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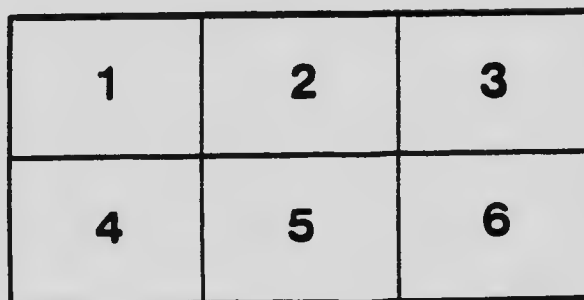
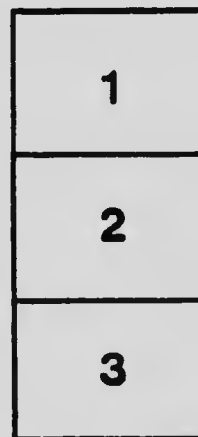
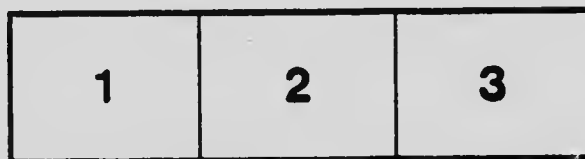
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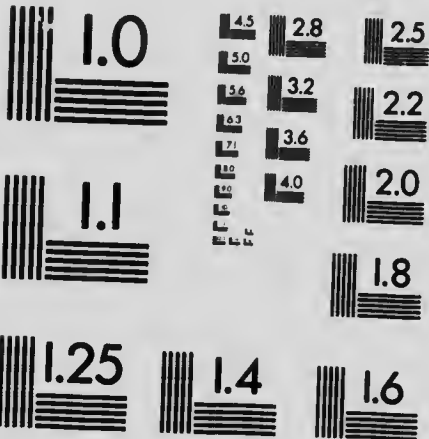
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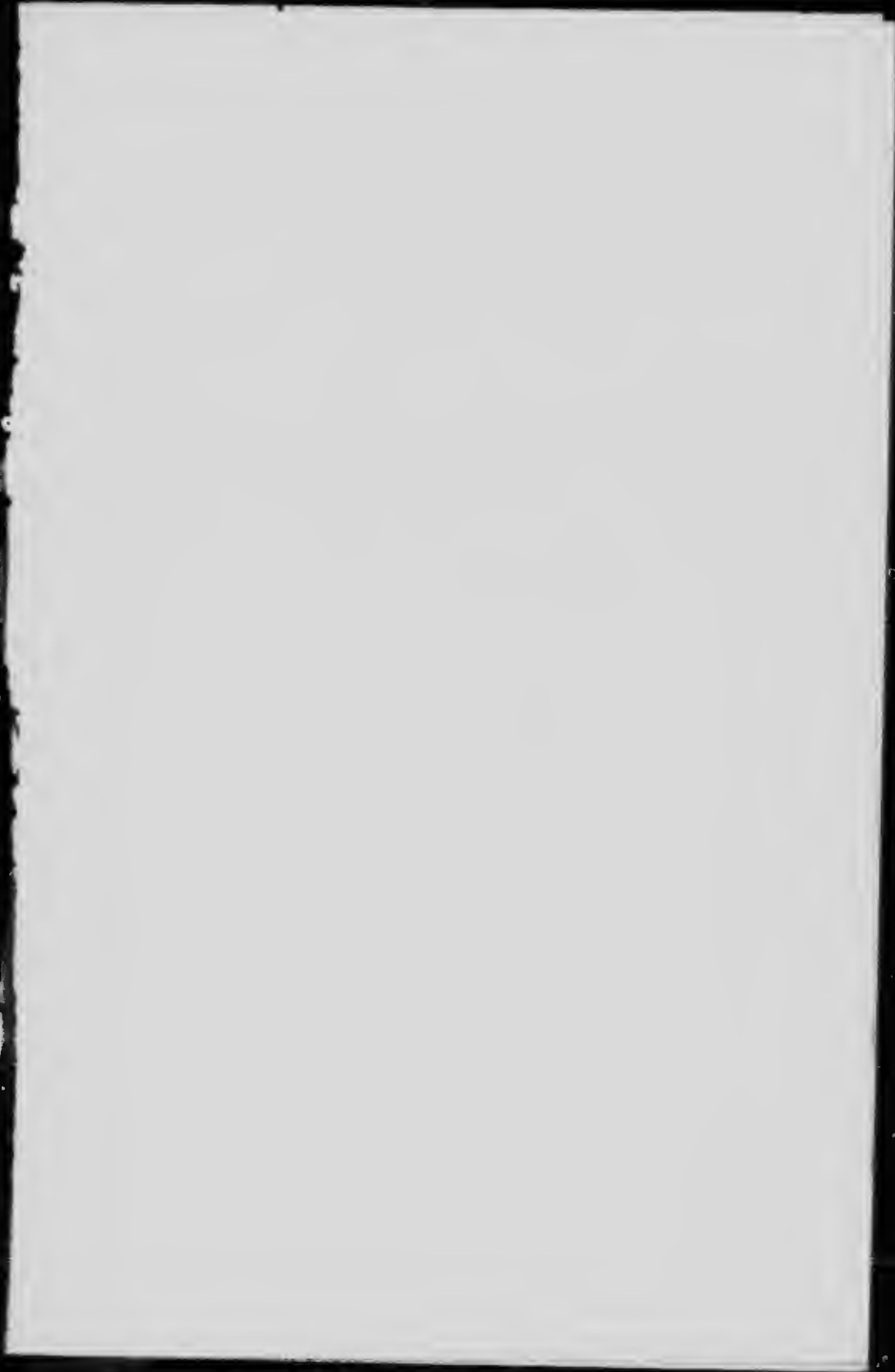
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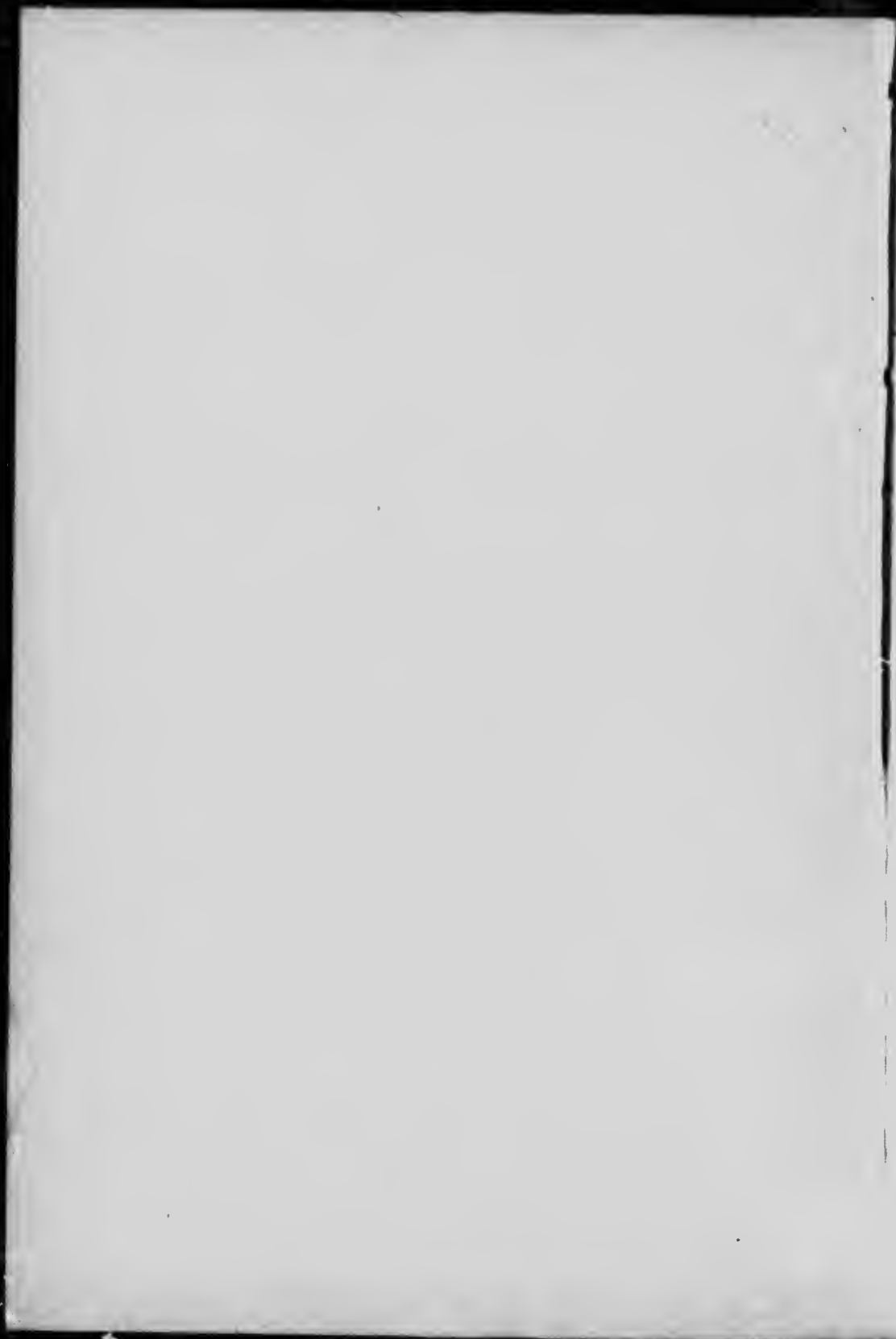
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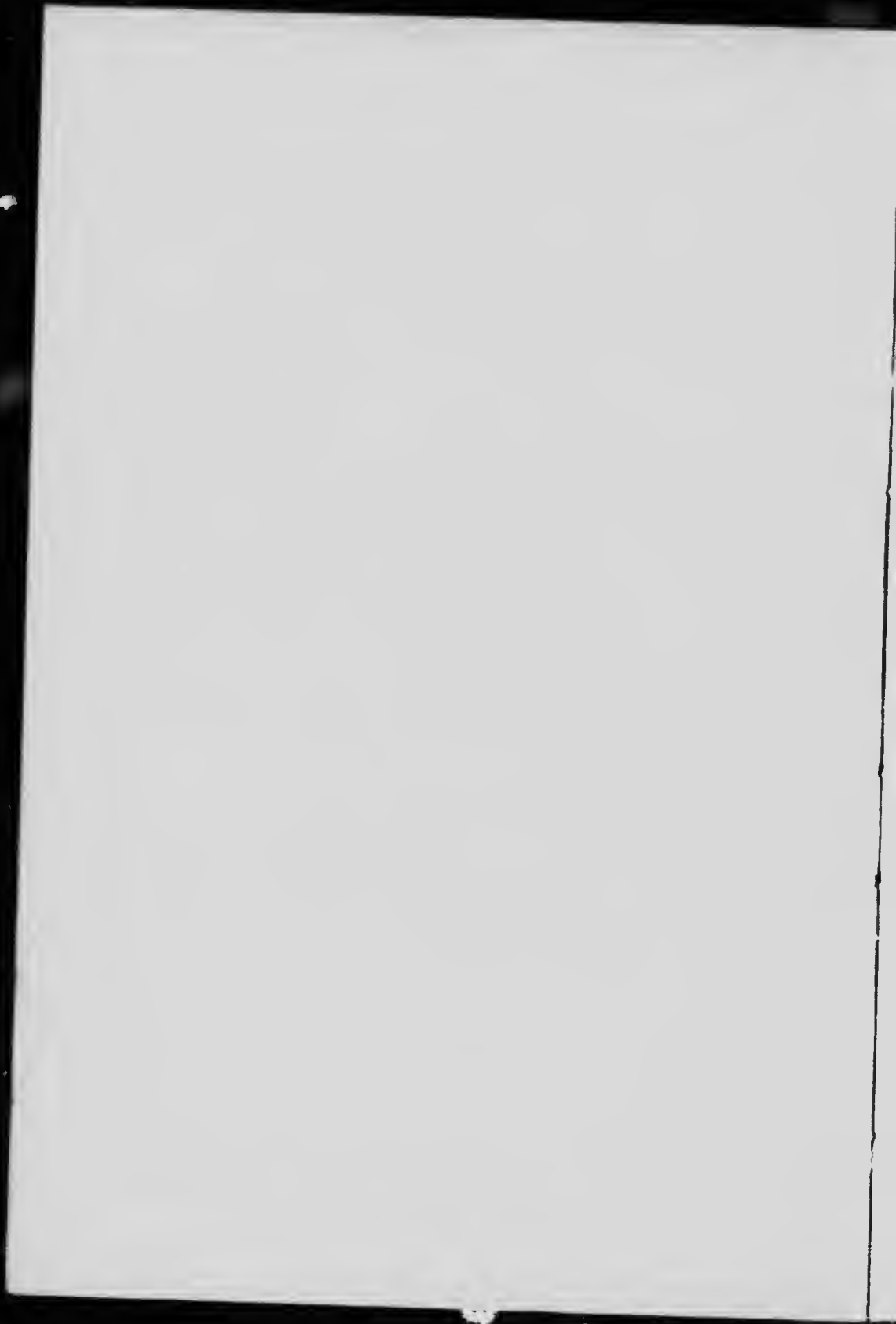
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THE ONTARIO  
SUCCESSION DUTY  
ACT





*A TREATISE*  
ON  
THE ONTARIO  
SUCCESSION DUTY  
ACT

BY  
JAMES BARBER McLEOD, ESQUIRE  
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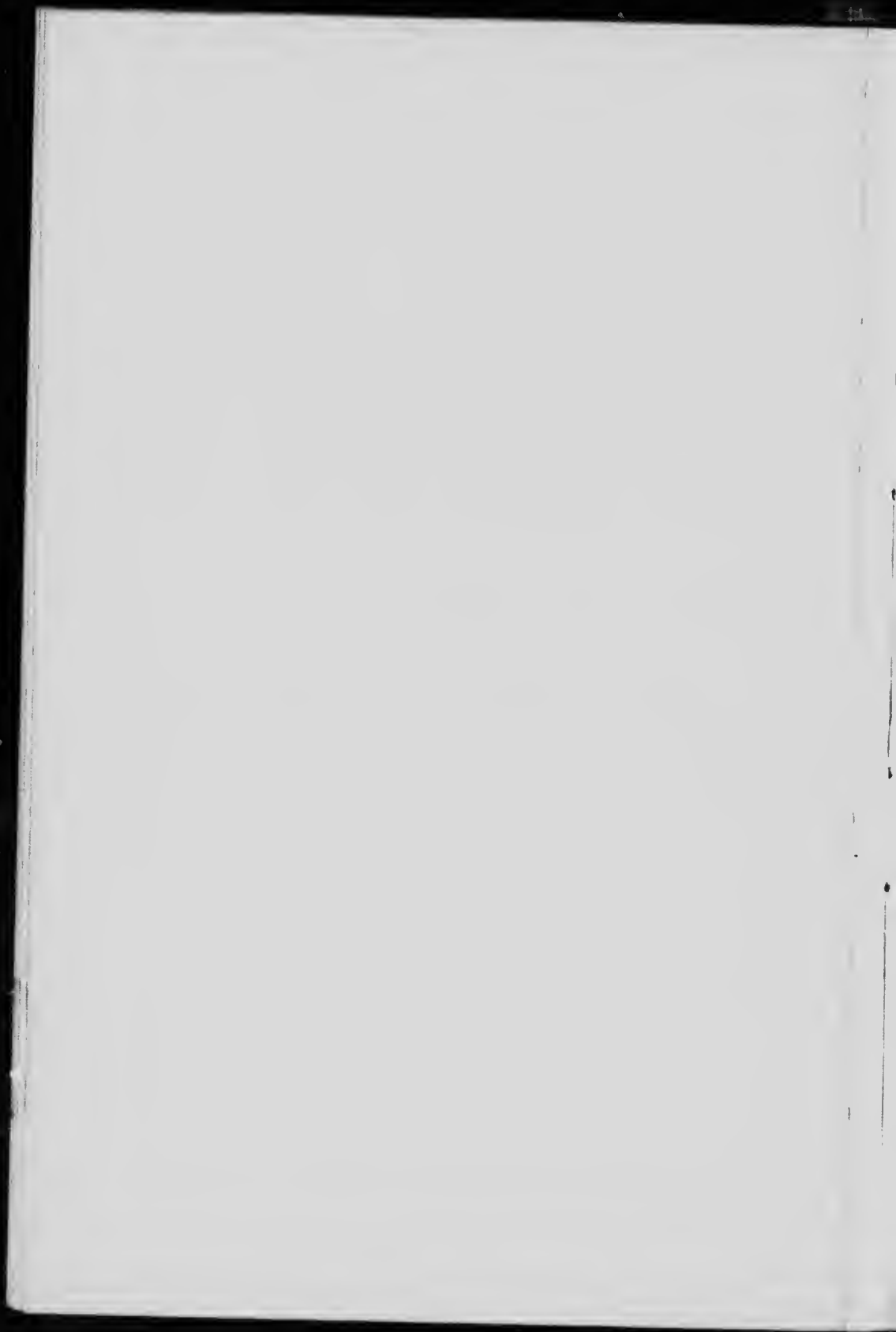
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A TREATISE  
ON  
THE ONTARIO  
SUCCESSION DUTY  
ACT



## THE ONTARIO SUCCESSION DUTY ACT

Death duties, other than the probate duty which was collected in early times by the Lord Ordinary on the goods, chattels and other personalty of a deceased person, are not of recent origin, as taxes on property devolving on the death of persons whether by will or intestacy were exacted in Great Britain by the Legacy Duty Act as early as April 26th, 1796; by the Succession Duty Act on the 4th of August, 1853; and the Finance Act on July 31st, 1894. In the State of Pennsylvania there was a Collateral Inheritance Tax Act on personalty as early as 1826, and in the State of New York there was enacted a Collateral Inheritance Tax Act on personalty in 1885. The last named was made a tax on lineals on the same property in 1891 and on real estate in 1903.

Introduc-  
tion.

