of the deceased, extended to the whole income of the property (e. g., property worth 10,000*l.* limited to the deceased for life, with remainder to B., or the same property limited to A. during the life of the deceased, with remainder to B.), the value of the benefit accruing or arising on the death of the deceased will be the principal value of the property (*i. e.*, in the case given above, 10,000*l.*). If, however, the interest, ceasing on the deceased's death, extended to less than the whole income of the property (e. g., property worth 10,000*l.*, charged with an annuity of 200*l.* per annum in favour of the deceased during his life, or of A. during the life of the deceased), the value of the benefit accruing or

§ 2.

arising will be the principal value of an addition to the property equal to the income to which the interest extended (*i. e.*, in the case just given the capitalized value of 200*l.* per annum, or, at 3 per cent., 6,666*l.* 13*s.* 4*d.*).

But exclusive of property the interest, &c. The effect of these words is to exclude from the class of property passing on death (which is the only property liable to estate duty) the stipend or emoluments attached to any office of profit, whether ecclesiastical (*e. g.*, that of a dean or prebend), or lay (*e. g.*, that of a judge, or master, or fellow, of a college at a university), pensions and annuities granted by a charity, and the emoluments enjoyed by a corporation sole (*e. g.*, a bishop or a parson).

44 & 45 Vict.
c. 12.
52 & 53 Vict.
c. 7.

- (c) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words “voluntary” and “voluntarily” and a reference to a “volunteer” were omitted therefrom :
and

Property which would, &c. The Customs and Inland Revenue Act, 1881, sect. 38, as amended by the Customs and Inland Revenue Act, 1889, sect. 11, and varied by this Act, runs as follows :—

- (i) “Any property taken as a *donatio mortis causa*, made by any person dying after 1st August, 1894, or taken under a disposition made by any person so dying purporting to act as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been made *bonâ fide* twelve months before the death of the deceased, and property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise :
- (ii) “Any property which a person so dying, having been absolutely entitled thereto, has caused or may cause to be transferred to or vested in himself and any other person, or has purchased or invested by himself alone, or in concert or by arrangement with any other person, so that the beneficial interest therein passes or accrues by survivorship on his death to such person :

- (iii) “ Any property, and the proceeds of sale of any property, passing under any past or future settlement made by any person so dying, by deed or any other instrument not taking effect as a will, and any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, whereby an interest in such property for life, or any other period determinable by reference to death, is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property.” § 2.

Donatio mortis causâ. A *donatio mortis causâ* is a gift of personal property made in contemplation (*Duffield v. Elwes*, 1 Bligh, N. S. 497; *Edwards v. Jones*, 1 My. & Cr. 226; *Walter v. Hodge*, 2 Swanst. 92) of death, and intended (either expressly, *Staniland v. Willott*, 3 Mac. & G. 664, or impliedly, *Gardner v. Parker*, 3 Madd. 184), to take complete effect only if the donor dies (*Edwards v. Jones*, *supra*; *Tate v. Hilbert*, 2 Ves. jun. 111) from the illness affecting him at the time of the gift. The subject of the gift must be delivered either actually (*Ward v. Turner*, 2 Ves. sen. 431; *White & Tudor*, 1 L. C., 6th ed., 1058), or (if the nature of the thing given does not admit of corporeal delivery) constructively (*Jones v. Selby*, Prec. Chanc. 300; *Moore v. Darnton*, 4 De G. & Sm. 517; *Mustapha v. Wedlake*, 8 Times L. R. 160) to the donee, or to some person for him (see *White & Tudor*, 1 L. C., 6th ed., p. 1074) for the use of the donee (*Tate v. Hilbert*, 2 Ves. jun. 120), or upon trust for another (*Drury v. Smith*, 1 P. Wms. 403; *Farquharson v. Cave*, 2 Coll. 356), or for a particular purpose (*Blount v. Burrow*, 4 Bro. C. C. 71). The donor must part with the dominion as well as the possession of the thing (*Hawkins v. Blewitt*, 2 Esp. 663); and a mere delivery to a person as agent for the donor will not suffice (*Farquharson v. Cave*, 2 Coll. 356, 367; *Trimmer v. Danby*, 25 L. J. Ch. 424).

Personal property which can be made the subject of a *donatio mortis causâ*, includes chattels passing by delivery, and also bank notes (*Miller v. Miller*, 3 P. Wms. 356), bankers' deposit notes (*Duffin v. Duffin*, 44 Ch. D. 76), bonds (*Snellgrove v. Baily*, 3 Atk. 213), bills of exchange, notes and cheques of a third person (*Veal v. Veal*, 27 Beav. 303; *Austin v. Mead*, 15 Ch. D. 651; *Clement v. Cheeseman*, 27 Ch. D. 631), but not of the donor (*Clement v. Cheeseman*, *supra*), mortgage debts (*Duffield v. Elwes*, 1 Bligh, N. S. 497), policies of insurance (*Witt v. Amis*, 1 Best & Sm. 109), and promissory notes (*Veal v. Veal*; *Austin v. Mead*, *supra*).

Under a disposition made by any person so dying, purporting to act as an immediate gift *inter vivos* whether by way of transfer, delivery, declaration of

§ 2. trust or otherwise, which shall not have been made bona fide twelve months before the death of the deceased. The effect of these words is to bring within this sub-clause gifts of every nature, howsoever effected, if made within twelve months before the death, *e.g.*, a transfer of 1,000*l.* Consols to a charity; a conveyance of an estate for "natural love and affection"; a gift of a valuable picture; a declaration of trust whereby the donor declares that he holds property belonging to himself in trust for some other person; an assignment of a policy of insurance upon the life of the owner to a son or daughter. "Gifts *inter vivos*" can be effected: (1) In the case of personal property passing by delivery, without any written instrument, so long as the gift is assented to by the donee, and there is an actual or constructive delivery of the subject of the gift. (*Moore v. Cochrane*, 25 Q. B. D. 57.) (2) In the case of all property, whether real or personal, by a deed of gift, declaration of trust, or some written instrument taking effect as such, and, if personal property, either with or without delivery. Gifts made in this manner are valid as between donor and donee, but may, if of personal property, be in certain cases, if the instrument of gift is not registered under the Bills of Sale Acts, avoided by the trustee in bankruptcy or execution creditor of the donor. The word "voluntary" occurred in the Customs and Inland Revenue Act, 1881, sect. 38, before the word "disposition," and an ante-nuptial settlement made by a father upon a son or daughter, not being a voluntary settlement, did not therefore fall within that section. It will, however, it is thought, be held that the effect of the omission of the word "voluntary" in this context is to bring within the scope of this sub-clause a settlement of the character above alluded to, if made within twelve months of the death of the settlor.

A voluntary release of a life interest by a life tenant under a settlement to the remainderman, or of a general power of appointment or revocation by the donee thereof, would, if made within a year of the life tenant's or donee's death, fall, it is thought, within this sub-clause. (As to this, see notes "Interest for life," and "The right . . . to restore to himself or reclaim the absolute interest in such property, pp. 12 & 13, *infra*.)

Property taken under any gift whenever made, of which property bonâ fide possession and enjoyment, &c. The transactions aimed at are gifts made at any time (not necessarily twelve months before the death of the donor) where the donor retains an interest in or a power over the subject of the gift. Any retention by the donor for however short a time of an interest in or a power over the property would apparently bring the transaction within this sub-clause.

Examples:—

- (i) A. hands over 2,000*l.* to his brother in consideration of his brother allowing him an annuity of 50*l.* for the rest of his life.
- (ii) A. hands over his estate of Whiteacre to B. on the

condition that B. shall pay A.'s debts within one year, or in default of B. so doing, that the property shall be reconveyed to A.

§ 2.

Any property which a person . . . has caused . . . to be transferred to or vested in himself and any other person.

These words deal with cases in which an absolute owner, whether of real or personal property, transfers the same into the joint names of himself and some other person or persons, so that they become joint tenants of the beneficial interest in the property.

In the case of a purchase or investment by a husband in the joint names of himself and his wife, or by a father in the joint names of himself and his child, the law presumes an intention on the part of the husband or father to make a provision for the wife or child. In the case of joint mortgages, the mortgagees are in equity deemed to be tenants in common (in whatever proportions the money was advanced), and the survivor (in whom the security is vested at law by survivorship) is a trustee for the legal personal representatives of the deceased mortgagee. So also in the case of partnership property, there is at law a joint tenancy, and in equity a tenancy in common. The omission of the word "voluntarily," which occurred before the words "caused" and "cause," do not, it is thought, make much practical difference. If the joint purchase or investment was made for full consideration in money or money's worth, moving from the person to whom the benefit will accrue, to the person effecting the purchase or investment, estate duty will not be payable. (Sect. 3 (1), p. 16, *infra*.) If it was made for partial consideration, the value of the consideration will be allowed as a deduction from the value of the property (sect. 3 (2), p. 16, *infra*).

Or has purchased or invested by himself alone. By these words the Act is, it is thought, made applicable to a policy effected by a husband on his own life to be payable to the wife if she survives, "nomination" policies, policies effected under the Married Women's Property Act, 1870, and survivorship policies. In any case these transactions fall, it would seem, under sub-clause (d). (See p. 13, *infra*.)

The combined effect of sub-clause (d) and sect. 3 (p. 16, *infra*), is to supersede the following provision contained in the Customs and Inland Revenue Act, 1889, sect. 11 (1). "The charge (*i. e.*, for account duty) under the said section (*i. e.*, sect. 38 of the Customs and Inland Revenue Act, 1881) shall extend to money received under a policy of assurance effected, by any person dying on or after 1st June, 1889, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit."

Example.—Twenty shares in a limited company are purchased in the joint names of the deceased and A., each having found one-half of the purchase-money. The property passing on the

§ 2.

deceased's death is the moiety accruing to A. by survivorship. As to the application of sect. 3, see *last note*.

Any property and the proceeds of sale, &c. This sub-clause brings within the operation of the Act all property real and personal, and the proceeds of sale thereof, settled by any instrument other than a will, or by a parol trust whereby a life interest or power of revocation is given to the settlor.

Passing under. "Property, the right to direct the application of which is created by deed A, but the specific direction of which is effected by deed B, passes *under* (not *by*) deed A." (Per Wills, J., *The Attorney-General v. Chapman*, (1891) 2 Q. B. 526, 532; cp. *The Attorney-General v. Gosling*, (1892) 1 Q. B. 545.)

It is conceived that the property, in order to be property passing on the death of the settlor, must actually pass under the settlement, and that this sub-clause would not apply if the settlor has, by the exercise of some power in his lifetime, taken the property out of the settlement or executed a release (more than a year before his death if the release is voluntary) of his life interest in the property.

Settlement. The omission of the word "voluntary," which occurs in the Act of 1881 before the word "settlement," makes this sub-clause applicable to marriage settlements, if the settlor has reserved a life interest in or a power of revocation over the property.

If the settlement was for consideration in money or money's worth the provisions of sect. 3 (p. 16, *infra*) apply.

Was made for valuable consideration or not as between the settlor and any other person. Having regard to the omission of the word "voluntary" throughout the sub-clause, and the provisions of sect. 3 (p. 16, *infra*), it is doubtful whether these words are strictly necessary for the purpose of this Act.

Interest for life. It is not apparently necessary that the settlor should reserve to himself an interest in the whole of the settled property, if the whole of the property passes on his death. See *The Attorney-General v. Heywood*, 19 Q. B. D. 326, in which case there was discretionary trust of the income of the property during the settlor's life in favour of himself and his wife and children.

A release by the settlor of his life interest to or in favour of the persons entitled in remainder or reversion would, it is thought, operate so as to take the property out of the scope of this section. (See note "Passing under," *supra*.) It might, however, be said that a release is only an assignment of a prior interest to the persons interested in remainder, and that such an assignment should not have any greater effect than an assignment to persons other than persons interested in remainder, which would certainly not operate so as to defeat the operation of the section.

If the release is voluntary, it must, even if good otherwise, have been made more than a year before the death of the re-

leasor. (See p. 10, *supra*.) If the release was for value in money or money's worth, it would fall within sect. 3 (p. 16, *infra*.)

§ 2.

Is reserved. These words do not mean more than that a life interest is kept or provided for or secured to the person making the settlement. (Per Wills, J., in *The Attorney-General v. Gosling*, (1892) 1 Q. B. 545, 549; *cp.*, *Crossman v. The Queen*, 18 Q. B. D. 256.)

The right . . . to restore to himself or to reclaim the absolute interest in such property. In this case no interest need be reserved to the settlor. It is sufficient that a power of revocation or a general power of appointment should be reserved to the settlor. It is a matter of some doubt whether the release of a power of revocation or of a general power of appointment (even if made more than a year before the death of the settlor) would take the property out of the operation of this sub-clause. Upon the whole, it is submitted, that such a release would have that effect. If A. has settled 1,000*l.* consols upon trust for B. for life, with remainder to C. absolutely, reserving to himself a power of revocation which he releases in his lifetime, no property could be said to "pass under" the settlement on his (A.'s) death. If the power has not been released, B. and C. take that absolutely which was before defeasible, and the property might fairly be said to "pass under" the settlement. A policy of assurance on the settlor's life, settled by an instrument containing a general power of revocation would, it is thought, be liable to estate duty, even if the power was released.

As to the time, before the settlor's death, within which a voluntary release of a power of revocation and a general power of appointment must be effected, see p. 10, *supra*. As to the effect of sect. 3 (p. 16, *infra*), see *note* on "Interest for life," (p. 12, *supra*).

- (d) Any annuity or other interest purchased or provided by the deceased 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.

Any annuity. The following are examples of annuities falling under this sub-clause:—(i) An annuity payable to the deceased during his life, and after his death to A. for his life, or a certain number of years. (ii) An annuity payable to the deceased and A., either jointly or in various proportions, during their joint lives, and after the death of the deceased to A., if he survives, for his life, or a certain number of years. (iii) An annuity payable to the deceased and A., either jointly or in various proportions, during their joint lives, and after the death of one to the survivor for his life, or a certain number of years.

§ 2.

(iv) An annuity in favour of A. for his life, or a certain number of years commencing after the deceased's death. The annuity need not be purchased entirely by the deceased, but he must have some share in the transaction.

The *quantum* upon which estate duty becomes payable on the death of the deceased is the extent of the beneficial interest accruing or arising on the death of the deceased—*i. e.*, in examples (i) and (iv) the capital value, according to A.'s age or the number of years for which the annuity is payable, of the whole annuity; and in cases (ii) and (iii) the capital value, according to A.'s age or the number of years for which the annuity is payable, of so much of the annuity as becomes payable to him by reason of the deceased's death. If A. has contributed to the purchase of the annuity, the amount contributed by him would, it is presumed, be allowed as a deduction from the *quantum* charged with estate duty. (Sect. 3 (2), p. 16, *infra*.) In examples (ii) and (iii) the amount contributed by A. would have to be part of the consideration paid for the deceased's share of the annuity. An annuity, not exceeding 25*l.*, purchased or provided by the deceased either by himself alone, or in concert or arrangement with any other person, for the life of himself and some other person, and the survivor of them, or to arise on his own death in favour of some other person, and a pension or annuity, payable by the Indian Government to the widow or child of a deceased Indian officer, are, by sect. 15 (1) & (3), (p. 69, *infra*), exempted from the payment of estate duty.

Annuities charged on or issuing out of property might fall under this sub-clause; but they are, it is conceived, more properly dealt with as falling under sub-clause (a), (p. 5, *supra*).

Or other interest. These words are inserted to bring within the definition of property passing on death cases which might be argued do not fall under sub-clause (c); *e.g.*, a policy of insurance effected by the deceased, or an arrangement entered into by him, whereby a sum of money becomes payable on his death to his wife or children.

The *quantum* in these cases chargeable with estate duty is arrived at in the same manner, and after making the same deductions, as in the case of annuities.

(2.) Property passing on the death of the deceased when situate out of the United Kingdom shall be included only if under the law in force before the passing of this Act, legacy or succession duty is payable in respect thereof, or would be so payable but for the relationship of the person to whom it passes.

Legacy or succession duty. Property situate out of the United Kingdom liable to legacy or succession duty consists of: (i) personal or moveable property situate out of the United Kingdom which passes upon the death of a testator, or intestate, or predecessor domiciled in the United Kingdom, the local situation of

the property being immaterial (*Re Ewin*, 1 Cr. & Jerv. 151; *Thomson v. The Advocate-General*, 13 Sim. 153, 12 Cl. & Fin. 1); (ii) personal or moveable property which is comprised in an English settlement, and vested in trustees subject to the jurisdiction of the Courts of the United Kingdom (*Re Cigala*, 7 Ch. D. 351); (iii) the share of a deceased partner who died domiciled in the United Kingdom, in real estate belonging to the partnership (*Forbes v. Stevens*, 10 Eq. 178; *The Attorney-General v. Hubbuck*, 13 Q. B. D. 275).

Real property situate out of the United Kingdom passing on the death of a person domiciled in the United Kingdom, legacies and annuities charged thereon, and the proceeds of sale thereof if directed to be sold, are not liable to either legacy or succession duty.

Or would be so liable but for the relationship of the person to whom it passes. *I.e.*, if the property passes to the husband or wife of the deceased. Lineals were not before this Act exempted from legacy duty in respect of foreign personalty liable to duty, sect. 41 of the Customs and Inland Revenue Act, 1881, only applying to cases in which probate or account duty had been paid.

(3.) Property passing on the death of the deceased shall not be deemed to include property held by the deceased as trustee for another person under a disposition not made by the deceased, or under a disposition made by the deceased more than twelve months before his death where possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust, and thenceforward retained to the entire exclusion of the deceased, or of any benefit to him by contract or otherwise.

Under a disposition made by the deceased more than, &c. Under sub-sect. (1) (c), (p. 8, *supra*), property settled by the deceased on another person within twelve months of his death is deemed to pass on his death. By the same sub-section, property settled by the deceased on another person more than twelve months before his death is also deemed to pass on his death, unless the possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust, and thenceforward retained, to the entire exclusion of the deceased, or of any benefit to him by contract or otherwise. Under sect. 22 (2) (a), (p. 85, *infra*), a person having a power of disposition exercisable in a fiduciary capacity, under a disposition made by himself is, it would seem, to be deemed to be competent to dispose of the property. The result appears to be that settlors would do well not to be trustees of the settlements effected by them.

§ 3.

Exception for transactions for money consideration.

3.—(1.) Estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where such purchase was made, or such lease or annuity granted, for full consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee.

(2.) Where any such purchase was made, or lease or annuity granted, for partial consideration in money or money's worth paid to the vendor or grantor for his own use or benefit, or in the case of a lease for the use or benefit of any person for whom the grantor was a trustee, the value of the consideration shall be allowed as a deduction from the value of the property for the purpose of estate duty.

By reason only of a bonâ fide purchase from the person under whose disposition the property passes.

Examples.—(i) A. being absolutely entitled to property, conveys it for full value to B., reserving to himself a life interest. It is conceived that estate duty is not payable on A.'s death. (ii) A. effects a policy of assurance on his life in the name of B. to secure a sum advanced by B. (together with interest, premiums, &c.). On A.'s death, the moneys payable to B. under the policy in respect of the amount due to him from A. are not chargeable with estate duty. (iii) A. assigns a policy of assurance belonging to him (whether on his own life or that of some other person) to B. for value. Estate duty is not payable by B. on the falling in of the life assured. (iv) A. being entitled to Whiteacre in fee simple, grants to B. for full value an annuity charged thereon, to commence at A.'s death. Estate duty is not payable on A.'s death.

Nor in respect of the falling into possession of the reversion on any lease for lives. Leases granted for a series of lives would, but for this section, be liable to estate duty upon the falling in of the last life, even though the grantor and the persons claiming through him had received full value for the

§ 3.

lease, either by way of fine or in rent, or partly in one way and partly in the other. Leases for lives are, as a rule, granted for lives of persons entirely unconnected with the property, *e.g.*, the Queen or other members of the Royal Family.

Nor in respect of the determination of any annuity for lives. A person having a limited interest in settled property frequently raises money by granting an annuity out of his interest to the person advancing the money. Estate duty is not, in such a case, payable on the death of the grantor, when, of course, the annuity ceases. If the advance is covered by an assignment of a policy of assurance on the life of the grantor of the annuity, the first part of this sub-section would apply.

For full consideration. *I.e.*, for what was full consideration at the time of the sale or grant. Thus it is thought that the surrender value of a policy of assurance would, if paid on an assignment of the policy during the life of the assured, be "full consideration."

Money or money's worth. The effect of these words is to exclude from the operation of the section transactions which were effected in consideration of marriage, or as part of a family arrangement (*cf.* The Succession Duty Act, 1853, s. 17; *Floyer v. Bankes*, 9 Jur. N. S. 1256; 3 De G. J. & S. 306; *James v. James*, 2 Brod. & Bing. 702; *Blake v. Attersoll*, 2 Barn. & Cr. 875; *Tetley v. Tetley*, 4 Bing. 214).

For his own use or benefit. These words appear to be inserted to meet the case of collusive transactions. It is, however, thought that if the consideration was paid to a third person on the request of the vendor or grantor, the consideration would, so far as the person making the payment was concerned, be deemed to be paid to the vendor or grantor for his own use or benefit.

Deductions. Deductions from the value of property are dealt with in sect. 7 (1) (p. 34, *infra*).

4. For determining the rate of estate duty to be paid on any property passing on the death of the deceased, all property so passing in respect of which estate duty is leviable shall be aggregated so as to form one estate, and the duty shall be levied at the proper graduated rate on the principal value thereof :

Aggregation of property to form one estate for purpose of duty.

Provided that any property so passing, in which the deceased never had an interest or which under a disposition not made by the deceased passes immediately on the death of the deceased to some person other than the

§ 4.

wife, or husband, or a lineal ancestor or lineal descendant of the deceased, shall not be aggregated with any other property, but shall be an estate by itself, and the estate duty shall be levied at the proper graduated rate on the principal value thereof, but if any benefit under a disposition not made by the deceased is reserved or given to the wife, or husband, or a lineal ancestor, or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of estate duty.

For determining the rate, &c. As to appeals from the determination of the Commissioners under this section, see sect. 10 (p. 59, *infra*).

All property so passing shall be aggregated. The following property passing on the death of the deceased is *not* aggregated: (1) Property not itself chargeable with or liable to estate duty, *e. g.*, the property, a list of which is given on p. 2, *supra* (notes to sect. 1). (But *quære* as to reversionary interests the estate duty on which has been commuted under sect. 12, p. 65, *infra*.) (2) Property which is itself chargeable with or liable to estate duty, but which, under the proviso to this section, or under sect. 16 (3) (p. 71, *infra*), devolves as an estate by itself.

What is aggregated for the purpose of ascertaining the estate, is the principal value (ascertained as provided by sect. 7, p. 34, *infra*) of the various items of property passing.

At the proper graduated rate. (Sect. 17, p. 74, *infra*.)

Principal value. (Sect. 7, p. 34, *infra*.)

Provided that any property so passing . . . shall be an estate by itself. The following property passing on the death of the deceased is not aggregated with any other property, but is in each case chargeable with duty as an estate by itself:

(i) Property in which the deceased never had an interest.

Example:—Property settled upon A. during the life of the deceased, and after the death of the deceased upon B.

(ii) Property which, under a disposition not made by the deceased, passes immediately on his death to some person other than the wife or husband, or a lineal ancestor or lineal descendant of the deceased.

Example:—Property settled by A. on the deceased for life, with remainder, if the deceased dies without male issue (which event happens), to a nephew of the deceased.

If, however, the property passed immediately on the deceased's death to his or her wife or husband, or lineal ancestor or descendant, the property would in that case be aggregated with the deceased's other property, even though it passed under a dis-

position not made by the deceased; e.g., one made by the deceased's father. (See *next note*.)

This section, combined with the next section, produces some curious results, as the following example shows:—

Example.—Property is settled by A.'s father upon A. for life, with remainder to A.'s nephew for life, with remainder to A.'s daughters. On A.'s death there is under this section no aggregation, and the estate duty payable on A.'s death covers, by virtue of the next section, the duty otherwise payable on the death of A.'s nephew. If, however, the property were settled, after A.'s death, on his daughters for life, with remainder to his nephew, there would equally be only one estate duty payable (viz. on A.'s death), but there would in this case be aggregation.

But if any benefit, &c.

Example.—Property is settled by A. on the deceased for life, with remainder to trustees to secure a rent-charge to the deceased's widow during her life, with remainder to the deceased's nephew. In this case the value of the annuity (ascertained as provided by sect. 7 (7), p. 43, *infra*) is aggregated with the deceased's other property, and the estate duty is payable thereon at the proper graduated rate, according to the value of the deceased's aggregated estate. The rest, however, of the settled property, after deducting the value of the annuity, devolves as an estate by itself, and estate duty is payable accordingly.

The foregoing example is, it is thought, tolerably clear. There is, however, considerable doubt as to the precise effect of the words "but if any benefit," &c. in the following cases:—

- (i) Property is settled by A. on B. during the life of the deceased, with remainder on the death of the deceased to the deceased's son.
- (ii) Property is settled by A., as to one-half thereof on the deceased for life, and as to the other half on B. during the life of the deceased, with remainder as to the whole on the death of the deceased to the deceased's son.

In each case the whole property passes, on the deceased's death, to his son. Should the settled property be aggregated to any, and, if so, to what extent with other property passing on the deceased's death?

It is submitted (though with diffidence) (1) that the words "but if any benefit," &c., are to be taken as limiting the *second* alternative at the commencement of the proviso *only* and not the *first* alternative, and that consequently, if the deceased never had an interest in the property, there would be no aggregation even if it passed, on his death, to his son; (2) that there would only be aggregation to the extent of any benefit accruing from the deceased to his son, &c.: e.g., in the second of the two cases last given, the *whole* property would not be aggregated, but *only* the principal value of one-half of the income. (Sect. 7 (7), p. 43, *infra*.)

§ 5.

Settled property.

5.—(1.) Where property in respect of which estate duty is leviable is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property—

- (a) A further estate duty called Settlement estate duty on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but
- (b) During the continuance of the settlement the Settlement estate duty shall not be payable more than once.

This sub-section deals with the incidence of the Settlement estate duty.

This is a duty at the rate of one per cent. (sect. 17, p. 74, *infra*), which is (in certain cases) charged on settled property, by way of countervailing the exemption granted to settled property from estate duty under the following sub-section.

In respect of which estate duty is leviable. Settled property, if not otherwise chargeable with estate duty, does not fall within this section, *e. g.*, a settled advowson (sect. 15 (4), p. 70, *infra*), or settled personalty, in respect of which probate or account duty has been paid (sect. 21 (1), p. 79, *infra*).

Settled. It is conceived that property is only “settled,” by the will of the deceased, if it passes to some person not “competent to dispose of the property.”

By the will of the deceased, or having been settled by some other disposition. Settlement estate duty is not chargeable in respect of property settled by an instrument taking effect before the 1st August, 1894 (see sect. 21 (4), p. 81, *infra*; sect. 24, p. 91, *infra*).

Passes to some person not competent to dispose of the property. See sect. 22 (2) (a) (p. 85, *infra*), for the definition of a person competent to dispose of property. If the property passes to a person competent to dispose of the property (*e. g.*, a tenant in tail, or a person having a general power of appointment), Settlement estate duty will not be chargeable, inasmuch as, on the death of that person, the exemption given by the following sub-section will not apply; and estate duty will be paid in the ordinary way under sect. 2 (1) (a). As to the

position of a tenant in tail in remainder, see *note* on sub-sect. (3), *infra*.