The original Succession Duty Act in Ontario went into effect on July 1st, 1892. The province had expended yearly large sums of money towards the support of asylums for the insane, institutions for the blind and for deaf mutes, and for the support of hospitals and other charities and for educational purposes, and as it was greatly in need of revenue for these purposes, a

Ontario Act.  
1st July,  
1892.

Original  
purpose.

preamble was inserted in the Act that the new taxes would provide a fund for defraying part of these expenditures. This preamble remained in the statute until the year 1905, when it was struck out because the sums of money paid with respect to deceased persons' estates from year to year were not expressly set apart to meet the purposes mentioned in it, although the Government continued to spend yearly large sums therefor.

The Act followed closely the inheritance tax laws in force in the States of New York and Pennsylvania, particularly in the operative clauses of the Acts of these States as well as those clauses relating to the procedure for the collection of the taxes through the medium of the Surrogate Courts.

(1) GENERAL SCOPE OF THE ACT.

The Act purported to be a tax on the succession owing to the death of a person who was at the time of death domiciled in Ontario, or had been so domiciled within five years previous thereto, of property situate in Ontario, including real and personal estate of every description and every estate or interest therein capable of being devised or bequeathed by will or passing on the death of the owner to his heirs or personal representatives. At that time there was no duty payable where the

Property  
passing on an  
Ontario  
succession.



whole property after deduction of debts and costs of administration did not exceed \$100,000, where the heirs or legatees were the father, mother, wife, husband, son-in-law or daughter-in-law, or the lineal descendants of the deceased who may be called generally the lineal class; (see *Ross v. The Queen*, 32 O.R. 143); nor was there any duty payable where the whole property after such deductions devolving on collateral relations and strangers in blood did not exceed \$10,000, nor where the benefits derived by each person were not in excess of \$200. Although the language used in the statute was seemingly clear in its intention to tax the whole value of the property where it exceeded \$100,000 or \$10,000, and not only the excess over these amounts, it was contended that the Act entirely exempted property to the value of \$100,000 devolving on any of the above named lineals, and allowed a like exemption of \$10,000 in other cases, but the section fixing the rates of duty in each class, which will be referred to later, enacted that where the aggregate value of the property exceeds \$100,000, and any property passes either in whole or in part to or for the benefit of any beneficiary belonging to the lineal class, so much thereof as so passes shall be subject to the duty at the prescribed rates. Similar words are used in the same section with respect to the

55 Vic.,  
Chap. 6,  
S. 3, S-S. 3.

property devolving on the near collateral class, and again with respect to remote collaterals and strangers in blood. The result of this construction of the actual working of the Act was that an estate worth \$100,100 after deducting the debts and expenses when devolving on children or other lineals, would be liable to duty at the prescribed rates, but if the estate after such deductions amounted to \$99,900 no duty was payable in so far as that class of heirs was concerned.

These exemptions of estates were reduced in 1905 to \$50,000 in the case of the lineal class, and again in 1915 to \$25,000, so that at present any estate in which the whole property, wherever situate, including gifts *inter vivos* of Ontario property, exceeds \$25,000 after deduction of debts and other allowances, and devolves on any of the generally described lineal class, as distinguished from collateral relations and strangers in blood, will pay duty to the province on the property liable under the Act. Likewise the exemption of estates devolving on the collateral class and strangers in blood was reduced in 1915 from \$10,000 to \$5,000, with the like result that any property devolving on near and remote collaterals and strangers in blood will thereafter be liable if the whole estate of the deceased, wherever situate, including gifts *inter vivos* of

Ontario property, exceeds \$5,000 after deduction of debts and other allowances.

While the original Act purported to tax all the property of any person who had been domiciled in Ontario, but who had changed such domicile within five years of his death, this provision was no doubt abandoned as impracticable. as in the revised Act (1897) domicile at the time of death alone was made the test to include all the property passing by a succession in Ontario.

Domicile at death the test.

There were also the provisions relating to the taxation of property on the ground of situs in Ontario owned by a person dying domiciled elsewhere.

The definition of the word "property" in section 2, seemed wide enough to include personal property which had an actual situs out of the province and which under the fiction of law that all personalty follows the domicile of the owner, would therefore be within Ontario and capable of passing to the heirs of such decedent by virtue of the succession in Ontario.

Personal property out of Ontario.

It will not apply to real estate or chattels real situate in a foreign country.

By an amendment the meaning of the Act, in so far as the incidence of the tax on personal property which was actually situated out of the province was concerned, was intended to be made clear by enacting the wording then used and

1 Edward VII, Chap. 8, Sec. 6.

discarded after the decision of the Privy Council in *Woodruff v. Attorney General*, 1908, A.C. 508, viz.: "All movable property locally situate out of this province and any interest therein where the owner was domiciled in this province at the time of his death, whether property passes by will or intestacy," and the following year it was amplified by the word "personal" in addition to "movable."

This amendment could not have been made without the full intent of following the well known fiction of law, "*mobilia sequuntur personam*," which has been clearly laid down in England and Scotland in the early revenue cases. *Wallace v. Attorney General*, L.R., 1 Ch. App. 1, and *Thompson v. Adv. Gen.*, 12 Cl. and Fin. 1; and the Canadian case arising in Quebec: *Lambe v. Manuel*, 1903, A.C. 68.

*Woodruff v.  
Attorney  
General.*

While the right of a province to make the incidence of the tax fall on all classes of property which pass on the succession in Ontario was not affected by the *Woodruff* case (*supra*), it was held by the Privy Council that the Act, as it stood at the time of the decedent's death in so far as the provisions applied to property transferred by the deceased in his lifetime, related clearly to property situate in Ontario, and as all the property in question consisted of American railway and municipal bonds and other securities deposited in safety deposit vaults in New York

and money in the hands of bankers in New York, the situs was held to be outside Ontario, hence the Act did not apply to it, and further that the province in seeking in this action to tax property of this nature so given away during the deceased's lifetime, was attempting something which was beyond its jurisdiction.

(2) PROPERTY SITUATE IN ONTARIO OWNED BY PERSON DYING DOMICILED ELSEWHERE.

The Act also makes the incidence of the tax, except as to the exemptions hereinafter referred to, apply to all property, real and personal, situate in Ontario passing on the death of a person who dies domiciled elsewhere, or property in Ontario transferred within the meaning of the provisions relating to gifts *inter vivos* by persons so dying. The inclusion of this property owned by persons domiciled elsewhere, is natural enough when the object of the Crown is to obtain increased revenues for provincial purposes, although such property, except real estate situate in Ontario, would not strictly pass or devolve in Ontario and be the subject of a tax under a Succession Duty Act, as the succession in such cases would be in the country or place of domicile of the deceased.

When the Legislature has shown a clear intention to tax such property on account of its local

situation, the courts will apply the reasoning laid down in probate cases, and the beneficiaries or executors or other personal representatives who are applying to the Surrogate Court at the place of situs, will be compelled to pay the duty according to the rates imposed by the Act. See *Harding v. Commissioner of Stamps*, 1898, A.C. 769.

Ordinarily speaking it is a simple matter to determine what property passes on the death of a person domiciled in Ontario, as under this definition property which has an actual or local existence and situation in Ontario, and also property of a personal or movable nature, except foreign leaseholds, which has an actual situs elsewhere but which is held by fiction of law to be situated at the place of domicile, would obviously be a part of the Ontario succession because it would be recoverable by the executors under the Ontario grant of Letters Probate, although it might be necessary in order to collect it or bring it into the estate, to apply to a foreign jurisdiction for ancillary letters. The proper interpretation of words indicating an intention to tax property locally situate in Ontario and owned by a person who dies domiciled elsewhere, necessitates in each case the knowledge of all those decisions which were arrived at in early times by the Ecclesiastical Courts in England to determine what property

came within the jurisdiction of such courts in Canterbury and York and was therefore liable to pay probate duty to such court, and a long line of later decisions which support them or distinguish various kinds of properties. While no difficulty can arise with respect to tangible property such as horses, cattle, and other objects which have a natural existence in a particular place, the situs of intangible personal property is not so easily determined. The situs of the principal classes of such property is as follows:

Situs of property.

Book debts, money in bank, promissory notes, or other simple contract debts are locally situate where the debtors reside: see *Re Ewing*, 6 P.D. 23; *Fernandez Executors*, L.R., 5 Ch. App. 314; *Attorney-General v. Newman*, 10 L.R. 511; and see also *Lovett v. The King*, 43 S.C.R. 106; 1912, A.C. 212. It is submitted that the decision of the Privy Council does not overrule the first mentioned cases as it really turned on the construction of the provincial Act. Property covered by any trust or settlement is locally situate in Ontario if it is an Ontario settlement and the trustees or the majority of them are resident in Ontario: see *Cigala Trusts*, 7 Ch. D. 351.

(a) Simple contract debts.

Trust property.

Bonds payable to bearer, (see *Winans v. Attorney General*, 1910, A.C. 27; *Attorney General v. Boumens*, 4 Meeson & Wellesley 171),

(b) Specialty debts, bonds and mortgages.

mortgages and other instruments usually under seal are locally situate where the instruments themselves are "conspicuous," that is, where they are deposited or happen to be: see *Commissioner of Stamps v. Hope*, 1891, A.C. 476; *Harding v. Commissioner of Stamps*, 1898, A.C. 769; and *Treasurer of Ontario v. Patten*, 22 O.L.R. 184; but see in *Re Griggs estate, Toronto General Trusts Corporation v. The King*, *Times Law Reports*, May 16th, 1919, where the Privy Council held that mortgages on Alberta lands held by an Ontario decedent were situate in Alberta where one of the instruments was registered in that province.

(c) Insurance policies.

Insurance Policies, the same as mortgages: *Ontario Mutual Life Insurance Company v. Fox*, 30 O.R. 666.

(d) Stocks.

Registered Bonds, Debentures and Stocks, generally where the head office of the company is situate, because at that place there are the funds to pay the amount represented by the certificate, and the principal register for the bonds, debentures and stocks is there: *Re Ewing*, 6 P.D. 23. Seemingly the situs is the same notwithstanding the stock is on register elsewhere, where it may be transferred: *Attorney General v. Higgins*, 2 *Hurlstone & Norman* 339. It is otherwise, however, where the certificates are endorsed "in order," that is, endorsed in blank and transferable by



delivery. In such case the stock is situate where the certificates happen to be: *Stern v. The Queen*, 1896, 1 Q.B. 211. However, it should be noted here, that at the Imperial Conference in 1911, an agreement was reached with the Premiers of the Dominions overseas, that the situs of stock of any company in any Dominion would be situate in Great Britain if it were transferable on a register there. The provinces of the Dominion of Canada were not directly represented at this conference and the Dominion has not yet passed any Act to collect succession duty or other death duties.

Share in Partnership: the property is locally situate where the partnership carried on its principal business: *Re Laidlay v. Advocate General*, 15 A.C. 468. In England lands purchased by partnership funds and conveyed to one or more partners would be personalty and in accordance with the above decision would be locally situate in the country where the principal business of the partnership was carried on.

(e) Share in partnership.

In Canada there has been a recent decision which will alter the general law relating to partnership assets in England. Large timber limits situate in British Columbia, bought by partnership funds and standing in the names of two partners one of whom died domiciled in Ontario, where the principal business of the partnership was carried on, were held to be real

estate and to have a situs in British Columbia, where that province had enacted in its Land Registry Act that land conveyed to two or more persons would be taken by them as tenants in common unless a contrary intention was shown in the conveyance, and consequently the property had a situs in that province and not in the place where the principal business was carried on. *Boyd v. Attorney General of British Columbia, Attorney General of Ontario intervening*, 54 S.C.R. 532.

### (3) GIFTS *Inter Vivos*.

The Act originally purported to tax gifts made during the lifetime of the deceased of any property voluntarily transferred by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, vendor or donor, or made and intended to take effect after such death, in trust or otherwise or by reason whereof any person shall become beneficially entitled by possession or expectancy, or of the income thereof. These provisions were copied from the New York and Pennsylvanian Inheritance Tax Acts and while their scope is seemingly very wide, yet the American and our own decisions have so limited the meaning of the expression "made in contemplation of the death," that the Crown was rarely able to satisfy the onus cast upon it of

proving that the transfer had been made at a time when the donor was *in extremis* or actually had knowledge of the near approach of death. It is now contended that these difficulties have been entirely overcome as the present Act refers to gifts made in the general contemplation of death, without regard to its near approach, and it is thought that any dispositions of property without consideration moving from donee to donor or the creation of a voluntary trust, show a general intention to transfer property in the transferrer's lifetime within the meaning of these provisions and the property is taxable.

4 Geo. V.,  
Chap. 10,  
Sec. 4.

It was therefore not until the 7th of April, 1896, when a number of clauses relating to dispositions in the deceased's lifetime were copied from the Finance Act in Great Britain that much attention was paid to the collection of duty from these sources. The clauses relating to these gifts were far reaching and affected various kinds of gifts made by the deceased.

Finance Act,  
31st July,  
1894.

Their effect was greatly enlarged by the revised Succession Duty Act under which the whole Act was made retroactive and applicable to every past and future disposition of property upon the death happening after the original passing of the Act on the 1st day of July, 1892. Thus it applied to any gift *inter vivos* within the meaning of the Act of any person so dying (Sec. 3),

R.S.O. 1914,  
Ch. 24, Sec. 7,  
S.S. 2.

Section 3.

whereas previously these clauses would have had no application to any death before April 7th, 1896, and the enlarged application of the Act covered all gifts *inter vivos* whenever made, unless the donee had assumed *bona fide* possession immediately upon the gift and thenceforth retained the property to the entire exclusion of the donor, or of any benefit of the donor, whether such benefit was derived by contract or voluntarily or in any other way.

(4) PROPERTY TAXABLE.

Shortly, the province is entitled to duty on the following property, of which the situs must be in Ontario. See *Woodruff v. Attorney-General of Ontario*, 1908, A.C. 508.

Voluntary  
gift in  
contempla-  
tion of death.  
Sec. 7, 8-8. 2 a.

(a) Any property voluntarily transferred by deed, grant, bargain, sale or gift made in general contemplation of death of the grantor or donor, and with or without regard to the imminence of such death; or made or intended to take effect by possession or enjoyment after such death to any person in trust or otherwise.

According to American authorities the words "in contemplation of death" are intended to cover all transfers made with the intention of evading death duties, although the intent to evade need not necessarily appear.

In *Re Baker*, 178 N.Y. 575, the words, "in contemplation of the death" were held to refer, not to that general expectation which every mortal entertains, but rather to "that apprehension which results from some existing condition of body or some impending peril which would cause death shortly."

In another American case, an old man eighty-six years old, physically feeble but mentally active, makes two gifts of securities of large amounts to his children, stating to them that his property is a burden, that he intends to give it to them and will divide a part of it at the present time, and he actually divided and delivered the securities to the donees and afterwards exercised no control over them. These gifts were held not to be in contemplation of death, within the meaning of the New York Inheritance Tax Act, from which this clause was taken. See *Re Spaulding* 163 N.Y. 607. See also *Attorney General v. Woodruff*, 1908, O.L.R., page 416.

As stated earlier in this article, these decisions cast upon the taxing state the onus to prove that the deceased was in some impending peril of death through a disease which would likely carry him off, having regard to the condition of his body and age and other circumstances. Therefore, the province amended the Act to apply to any gifts made in general contemplation of death without regard to threatening death.

*Donatio  
mortis  
causa.*  
Sec. 7, S-S. 2 b.

(b) Property taken as a *donatio mortis causa*.

In order that any gift *inter vivos* would be liable to duty under this clause, it must have been given absolutely to the donee at a time when death was impending and the death must have actually taken place. If the donor recovers, the property might become liable under some other clause but not under this.

Immediate  
gift  
*inter vivos.*  
Sec. 7, S-S. 2 b.  
See also 9 Geo.  
V, Chap. 9,  
Sec. 1.

(c) Property taken under a disposition operating or purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, made since the 1st day of July, 1892.

At one time this clause had particular application to gifts which had not been *bona fide* made twelve months before the death of the deceased. Now it applies generally to any immediate transfer made since the original Act was passed.

Gift when-  
ever made,  
without  
possession, *idem.*  
See also 9 Geo.  
V, Chap. 9,  
Sec. 1.

(d) Property taken under any gift whenever made of which actual and *bona 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, whether voluntary or by contract or otherwise.

The great majority of gifts *inter vivos* are taxable under this clause for the reason that the

donors' desire to retain possession of the property during their lives, or their position in life is such that they cannot deprive themselves of the income of the property so intended to be given away. Therefore, the donor usually makes a reservation of an interest for life or for a sufficient period to bring the property within the meaning of this clause. Mr. Justice A. L. Smith, in discussing a similar clause incorporated in the Imperial Finance Act, says in *Attorney General v. Grey*, 1898, 2 Q.B., page 541: "In my judgment the meaning of the section is that if there be a gift, no matter when made, of property *inter vivos*, then the property must be included in an account and therefore be liable to estate duty, unless the donee has *bona fide* assumed possession and enjoyment of the property immediately upon the gift, and has thenceforward retained the possession and enjoyment thereof to the entire exclusion of the donor, or if he has taken and retained the possession to the entire exclusion of the donor, then that this possession and enjoyment has been without any benefit by contract or otherwise. To escape duty both these events must occur." It is suggested that the donee must show that he has been in absolute and continuous possession and enjoyment of the property because if it can be shown that the donor has at any time since the date of

the gift received a scintilla of benefit, or that benefits were reserved by the gift and afterwards released, the donee has not had that continuous enjoyment which will save him from the tax imposed. This clause has come up for review in many cases, but the most instructive and interesting is *Grey v. Attorney General* (*supra*) and at 1900, A.C. 124. See also *Attorney General v. Seccombe*, 1911, 2 K.B. 688; *Attorney General v. Worrall*, 1895, 1 Q.B. 99; *Crossman v. The Queen*, 18 Q.B.D. 256.

Joint  
ownership.  
Sec. 7, S-S 2 c.

(e) Property which a person having been absolutely entitled to in his own right has caused to be vested in himself and any other person so that the beneficial interest accrues by survivorship on his death to such other person.

Settlement  
reserving  
life interest  
or other  
control.  
Sec. 7, S-S 2 d.

(f) Property passing under any past or future settlement including any trust, whether verbal or written, and contained in a deed or other instrument effecting the settlement whether such instrument was made for a valuable consideration or not, as between a settlor or other person whereby the interest in such property or the proceeds of sale thereof for life or any other period determinable by death is reserved to the settlor, or whereby the settlor may have reserved to himself the right to exercise any power to restore to himself or reclaim the absolute interest in such property or otherwise re-settle the same.



This paragraph brings within the purview of the Act any past or future settlement or trust in which (a) the deceased reserves an interest in the property for life, (b) the deceased may have reserved to himself the right by any power to restore the property to himself, (c) the deceased reserves the right to otherwise re-settle the property or any part thereof. See *Attorney General v. Grey*, 1898, 1 Q.B., page 318; *Attorney General v. Campbell* (1872), 5 H.L.C. 524.

(g) Any annuity or other interest arising through the purchase of insurance by the deceased, either by himself alone or by arrangement with any other person to the extent of the beneficial interest accruing by survivorship on the death of the deceased. This includes money received under a policy of insurance effected by any person on his life where the policy is wholly kept up by him for the benefit of any donee existing and named at the time of effecting the policy or afterwards.

Annuity  
insur. nec.  
Sec. 7, S-S 2 e.

Any annuity or policy of insurance purchased by the deceased from an insurance company for the benefit of another person, accruing or arising to such person on the death of the deceased, will be liable to duty.

The words "other interest" are sufficiently wide to cover any policy of insurance effected by

the deceased for the benefit of another and accruing on the assured's death without the other clauses. See *Attorney General v. Dobree*, 1900, 1 Q.B. 442. Also *Attorney General v. Hawkins*, 1901, 1 Q.B. 285. Under this clause it is unnecessary for the Crown to show that deceased entered into a definite contract with the donee to purchase the annuity or effect insurance in favor of the donee. If the fact is that the deceased purchased such insurance for the benefit of the donee who derives such benefit on the death of the donor, the property will be liable.

Where a policy has been so transferred it was at one time questionable whether the transfer to a donee at a future period could be within the contemplation of the Act. Now this objection is overcome as insurance money in such policy is liable where it is kept up by the deceased for the benefit of the donee mentioned in the policy at the time of its creation or made a donee at some future period. If the deceased has paid the premiums on the insurance effected by him for a portion of the period mentioned in an endowment or other policy and afterwards assigns the policy to another who continues to pay them for the balance of the period, the province would be entitled to duty on a proportion of the insurance moneys having regard to the time during which deceased had so paid, and a proportionate amount would

be exempt having regard to the time for which the payments were paid by the assignee.

Where the policies have been assigned for a consideration equal to the benefits received by the assignee, it would seem that this assignment for value would exclude any idea of a gift *inter vivos* and if not exempt within a later clause of the Act dealing with a transfer for a consideration in money or money's worth, it would probably not come within the clause in question. On this point see *Lethbridge v. Attorney General*, 1907, A.C. 19.

(h) Property of which a person dying was at the time of his death competent to dispose.

Power of appointment.  
Sec. 7, S.S. 2 g.

This applies to a general power of appointment given to a person who is capable of exercising it and does not apply to a power limited to children or to any particular class of donees.

The words "competent to dispose" do not necessarily mean that the deceased actually exercised the power of appointment which is vested in him, so long as the instrument creating the power gave him the right to dispose of it by deed *inter vivos*, or by will, and he has not done anything to transfer the property or otherwise exercise the power in his lifetime.

This paragraph is wide enough to cover the deceased's interests in property held in joint

Joint tenancy.

tenancy, and in the event of his dying without severing his moiety, it will, it is suggested, be deemed to pass. See Hanson on Death Duties, 6th Edition, page 89.

**Estate tail.**

It also covers property of which the deceased was tenant in tail, whether in possession or not and whether concurrence of any other person was or was not required.

**Dower.  
Sec. 7, 8-8. 2 h.***(i)* Any estate in dower.

A widow's right to dower is not the subject matter of a gift by the deceased husband but is rather a legal right accruing to her at his death. As it does not devolve or pass, it is expressly mentioned to show the estate taken by the widow is taxable.

**EXCEPTIONS.**

There are certain exceptions to these wide provisions taxing such dispositions. These are shortly:

*(a)* Gift three years before death. 4 Geo. V, Chap. 10, Sec. 6; 5 Geo. V, Chap. 7; 9 Geo. V, Chap. 9, Sec. 2.

Property given absolutely more than three years before the death of the donor to a child, son-in-law, or daughter-in-law, or to the father or mother of the donor, which does not exceed in the aggregate to the above named persons, the sum of \$20,000 in value or amount, where the donee shall have immediately assumed full possession and enjoyment and to the exclusion of the donor as in a previous paragraph mentioned.

Property given by the donor in his lifetime and not exceeding in value the sum of \$500 in the case of any donee. 9 Geo. V, Chap. 9, Sec. 2, S-S. c.

(b) Gift up to \$500.

Property passing by will for any religious, charitable, or educational purposes to be carried out in Ontario, or by a corporation or person resident in Ontario, or any unpaid subscription to any such corporation or person for such purposes.

(c) Religious, charitable and educational gifts.

Any legacy or distributive share not exceeding \$300 is exempt.

(d) Legacy not exceeding \$300.

(A) VALUE OF ESTATE.

Liability of property for succession duty depends on the aggregate value of all the deceased's property, wherever situate, not on the value only of the property in Ontario.

Thus the fair market value of all the property owned by the deceased at the time of death and situate out of, as well as in, Ontario and of any property comprising gifts *inter vivos* and any other property liable to duty under section 7 of the Succession Duty Act is aggregated, and if after deduction of debts defined by the Act, reasonable funeral expenses and surrogate fees, the net value:

R.S.O. 1914,  
Chap. 24,  
Sec. 7.

(a) Exceeds the amount of \$25,000 when passing to husband, wife, son-in-law, daughter-

in-law, or to any lineal descendant, or to certain ancestors; or

(b) Exceeds the amount of \$5,000 when passing to collateral relations and strangers in blood, duties are payable at the prescribed graduated rates.

"Aggregate value" defined.

R.S.O. 1914,  
Chap. 24,  
S. 2-A.

The term "aggregate value" defined in the interpretation section includes the value of property situate out of the province as well as in the province, and seemingly includes property in Ontario given away by the deceased *inter vivos*, and any other property made liable to duty under section 7 by reason of the expressed wording of sub-section 2 of that section, in which property passing on the death shall be deemed to include such gifts and other classes of property mentioned for all the purposes of the Act. The Legislature has included the value of all such property in such unmistakable language that it must be aggregated with the property in Ontario actually passing, and it seems no objection can be raised to this mode of determining what property may be so aggregated so long as there is a clear intention expressed: *Re Renfrew*, 29 O.R. 566. See also *Lambe v. Manuel*, 1903, A.C. 68, which seems to support this view. It should also be noted that only the value of the property after the deduction of debts is taken. (See below.) The value of property situate out of Ontario and given away by the

deceased within the meaning of the provision relating to the liability of property in Ontario so given away is not taken as part of the aggregate. See *Woodruff v. Attorney General*, 1908, A.C. 508.

“Fair market value” is the price which at the time of the deceased’s death could probably have been obtained or made in the open market: *Re Marshall*, 1909, 1 O.W.N. 258. In the Finance Act in Great Britain the term used is the “principal value.” This is practically synonymous with the phrase used in the Ontario Act. Fair market value may also be said to be the price which could be realized at the time of death by a purchaser willing to buy from a vendor who is willing to sell.

“Fair market value.”

Before determining the liability of the estate for duty, or fixing the amount of duty payable by the legatee, heir, or donee, the executor or other personal representative is entitled to deduct all debts charged against the property devolving or given away, and certain debts payable by the deceased, also reasonable funeral expenses and surrogate fees, but no solicitor’s fees. Any debt, covenant in a marriage settlement, rent, or other charge against property or affecting it at the time deceased acquired it, would under the generality of the statute be deducted and only the net value would be liable for duty. On the other hand,

Debts and other deductions.

**Suretyship.**

debts or charges created by the deceased must be created *bona fide* and for a full consideration in money or money's worth and must take effect out of deceased's interest. If the deceased is liable as surety only, any right of reimbursement must be valued and the portion of the debt for which he cannot obtain reimbursement may be deducted.

A covenant in a marriage settlement to settle property or to give a life annuity to an intended wife would not be a proper deduction because the consideration was not for money or money's worth although it is a valuable one and good against creditors: *Floyer v. Bankes*, 3 DeG. J. & Sm. 306. Where the deceased conveyed property to trustees of a marriage settlement and created benefits for his intended wife, who in return for provisions in her favor released any rights to dower, it was also held that the settlements in her favor were not a deduction as the real consideration was the marriage: *Lord Advocate v. Alexander Trustees*, 7 S.S.C., 5 Ser. 367. The debt must be created wholly for deceased's own benefit: *Lord Advocate v. Warrenden Trustees*, 8 S.S.C., 5 Ser. 371. See also *Attorney General v. Richmond & Gordon (Duke)*, 1909, A.C. 466. It is submitted that a claim for damages for misfeasance or misconduct by a director of a company is not an allowance under the Act, even when



judgment has been signed. A debt barred by the Statute of Limitations, paid by the executors or other personal representative, would be a proper allowance if it were originally created *bona fide* and for a full consideration in money or money's worth, and otherwise conformed to the wording of the section relating to such allowances.

In the practical working out of the Act in large estates where deceased had property out of Ontario as well as in Ontario, it is not an unfair adjustment against the taxed subject or against the Crown to apportion the debts against the estate properly allowable under the Act against the whole property, wherever situate, so that the property in Ontario liable to duty bears only the pro rata share of debts: *Wallace's case*, *The Queen v. Commissioner of Stamps*, 9 Q.B. 637; *Hanson on Death Duties*, 6 Ed. 829; *Re Kloebe*, 28 L.R., C.D. 181. Where property subject to a charge or encumbrance is specifically bequeathed, such encumbrance must first be deducted from it.

Under the Imperial Finance Act where the same allowances are made for reasonable funeral expenses, charges not directly connected with the funeral, such as for embalming the body, costs of transportation from abroad for burial in Great Britain, or costs of a monument, are not deductible. The same practice is followed here.

Funeral  
expenses.

## (6) RATES OF DUTY.

The Succession Duty in Ontario is a graduated tax on the property passing to the legatee, heir, or donee, according to the relationship in which he stood to the deceased, and there is also a graduated supertax from one to five per cent. imposed on the legatee or other beneficiary where any person receives over the amount fixed by the Act.

**Lineals.**

Where the aggregate value of the property exceeds \$25,000 and the whole or part passes to grandfather, grandmother, father, mother, husband, wife, child, son-in-law, or daughter-in-law, the amount so passing is subject to duty on the following scale:

If the aggregate value is over	And not more than	The rate of duty is
\$ 25,000	\$ 50,000.....	1%
50,000	75,000.....	2%
75,000	100,000.....	3%
100,000	150,000.....	4½%
150,000	300,000.....	5½%
300,000	500,000.....	6½%
500,000	750,000.....	7½%
750,000	1,000,000.....	8½%
1,000,000	.....	10%

**Additional duty on lineals.**

If the aggregate value of the estate exceeds \$100,000, then there is a further duty on the

property passing to any of the persons mentioned in the preceding paragraph, on the following scale:

On the amount passing to one person, over	Up to	The additional duty is at the rate of
\$ 100,000	\$ 200,000.....	1%
200,000	400,000.....	1½%
400,000	600,000.....	2%
600,000	800,000.....	2½%
800,000	1,000,000.....	3%
1,000,000	1,200,000.....	4%
1,200,000	.....	5%

The maximum rate of duty therefore payable by any person in the class of grandfather, grandmother, father, mother, husband, wife, child, son-in-law, daughter-in-law is 15%.

Any person adopted by the deceased before he attains twelve years of age, and any infant to whom deceased had for a period of five years immediately preceding his death stood in the position of a parent and any lineal descendant of such person or infant are in the same class as a lawful child. Adopted child.

Where the aggregate value of the estate exceeds \$5,000 and the whole or part passes to a lineal ancestor—except a grandfather, grandmother, father or mother, who are in the preferred class Near collaterals.

before mentioned—or to a brother or sister or a descendant of such brother or sister (nephew or niece of deceased) brother or sister of the father or mother (uncle or aunt) or to any of their descendants (cousins) the amount is subject to duty on the following scale:

If the aggregate value is over	And not more than	The rate of duty is
\$ 5,000	\$ 50,000.....	5%
50,000	100,000.....	10%
100,000	.....	12½%

Additional duty on near collaterals.

Further duty is payable also by persons in the class last mentioned on the amounts which they respectively receive if the aggregate value of the estate exceeds \$50,000. This further duty is on the following scale:

On the amount passing to one person, over	Up to	The additional duty is at the rate of
\$ 50,000	\$100,000.....	1%
100,000	150,000.....	1½%
150,000	200,000.....	2%
200,000	250,000.....	2½%
250,000	300,000.....	3%
300,000	350,000.....	3½%
350,000	400,000.....	4%
400,000	450,000.....	4½%
450,000	.....	5%

The maximum rate payable by any one in the last mentioned class is therefore 17½%.

Where the aggregate value of the estate exceeds \$5,000 and the whole or part passes to any person in any other degree of collateral consanguinity than is before mentioned or to any stranger in blood the amount so passing is subject to duty on the following scale:

Remote  
collaterals  
and strangers  
in blood.

If the aggregate value is over	And not more than	The rate of duty is
\$ 5,000	\$ 10,000.....	6%
10,000	50,000.....	10%
50,000	200,000.....	15%
200,000	.....	20%

There is no super-tax on property passing to remote collaterals and strangers.

The maximum rate payable by any person in this class is therefore 20%.

Earlier in this treatise it has been shown that the rates of duty are imposed in the collateral class and against strangers in blood where the aggregate value of the estate, wherever situate, exceeds \$5,000, and against lineals where the aggregate value exceeds \$25,000. It necessarily follows that all property will be exempt where the estate does not reach the fixed limit in each class and devolves entirely to beneficiaries of the same class. For instance, an estate con-

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sisting of property in Ontario and other provinces, or in Great Britain, is valued at \$25,000 after the deduction of the debts, funeral expenses and surrogate fees, and if the property is given entirely to a wife or children or to any one of the lineal class, as above defined, there is no duty on the property situate in Ontario. Whereas if any part of such estate in excess of \$300 is given to collaterals or strangers in blood, duty will be imposed on the Ontario property if the whole estate, wherever situate, exceeds \$5,000.

Valuation  
of annuities,  
income, and  
future  
estates.

As the duty is imposed on the quantum of the benefits derived by each person, it becomes necessary to find the present value according to the tables of mortality of every annuity, bequest of income for life, or term of years, and of the remainder or reversionary interests which fall into possession upon the termination of the immediate estate. These values are ascertained by the Inspector of Insurance according to the Tables of Mortality, called the Healthy Male Tables, upon a requisition therefor from the Solicitor to the Treasury, or by the Surrogate Judge where there is a reference, and by the Act the Inspector's Certificate of the present values is final.

#### (7) WHO PAYS DUTY?

Succession duty is payable by the legatee, heir, or other person beneficially entitled by will or

intestacy, or by the donee where the property has been given away during the deceased's lifetime within the meaning of the provisions of the Act relating to gifts *inter vivos*, and the executors or administrators are obliged to deduct the duty from the share of the beneficiary before distributing the estate.

Unless otherwise provided, the duty is due at deceased's death and it is in general payable in eighteen months therefrom. If so paid no interest on the amount presently payable is chargeable, but if not so paid interest is charged thereon from the date of death and not from the expiration of the time for payment fixed by the statute. There are two important exceptions to this general rule: First, in order to allow any legatee by way of annuity more time for payment so that his first instalments of annuity are not entirely or largely appropriated for this purpose, the payment is spread over four yearly instalments commencing on the first anniversary of deceased's death. The duty is based on the present value of the annuity under the Healthy Male Tables, as explained elsewhere. If the annuitant dies before the four payments are made, the duty unpaid by him is charged to the reversioner who takes the funds so set aside to provide the annuity. A bequest of income for life or for a term of years is an estate or interest upon which the duty is due at death and payable

Time of  
payment.  
General  
R.

On Annuity.

On Income  
for Life.

within eighteen months under the general rule: *Re Bethune v. The King*, 3 O.W.N. 941, 26 O.L.R. 117.

On Remainder.

Secondly, the duty on any remainder, reversion or other future estate or interest in expectancy may be deferred until the time that the estate or interest falls into the possession of the reversioner, and at such time the property comprising the reversion is then valued at its fair market value and duty is then payable on it, and no allowance is made for any duty previously paid on the life income or other estate upon which the duty was paid or should have been paid at the time of the death of the deceased.

Commuta-  
tion of duty.

The executors may commute the whole duty payable upon any property upon which there are any annuities, life estates, and future estates by making a present payment of all the duty for which the property is liable. In such case the present value of all the immediate estates is added together and the difference between the value of such immediate estates and the value of the fund required to be set aside for these purposes is the present value of the reversion or future estate, and the commuted present value so ascertained is taxable at the rates chargeable according to the aggregate value of the estate and the relationship of the various parties entitled. Such commutation may be made after the period of eighteen



months has expired, but at such later period it is quite obvious that the present value of the reversioner's estate will be greater than it was at the time of deceased's death by reason of the shorter expectation of life of the annuitant or life tenant.

An allowance for any estate, legacy or succession duty paid elsewhere is made in the case of any succession in Ontario where an Order in Council has been passed extending the provisions of the section in question to the country or province where such duty is paid on the same property. Such Orders in Council have been passed with respect to duties paid in all the provinces of the Dominion and in Great Britain. In so far as this section applies to Great Britain, the amount paid there will be allowed where the law of England gives a situs in that country to the property taxed. A deduction from the value of the estate may be made by the Treasurer where duty has been paid to any other province or country with which reciprocal arrangements for an allowance of the duty paid in that country have not been made with this province. This allowance is somewhat different from an allowance of the duty payable referred to in the earlier part of this paragraph and the amount of duty so paid is merely deducted from the value of the property

Allowance  
for duty  
paid else-  
where.  
Sec. 9.