§ 5.

Settlement estate duty. The following are the points to be remembered with regard to the incidence of Settlement estate duty.

(i) The property must be settled by the will of a person dying after 1st August, 1894 (sect. 21 (4), p. 81, *infra*; sect. 24, p. 91, *infra*); or (ii) the property, if settled by some other disposition (which must also take effect after 1st August, 1894 (sect. 21 (4), p. 81, *infra*), must pass to some person not competent to dispose of the property (see sect. 22 (2)(a)); (iii) the duty is not charged if the only life interest in the property, after the deceased's death, is that of the wife or husband of the deceased; (iv) the duty is chargeable only once during the continuance of the settlement; (v) the duty is not charged in respect of property settled by the will of the deceased, if the net value of all property in respect of which estate duty is leviable on his death (exclusive of property settled otherwise than by his will) does not exceed 1,000*l*.

Examples :

- (i) Property (whether real or personal) is settled by the will of a person dying after 1st August, 1894, or by an instrument which has taken effect after 1st August, 1894, upon A. for life, and after A.'s death, upon B. absolutely. Upon the death of the deceased, Settlement estate duty (as well as estate duty) is chargeable on the property. If A. dies in the lifetime of the deceased, so that the property passes immediately to B. for an absolute interest, the Settlement estate duty would not, it is thought, be payable on the death of the deceased.
If A. happens to be the wife or husband of the deceased, Settlement estate duty is not payable.
If the property was settled by some instrument other than a will, such instrument may have been made either by the deceased, or some other person.
- (ii) Real property is settled (after 1st August, 1894), by A. upon himself for life, with remainder to B. for life, with remainder to C. in tail.
B. predeceases A.
Settlement estate duty is not payable on A.'s death.
- (iii) Personal property is settled (after 1st August, 1894) upon A. for life, and, after A.'s death, on B. for life, and, after B.'s death, as B. shall generally by will appoint.
Settlement estate duty is not payable on A.'s death.
- (iv) Real property is devised by A. (dying after 1st August, 1894) to his eldest son in tail, with remainders over.
Settlement estate duty is not payable on A.'s death.
- (v) Personal property is bequeathed by A. (dying after 1st August, 1894) in trust for B. for life, and, after B.'s death, for B.'s appointees.
Settlement estate duty is not payable on A.'s death.

 § 5.

(vi) Property is settled (after 1st August, 1894) upon A. (husband) for life, with remainder to B. (wife) for life, with remainder to the children.

Settlement estate duty is not payable on A.'s death.

(vii) Property is settled upon A. for life, with remainder to B. for life, with remainder to C. for life, with remainder to D. absolutely.

Settlement estate duty is payable on A.'s death, but not on B.'s death.

Principal value. Settlement estate duty is, like estate duty (sect. 1, p. 2, *supra*), levied on the principal value (sect. 7, p. 34, *infra*) of the property.

At the rate hereinafter specified. *I.e.* one per cent. (sect. 17, p. 74, *infra*).

Except where the only life interest. *Vide supra.* *Quere*, whether the Settlement estate duty is payable if there are *two* or more life interests, one being that of the deceased's wife.

During the continuance of the settlement. *Vide supra*, Example (vii). These words are necessary in order to prevent the Settlement estate duty being paid more than once in respect of the same settled property; otherwise, if there were two or more successive life interests arising after the death of the deceased under the settlement, Settlement estate duty would be payable as often as the property passed to a life tenant.

(2.) If estate duty has already been paid in respect of any settled property since the date of the settlement, the estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.

Under this sub-section, if estate duty has once been paid on settled property, no further payment of estate duty is required until the death of some person who, under the limitations of the settlement, is competent to dispose of the property (*e.g.* a tenant in tail or a person with a general power of appointment, whether by deed or will, or both. See sect. 22 (2) (a), p. 85, *infra*). Upon the death of such a person, estate duty is charged on the property under sect. 2 (1) (a).

Settled property. By sect. 22 (1) (h), settled property is defined to mean "property comprised in a settlement." It is conceived, therefore, that the exemption given by this sub-section would

apply if, under the limitations or trusts of a settlement, property passes on the death of the deceased to some person absolutely. (23 Hansard, 4th Ser., p. 522.)

Example.—Property is settled upon A. for life, with remainder to B. for life, with remainder to C. absolutely. Estate duty is paid on A.'s death. On B.'s death no estate duty, it is thought, becomes payable, although C. takes absolutely.

The estate duty shall not. It must be borne in mind that under sect. 21 (1), personalty settled by a will taking effect on or before 1st August, 1894, or by an instrument falling under the Customs and Inland Revenue Act, 1881, sect. 38 (2) (c), where the settlor has died on or before 1st August, 1894, is not liable to estate duty at all. All other settled property, whenever settled, is liable to, at any rate, *one* payment of *estate duty*, though property settled before 1st August, 1894, is not liable to Settlement estate duty.

Nor shall any of the duties mentioned in the fifth paragraph, &c. The duties referred to are the one per cent. legacy and succession duties payable by lineals. By sect. 1 (p. 2, *supra*) they are by implication chargeable if the property is *not* charged with estate duty. Under this section, if settled property is once cleared of estate duty, it is also cleared of the one per cent. legacy or succession duty until estate duty becomes again payable. Temporary estate duty under the Act of 1889, s. 6, and the additional succession duties under the Act of 1888, s. 21, remain, it is thought, payable in such a case (*quære*, however, as to the $\frac{1}{2}$ per cent. additional succession duty: see *note* to sect. 1, "The existing duties," p. 4, *supra*).

Until the death of a person who was at the time of his death . . . competent to dispose.

Example.—Property is settled on A. for life, with remainder to B. in tail. Estate duty is payable on A.'s death. B. dies without disentailing. Estate duty is paid on his death.

Had been at any time during the continuance, &c.

Examples:—

(i) Property is settled on A. for life, with remainder to B. for life, with a general power of appointment. B. releases this general power. Estate duty is paid on A.'s death and also on B.'s death.

(ii) Property is settled on A. for life, with remainder to B. in tail. B. disentails and resettles on himself for life, with remainders over. Estate duty is payable on A.'s and also on B.'s death.

A difficulty will, it is thought, arise in determining, in the case of composite settlements and re-settlements, what exactly is the settlement, during the continuance of which the deceased was competent to dispose of the property. For instance, property is, in 1860, settled (subject to charges) to such uses as A. and B. shall jointly appoint, and subject thereto to the use of A. for

§ 5.

life, with remainder to the use of B. for life, with remainder to B.'s sons in tail. In 1890 the property is, by means of the joint power of appointment, resettled (subject to charges) to such uses as A., B., and C. (B.'s son) shall jointly appoint, and subject thereto to the use of A., B., and C., successively for life, with remainder to C.'s sons in tail. The settlements of 1860 and 1890 constitute one composite settlement, the date of which is 1890. Could C. be said to have been competent to dispose of the property during the continuance of the settlement?

It is suggested (though not with confidence) that in the case of composite settlements, and resettlements effected at any rate before 1st August, 1894, the settlement actually in operation on the 1st of August, 1894, must be taken as the settlement referred to in this sub-section, so that, in the example last given, C. would not have been competent to dispose of the property during the continuance of the settlement. And this it is thought would be the case even if the resettlement had been effected by means of C. disentailing instead of by the exercise of the joint power of appointment. In cases of composite settlements, and resettlements, effected by means of the exercise of a joint power of appointment after the 1st August, 1894, it is thought that estate duty would again become payable on the death of the person who would have been competent to dispose of the property if the settlement in operation at the date when the first or "clearing" payment of estate duty was made, had been left to work itself out. It is fairly clear that this would be the case if the resettlement had been effected by means of a disentail. The payment of duty on the death of the person competent to dispose, above referred to, will in its turn clear the property till the death of a person who, under the resettlement, is or might have been competent to dispose of the property.

The section is silent with regard to jointures and portions. It is, however, conceived that no duty would be payable on the death of a person not competent to dispose of the settled property in respect of the jointures or portions raised on his death under limitations, trusts, or powers contained in the settlement, or on the cesser of any annuity or rent-charge limited to a person for life and charged on the settled property, if estate duty has already, on the occasion of a prior death, been paid in respect of the settled property during the continuance of the settlement. *Secus*, however, in the case of a jointure or portion raised on the death of a person under a general power vested in him to charge the property. (See sect. 22 (2) (c), p. 86, *infra*.)

Examples :

- (i) Property is settled on A. for life, with remainder to B. for life, with remainder to secure a jointure rent-charge to C. (B.'s wife), with remainder to raise 10,000*l.*, portions for B.'s younger children, with remainders over.

On A.'s death, estate duty and Settlement estate duty are paid. It is conceived that on B.'s death, the settled property being cleared of duty, C. will be entitled to her jointure, and B.'s younger children to their portions, clear of duty.

- (ii) Property is settled on A. for life, with remainder to B. in tail, with remainder to secure a jointure to B.'s wife.

A. dies. B. then dies without disentailing. Estate duty is paid on B.'s death (he being competent to dispose of the property) and C. has to contribute her share of that duty rateably in proportion to the value of her jointure (sect. 14 (1), p. 67, *infra*).

- (iii) Property is settled on A. for life, but a power is reserved to him to charge 10,000*l.* by will on the estates for such persons and purposes as he thinks fit. A. by his will charges the estates with 5,000*l.* in favour of B.

B. has to pay estate duty on the 5,000*l.* whether estate duty has or has not been paid on a prior death on the settled property.

- (iv) Under a will or settlement taking effect before the 1st August, 1894, personal property in respect of which probate or account duty, as the case may be, has been paid, is settled on A. for life, and after A.'s death upon trust to raise 5,000*l.* for B., and subject thereto the property is to be held in trust for C. for life, and after C.'s death for C.'s children.

Estate duty is not, it is submitted, paid on A.'s death on the 5,000*l.* which is then raised, that sum forming part of the property in respect of which probate or account duty has been paid.

There is some doubt how rent-charges, charged by the settlor in his lifetime upon the settled estates, will be dealt with.

Example.—A. being seised in fee of Blackacre, executes a settlement by which he charges it with an annuity in favour of B. : subject thereto he settles the estate on himself for life, with remainder to C. in fee. It would appear that on A.'s death (which takes place in B.'s lifetime) no deduction could be made for B.'s annuity. (See sect. 7 (1) (a).) C. would therefore, according to this, have to pay on the *whole* estate. On B.'s death he would have to pay estate duty again (sect. 2 (1) (b)), the case not falling within sect. 7 (10), (p. 45, *infra*).

This seems hard on C. It is suggested that the capital value of B.'s annuity might be treated as an interest in expectancy (see sect. 22 (1) (j), p. 83, *infra*) to which A. was entitled for life contingently upon his surviving B. As he dies before B., his interest fails, and under the next section the property (*i. e.*, the capital value of the annuity) is not deemed to pass on his death. The result would then, so far as C. is concerned, be the same as if a deduction was made on A.'s death of the capital value of the annuity.

Estates in dower, and by the courtesy, and any like estate, are treated as if settled by the will of the deceased.

Example :—

- (i) A. becomes, on her husband's death, entitled, as doweress, to one-third of Whiteacre for life. She pays estate duty (but not Settlement estate duty, sub-sect. 1 (a)) in respect of the principal value of one-third. On A.'s death her

 § 5.

husband's heir has not to pay estate duty in respect of the one-third, and, if a lineal, succession duty.

- (ii) A. becomes, on his wife's death, entitled, as tenant by the courtesy, to Whiteacre for life. He pays estate duty (but not Settlement estate duty, *vide* p. 21, *supra*), and on his death his wife's heir escapes duty, and, if a lineal, succession duty.

(3.) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

In order that there may be an exemption from estate duty under this sub-section, the following conditions must be fulfilled:—(a) The interest of the deceased under the settlement must be an interest in expectancy or remainder, and must fail or determine by reason of his death. (b) Subsequent limitations under the settlement must continue to subsist.

Examples :

- (i) Property is settled on A. for life, with remainder to B. for life, with remainder to C.
B. predeceases A. Estate duty is not payable on B.'s death.
- (ii) Property is settled on A. for life, with remainder to B. in tail male, with remainder to C. in tail male.
B. predeceases A. *sine prole*. Here B.'s interest under the settlement (namely, his estate tail in remainder) fails, and a subsequent limitation (namely C.'s estate tail in remainder) continues to subsist. It is conceived that estate duty is not payable on B.'s death, though B. was, strictly speaking, "competent to dispose of the property" (see sect. 2 (1) (a), p. 5, *supra*, and sect. 22 (2) (a), p. 85, *infra*).
- (iii) Property is settled on A. for life, with remainder to B. in tail male, with remainders over.
B. dies before A., leaving a son. In this case B.'s estate tail does *not* fail on his death, and estate duty would, it is thought, be payable.
- (iv) Property is settled upon A. for life, with remainder to B. in tail or for life, with no remainders over.
B. dies before A. *sine prole*, and the property passes to the heirs of the settlor. Estate duty is payable on B.'s death, as no limitations under the settlement continue to subsist.

Estate duty will, of course, be payable on the death of a tenant in fee in remainder under a settlement as well as subsequently upon the death of the tenant for life. If the estate in fee is subsequent to an estate tail, recourse can with advantage be had to the provisions of sect. 7 (6), (p. 42, *infra*).

(4.) Any person paying the Settlement estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the ad valorem stamp duty (if any) charged on the settlement in respect of that property.

Any person paying. The persons who are made accountable for the duty on settled property consist of beneficiaries in possession, trustees, guardians, committees, and voluntary alienees (sect. 8 (4) p. 49, *infra*). Executors are authorized to pay the duty if requested by the person accountable. As to raising the money for duty, &c., see sect. 8 (5), (6), (7).

May deduct the amount of the ad valorem stamp duty. *I.e.* 5s. per cent. (see the Stamp Act, 1891, Sched.).

The *ad valorem* stamp duty can only be deducted from the Settlement estate duty. If, therefore, no Settlement estate duty is payable (*e.g.* by reason of the settlement having been made before 1st August, 1894, or by reason of the only life interest under it being that of the husband or wife of the deceased), no deduction can be made.

If any. These words are inserted, as there is no *ad valorem* duty chargeable on a settlement of real estate.

In respect of that property. Upon a settlement of mixed realty and personalty, stamp duty is only payable in respect of the personalty. As between the persons interested in the respective classes of property, the deduction should be made from the Settlement estate duty upon the settled personalty.

(5.) Where any lands or chattels are so settled, whether by Act of Parliament or Royal Grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels shall be the interest of his successor in the lands and chattels, and such interest shall be valued, for the purpose of estate duty, in like manner as for the purpose of succession duty.

Where any lands or chattels, &c. This sub-section deals with the case of estates inalienably settled or entailed by an Act of Parliament or Royal Charter, each of which instruments is a

§ 5.

settlement within the meaning of the Settled Land Act, 1882, sect. 2 (1) (see sect. 22 (1) (i), p. 83, *infra*).

Property inalienably settled or entailed in this manner can (unless the property was purchased with money provided by Parliament in consideration of public services) be sold under the Settled Land Act, 1882 (see sect. 58 (1) (i) of that Act). Thus the estates settled on the Dukedom of Wellington and the Earldom of Nelson cannot be sold under the Settled Land Acts, but *secus* in the case of the lands settled on the Dukedom of Marlborough (*Re The Duke of Marlborough*, 8 Times L. R. 582), the Earldoms of Shrewsbury and Abergavenny, and all lands which, prior to the Settled Land Act, 1882, had become inalienably entailed under the Act 34 & 35 Henry 8, c. 20. It is conceived, however, that notwithstanding sect. 58 of the Settled Land Act, 1882, the sub-section under consideration extends to *all* the cases noticed above. If the settled property is sold in either of the cases mentioned above, the tenant in tail cannot disentail, and get possession of the proceeds of sale. The same reasoning applies to the case of chattels inalienably settled. The power of sale given to tenants for life by the Settled Land Act, 1882, is a fiduciary power, and does not render a tenant for life, or, it is submitted, a tenant in tail, of an inalienably entailed estate competent to dispose of the property (see sect. 22 (2) (a), p. 85, *infra*).

The provisions of this Act with respect to settled property shall not apply. In the cases above referred to, the settlement under the Act of Parliament or Royal Charter cannot be put an end to, and, except for this sub-section, one payment of estate duty would exonerate the property from the payment of any further duty for all time.

The property passing . . . shall be the interest of his successor . . . and shall be valued . . . in like manner as for the purpose of succession duty. See the Succession Duty Act, 1853, sects. 21—26, 28, 31, 32.

Collection and Recovery of Duty and Value of Property.

Collection and
recovery of
Estate duty.

6.—(1.) Estate duty shall be a stamp duty, collected and recovered as hereinafter mentioned.

(2.) The executor of the deceased shall pay the estate duty in respect of all personal property (where-soever situate) of which the deceased was competent to dispose at his death, on delivering the Inland Revenue affidavit, and may pay in like manner the estate duty in respect of any other property passing on such death, which by virtue of any testamentary disposition of the

 § 6.

deceased is under the control of the executor, or in the case of property not under his control, if the persons accountable for the duty in respect thereof request him to make such payment.

Estate duty. This expression, as used throughout the Act, includes, where the context requires it, the Settlement estate duty, as well as the estate duty proper (see 26 Hansard, 4th Ser., p. 1645).

Stamp duty. By sect. 8 (16) (p. 54, *infra*), the duty is to be collected by means of stamps, or such other means as the Commissioners prescribe. Under the Customs and Inland Revenue Act, 1881, the Inland Revenue affidavit has to bear a stamp showing the amount of the probate duty, and the account delivered in respect of property liable to account duty, a stamp showing the amount of such duty.

Collected and recovered as hereinafter mentioned. See the other provisions of this section, and also sects. 8 and 9 (pp. 45 to 59, *infra*).

The executor. "The executor" in this Act means the executor or administrator of a person dying after the 1st August, 1894, and, as regards any obligation under this and the following sections, includes any person who takes possession of, or intermeddles with, the personal property of a deceased person (sect. 22 (1) (d), p. 82, *infra*).

Shall pay the estate duty in respect of all personal property (wheresoever situate) of which the deceased was competent to dispose at his death on delivering the Inland Revenue affidavit. The liability imposed on the executor is to pay the estate duty on all the free personalty of the deceased, whether in the United Kingdom or not, including personalty over which the deceased had a general power of appointment which he did not exercise. (See sect. 22 (2) (a), p. 85, *infra*.) This liability, is, however, limited to the amount of the assets which he has received as executor, or might, but for his own neglect or default, have received. (Sect. 8 (3), p. 48, *infra*.)

The executor must to the best of his knowledge specify in appropriate accounts annexed to the Inland Revenue affidavit (see sect. 8 (3), p. 48, *infra*) all the property passing on the deceased's death liable to duty, and the rate of the estate duty will, in the first instance, be calculated upon the value of the estate as appearing in these accounts. (Sect. 8 (7), p. 52, *infra*.) "The existing law and practice" relating to the collection and recovery of probate duty being made applicable to the collection and recovery of estate duty (sect. 8 (1), p. 45, *infra*), it is presumed, that the Commissioners will, upon being satisfied with the *prima facie* correctness of the Inland Revenue affidavit and the annexed accounts, allow the affidavit to be stamped, so as to enable probate to be granted under the Customs and Inland

§ 6.

Revenue Act, 1881, s. 30. If it should turn out that too little duty has been paid, the matter will be dealt with by means of a supplemental or corrective affidavit.

The "Inland Revenue affidavit" will continue to be the same as that hitherto in use (see sect. 22 (1) (n), p. 84, *infra*), subject to such modifications as may be necessary to carry out the provisions of the Act. (See the following sub-sections, and sect. 8 (14), p. 54, *infra*.)

If the executor does not know the amount or value of any property which has passed on the death, he is, by the following sub-section allowed, upon certain terms, to make a statement to that effect in his affidavit. It is presumed that the duty will then, for the purposes of stamping the Inland Revenue affidavit, be calculated upon the value of the property appearing in the accounts annexed thereto, and that upon payment of the duty at the rate so ascertained upon the property appearing in the accounts, for the duty upon which the executor is liable, the affidavit will be stamped and probate granted. (See 25 Hansard, 4th Ser., p. 881, and sect. 8 (17), p. 54, *infra*.)

By sect. 8 (9) (p. 52, *infra*), the Commissioners are authorised in certain cases, to allow the payment of the duty to be postponed. In such cases probate will, it is thought, be granted. (See 26 Hansard, 4th Ser., p. 1616, and sect. 8 (17), p. 54, *infra*.)

The duty on property passing to the executor, as such, will be paid as probate duty was formerly paid, (*viz.*) out of the general personal estate. The duty on personal property which does not pass to the executor, as such, but for the duty on which the executor is liable (*e.g.* foreign free personalty and personalty over which the deceased had an unexercised general power of appointment) will be recoverable from the trustees or owners of the property (sect. 9 (4), p. 58, *infra*, 25 Hansard, 4th Ser., p. 1529), or may be raised by the executor by sale or mortgage of the property itself (sect. 9 (5), p. 58, *infra*).

May pay. There is no obligation on the executor to pay the duty on any other property except the deceased's free personalty (as defined above); but he may pay the duty, (a) upon any other property which by virtue of any testamentary disposition of the deceased is under his control (*e.g.* real estate devised to him in trust or charged with debts); (b) upon any other property *not* under his control (*e.g.* settled property, or real estate not devised to him or charged with debts); but in this case only at the request of the persons accountable for the duty.

If the executor pays the duty out of general assets in his hands, he may recover the amount paid from the trustees or owners of the property (sect. 9 (4), p. 58, *infra*); or he may raise the amount of the duty, either before or after he actually pays it, by sale or mortgage of the property (sect. 9 (5), p. 58, *infra*).

Under the control of the executor. See last *note*.

Persons accountable for the duty. Several persons may be accountable for the duty on the same property, *e.g.* a beneficiary under a settlement, and also the trustees of the settlement.

It is not clear whether in such a case it is necessary that *all* the persons accountable should request the executor to pay the duty.

(3.) Where the executor does not know the amount or value of any property which has passed on the death, he may state in the Inland Revenue affidavit that such property exists but he does not know the amount or value thereof, and that he undertakes, as soon as the amount and value are ascertained, to bring in an account thereof, and to pay both the duty for which he is or may be liable, and any further duty payable by reason thereof for which he is or may be liable in respect of the other property mentioned in the affidavit.

(4.) Estate duty, so far as not paid by the executor, shall be collected upon an account setting forth the particulars of the property, and delivered to the Commissioners within six months after the death by the person accountable for the duty, or within such further time as the Commissioners may allow.

(5.) Every estate shall include all income accrued upon the property included therein down to and outstanding at the date of the death of the deceased.

Property. *I.e.* any property passing at the death, whether the executor is liable for the duty on it or not.

Undertakes . . . to bring in an account. This provision is supplemental to sect. 8 (3), (p. 48, *infra*), under which the executor is bound to annex to the Inland Revenue affidavit accounts of all the property passing at the death and liable to estate duty. It is by means of these accounts that the rate of the estate duty is in the first instance determined (sect. 8 (7), p. 52, *infra*).

Both the duty for which he is or may be liable and, &c. *I.e.* if the property in question is property for the duty on which the executor is accountable.

Any further duty. Upon the value of the property in question being aggregated with that of the other property mentioned in the affidavit, it may turn out that duty on such other property has been paid at too low a rate. The executor in such a case undertakes to pay the balance of the duty payable on the property, for the duty on which he is accountable.

§ 6.

Account. This account is to be in such form, and shall contain such particulars, as the Commissioners may prescribe (sect. 8 (14), p. 54, *infra*). If required by the Commissioners, it is to be in duplicate, and it must be verified on oath, and by the production of books and documents, in the manner prescribed by the Commissioners (sect. 8 (14), p. 54, *infra*). There will, it would appear, be two accounts delivered of property, the duty on which is not paid by the executor,—one annexed to the executor's Inland Revenue affidavit (sect. 8 (3), p. 48, *infra*), and the other delivered by the person accountable for the duty.

Within six months. The duty becomes due on the delivery of the account, or the expiration of six months from the death, whichever first happens (sub-sect. (7), *infra*). In the case of real property the duty may be paid by instalments as provided by sub-sect. (8), *infra*.

Person accountable for the duty. See sect. 8 (4), (p. 49, *infra*).

Shall include all income, &c. All income, whether arising from settled or unsettled property, outstanding at the death of the deceased, is made liable to estate duty, as it was, before the Act, liable to Probate duty. Such income will be apportioned under the Apportionment Act, 1870 (33 & 34 Vict. c. 35), and will, it is presumed, form part of the general personal estate of the deceased.

(6.) Interest at the rate of three per cent. per annum on the estate duty shall be paid from the date of the death up to the date of the delivery of the Inland Revenue affidavit or account, or the expiration of six months after the death, whichever first happens, and shall form part of the estate duty.

(7.) The duty which is to be collected upon an Inland Revenue affidavit or account shall be due on the delivery thereof, or on the expiration of six months from the death, whichever first happens.

The estate duty is calculated as at the death of the deceased; interest upon the duty is then calculated for the period intervening between the death and the delivery of the Inland Revenue affidavit or account, or the expiration of six months from the death, whichever first happens. The sum so arrived at is treated as the estate duty, and carries interest, as provided by sect. 8 (10) (p. 53, *infra*), from the time at which the duty becomes due (*i. e.*, the delivery of the affidavit or account, or the expiration of six months from the death, whichever first happens; see the next sub-section).

§ 6.

Interest. By sect. 16 (5), (p. 72, *infra*), if the fixed duty of 30s., or 50s. (being the duty payable where the gross value of the real and personal estate of the deceased liable to estate duty, exclusive of property settled otherwise than by his will, does not exceed 300*l.* or 500*l.*, as the case may be) is paid within twelve months after the death, interest is not payable on the duty.

(8.) Provided that the duty due upon an account of real property may, at the option of the person delivering the account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due, less income tax, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

Upon an account of real property. It is presumed that in cases of payment by instalments under this section, the provisions of sub-sect. (6), *supra*, apply, and that interest on the duty at three per cent. for the period intervening between the death and the delivery of the account, or the expiration of six months from the death (whichever first happens), is added to, and forms part of, the estate duty.

At the option, &c. The duty may, in the case of real property, be paid in the same way as on personalty (sub-sect. (4), *supra*), or by instalments.

At which the first instalment is due. *I.e.*, twelve months after the death.

Less income tax. *I.e.*, the income tax on the interest.

And the interest on the unpaid portion, &c. These words might be taken to imply that if any instalment and interest was in arrear, interest would be payable on such instalment and interest. It is, however, thought that it is not intended to charge interest on unpaid interest, but only on the duty for the time being unpaid.

The instalments may be put an end to (a) voluntarily, by payment of duty and interest up to date; (b) compulsorily, by the sale of the property, when the duty and interest up to date must be paid on the completion of the sale.

§ 6.

Shall be paid on completion. Though a *bonâ fide* purchaser without notice is exempted from personal liability for duty (sect. 8 (18), p. 55, *infra*), and the property in his hands is exonerated from any charge for duty (sect. 9 (1), p. 56, *infra*), a purchaser should, if he has notice that the duty was payable in instalments, insist upon seeing that the provisions of this subsection are carried out. (See, however, sect. 8 (2), p. 47, *infra*.) It is a question of some doubt whether a purchaser should, in the case of the abstract of title showing a recent death, inquire whether the duty on that death was payable by instalments. (As to this, cp. *Re Ford and Hill*, 10 Ch. D. 365; and see notes on sect. 8 (18), p. 55, *infra*, and sect. 9 (1), p. 56, *infra*.)