8 Geo. V.  
Chap. 6.

Allowance of  
duty as a debt,  
Sec. 5.

like a mortgage or other debt. The section is permissive and the allowance is made as a matter of course when the claim is supported by affidavit proving the amount paid and the property affected.

**Liability of executor.**

For the purpose of collecting the duty, the executor, administrator or trustee is an officer under the Public Revenue Act. He will be personally liable for the duty if he distributes the estate without deducting it and paying it over to the Treasurer.

#### (8) DISCLOSING OF ESTATE.

**1. By executors and administrators.**

Executors and administrators are obliged, upon presenting the usual proofs to the Surrogate Court for a grant of Letters Probate or Letters of Administration, to divulge the whole estate of a deceased person, of which he died possessed or to which he died entitled, or of which he was competent to dispose, and also all the property given away by him against the provisions of the Act. For this purpose personal representatives are required by the Act to file affidavits of value and relationship in duplicate, according to the forms approved of by Order in Council. These affidavits have attached as exhibits a full inventory of all the property of the deceased situate as well out of as in Ontario. Before the issue of letters probate or other grant, the

Treasurer requires the applicants to give security for the duty. This may be by bond with two sureties, on the form approved by him, in a penal sum generally double the amount of the duty payable, or by a deposit of cash to be fixed by him.

The estate devolving is usually in practice divulged on an application for letters probate of deceased's will or letters of administration of his estate. Yet in many estates no such application is made, therefore the Act requires every heir, legatee, donee, or other successor, and every person to whom property passes for any beneficial interest in possession or in expectancy, to file an Account in duplicate, according to the same forms of affidavit of value and relationship, as mentioned in the last paragraph, within six months after deceased's death, and these persons are liable for the duty upon so much of the property as passes to them. If the executor or other personal representative, or all of the above named persons, fail to make a full and complete inventory of the property as required by the Act, the persons liable for the duty are compelled to pay not only the duty imposed by the Act, but an additional twenty-five per cent. as a penalty.

No foreign executor or other personal representative shall assign or transfer any bond, debenture, stock, or share of any bank or other

2. By heir,  
legatee,  
or donee.

3. By for-  
eign  
executor.

corporation having its head office in Ontario, until the duty is paid, and the corporation is liable for the duty if it allows any transfer before receiving proof that it has already been paid to the Treasurer.

(9) FIXING VALUE OF ESTATE.

1. By reference  
to Surrogate  
Judge.

In the event of any dispute over the valuation of property disclosed or any omission of property from an inventory or the liability of any property to duty, the Treasurer of Ontario may direct the Surrogate Judge of the County where any property subject to duty is situated (usually the county in this province where the application for letters probate or of administration was made) to hear and determine what property is liable to duty, the aggregate value of the same, to fix the debts and other allowances, to value any annuity or future estates, to fix the amount of duty, the time when payable and the persons liable therefor, and for such purposes the Surrogate Judge has all the powers of a County Court Judge at the trial of an action. Before judgment the Surrogate Judge may request the sheriff of any county where any property in question is situate, or any other competent person, to make a valuation of it. There is an appeal from his judgment within thirty days to the

Appellate Division of the Supreme Court, but no further appeal is allowed. This procedure is usually followed by the Treasurer on any dispute over the valuation of the executors or other personal representatives, or a disputed point of law where a moderate amount of duty is involved, but where the amount is large or any constitutional or other important questions are raised, action will likely be taken in the Supreme Court by the issue of a writ of summons or on a summary application where there can be an appeal to the highest courts of the realm.

2. By action in Supreme Court.

Nowadays the temptation to make transfers or create trust settlements for the benefit of dependents and to evade Succession Duty on the death of the settlors is so great that the Treasurer has also plenary powers, in addition to the exhaustive inquiry before the Surrogate Judge, to appoint one or more Commissioners to make an examination of any person or any officer of a corporation as to his knowledge of the property of any deceased person in his possession or that of the corporation which may form part of the deceased's estate for Succession Duty purposes, and generally to inquire what property of the deceased is liable for duty, the amount thereof and the persons liable therefor. The Commissioners have power to compel production of all books, documents and papers of the trustee or other person or of the

3. By commissions of Inquiry.

corporation relative to the matters in question, and they have all the powers which may be bestowed under the Public Inquiries Act, and the report of the Commissioners may be enforced in the same way as a judgment of the Supreme Court with the like right of appeal as in a case of a reference to a Surrogate Judge to the Appellate Division of that court but no further.

(10) RETROACTIVITY.

R.S.O. 1914,  
Chap. 24.

With one exception no Act has received more legislative amendments and revisions than the Succession Duty Act since its original enactment on July 1st, 1892. It has exempted certain classes of property, then the same classes have been liable to taxation for a period of years, and then exempted again. Again on account of decisions which caused doubts as to the application of the Act to personal property locally situate out of Ontario, although passing by virtue of a succession in Ontario, the Succession Duty Act contained in the present Revised Statutes as well as the consolidated Act, 1909, is retroactive and applies to any past or future disposition of property whereby any person becomes beneficially entitled to any property upon the death of any person since July 1, 1892, except as to the rate of duty and as to the liability for duty of any property transferred *inter vivos*, and except as to

Section 3.

any duty fixed by a reference or judgment in an action, or where the duty has been fully paid and satisfied. Some instances of these changes in the incidence of the tax and effects of the retroactive Act are the following: The whole property, wherever situate, of the deceased owned at the time of death or transferred by gifts *inter vivos* will be aggregated to determine liability of the estate for duty, thus overruling *Re Renfrew*, 29 O.R. 566, defining the limit of property within the meaning of "aggregate value" as it had been construed to mean from the time of the original passing; the calculation of annuities, life estates, and reversions will be made on the present statute instead of by the mode laid down in *Attorney General v. Cameron*, 27 O.R. 380; 28 O.R. 571; property subject to a limited power of appointment in favor of children will not now be dutiable upon the exercise of the power although it was liable for many years; life insurance forming part of an estate of any deceased person who died prior to April 7th, 1896, will be dutiable although the special provisions introduced to include this class of property were not enacted until the date mentioned; and lastly, in determining the liability of an estate for duty the costs of the administration of an estate or of a trust are not allowable as a deduction under the present Act, although it was held in *Re Ross v.*

4 Geo. V.  
Chap. 10,  
Sec. 9.

The Queen, 32 O.R. 143, that such costs were debts that should be allowed. This change was made in an amendment passed in 1901, to disallow these costs and to introduce further restrictions in the deductions of debts by enacting the same provisions as are contained in the Imperial Finance Act in Great Britain.

Retroactivity  
of Act.

From the general retroactivity of the Act, the exceptions as to the rate of duty, the liability to duty of property transferred *inter vivos*, where duty has been determined by action or reference, or where duty has been fully paid and satisfied, are far reaching in many ways: for instance, under the first, it is submitted as no rate was enacted to make dutiable an estate devolving on the lineal class between \$25,000 and \$50,000 before April 8th, 1915, and before May 1st, 1905, between \$50,000 and \$100,000, the lowering of the dutiable limit to \$25,000 and \$50,000 on these dates respectively will not make dutiable any property devolving on this class, where the duty has not for any reason been paid and settled, or where the executors elected, as they may do, to pay on the income or life estates in possession and deferred the payment of the duty on the future estates until they fell into possession.

Notwithstanding that there is an express exception as to the liability of property transferred *inter vivos*, there has been a very far-reaching



retroactive provision in the Act since April 7th, 1896, making liable for duty any gift of property *whenever made* where the *bono fide* possession and enjoyment of the property were not assumed immediately by the donee and thenceforth retained to the entire exclusion of the donor or of any benefit to him by contract or otherwise.

This exception from the general retroactivity of the Act will necessarily apply only to the estates of persons who died before the passing of the section in question, otherwise the revised statute will be construed as speaking from the date of its assent by the Lieutenant-Governor and all its provisions will affect the estates of persons who had died at any time after July 1st, 1892, or who shall hereafter die.

(11) CONSTITUTIONALITY OF THE ACT.

On the broad question of the constitutionality of the Act, the province seems to be clearly within its legislative rights to exact a direct tax on property or persons within its territorial area. In the case of estates of persons who die domiciled in Ontario, the Act clearly and unequivocally taxes the succession in Ontario, that is, the property which devolves by virtue of a succession in Ontario, so that all personal or movable property owned by a deceased person at the time of his death would by fiction of law be situate in Ontario.

This fiction has already been judicially approved (although in a negative way) as applicable to the peculiar situation and powers of the provinces of the Dominion of Canada, limited to certain subjects although plenary and unlimited in the extent of the subjects given to the provincial legislatures. See *Lambe v. Manuel*, 1903, A.C. 68. A difficulty might present itself in some cases, for instance, where a foreign resident in New York or elsewhere is specifically bequeathed personal property locally situate in such foreign country. The legatee in such case might have recourse to the courts of that state and receive the legacy from the administrators, with the will annexed, who are not personal representatives at the place of domicile and the province would not be able to recover the duty from persons not subject to the jurisdiction of its courts. However, this seems, in the writer's opinion, a difficulty in the successful enforcement of the rights of the province rather than one affecting the constitutionality of the taxing Act.

In order to come within the classification of subjects given the province by paragraph 2 of section 92 of the British North America Act, the tax must be direct and raised for provincial purposes. Where the deceased person dies domiciled in Ontario it is submitted that the tax is direct on the succession in Ontario, that is, the

property comprising it. On the other hand, where the deceased was domiciled elsewhere than in Ontario, the fiction of law *mobilia sequuntur personam* is clearly negated by express and unmistakable language in the Act showing an intention to tax property as such situate in Ontario. (See *Harding v. Commissioner of Stamps*, 1898, A.C. 769.) Hence in this case the tax is on the property which may pass to a non-resident legatee or donee.

The heir, legatee or donee who receives the property taxed is the person liable to pay the tax. The mere fact that the executor pays the tax usually in the course of administration does not create any charge of indirectness, as he is not primarily liable for it, but is only personally held liable in the event of his breach of duty in failing to deduct the amount due by the Act before distributing the estate.

The *Cotton* case (*The King v. Cotton*, 1914, A.C. 176), which arose in the province of Quebec, does not lend much assistance in discussing the present Act, as it was a decision entirely upon the provisions of the Succession Duty Act in that province. The whole question is whether the provincial legislature can tax property of a personal or movable nature locally situate out of the taxing province. The provincial legislature had more or less restricted the scope of its Act to property passing "under any transmission, owing

to death, of property situate in Quebec," which was the phraseology of the Act in question in that action. Curiously enough Lord Moulton, who delivered the judgment of the Privy Council in this case, gave as one of his reasons for judgment that under the Quebec Act the executor, trustee, curator, notary or other person compelled to produce the will and file a declaration proving the value of the estate was the party liable for the duty, and as he reimbursed himself from the heir or legatee, whose property it was, and as this procedure was generally in practice carried out by the notary, hence the tax was indirect. The notary is the person who is specially exempted by the Act from any obligation to pay duty, but this error in misquoting seemingly vital provisions of the Act would probably not have made any difference in the decision when the court had already given effect to the words "transmission of property situate in Quebec" by confining it to such property as was actually situate in that province.

Much more might be written on this branch of the subject as well as on other important branches, but within the limits of a short treatise designed to deal with the whole subject in a somewhat general way much must of necessity be left unwritten. The indulgence of the reader is therefore sought if many points and difficulties arising in practice are left unnoticed.

# THE SUCCESSION DUTY ACT

BRINO

Revised Statutes of Ontario, 1914, Chapter 24, and Amendments

An Act respecting the payment of Succession Duty.

**HIS MAJESTY**, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as "*The Succession Duty Act.*" Short title.  
9 Edw. VII. c. 12, s. 1. Interpretation.

2. In this Act:—

- (a) "Aggregate value" shall mean the fair market value of the property after the debts, encumbrances and other allowances authorized by section 4 are deducted therefrom, and for the purposes of determining the aggregate value and the rate of duty payable the value of property situate out of Ontario shall be included; "Aggregate value."
- (b) "Beneficial interest" and "dutable value" shall mean the fair market value of the property after the debts, encumbrances, and other allowances and exemptions authorized by this Act are deducted therefrom; "Beneficial interest."  
"Dutable value."
- (c) "Child" shall include any lawful child of the deceased or any lineal descendant of such child born in lawful wedlock or any person adopted while under the age of twelve years by the deceased as his child or any infant to whom the deceased for not less than five years immediately preceding his death stood in *loco parentis* or any lineal descendant of such adopted child or infant as aforesaid born in lawful wedlock; "Child."
- (d) "Executor" shall include administrator; "Executor."
- (e) "Interest in expectancy" shall include an estate, income or interest in remainder or reversion and any other future interest whether vested or contingent but shall not include a reversion expectant on the determination of a lease; "Interest in expectancy."

"Passing on the death."

(f) "Passing on the death" shall mean passing either immediately on the death or after an interval, either certainly, or contingently, and either originally or by way of substitutive limitation, whether the deceased was at the time of his death domiciled in Ontario or elsewhere;

"Property."

(g) "Property" shall include real and personal property of every description and every estate and interest therein capable of being devised or bequeathed by will or of passing on the death of the owner to his heirs or personal representative;

"Treasurer."

(h) "Treasurer" shall mean the Treasurer of Ontario. 9 Edw. VII. c. 12, s. 2.

What dispositions and devolutions of property shall confer successions.

3. Every past or future disposition of property, by reason whereof any person has or shall become beneficially entitled to any property or the income thereof upon the death happening after the 1st day of July, 1892, whether the death has heretofore or shall hereafter happen, of any person domiciled in Ontario, either immediately or after any interval, either certainly or contingently, and either originally, or by way of substitutive limitation, and every devolution by law of any beneficial interest in property, or the income thereof, upon the death of any person so domiciled to any other person in possession or expectancy shall be deemed to have conferred or to confer on the person entitled by reason of any such disposition or devolution a "succession," and the term "successor" shall denote the person so entitled. 9 Edw. VII. c. 12, s. 3.

Allowances made in computing dutiable value.

4. In determining the dutiable value of property or the value of a beneficial interest in property the fair market value shall be taken as at the date of the death of the deceased, and allowance shall be made for reasonable funeral expenses, debts and encumbrances and Surrogate Court fees (not including solicitor's charges); and any debt or encumbrance for which an allowance is made shall be deducted from the value of the land or other subject of property liable thereto; but an allowance shall not be made:—

No allowance to be made for certain debts and expenses of administration.

(a) For any debts incurred by the deceased or encumbrances created by a disposition made by him unless such debts or encumbrances were created *bona fide* for full consideration in money or money's worth wholly for the deceased's own use and benefit and to take effect out of his estate; 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 encumbrance charged upon the different portions of the estate; nor
- (d) Save as aforesaid, for the expense of the administration of the estate or the execution of any trust created by the will of the deceased or by any instrument made by him in his lifetime. 9 Edw. VII. c. 12, s. 4.

5. Where in respect of any succession in Ontario any estate, legacy, or succession duty is payable in any part of the British Dominions other than Ontario, or in a foreign country by the law of that country, in respect of which no allowance of duty is made under section 9, and the Treasurer is satisfied that by reason of such succession any duty is payable there in respect of it, he may allow the amount of that duty to be deducted from the value of the succession in Ontario. 10 Edw. VII. c. 6, s. 2, *part*.

Allowance  
in respect  
of duty paid  
elsewhere.

6. No duty shall be leviable,—

- (a) On any estate the aggregate value of which does not exceed \$5,000. 4 Geo. V. c. 10, s. 2, *part*; 5 Geo. V. c. 7, s. 2 (1).
- (b) On property passing by will, intestacy or otherwise to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, daughter-in-law or son-in-law of the deceased where the aggregate value of the property of the deceased does not exceed \$25,000. 4 Geo. V. c. 10, s. 2, *part*; 5 Geo. V. c. 7, s. 2 (2).
- (c) Where the whole value of any property passing to any one person does not exceed \$300. 5 Geo. V. c. 7, s. 2 (3); 7 Geo. V. c. 27, s. 8.
- (d) On property devised or bequeathed for religious, charitable, or educational purposes to be carried out in Ontario or by a corporation or a person resident in Ontario or on the amount of any unpaid subscription for any like purpose made by any person in his lifetime to any corporation or person mentioned in this subsection for which his estate is liable.

Exemptions  
from succes-  
sion duty.

- (e) On any bond, debenture or debenture stock issued by a corporation having its head office in Ontario, transferable on a register at any place out of Ontario and which is owned by a person not domiciled at the time of his death in Ontario. 4 Geo. V. c. 10, s. 2, *part*.

Property  
subject to  
duty.

7.—(1) The following property as well as all other property subject to succession duty upon a succession shall be subject to duty at the rates hereinafter imposed. 9 Edw. VII. c. 12, s. 7 (1), *part*; 4 Geo. V. c. 10, s. 3.

Property in  
Ontario.

(a) All property situate in Ontario and any income therefrom passing on the death of any person, whether the deceased was at the time of his death domiciled in Ontario or elsewhere. 9 Edw. VII. c. 12, s. 7, *part*.

*Former clause (b) repealed by 8 Geo. V. c. 6, s. 1.*

Property  
deemed to  
pass on  
the death.  
Property  
transferred  
in contem-  
plation of  
death.

(2) Property passing on the death of the deceased shall be deemed to include for all purposes of this Act the following property:—

- (a) Any property, or income therefrom voluntarily transferred by deed, grant, bargain, sale or gift made in general contemplation of the death of the grantor, bargainor, vendor, or donor, and with or without regard to the imminence of such death, or made or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise, or the effect of which is that any person becomes beneficially entitled in possession or expectancy to such property or income. 9 Edw. VII. c. 10, s. 7, *part*; 4 Geo. V. c. 10, s. 4.

*Donatio  
mortis  
causa.*

- (b) (1) Any property taken as a *donatio mortis causa*.  
(2) Any property taken under a disposition operating or purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust or otherwise, made since the first day of July, 1892.

Gifts where  
possession  
and enjoy-  
ment have  
not passed.

- (3) Any property taken under any gift whenever made of which actual and *bona fide* possession and enjoyment shall have not 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, whether voluntarily or by contract or otherwise, except as hereinafter mentioned. 9 Geo. V. c. 9, s. 1.