Shall be duty in arrear. *I.e.*, the unpaid duty and interest up to the date of completion of the sale. This amount will carry interest under sect. 8 (10), (p. 53, *infra*).

Value of
property.

7.—(1.) In determining the value of an estate for the purpose of estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

- (a) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created *bonâ fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor
- (b) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor
- (c) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

In determining the value of an estate for the purpose of estate duty allowance shall be made. By The Customs and Inland Revenue Act, 1881, sect. 28, a power to deduct debts and funeral expenses was given only where the deceased was domiciled in the United Kingdom. Subject to the provisions of

sub-sect. (2) *infra*, with regard to the allowance of debts due to creditors resident out of the United Kingdom, the section under consideration is general, and appears to apply to all estates liable to duty whether passing on the death of a person domiciled in the United Kingdom or not. Thus, in the case of a domiciled foreigner an allowance can, it is thought, be made for debts due to creditors resident in the United Kingdom, and for debts or incumbrances charged on his property within the United Kingdom, and, it would seem, for debts due to creditors resident abroad but contracted to be paid in the United Kingdom. Allowance cannot be made for incumbrances charged on property belonging to a domiciled foreigner situate abroad, such property not being liable to estate duty (see sect. 2 (2), p. 14, *supra*, and sub-sect. (2), *infra*). Incumbrances upon property situate abroad but liable to estate duty can, it is thought, be deducted from the value of that property.

Reasonable funeral expenses. *I.e.*, the usual necessary expenses of burying the deceased in a manner suitable to his position in life and his means generally. (See Williams on Executors, 9th ed., pp. 839 *et seq.*) Such expenses do not include expenses incurred in embalming the body, bringing it home from abroad, erecting a tomb or monument, or putting the family or servants into mourning. (See Williams on Executors, cited *supra*; *Johnson v. Baker*, 2 Car. & Pa. 207; *Bridge v. Brown*, 2 Yo. & Coll. C. C. 181.)

Debts. As to debts due to creditors resident abroad, see sub-sect. (2), *infra*; and as to debts due from a person domiciled abroad to creditors resident in England, see the first *note* to this section. Debts will be deducted from the property of the deceased liable thereto in the due course of administration.

Incumbrances. All incumbrances (including, of course, ancestral incumbrances) can, subject to the provisions of sub-clause (a), be deducted from the property liable thereto. As to incumbrances charged on property abroad liable to duty, *vide supra*. Incumbrances include mortgages and terminable charges (sect. 22 (1), (k), p. 84, *infra*); in the case of the latter, a rateable part of the duty may in many instances be thrown on to the charge (see *note* on sect. 5 (2), p. 25, *supra*, and sect. 41 (1), p. 67, *infra*).

An allowance shall not be made. Under the Customs and Inland Revenue Act, 1881, sect. 28, no deduction could be made for "voluntary debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been *bonâ fide* delivered to the donee thereof three months before the death of the deceased." Debts contracted in consideration of marriage could therefore be deducted. Under this Act, however, no deduction can be made in respect of debts or incumbrances incurred or created in consideration of marriage.

Examples:—

- (i) A., upon his daughter's marriage, covenants to pay 2,000l.

§ 7.

to the trustees of her settlement within six months of his death. The 2,000*l.* cannot on A.'s death be deducted from A.'s general estate.

- (ii) A., upon his daughter's marriage, charges Whiteacre with the payment on his death of 2,000*l.* to the trustees of his daughter's settlement. The 2,000*l.* cannot on A.'s death be deducted from the value of Whiteacre.

By sub-sect. (10) (p. 45, *infra*), the same property cannot be aggregated or estate duty paid in respect thereof more than once on the same death.

In each, therefore, of the two cases above given the duty on the 2,000*l.* will be paid as part of the duty—in the one case on A.'s general estate, and in the other case on Whiteacre. No further duty will be paid on the 2,000*l.* by reason of its passing to the trustees of the daughter's settlement, but the trustees will have to refund a rateable part of the duty to the person paying the duty on the *whole* property (sect. 14 (1), p. 67, *infra*; and see *note* on sect. 5 (2), p. 25, *supra*).

For full consideration in money or money's worth. These words will not, it is thought, be unduly strained. "Full consideration" means full consideration at the time the debt was incurred or incumbrance created. Thus in many cases a sum presently paid to a borrower would be full consideration for a considerably greater sum, payable on the death of the borrower. The case of a charge given upon property for partial consideration would, in certain cases, fall within sect. 3 (2) (p. 16, *supra*). But it is submitted that, in any case, a *pro tanto* allowance would be made in respect of debts and incumbrances incurred and created for partial consideration. As to "money or money's worth," see *note* on sect. 3 (1), (p. 17, *supra*).

Wholly for the deceased's own use or benefit. These words were, no doubt, inserted to meet the case of the deceased having made himself liable for, or charged his property to secure, the debt of another person. In such a case, the debt or incumbrance may have been incurred or created for full consideration; but as the deceased's estate has not had the benefit of the consideration, no deduction will be allowed in respect of the debt or incumbrance. The words will, however, cause difficulty in cases falling under the next sub-clause.

And take effect out of his interest. By sect. 22 (2) (b) (p. 86, *infra*) a disposition taking effect out of the interest of the deceased shall be deemed to have been made by him, whether the concurrence of any other person was or was not required. An instance of such a disposition would be a mortgage created by a tenant in tail in remainder, who disentails with the concurrence of the tenant for life, to secure money raised by the former. (Cf., *Attorney-General v. Sibthorp*, 3 Hurlst. & Norm. 424.)

As the incumbrance must "take effect," no allowance can, it is thought, be made for a contingent incumbrance. The meaning of the words "out of his interest" is not clear. Could, for instance, a mortgage created by a tenant for life on the inherit-

ance of the property under a power in the settlement to secure money raised for his benefit, or a mortgage created by two limited owners for the benefit of one of them, by the exercise of a joint general power of appointment, be said "to take effect out of the interest" of the person for whose benefit the mortgage was made?

§ 7.

Nor for any debt in respect whereof there is a right to reimbursement from any other estate or person. These words are taken, with slight alterations, from sect. 28 of the Customs and Inland Revenue Act, 1881, and the debts referred to are debts for which the deceased's estate is not primarily liable (*e.g.* a partnership debt), or for which the deceased was surety only. The word "estate" is used in this passage in its ordinary sense, and not in the technical sense in which it is used in other parts of the Act. It is doubtful whether, having regard to the words "for the deceased's own use or benefit" in sub-clause (a), debts which would otherwise fall within this sub-clause will be allowed to be deducted; *e.g.* a debt incurred by the deceased as surety for another person, where, so far as the deceased was concerned, the transaction was without consideration, or a partnership debt where the consideration passed to the partnership. The word "incumbrance" is not used in this sub-clause, but it is thought that a charge given by the deceased on his property as surety (without incurring any further personal liability) would be on the same footing as a suretyship debt.

More than once for the same, &c.

Example.—Whiteacre is mortgaged for 2,000*l.* and the deeds of Blackacre are deposited by way of collateral security. The 2,000*l.* can be deducted from the value of Whiteacre, but (unless Whiteacre is worth less than 2,000*l.*) not from Blackacre.

Any debt or incumbrance . . . shall be deducted.

See *notes* on "Debts" and "Incumbrances" at the beginning of the section.

A return of duty will be made by the Commissioners if any debts or incumbrances have not been allowed which ought to have been allowed (sect. 8 (12), p. 53, *infra*); and if a certificate has been granted under sect. 9 (2) (p. 56, *infra*) the return will be made to the person producing the certificate (sect. 9 (3), p. 57, *infra*). Any decision of the Commissioners as to repayment of duty is subject to appeal to the High Court. (Sect. 10 (1), p. 59, *infra*.)

(2.) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom, (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate

§ 7.

out of the United Kingdom in respect of which estate duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the Commissioners, that the personal property of the deceased situate in the foreign country or British Possession in which the person to whom such debts are due resides, is insufficient for their payment.

Debts due from the deceased to persons resident out of the United Kingdom. The rules as to these debts are as follows:—

- (i) If contracted to be paid in the United Kingdom, or charged upon property situate within the United Kingdom, such debts will be deducted in the one case from the value of the assets within the United Kingdom liable thereto in a due course of administration, and in the other case from the value of the property specifically charged. This rule appears to apply whether the deceased was domiciled in the United Kingdom or not.
- (ii) If not contracted to be paid in the United Kingdom or charged upon property situate within the United Kingdom, the debts in question will, in the first instance, be deducted from the value of the deceased's free personal property situate abroad, but in this case the deceased must have been domiciled in the United Kingdom. (See sect. 2 (2), p. 14, *supra*.) It would appear that the deduction need not necessarily be made as against personal property situate in the country in which the foreign creditor resides. Thus, if the deceased, possessing 10,000*l.* free personalty in Russia, owes 5,000*l.* in France, the executor is allowed to deduct the French debt of 5,000*l.* from the Russian personalty, and is required only to pay duty on the balance.
- (iii) If the deceased was domiciled in the United Kingdom, and the foreign personalty (if any) does not equal or exceed the foreign debts, or if the deceased was domiciled abroad, no allowance is made in the first instance as against the property in the United Kingdom, in respect of the debts in question. If, however, the Commissioners are satisfied that the deceased's personalty in the country, where the creditor resides, is to any extent insufficient for payment of his debt, a return of duty will to that extent be made in respect of the debt. (See sects. 8 (12), 9 (3), pp. 53 & 57, *infra*; and as to appeal, see sect. 10 (1), p. 59, *infra*.)

Any personal property of the deceased situate out of the United Kingdom, &c. See sect. 2 (2), p. 14, *supra*.

(3.) Where the Commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4.) Where any property passing on the death of the deceased is situate in a foreign country, and the Commissioners are satisfied that by reason of such death any duty is payable in that foreign country in respect of that property, they shall make an allowance of the amount of that duty from the value of the property.

Foreign country or British Possession. Throughout these notes a person domiciled in a foreign country or British Possession is spoken of as domiciled abroad or as a domiciled foreigner, and a creditor resident in a foreign country or British Possession is spoken of as a foreign creditor or as resident abroad.

Situate out of the United Kingdom. *I.e.*, whether in a foreign country or a British Possession. The property in question is personalty abroad belonging to the deceased, or in which he had an interest, he being domiciled in the United Kingdom. In most cases such property is realised on the deceased's death, at very considerable expense.

Foreign country. The phrase appears to be used throughout the Act in contradistinction to "British Possession." Under sect. 20 (p. 77, *infra*), the amount of death duty payable in a British Possession, to which that section is applied by an Order of the Queen in Council, in respect of property situate in such British Possession, and liable to estate duty under this Act, may be deducted from the estate duty. That section can, however, only be applied to a British Possession (a) if by the law of such possession no duty is leviable in respect of property situate in the United Kingdom when passing on death; or (b) if the law of such possession, as respects any death duty, is to the like effect as the provisions of sect. 20. (See sect. 20 (3), p. 78, *infra*.) It would appear that the benefit of sect. 7 (4) should extend to the case of a British Possession to which sect. 20 does not apply.

(5.) The principal value of any property shall be estimated to be the price which, in the opinion of the Commissioners, such property would fetch if sold in the open market at the time of the death of the deceased;

§ 7.

Provided that, in the case of any agricultural property, where no part of the principal value is due to the expectation of an increased income from such property, the principal value shall not exceed twenty-five times the annual value as assessed under Schedule (A) of the Income Tax Acts, after making such deductions as have not been allowed in that assessment and are allowed under the Succession Duty Act, 1853, and making a deduction for expenses of management not exceeding five per cent. of the annual value so assessed.

The principal value. *I.e.*, after making the deductions allowed under the preceding sub-sections.

Any property. The general working rule is that the market value of the property at the time of the death is to be taken. The Commissioners are (except in the case of agricultural property not having a prospective value) to ascertain such value in such manner and by such means as they think fit, and are given certain powers as to inspection of the property. (Sub-sect. (8), *infra*.) The reasonable costs of any valuation required by the Commissioners are to be borne by them. As the existing law and practice with regard to any of the death duties are, for the purposes of the collection and recovery of estate duty, embodied in this Act, it is thought that, at any rate for the purposes of probate, the Commissioners will in the first instance accept the value put on the property by the executor or other persons accountable for the duty. (25 Hansard, 4th Ser., p. 881.)

As to appeals from valuations of the Commissioners, see sect. 10, (p. 59, *infra*). If duty has been overpaid owing to over-valuation by the Commissioners, interest at three per cent. is paid on the excess of duty. (Sect. 8 (12), p. 53, *infra*.)

Agricultural property is defined by sect. 22 (1) (g) (p. 83, *infra*), to mean agricultural land, pasture, and woodland, and is also deemed to include such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith) as are of a character appropriate to the property.

Where no part of the principal value, &c. Property which literally falls within the definition given in sect. 22 (1) (g) may have what is known as a prospective value. In such a case this proviso does not apply, and the value of the property must be ascertained in the usual way. Anomalies like those which formerly occurred under the Succession Duty Act, 1853 (see *The Attorney-General v. Lord Sefton*, 2 Hurlst. & Colt. 362) will not, therefore, occur under this Act.

Shall not exceed twenty-five times. This is the *maximum*.

Of course the Commissioners may put the property at a less number of years purchase.

§ 7.

The annual value as assessed under Schedule (A) of the Income Tax Acts. Under the Income Tax Act, 1842, s. 60, the rule for assessing the annual value of property, chargeable under Schedule (A), is as follows:—

“The annual value of lands, tenements, hereditaments, or heritages, charged under Schedule (A), shall be understood to be the rent by the year at which the same are let at rack-rent, if the amount of such rent shall have been fixed by agreement, commencing within the period of seven years preceding the fifth day of April next before the time of making the assessment; but if the same are not so let at rack-rent, then at the rack-rent at which the same are worth to be let by the year.”

The valuation of property for the purpose of Schedule (A) is obtained as a rule from the gross amount of assessment to the local rates. The particular deductions and allowances made in respect of agricultural property under Schedule (A), consist of house and land tax, drainage, fencing, and embankment rates, and the outlay, on the average of the preceding twenty-one years, upon erecting and maintaining sea walls (16 & 17 Vict. c. 34, s. 37), and also all rates or taxes which fall by law on the tenant, but are paid by the owner (*e. g.*, poor, highway, school board, water, district, sanitary, borough, and general rates).

Deductions as have not been . . . and are allowed under the Succession Duty Act, 1853. *I. e.*, for necessary outgoing (sect. 22)—*e. g.*, chief rents; fire insurance; repairs executed or paid for by the owner (for buildings, &c. on farms generally 5 to $7\frac{1}{2}$ per cent., for ordinary house property generally 10 per cent., for cottage property 12 to 15 per cent.); tithes, and tithe rent-charge;—(sect. 28) fines, fees, and other payments incident to tenure, and also consideration paid for compulsory enfranchisement. An allowance for unpaid instalments of succession duty would, it is thought, be made under sub-sect. (1).

Incumbrances for the purpose of this Act are dealt with in sub-sect. (1), *supra*; it is thought, therefore, that sect. 34 of the Succession Duty Act, 1853, does not, speaking generally, apply. But *quære* whether an allowance might not be made for moneys laid out by a successor in substantial repairs or permanent improvement of the property previously to coming into possession.

It is not clear how “woodland” (which is included in the definition of “agricultural property” in sect. 22 (1) (g), p. 83, *infra*) will be dealt with, or how far the value of growing timber will be taken into account in ascertaining the value of the property. Under sect. 23 of the Succession Duty Act, 1853, timber (not being coppice or underwood) is not taxable until it is actually severed from the land. When cut down and sold (if the net moneys in any one year exceed 10*l.*) succession duty is charged upon the successor’s interest in the net moneys, after deducting all necessary outgoing—*i. e.*, the expenses of selling, felling, and drawing out the timber, of restoring the fences,

§ 7.

ditches, roads, and gates, injured by the felling and drawing out of such timber, in so far as these expenses are borne by the vendor; also the expenses of the year in which the sale takes place in connection with the growth of the timber actually sold. The provisions of that section not being in any way incorporated into this Act, it is thought that if timber on property passing on death is subsequently cut down and sold the proceeds of sale will not be charged with any estate duty in addition to that paid on the death. In the case of "timber estates" (such as the estate referred to in *Dashwood v. Magniac*, (1891) 3 Ch. 306), an annual income is derived from the timber, and it is submitted that in such a case the allowances mentioned in sect. 23 of the Succession Duty Act should be made.

Expenses of management. This is new. Under the Succession Duty Act no deduction can be made for expenses of management.

Not exceeding five per cent. This is the maximum. The Commissioners will, no doubt, determine the percentage to be allowed, having regard to the average amount of the expenses of management. For the purpose of estimating the duty in the first instance, the Commissioners will, it is thought, accept a valuation which is *primâ facie* in accordance with this proviso. (See notes on sect. 6 (2), p. 28, *supra*, and note on this subsection "Any property" *supra*.)

(6.) Where an estate includes an interest in expectancy, estate duty in respect of that interest shall be paid, at the option of the person accountable for the duty, either with the duty in respect of the rest of the estate or when the interest falls into possession, and if the duty is not paid with the estate duty in respect of the rest of the estate, then—

- (a) for the purpose of determining the rate of estate duty in respect of the rest of the estate the value of the interest shall be its value at the date of the death of the deceased; and
- (b) the rate of estate duty in respect of the interest when it falls into possession shall be calculated according to its value when it falls into possession, together with the value of the rest of the estate as previously ascertained.

An interest in expectancy. This expression includes (sect. 22 (1) (j), p. 83, *infra*) an estate in remainder or reversion, and every other future interest, whether vested or contingent; but does not

include reversions expectant upon the determination of leases (*i. e.*, leases for years). If an interest in expectancy passes on the death of any person, such person must have been competent to dispose of the interest. No question can arise therefore under sect. 5 (3), (p. 26, *supra*). Under this section the duty on an interest in expectancy can be paid *either* on the death of the deceased upon the value of the interest at that time, *or* when the interest falls into possession. Sub-clauses (a) and (b) provide how the rate of duty payable on the estate, other than the interest in expectancy, and on the interest when it falls into possession, is to be ascertained.

Example.—Whiteacre is settled on A. for life, with remainder to B. in fee. B. predeceases A., devising all his property to C. Whiteacre is worth 10,000*l.* as an estate in fee; as an estate in remainder expectant on the determination of A's life interest, it is worth 8,000*l.* The rest of B.'s property is worth 16,000*l.* C. elects to pay the duty on Whiteacre on A.'s death. In order to ascertain the rate of duty payable on the 16,000*l.*, the present value of Whiteacre—8,000*l.*—must be added to the 16,000*l.* The rate of duty payable on an estate worth the sum of these two amounts (namely, 24,000*l.*) is 4 per cent. Duty at this rate is paid then on the 16,000*l.* On A.'s death, the duty on Whiteacre, which became payable on B.'s death, but has been postponed, must be paid. The value of Whiteacre, which is now in possession, is 10,000*l.*: this sum, and 16,000*l.*, which was the value of the rest of the estate, added together make 26,000*l.*, the rate of duty for which is $4\frac{1}{2}$ per cent. Duty at this rate must therefore be paid by C. upon Whiteacre.

This example can be elaborated to any extent.

If the interest in expectancy is a reversion or remainder expectant upon some death, duty will (if otherwise payable) have of course to be paid on that death in addition to the duty, the payment of which has been postponed.

Example.—Whiteacre is settled by A. on himself for life, with remainder to B. in fee. B. predeceases A., and leaves Whiteacre to C. C. elects to pay the duty on A.'s death when the estate falls into possession, *i. e.*, when A. dies. On A.'s death C. will have to pay the duty payable on A.'s death, as well as the postponed duty which became payable on B.'s death.

See, too, *note* on sect. 5 (2), (p. 25, *supra*).

(7.) The value of the benefit accruing or arising from the cesser of an interest ceasing on the death of the deceased shall—

- (a) if the interest extended to the whole income of the property, be the principal value of that property; and
- (b) if the interest extended to less than the whole income of the property, be the principal value of

§ 7.

an addition to the property equal to the income to which the interest extended.

The value of the benefit accruing or arising from the cesser of an interest. This sub-section deals with cases falling under sect. 2 (1) (b), (p. 6, *supra*), namely, life estates and interests, and annuities charged on and issuing out of property. (See the examples given in the *notes* to sect. 2 (1) (b), "To the extent to which," p. 7, *supra*.)

(8.) Subject to the provisions of this Act, the value of any property for the purpose of estate duty shall be ascertained by the Commissioners in such manner and by such means as they think fit, and, if they authorize a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorized to inspect it at such reasonable times as the Commissioners consider necessary.

(9.) Where the Commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the Commissioners.

Subject to the provisions of this Act. *I.e.*, subject to the general working rule laid down in sub-section (5), *supra*, and the provisions as to deductions, &c. contained in the preceding sub-sections.

To inspect any property. This is new.

Valuation. At the present time no valuation is made by the Commissioners for the purpose of Probate duty or Succession duty. They have the power to require a valuation to be made in the case of legacies in specie. (See 36 Geo. 3, c. 52, s. 22.) By sect. 8, (8) (p. 52, *infra*), they are, if required, to certify the amount of valuation accepted by them for any class or description of property forming part of the estate.

The reasonable costs of such valuation. The Commissioners will, it is thought, pay the costs of a valuation required by them, so far as such costs are not unduly increased by the conduct of the person accountable for the duty.

In the case of a valuation of legacies in specie, the costs are borne by the legatee.

§ 7.

(10.) Property passing on any death shall not be aggregated more than once, nor shall estate duty in respect thereof be more than once levied on the same death.

Shall not be aggregated more than once . . . on the same death. See the example given in the notes to sub-sect (1), *supra*.

8.—(1.) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act, and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of estate duty, and for the exemption of the property of common seamen marines or soldiers who are slain or die in the service of Her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this Part of this Act.

Supplemental provisions as to collection, recovery, and repayment of and exemption from estate duty.

The existing law and practice, &c. See the notes to sects. 6 (2), 7 (5), (pp. 29 & 40, *supra*).

Recovery. The recovery of the duty will be enforced by a writ of summons for an account and payment under 28 & 29 Vict. c. 104; and if the person summoned fails to appear and show cause why he has made default, a writ of attachment will be issued. (See *Re Coulson*, Times, 21st July, 1894.) An action to enforce the charge can also, it would seem, be brought in the case of property upon which the duty is charged by sect. 9 (1), (p. 56, *infra*). In either case the Court can appoint a receiver and order a sale of the property. (Sub-sect. 13, p. 53, *infra*.)

Under the Succession Duty Act, 1853, s. 44, persons accountable for duty are made debtors to her Majesty.

For the exemption of the property of common seamen, &c. The effects of any common seaman, marine, or soldier dying in the service of the Queen are exempted from Probate duty. (55 Geo. 3, c. 184, Sch., Part 3.) All property belonging to such persons is exempted from estate duty.

For the purpose of payment of sums under 100%. without requiring representation. The following appear to be the cases here referred to:—

- (1) Sums in friendly societies not exceeding 100%. (The Friendly Societies Act, 1875, s. 15 (4)) may be paid to nominees

§ 8.

- of a deceased member without administration being required.
- (2) Under 26 & 27 Vict. c. 57 (The Regimental Debts Act), representation is not required where the surplus of the personal effects of any officer or soldier dying on service after payment of the preferential charges mentioned in the Act does not exceed 100l.
 - (3) Under 28 & 29 Vict. c. 111, s. 6 (The Navy and Marines (Property of Deceased) Act) representation may be dispensed with where the amount of pay or pension standing to the credit at the time of death of any officer, seaman, or marine, or any civil officer in the books of the Admiralty, does not exceed 100l.
 - (4) Under 31 & 32 Vict. c. 90, representation may be dispensed with where the arrears of civil pay or pension due at the time of death to any civil servant does not exceed 100l. (sect. 1); where civil and military allowances chargeable to army votes and army prize-money do not exceed 100l. (sect. 2.)
 - (5) Under the Savings Bank Act, 1887, s. 3 (2), deposits in savings banks not exceeding 100l. may be distributed without probate or other proof of representation being required.

Estate duty is apparently not payable (though it is not so stated in terms) in any of the cases just given. Under the former law, probate duty, for which estate duty is now substituted, would not have been payable where no representation was required.

The expression "representation" means probate of a will or letters of administration. (Sect. 22 (1), (c), p. 82, *infra*.)

(2.) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if estate duty were therein mentioned as well as succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

Sections 12 to 14 of the Customs and Inland Revenue Act, 1889. These sections run as follows:—

Purchasers and mortgagees exempted from liability to succession duty after a specified period.

"12—(1.) Notwithstanding the forty-second section of the Succession Duty Act, 1853, or any other provision contained in that Act, real property, or any estate or interest therein, shall not, as against a purchaser for valuable consideration, or a mortgagee, remain charged with or liable to payment of any sum for succession duty or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of notice to the Commissioners of Inland Revenue of the fact

§ 8.

that the successor, or any person in his right or on his behalf, has become entitled in possession to his succession or to the receipt of the income and profits thereof, or from the date of the first payment by such successor or person of any instalment or part of the duty, in case the successor shall not have availed himself of the option given to him by section twenty-two of the Customs and Inland Revenue Act, 1888, or after two years from the time for the payment by such successor of the last instalment or part of the duty, if he has availed himself of such option; or, in the absence of any such notice or payment, after the expiration of twelve years from the happening of the event (whether before or after the passing of this Act) which gave rise to an immediate claim to such duty, or if such period of twelve years expires within six years from the date of the passing of this Act, then after the expiration of six years from the last-mentioned date."

"(2.) The duty (if any) unpaid at the expiration of such period of six years, or of twelve years or six years as the case may be, shall be payable and paid by the successor or the persons mentioned as accountable in section forty-four of the said Act, other than the purchaser or mortgagee, and shall become charged substitutively upon any other estate or interest comprised in the succession of the successor remaining vested in him, or in any person in his right or on his behalf, other than the purchaser or mortgagee, and in case of a mortgage upon the equity of redemption."

"(3.) This section is not to lessen or affect any liability of any successor or accountable person, other than the purchaser or mortgagee, to payment of duty, whether out of money received on any sale or mortgage, or otherwise; but a purchaser or mortgagee shall not, for the purpose of obtaining the exemption conferred by this section, be bound to see that the duty is discharged out of the money or other consideration paid or given as the consideration for the sale or mortgage."

"13—(1.) Any person may cause an attested copy (which shall be exempt from stamp duty) of any document which creates a liability for payment of any succession duty, or duty hereinbefore imposed by this part of this Act, other than a testamentary document admitted to probate, to be deposited with the Commissioners of Inland Revenue at their principal office in London, Edinburgh, or Dublin, as the case may require, and such copy shall be received at that office."

Power to deposit copies of documents and liability to duty to cease after specified period.

"(2.) The officer of the Commissioners receiving the copy shall, on request of the person making the deposit, and either by indorsement on the original document or otherwise, give a receipt in writing under his hand for the copy."

"(3.) After a receipt has been given by an officer for a copy of a document under this section, no person shall be liable for payment of any duty under such document after the expiration of six years from the date of notice to the Commissioners of the fact which gives rise to an immediate claim to such duty."

"(4.) The costs of depositing a copy of a document and obtaining a receipt under this section shall be deemed costs duly incurred by a trustee, executor, or administrator, or any other

§ 8.