- (c) Any property which a person having been absolutely entitled thereto, has caused, or may cause to be transferred to or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment, effected by the person who was absolutely entitled to the property either by himself alone or in concert, or by arrangement with any other person; **Property vested jointly with interest to survivor.**
- (d) Any property, passing under any past or future settlement, including 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, made by deed or other instrument not taking effect as a will, whereby an interest in such property or the proceeds of sale thereof 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, or the proceeds of sale thereof, or to otherwise re-settle the same or any part thereof; **Property passing under settlement, etc.**
- (e) 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. **Annuities, insurance, etc.**
- (f) Money received under a policy of insurance effected by any person on his life, where the policy is wholly kept up by him for the benefit of any existing or future donee, whether nominee or trustee, or for any person who may become a donee, 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; **Policies of Insurance.**

Property over which decedent had power of disposal.

(g) Any property of which the person dying was at the time of his death competent to dispose; and 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 as he thinks fit, whether the power is exercisable by instrument *inter vivos* or by will or both, including the powers exercisable by a tenant in tail, whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or as mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose;

Dower and curtesy.

(h) Any estate in dower or by the curtesy in any land of the person so dying of which the wife or husband of the deceased becomes entitled on the decease of such person. 9 Edw. VII. c. 10, s. 7, *part*.

Exemptions.

(3) Notwithstanding anything herein contained, no duty shall be payable in respect of any property (of which actual and *bona fide* possession and enjoyment shall 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, whether voluntarily or by contract or otherwise),

Property transferred to certain relatives more than three years before death. Gifts *inter vivos* to \$500.

(a) Given more than three years before the death of the donor to the father, mother, child, son-in-law or daughter-in-law of the donor, to the value or amount of \$20,000 in the aggregate, to the persons named in this subsection; or

(b) Given by the donor in his lifetime and not exceeding in value the sum of \$500 in the case of any one donee; or

Property transferred for consideration.

(c) Actually and *bona fide* transferred for a consideration in money or money's worth paid to the transferor for his own use and benefit, except to the extent, if any, to which the value of the property transferred exceeds that of the consideration so paid. 9 Geo. V. c. 9, s. 2.

Former clause (6) repealed by 9 Geo. V. c. 9, s. 3.

8. Subject to the exceptions mentioned in sections 6 and 7 there shall be levied and paid for the purpose of raising a revenue for Provincial purposes in respect of any succession or on property passing on the death according to the dutiable value the following duties over and above the fees paid under *The Surrogate Courts Act*—

Amount of duty.

Rev. Stat. c. 62.

Where property passes to grand-parents, etc. and exceeds \$25,000.

- (1) Where the aggregate value of the property exceeds \$25,000, and any property passes in manner hereinbefore mentioned, either in whole or in part to or for the benefit of the grandfather, grandmother, father, mother, husband, wife, child, son-in-law or daughter-in-law of the deceased, the same or so much thereof as so passes, shall be subject to a duty at the rate on the scale as follows:

Where the aggregate value

- (a) Exceeds \$25,000 and does not exceed \$50,000, 1 per cent.
- (a) (a) Exceeds \$50,000 and does not exceed \$75,000, 2 per cent.
- (b) Exceeds \$75,000 and does not exceed \$100,000, 3 per cent.
- (c) Exceeds \$100,000 and does not exceed \$150,000, 4½ per cent.
- (d) Exceeds \$150,000 and does not exceed \$300,000, 5½ per cent.
- (e) Exceeds \$300,000 and does not exceed \$500,000, 6½ per cent.
- (f) Exceeds \$500,000 and does not exceed \$750,000, 7½ per cent.
- (g) Exceeds \$750,000 and does not exceed \$1,000,000, 8½ per cent.
- (h) Exceeds \$1,000,000, 10 per cent. 4 Geo. V. c. 10, s. 7, *part*; 5 Geo. V. c. 7, s. 4 (1-2).

- (2) Where the aggregate value of the property exceeds \$100,000 and the value of the property passing in manner hereinbefore mentioned to any one of the persons mentioned in the next preceding subsection exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the rates in the next preceding subsection mentioned as follows:—

Additional duty where share exceeds \$100,000.

Where the whole amount so passing to one person

- (a) Exceeds \$100,000 and does not exceed \$200,000, 1 per cent.

Rate of  
duty where  
property  
passes to  
certain  
relatives.

- (b) Exceeds \$200,000 and does not exceed \$400,000, 1½ per cent.
  - (c) Exceeds \$400,000 and does not exceed \$600,000, 2 per cent.
  - (d) Exceeds \$600,000 and does not exceed \$800,000, 2½ per cent.
  - (e) Exceeds \$800,000 and does not exceed \$1,000,000, 3 per cent.
  - (f) Exceeds \$1,000,000 and does not exceed \$1,200,000, 4 per cent.
  - (g) Exceeds \$1,200,000, 5 per cent. 4 Geo. V. c. 10, s. 7, *part*.
- (3) Where the aggregate value of the property exceeds \$5,000 and any property passes in manner hereinbefore mentioned, either in whole or in part to or for the benefit of any lineal ancestor of the deceased, except the grandfather, grandmother, father and mother, or to any brother or sister of the deceased or to any descendant of such brother or sister or to a brother or sister of the father or mother of the deceased or to any descendant of such last mentioned brother or sister, the same or so much thereof as so passes shall be subject to a duty at the rate and on the scale as follows:—

Where the aggregate value

- (a) Exceeds \$5,000 and does not exceed \$50,000, 5 per cent.
- (b) Exceeds \$50,000 and does not exceed \$100,000, 10 per cent.
- (c) Exceeds \$100,000, 12½ per cent. 4 Geo. V. c. 10, s. 7, *part*; 5 Geo. V. c. 7, s. 4 (3).

Additional  
duty  
where  
share  
exceeds  
\$50,000.

- (4) Where the aggregate value of the property exceeds \$50,000 and the value of the property passing in manner hereinbefore mentioned to any one of the persons mentioned in the next preceding subsection, except the grandfather, grandmother, father and mother exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the duty in the next preceding subsection mentioned as follows:—

Where the whole amount so passing to one person

- (a) Exceeds \$50,000 and does not exceed \$100,000, 1 per cent.

- (b) Exceeds \$100,000 and does not exceed \$150,000, 1½ per cent.
- (c) Exceeds \$150,000 and does not exceed \$200,000, 2 per cent.
- (d) Exceeds \$200,000 and does not exceed \$250,000, 2½ per cent.
- (e) Exceeds \$250,000 and does not exceed \$300,000, 3 per cent.
- (f) Exceeds \$300,000 and does not exceed \$350,000, 3½ per cent.
- (g) Exceeds \$350,000 and does not exceed \$400,000, 4 per cent.
- (h) Exceeds \$400,000 and does not exceed \$450,000, 4½ per cent.
- (i) Exceeds \$450,000, 5 per cent.

(5) The additional duty provided for by subsections 2 and 4 shall be payable on the property in Ontario, where the deceased dies domiciled elsewhere than in Ontario, but for the purpose of fixing the rate of such duty the beneficial interest in property out of Ontario passing to the successor or other person on the same death shall be added to the value of the property in Ontario, and nothing in this Act shall be construed to impose any duty, directly or otherwise, on property out of Ontario owned by any deceased person so domiciled. 4 Geo. V. c. 10, s. 7, *part*.

Additional duty, how fixed where deceased dies domiciled out of Ontario.

(6) Where the aggregate value of the property exceeds \$5,000 and any property passes in manner hereinbefore mentioned, either in whole or in part, to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above mentioned or to or for the benefit of any stranger in blood to the deceased, the same or so much thereof as so passes shall be subject to a duty at the rate and on the scale as follows:—

Rate where property passes to other persons.

Where the aggregate value

- (a) Exceeds \$5,000 and does not exceed \$10,000, 6 per cent.
- (a) Exceeds \$10,000 and does not exceed \$50,000, 10 per cent. 4 Geo. V. c. 10, s. 7, *part*; 5 Geo. V. c. 7, s. 4 (4), *part*.
- (b) Exceeds \$50,000 and does not exceed \$200,000, 15 per cent.
- (c) Exceeds \$200,000, 20 per cent. 8 Geo. V. c. 6, s. 3.

Allowance  
for duty  
paid else-  
where on  
same death.

9. Where the Treasurer is satisfied that in any part of the British Dominions other than Ontario, or in any foreign country to which this section applies, any estate, legacy or succession duty is paid by reason of the succession in Ontario, an allowance for the duty so paid shall be made from the amount payable to this Province with respect to the same property; provided that any such allowance shall be made only as to such part of the British Dominions or as to such foreign country to which the Lieutenant-Governor in Council shall have extended the provisions of this section. Provided also that the Lieutenant-Governor in Council may revoke any Order in Council made under this section. 10 Edw. VII. c. 6, s. 2, part.

Proviso.

(2) In determining for the purpose of this section only whether property is locally situate in Great Britain or in the Province of Ontario the law of England shall be followed. 8 Geo. V. c. 6, s. 4.

[*Note.—For list of Orders in Council extending the provisions of this section, see Appendix "C".*]

Foreign ex-  
ecutors, etc.,  
not to trans-  
fer stock  
until duty  
paid.

10. No foreign executor shall assign or transfer any bond, debenture, stock or share of any bank or other corporation whatsoever, having its head office in Ontario, standing in the name of the deceased person, or in trust for him, until the duty, if any, is paid or security is given as required by section 11, and any such bank or corporation allowing a transfer of any debenture, bond, stock or share contrary to this section shall be liable for such duty. 9 Edw. VII. c. 12, s. 10.

Filing  
inventory,  
etc., liability  
of heir,  
etc.

11 (1) Every heir, legatee, donee or other successor and every person to whom property passes for any beneficial interest in possession or in expectancy shall be liable for the duty upon so much of the property as so passes to him, and shall within six months after the death of the deceased or such later time as may be allowed by the Treasurer make and file with the Registrar of the Surrogate Court of the County or District in which the deceased had a fixed place of abode or in which the property or any part thereof is situate a full, true and correct statement under oath showing:—

(a) A full inventory in detail of all the property of the deceased person and the fair market value thereof on the date of his death;

- (b) The several persons to whom the same passes, their places of residence and the degrees of relationship, if any, in which they stand to the deceased.
- (2) Where any one of the persons mentioned in subsection 1 has made and filed the statement required by that subsection, the Treasurer may dispense with the making of the statement by any other of them. Where one files statement others to be relieved.
- (3) Before the issue of letters probate or letters of administration to the estate of a deceased person a statement under oath similar to that required by subsection 1 shall be made by the executor or administrator applying therefor and filed with the Surrogate Registrar of the County or District in which the application is made, and if the duty has not been paid by the successors or security to the satisfaction of the Treasurer given, the applicant shall in consideration of the grant applied for being made furnish a bond in a penal sum to be fixed by the Treasurer, executed by himself and two sureties, to be approved by the Registrar, conditioned for the due performance of his duty under this Act as to accounting for the succession duty to His Majesty for which the property of the deceased is chargeable in default of payment being made by the persons liable therefor. Duty and liability of executors, etc.
- (4) The Treasurer may accept a sufficient sum as security for the due payment of any duty in lieu of or in addition to any other security, and he may in such case allow to the depositor interest thereon at a rate not exceeding three per cent. per annum upon so much thereof as from time to time exceeds the amount of duty which has become payable under this Act. 4 Geo. V. c. 10, s. 11. Accepting lump sum as security.
- (5) If at any time it shall be discovered that any property was not disclosed upon the grant of letters probate, or of administration, or the filing of the account, the person acting in the administration of such property and the person who is liable for the duty payable under this Act shall pay to the Treasurer the amount which, with the duty (if any) previously payable or paid on such property, shall be sufficient to cover the duty chargeable accord-
- Property not disclosed on application for probate, etc.

ing to the true value thereof at the rates fixed by this Act, together with interest thereon, and shall at the same time pay to the Treasurer as a penalty a further duty of twenty-five per cent. of the duty chargeable on the value of the property not disclosed, and shall also, within two months after the discovery of the omission, deliver to the Surrogate Registrar an affidavit or account setting forth the property so not disclosed, and the value thereof, in default of which he shall incur a penalty of \$10 for each day during which the default continues. 9 Edw. VII. c. 12, s. 11 (4).

Proceedings  
when Treas-  
urer not  
satisfied  
with  
valuation.

12.—(1) The Surrogate Judge of the county in which the property or any part thereof subject to duty is situate shall, at the instance of the Treasurer and upon such notice by personal or substitutional service to the executor or such interested parties as he by order directs, enquire into the correctness of the inventory, and as to the value so sworn to, and determine what property should be included in such inventory and the value of the same, fix and settle the amounts of the debts and other allowances and exemptions, and assess the cash value of every annuity, term of years, life estate, income or other estate, and of every interest in expectancy as provided by this Act, and shall at the time and place mentioned in the notice or any other time and place named by him value all property at the fair market value, and hear and determine all questions relative to the liability of property, the amount of duty and the successor and other persons liable therefor. 9 Edw. VII. c. 12, s. (1); 4 Geo. V. c. 10, s. 12; 6 Geo. V. c. 7, s. 2.

Powers of  
Judge.

(2) The Surrogate Judge shall have all the powers of a Judge of the County Court at the trial of any action and the power to compel discovery, the production of books, papers and documents and he may with the consent of the Official Guardian appoint for the purposes of this Act a guardian of any infant who has no guardian.

Enforcement  
of judg-  
ment.

(3) The judgment of the Surrogate Judge shall have the like force and effect and be enforceable in the same manner as a judgment of the County Court. 9 Edw. VII. c. 12, s. 12 (2-3).

Judge may  
direct ap-  
praisalment  
of property  
by sheriff.

(4) In lieu of or in addition to evidence of valuation of property the Surrogate Judge may in the first instance or at any time before judgment, and at the request of the Treasurer shall, issue a direction to the Sheriff of the county where any property is situate in respect to which duty is payable, or to some other



competent person, to make an appraisement of the property mentioned in the inventory or any part thereof, or of any property wrongfully omitted. 10 Edw. VII. c. 6, s. 2, *part*.

(5) When so directed the sheriff shall forthwith appraise the property mentioned in the inventory, or any part thereof, as directed by the Surrogate Judge, or any property wrongfully omitted, at its fair market value at the date of death, or at the time provided in section 16, as the case may be, and make a report in writing to the Surrogate Judge of his appraisement and of such other facts as he may deem proper.

Appraisement at fair market value.

(6) The sheriff shall be paid the following fees for services performed under this Act:—

Sheriff's fees.

\$1 for every hour up to five hours;

\$2 for every hour in important or difficult cases;

In no case to exceed \$10 per diem;

His actual and necessary travelling expenses. 9 Edw. VII. c. 10, s. 12, (5), (6).

(7) In case the Treasurer is of the opinion that any person or corporation is in possession of any property of a deceased person which is or may be dutiable under this Act, or that any person or corporation is in possession of knowledge or information in reference to the property of any deceased person which is or may be dutiable under this Act, or in case the Treasurer for any other reason deems it advisable to examine any person in or about the enforcement of the provisions of this Act, the Surrogate Court Judge of the county in which the property or any part thereof is supposed to be situated, shall, at the instance of the Treasurer, order such person or any officer of such corporation to attend before him and submit to examination on oath touching the property of such deceased person, or touching any property in his knowledge, which is, or may be, dutiable under this Act, or otherwise, as may seem just, and may direct the persons to be examined to make production upon oath of any books, papers, or other writings or documents, relating to the matters in issue which may be in the possession of such person or of any corporation. 6 Geo. V. c. 7, s. 3.

Examination of persons having dutiable property in possession.

13. The value of every annuity, term of years, life estate, income or other estate and of every interest in expectancy, in respect of which duty is payable under this Act, shall for the purposes of this Act be determined by the rule, method and standards of mortality and of value which are employed by the Superintendent of Insurance in ascertaining the value of

Valuation of annuities and limited estates.

policies of life insurance and annuities for the determination of the liabilities of life insurance companies, save that the rate of interest to be taken for all purposes of computation under this section shall be four per cent. per annum; and the Superintendent of Insurance shall on the application of any Surrogate Judge determine the value of any annuity, term of years, life estate, income or other estate or of any interest in expectancy upon the facts contained in any such application and certify the same to the Surrogate Judge, and his certificate shall be conclusive as to the matters dealt with therein. 9 Edw. VII. c. 12, s. 13.

**Appeal from  
Surrogate  
Judge.**

14.—(1) The Treasurer, or any other person interested, may within thirty days from the date of the judgment of the Surrogate Judge appeal to a Divisional Court, whose decision shall be final, but no appeal shall lie unless that portion of the property or of the debts and other allowances and exemptions in respect of which such appeal is taken, or all combined, exceeds in value or amount \$10,000 according to such judgment.

**Proviso.**

**Costs.**

(2) The costs of all such proceedings shall be in the discretion of the Court or Judge and shall be on the County Court scale, except the costs of an appeal, which shall be according to the tariff applicable to proceedings in the Supreme Court. 9 Edw. VII. c. 12, s. 14.

**Duty pay-  
able within  
18 months  
from death  
of deceased.**

15.—(1) The duty imposed by this Act, unless otherwise herein provided, shall be due at the death of the deceased, and payable within eighteen months thereafter, and if the same, or any part thereof, is paid within that period, no interest shall be charged or collected thereon, but if not so paid, interest at the rate of five per centum per annum from the death of the deceased shall be charged and collected upon the amount remaining from time to time unpaid, and such duty, or so much thereof as remains unpaid, with interest thereon, shall be and remain a lien upon the property in respect of which it is payable until paid. Provided that the duty chargeable upon any legacy given by way of annuity, whether for life or otherwise, may be paid in four equal consecutive annual instalments, the first of which shall be paid before the falling due of the first year's annuity and each of the three others within the same period in each of the next succeeding three years, and for non-payment when due interest shall be collected from the date of maturity of each instalment until paid, and if the annuitant dies before the expiration of the four years, the balance of the duties shall be payable by the estate or fund out of which the

**Proviso.**

**Payment of  
duty on  
annuity.**

annuity is charged or derived. 9 Edw. VII. c. 12, s. 15 (1), part; 6 Geo. V. c. 7, s. 4.