Liability to duty under documents admitted to probate to cease after a specified period.

person in the execution of his duties as trustee, executor, or administrator, or otherwise, under the document.”

“14. No person shall, under a testamentary document admitted to probate, or under letters of administration, or under a confirmation, be liable for payment of any legacy duty or succession duty, or duty hereinbefore imposed by this part of this Act, after the expiration of six years from the date of the settlement of the account in respect of which the duty is payable, where such account was in all respects a full and true account and contained all the facts material to be known by the Commissioners of Inland Revenue for the ascertainment of the rate and amount of duty; and no trustee, executor, or administrator shall, after the expiration of such six years, be liable to such duty if it is proved to the satisfaction of the Commissioners that the account rendered was correct to the best of his knowledge, information, and belief.”

As if estate duty were therein mentioned. It would appear that the term “succession,” in the sections from the Act of 1889 above given, would, in the case of estate duty, mean “property passing on the death of the deceased,” and “successor” “any person to whom such property passed for a beneficial interest in possession.”

And as if an account were not settled, &c. See sect. 14 of the Act of 1889 above given. That section, as it stands, is only appropriate to cases in which duty is payable in a lump sum. Inasmuch, however, as under sect. 6 (8), (p. 33, *supra*), estate duty may, in the case of real estate, be paid in instalments, a modification in sect. 14 of the Act of 1889 has to be made in order to make it applicable when the duty is paid in instalments. The effect of the sub-section under consideration is to release trustees, executors, &c., to whom the provisions of sect. 14 of the Act of 1889 apply, after the expiration of six years from the payment of the duty when it is payable in a lump sum, and after the expiration of six years from the last payment when it is payable in instalments.

These provisions are supplemental to the provisions as to purchasers for value without notice, contained in sub-sect. 18, *infra*, and sect. 9 (1), (p. 56, *infra*). See the *notes* on those provisions.

(3.) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which estate duty is payable upon the death of the deceased, and shall be accountable for the estate duty in respect of all personal property wheresoever situate of which the deceased was competent

to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

§ 8.

See the notes to sect. 6 (2), (p. 28, *supra*).

(4.) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom the same is vested in possession by alienation or other derivative title shall be accountable for the estate duty on the property, and shall, within the time required by this Act or such later time as the Commissioners allow, deliver to the Commissioners and verify, an account, to the best of his knowledge and belief, of the property: Provided that nothing in this section contained shall render a person accountable for duty who acts merely as agent or bailiff for another person in the management of property.

Where property passes on the death of the deceased, and his executor is not accountable. The property dealt with in this sub-section includes all property, settled or unsettled, passing on the deceased's death, except the deceased's free personalty (whether situate within or without the United Kingdom) and personalty over which he had an unexercised power of appointment. Thus, persons taking from the executor property of the description last referred to are safe. The persons made accountable for duty under this sub-section are—

- (1) Beneficiaries in possession (*e.g.*, a tenant for life in possession).
- (2) Trustees, guardians, and committees.

§ 8.

- (3) Any other person in whom the property or the management thereof is at any time vested.
- (4) Volunteers taking by alienation or other derivative title, and purchasers for value *with* notice. In this case the alienation or purchase may have been made, or the derivative title accrued, either before or after the death on which the liability to duty arose; there is in this respect a difference from the Succession Duty Act, 1853, s. 44, under which purchasers who purchased the successor's interest after it has fallen into possession are not accountable for succession duty.

In case (1) the liability is apparently unlimited, and is not, it would seem, restricted to the amount of assets received; but in cases (2) (3) and (4) it is limited to the amount of the property actually received or disposed of by the person accountable. (See sub-sect. (2), *supra*, p. 46, as to the time within which estate duty may be recovered in cases falling under that sub-section.)

The following persons are not accountable for estate duty—(1) agents or bailiffs; (2) purchasers for value without notice. (Sub-sect. (18), *infra*).

Shall be accountable. Persons accountable will be debtors to her Majesty. (Sub-sect. (1), p. 45, *supra*, Succession Duty Act, 1853, s. 44.) See sub-sect. (2), *supra*, as to the cesser of liability in certain cases.

Within the time required. *I.e.*, six months after the death. (Sect. 6 (4), p. 31, *supra*.) The property will as a rule be specified in the executor's accounts (see sub-sect. (3) p. 48, *supra*), and the executor may (upon request if the property is not under his control) pay the duty. (Sect. 6 (2), p. 28, *supra*.) It is, however, thought that the account under this section must in any case be delivered.

Verify. *I.e.*, on oath and by the production of books and documents in the manner prescribed by the Commissioners. (Sub-sect. (14) *infra*.)

(5.) Every person accountable for estate duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate in respect of which duty is leviable on the death of the deceased, or of the income of any part of such estate, shall, to the best of his knowledge and belief, if required by the Commissioners, deliver to them, and verify, a statement of such particulars together with such evidence as they require relating to any property which they have reason to believe to form part of an

estate in respect of which estate duty is leviable on the death of the deceased.

(6.) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay one hundred pounds, or a sum equal to double the amount of the estate duty, if any, remaining unpaid for which he is accountable, according as the Commissioners elect: Provided that the Commissioners, or, in any proceeding for the recovery of such penalty, the Court, shall have power to reduce any such penalty.

This sub-section is subsidiary to the last.

Every person accountable. *I.e.*, accountable for the estate duty on *any* property forming part of the estate in question, not merely for the duty on the property with regard to which information is sought.

Every person whom the Commissioners, &c. *E.g.*, solicitors, bankers, mortgagees in possession, agents. These persons are not necessarily accountable for the duty. An executor *de son tort* is accountable for the duty on the personality of which the deceased was competent to dispose. (Sect. 22 (1) (d), p. 82, *infra*.)

To the best of his knowledge and belief. There appears to be no necessity for the persons above referred to go out of their way to obtain the information sought.

Verify. See sub-sect. (14), *infra*.

A statement. See sub-sect. (14), *infra*.

Any property. If a person is accountable for the duty on, or has taken possession of, &c., any part of an estate, he may be called on to give information as to any other part of the estate.

Wilfully. No penalty is imposed in respect of any default unless such default was wilful. (See sub-sect. (14), *infra*.)

Foregoing provisions. *I.e.*—

- (1) Delivery of accounts by the executor. (Sub-sect. (3).)
- (2) Delivery of accounts by persons accountable for the duty in cases where the executor is not so accountable. (Sub-sect. (4).)
- (3) Furnishing statement of particulars of property. (Sub-sect. (5).)

By the Customs and Inland Revenue Act, 1881, s. 40, any person who ought to obtain probate or letters of administration, or deliver a further affidavit, but neglects to do so within the period prescribed by law (see 55 Geo. 3, c. 184, s. 37), is made liable to a penalty of double the amount of duty chargeable. The provisions of the section referred to remain, it is thought,

§ 8.

in force (see sub-sect. (1), *supra*), and are not superseded by the provisions of the sub-section under consideration.

The penalty imposed by this sub-section is payable in the case of default under sub-sect. (14).

The acceptance by the Commissioners of duty and interest operates as a waiver of penalties. (31 & 32 Vict. c. 124, s. 9.)

Penalties under this Act will be recovered in the same way as duty. (See *note* to sect. 8 (1), "Recovery," p. 45, *supra*.)

(7.) Estate duty shall, in the first instance, be calculated at the appropriate rate according to the value of the estate as set forth in the Inland Revenue affidavit or account delivered, but if afterwards it appears that for any reason too little duty has been paid, the additional duty shall, unless a certificate of discharge has been delivered under this Act, be payable, and be treated as duty in arrear.

(8.) The Commissioners on application from a person accountable for the duty on any property forming part of an estate shall, where they consider that it can conveniently be done, certify the amount of the valuation accepted by them for any class or description of property forming part of such estate.

(9.) Where the Commissioners are satisfied that the estate duty leviable in respect of any property cannot without excessive sacrifice be raised at once, they may allow payment to be postponed for such period, to such extent, and on payment of such interest not exceeding four per cent. or any higher interest yielded by the property, and on such terms, as the Commissioners think fit.

Estate duty. See notes to sect. 6 (2), (p. 29, *supra*).

Unless a certificate of discharge. *I.e.*, under sects. 11 or 12 (pp. 62, 65, *infra*).

Duty in arrear. This will carry interest at 4 per cent. (Sub-sect. (10), *infra*.)

Any class. An estate may consist of different classes of property, *e. g.*, building property and agricultural property. It will in many cases be convenient to know the exact value put by the Commissioners on any particular item of property, for the purpose of apportioning the duty as between the various items of property.

§ 8.

Postponed. See notes on sect. 6 (2), (p. 29, *supra*). The sub-section applies equally to all property, whether settled or unsettled, in respect of which estate duty is leviable. It is thought that it will be mainly resorted to in the case of settled property.

Without excessive sacrifice. These words give the rule to be applied in each case.

Not exceeding four per cent. *I. e.*, if the return yielded by the property does not exceed four per cent. on its capital value.

Any higher interest. If the return from the property amounts to more than four per cent. on the capital value, the Commissioners are, under this section, entitled to claim interest at the rate actually yielded.

(10.) Interest on arrears of estate duty shall be paid as if they were arrears of legacy duty.

I. e., Four per cent. (31 & 32 Vict. c. 124, s. 9.)

As to interest on the fixed duty payable on estates of under 500*l.*, see sect. 16 (5), (p. 72, *infra*).

(11.) If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the Commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

The provisions of this sub-section will be salutary in cases which do not fall within sub-sect. (2), *supra*.

(12.) Where it is proved to the satisfaction of the Commissioners that too much estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the Commissioners, with interest at three per cent. per annum.

(13.) Where any proceeding for the recovery of estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a

§ 8. receiver of the property and the rents and profits thereof, and to order a sale of the property.

To the satisfaction of the Commissioners. An appeal lies from a decision of the Commissioners under this sub-section (sect. 10, p. 59, *infra*). Interest is payable as of course by the Commissioners only in cases where the over-payment was due to an over-valuation by them. The Court can, however, direct the Commissioners to pay interest, under sect. 10 (3), (p. 61, *infra*).

Where any proceeding. *I.e.*, either by the Commissioners (sect. 8 (1), *note* on "Recovery," p. 45, *supra*), or under sects. 9 (4), (p. 58, *infra*), or 14 (1), (p. 67, *infra*). In the two latter cases, however, persons seeking to recover the duty would proceed, it is thought, as a rule, under sect. 9 (5), (p. 58, *infra*).

(14.) All affidavits, accounts, certificates, statements, and forms used for the purpose of this Part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the Commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15.) No charge shall be made for any certificate given by the Commissioners under this Act.

(16.) The estate duty may be collected by means of stamps or such other means as the Commissioners prescribe.

(17.) The form of certificate required to be given by the proper officer of the Court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of Court in such manner as may appear necessary for carrying into effect this Act.

Affidavits. *E.g.*, under sect. 6 (2), (p. 28, *supra*).

Accounts. Sub-sects. (3) & (4), *supra*.

Certificates. See sects. 11, 12 & 13, (pp. 62—67, *infra*).

Statements. Sub-sect. (5), *supra*, sect. 9 (2), (p. 56, *infra*), sect. 11 (2), (p. 63, *infra*).

Wilfully. See sub-sect. (6), *supra*.

Penalty. See sub-sect. (6), *supra*.

Certificate. Certificates are given under sect. 9 (2), (certificate of duty paid, p. 56, *infra*), and sect. 11 (1) & (2), and sects. 12 & 13 (certificates of discharge, pp. 65—67, *infra*).

Stamps. See sect. 6 (1), (p. 28, *supra*).

The form of certificate. Section 30 of the Customs and Inland Revenue Act, 1881, enacts that no probate or letters of administration shall be granted by the Probate, &c., Division, unless the same bear a certificate in writing under the hand of the proper officer of the Court, showing that the affidavit for the Commissioners of Inland Revenue has been delivered, and that such affidavit, if liable to stamp duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account.

May be varied by a rule of Court. See notes on sect. 6, sub-sect. (2), (p. 29, *supra*). Probate will, it is thought, be granted if the certificate states that other property will subsequently have to be brought into account (sect. 6 (3), p. 31, *supra*), or that the Commissioners have allowed payment of duty to be postponed. (Sub-sect. (9), *supra*.)

(18.) Nothing in this section shall render liable to or accountable for duty a *bonâ fide* purchaser for valuable consideration without notice.

Bonâ fide purchaser for valuable consideration without notice. This sub-section exempts a purchaser for value from personal liability to pay the duty, or to render accounts in respect thereof if he has no notice of the death or that duty is unpaid. (See *infra*.) By the following section duty is, in the case of property not passing to the executor, made a charge on the property, but (sect. 9 (1)) this charge does not attach to the property in the hands of a *bonâ fide* purchaser for value without notice.

In the case of property passing to the executor, as such, the executor alone is liable for the duty (sub-sects. (3) and (4), *supra*), and there is no charge for unpaid duty imposed on such property (sect. 9 (1), p. 56, *infra*). It is thought, therefore, that any person can safely deal with an executor as such. It is to be observed that no person, except the executor, is made personally liable for estate duty on personal property abroad of which the deceased was competent to dispose, or of personal property over which he had an unexercised power of appointment. As to how far duty is a charge on such last mentioned property, see sect. 9 (1), (p. 56, *infra*), and *notes*.

It is not quite clear whether "without notice" means without

§ 8.

notice of the death or without notice of any unpaid duty. It is thought that if any purchaser has notice of a death on which the property passed, he should (except in the case of purchases from the executor, as such) enquire whether duty has been paid. (See *notes* on sect. 6 (8), p. 33, *supra*.) See, however, subsect. (2), *supra*.

As to what is notice, see the Conveyancing and Law of Property Act, 1882, sect. 3.

Charge of estate duty on property, and facilities for raising it.

9.—(1.) A rateable part of the estate duty on an estate in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a *bonâ fide* purchaser thereof for valuable consideration without notice.

Property which does not pass to the executor as such.

The duty is only made a charge on property *not* passing to the executor as such. There is therefore no charge created under this section on any property forming part of the free personal estate of the deceased within the United Kingdom. A charge is, however, created on the deceased's foreign personal estate, which is liable to estate duty under sect. 2 (2), (p. 14, *supra*). No charge is created on property liable to estate duty situate in a British Possession so long as it is so situate. (Sect. 20 (2), p. 78, *infra*.)

First charge. It was stated, when the Bill was before Parliament (26 Hansard, 4th Ser., pp. 1628, 1629), that the charge created by this section would be subject to any incumbrances existing at the date of the deceased's death. This, no doubt, is the case in respect of property subject to a legal mortgage, inasmuch as the equity of redemption is the only property that passes on the death. In the case of equitable incumbrances there is, it is conceived, some doubt. If the only property passing on the death was the residue of the property after deducting incumbrances, sect. 7 (1) should have been differently worded. That section as it stands appears to contemplate that the *whole* property passes, but that before duty is assessed incumbrances have to be deducted.

Bonâ fide purchaser, &c. See *notes* to sect. 8 (18). A *bonâ fide* purchaser for value without notice is protected in the case of a certificate of discharge having been obtained by fraud. (Sect. 11 (3), p. 64, *infra*.)

(2.) On an application submitting in the prescribed form the description of the lands or other subjects of property (whether hereditaments, stocks, funds, shares,

§ 9.

or securities), and of the debts and incumbrances allowed by the Commissioners in assessing the value of the property for the purposes of estate duty, the Commissioners shall grant a certificate of the estate duty paid in respect of the property, and specify the debts and incumbrances so allowed, as well as the lands or other subjects of property.

Application. *I.e.*, by a person authorised or required to pay the estate duty, who has paid such duty.

Lands or other subjects of property. As this section only deals with property not passing to the executor as such, no certificate will be necessary in the case of stocks, &c. forming part of the deceased's free personal estate in the United Kingdom.

Debts and incumbrances. *I.e.*, the debts and incumbrances allowed as against the property comprised in the certificate.

(3.) Subject to any repayment of estate duty arising from want of title to the land or other subjects of property, or from the existence of any debt or incumbrance thereon for which under this Act an allowance ought to have been but has not been made, or from any other cause, the certificate of the Commissioners shall be conclusive evidence that the amount of duty named therein is a first charge on the lands or other subjects of property after the debts and incumbrances allowed as aforesaid: Provided that any such repayment of duty by the Commissioners shall be made to the person producing to them the said certificate.

From any other cause. *E.g.*, over-valuation.

First charge . . . after the debts and incumbrances.

See the note on "First charge" under sub-sect. (1), *supra*. The certificate will be evidence of the charge in the hands of any person who has paid the duty in accordance with the Act, until the amount paid is recovered under (for example) sub-sect. (4), *infra*, or raised under sub-sect. (5), *infra*, or of the charge to which a limited owner who has paid the duty is entitled under sub-sect. (6), *infra*.

Repayment of duty. See sect. 8 (12), (p. 53, *supra*).

Person producing . . . the said certificate. The certificate

 § 9.

will be a transferable document. For example, if an executor has, at the request of a devisee of real property, paid the duty, and has been repaid by such devisee, the latter will be entitled to the certificate. If too much duty has been paid, the certificate will be evidence that the devisee is entitled to the return.

(4.) If the rateable part of the estate duty in respect of any property is paid by the executor, it shall, where occasion requires, be repaid to him by the trustees or owners of the property, but if the duty is in respect of real property, it may, unless otherwise agreed upon, be repaid by the same instalments and with the same interest as are in this Act mentioned.

Is paid by the executor. See *notes* to sect. 6 (2), "may pay," (p. 30, *supra*).

Be repaid to him. These words make the executor a creditor of the "trustee or owner" for the amount of duty paid by the executor.

Trustees or owners. These words are probably sufficiently wide for practical purposes. The phrase appears to have been used instead of the phrase "persons accountable," because in certain cases (*e.g.*, foreign free personalty and personalty over which the deceased had an unexercised power of appointment) the executor himself is accountable for the duty, though the property does not come into his hands. In these cases the persons to repay the executor the amount of the duty would be the "trustees or owners." A difficulty might possibly arise in the case of real estate limited to a legal tenant for life with legal remainders over.

Unless otherwise agreed upon. The executor should, before paying duty on real property, be careful to have it agreed how the duty is to be repaid; otherwise he might find he had paid a large sum, the repayment of which was to be extended over several years.

Instalments. See sect. 6 (8), (p. 33, *supra*).

(5.) A person authorized or required to pay the estate duty in respect of any property shall, for the purpose of paying the duty, or raising the amount of the duty when already paid, have power, whether the property is or is not vested in him, to raise the amount of such duty and any interest and expenses properly paid or incurred by him in respect thereof, by the sale or mortgage of

or a terminable charge on that property, or any part thereof.

§ 9.

(6.) A person having a limited interest in any property, who pays the estate duty in respect of that property, shall be entitled to the like charge, as if the estate duty in respect of that property had been raised by means of a mortgage to him.

(7.) Any money arising from the sale of property comprised in a settlement, or held upon trust to lay out upon the trusts of a settlement, and capital money arising under the Settled Land Act, 1882, may be expended in paying any estate duty in respect of property comprised in the settlement and held upon the same trusts.

Authorised or required. *I.e.*, the person accountable for the duty, and in the cases mentioned in sect. 6 (2), (*notes* on "may pay," p. 30, *supra*), the executor. It is not clear whether this sub-section confers any greater power upon an executor than he now possesses to sell or mortgage property passing to him as such (*e.g.*, leaseholds) before he has obtained probate. It is thought not. (See 26 Hansard, 4th Ser., p. 1636.) The whole of this section deals, it is conceived, with property that does not pass to the executor as such. As to the powers of an executor before probate has been granted him, see Williams on Executors, 9th edition, pp. 249 *et seq.*

Whether the property is or is not vested in him. *E.g.*, an equitable tenant for life or an executor who has paid the duty on real estate.

Having a limited interest. Such a person (if entitled to the property in possession) is accountable for the duty. (Sect. 8 (4), p. 49, *supra*.)

Like charge. The certificate under sub-sect. (2), *supra*, will be evidence in this case.

Capital money arising under the Settled Land Act. See the Settled Land Act, 1882, ss. 7 (2), 11, 14, 16, 18, 31 (1) (ii), 32, 33, 35, 37; the Settled Land Act, 1889, s. 3.

Such money includes fines on leases, shares in mining rents and in proceeds of sale of timber, proceeds of sale of heirlooms, &c.

10.—(1.) Any person aggrieved by the decision of the Commissioners with respect to the repayment of any

Appeal from
Commissioners.

§ 10.

excess of duty paid, or by the amount of duty claimed by the Commissioners, whether on the ground of the value of any property or the rate charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the Commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of Court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the Commissioners the excess shall be repaid.

(2.) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

By the decision. An appeal can only be made under the Succession Duty Act, 1853 (sect. 50), where the liability to some duty is admitted, and the only question is as to the amount. It is thought (though the point is not free from doubt) that it is the same under this Act. If no liability is admitted, the matter would be brought before the Court by a writ of summons for delivery of an account, and payment of what shall be found due. (*Re Greenwood*, L. R. 4 Ex. 327.)

Value of any property. Sect. 7 (5) and (8), (pp. 39, 44, *supra*).

Or the rate charged. Sect. 4, (p. 17, *supra*).

Or otherwise. *E.g.*, by refusal to deduct debts or incumbrances which should have been deducted.

On payment of or giving security as hereinafter mentioned. See sub-sect. (4), *infra*.

High Court. The appeal would be made, it would appear, to the Divisional Court. See R. S. C. 1883; Ord. LIX. r. 1 (d). As to appeals to the County Court when the value of the property is less than 10,000*l.*, see sub-sect. (5), *infra*.

Within the time, &c. Rules of Court dealing with these matters will be made in due course.

Amount of duty shall be determined. The Court will have jurisdiction to go into all questions, *e.g.*, value, allowance of debts, &c. Questions of value may be referred to the arbitration of properly appointed valuers, under sub-sect. (6), *infra*.

Except with the leave of the High Court or Court of Appeal. See the Judicature Act, 1873, s. 45, for cases in which leave to appeal from the High Court has to be obtained. As to

when leave will be granted, see *Kirby v. Biffen*, 8 Q. B. D. 210; *Ex parte Gilchrist*, 17 Q. B. D. 528; and cp. *Bradley v. Baylis*, 8 Q. B. D. 195, and *Barnes v. London, &c. Assurance Company*, (1892) 1 Q. B. 864. It is thought that appeals cannot be brought from the County Court (see sub-sect. (5), *infra*) to the Divisional Court, without leave being given either by the County Court or the Divisional Court (sub-sect. (5), *infra*).

(3.) The costs of the appeal shall be in the discretion of the Court, and the Court, where it appears to the Court just, may order the Commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the Court just.

(4.) Provided that the High Court, if satisfied that it would impose hardship to require the appellant as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the Commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the Court seems reasonable, and on security to the satisfaction of the Court being given for the duty, or so much of the duty as is not so paid, but in such case the Court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the Court.

The costs. This will prevent any question arising as to the jurisdiction to give costs against the Crown.

Interest. Interest can only be claimed as of right against the Commissioners when the over-payment of duty was due to an over-valuation by them (sect. 8 (12), p. 53, *supra*).

In ordinary cases, payment of the duty claimed will be required as a condition precedent to hearing an appeal. The Court has jurisdiction, in cases of hardship, to allow, instead of requiring payment, security to be given for the whole or any part of the duty. The Court cannot, however, dispense with both payment and security.

May. The Court has a discretion in the matter.

(5.) Where the value as alleged by the Commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under

§ 10.

this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court.

May. It would appear that it is not obligatory upon the appellant to bring the appeal in the County Court.

Shall for the purpose of the appeal. As to appeals from the County Court, see notes to sub-sect. (2), *supra*.

(6.) The county council of every county or county borough in Great Britain, shall within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the Court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate, and the costs of any such arbitration shall be part of the costs of the appeal.

Valuers . . . in their respective counties. The subjects of property to be valued under this sub-section will, no doubt, principally consist of land and houses. But it is thought that valuers will be appointed for other subjects of property, *e.g.* pictures, books, plate, works of art, &c.

For the county in which the appellant resides. *E.g.* if the property to be valued consists of pictures, &c.

Or the property is situate. *E.g.* if the property is land or houses.

Discharge from and Apportionment of Duty.

Release of
persons paying
estate duty.

11.—(1.) The Commissioners on being satisfied that the full estate duty has been or will be paid in respect of an estate or any part thereof shall, if required by the person accounting for the duty, give a certificate to that effect, which shall discharge from any further claim for estate duty the property shown by the certificate to form the estate or part thereof as the case may be.

 § 11.

On being satisfied. If the Commissioners are not satisfied that the full estate duty has been paid, they may refuse to give a certificate, and no appeal will apparently lie from their refusal.

Estate duty. Throughout the Act this phrase includes (when the context admits) Settlement estate duty (*notes* to sect. 6 (1), p. 29, *supra*).

An estate or any part thereof. Certificates will, it appears, be given in respect of separate items of property.

If required. If the Commissioners are satisfied that the full duty has been paid, it is obligatory upon them to grant a certificate of discharge.

By the person accounting for the same. *I.e.*, the person *de facto* paying the duty, if he is under this Act authorised or required so to do (*e.g.* an executor who pays the duty on real property at the request of the devisee; sect. 6 (2), p. 29, *supra*).

Certificate. No charge is made by the Commissioners for the certificate (sect. 8 (15), p. 54, *infra*).

Which shall discharge. If the certificate was obtained by fraud or failure to disclose material facts, the discharge does not take effect except in favour of a *bonâ fide* purchaser for value without notice (sub-sect. 3, *infra*).

(2.) Where a person accountable for the estate duty in respect of any property passing on a death applies after the lapse of two years from such death to the Commissioners, and delivers to them and verifies a full statement to the best of his knowledge and belief of all property passing on such death and the several persons entitled thereto, the Commissioners may determine the rate of the estate duty in respect of the property for which the applicant is accountable, and on payment of the duty at that rate, that property and the applicant so far as regards that property shall be discharged from any further claim for estate duty, and the Commissioners shall give a certificate of such discharge.

The provisions of this sub-section will be useful in the case of a large and complicated estate. It may be difficult or impossible to ascertain the exact value of such an estate within two years from the death. If it is desired in such a case to deal with any specific part of the estate duty free, an application can be made to the Commissioners under this sub-section.

§ 11.

Two years. No application can be made under this sub-section under two years from the death.

May determine. It is not obligatory on the Commissioners to determine the rate of duty under this sub-section. It is doubtful whether an appeal lies from a determination of the Commissioners under this sub-section, such a determination being something in the nature of a compromise or commutation. It is, however, conceived that if questions as to (for instance) value or allowance of debts or incumbrances arise, an appeal would lie on those points. (Sect. 10 (1), p. 59, *supra*.)

Shall be discharged. See the next sub-section.

Certificate of discharge. See sect. 8 (15), (p. 54, *supra*).

(3.) A certificate of the Commissioners under this section shall not discharge any person or property from estate duty in case of fraud or failure to disclose material facts, and shall not affect the rate of duty payable in respect of any property afterwards shown to have passed on the death, and the duty in respect of such property shall be at such rate as would be payable if the value thereof were added to the value of the property in respect of which duty has been already accounted for;

(4.) Provided nevertheless that a certificate purporting to be a discharge of the whole estate duty payable in respect of any property included in the certificate shall exonerate a *bonâ fide* purchaser for valuable consideration without notice from the duty notwithstanding such fraud or failure.