- (a) The Lieutenant-Governor in Council, upon proof to his satisfaction that payment of the duty within the time limited by this subsection would be unduly onerous, may extend the time for the payment to such date and upon such terms as may be deemed proper. 9 Edw. VII. c. 12, s. 15 (1), part.
- (b) For payment before the time provided for in this section the Treasurer may allow to the person accountable for the duty, interest at a rate not exceeding three per centum per annum upon the amount so paid. 10 Edw. VII. c. 6, s. 2, part.

Extension of time by order-in-council.

Interest allowed for prepayment.

(2) Where the whole or any part of the income or interest of any property is directed to be accumulated for any period for the benefit of any person or persons or class to whom or to any of whom at the expiration of such period such property passes, or income, or interest, becomes payable, such property shall be deemed for the purpose of this Act an interest in possession, passing at the death of the deceased, and the duty thereon shall be payable within eighteen months thereafter. 9 Edw. VII. c. 12, s. 15 (2).

Time for payment of duty where income accumulated.

(3) Property passing upon the death in respect to which any person is given such a general power to appoint, as is mentioned in clause (g) of subsection 2 of section 7, shall be liable to duty and the duty thereon shall be payable in the same manner and at the same time as if the property itself had been given to the donee of the power. 9 Edw. VII. c. 12, s. 15 (3); 4 Geo. V. c. 10, s. 8.

Where person has general power of appointment.

(4) When the duty or any part thereof has been paid or secured to the satisfaction of the Treasurer he shall, if required by the person accounting for the duty, give a certificate to that effect which shall discharge from any further claim for such duty the property mentioned in the certificate; provided the Treasurer shall not be bound to grant such certificate until the expiration of one year from the death of the deceased.

Certificate of discharge to be given by Provincial Treasurer.

(5) Such certificate shall not discharge any person or property from the 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

Certificate not a discharge in case of fraud, etc.

Except as to  
bona fide  
purchaser.

Time for  
payment of  
duty on  
interest in  
expectancy.

Payment  
after time  
limited.

Payment  
forthwith  
when  
interest in  
expectancy  
falls into  
possession.

Where no  
person  
presently  
beneficially  
entitled.

Commuta-  
tion of duty.

already accounted for; provided that a certificate purporting to be a discharge of the whole duty payable in respect of any property included in the certificate shall exonerate from duty property in the hands of a bona fide purchaser for valuable consideration without notice. 9 Edw. VII. c. 12, s. 15 (4-5).

16.—(1) Where the dutiable property includes any interest in expectancy the duty on such interest may be paid within the eighteen months limited by subsection 1 of section 15, and when so paid the duty shall be on the value of such interest ascertained as provided herein as at the death of the deceased.

(2) With the consent in writing of the Treasurer, the duty may be paid after the time so limited and before such interest comes into possession; but if such consent is given the duty shall then be on a value not less in any event than the value of such interest in expectancy ascertained as provided herein as at the date when the duty is paid; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest.

(3) The duty on any interest in expectancy, if not sooner paid, shall be payable forthwith when such interest comes into possession, in which case the duty shall be on the value ascertained as provided herein as at the date of coming into possession; and no deduction shall be made by reason of duty paid or payable on any prior estate, income or interest; and if such duty is not so paid, interest at the rate of five per cent. per annum shall be charged and collected thereon from the date when such interest in expectancy came into possession.

(4) Subject to the provisions of subsection 2 of section 15, where any property so passes that no person is beneficially entitled to the present enjoyment of the income or any part thereof for any term of years, or other period, whether certain or uncertain, the duty shall be payable on the present value of such income or part thereof for such term or period computed as provided by section 13 and shall be payable within eighteen months after the death of the deceased.

(5) Notwithstanding that the duty may not be payable under this section until the time when the right of possession or actual enjoyment accrues, an executor or person who has the custody or control of the property may, with the consent of the Treasurer, commute the duty which would or might, but for the commutation, become payable in respect of such interest in expectancy, for a certain sum to be presently payable, and for determining that sum the Treasurer shall cause a

present value to be set upon such duty, regard being had to the contingencies affecting the liability to, and the rate and amount of such duty and interest; and on the receipt of such sum the Treasurer shall give a certificate of discharge from such duty.

(6) Where the duty on any interest in expectancy has been commuted and paid under the provisions of this section before such interest in expectancy falls into possession the duty so paid shall be charged on such interest in expectancy and shall be repaid with interest at the rate of four per cent. per annum to the person who has paid the same by the person entitled to such interest in expectancy at the time when such interest comes into possession.

Interest in expectancy to be charged with duty paid.

(7) Where it appears to the Treasurer, that, by reason of the number of deaths on which property has passed or of the complicated or contingent nature of the interests of different persons in property passing on the death, it is difficult to ascertain exactly the rate or amount of duty 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 Treasurer on the application of any person accountable for any duty thereon, and upon his furnishing 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 duty 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 proper and may accept payment of the sum so assessed in full discharge of all claims for duty in respect of such property or interest and shall give a certificate of discharge accordingly. 9 Edw. VII. c. 12, s. 16.

Composition by Treasurer for duty payable in certain cases.

17. Upon the application of any person liable for the payment of the duty the Surrogate Judge may from time to time, on notice to the Treasurer, and for just cause shown, make upon such terms as he may deem proper an order extending the time fixed by this Act for payment thereof for any period, in the aggregate not exceeding one year, or with the consent of the Treasurer for a longer period, but, unless the Judge otherwise orders, the duty shall nevertheless bear interest at the rate of five per centum per annum from the day upon which such duty might have been paid without interest. 9 Edw. VII. c. 12, s. 17.

Extension of time for the payment of duty.

Non-personal liability of executors not to transfer property until duty paid.

Money retained by executor to be paid over to Treasurer.

Rev. Stat. c. 22.

Persons liable to duty may raise same by sale, etc.

Refunding duty upon subsequent payment of debts.

Fees of Judges and Registrars.

18.—(1) No executor or trustee shall in the first instance be personally liable to pay the duty on any property to which any legatee, donee or other successor is beneficially entitled, but an executor, trustee or other person in whom any interest in any property so passing to any legatee, donee or other successor, or the management thereof is at any time vested, shall not transfer such property to the person so entitled without deducting therefrom the duty for which such successor is liable and any executor, trustee or other person who transfers such property without deducting the duty therefrom shall pay to the Treasurer the amount of such duty in respect of such property and interest thereon together with an additional rate of fifty per cent. of the duty payable in respect of such property and such combined amounts shall be recoverable against the executor, trustee or other person so chargeable.

(2) Every sum of money retained by an executor or trustee or paid into his hands for the duty on any property shall be paid by him forthwith to the Treasurer or as he may direct.

(3) Such executor and trustee shall for the purpose of the collection and payment of any duty which under the provisions of this Act it is his duty to collect and pay over to the Treasurer be deemed to be an officer for the collection thereof within the meaning of the *Public Revenue Act*. 4 Geo. V. c. 10, s. 13.

(4) Any person who may be required to pay the duty in respect of any property which has come into his possession, or is used in his or is under his control shall, for the purpose of paying such duty or raising the amount of the duty when already paid, have power to raise the amount of such duty and any interest and expense properly paid or incurred by him in respect thereof by sale, mortgage or lease of so much of the property as may be necessary for such purpose. 5 Geo. V. c. 7, s. 6.

19. Where any debts shall be proven against the estate of a deceased person after the payment of legacies or distribution of property from which the duty has been deducted, or upon which it has been paid, and a refund is made by the legatee, devisee, heir or next of kin, a proportion of the duty so paid shall be repaid to him by the executor, if such duty has not been paid to the Treasurer, or by the Treasurer if it has been so paid. 9 Edw. VII. c. 12, s. 19.

20. The Judges and Registrars of the several Surrogate Courts and solicitors practising therein shall be entitled to take for the performance of duties and services under this

Act, similar fees to those payable to them for the like services under and by virtue of *The Surrogate Courts Act* and the Surrogate Court rules. 9 Edw. VII. c. 12, s. 20.

Rev. Stat. c. 62.

21.—(1) Any duty payable under this Act shall be recoverable with full costs as a debt due to His Majesty from any person liable therefor by action in or on summary application to any court of competent jurisdiction.

Recovery of succession duties by action.

(2) The Supreme Court shall also have jurisdiction to determine what property is liable to duty under this Act, the amount of such duty and the time or times when the same is payable, and may itself or through any referee exercise any of the powers conferred upon any officer or person by the said sections.

Matters to be determined by Supreme Court in action.

(3) An action may be brought for any of the purposes in this Act mentioned, notwithstanding the time for the payment of the duty has not arrived, subject to the discretion of the court as to costs.

Action may be brought before time for payment of duty.

(4) In every such action His Majesty's Attorney-General shall have the same right, either before or after the trial, to require the production of documents, to examine parties or witnesses, or to take such other proceedings in aid of the action as a plaintiff has in an ordinary action. 9 Edw. VII. c. 12, s. 21.

Production of documents, examination of witnesses, etc.

22. Where duty is claimed in respect of any land, or money secured by mortgage, or charge upon land, the Treasurer may cause to be registered in the proper registry office, or in the proper office of land titles, if the land is registered under *The Land Titles Act*, a caution claiming duty in respect of such land, mortgage, or charge by reason of the death of the deceased, and the land, mortgage or charge, shall upon such registration be subject to the lien of the Crown for duty, but nothing herein contained shall affect the rights of the Crown to a lien independently of the caution. 9 Edw. VII. c. 12, s. 22.

Caution.

23. The Lieutenant-Governor in Council may make rules and regulations for carrying into effect the provisions of this Act, and such rules and regulations shall be laid before the Assembly forthwith, if in session at the date of such rules and regulations, and if not then in session such rules and regulations shall be laid before the Assembly within the first seven days of the session next after the same are made. 9 Edw. VII. c. 12, s. 23.

Rev. Stat. c. 126.

Lieutenant-Governor in Council may make regulations.

By 4 Geo. V. c. 10, s. 2, it was enacted as follows:—Except as to the rate of duty and as to the liability for duty of any property transferred *inter vivos* the *Succession Duty Act* as

Declaration as to application of Act.



amended by this Act shall be deemed to be and to declare the law relating to succession duty since the first day of July, 1892, save as to any action or reference heretofore determined in any court, or as to any estate upon which the duty has been fully paid and satisfied. 4 Geo. V. c. 19, s. 9.

*The foregoing enactment does not affect the amendments contained in 5 Geo. V. c. 7, or any subsequent enactment.*

By 6 Geo. V. c. 7, s. 5, it was enacted as follows:—(1) The Treasurer may appoint a Commissioner or Commissioners to:—

- (a) Ascertain and inquire into what property, if any, is subject to succession duty under the terms of this Act; the fair market value of such property, the amount of duty payable upon such property, and the persons liable therefor;
- (b) Fix and settle the amount of the debts and other allowances and exemptions and assess the cash value of every annuity, term of lease, term of years, life estate, income or other estate, and of every interest in expectancy as provided by this Act;
- (c) Make inquiries as to any property transferred *inter vivos* or wrongfully omitted from any inventory filed; and
- (d) Generally make inquiry as to any matter or thing arising under this Act in connection with the estate of any deceased persons.

(2) The Commissioner shall direct that notice be given by personal service or otherwise to the executor or such interested parties as he may think proper.

(3) The Commissioner shall have all the powers of a Judge of the Supreme Court of Ontario at the trial of any action and all the powers which may be conferred upon a Commissioner under *The Public Inquiries Act*, and in addition thereto may, either at or previous to the hearing, make such order for the attendance and examination of any person or the officer or officers of any corporation for discovery or otherwise as he may deem expedient and may direct the persons to be examined to make production upon oath of any books, papers or other writings or documents which may be in the possession of such person or of any corporation.

(4) Where the Treasurer or any person interested desires to produce for use before the Commissioner the evidence of any person to be taken *de bene esse* or to be taken out of Ontario, an order may be made for the examination of such person or for

Appoint-  
ment of  
Commis-  
sioner to  
inquire into  
estate.

Notice to  
parties.

Powers of  
Commis-  
sioner.

Examina-  
tion for  
discovery.

Taking  
evidence  
*de bene esse*  
or by com-  
mission.



the issue of a Commission in the like circumstances and with the like effect as a similar order may be made in an action.

(5) The evidence of the witnesses taken before such Commissioner shall be taken down in writing and shall, at the request of either party, be transmitted by the Commissioner to the Central office at Osgoode Hall.

Evidence to be taken down.

(6) A Commissioner may, with the consent of the Official Guardian, appoint for the purpose of this Act, a guardian of any infant who has no guardian.

Appointment of guardian for infant parties.

(7) The costs of proceedings shall be paid as directed by the Commissioner.

Costs.

(8) The report of the Commissioner may be filed in the Central Office of the Supreme Court of Ontario at Osgoode Hall, in the City of Toronto.

Filing report of Commission.

(9) Upon the report being so filed, it shall become a judgment of the Supreme Court of Ontario, and may be enforced in the same manner and by the like processes as if the judgment had been made by a Judge of the Supreme Court at the trial of an action.

Report to become a judgment.

(10) The judgment shall be entered in the same manner as a judgment of the court at the trial.

Entry of judgment.

(11) Either the Treasurer or any person interested may appeal from the said judgment to the Appellate Division of the Supreme Court of Ontario, but there shall be no further or other appeal.

Appeal to Appellate Division.

(12) Rules of Court for the better carrying out of the purposes of this Act and the regulation of practice thereunder, including the practice of any appeal, may be made by any authority to whom is committed the power of making Rules of Court; but until such rules are made the practice shall be governed by the rules of the Supreme Court of Ontario. 6 Geo. V. c. 7, s. 5.

Rules of procedure.

*The following enactment relates to deaths on active service:—* Where any person dies from wounds inflicted, accident occurring or disease contracted, within twelve months before death while in the active military or naval service of His Majesty, whether in Canada or abroad, the Treasurer may, if he thinks fit, remit the whole or any part of the duty chargeable in respect of property passing upon the death of the deceased to the wife, husband, child, son-in-law, daughter-in-law, father, mother, brother or sister of the deceased. 5 Geo. V. c. 7, s. 6, part; 7 Geo. V. c. 27, s. 7.

Remission of duty in cases of persons killed in the war.

*Subsection 2 of this section was repealed by 6 Geo. V. c. 7, s. 6.*



# APPENDIX A

## RULES AND REGULATIONS.

MADE BY ORDER OF HIS HONOUR THE LIEUTENANT-GOVERNOR IN COUNCIL  
BEARING DATE THE TWENTY-SEVENTH DAY OF MAY, A.D. 1914,  
FOR CARRYING INTO EFFECT THE SUCCESSION DUTY ACT.

1. Every heir, legatee, donee, or other successor, and every person to whom property passes for any beneficial interest in possession or in expectancy and every trustee, guardian, committee, or other person, in whom any interest in property so passing for the benefit of any other person or the management thereof, is at any time vested, shall be required within six months after the death of any person to file in the office of the Surrogate Registrar of the County or District in which the deceased, being domiciled or resident in Ontario, had a fixed place of abode, or in which the property or any part thereof was situate where deceased was resident out of Ontario, two duplicate original affidavits of value and relationship, attaching thereto inventories, giving full particulars in detail of the property, wheresoever situate of the deceased, and any gifts *inter vivos*, and also schedule of relationship according to forms numbered "1."
2. When the aggregate value of the property, wheresoever situate, including any gift, transfer, or other disposition *inter vivos*, or other property within the meaning of section 7, does not exceed \$5,000, the heir, legatee or other successor may make and file two duplicate original affidavits of value and relationship in the short form, attaching thereto inventories in detail, and schedules of relationship, according to the forms numbered "2" hereunder, in lieu of those required by rule 1.
3. On all applications for letters probate, or of administration, or other grant, except letters of guardianship, made to any Surrogate Court in Ontario, the applicant or applicants shall at the time of filing the papers required by the practice of the Surrogate Courts make and file with the Surrogate Registrar, two duplicate original affidavits of value and relationship similar to those required by rules numbered "1" and "2" following forms numbered "1" and "2" according to value of the property.
4. Such affidavits shall be made and filed in all cases without regard to the nature or value of the property of the deceased but if any heir, legatee, donee, or other successor, or the executor or administrator applying for a grant to any Surrogate Court makes full disclosure of the property by filing the affidavits, inventories and schedule in the proper Surrogate Court, and otherwise fulfils the requirements of the Act, the others may be relieved by the Treasurer from so doing.

5. The Surrogate Registrar shall forthwith on receipt thereof forward one of such duplicate original affidavits, with schedules attached, to the Solicitor under the Succession Duty Act, Toronto, and shall at the same time forward to the Treasurer of Ontario, Toronto, a notice in the form numbered "2a" hereunder.

6. The affidavit or account required by section 11, subsection 4, showing property not disclosed on the filing of an account by the heirs, legatees or other successors, or upon the grant of letters probate or of administration or other grant, shall conform to forms numbered "1" or "2," according to the value of the property in the affidavit or account previously filed and the property so disclosed.

7. For the purposes of determining the aggregate value and the rate of duty, the affidavits of value and relationship and accounts and inventories attached thereto shall set out the full particulars in detail of the property out of Ontario, as well as in Ontario, and the market value of each parcel or part thereof.

8. Where duty becomes payable on the falling into possession of any interest in expectancy, the successor or other person accountable for the duty, and the executor or administrator shall forthwith furnish to the Treasurer an account in detail verified by affidavit, and such other evidence as may be required, of the then value of the property of the deceased including the property to which such successor or other person accountable for the duty is entitled.

9. The Solicitor above-mentioned shall upon receipt of the said affidavit of value and relationship or other affidavit or account, determine whether in his opinion, the property of the deceased is liable, or may become liable to succession duty, and in case it appears to him that the same is liable or likely to become liable, he may require security to be given by the successor, or other person accountable for the duty, or by the applicant, which security may be by bond in the form numbered "3" or "4" hereunder, or by a deposit of a sufficient sum in addition to or substitution for a bond.