Shall not discharge any person or property . . . in case of fraud or failure, &c. By this proviso a purchaser for value without notice is protected; but with that exception it would appear that persons accountable for duty (sect. 8 (3) and (4), pp. 48, 49, *supra*), and the property in their hands are, in the case of fraud or failure to disclose material facts *on the part of any person*, precisely in the same position as if no certificate had been granted.

Example.—A., being a trustee of property liable to duty, obtains a certificate of discharge by fraud. He retires from the trust and B. is appointed in his place. B. is accountable for the unpaid duty to the extent of the property actually received or disposed of by him (sect. 8 (4), p. 49, *supra*), and the property is liable to the charge under sect. 9 (p. 56, *supra*).

And shall not affect. This is not confined to certificates obtained by fraud or failure to disclose material facts, but applies equally to *bonâ fide* certificates of discharge, under subsects. (1) and (2).

§ 11.

Example.—A certificate of discharge is obtained in respect of an estate worth 20,000*l.* (duty being at the rate of four per cent.) (Sect. 17, p. 74, *infra*.) There is no question of fraud or failure to disclose material facts. Property worth 10,000*l.* is afterwards found to have passed on the death. In order to ascertain the rate of duty payable on the 10,000*l.*, the 20,000*l.* and 10,000*l.* must be added together. The rate payable on the 10,000*l.* will be four and a half per cent.—the total estate amounting to 30,000*l.* (See sect. 17, p. 74, *infra*.)

Exonerate. *I. e.*, both the purchaser from any personal liability, and the property in his hands from any charge. (See 26 Hansard, 4th Ser., p. 1649.)

Without notice. *I. e.*, of the fraud, or failure to disclose the material facts. See notes on sect. 8 (18), (p. 55, *supra*).

12. The Commissioners in their discretion, upon application by a person entitled to an interest in expectancy, may commute the estate duty which would or might, but for the commutation, become payable in respect of such interest for a certain sum to be presently paid, and for determining that sum shall cause a present value to be set upon such duty, regard being had to the contingencies affecting the liability to and rate and amount of such duty, and interest being reckoned at three per cent.; and on the receipt of such sum they shall give a certificate of discharge accordingly.

Commutation
of duty on
interest in
expectancy.

The provisions of this section will be valuable in the case of persons desiring to deal with reversions expectant upon a life, on the dropping in of which estate duty may become payable. Cp. the Succession Duty Act, 1853, s. 41.

In their discretion. The Commissioners have a discretion in the matter, and this should be borne in mind by persons entering into negotiations for the purchase of reversions.

Interest in expectancy. See sect. 22 (1) (j) p. 83, *infra*. It is thought that, as a rule, the Commissioners will be disinclined to exercise their discretion, except in the case of a sale of the interest.

Which would or might. Commutation can be made whether the interest in expectancy is vested or contingent.

Cause a present value to be set. It is conceived that no appeal lies from a determination of the Commissioners under

§ 12.

this sub-section. (Cp., however, sect. 11 (2), note "May determine," p. 64, *supra*.)

Contingencies affecting . . . the rate. In many cases regard will have to be had to the position in life and means of the person upon whose death the interest in expectancy will fall in.

And interest being reckoned at three per cent. These words give the basis upon which calculations will be made in the case of commutations under this section. The calculations will be analogous to calculations as to the present value of a sum payable a given number of years hereafter.

Certificate of discharge. See sect. 8 (15), p. 54, *supra*. It is thought that in the case of fraud or failure to disclose material facts the provisions of sect. 11 (3) (p. 64, *supra*) will apply to a certificate granted under this section. If the interest in expectancy is a reversion or remainder expectant on the happening of some death, no further duty will, after a certificate has been granted under this section, be payable on the happening of such death in respect of the interest in question. It is thought, however, that in such a case the value of the interest would be taken into account for the purpose of determining the rate of duty on the rest of the estate passing on the death; *sed quære*. See sects. 1 and 4 (pp. 2, 17, *supra*).

Powers to accept composition for death duties.

13.—(1.) Where, by reason of the number of deaths on which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the Commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears

 § 13.

proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly;

(2.) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3.) In this section the expression "death duties" means the estate duty under this Act, the duties mentioned in the First Schedule to this Act and the legacy and succession duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881.

This section is supplemental to sect. 11 (2), (p. 63, *supra*).

Death duties. The meaning of this expression is defined in the last paragraph of the section, which shows that the section applies in cases where the death took place on or before 1st August, 1894, as well as in cases where the death took place after that date.

The power given by this section to the Commissioners to compound death duties is larger than the power they already possess. As to the power of the Commissioners to commute legacy duty, see 36 Geo. 3, c. 52, s. 33; The Customs and Inland Revenue Acts, 1880, s. 11, and 1881, s. 43; and as to their power to commute succession duty, see the Succession Duty Act, 1853, s. 39, and The Customs and Inland Revenue Act, 1880, s. 11. There was, prior to this Act, no power to commute probate duty.

Or any of them. The provisions of the former Acts, quoted in the last *note*, are apparently superseded. It may of course (owing to difficulties as to aggregation, &c.), be difficult to ascertain the proper rate of estate duty, while it is feasible to ascertain the rate of succession duty.

Or interest. *E.g.*, a life interest.

Certificate of discharge. See sect. 8 (15), p. 54, *supra*.

Shall not discharge. No provision is made for exonerating a purchaser for value without notice. (See sect. 11 (3), p. 64, *supra*.) This appears to be a *casus omissus*.

14.—(1.) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorized or required to pay

Apportion-
ment of duty.

§ 14.

the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property, (whether as capital or as an annuity or otherwise,) under a disposition not containing any express provision to the contrary.

(2.) Any dispute as to the proportion of estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by Rules of Court, either by the High Court, or, where the amount in dispute is less than fifty pounds, by a County Court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3.) Any person from whom a rateable part of estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the Commissioners.

Which does not pass to the executor as such. *I.e.*, all the property passing on the death of the deceased except his free personalty within the United Kingdom.

May be recovered. This makes the rateable amount of duty a debt due from the person entitled to the sum charged to the person paying the duty.

Authorised. *E.g.*, the executor, sect. 6 (2), (p. 29, *supra*).

Or required to pay. *E.g.*, the trustees, and, in certain cases, the person entitled to the enjoyment of the property as a whole. (See sect. 8 (4), p. 49, *supra*.)

Examples:—

- (i) A., by will, leaves Whiteacre to trustees upon trust for B. for life, but charged with an annuity in favour of C. The trustees must pay the estate duty on the whole of Whiteacre, and they will then be entitled to recover the rateable part of the duty from C. in proportion to the amount of his annuity.
- (ii) A. leaves his freehold cotton mill and works to B., charged with 10,000*l.* in favour of C. B. cannot deduct the 10,000*l.* from the value of the mill, &c. (See sect. 7 (1), (a), p. 34, *supra*.) He must pay the duty on the gross value, and recover a rateable part thereof from C.
- (iii) Property is settled by a stranger on A. for life, with remainder to secure an annuity to B. with remainder to

C. absolutely. On A.'s death C. may deduct the capital value of the annuity from the value of the property (sect. 7 (1), (a) p. 34, *supra*), and B. will have to pay the duty on such capital value.

§ 14.

Not containing any express provision to the contrary.

Testators and settlors will be able to throw the estate duty on charges in favour of a wife and younger children on to the corpus of the estate.

Any dispute as to the proportion. The liability to some duty must, it is thought, be admitted.

Upon application. This is an original application, and not by way of appeal from the Commissioners, who have apparently no jurisdiction to decide such a dispute as is referred to in this sub-section.

15.—(1.) Estate duty shall not be payable in respect of a single annuity not exceeding twenty-five pounds purchased or provided by the deceased, either by himself alone, or in concert or arrangement with any other person, for the life of himself and of some other person and the survivor of them, or to arise on his own death in favour of some other person; and if in any case there is more than one such annuity, the annuity first granted shall be alone entitled to the exemption under this section.

Exemptions
from estate
duty.

(2.) It shall be lawful for the Treasury to remit the estate duty, or any other duty leviable on or with reference to death, in respect of any such pictures, prints, books, manuscripts, works of art or scientific collections, as appear to the Treasury to be of national, scientific, or historic interest, and to be given or bequeathed for national purposes, or to any university, or to any county council or municipal corporation, and no property the duty in respect of which is so remitted shall be aggregated with any other property for the purpose of fixing the rate of estate duty.

(3.) Estate duty shall not be payable in respect of any pension or annuity payable by the government of British India to the widow or child of any deceased

§ 15.

officer of such government, notwithstanding that the deceased contributed during his lifetime to any fund out of which such pension or annuity is paid.

(4.) Estate duty shall not be payable in respect of any advowson or church patronage which would have been free from succession duty under section twenty-four of the Succession Duty Act, 1853.

Property passing on the death of the deceased and exempted from estate duty is not aggregated with other property for the purpose of determining the rate of the duty. (Sect. 4, p. 17, *supra*.) For a list of exemptions from estate duty, see the notes on sect. 1, "Save as hereinafter expressly provided," (p. 2, *supra*).

Single annuity. . . . Such an annuity would *primâ facie* fall under sect. 2 (1), (d), (p. 13, *supra*).

If . . . there is more than one. Apparently if a man purchased a dozen survivorship annuities, the one first granted would escape estate duty on his death.

For national scientific purposes. If the gift is for these purposes, it is apparently immaterial who are the donees. It is conceived that the word "scientific" is used in its widest signification, and that a gift for the general advancement of art, literature, or science would be a gift for a national scientific purpose. For example, a gift of books to the trustees of the British Museum, or of pictures to the trustees of the South Kensington Museum, would, it is thought, fall within this provision.

Or to any university. *I.e.* given or bequeathed to any university. It is doubtful whether "university" includes a college at a university.

No property . . . shall be aggregated. See sect. 4, (p. 17, *supra*).

Pension or annuity. Such a pension or annuity would otherwise fall within sect. 2 (1), (c) or (d), (pp. 8, 13, *supra*).

Advowson. Sect. 24 of the Succession Duty Act, 1853, runs as follows:—"A successor shall not be chargeable with duty in respect of any advowson or church patronage comprised in his succession, unless the same or some right of presentation, or some other interest in or out of such advowson or church patronage, shall be disposed of by or in concert with him for money or money's worth, in which case he shall be chargeable with duty upon the amount or value of the money or money's worth for which the same or any such presentation or interest shall be disposed of at the time of such disposal."

It is submitted that, even if the advowson, or any interest therein, is sold by the successor, so that succession duty becomes payable as mentioned in the section just quoted, estate duty will

not be payable on the proceeds of sale as being property passing on the death of the predecessor. A gift by will of the next presentation to a living confers a chattel interest, which is chargeable with duty as a legacy out of real estate within the meaning of 45 Geo. 3, c. 28, s. 4. Such a gift would have, it is thought, to be brought into account for the purpose of assessing estate duty.

§ 15.

Small Estates.

16.—(1.) The provisions of sections thirty-three, thirty-five, and thirty-six of the Customs and Inland Revenue Act, 1881, (relating to the obtaining of representation to the deceased where the gross value of his personal estate does not exceed three hundred pounds,) shall apply with the necessary modifications to the case where the gross value of the property real and personal in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed five hundred pounds, and where the gross value does not exceed three hundred pounds the fixed duty shall be thirty shillings, and where the gross value exceeds three hundred pounds and does not exceed five hundred pounds the fixed duty shall be fifty shillings.

Provision for
estates not
exceeding
1,000l.
44 & 45 Vict.
c. 12.

(2.) All such property may be comprised in the notice under the said section thirty-three.

(3.) Where the net value of the property, real and personal, in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of estate duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty or estate duty has been paid upon the principal value of that estate, the Settlement estate duty and the legacy and succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate.

§ 16.

(4.) Where representation granted under this section, if granted in England extends to property in Ireland, and if granted in Ireland extends to property in England, the principal registrar of the Probate Division of the High Court in England or Ireland, as the case may be, shall affix the seal of the Court thereto on the same being sent to him for that purpose, with the fee of two shillings and sixpence.

(5.) Where the fixed duty of thirty or fifty shillings is paid within twelve months after the death of the deceased, interest on such duty shall not be payable.

Sects. 33, 35, and 36 of the Customs and Inland Revenue Act, 1881, run as follows:—

Provisions as to obtaining probate, &c., where gross value of estate does not exceed 300*l.*

“33.—(1.) Where the whole personal estate and effects of any person dying on or after the first day of June, one thousand eight hundred and eighty-one (inclusive of property by law made such personal estate and effects for the purpose of the charge of duty, and any personal estate and effects situate out of the United Kingdom), without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, it shall be lawful for the person intending to apply for probate or letters of administration in England or Ireland, to deliver to the proper officer of the Court, or to any officer of Inland Revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum of fifteen shillings for fees of Court and expenses; and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty.

“(2.) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of three hundred pounds, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

“(3.) The principal registrars of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, and of the Probate and Matrimonial Division of the High Court of Justice in Ireland, in communication with the Commissioners of Inland Revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of Inland Revenue, the steps to be taken for the preparation and filling up of forms and documents, and generally all matters which may be necessary, so as to authorise the grant of probate or letters of administration.

“(4.) Officers of Inland Revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of letters of administration, to attest the bond and accept the same on behalf of the president or judge of the division.

§ 16.

“(5.) Where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the affidavit for the Commissioners of Inland Revenue shall be the fixed duty of thirty shillings, and no more.”

“35. Where representation has been obtained in conformity with either of the two preceding sections, and it shall be at any time afterwards discovered that the whole estate and effects of the deceased were of a value exceeding three hundred pounds, then a sum equal to the stamp duty payable on an affidavit or inventory in respect of the true value of such estate and effects shall be a debt due to her Majesty from the person acting in the administration of such estate and effects, and no allowance shall be made in respect of the sums deposited or paid by him, nor shall the relief afforded by the next succeeding section be claimed or allowed by reason of the deposit or payment of any sum.”

Provision in case of subsequent discovery that the value of estate exceeded 300%.

“36. The payment of the sum of thirty shillings for the fixed duty on the affidavit or inventory in conformity with this Act shall be deemed to be in full satisfaction of any claim to legacy duty or succession duty in respect of the estate or effects to which such affidavit or inventory relates.”

Relief from legacy duty in cases under 300%.

Gross value. No deduction of any sort must apparently be made for debts or incumbrances under sect. 7 (1) (p. 34, *supra*). But there seems to be some hardship in not deducting at any rate ancestral mortgages; it might perhaps be said in this case that as the only property passing on the death is the equity of redemption, the gross value of the property is the gross value of the equity of redemption. But it is doubtful whether such an argument would prevail.

Exclusive of property settled otherwise than by the will.

All settled property (except property settled by the will of the deceased) is excluded, whether comprised in a marriage or voluntary settlement. Estate duty will be paid at the appropriate rates on the settled property, which will be aggregated in the ordinary way.

All such property. *I.e.*, real as well as personal property (exclusive of property settled otherwise by the will of the deceased).

“The proper officer of the Court,” in sect. 33 (1) of the Act of 1881 above cited, means the officer of the Probate Division having jurisdiction to make the grant. The grant, unless made by the principal registry, can only be made by the registrar of the district where the deceased resided. (20 & 21 Vict. c. 77, s. 46.) Authority is, therefore, conferred under this section in most towns on Inland Revenue officers, who act as intermediaries in obtaining the grant when the person desiring the grant does not live in the district where the deceased resided.

If the gross estate (exclusive as aforesaid) is less than 100*l.*, no duty would, it is thought, be payable: the fee of 15*s.* would alone be required.

Net value. *I.e.*, after making the deductions allowed by sect. 7 (1) and (5) (pp. 34, 39, *supra*).

§ 16.

Exclusive of property settled. See *note* on these words under sub-sect. (1), *supra*.

Fixed duty. *I.e.*, the duty payable under sub-sect. (1) in cases in which the *gross* value of the property in question does not exceed 500*l.*

Estate duty. This will be the duty payable if the net value of the property is less than 1,000*l.*, and the gross value exceeds 500*l.*

The Settlement estate duty. *I.e.*, if the property is settled by the will of the deceased.

Legacy and succession duty. Cp. sect. 36 of the Act of 1881, cited *supra*. The exemption does not, of course, extend to property settled otherwise than by the will of the deceased.

Interest on such duty. *I.e.*, the provisions of sect. 8 (10) (p. 53, *supra*) do not apply if the fixed duty is paid within twelve months after the death. If, however, the duty is not paid within that time, interest would run from the expiration of six months from the death. (Sect. 6 (7), p. 32, *supra*; sect. 8 (10), p. 53, *supra*.)

Scale of rates
of estate duty.

17. The rates of estate duty shall be according to the following scale :—

Where the Principal Value of the Estate				Estate Duty shall be payable at the Rate per cent. of
Exceeds	£	and does not exceed	£	
„	500	„	1,000	One pound.
„	1,000	„	10,000	Two pounds.
„	10,000	„	25,000	Three pounds.
„	25,000	„	50,000	Four pounds.
„	50,000	„	75,000	Four pounds ten shillings.
„	75,000	„	100,000	Five pounds.
„	100,000	„	150,000	Five pounds ten shillings.
„	150,000	„	250,000	Six pounds.
„	250,000	„	500,000	Six pounds ten shillings.
„	500,000	„	1,000,000	Seven pounds.
„	1,000,000	-	-	Seven pounds ten shillings.
		-	-	Eight pounds.

The rate of the Settlement estate duty where the property is settled shall be one per cent.

Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the estate duty

and the Settlement estate duty shall be payable at the rate per cent. for the full sum of ten pounds.

In this section estate duty and Settlement estate duty are distinguished. In the sections of the Act dealing with collection, repayment and recovery of the duty, discharges, &c., the expression "estate duty" includes Settlement estate duty.

Succession Duty.

18.—(1.) The value for the purpose of succession duty of a succession to real property arising on the death of a deceased person shall, where the successor is competent to dispose of the property, be the principal value of the property, after deducting the estate duty payable in respect thereof on the said death and the expenses if any properly incurred of raising and paying the same; and the duty shall be a charge on the property, and shall be payable by the same instalments as are authorized by this Act for estate duty on real property, with interest at the rate of three per cent. per annum; and the first instalment shall be payable and the interest shall begin to run at the expiration of twelve months after the date on which the successor became entitled in possession to his succession or to the receipt of the income and profit thereof; and after the expiration of the said twelve months the provisions with respect to discount shall not apply.

Value of real successions for succession duty.

(2.) The principal value of real property for the purpose of succession duty shall be ascertained in the same manner as it would be ascertained under the provisions of this Act for the purpose of estate duty; and in the case of any agricultural property where no part of the principal value is due to the expectation of an increased income from such property, the annual value for the purpose of succession duty shall be arrived at in the same manner as under the provisions of this part of this Act for the purpose of estate duty.

This section supersedes sect. 21, and the following sections of

§ 18.

the Succession Duty Act, 1853, sect. 22 of The Customs and Inland Revenue Act, 1888, and sects. 6 of The Customs and Inland Revenue Act, 1889, in cases in which the successor is competent to dispose of the property.

With regard to sect. 6 of the Act of 1889, it has been pointed out in the *notes* to sect. 1 (p. 5, *supra*), that the duty imposed by that section is still apparently chargeable in cases in which estate duty is not payable (*e.g.*, in the case of settled property where estate duty has been paid on a prior death, and the property is cleared of duty under sect. 5 (2), (p. 22, *supra*). This duty is an additional succession duty (Act of 1889, sect. 6 (4) and (5)). Succession duty is not payable if the succession does not fall into possession. (See *note* on "The first instalment shall be payable," *infra*.)

Competent to dispose of the property. (See sect. 22 (2) (a), p. 85, *infra*.) As a successor, who has a general power of appointment, is competent to dispose of the property, no question will, it is thought, arise under sects. 4 and 33 of the Succession Duty Act, 1853, in case the power is exercised.

Principal value. (See the next sub-section.)

By the same instalments as are authorised by this Act.
See sect. 6 (8) (p. 33, *supra*).

The first instalment shall be payable. The first instalment being made payable twelve months after the successor becomes entitled in possession to his succession, it follows that no duty is payable if the successor dies before he becomes entitled in possession. (See 27 Hansard, 4th Ser., p. 79.) The result seems to be the same as if sect. 14 of the Succession Duty Act, 1853, was in terms made applicable to successions to real property under this section. Under sect. 21 of the Succession Duty Act, 1853, the successor had no taxable interest in real estate unless he became entitled in possession.

The provisions with respect to discount. Discount at four per cent. is allowed under the Succession Duty Act, 1853, s. 40, in the case of payments in advance, and under The Customs and Inland Revenue Act, 1888, sect. 22 (2), at such rate as the Commissioners of the Treasury may prescribe. Under this section discount will apparently only be allowed on payments of duty in advance made before the expiration of twelve months from the death.

Principal value. (See sect. 7 (5), and (8), pp. 39, 44, *supra*.) It is conceived that though the value of the property itself is to be ascertained, for the purpose of succession duty, in the same manner and by the same means as if it was being ascertained for the purpose of estate duty under this Act, the law as to the allowance to be made for incumbrances remains the same as before the Act. Under sect. 34 of the Succession Duty Act, 1853, no allowance can be made, in estimating the value of a succession,

§ 18.

in respect of incumbrances created or incurred by the successor, not made in execution of a prior general power of appointment, but an allowance can be made for all other incumbrances. The incumbrances which can be deducted under the section last referred to include incumbrances which would not be allowed for in ascertaining the value of the property for the purpose of estate duty.

Agricultural property. See *notes* on the provisions of sect. 7 (5), (p. 39, *supra*). As to the allowance of incumbrances under the Succession Duty Act, 1853, s. 34, see last note.

Annual value. It is conceived that the provisions of this subsection with regard to agricultural property are (equally as with regard to other real property) only intended to apply in the case of the successor being competent to dispose of the property. It may, however, be held that a new rule is introduced in all cases for the ascertainment of annual value.

Local Taxation Grant.

19. In substitution for the grant out of the probate duties under the Local Government Act, 1888, the Probate Duty (Scotland and Ireland) Act, 1888, and the Local Government (Scotland) Act, 1889, there shall be paid, out of the proceeds of the estate duty derived from personal property, such sum as the Commissioners, in accordance with regulations made by the Treasury under those Acts, may determine to be an amount equal to one and a half per cent. on the net value of such of the property in respect of which estate duty is leviable as would, if this Act had not been passed, have been chargeable with the duty imposed by section twenty-seven of the Customs and Inland Revenue Act, 1881, on Inland Revenue affidavits, and the first-mentioned Acts shall apply, as if the sum so determined were the probate duty grant or one half of the proceeds of the sums collected in respect of the probate duties (as the case requires) within the meaning of those Acts.

Adaptation of law as to probate duty grant.

51 & 52 Vict. cc. 41 and 60.
52 & 53 Vict. c. 50.

British Possessions.

20.—(1.) Where the Commissioners are satisfied, that in a British possession to which this section applies, duty

Exception as to property in British possessions.

§ 20.

is payable by reason of a death in respect of any property situate in such possession and passing on such death, they shall allow a sum equal to the amount of that duty to be deducted from the estate duty payable in respect of that property on the same death.

(2.) Nothing in this Act shall be held to create a charge for estate duty on any property situate in a British possession, while so situate, or to authorize the Commissioners to take any proceedings in a British possession for the recovery of any estate duty.

(3.) Her Majesty the Queen may, by Order in Council, apply this section to any British possession where Her Majesty is satisfied that by the law of such possession, either no duty is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section.

(4.) Her Majesty in Council may revoke any such Order, where it appears that the law of the British possession has been so altered that it would not authorize the making of an Order under this section.

Property situate in a British Possession. As to when property situate in a British Possession is liable to estate duty, see sect. 2 (2), (p. 14, *supra*). The following property, though in one sense colonial, is treated as situate in the United Kingdom, and would, it is thought, be liable to estate duty, even though the deceased was domiciled abroad:—(1) Colonial Inscribed Stock transferable only on the books of the Bank of England, or any other bank in London; (2) the registered stock of a British joint stock company carrying on business abroad; (3) the registered stock of a foreign company having a register in the United Kingdom.

Nothing in this Act shall be held to create a charge. The provisions of this sub-section appear to be general, and not to apply merely in the case of British Possessions to which this section has been applied.

Either no duty is leviable. Before this section can be applied to any British Possession one or other of the two following conditions must be fulfilled:—(1) There must be no duty

leviable on death in the British Possession on property situate in the United Kingdom; (2) if duty is leviable in the British Possession on such property, a deduction must, by the law of the possession, be allowed of the death duties payable in the United Kingdom.

Savings and Definitions.

21.—(1.) Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this part of this Act, in respect of which property any duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property. Savings.

See notes on sect. 1, (p. 2, *supra*), “Save as hereinafter expressly provided.” The property exempted from estate duty by this subsection consists of personal property settled (1) by a will made by a person dying on or before the 1st August, 1894, if probate duty has been paid or is payable in respect thereof, either under the Act of 1881, or the previous Acts; (2) by a voluntary settlement made by a person dying on or before 1st August, 1894, if account duty has been paid or is payable in respect thereof under the Act of 1881. If, however, the deceased was at the time of his death, or had been at any time since the will or settlement took effect, competent to dispose (see sect. 22 (2) (a), p. 85, *infra*) of the property, estate duty will be payable on his death in the ordinary way.

Examples:—

- (i) A., who died in 1890, settled, by his will, 10,000*l.* Consols upon trust for B. for life, and after his death for C. absolutely. B. dies after 1st August, 1894. No estate duty is payable on his death.
- (ii) A., who died in 1890, settled, by his will, 10,000*l.* Consols upon B. for life, but gives him a general power of appointment. Estate duty is payable on B.’s death.
- (iii) The same result takes place if B. releases his general power of appointment, or exercises it and re-settles the property, giving himself merely a life interest.

§ 21.

- (iv) The same result takes place if the property has been similarly settled by a voluntary settlement made on or before 1st August, 1894, in respect of which Account duty has been paid on the death of the settlor.
- (v) Foreign personalty is settled by the will of A. (who died in 1890) upon trust for B. for life. Probate duty not having been paid in respect of this property, estate duty will be paid on B.'s death.

Or is payable. In many cases (*e. g.*, in the case of persons dying on the 1st August, 1894), the Act will have come into operation before the death duties can possibly have been paid. In such cases the old duties remain payable as if this Act had not been passed. See next sub-section.

(2.) Where a person died before the commencement of this part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

Where a person died. Estate duty is not payable on the death of any person dying on or before 1st August, 1894; but the duties mentioned in the First Schedule remain payable as if the Act had not been passed.

(3.) Where an interest in expectancy in any property has, before the commencement of this part of this Act, been *bonâ fide* sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

Interest in expectancy. See sect. 22 (1) (j), (p. 83, *infra*). This sub-section is for the benefit of persons who have purchased or lent money on the security of reversions, expectant on the determination of lives, on or before the 1st August, 1894. In such cases, allowance has always been made, in calculating the amount of the purchase money, in advance, for the duties which will become payable upon the interest falling into possession.

Full consideration in money or money's worth. See *note* to sect. 3 (1) (p. 16, *supra*), and to sect. 7 (1) (a) (p. 34, *supra*).

§ 21.

No other duty. The purchaser or mortgagee will, it is thought, have to pay the same duties, on the interest falling into possession, as would have been payable if this Act had not been passed, including duties which would have been covered by estate duty.

Example.—Property is settled by A.'s father on A. for life, with remainder to B. (A.'s son) in fee. B., before 1st August, 1894, sells his reversion to C. The duties which would become payable on A.'s death if this Act had not been passed, are 1 per cent. succession duty (First Schedule, paragraph 5), and the additional $\frac{1}{2}$ per cent. (First Schedule, paragraph 3). C. will have, on A.'s death, to pay these two latter duties, and not estate duty.

For the future, persons intending to purchase or lend money on the security of reversions must avail themselves of the provisions of sect. 12, (p. 65, *supra*).

Any higher duty. The mortgagor will pay estate duty on his equity of redemption, but the charge (sect. 9 (1), p. 56, *supra*) will rank after the mortgage. It is thought that the value of an interest in expectancy will not be aggregated with other property upon the death upon which it falls into possession, if it has been out and out sold before the 1st August, 1894, and that if it has been mortgaged, it will be exempted from aggregation to the extent of the moneys secured (see sect. 4, p. 17, *supra*, under which only property chargeable with estate duty can be aggregated).

(4.) The Settlement estate duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this Part of this Act.

Settlement estate duty. See sect. 5 (1), (p. 20, *supra*).

(5.) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this Part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, estate duty shall not be payable in respect of that property until the death of the survivor.

Where a husband or wife. The ordinary case is that of pin money settled by a husband on a wife. The conditions are (1) the instrument must have taken effect on or before 1st August, 1894; (2) the settlement must have been made by the

§ 21.

one spouse upon the other; (3) the one who makes the settlement must be the survivor.

Estate duty. It must be remembered that the Settlement estate duty is not payable where the only life interest, after the death of the deceased, is that of the wife or husband of the deceased (sect. 5 (1), (a), p. 20, *supra*). See *note* to that section on the question, whether Settlement estate duty is payable when there is more than one life interest after the death of the deceased, including that of the deceased's wife or husband. If Settlement estate duty is payable in such a case, this sub-section, it is thought, applies. (See *note* to sect. 6 (1), p. 28, *supra*.)

The rate of estate duty will, it is conceived, be the appropriate rate payable on property passing on the death of the survivor.

Example:—

- (i) A. settles Whiteacre, on his marriage, on himself for life, charged with a rent-charge in favour of B., his wife, during her life, with remainder to his children in tail. B. predeceases A. Estate duty is not payable on B.'s death.
- (ii) The same result takes place if A. gives B. (his wife) the first life interest in his settled property. If B. survives A., the duty is payable on her death in the ordinary way.

Definitions.

22.—(1.) In this Part of this Act, unless the context otherwise requires:—

- (a) The expressions “deceased person” and “the deceased” mean a person dying after the commencement of this Part of this Act.

I. e., after 1st August, 1894 (sect. 24, p. 91, *infra*).

- (b) The expression “will” includes any testamentary instrument.
- (c) The expression “representation” means probate of a will or letters of administration.
- (d) The expression “executor” means the executor or administrator of a deceased person, and includes, as regards any obligation under this Part of this Act, any person who takes possession of or intermeddles with the personal property of a deceased person.
- (e) The expression “estate duty” means estate duty under this Act.

The temporary duties under sects. 5 and 6 of the Customs, &c., Act, 1889, are called estate duties.

- (f) The expression "property" includes real property and personal property and the proceeds of sale thereof respectively and any money or investment for the time being representing the proceeds of sale. § 22.
- (g) The expression "agricultural property" means agricultural land, pasture and woodland, and also includes such cottages, farm buildings, farm houses, and mansion houses (together with the lands occupied therewith), as are of a character appropriate to the property.
- (h) The expression "settled property" means property comprised in a settlement.
- (i) The expression "settlement" means any instrument, whether relating to real property or personal property, which is a settlement within the meaning of section two of the Settled Land Act, 1882, or if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust. 45 & 46 Vict.
c. 38.

Settlement. Sect. 2 (1), of the Settled Land Act, 1882, runs as follows:—"Any deed, will, agreement for a settlement, or other agreement, covenant to surrender, copy of court roll, Act of Parliament, or other instrument, or any number of instruments, whether made or passed before or after, or partly before and partly after the commencement of this Act, under or by virtue of which instrument or instruments any land, or any estate or interest in land, stands for the time being limited to or in trust for any persons by way of succession, creates or is for purposes of this Act a settlement, and is in this Act referred to as a settlement, or as settlements, as the case requires."

One settlement may be created by a series of instruments. (*Re Mundy*, (1891) 1 Ch. 399; *Re Byng*, (1892) 2 Ch. 219.) See note on sect. 5 (2), (p. 22, *supra*).

Parol trust. See Lewin on Trusts, 9th ed., pp. 50 *et seq.*

- (j) The expression "interest in expectancy" includes an estate in remainder or reversion and every

§ 22.

other future interest whether vested or contingent, but does not include reversions expectant upon the determination of leases.

Interest in expectancy. (See sect. 7 (6), p. 42, *supra*; sect. 12, p. 65, *supra*; sect. 21 (3), p. 80, *supra*.)

Future interest. This phrase would seem to include every interest arising at a future time, but the right to, or expectation of, which passed on the death of the deceased. Thus it is suggested that if A. is entitled in fee to an estate which he has voluntarily charged with a jointure of 100*l.* per annum, payable during the life of C. (which is not an incumbrance within the meaning of sect. 7 (1), p. 34, *supra*), the capitalized value of the jointure would be an interest in expectancy passing on A.'s death which could be dealt with under sect. 7 (6), (p. 42, *supra*). See *note* to sect. 5 (2), (p. 25, *supra*).

(k) The expression "incumbrances" includes mortgages and terminable charges.

Terminable charges. If a terminable charge has been voluntarily created by the deceased in his lifetime, it cannot apparently be deducted from the value of the estate under sect. 7 (1) (p. 34, *supra*). As to whether it could be treated as an interest in expectancy, see the notes to the last definition. Under the Succession Duty Act, 1853, s. 34, questions have arisen whether a terminable charge is an incumbrance.

(l) The expression "property passing on the death" includes property passing either immediately on the death or after any interval, either certainly or contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death."

Either immediately, &c. See *note* to sect. 2 (1) (b), (p. 6, *supra*), "Property in which the deceased, &c."

(m) The expression "the Commissioners" means the Commissioners of Inland Revenue.

(n) The expression "Inland Revenue affidavit" means an affidavit made under the enactments speci-

fied in the Second Schedule to this Act with § 22.
the account and schedule annexed thereto.

(o) The expression “prescribed” means prescribed by the Commissioners.

(2.) For the purposes of this Part of this Act—

(a) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were *sui juris*, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression “general power” includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument *inter vivos* or by will, or both, 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, 1882, or as mortgagee :

See note on sect. 2 (1) (a), (p. 5, *supra*).

Tenant in tail, whether in possession or not. As to the position of a tenant in tail in remainder, see sect. 5 (3), p. 26, *supra*.

General power . . . enabling the donee. Upon the whole it is thought that a person having jointly with some other person a general power to appoint property, is not competent to dispose of the property within the meaning of this definition.

Example.—Property is limited to such uses as A. and B. shall jointly appoint, and subject thereto to the use of A. for life, with remainder to the use of B. for life. It is thought that A. is not competent to dispose of the property. It is conceived that the following sub-clause (b) has no connection with sub-clause (a).

Exercisable. The power of appointment need not have been exercised.

Under a disposition not made by himself. Property held by the deceased as trustee, if held under a disposition made by himself within twelve months of his death, is liable to estate duty, but is not so liable if held under a disposition made by

§ 22.

the deceased more than twelve months before his death, where the possession and enjoyment of the property was *bonâ fide* assumed by the beneficiary immediately upon the creation of the trust, and thenceforward retained to the entire exclusion of the deceased, or of any benefit to him by contract or otherwise. (Sect. 2 (1), (c), and (3), pp. 8 & 15, *supra*.) It would appear, however, that property settled by the deceased on another person more than twelve months before the deceased's death, would be liable to duty on the deceased's death if the deceased had a power of sale as trustee under the settlement. If this is the true interpretation of the Act, it will be extremely dangerous in the future for any settlor to be trustee of the settled property.

- (b) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required :

(See sect. 7 (1), (a), p. 34, *supra*; and see *note*, sub-clause (a), "General power . . . enabling the donee.")

It may possibly be said that the effect of this sub-clause is to put a person, having a power of appointment jointly with some other person, in the same position as if he were the sole donee of the power; but, upon the whole, it is submitted that such a construction would not prevail.

- (c) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3.) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the courtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

Estate in dower. *I.e.* the one-third of the rents and profits to which a widow becomes, on the death of her husband, entitled of and in the real estate undisposed of by him.

Estate by the courtesy. *I.e.* the estate for life to which a husband becomes entitled on his wife's death of and in the real estates to which she was entitled in fee simple or fee tail, provided he has had issue by her born alive capable of inheriting the estates.

Any other like estate. *E.g.* free bench.

Settled by the will. See sect. 5, p. 20, *supra*, and the examples there given.

§ 23.*Application to Scotland.*

23. In the application of this Part of this Act to Scotland unless the context otherwise requires:—

Application of
Part of Act to
Scotland.

- (1.) The Court of Session shall be substituted for the High Court.
- (2.) "Sheriff court" shall be substituted for "county court."
- (3.) "Confirmation" shall be substituted for "representation."
- (4.) The expression "receiver of the property and of the rents and profits thereof," means a judicial factor upon the property.
- (5.) The expression "Inland Revenue affidavit," means the inventory of the personal estate of a deceased now required by law, and includes an additional inventory.
- (6.) The expression "on delivering the Inland Revenue affidavit" means on exhibiting and recording a duly stamped inventory as provided by section thirty-eight of the Act of the forty-eighth year of the reign of King George the Third, chapter one hundred and forty-nine.
- (7.) Section thirty-four of the Customs and Inland Revenue Act, 1881, shall be substituted for section thirty-three of that Act, and the Acts referred to in such section thirty-four shall extend to an estate of a gross value not exceeding five hundred pounds, and an application under the said Acts may be made to any commissary clerk, and any commissary clerk shall affix the seal of the Court to any representation granted in England or Ireland upon the same being sent to him for that purpose, enclosing a fee of two shillings and sixpence.

§ 23.

- (8.) The expression "personal property" means moveable property.
- (9.) The expression "real property" includes heritable property.
- (10.) The expression "incumbrance" includes any heritable security, or other debt or payment secured upon heritage.
- (11.) The expression "executor" means every person who as executor, nearest of kin, or creditor, or otherwise, intromits with or enters upon the possession or management of any personal property of a deceased person.
- (12.) The property comprised in any special assignation or disposition taking effect on death shall be deemed to pass on death within the meaning of this Act.
- (13.) The expression "trustee" includes a tutor, curator, and judicial factor.
- (14.) The expression "settled property" shall not include property held under entail.
- (15.) An institute or heir of entail in possession of an entailed estate shall, whether *sui juris* or not, be deemed for the purposes of this Act to be a person competent to dispose of such estate.
- (16.) Where an entailed estate passes on the death of the deceased to an institute or heir of entail, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, Settlement estate duty as well as estate duty shall be paid in respect of such estate, but neither estate duty nor Settlement estate duty shall be payable again in respect of such estate, until such

§ 23.

estate is disentailed, or until an heir of entail to whom it passes on or subsequent to the death of the institute or heir first mentioned, and who is entitled to disentail it without obtaining the consent of any subsequent heir or heirs or having the consent of any subsequent heir or heirs valued and dispensed with, dies.

- (17.) Where an institute or heir of entail in possession of an entailed estate, who is not entitled to disentail such estate without either obtaining the consent of one or more subsequent heirs of entail or having the consent of such one or more subsequent heirs valued and dispensed with, has paid estate duty in respect of such estate, and afterwards disentails such estate, he shall be entitled to deduct from the value in money of the expectancy or interest in such estate of such one or more subsequent heirs, payable by him to them in respect of their consents having been granted or dispensed with, a proper rateable part of the estate duty paid by him as aforesaid.
- (18.) Where any person who pays estate duty on any property, and in whom the property is not vested, is by this Act authorized to raise such duty by the sale or mortgage of that property, or any part thereof, it shall be competent for such person to apply to the Court of Session—
- (a) for an order of sale of the property or part of it, and in the event of the Court granting such order, it shall provide for the payment out of the price of the amount of the estate duty which has been paid by such person, and the Court shall thereafter make such order as to the disposal of the surplus, if any, of the price, by way of investment or otherwise, as to the Court shall seem proper;

§ 23.

the Court may in such order specify the time and place at which, the person by whom, and the advertisement or notice after which the sale shall be made, and may ordain the person in whom the property is vested to grant a disposition thereof in favour of the purchaser, and if the person in whom the property is vested refuses or fails to do so, the Court shall grant authority to the clerk of Court to execute such disposition, and such disposition so executed shall be as valid as if it had been executed by the person in whom the property is vested ;
or

- (b) for an order ordaining the person in whom the property is vested to grant a bond and disposition in security over the property in favour of the person who has paid the estate duty, for the amount of the said duty, and if the person in whom the property is vested refuses, or fails to do so, the Court shall grant authority to the clerk of Court to execute such a bond and disposition in security, and such bond and disposition in security so executed shall be as valid as if it had been executed by the person in whom the property is vested, and shall be a first charge upon the property after any debt or incumbrance for which an allowance is directed to be made under this Act in determining the value of the property for the purpose of estate duty ;

Provided also that summary diligence shall not be competent thereupon, and that nothing herein contained shall make the duty to be recovered by the methods of these sub-sections (a) and (b) recoverable at any earlier

time than if it had been recovered by direct action against the person ultimately liable for the duty. § 23.

- (19.) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate of terce or courtesy or any other like estate in like manner as it applies to property settled by the will of the deceased.

Commencement.

24. This Part of this Act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety four, in this Part of this Act referred to as the commencement of this Part of this Act. Commencement of Part of Act.

Short Title.

42. This Act may be cited as the Finance Act, 1894. Short title.

SCHEDULES.

FIRST SCHEDULE.

EXISTING DUTIES REFERRED TO.

1. The stamp duties imposed by the Customs and Inland Revenue Act, 1881, on the affidavit to be required and received from the person applying for probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland. Sections 1 and 11. 44 & 45 Vict. c. 12.

2. The stamp duties imposed by section 38 of the Customs and Inland Revenue Act, 1881, as amended and extended by section 11 of the Customs and Inland Revenue Act, 1889, on the value of personal or moveable property to be included in accounts thereby directed to be delivered. 52 & 53 Vict. c. 7.

**1st
Sched.**51 & 52 Vict.
c. 8.

3. The additional succession duties imposed by section 21 of the Customs and Inland Revenue Act, 1888.

4. The temporary estate duties imposed by sections 5 and 6 of the Customs and Inland Revenue Act, 1889.

5. The duty at the rate of one pound per cent. which would by virtue of the Acts in force relating to legacy duty or succession duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively estate duty has been paid, or under any other disposition under which estate duty has been paid.

See note to sect. 1, "The existing duties," (p. 4, *supra*).

SECOND SCHEDULE.

ACTS REFERRED TO.

Session and Chapter.	Title or Short Title.	Section referred to.
55 Geo. 3, c. 184 ..	The Stamp Act, 1815	Section thirty-eight.
56 Geo. 3, c. 56....	An Act the title of which begins with the words "An Act to repeal the several stamp duties" and ends with the words "managing the said duties."	Section one hundred and seventeen.
43 Vict. c. 14.....	The Customs and Inland Revenue Act, 1880.	Section ten.
44 & 45 Vict. c. 12..	The Customs and Inland Revenue Act, 1881.	Sections twenty-nine and thirty-two.

The 38th section of 55 Geo. 3, c. 184, is as follows:—

"38. And be it further enacted that from and after the expiration of three calendar months from the passing of this Act, no Ecclesiastical Court or person shall grant probate of the will or letters of administration of the estate and effects of any person deceased, without first requiring and receiving from the person or persons applying for the probate or letters of administration, or from some other competent person or persons, an affidavit, or solemn affirmation in the case of Quakers, that the estate and

effects of the deceased for or in respect of which the probate or letters of administration is or are to be granted, exclusive of what the deceased shall have 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 deceased, whether absolute or determinable on lives, if any, and without deducting anything on account of the debts due and owing from the deceased, are under the value of a certain sum to be therein specified, to the best of the deponent's or affirmant's knowledge, information, and belief, in order that the proper and full stamp duty may be paid on such probate or letters of administration; which affidavit or affirmation shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the estate and effects of the deceased."

The 117th section of 56 Geo. 3, c. 56, is as follows:—"And be it further enacted that from and after the commencement of this Act, no Ecclesiastical Court or jurisdiction in Ireland shall grant probate of the will or letters of administration of the estate and effects of any person deceased without first requiring and receiving from the person or persons applying for the probate or letters of administration, or from some other competent person or persons, an affidavit, or solemn affirmation in the case of Quakers, in the form contained in the schedule hereunto annexed, that the estate and effects of the deceased for or in respect of which the probate or letters of administration is or are to be granted are under the value of a certain sum, to be specified in such affidavit to the best of the deponent's or affirmant's knowledge, information and belief, and according to the account to be annexed to such affidavit, according to which sum the stamp duty shall be ascertained which shall be then required on such probate or letters of administration, which affidavit or affirmation shall be made before the surrogate or other person who shall administer the usual oath for the due administration of the estate and effects of the deceased."

The 10th section of 43 Vict. c. 14, is as follows:—

"10.—(1) Together with the affidavit to be required and received from the person applying for a probate or letters of administration in England, in conformity with section thirty-eight of the Act passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, there shall be delivered an account of the particulars of the personal estate for or in respect of which the probate or letters of administration is or are to be granted, and of the estimated value of such particulars.

"(2) The account so delivered shall be transmitted to the Commissioners of Inland Revenue, together with the documents mentioned in section ninety-three of the Act passed in the twentieth and twenty-first years of her Majesty's reign, chapter seventy-seven.

"(3) A like account shall be annexed to the affidavit to be required and received from the person applying for a probate or letters of administration in Ireland, in conformity with section one hundred and seventeen of the Act passed in the fifty-sixth year of the reign of King George the Third, chapter fifty-six,

**2nd
Sched.**

and such account shall be in lieu of, and in substitution for, the account annexed to the form of affidavit set forth in Part III. of the Schedule to the said Act.

“(4) Every account to be delivered in pursuance of this section shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty’s Treasury.”

The 29th and 32nd sections of 44 & 45 Vict. c. 12, are as follows:—

“29. The affidavit to be required or received from any person applying for probate or letters of administration in England or Ireland shall extend to the verification of the account of the estate and effects, or to the verification of such account and the schedule of debts and funeral expenses, as the case may be, and shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty’s Treasury; and the Commissioners of Inland Revenue shall provide forms of affidavit stamped to denote the duties payable under this Act.”

“32. If at any time it shall be discovered that the personal estate and effects of the deceased were, at the time of the grant of probate or letters of administration, of greater value than the value mentioned in the certificate, or that any deduction for debts or funeral expenses was made erroneously, the person acting in the administration of such estate and effects shall, within six months after the discovery, deliver a further affidavit with an account to the Commissioners of Inland Revenue, duly stamped for the amount which, with the duty (if any) previously paid on an affidavit in respect of such estate and effects, shall be sufficient to cover the duty chargeable according to the true value thereof, and shall at the same time pay to the said Commissioners interest upon such amount at the rate of five pounds per centum per annum from the date of the grant, or from such subsequent date as the said Commissioners may, in the circumstances, think proper.”

APPENDIX.

EXTRACT FROM THE

* *SPEECH of the Right Hon. Sir William Harcourt (Chancellor of the Exchequer), on making the Financial Statement, 16th April, 1894.*

THE Committee will anticipate that the first subject to which I shall refer is the Death Duties. Even without the pressure of immediate necessity, it would be a mere act of financial justice to redress inequalities which have too long existed. It is difficult to understand how the intolerable injustice of the relations between the taxation of various kinds of property under the Death Duties has been so long endured. We are bound to undertake the solution of this question by the pledge given in the important Resolution moved by the Right Hon. Member for Midlothian on the Second Reading of the Budget Bill in 1888. I will remind the Committee of that Resolution. It was—

“That, in the opinion of this House, after Parliament shall have made the appropriations it may deem just in the relief of local rates, the duties accruing upon death shall be so fixed as to equalise the charge upon real and personal property respectively.”

I have not time to enter on a lengthened disquisition on the history of those duties and their anomalous incidence. In a general way they are familiar to most people. A sort of defence has been set up that there was a compensation to be found in the heavier burden to which particular kinds of property were subject under other taxes. But these sorts of compensation are unsound in principle and mischievous in practice. It is far better to place both taxes on a fair and equal basis than to attempt to counterbalance one inequality by the creation of another. The whole subject is admittedly difficult and complicated. The Death Duties have grown up piecemeal, and bear traces of their fragmentary origin. They have never been established upon any general principles, and they present an

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extraordinary specimen of tessellated legislation. Various endeavours have been made at different times to redress some of their inequalities. Here a patch and there a patch, but each successive modification has only left confusion worse confounded. In the fraction of time which I can devote to this subject I can only present to the Committee a very faint outline.

EXISTING DEATH DUTIES.

There exist at present five duties—the *Probate Duty*, the *Account Duty*, the *Estate Duty* (which, however, was only imposed for seven years, and expires in 1896), the *Legacy Duty*, and the *Succession Duty*. The Probate, Account, and the Legacy Duties affect personalty; the Estate and Succession Duties affect both personalty and realty. But there is a more important distinction—namely, the point of view from which these duties are levied. The difference may be illustrated by the examples of the Probate and the Legacy Duties. Probate is a duty imposed on the whole *corpus* of the personal property which passes to a man's executor or administrator at his death. The Account Duty and the Estate Duty are similar to it in that they deal with the *corpus* of the estates to which they apply, and that the duty is charged on the amount of the capital passing, irrespective of its destination. For shortness, I will call these the *A duty class*. The principle of this A duty is to look solely at the amount of property passing, without regard to its subsequent destination or distribution. I now turn to what I will call the *B class of duty*. Of this the Legacy Duty is an example. The B class of duty is an additional tax imposed on the interest which a man derives from property left to him or devolving upon him. This duty regards not the amount of the estate which the deceased leaves, but the amount of interest which the successor takes, and the rate of it is determined by his relationship to the man from whom he takes it—a distinction which is not made in the case of the A duty. This is the general character of the Legacy and Succession Duties. The point of view of the *A duty class* is the amount of property left. The point of view of the *B duty class* is the interest of the individual successor and his relationship to the predecessors. It is obvious that, accepting these principles, these duties should severally be applied with equality to all classes of property.

PERSONALTY AND REALTY.

But it is not so. The *A duty* is imposed, in the shape of Probate Duty, on personalty passing by will or intestacy,

and, in the shape of Account Duty, on personalty included in voluntary settlements and some other things, but it is not imposed on personalty included in other forms of settlement, or on any form of realty, settled or unsettled. In the case of the *B duty*, the principle is not equally applied. There is an unfair distinction between personalty and realty. In the case of personalty the duty is in all cases charged according to the interest of the beneficiary—that is, if he takes a life interest, he pays on the value of that interest; whereas, if he takes an absolute interest, he pays on the principal value of what he takes. But, in the case of realty, the beneficiary pays in all cases only on his life interest, even when he takes an absolute interest—fee-simple—in property. These inequalities are not denied. The right hon. gentleman, the Member for St. George's, Hanover Square, attempted in some degree to redress them. He somewhat raised the *B duty* on realty, in order to compensate its exemption from duty *A*. He imposed also an Estate Duty, the object of which he thus described:—

“The new duty will be charged similarly on both realty and personalty—that is to say, on the capital value, when the property passes absolutely.”

I entirely accept this principle, and what we desire is to carry it out to its legitimate conclusion. I have not time now to discuss the right hon. gentleman's plans in detail; but they have failed of their avowed intention—they have not redressed the inequality, either in respect of settled property or of realty. Realty is not taxed upon the principal value; it is taxed on the value of the life interest of the successor. The basis of calculation is, not the principal value of the land, but the annual rental. It is, in effect, a tax upon rent, which is a wholly different thing. I have here a table which will illustrate this matter by concrete instances better than any elaborate statement. I will take the case of a property of the market value of 15,000*l*. If it is what is called free personal property, or anything else not settled, that property will pay 3 per cent. Probate Duty, 450*l*., and Estate Duty, 1 per cent., 150*l*., making 600*l*. Supposing the same property is under settlement, it will pay Succession Duty, 225*l*.; Estate Duty, 150*l*.; or a total of 375*l*. instead of 600*l*. If it were divided into two properties, it would only pay 225*l*. instead of 600*l*. Now, let us take the case of land, or real property, of the market value of 15,000*l*. I take the age of the successor at 35. The net rental at $4\frac{1}{2}$ per cent. is 675*l*.; the Succession

Duty would be 139*l.* 10*s.*, the Estate Duty 130*l.* 10*s.*, or a total of 270*l.* as against 600*l.*, or about one-half. If there were two successors and no personalty, there would be no Estate Duty, and the charge would be only 139*l.* 10*s.* instead of 600*l.* I do not go into the figures, but upon collaterals generally the charge in the case of realty will not be much more than half that on free personalty, and, when there are two successors to realty alone, less than one-half.

LEASEHOLDS AND FREEHOLDS.

There is a great distinction between leasehold and freehold property. The one—that is, the leasehold—is taxed for the purpose of probate as personal property, and the other—the freehold—is exempted from probate as realty. Leaseholds are always diminishing in value; but freeholds, on the other hand, are generally increasing in value. I am afraid that there are some freeholds that are not increasing in value, but there are a good many that are. I should think if you took some of the ground-rent proprietors in London they would not tell you that their receipts were decreasing. Now, I will suppose a person (A.), who owns two sets of trade premises, each worth 200*l.* per annum net annual value, the one, a leasehold, having, say, sixty years to run, and the other a freehold. The properties are rated equally for local purposes; but mark the difference of their contribution under the Death Duties to Imperial taxation. A., the father, leaves the leasehold to his son B., who pays probate at 3 per cent. on 3,000*l.*, which is fifteen years' purchase. The amount of probate he will pay is 90*l.* He leaves the freehold to another son, C. The freehold at twenty years' purchase is worth 4,000*l.*, but the tax in this case being under the Succession Duty is only valued on the life interest. Assuming C. to be forty-four (the average age of successors), his life interest in the property, of 200*l.* net annual value, would be 2,800*l.*, and on that he would pay 1½ per cent., or 42*l.* Therefore the leasehold, which is really worth 3,000*l.*, pays 90*l.*, while the freehold, which is worth 4,000*l.*, only pays 42*l.* It ought at equal rates to pay 120*l.* That is to say, the leasehold pays nearly three times as much as the freehold. Now, is it possible to justify a system of taxation of that kind? I beg leave to call the attention of people interested in urban populations to this question of the position of the leaseholder and the freeholder.

* * * * *

PROPOSED ALTERATION OF THE LAW.

The object of the proposal the Government have to make is to effect completely what the right hon. gentleman opposite (Mr. Goschen) avowed to be his object—to make as complete an assimilation of the charges on all kinds of property in respect of the Death Duties as the nature of the case permits.

ASSIMILATION OF DUTIES OF THE A CLASS.