10. Where a bond is required to be given under the next preceding rule, such bond shall be in a penal sum not less than double the amount of duty payable upon the succession or property passing subject to duty, or such lesser sum as may be fixed by the Solicitor above-mentioned, and where executed by the heir, legatee, donee or other successor, each shall be bound in an amount equal to double the duty on the portion of the succession or property passing to which such successor is entitled in possession or expectancy, and where executed by the applicant, or all the applicants, in case there are more than one each shall be bound in the whole amount of the bond, and such bond shall also be executed by a guarantee company, approved by Order-in-Council under *The Guarantee Companies Securities Act*, or by two or more sureties (to be approved by the Surrogate Registrar),

who shall justify each in an amount equal to the sum for which he is to be liable, and the aggregate shall equal the amount of the penalty of the bond, and it shall be conditioned for the due payment to His Majesty of any duty to which the property passing to such successors may be found liable, and in the case of an executor or administrator for the due performance of his duties and obligations to collect such duty from the heirs and other persons accountable therefor pursuant to the Act. Persons beneficially entitled by will, or under intestacy, or as *cestuis que trustent* shall not be eligible as sureties.

11. This bond must be filed in the office of the Registrar of the Surrogate Court to which application is made or the account is filed, and a certified copy thereof sent forthwith to the Solicitor under Succession Duty Act.

12. No letters probate, or of administration, or other grant shall issue without the consent in writing of the Solicitor under Succession Duty Act or someone deputed by the Treasurer to act for him.

13. Where it is desired to register under section 56 of *The Registry Act*, an original will or other instrument without any grant from a Surrogate Court, the Surrogate Registrar of the County in which the deceased had a fixed place of abode, or in which the lands or any part thereof are situate, shall upon receipt of a similar affidavit or verified account in duplicate, forward a duplicate original to the Solicitor under Succession Duty Act, and upon receiving his written consent, shall issue, if required, a certificate of such filing in the form numbered "10" hereunder, or to the like effect, for the purposes of registration.

14. Where a caveat against the issue of letters probate, or of administration, or other grant, is lodged with the Surrogate Clerk or with the Registrar of any Surrogate Court in Ontario, the Surrogate Registrar of any County in which any lands of the deceased are situate, to whom notice of such caveat has been given, shall not issue the Certificate required by the next preceding rule until such caveat has been withdrawn and notice of such withdrawal has been given by the Surrogate Clerk or the Registrar of the Court in which it was lodged.

15. Upon the application for letters probate, or of administration or other grant, or on the filing of an account, or as soon thereafter as they are ascertained, full and true particulars of the debts, encumbrances and other allowances, shall be proven by affidavit of the executor, administrator, trustee, heir, legatee, or other person accountable for the duty, according to the form numbered "5" hereunder.

16. In cases where security has been given for the payment of succession duty as aforesaid, notice of any appointment for the passing of the accounts of the executor or administrator or other person, as the case may be, shall be served upon the Solicitor under Succession Duty Act by the executor, administrator, or other person, or his solicitor, together with a copy of the

accounts, and the affidavit verifying, seven clear days before the audit of such accounts.

17. Notice of the valuation and hearing by the Surrogate Judge (Form 8) under section 12, shall be served upon all the parties directed to be served at least seven days before the commencement thereof, unless the Judge otherwise orders.

18. Notice of motion to extend the time under section 17 shall be served with the affidavit in support thereof on the Solicitor under Succession Duty Act, at least seven days before the return thereof.

19. Affidavits under this Act may be sworn or affirmed before any person entitled to take affidavits for use in any Court of Record in this Province, but no affidavit, which has been sworn before the party on whose behalf the same is offered, or before his solicitor, or before the clerk or partner of such solicitor, shall be admissible in any matter or proceeding under this Act.

20. The fees payable out of the estate for the services of the Surrogate Judge and Registrar under section 20 shall be the same as those payable in contentious matters under *The Surrogate Courts Act*.

21. The subjoined forms are to be followed as nearly as the circumstances of each case will allow.

FORM 1.—AFFIDAVIT OF VALUE AND RELATIONSHIP.

This Affidavit is to be made by all Persons Applying for Letters Probate, or of Administration, or other grant, or on filing an Account.

THE SUCCESSION DUTY ACT (ONTARIO).

Canada, Province of Ontario. In the Surrogate Court of the County of

In the matter of the estate of \_\_\_\_\_ late of the \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_ deceased.

I, \_\_\_\_\_, make oath and say:—

That \_\_\_\_\_ a \_\_\_\_\_ the applicant \_\_\_\_\_ for letters \_\_\_\_\_ of \_\_\_\_\_ Full names, addresses and occupation of all deponents.

who died on or about the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_

domiciled in \_\_\_\_\_

That \_\_\_\_\_ have caused to be filed in the office of the Registrar of the above named Court a petition praying that letters be granted \_\_\_\_\_ of the said deceased by the said Court.

That \_\_\_\_\_ have made full, careful and searching enquiry for the purpose of ascertaining what real and personal property and effects the said deceased was possessed of or entitled to, at the time of h \_\_\_\_\_ death, together with the market value thereof respectively.

That \_\_\_\_\_ have according to the best of \_\_\_\_\_ knowledge, information, and belief set forth in the Inventory herewith exhibited, marked "A," a full, true and particular account of all the real and personal estate of the said deceased or of which \_\_\_\_\_ he was possessed, or to which \_\_\_\_\_ he was entitled in possession or reversion absolutely or contingently or otherwise howsoever at the time of h \_\_\_\_\_ death, or of which the deceased was competent to dispose, or over which \_\_\_\_\_ he had a general power of appointment, together with the market value as at the date of death, of each and every asset forming part of the said real and personal estate and particularized in the said inventory. The gross value of the estate wherever situate as at date of deceased death was \$ \_\_\_\_\_

That \_\_\_\_\_ have included in the said inventory every security, debt and sum of money outstanding due, or payable to, or standing to the credit of the said deceased at the time of h \_\_\_\_\_ death, and in estimating the value thereof have included all the interest due, payable, chargeable and accruing due thereon up to the death of the said deceased.

That \_\_\_\_\_ in the said inventory is included all the property of the said deceased situate out of Ontario as well as the property situated in Ontario.

That \_\_\_\_\_ to the best of \_\_\_\_\_ knowledge, information and belief, the said deceased did not voluntarily transfer by deed, grant or gift, made in contemplation of h \_\_\_\_\_ death, or made, or intended to take effect in possession or enjoyment after h \_\_\_\_\_ death, any property or any interest therein, or income therefrom, to any person in trust or otherwise by reason whereof any person is or shall become beneficially entitled in possession or expectancy in or to the said property, or income thereof.

That \_\_\_\_\_ to the best of \_\_\_\_\_ knowledge, information and belief, the said deceased did not at any time transfer to any person any property whatsoever by way of *donatio mortis causa*, nor did \_\_\_\_\_ he since the first day of July, 1892, make any disposition of property operating or

Executor or administrator appointed by the proper Probate Court at place of domicile, or the heirs, legatees, donees or other successor entitled to property where an account is filed.

purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, nor did he at any time previous to his death, transfer any property, of which property the *bona fide* possession was not assumed by the donee immediately upon the gift, and thenceforth retained to the entire exclusion of the donor, or of any benefit to him, whether voluntarily, or by contract, or otherwise, except the property set out in the schedule marked Exhibit "B," and the fair market value of such property or the amount thereof, the person or persons to whom it was given, their addresses, the relationship in which they stand to the deceased, and the dates when so given, are therein correctly set out, and such transfer or other gift was made absolutely to the donee and took effect in the lifetime of the deceased and was part of his ordinary and normal expenditure for the maintenance and advancement of the persons so benefited.

That to the best of his knowledge, information and belief, the said deceased did not transfer or cause to be transferred to or vested in himself and any other person jointly any property to which he was absolutely entitled, so that the beneficial interest therein, or in some part thereof, passed or accrued by survivorship on his death to such other person, nor did he make or effect, or cause to be made or effected, either by himself alone, or in concert, or by arrangement with any other person, any purchase or investment of property whatsoever for any other person, or in trust for him, except as set out in the said inventory.

That to the best of his knowledge, information and belief, he said deceased was not at the time of his death a party to any past or future settlement, including any trust whether expressed in writing or otherwise, whether made for valuable consideration or not, as between the settlor and any other person, and not taking effect as a will, whereby an interest in such property or the proceeds of the sale thereof for life, or any other period determinable by reference to death, was reserved expressly or by implication to the deceased, or whereby the deceased reserved to himself the right by the exercise of any power to restore to himself or to reclaim the absolute interest in such property or the proceeds of the sale thereof, or otherwise resettle the same, or any part thereof, except as set out in the said inventory.

That to the best of his knowledge, information and belief, no annuity, policy of insurance, or other interest had been purchased or provided by the said deceased, either by himself alone, or in concert, or by arrangement with any other person, except as set out in the said inventory.

That he have in the schedule marked Exhibit "C" set forth the names of the several persons to whom the property of the said deceased will pass, the degree of relationship, if any, in which they stand to the deceased, their addresses so far as he can ascertain them, and the nature and value of the property passing to each of these persons respectively, and that the several persons who receive annuities or estates for life, or bequests of income were on their last birthday previous to the date of deceased's death, the ages respectively set opposite their names.

Sworn before me at the \_\_\_\_\_ of  
in the \_\_\_\_\_ County of \_\_\_\_\_  
this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 191\_\_\_\_\_

A Commissioner, etc., or Notary Public, etc.

This Affidavit is filed on behalf of the applicant by

.....  
Solicitor.



FORM 2.—SHORT AFFIDAVIT OF VALUE OPTIONAL UNDER REGULATION 2.

This Affidavit is to be made by all Persons applying for Letters Probate or of Administration or other grant, or on filing Account.

THE SUCCESSION DUTY ACT (ONTARIO).

Canada, Province of Ontario. In the Surrogate Court of the
Count (District) of

In the matter of the estate of
late of the
County (District) of
I (or we),
That a the applicant for letters
of the above named day of
, who died on or about the
, 19 , domiciled in

make oath and say:--
That have according to the best of knowledge, informa-
tion and belief set forth in the inventory herewith exhibited marked
"A," a full, true and particular account of all the real and personal estate
of the said deceased situate out of as well as in the Province of Ontario
or of which the said deceased was possessed or to which he was
entitled at the time of his death either in possession, remainder or
reversion absolutely, contingently or otherwise howsoever, together
with the market value as at the date of death of each and every asset,
and the gross value thereof did not exceed the sum of \$5,000. The said
inventory includes all the real and personal estate of which the deceased
was competent to dispose or over which the deceased had a general power
of appointment.

So far as have been able to ascertain after a careful and searching
investigation of his affairs, the said deceased did not make any gift,
transfer or delivery of any property or any declaration of trust, settlement,
deed or other instrument of appointment, nor did he purchase or
provide any annuity, policy of insurance or other interest, or make any
other disposition of any property whatsoever within the meaning and
intent of subsection 2 of section 7 of the Succession Duty Act, except

That have in the schedule herewith exhibited, marked "B,"
set forth the names of the several persons to whom the property of the
said deceased will pass, the degrees of relationship, if any, in which they
stand to the deceased, their addresses so far as can ascertain them, and
the nature and value of the property passing to each of these persons
respectively.

Sworn before me at the of
in the County of
this day of A.D. 191

A Commissioner, etc., or a Notary Public, etc.

This Affidavit is filed on behalf of the applicant for letters
by

.....
Solicitor.

\*Where an account is filed, state that deponent is executor or administrator appointed by the proper Probate Court at the place of domicile, or is heir, legatee, donee or other successor entitled to property devolving.

Give particulars of gifts or other dispositions, stating amounts or market value, the dates when transferred and whether possession and enjoyment by donee to entire exclusion of donor followed such gift.

## The Ontario Succession Duty Act

### SCHEDULE A.—FORMS 1 AND 2,

SHOWING AN INVENTORY IN DETAIL OF PROPERTY, WHERESOEVER SITUATE.

In the Surrogate Court of the \_\_\_\_\_ of \_\_\_\_\_  
 In the matter of the estate of \_\_\_\_\_ deceased, late of the  
 of \_\_\_\_\_ in the County of \_\_\_\_\_  
 THE SUCCESSION DUTY ACT (ONTARIO).

Real Estate Give short description of each parcel or lot with dimensions for purposes of identification	Fair market value of property, exclusive of liens and encumbrances.
Total.....	\$      c.

### MONEYS SECURED BY MORTGAGE.

Name of Mortgagor	Short description of land	Other particulars including date, principal, payments on account, rate of interest, and date from which interest has been accruing to date of death	Principal	Interest	Total
			\$    c.	\$    c.	\$    c.
		Total.....			

### BOOK DEBTS AND PROMISSORY NOTES, ETC.

Name of Debtor or Payor	Address (City, town or Province)	Particulars in- cluding date due, principal, payments on account, rate of interest, and date from which interest has been accruing to date of death	Principal	Interest	Total
			\$    c.	\$    c.	\$    c.
		Total.....			

**SECURITIES FOR MONEY, INCLUDING LIFE INSURANCE AND CASH ON HAND AND IN BANK.**  
(See Note below.)

Name of Company or otherwise	Head Office of Company or Residence of persons (whether in Ontario or elsewhere)	Other particulars as above, and if owned by a non-resident where registered	Principal	Interest	Total
			\$ c.	\$ c.	\$ c.
		Total.....			

**BANK STOCKS AND OTHER STOCKS.**

No. of Shares	Full Name of Company	Head Office (Ontario or elsewhere)	Kind of Stock Common or Preferred	Amount Paid up	Par Value	Fair Market Value
				\$ c.	\$ c.	\$ c.
			Total.....			

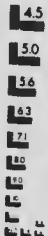
<b>MISCELLANEOUS ASSETS NOT HEREINBEFORE MENTIONED, IF ANY.</b>		Fair Market Value
Give full particulars here		\$ c.
Household Goods and Furniture.....		
Pictures, Plate and Jewelry.....		
Stock-in-Trade of Business or Industrial Concern.....		
Goodwill of Business or Industrial Concern.....		
Farm Implements.....		
Farm Produce of all Kinds.....		
Horses.....		
Horned Cattle.....		
Sheep and Swine.....		
Any other Property.....		
Total.....		

**NOTE.**—State fully if bonds, debentures and other securities, owned by a foreign decedent, are in his possession elsewhere than in Ontario and are actually listed on a register out of Ontario where a transfer can be made without any act being required at the head office in Ontario.



# MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART Na. 2)



4.5

5.0

5.6

6.3

7.1

8.0

9.0

10

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18

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63

71

80

90

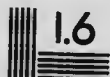
100

112

125

140

160



APPLIED IMAGE Inc

1653 East Main Street  
Rochester, New York 14609 USA  
(716) 482 - 0300 - Phone  
(716) 288 - 5989 - Fax

SUMMARY.

	Principal or Market Value		Interest	Total
	\$	c.	\$	c.
Real Estate .....				
Moneys Secured by Mortgage.....				
Book Debts and Promissory Notes.....				
Securities for Money, including Life Insurance and Cash in Bank and on hand.....				
Bank Stocks and other Stocks.....				
Miscellaneous Assets not hereinbefore mentioned (if any)				
Total.....				

This is Schedule "A" referred to in the affidavit of value and relationship of

Sworn before me on the \_\_\_\_\_ day  
of \_\_\_\_\_ A.D. 191 .

.....  
A Commissioner, etc., or Notary Public, etc.

SCHEDULE B.—FORMS 1 AND 2.

In the Surrogate Court of the County (District) of

In the matter of the estate of \_\_\_\_\_, deceased, late of  
the \_\_\_\_\_ of \_\_\_\_\_ in the County (District) of

THE SUCCESSION DUTY ACT (ONTARIO).

Date of Gift or Settlement	Name of Donee and Trustees if any	Address	Trace Relationship to Deceased	Nature of Gift or Property given	Amount of Gift or fair Market Value of Property	Any other facts relating to Gift.

This is Schedule "B" referred to in the Affidavit of Value and Relationship of

Sworn before me on the \_\_\_\_\_ day  
of \_\_\_\_\_ A.D. 19 .

.....  
A Commissioner, etc., or Notary Public, etc.

SCHEDULE C.—FORMS 1 AND 2.

In the Surrogate Court of the Count of

THE SUCCESSION DUTY ACT (ONTARIO).

In the matter of the estate of \_\_\_\_\_, deceased, late of  
 the \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ Count  
 of \_\_\_\_\_

Name of Legatee	Relationship	Address	Age last birthday of life tenant or annuitant	Nature of bequest or property passing.	Value

This is Schedule "C" referred to in the affidavit of Value and Relationship of

Sworn before me on the \_\_\_\_\_ day  
 of \_\_\_\_\_ A.D. 191 \_\_\_\_\_

.....  
*A Commissioner, etc., or Notary Public, etc.*

No.....

**FORM 2A.—NOTICE OF APPLICATION FOR LETTERS.****THE SUCCESSION DUTY ACT (ONTARIO).**

In the Surrogate Court of the \_\_\_\_\_ Count of \_\_\_\_\_  
 In the matter of the estate of \_\_\_\_\_, deceased.

Strike out the  
 irrelevant  
 words.

Notice is hereby given that application for letters probate, of administration, administration with the will annexed, resealing or ancillary letters probate or of administration, has been received as herein set forth.

\_\_\_\_\_  
 Name of deceased

\_\_\_\_\_  
 Date of death

\_\_\_\_\_  
 Domicile at death

\_\_\_\_\_  
 Name or Names of applicant or applicants

\_\_\_\_\_  
 Name of applicant's solicitor

\_\_\_\_\_  
 Value of assets in Ontario

\_\_\_\_\_  
 Value of assets, if any, elsewhere than in Ontario

Dated at \_\_\_\_\_ this \_\_\_\_\_ day  
 of \_\_\_\_\_ 19 .

.....  
 Surrogate Registrar.

*The Hon. the Treasurer of the Province of Ontario.*

**NOTE.—This must be sent to the Treasurer, not to the Succession Duty Office.**



FORM 3.—BOND BY ALL APPLICANTS FOR LETTERS  
PROBATE OR OTHER GRANT OR BY TRUSTEES.