The proposal of the Government, therefore, is this: We propose to clear the ground by abolishing or merging the present Probate Duty, the Account Duty, the Estate Duty, and the addition made by the right hon. gentleman opposite to the Succession Duty and to start afresh. We constitute in their place a single duty of the A class, of which probate is the type, which we propose to call the *Estate Duty*. We borrow the right hon. gentleman's principle, and we borrow his name. We carry out his principle, however, to its legitimate conclusion. The Estate Duty will be charged according to the principal value of all property, whether real or personal, settled or unsettled, which passes on the death of any person, whether by the disposition of the deceased or by a settlement made by others. That is the broad and general principle. In this duty regard will only be had to the sum total of the property passing, and not at all to the persons to whom or the shares in which it passes. The governing principle is this: Upon the devolution of property of all descriptions the State takes its share first—before any of the successors in title or beneficiaries. The reason on which this is founded is plain. The title of the State to a share in the accumulated property of the deceased is an anterior title to that of the interest to be taken by those who are to share it. The State has the first title upon the estate, and those who take afterwards have a subsequent and subordinate title. Nature gives a man no power over his earthly goods beyond the term of his life. What power he possesses to prolong his will after his death—the right of a dead hand to dispose of property—is a pure creation of the law, and the State has the right to prescribe the conditions and limitations under which that power shall be exercised. The right to make wills or settlements or successions is the creation of positive law. In case of default of disposition by intestacy, the State settles the destination of the property under the Statute of Distribution. It is most important to keep that clearly in view. The objection is often taken that taxes of this kind are so hard upon this person or that person,

but a duty like the Probate Duty, where property is bequeathed by will, knows nothing of distinctions of persons who are to be benefited by the will. We deduct the share of the State, and then the persons interested take according to their several shares. Suppose a man leaves property amounting to 100,000*l.*, the Probate Duty, which will now be the Estate Duty, is deducted before anyone gets anything. The deduction may be 4,000*l.* What really belongs to the beneficiaries is not 100,000*l.*, but 96,000*l.*, and they never had a right to anything more. That is the principle of the new Estate Duty. Those who laugh cannot have read the most elementary books on political economy and finance. The State is to take its share from the *corpus* of the whole property passing on the death of the deceased, of whatever kind or description that property may be. That principle is so simple and so just. I never supposed till this moment that that was a principle which anyone disputed. It is a principle which has been laid down in this House for a very long time, and it had been laid down in every work that has ever professed to deal with political economy. Therefore I was not prepared to argue it. I have taken it as an axiom of finance. The real difficulty arises in the application of the principle.

CASE OF REAL PROPERTY.

The difficulty arises from the complication of the Law of *Settlement*, and the Law of *Real Property*, and likewise from the nature of real property. As to free personalty, you have to deal only with the executors, but in the case of settlements, you must have recourse to trustees, and you may often have to deal with the dispositions of persons other than the deceased. Real property passes immediately to the devisee or heir, and, when settled, presents the same difficulties as those to which I have referred in the case of settled property. That constitutes, no doubt, a difficulty in regard to collection. The evils from which we suffer, not only in this respect, but in all dispositions of property, exist to a degree which makes the United Kingdom the most lawyer-ridden country in the world. These complications are the work of the astute and ingenious professors of the law. They are the result of the accumulated subtleties of conveyancing. They are expensive and unintelligible to everyone who is not well paid to understand them. It is a difficult business to unravel and break through all their cobwebs, but in principle there is no reason why settled property should be favoured in comparison with unsettled property. Settlements may be good

things in some cases, but they are certainly very bad things in others, and there is assuredly no reason why they should be favoured by any fiscal exemptions. You cannot by fiscal enactments alter the Law of Settlement, but you may provide that settlements shall not be unduly favoured in respect of taxation. To show again what a faithful disciple I am of the right hon. gentleman opposite, I should like to read a sentence upon the subject of settlements from his Budget Speech, 1889. He said—

“The whole theory of the Death Duties is that the State claims a share in all property passing on death. If I may use a phrase of legitimate exaggeration, a portion of the Death Duties is practically evaded by settlement. From my point of view, every settlement if not a fraud upon the Death Duties, at all events, makes a serious inroad on what I may term the rights of the Chancellor of the Exchequer.”

I beg attention to what follows:—

“I do not feel sure that equity and analogy do not require that a higher duty should be put upon settlements to compensate for the heavy loss to the Death Duties which they bring about.”

As regards real property, there is no reason why it should be charged at a different rate from other property, why the duty on it should be charged on a life interest when the real interest taken is the fee simple, why it should be estimated on an annuity, which in the case of the best classes of property, such as ground rents, produces a sum far below the principal value on which other property is valued. This is one of the few countries in the world where such a principle is adopted. I find in *The Statistical Society's Journal*, Part 85, this statement:—

“Coming next to the question of this modification or mode of estimating the value of real property, and the substitution of the actual realisable value for the fictitious value obtained by multiplying the income by a given quantity, we find there are only two countries besides France in which the assessment of Succession Duties on real estate is based on the fictitious, and not the real, value. Those countries are England and Belgium. In determining the value of real estate in all other countries, the duty is levied on the realisable value of the property.”

I have forgotten to mention that, in taking *principal value* as the basis of the tax, we reform a glaring injustice of exempting property which has a high selling value, though yielding little or no annual rent. There is the well-known Lord Sefton's case, where there was property yielding no rent at all, on the banks of the Mersey. Well, he paid no Succession Duty upon that, and very shortly afterwards he sold the property for a very large sum. The Inland

Revenue claimed Succession Duty upon what he had received, but the land had no annual value, and it therefore paid nothing. This applies to the question of ground-rents and ground values. You may have a ground rent which is very small, and yet you may sell that property to-morrow for an immense sum of money. There is no more difficulty in estimating the principal value of real property than that of jewels or pictures. The real test is what experienced persons estimate would be the fair market value at the time and under the circumstances. That real estate should not be treated on a more favourable footing than other property was laid down by Mr. Pitt in 1795.

“In a war for the protection of property it was just and equitable that property should bear the burden, and as it was in the nature of things that landed property was the most permanent it was fit that it should contribute accordingly.”

That principle was rejected then by the House of Commons of those days, but I venture to say that it will not be rejected by the House of Commons of to-day. But, to take a later example, the right hon. gentleman (Mr. Goschen), in his able Report of 1871, stated that—

“Out of the total Imperial taxation, land in England paid, in 1868, 5·28 per cent.; in France, 18·43 per cent.; in Prussia, 11·39 per cent.; in Belgium, 20·72 per cent.; in Russia, 11·21 per cent.; in Austria, 17·54 per cent.; in Hungary, 32·30 per cent.; and” (he added) “from these figures it is apparent to what a small extent the taxation of land has been available for Imperial purposes in the United Kingdom as compared with the whole of the Continent.”

If it is urged, as is unfortunately true, that the value of land has greatly fallen in this country, it will be remembered that the charge will be the less in proportion to the fall in value, and that land will, like other properties, only be taxed on what it is worth and what it will fetch. One difficulty we have to meet is one which would have been remedied if the House of Lords had not rejected the Land Transfer Bill introduced by the late Government in 1889, by which land would have passed, like personal property, to the hands of the executors. There may be more difficulty in realising at once the tax on real property, and regard should be had to this consideration, so long as in the end the same amount is realised on real property as that which is levied in other cases. The situation of settled property will also require special treatment, but the charge in the end should be the same. All these are questions of the manner of collection, which will have to be dealt with at a later date, and their difficulty, no doubt, is great; but

I have not time to enlarge on them now. We have done our best to solve them; and I have no doubt that, with the assistance of the Committee, we shall be able to arrive at some reasonable conclusion. So long as the equal contribution of all classes of property is kept intact we have a very open mind as to the method of effecting it. It is very desirable and very important to interfere as little as possible with the existing system of administering the law, round which has grown up a great mass of established decisions and practice. I have said that, whilst making an equal charge on all kinds of property under the Estate Duty, we accommodate the method of collection and payment to the different conditions of various kinds of property. It would, obviously, be impossible to realise at once the capital value of landed property in like manner as in the case of Stocks or other personalty. We continue, therefore, the existing system of *payment by instalments*; but, in order that the ultimate payment may be the same as on other property, we charge interest on the money remaining due until the whole is discharged. These instalments will be a charge on the estate, and will not lapse with the death of the person primarily liable to pay them. In the case of settlement, when property is now settled by will, probate is charged once on the *corpus* of the property, and this payment covers all the limitations of the settlement. It is felt that it would not be fair to require a full payment on each devolution within the scope of the settlement when the beneficiary takes only limited interest, and thus treat a man with only a life interest on the same footing as one who had the absolute disposal of the estate. We now, therefore, propose to assimilate the treatment of property under all kinds of settlements to that now in force respecting settlements made by will. But, as the single payment in respect of the whole settlement may result in a diminished total produce of the tax, we propose to levy an additional 1 per cent. on all property under settlement to recoup this loss. I have, in fact, adopted the right hon. gentleman's policy. I have sat at his feet for some years, and have learned something from him. In this manner we levy the same amount from the estate as if it were left absolutely, but each beneficiary will contribute according to the extent of his interest by the reduction of his income resulting from the original diminution of the capital. In the case of realty, where the duty will be payable in the first instance by the life tenant, he will have the power to charge the amount of it on the property. I do not propose, at the present moment, to argue this question in detail. The proper time for that will be

when the Resolution relating to the Death Duties comes separately under discussion. I have not found it necessary to go into any elaborate calculations, such as those which were discussed in the Debate of 1888, as to the relative amount of various kinds of property and the charges upon them. Our plan does not require any such calculation, because it is proposed to place exactly the same charge on every sort of property, of whatever kind it may be.

Sir M. HICKS-BEACH: Will the right hon. gentleman state the percentage?

Sir W. HARCOURT: I am coming to that directly. I now come to a point in this matter which is of still greater importance. Hitherto I have discussed the propriety of bringing all kinds of property under the same tax—a tax in the nature of the present Probate Duty. This we have sought to accomplish. When we have collected all the different heads of property passing at a man's death, and aggregated them in one sum, the question arises, shall the property be taxed at the same rate, whether it be great or small?

GRADUATION OF DUTY.

Shall a property of 100,000*l.* not contribute on a higher scale than a property of 1,000*l.*; a property of 500,000*l.* more than 100,000*l.*; and 1,000,000*l.* more than 500,000*l.*? This raises in its simplest form the vital question of graduated taxation. To my mind, the principle if applied with fairness and justice is a most equitable and politic principle. Every writer on political economy and finance has laid down the doctrine that taxation should be proportionate to the ability to bear it of those on whom it is imposed. The right hon. gentleman (Mr. Goschen) admitted, and indeed proclaimed, these principles when he established the Estate Duty. He stated—

“On the whole, I think it will be generally recognised that it is the men whose fortunes are considerable who pay least in proportion to their aggregate income and property.”

He proceeded to act to a limited extent on this principle by imposing the Estate Duty on estates amounting to 10,000*l.*, and excepting all estates below that sum. I pointed out at the time that this fact, and the principle upon which it was propounded, contained the germ of graduation. It was, in fact, the first rung of the ladder, and we propose to ascend the scale. I read last week a

very able article in *The Economist* on this subject, which pointed out how this principle might be applied even on a small scale. Mr. Pitt suggested that a man who could afford to keep two carriages should be taxed on each a higher rate than his neighbour who could only afford to keep one. This system of graduation is in force in many of our colonies. In Victoria an estate of 10,000*l.*, to 20,000*l.* pays 4 per cent., rising by steps to estates of 100,000*l.*, above which 10 per cent. is paid. We propose a much more moderate graduation, rising to 8 per cent. at 1,000,000*l.*, or double the existing maximum. I now propose to tell the Committee how I intend to fix the graduation. On estates exceeding 100*l.* and not exceeding 500*l.* the rate will be 1 per cent.; exceeding 500*l.* and not exceeding 1,000*l.*, 2 per cent., including in both cases Legacy and Succession Duty; exceeding 1,000*l.* and not exceeding 10,000*l.*, 3 per cent.; exceeding 10,000*l.* and not exceeding 25,000*l.* 4 per cent.; exceeding 25,000*l.* and not exceeding 50,000*l.* 4½ per cent.; exceeding 50,000*l.* and not exceeding 75,000*l.*, 5 per cent.; exceeding 75,000*l.* and not exceeding 100,000*l.*, 5½ per cent.; exceeding 100,000*l.* and not exceeding 150,000*l.*, 6 per cent.; exceeding 150,000*l.* and not exceeding 250,000*l.*, 6½ per cent.; exceeding 250,000*l.* and not exceeding 500,000*l.*, 7 per cent.; exceeding 500,000*l.* and not exceeding 1,000,000*l.*, 7½ per cent.; over 1,000,000*l.*, 8 per cent. Properties below 500*l.* will pay 1 per cent. instead of a minimum of 2 per cent. on personalty and of 1½ per cent. on realty as at present, but they will be relieved from Legacy and Succession Duty, which, under the consanguinity scale, may now render such properties subject to a much higher charge. Properties between 500*l.* and 1,000*l.* will pay 2 per cent., but they will be similarly relieved from Legacy and Succession Duty. The 30*s.* payment below 300*l.* gross will cease. Properties of capital value between 1,000*l.* and 25,000*l.* in free personalty will pay as they now do. It is above 25,000*l.* that the new graduation will commence.

* * * * *

PROPOSED CHANGES IN B CLASS OF DUTY.

I have yet to mention the changes which I propose to make in the B class of duty, the duty which falls upon the interest of the individual beneficiary, and is graduated according to the degree of his relationship to the person from whom he derives his interest. There are two duties of the B class—*Legacy* and *Succession Duty*. They always used

to be—and now that the additional $1\frac{1}{2}$ per cent. Succession Duty is to be swept away and the Succession Duty on lineals is merged in Estate Duty they once more will be—identical in respect of the rates of duty. The “consanguinity scale,” as it is called, will be the same in either case. But, in order to make them identical, it is necessary to remove—and I propose to remove—the anomaly by which Succession Duty is in all cases, even where the successor takes an absolute interest, charged only on his life interest, and the further anomaly that Succession Duty is payable by instalments free of interest, whereas Legacy Duty is payable in one lump sum. In both these respects we propose to place Succession Duty on exactly the same footing as Legacy Duty. It will in future be charged upon the *capital value* of the property where the successor takes absolutely. Though still payable in instalments, these instalments will be charged with interest, thus rendering them really equivalent to the lump sum paid at once under Legacy Duty. With these changes Legacy and Succession Duties—though kept up nominally as separate duties for the sake of administrative convenience and on account of the body of law and legal decisions which has grown up around them—will be identical in their incidence. There will, in fact, be only one B duty, equal in its incidence on all kinds of property, real and personal, settled and unsettled, just as there will be one A duty, the Estate Duty, instead of three, and that one duty likewise equal in its incidence all round. There will be two duties instead of five duties, and two equal duties in the place of the chaotic inequality of incidence which now prevails.

INDEX.



- ABERGAVENNY,**
lands and chattels settled on Earldom of, how dealt with, 28.
- ACCOUNT DUTY,**
when paid or payable on settled property, estate duty not payable, 2, 5.
when still payable, 5.
- ACCOUNTABLE**
for estate duty, executor, when, 29.
purchaser for value without notice is not, 55.
who are, 30, 49, 50.
- ACCOUNTS,**
delivery of, by persons accountable for duty, 49.
furnished by executor with Inland Revenue affidavit, 29, 48.
of property, for duty on which executor is not liable, 32.
person paying rateable part of estate duty bound by, when, 68.
time for delivery of, 31, 50.
verification of, 32, 50, 54.
- ACT OF PARLIAMENT,**
lands and chattels settled by, how dealt with, 27.
- AD VALOREM***
stamp to be deducted from Settlement estate duty, 27.
- ADDITIONAL SUCCESSION DUTY,**
under the Customs and Inland Revenue Act, 1888. *See* SUCCESSION DUTY.
- ADVOWSONS,**
exempted from estate duty, when, 3, 70.
- AFFIDAVIT,**
corrective, 30.
Inland Revenue, 28—30, 48, 84, 92.
provisions as to, 54.
- AGENTS,**
may be called on to give information to Commissioners, 51.
not accountable for estate duty, 49, 50.

AGGREGATION, 17.

- can only take place once on same death, 36, 45.
- exemptions from. *See* EXEMPTIONS.
- for determining rate of estate duty, 18.
- none in case of property devolving as an estate by itself, 18, 71.
 - not chargeable with estate duty, 18.
 - under 1,000*l.* when, 71.
- of benefits reserved to immediate family, how and when effected, 19.
- of reversions, the duty on which has been commuted, 18, 66.
 - sold or mortgaged before the 1st of August, 1894, *quære*, 81.

AGRICULTURAL PROPERTY,

- deduction for expenses of management in case of, 42.
- definition of, 40, 83.
- includes what buildings, 83.
- outgoings to be deducted from value of, 41.
- rates to be deducted from value of, 41.
- rules for ascertaining value of, 40.
- value, for the purpose of succession duty, 75.

ALLOWANCES. *See* DEDUCTIONS.**ANNUAL VALUE**

- of agricultural property, how ascertained, 41.

ANNUITY,

- cesser of, does not create a liability to duty, when, 7, 16, 17.
- deduction allowed if granted for partial consideration, 16.
- Indian Government, exempted from estate duty, when, 3, 69.
- jointure. *See* JOINTURE.
- pur autre vie*, 7.
- rent-charge. *See* RENT-CHARGE.
- survivorship, exempted from estate duty, when, 3, 14, 69.
 - liable to estate duty, when, 13.
- value of property passing on cesser of, 14, 43, 44.

APPEAL,

- costs of, 61.
- from Commissioners to County Court, 59.
 - to High Court, 59.
- from County Court, 61.
 - High Court only by leave, 59, 61.

APPORTIONMENT

- of estate duty, when, 67.

ARBITRATION,

- Court may refer valuation to, when, 62.

ASSETS,

- liability of executor limited to amount received, 48.

BAILIFFS,

- not accountable for estate duty, 49, 50.

BANK NOTES,

- subject of *donatio mortis causâ*, 9.

BANKER

may be called on to give information to Commissioners, 51.

BANKERS' DEPOSIT NOTE,

subject of *donatio mortis causá*, 9.

BENEFICIARY,

accountable for estate duty, when, 30, 49.

BENEFIT ACCRUING OR ARISING,

value of, in case of limited interests, 7.

BILLS OF EXCHANGE,

subject of *donatio mortis causá*, 9.

BISHOP,

estate duty not payable on emoluments of, 8.

BONDS,

subject of *donatio mortis causá*, 9.

BOOKS,

duty not payable on gifts of, when, 3, 69.

BRITISH POSSESSION. *See* COLONIAL AND FOREIGN.

no proceedings to be taken to recover estate duty in, 78.

BUILDINGS,

included in agricultural property, what, 83.

CAPITAL MONEY

under Settled Land Act, application of, for estate duty, 59.

CERTIFICATE,

of discharge effectual in case of fraud, &c., when, 63, 64.
 ineffectual in case of fraud, &c., when, 63.
 may be given, when, 63.
 must be given, when, 62.
 to be given for separate items of property, 63.
 when estate duty commuted, 66.
 when death duties commuted, 66.
 of estate duty, 57.
 evidence of charge, 57.
 repayment of overpaid duty on production of, 57.
 of valuation, separate for different classes of property, 52.
 on probate and letters of administration, 55.
 provisions as to, 54.

CESSER,

of annuities. *See* ANNUITY.
 of limited interests, value of property passing on, 7, 43, 44.

CHANCELLOR OF THE EXCHEQUER,

speech of, 95.

CHARGE,

- certificate of estate duty evidence of, 57.
- estate duty is a, on what property, 56.
- estate duty is a, subject to what incumbrances, 56.
- of estate duty in favour of limited owner paying, 59.
- on Colonial property for estate duty, none, 78.
- person is competent to dispose of money which he has a general power to, 6, 86.

CHARITY,

- estate duty not payable on annuities, pensions, &c., of, 3, 8.

CHEQUES,

- subject of *donatio mortis causa*, 9.

CHIEF RENTS,

- deducted in case of agricultural property, 41.

CHURCH PATRONAGES,

- exempted from estate duty, when, 3, 70.

CIVIL

- officer, estate duty not payable on arrears of pay or pension of, when, 46.
- servant, estate duty not payable on arrears of pay or pension of, when, 46.

CLASSES

- of property, separate valuations for different, 52.

COLLECTION

- of estate duty, 28, 45.

COLLEGE,

- fellow of, estate duty not charged on emoluments of, 8.
- master of, estate duty not charged on emoluments of, 8.
- quare* whether estate duty may be remitted on gifts to, 70

COLONIAL. *See* FOREIGN.

- property, deduction of duty payable on, when allowed, 39, 78.
- estate duty not a charge on, 56, 78.
- liable to estate duty, when, 14, 15.
- what, treated as situate in United Kingdom, 78.

COMMENCEMENT OF ACT, 2, 91.**COMMISSIONERS,**

- have discretion to commute duty, 65.
- compound duty, 66.
- inspection by, for purposes of valuation, 44.
- may require statement of property, from whom, 50.

COMMITTEE,

- accountable for duty, when, 49.

COMMUTATION,

- of estate duty on interest in expectancy, 65.

COMPETENT TO DISPOSE,

- definition of, 85.
- estate duty charged on settled property on death of person, 22.
- estate duty payable on, when, 2, 3.
 - not, 2, 3.
- mortgagee not, 6, 85.
- of what property a person is, 5, 85.
- person having a general power of appointment is, 5, 86.
- succession duty charged on principal value when successor is, 75.
- tenant for life not, 6, 85.
- tenant in tail in possession is, 5, 85.
 - in remainder, *quære*, 6, 26.
- trustee, when deemed, 5, 85.

COMPOSITION,

- of death duties, 66.

CONSIDERATION,

- debts and incumbrances to be allowed, must be for full, 36.
- full, what is, 17, 36.
- in money or money's worth, 17, 36.
- marriage not a valuable, 17.
- of marriage, debts and incumbrances in, may bear rateable amount of duty, 24, 36.
 - no allowance for debts and incumbrances created in, 35.

CORPORATION SOLE,

- estate duty not payable on emoluments of, 3, 8.

COSTS,

- of appeal, 61.
- of valuation by Commissioners, 44.

COUNTY COUNCIL,

- estate duty may be remitted on gifts to, when, 69.
- to appoint valuers, 62.

COUNTY COURT,

- appeals to, 61.
- applications to, as to apportionment of duty, 68.

COURTESY,

- estate by the, treated as settled, 25, 86.

CROWN DEBTORS,

- persons accountable for duty are, 45.

DEAN,

- estate duty not payable on emoluments of, 8.

DEATH,

- meaning of, on the, 7, 84.
- property passing on. *See* PROPERTY PASSING ON DEATH.

DEATH DUTIES,

- composition of, 66.
- definition, 66.
- in case of death before 1st August, 1894..80.

DEBTS,

- due to foreign creditors may be deducted, when, 35.
- foreign, when and how allowed, 37, 38.
- incurred in consideration of marriage cannot be deducted, 35.
 - but may bear rateable part of duty, 36.
- may be deducted, when, 35.
- must have been for deceased's own use and benefit, 36.
 - full consideration in money or money's worth, 36.
 - take effect out of deceased's interest, 36.
- not deducted, if a right of reimbursement exists, 37.

DECEASED PERSON,

- definition of, 82.

DECLARATION OF TRUST,

- gift may be by, 8, 10.

DEDUCTIONS,

- ad valorem* stamp to be a deduction from Settlement estate duty, 27.
- allowed in cases of purchases for partial value, 16.
 - on determination of leases and annuities for lives for partial value, 16.
 - under Income Tax Acts for agricultural property, 41.
 - under Succession Duty Act, 41.
- appeal as to, 60.
- for duty payable in foreign country, 39.
- for expenses of management in case of agricultural property, 42.
- for expense of realizing foreign property, 39.
- for debts and incumbrances, 34. *See* DEBTS and INCUMBRANCES.
- for foreign debts, when, 37, 38.
- from estate duty, of duty on Colonial property, when allowed, 39, 78.
- jointures and portions, when not allowed as, 25.
- none for debts for which right of reimbursement exists, when, 37.

DELIVERY

- of account, time for, 32, 50.

DISCHARGE,

- certificate of, effectual in case fraud, when, 63, 64.
 - when not, 63, 64.
- given for separate items of property, 63.
- may be given, when, 63.
- must be given, when, 62.
- when estate duty commuted, 65.
- when death duties commuted, 66.

DISCOUNT,

- what allowed on succession duty when successor competent to dispose, 76.

DOMICIL,

- estate duty payable on foreign personalty if deceased had a British, 14.

- DONATIO MORTIS CAUSÂ*,
 estate duty payable in respect of, 8.
 property which may be subject of, 9.
 requisite of, 9.
 what is, 9.
- DONOR,
 must be excluded from all benefit of gift, 8, 10.
- DOWER,
 estate in, treated as settled, 25, 86.
- DUTIES,
 superseded by estate duty, 4.
 to what extent, 5, 80.
- DUTY,
 in foreign country, deduction of, from property, 39.
- ENFRANCHISEMENT,
 deduction of consideration for compulsory, allowed in case of
 agricultural property, 41.
- ESTATE,
 by itself, devolution of property under 1,000*l.*, as, 71.
 property devolves as, when, 18.
 by the courtesy treated as settled, 25, 86.
 definition of, 2.
 duty. *See* ESTATE DUTY.
 includes income down to death, 32.
 in dower treated as settled, 25, 86.
 less than 100*l.*, estate duty not payable on, 73, 74.
 small, provisions as to duty on, 71.
 tail in remainder, *quære*, whether estate duty payable on failure
 of, 26.
 under 1,000*l.* not charged with legacy or succession duty, when,
 71.
 Settlement estate duty, when,
 21, 71.
 value of, how ascertained, 34 *et seq.*
- ESTATE DUTY,
 analogue of probate duty, 2.
 of succession duty, 2.
 annuities, not payable on cesser of, when, 7, 16.
 apportionment of, when, 67.
 disputes as to, 68.
 capital money under the Settled Land Acts may be applied in
 payment of, 59.
 collection and recovery of, 28, 45.
 commutation on interests in expectancy, 65.
 composition of, 66.
 definition of, 2.
 duty on Colonial property when deducted from, 39, 78.
 exemptions from. *See* EXEMPTIONS.
 fixed, on small estates, 71.
 grant of, 2.
 how collected if not paid by the executor, 31, 32.

ESTATE DUTY—*continued.*

- in arrear, 52, 53.
- includes Settlement estate duty, when, 29.
- interest forms part of, when, 32.
- is a first charge on what property, 56.
- is not a charge on Colonial property, 56, 78.
 - property passing to the executor as such, 55, 56.
- leases for lives, not payable on determination of, when, 16.
- levied on value of aggregated estate, 18.
- limited owner paying, has what charge for, 59.
- none on annuities in gross, 6.
 - estates of less than 100l...73, 74.
 - pin money, when, 81.
 - settled property, when, 23, 26.
- on property not passing to executor, recovery of, 58.
- on real property, may be paid by instalments, 33.
- on settled property, 2, 3, 20.
- once leviable on same death, 45.
- payable if general power of appointment reserved to settlor, 9, 10.
 - life interest reserved to settlor, 9.
 - power of revocation reserved to settlor, 9.
 - in respect of foreign and Colonial property, when, 14.
 - joint purchases and investments, when, 8, 11.
 - policies of insurance, 11.
 - survivorship annuities, 13.
 - trust property, when, 15, 85.
 - out of general estate, when, 30.
 - specific property passing, when, 56.
- persons accountable for, 30, 48, 49.
 - paying rateable part of, bound by what accounts, 68.
- postponement of payment of, when allowed, 30, 52.
- power of Treasury to remit, when, 3, 69.
- proceedings to recover, cannot be taken in colony, 78.
- raisable, how, 30, 58.
- rate of, how first calculated, 29, 52.
- receiver may be appointed in proceedings for recovery of, 53.
- recoverable by executor, how, 30.
- recovery of, 45.
- remission of, after twenty years, 53.
- repayment of, 57.
- sale to raise, 58.
- settlement. *See* SETTLEMENT ESTATE DUTY.
- stamp duty, to be a, 28, 54.
- substitute for probate duty, 46.
- to be paid on sale of real estate, when, 33.
- when due, 32.

EXECUTOR,

- accounts to be furnished by, with Inland Revenue affidavit, 29, 48.
- course to be adopted if value of property not known, 30, 31.
- definition of, 29, 82.
- de son tort* accountable, 51.
- limitation of liability of, 29, 48.
- may pay duty on other property, when, 28.
- may raise estate duty, how, 30, 58.
- may recover estate duty, how, 30, 58.
- must pay duty on all personal property of which deceased was competent to dispose, 28.

EXECUTOR—*continued.*

- no charge for duty on property passing to him as such, 55.
- power of, to sell or mortgage, 59.
- probate will be granted to, when, 29, 30.
- recovery of duty by, in case of property not passing to him as such, 58.
- safe to deal with, 49, 55.

EXEMPTIONS.

- from aggregation, 18, 71.
- estate duty, 2, 3, 45, 69, 79, 81.
- legacy duty, 71.
- Settlement estate duty, 71.
- succession duty, 71.

EXPECTANCY,

- interest in. *See* INTEREST IN EXPECTANCY.

FELLOW

- of a college, estate duty not payable on stipend of, 8.

FIDUCIARY,

- power renders deceased competent to dispose, when, 85.

FINES,

- deducted in case of agricultural property, 41.

FIVE HUNDRED POUNDS,

- fixed duty on estates, gross value of which is under, 71.

FIXED DUTY,

- on small estates, 71.

FOREIGN

- country, deduction for duty payable in, 39.
- debts, how and when deducted, 37, 38.

FOREIGN CREDITORS,

- debts due to, may be deducted, when, 35.

FOREIGN PROPERTY,

- allowance to be made for expenses of administering, 39.
- of realising, 39.
- deductions from, 35.
- executor accountable for duty, on what, 29, 48.
- estate duty a charge on, when, 56.
- incumbrances on may be deducted, when, 35.
- liable to estate duty, when, 14.
- lineals formerly paid legacy and succession duty on foreign personalty, 15.

FORMS,

- provisions as to, 54.

FRAUD,

- certificate of discharge, effectual in case of, when not, 63, 64.
- effectual, when, 64.

FREEBENCH, 86.

FRIENDLY SOCIETIES,

estate duty not payable on sums of less than 100*l.* in, 45.

FUNERAL EXPENSES,

what are reasonable, 35.

GENERAL POWER,

fiduciary, renders deceased competent to dispose, when, 5, 85.
when not, 5, 85.

money raised under, 86.

GENERAL POWER OF APPOINTMENT. See **GENERAL POWER**.

if unexercised, probate duty not payable, 6.

person having, is competent to dispose, 5, 85.

even if unexercised, 6, 85.

release of, 13.

reserved to settlor, renders estate duty payable, 9.

voluntary release of, ineffectual within year of settlor's death, 10.

GIFT,

how effected, 10.

if made within twelve months of death, estate duty payable, 8, 10.

if donor retains any interest, estate duty payable, whenever gift was made, 8.

may be by declaration of trust, 8, 10.

transfer, 8, 10.

GUARDIAN,

when accountable for duty, 49.

HIGH COURT,

appeals to, 59.

application to, as to apportionment of duty, 68.

IN MONEY OR MONEY'S WORTH,

debts and incumbrances to be allowed must be for full consideration, 36.

what is, 17, 36.

INCOME,

down to death included in estate, 32.

INCOME TAX ACTS,

deductions allowed under Schedule A, 41.

INCUMBRANCES,

created by way of suretyship, *quare* as to, 37.

in consideration of marriage cannot be deducted, 35.

may bear rateable part of duty, 25, 35.

definition of, 35, 83.

may be deducted, when, 35.

no allowance made for contingent, 36.

on foreign property may be deducted, when, 35.

prior to estate duty, what are, 56.

rateable amount of duty thrown on to, 35, 68.

to be deducted, must have been for deceased's own use and benefit, 36.

full consideration in money or money's worth, 36.

must take effect out of deceased's interest, 36.

INDIAN

Government annuities, estate duty not payable on, when, 3, 69.

INLAND REVENUE,

accounts to be annexed to, 29, 48.

affidavit, 30, 48, 84.

what duty executor must pay on delivery of, 29.

INSPECTION,

Commissioners may order for purposes of valuation, 44.

INSTALMENTS

of estate duty on real property, 33.

of succession duty on real property when successor is competent to dispose, 75.

INSURANCE,

deducted in case of agricultural property, 41.

policies of. *See* POLICIES OF INSURANCE.

INTEREST,

Court may allow, when, 61.

deceased's, debts and incumbrances taking effect out of, 36, 37.

quare whether mortgages under joint power of appointment take effect out of, 36.

forms part of estate duty, when, 32.

in expectancy. *See* INTEREST IN EXPECTANCY.

life. *See* LIFE INTEREST.

not charged in case of small estates, when, 33, 72.

on arrears of duty, 53.

on repayments of duty, when given, 53, 61.

remission of, after 20 years, 53.

INTEREST IN EXPECTANCY,

commutation of estate duty on, 65.

definition of, 83.

does not include reversions on leases for years, 42, 83.

may be vested or contingent, 42, 83.

payment of duty may be postponed on, 42.

quare whether aggregated if duty commuted, 18, 66.

if sold or mortgaged before 1st August, 1894. .81.

rent-charge created by settlor is an, 25.

sold or mortgaged before 1st of August, 1894, provisions as to, 80.

two duties payable, when, 43.

JOINT INVESTMENT,

estate duty payable on, when, 8.

when not, 11.

example of, 11.

JOINTURE,

cleared of estate duty, when, 24.

contributes to duty, when and how, 24, 68.

rent-charge charged by settlor in lifetime on settled estates, how dealt with, 25.

quare whether an interest in expectancy, 25.

rent-charge, estate duty not payable in cases of, when, 24.

JUDGE,

estate duty not payable on emoluments of, 8.

LEASES,

for lives, 7.

deduction allowed on determination of, if granted for partial consideration, 16.

estate duty not payable on determination of, if granted for value, 16.

for years, interest in expectancy does not include reversions on, 43, 84.

LEGACY,

in specie, valuation of, 44.

LEGACY DUTY,

exemption of property under 1,000*l.* from, when, 71.

one per cent. formerly payable by lineals on foreign personalty, 15.

not leviable on settled property if estate duty once paid, 22, 23.

payable on property out of the United Kingdom, when, 14, 15.

when not payable, 5.

when still payable, 5.

LETTERS OF ADMINISTRATION. *See* PROBATE and REPRESENTATION.

LIABILITY,

limitation of, as to extent, in the case of executors, 48.

time, in the case of purchasers and mortgagees, 46.

trustees and executors, 48.

LIFE ESTATES. *See* LIFE INTEREST.

LIFE INTEREST,

effect of release of, 10, 12, 13.

pur autre vie, 6.

reserved to settlor renders estate duty payable, 9.

value of property passing on cesser of, 43, 44.

LIMITED OWNER,

paying estate duty has what charge, 59.

LOCAL TAXATION GRANT, 77.

MANAGEMENT,

deduction in case of agricultural property for expenses of, 42.

MANSION,

included in agricultural property, when, 83.

MANUSCRIPTS,

estate duty remitted on, when, 69.

MARINE,

estate duty not payable on arrears of pay or pension of, when, 3, 45, 46.

MARLBOROUGH,

lands and chattels settled on Dukedom of, how dealt with, 28.

MARRIAGE.

debts and incumbrances created in consideration of, not deducted, 35.

debts and incumbrances created in consideration of, may bear rateable part of duty, 25, 36.
not a valuable consideration, 17.

MARRIAGE SETTLEMENT,

by a third person is a gift, 10.

See SETTLEMENT.

MASTER,

of a college, estate duty not payable on emoluments of, 8.

MONEY OR MONEY'S WORTH. *See* IN MONEY OR MONEY'S WORTH.**MORTGAGE,**

created under joint power of appointment, takes effect out of whose interest, 37.
to raise estate duty, 58.

MORTGAGE DEBTS,

subject of *donatio mortis causa*, 9.

MORTGAGEE,

exempted from liability for duty, when, 46.

may be called on to give information to Commissioners, 51.

of interest in expectancy on or before 1st August, 1894, what duty payable by, 80.

MUNICIPAL CORPORATION,

estate duty may be remitted on gifts to, when, 3, 69.

NATIONAL SCIENTIFIC PURPOSES,

pictures, &c. given or bequeathed for, exempted from estate duty, when, 3, 69.

what are, 70.

NELSON;

lands and chattels settled on Earldom of, how dealt with, 28.

NOTICE,

purchaser for value without, 56.

what is, 56.

OFFICE,

estate duty not payable in respect of stipend attached to, 3, 8.

OFFICER,

estate duty not payable on effects of, when, 46.

- OFFICER OF INLAND REVENUE,**
duties of, in case of small estates, 73.
- ONE HUNDRED POUNDS,**
estate duty not payable on estates less than, 73.
sums less than, payable to deceased's
representatives without representa-
tion, 3, 45.
- ONE PER CENT.** See LEGACY DUTY and SUCCESSION DUTY.
- ONE THOUSAND POUNDS,**
estates under, not charged with Settlement estate, or Legacy or
Succession duty, when, 71.
property under, an estate by itself, when, 71.
- OUTGOINGS,**
what are necessary, under the Succession Duty Act, 1853..41.
- PAROL TRUST,**
settlement may be effected by, 83.
- PARSON,**
estate duty not payable on emoluments of, 8.
- PASSING UNDER**
a settlement, what is property, 12, 13.
- PAY,**
estate duty not payable on arrears of, when, 46.
- PENALTY,**
amount of, 51.
for neglect to obtain representation, 51.
furnish further affidavit, 51.
how recovered, 52.
only for wilful defaults, 51, 54.
remission of, 51.
- PENSION,**
estate duty not payable on arrears of, when, 46.
charitable, 6.
- PICTURES AND PRINTS,**
given for national scientific purposes, exempted from estate duty,
when, 3, 69.
to a county council, 3, 69.
to municipal corporations, 3, 69.
to universities, 3, 69.
valuation of, 62.
- PIN MONEY,**
estate duty not payable on, when, 81.
- PLATE,**
valuation of, 62.
- POLICIES OF INSURANCE,**
nomination, 11.
subject of *donatio mortis causa*, 9.
survivorship, 11.
under Married Women's Property Act, 1870, liable to estate
duty, 11.

- PORTIONS,
 cleared of estate duty, when, 24.
 contribute to estate duty, when and how, 24, 67.
 created by deceased, 25, 34.
- POSSESSION,
 succession duty not payable unless successor comes into, 76.
- POSTPONEMENT,
 of estate duty to death of survivor of husband and wife, 82.
 of payment of estate duty, when allowed, 30, 52.
 probate will be granted, when, 30.
- POWER OF APPOINTMENT. *See* GENERAL POWER OF APPOINTMENT.
 effect of joint, 24, 86.
 mortgage created under, takes effect out of whose interest, 37.
- POWER OF REVOCATION,
 release of, 13.
 reserved to settlor, renders estate duty payable, 9.
 voluntary release of, ineffectual within year of settlor's death, 10, 13.
- PRACTICE,
 as to grant of probate, 29.
- PREBEND,
 estate duty not payable on emoluments of, 8.
- PRINCIPAL VALUE. *See* VALUE.
- PRINTS. *See* PICTURES AND PRINTS.
- PROBATE,
 certificate on, under 44 & 45 Vict. c. 12, s. 30..55.
 penalty for neglect to obtain, 51.
 valuation for purposes of, 40.
 will be granted, when, 29, 30.
- PROBATE DUTY,
 estate duty, analogue of, 2.
 substitution for, 46.
 if paid or payable in respect of settled personalty, estate duty not payable, 2, 5, 79.
 not payable if power of appointment not exercised, 6.
 no valuation by Commissioners, for, 44.
- PROMISSORY NOTES,
 subject of *donatio mortis causâ*, 9.
- PROPERTY,
 definition of, 82.
 passing on cesser of interest, value of, 43, 44.

PROPERTY—*continued.*

- passing on death, after an interval, 7, 84.
 - by way of substitutive limitation, 7, 84.
 - can only be aggregated once, 36, 45.
 - certainly, 7, 84.
 - chargeable once with estate duty, 45.
 - contingently, 7, 84.
 - definition of, 84.
 - immediately, 7, 84.
 - originally, 7, 84.
 - trust property is deemed to be, when, 15.
 - when not, 15.
 - what property is chargeable, when, 4.

PURCHASE,

- in joint names, estate duty payable on, 8, 11.

PURCHASERS,

- exempted from liability for duty, when, 46.
- for value, without notice, not accountable for estate duty, 50, 55.
 - no charge for estate duty on property in hands of, 55, 56.
 - protected in case of fraud, &c., 64.
- inquiries to be made by, 34.
- of interest in expectancy before 1st August, 1894, what duty payable by, 80.

RATE, 17, 74.

- of estate duty, appeal as to, 68.
 - how calculated in first instance, 29, 52.
 - if payment postponed till death of survivor of husband and wife, 68.
- of Settlement estate duty, 74.

RATES,

- what may be deducted from value of agricultural property, 41.

REAL ESTATE,

- estate duty on, may be paid by instalments, 33.
- instalments of duty on, to be paid on sale, 33.
- limitation of liability, when estate duty payable by instalments on, 47.
- situate abroad, not as a rule liable to estate duty, 15.
 - when liable to estate duty, 15.
- what inquiries should be made by purchaser of, 34.

REALIZATION

- of foreign property, allowance for cost of, 39.

RECEIVER,

- may be appointed in proceedings for recovery of estate duty, 54.

RECOVERY,

- of estate duty, 28, 45.
 - by executor in case of property not passing to him as such, 58.
 - proceedings for, not to be taken in a colony, 78.
 - receiver may be appointed in proceedings for, 54.
 - when apportioned, 68.
- of penalty, how effected, 52.

- REGISTRAR,**
of County Court, duties of, under sect. 16..72.
- REIMBURSEMENT,**
debts cannot be deducted if a right to, when, 37.
- RELEASE,**
of general power of appointment, effect of, 13.
ineffectual within year of re-
leasor's death if voluntary, 10.
secus, if for value, 13.
of life interest, effect of, 12, 13.
ineffectual within year of releasor's death if
voluntary, 10, 12.
secus, if for value, 13.
of power of revocation, effect of, 13.
ineffectual within year of releasor's death
if voluntary, 10, 13.
secus if for value, 13.
- REMAINDER.** *See* INTEREST IN EXPECTANCY.
estate duty not payable under a settlement on failure of interest
in, 26.
quare whether estate duty payable on failure of estate tail in, 26.
- REMISSION**
of estate duty or interest after twenty years, 53.
- RENT-CHARGE.** *See* ANNUITY.
created by deceased, *quare* whether an interest in expectancy, 25.
no deduction allowed for, when, 25, 34.
pur autre vie, 7.
value of property passing on cesser of, 43, 44.
- REPAIRS,**
deduction in case of agricultural property, 41.
- REPAYMENT**
of estate duty, 53.
interest allowed, when, 53, 61.
to person producing certificate, 57.
- REPRESENTATION,**
definition of, 46, 82.
penalty for neglect to obtain, 51.
sums payable to deceased's representatives without, free from
estate duty, 3, 45.
- REVERSIONS.** *See* INTEREST IN EXPECTANCY.
- ROYAL GRANT,**
lands and chattels settled by, how dealt with, 27.
- SALE,**
of real property, estate duty payable on, 33.
to raise estate duty, 58.
- SAVINGS BANK,**
estate duty not payable on sums of less than 100*l.* in, 46.

SCOTLAND,

application of the Act to, 87 *seq.*

SEAMEN,

estate duty not payable on arrears of pay or pension of, when, 46.
effects of, when dying in Her Majesty's service, 45.

SETTLED LAND ACTS,

capital money under, applicable for estate duty, 59.

SETTLED PROPERTY,

capital money under the Settled Land Acts applicable for payment of estate duty on, 59.

definition of, 83.

effect of first life interest given by husband to wife in, 3, 81.

estate duty levied on, 6.

estate duty levied on, how, 20.

not levied on, when, 2, 3, 23.

exempted from estate duty, how long, 22.

though beneficiary takes absolutely, 23.

one per cent. legacy and succession duty, when, 22, 23.

Settlement estate duty not payable on, if settled before 1st August, 1894..81.

succession duty (additional) payable in respect of, when, 5, 23.

temporary estate duty, payable in respect of, when, 5, 23.

under dispositions made before 1st August, 1894..5, 79, 81.

SETTLEMENT,

ad valorem stamp on, may be deducted from the Settlement estate duty, 27.

by Act of Parliament, how dealt with, 27.

by parol trust, 83.

by Royal Grant, how dealt with, 27.

composite, what is continuance of, 23.

continuance of, what is, 22, 23.

definition of, 83.

effect of release of life interest, &c. under, 12, 13.

taking property out of, 12.

effected by exercise of joint power of appointment, 24.

estate duty payable if power of revocation is reserved to settlor, 9.

foreign personalty comprised in an English, liable to estate duty, 15.

jointures and portions under a, 24, 25, 67.

made before 1st August, 1894, Settlement estate duty not payable on, 81.

marriage and voluntary, on same footing, 10, 12.

on failure of interest in remainder under a, estate duty not payable, when, 26.

re-settlement, what is the continuance of, 23.

SETTLEMENT ESTATE DUTY,

ad valorem stamp may be deducted from, 27.

included in estate duty, when, 29.

levied on principal value, 22.

once during continuance of settlement, 20, 21.

when, 20.

SETTLEMENT ESTATE DUTY—*continued.*

- not levied on estates under 1,000*l.*, when, 21.
 - property settled before 1st August, 1894. .20, 21, 81.
 - when only life interest that of husband or wife of deceased, 20, 21.
 - when property passes to a person competent to dispose, 20, 21.

SETTLOR,

- general power of appointment reserved to, renders estate duty payable, 9.
 - release of, 10, 13.
- life interest of, release of, 10, 12.
- must be excluded from all benefit or control over settlement, 10, 15, 86.
- power of revocation reserved to, renders estate duty payable, 10.
 - release of, 10, 13.
- property held by, as trustee, when chargeable with estate duty, 15, 86.
 - not chargeable with estate duty, 15, 86.
- should not be trustee of a settlement made by himself, 15, 86.

SHREWSBURY,

- lands and chattels settled on Earldom of, how dealt with, 28.

SIX YEARS,

- the limit of liability for estate duty, when, 47.

SMALL ESTATE. *See* ESTATE.

SOLDIERS,

- effects of, exempted from estate duty, when, 3, 45, 46.

SOLICITOR,

- may be called on to give information to the Commissioners, 51.

STAMP,

- ad valorem*, may be deducted from the Settlement estate duty, 27.
- estate duty may be collected by means of, 28, 54.

STATEMENT,

- of property, Commissioners may require, when, 50.
- provisions as to, 54.
- verification of, 54.

SUCCESSION DUTY,

- additional, under the Act of 1888, when payable on settled property, 23.
 - when still payable, 5.
- charged on principal value when successor competent to dispose, 75.
- estate duty, analogue of, 2.
- exemption of property under 1,000*l.* from, when, 71.
- no valuation by the Commissioners for, 44.
- not payable unless successor comes into possession, 76.

SUCCESSION DUTY—*continued.*

- one per cent. formerly payable by lineals, when, 15.
- when still payable, 5.
- not payable, 5, 22, 23.
- payable on foreign property, when, 14, 15.
- unpaid instalments of, deducted in the case of agricultural property, 41.

SUCCESSOR,

- competent to dispose, succession duty in case of, 75.
- succession duty not payable by, unless he comes into possession, 76.

SURETY,

- no deduction for debts for which deceased was, when, 37.

TAIL,

- estate. *See* ESTATE.

TAKE EFFECT OUT OF INTEREST. *See* INTEREST, 86.

TAXES,

- deduction of, in case of agricultural property, 41.

TEMPORARY ESTATE DUTY,

- payable on settled property, when, 23.
- when payable, 6.
- when not, 6.

TENANT FOR LIFE,

- accountable for estate duty, when, 49.
- not competent to dispose, 6, 85.

TENANT IN TAIL,

- in possession, is competent to dispose, 5, 85.
- in remainder, competent to dispose, when, 5, 6, 26.
- quære* whether estate duty payable on death of, 26
- under Act of Parliament, provisions as to, 27.
- under Royal Grant, 27.

TERMINABLE CHARGE,

- an incumbrance, 84.
- to raise estate duty, 59.

THREE HUNDRED POUNDS,

- fixed duty on estates, gross value of which is under, 71.

TIMBER,

- quære* how valued, 41.

TIMBER ESTATES,

- how dealt with, 42.

TITHE AND TITHE RENT-CHARGE,

- deducted in case of agricultural property, 41.

TRANSACTIONS FOR VALUE,

- estate duty not payable on, when, 16.

TRANSFER,

- gift may be made by, 8, 10.
- of property into joint names, estate duty payable on, when, 8.
when not, 11.

TREASURY,

- may remit estate duty, when, 3, 69.

TRUSTEE,

- accountable for estate duty, when, 30, 49.
- limitation of liability for duty in case of, 48.
- property held by, liable to duty, when, 15, 85.
when not, 15, 85.

TWELVE YEARS,

- the limit of liability for duty, when, 47.

UNITED KINGDOM,

- what Colonial property treated as situate in the, 78.

UNIVERSITY,

- gifts to, when exempted from estate duty, 69.

VALUATION,

- appeal as to, 60.
- by Commissioners, 44.
costs of, 40, 44.
- for purposes of probate, 40.
- inspection by Commissioners for purpose of, 44.
- persons paying rateable part of estate duty bound by, when, 68.
- separate, for different classes of property, 52.

VALUE,

- annuities granted for, exempted from estate duty, 16, 17.
- deduction allowed in cases of leases and annuities granted for partial, 16, 17.
- gross, what is, 73.
- leases for lives granted for full, exempted from estate duty, 16.
- of agricultural property for succession duty, 75.
- of lands and chattels settled by Act of Parliament, how ascertained, 27.
- of lands and chattels settled by Royal Grant, 27.
- of property, course to be adopted if executor does not know, 30, 31.
passing on cesser of interest, 43.
- principal, general rule for ascertaining, 39, 40.
of agricultural property, 40.
of annuities, 7, 14.
- purchaser for, without notice, exempted from liability, 55, 64.
no charge for duty on property in hands of, 55, 64.
- transactions for full, exempted from estate duty, when, 16.
partial, exempted from estate duty, when, 16.

VALUERS,

- County Council to appoint, 62.
- Court may refer questions as to value to arbitration of, 62.

VOLUNTARILY,

now omitted from 44 & 45 Vict. c. 12, s. 38, and 52 & 53 Vict.
c. 7, s. 11..8, 10.

VOLUNTARY,

now omitted from 44 & 45 Vict. c. 12, s. 38; and 52 & 53 Vict.
c. 7, s. 11..8.
effect of omission, 10.

VOLUNTEER,

accountable for estate duty, 50.
reference to, omitted from 44 & 45 Vict. c. 12, s. 38, and 52 &
53 Vict. c. 7, s. 11..8, 10.

WELLINGTON,

lands and chattels settled on Dukedom of, how dealt with, 28.

WILL,

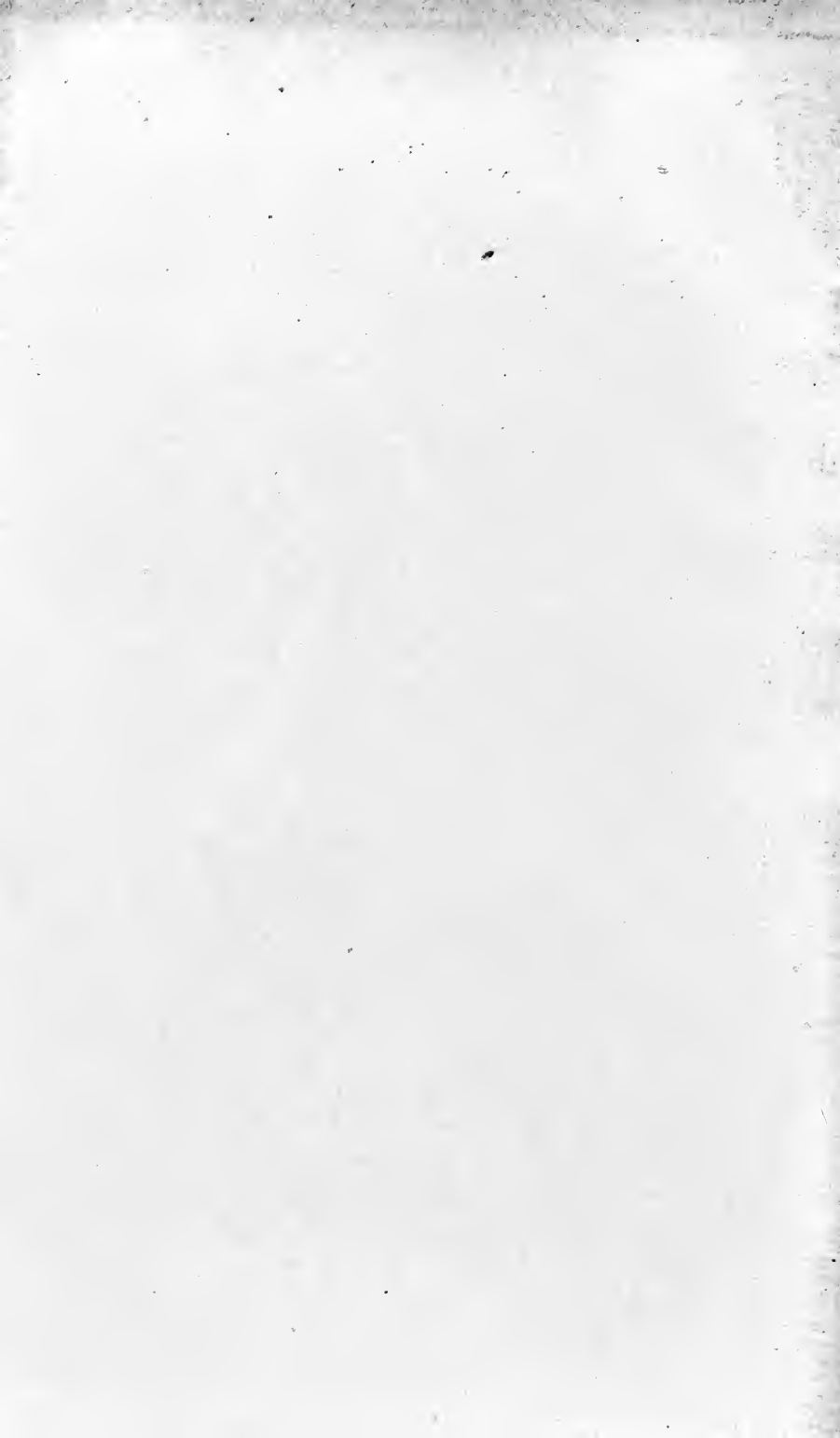
definition of, 82.

WOODLAND,

quære, how valued, 41.

WRIT OF SUMMONS,

for account and payment of estate duty, 45, 60.



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