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the

In the matter of the estate of \_\_\_\_\_, deceased.

Know all men by these presents that we,  
of the \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_ Count of \_\_\_\_\_  
\_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_ Count of \_\_\_\_\_  
Count of \_\_\_\_\_ of \_\_\_\_\_, and \_\_\_\_\_ Count of \_\_\_\_\_  
of the \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_

Where a  
Guarantee  
Company is  
surety add:  
"and the said  
Company for  
itself, its  
successors and  
assigns binds  
itself for the  
whole firmly  
by these  
presents."

\_\_\_\_\_ are jointly and severally bound unto  
His Majesty the King in the sum of \$ \_\_\_\_\_, to be paid to the  
Treasurer of the Province of Ontario for the time being for which pay-  
ment well and truly to be made we bind ourselves and each of us for the  
whole and our and each of our heirs, executors and administrators,  
firmly by these presents.

And the said  
Company  
affixes its  
corporate seal  
and the hand  
of its  
"President"  
or "Manager  
for Canada."

Sealed with our seals. Dated the \_\_\_\_\_ day of

in the year of our Lord, A.D. 19 \_\_\_\_\_

NOTE.—The penal sum should be not less than double the duty payable on the property subject to duty. The sureties must be one of the Guarantee Companies approved by Order of His Honour the Lieutenant-Governor in Council or two or more disinterested persons who will together justify to the aggregate of the penal sum.

The condition of this obligation is such that if the above named  
\_\_\_\_\_ of \_\_\_\_\_, the \_\_\_\_\_ of all the property  
of \_\_\_\_\_, late of the \_\_\_\_\_ of \_\_\_\_\_  
in the County of \_\_\_\_\_, deceased, who died on  
or about the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_,  
do collect from the person liable therefor and cause to be paid to the  
Treasurer of the Province of Ontario for the time being, representing  
His Majesty the King in that behalf, any and all duty to which the pro-  
perty, estate and effects of the said deceased may be found liable under  
the provisions of the Succession Duty Act, within the time or times  
provided for under Section 15 of the said Act or such further time as may  
be given for payment thereof under Section 17 or otherwise by the said  
Act, and otherwise perform the duties and obligations required of them  
by the said Act, then this obligation shall be void and of no effect, other-  
wise the same to remain in full force and virtue.

Signed, sealed and delivered in the presence of

## AFFIDAVIT OF JUSTIFICATION.

Ontario.  
Count of  
To Wit:

I,

named, make oath and say as follows:— one of the sureties in the annexed bond

(1) I am seized and possessed to my own use of property in the Province of Ontario, of the actual value of \_\_\_\_\_ dollars over and above all charges upon and incumbrances affecting the same. !

(2) I am worth the sum of \_\_\_\_\_ dollars, over and above my just debts, and any sum for which I am liable as surety or otherwise, except upon the said bond.

(3) My post office address is as follows:—

Sworn before me at \_\_\_\_\_ in the Count  
of \_\_\_\_\_ this \_\_\_\_\_ day of  
19 .

*A Commissioner, etc., or Notary Public, etc.*

## AFFIDAVIT OF JUSTIFICATION.

Ontario.  
Count of  
To Wit:

I,

named, make oath and say as follows:— one of the sureties in the annexed bond

(1) I am seized and possessed to my own use of property in the Province of Ontario, of the actual value of \_\_\_\_\_ dollars over and above all charges upon and incumbrances affecting the same.

(2) I am worth the sum of \_\_\_\_\_ dollars, over and above my just debts, and any sum for which I am liable as surety or otherwise, except upon the said bond.

(3) My post office address is as follows:—

Sworn before me at \_\_\_\_\_ in the Count  
of \_\_\_\_\_ this \_\_\_\_\_ day of  
19 .

*A Commissioner, etc., or Notary Public, etc.*

AFFIDAVIT OF EXECUTION.

Ontario.  
Count of  
To Wit:

I,

in the Count of

make oath and say as follows:—

(1) I am the person whose name is subscribed to the annexed bond as the attesting witness to the execution thereof, and the signature set and subscribed thereto as such attesting witness is of my proper handwriting, and my name and addition are correctly above set forth.

(2) I was present and did see the said bond duly signed and executed by , therein named.

(3) I am well acquainted with the said

Sworn before me at  
of

this

in the Count

day of

19 .

*A Commissioner, etc., or Notary Public, etc.*

## FORM 4.—BOND BY LEGATEE, NEXT-OF-KIN, DONEE OR OTHER SUCCESSOR.

## THE SUCCESSION DUTY ACT (ONTARIO).

\*Where a Guarantee Company is surety add: "and the said Company for itself, its successors and assigns, binds itself for the whole."

\*And the said Company affixes its corporate seal and the hand of its "President" or "Manager for Canada."

In the Surrogate Court of the  
In the matter of the estate of \_\_\_\_\_, deceased.

Know all men by these presents that we, \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_ Count of \_\_\_\_\_, of the \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ Count of \_\_\_\_\_, and \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_ Count of \_\_\_\_\_, are jointly and severally bound unto His Majesty the King in the sum of \$ \_\_\_\_\_, to be paid to the Treasurer of the Province of Ontario for the time being for which payment well and truly to be made we bind ourselves and each of us for the whole and our and each of our heirs, executors and administrators\* firmly by these presents.

Sealed with our seals.\* Dated the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord, A.D. 19 \_\_\_\_\_.

NOTE.—The penal sum should be not less than double the duty payable on the property subject to duty passing to all legatees, next-of-kin or other successors who join in same bond, but if separate security is given by each successor it should be double the duty on the property passing to such successor. The sureties must be one of the Guarantee Companies approved by Order of His Honour the Lieutenant-Governor in Council or two or more disinterested persons who will together justify to the aggregate of the penal sum.

\*"Legatees, next-of-kin, donees, or other successors." The condition of this obligation is such that if each of the above named \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ property of \_\_\_\_\_, late of the \_\_\_\_\_ of \_\_\_\_\_, in the County of \_\_\_\_\_, deceased, who died on or about the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_, do well and duly pay or cause to be paid to the Treasurer of the Province of Ontario for the time being, representing His Majesty the King in that behalf, any and all duty to which the property to which each is beneficially entitled.\*

\*Under the deceased's will, by intestacy, by settlement made by the deceased or for his benefit or by other gift *inter vivos* (as the case may be).

may be found liable under the provisions of the Succession Duty Act, within the time or times provided for under Section 15 of the said Act or such further time as may be given for payment thereof under Section 17 or otherwise of the said Act, then this obligation shall be void and of no effect, otherwise the same to remain in full force and virtue.

Signed, sealed and delivered in the presence of \_\_\_\_\_

AFFIDAVIT OF JUSTIFICATION.

For Personal Sureties Only.

Ontario.  
Count of  
To Wit:

I,

one of the sureties in the annexed bond  
named, make oath and say as follows:—

(1) I am seized and possessed to my own use of property in the Province of Ontario,  
of the actual value of \_\_\_\_\_ dollars over and  
above all charges upon and incumbrances affecting the same.

(2) I am worth the sum of \_\_\_\_\_ dollars, over and  
above my just debts, and any sum for which I am liable as surety or otherwise, except  
upon the said bond.

(3) My post office address is as follows:—

Sworn before me at \_\_\_\_\_ in the Count  
of \_\_\_\_\_ this \_\_\_\_\_ day of

19 .

A Commissioner, etc., or Notary Public, etc.

AFFIDAVIT OF JUSTIFICATION.

For Personal Sureties Only.

Ontario.  
Count of  
To Wit:

I,

one of the sureties in the annexed bond  
named, make oath and say as follows:—

(1) I am seized and possessed to my own use of property in the Province of Ontario,  
of the actual value of \_\_\_\_\_ dollars over and  
above all charges upon and incumbrances affecting the same.

(2) I am worth the sum of \_\_\_\_\_ dollars, over and  
above my just debts, and any sum for which I am liable as surety or otherwise, except  
upon the said bond.

(3) My post office address is as follows:—

Sworn before me at \_\_\_\_\_ in the Count  
of \_\_\_\_\_ this \_\_\_\_\_ day of

19 .

A Commissioner, etc., or Notary Public, etc.

# The Ontario Succession Duty Act

## AFFIDAVIT OF EXECUTION.

I, \_\_\_\_\_ in the County of \_\_\_\_\_  
 Ontario, County of \_\_\_\_\_ make oath and say as follows:—  
 To Wit: (1) I am the person whose name is subscribed to the annexed bond as the attesting  
 witness to the execution thereof, and the signature  
 set and subscribed thereto as such attesting witness is of my proper hand-  
 writing, and my name and addition are correctly above set forth.

(2) I was present and did see the said bond duly signed and executed by  
 \_\_\_\_\_, therein named  
 (3) I am well acquainted with the said \_\_\_\_\_  
 Sworn before me at \_\_\_\_\_ in the County of \_\_\_\_\_  
 of \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_  
 19 \_\_\_\_\_

\_\_\_\_\_  
 A Commissioner, etc., or Notary Public, etc.

## FORM 5.—AFFIDAVIT OF DEBTS. THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the \_\_\_\_\_ of \_\_\_\_\_, deceased.  
 In the estate of \_\_\_\_\_ of \_\_\_\_\_

I, \_\_\_\_\_, make oath and say:—  
 in the \_\_\_\_\_ of the \_\_\_\_\_, deceased's  
 estate. That there is  
 set forth full and true particulars of the debts incurred by the deceased  
 and encumbrances created by a disposition made by the deceased, and  
 the funeral expenses and Surrogate fees allowed as deductions by the  
 Succession Duty Act.

\*As the case  
 may be  
 (strike out  
 irrelevant  
 words).

\*Or as the  
 case may be.

That such debts and encumbrances were incurred and created *bona fide*  
 for full consideration of money or money's worth wholly for the deceased's  
 own use and benefit, and take effect out of his estate. That there is  
 no right to reimbursement for any debt or encumbrance included in such  
 schedule from any other estate or person (nor can any reimbursement  
 be obtained from the persons primarily liable or as contributors for the  
 amount so set out in such schedule), nor is the same debt or encumbrance  
 charged more than once upon different portions of the estate.

That all the said debts and encumbrances have been allowed and  
 paid by the executors, administrators, \_\_\_\_\_  
 those set out in the second part of such schedule and the reasons for such  
 non-payment are respectively set opposite thereto.

Sworn before me at the \_\_\_\_\_ of \_\_\_\_\_  
 in the \_\_\_\_\_ day of \_\_\_\_\_ A.D. 19 \_\_\_\_\_  
 this \_\_\_\_\_ day of \_\_\_\_\_  
 A Commissioner, etc., or Notary Public, etc.

FORM 5.—SCHEDULE OF DEBTS.

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of \_\_\_\_\_ of \_\_\_\_\_  
 In the matter of the estate of \_\_\_\_\_, deceased, late of  
 the \_\_\_\_\_ of \_\_\_\_\_ in the \_\_\_\_\_ of \_\_\_\_\_

FIRST PART.

Name of Creditor	Address	Nature of Claim	Amount Paid
			\$ c.
		Total.....	

NOTE.—In the First Part of Schedule must be inserted all items including those in Second Part; of which payment is deferred.

SECOND PART.

Name of Creditor	Address	Nature of Claim	Amount un- paid or in dispute	Reason for non-payment
			\$ c.	
		Total.....		

This is Schedule marked "A" referred to in the Affidavit of Debts of \_\_\_\_\_

Sworn before me on the \_\_\_\_\_ day  
 of \_\_\_\_\_ A.D. 19 \_\_\_\_\_

.....  
 A Commissioner, Etc.

A.D. 19

*The Ontario Succession Duty Act*

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**FORM 6.—DIRECTION TO SURROGATE JUDGE TO MAKE VALUATION AND ASSESS DUTY.**

(Section 18.)

THE SUCCESSION DUTY ACT (ONTARIO).

---

In the Surrogate Court of

In the matter of the estate of

, deceased.

To the Surrogate Judge of the Court of

At the direction of the Treasurer of the Province of Ontario, I hereby request you to make a valuation of all property of the deceased and determine the liability of the estate for duty and the persons by whom it is payable in accordance with the Succession Duty Act.

Dated at Toronto, this

day of

19 .

---

**FORM 7.—ORDER OF JUDGE DIRECTING HEARING AND SERVICE OF PERSONS INTERESTED.**

(Section 18.)

THE SUCCESSION DUTY ACT (ONTARIO).

---

In the Surrogate Court of the

Count of

In the matter of the estate of

, deceased.

His Honour

in Chambers.

The

day of

19 .

Pursuant to the direction of the Treasurer of Ontario, I do order as follows:—

(1) That all persons having any interest in the estate of the above named deceased and its liability to Succession Duty, attend before me at my chambers in the Court House at \_\_\_\_\_ on \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_ at \_\_\_\_\_ o'clock \_\_\_\_\_ noon, and so from day to day until the hearing is ended, at which time and place I will proceed to make a valuation of all the property of the deceased within the meaning of the Succession Duty Act, to fix the amount of the debts, and other deductions and exemptions, to determine the liability of the estate for such duty by reason of the deceased's death, the persons liable therefor, and the times or times when the same shall be paid.

(2) That notice of this order be served personally (or by registered letter, prepaid, or other substitutional service) seven clear days before such hearing on the following persons:—



Here name  
the executors,  
administra-  
tors, trustees,  
etc., and  
beneficiaries  
to be served.

(3) That notice of this order be served on  
agent of the official guardian, to represent the infants interested in the  
estate, viz:—

(4) That all personal representatives or beneficiaries, distributees, or  
donees (as the case may be) are required to produce before me at the  
said time and place all books, books of accounts, accounts, title deeds,  
securities for moneys, promissory notes, and other documents and papers  
relative to the property and the liability of the estate for such duty and  
the matters in question herein, and particularly such documents as are  
hereinafter mentioned.

Add here any  
special or  
other pro-  
visions of  
Judge's order.

*The Ontario Succession Duty Act***FORM 8.—NOTICE BY SURROGATE JUDGE TO EXECUTORS,  
ADMINISTRATORS AND INTERESTED PERSONS  
DIRECTED TO BE SERVED.***(Section 19.)***THE SUCCESSION DUTY ACT (ONTARIO).**

In the Surrogate Court of the \_\_\_\_\_ Count of \_\_\_\_\_  
 In the matter of the estate of \_\_\_\_\_, deceased.  
 To \_\_\_\_\_

Take notice that His Honour \_\_\_\_\_, Judge of  
 the Surrogate Court, will, on the \_\_\_\_\_ day of \_\_\_\_\_,  
 19\_\_\_\_, at the hour of \_\_\_\_\_ in the \_\_\_\_\_ of noon at his chambers  
 in the Court House at the \_\_\_\_\_ of \_\_\_\_\_  
 proceed to make a valuation of all the property of the deceased within  
 the meaning of the Succession Duty Act, to fix the amount of the debts  
 and other deductions and exemptions, to determine the liability of the  
 estate for duty, and persons liable therefor, under the devolution by reason  
 of the deceased's death, and the time or times when such duty is payable.

Take notice that you are required to attend at the above time and  
 place, and so from day to day until the hearing is ended, and that in default  
 of your so doing, he will proceed to hear and determine all matters upon  
 the showing of the Treasurer of Ontario.

Take notice further, that you are required further to produce before  
 him at the said time and place all books, books of account, accounts,  
 title deeds, securities for moneys, promissory notes, and other documents  
 and papers relative to the property, the liability of the estate for such  
 duty and the matters in question herein and particularly the following:—

**Insert docu-  
 ments specially  
 required to  
 be produced.**

**State here any  
 special or other  
 provisions of  
 Judge's order.**

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

*Registrar of the Surrogate Court of the*

FORM 9.—REPORT OF SHERIFF.

(Section 18, ss. 6.)

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the

In the matter of the estate of

, deceased.

To the Judge of the said Surrogate Court:

Pursuant to an order made in this matter and dated the day of , A.D. 19 , directing me to make a valuation and appraisal of the property or parts of the property (as the case may be) more particularly described in the inventory attached to the affidavit of value and relationship filed, or wrongfully omitted from such inventory (as the case may be) and set out in the schedule hereto annexed, I proceeded in the presence of (or personally, as the case may be) to make an appraisal and valuation of the said property at its fair market value on the day of the deceased's death, being the day of 19 , (or as the case may be), and do value and appraise the same at the sum of \$ as appears from the schedule hereto annexed.

Dated

day of

, 19 .

Sheriff of the Count of

FORM 10.

THE SUCCESSION DUTY ACT (ONTARIO).

In the Surrogate Court of the County of

In the matter of the estate of

, deceased.

This to certify that a statement verified on oath of all the property owned by the above named deceased, who died on or about the day of in the year of our Lord one thousand nine hundred and , and who at the time of h death had a fixed place of abode at the of in the Count of and Province of Ontario, has been filed in this office pursuant to sub-section 1 of section 11 of The Succession Duty Act and the rules and regulations thereunder.

This certificate is given only for the purpose of registration of the original will or other instrument under section 56 of the Registry Act.

Dated at

, this

day of

A.D. 191 .

Registrar of the Surrogate Court of the County of

To the Registrar of the Registry Division of

## FORM 11.

## THE SUCCESSION DUTY ACT (ONTARIO).

In the matter of the estate of \_\_\_\_\_, late of \_\_\_\_\_,  
 \_\_\_\_\_, in the Count of \_\_\_\_\_, deceased.

## CERTIFICATE OF DISCHARGE.

(Section 18.)

This is to certify that the full amount of Succession Duty payable under the devolution by reason of the death of \_\_\_\_\_, the above named deceased, has been paid, and the property set forth in the affidavits and papers filed in the Succession Duty Office is therefore discharged from any further claim to succession duty under such devolution.

This certificate is given under the terms and subject to the conditions of section 15 of the Succession Duty Act.

Dated at Toronto, this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 191 \_\_\_\_\_.

Provincial Treasurer.

Countersigned,

\_\_\_\_\_  
 Solicitor under Succession Duty Act.

## APPENDIX B.

THE LIEUTENANT-GOVERNOR, by Order-in-Council, has approved of the following companies under *The Guarantee Companies Securities Act*, and the bonds of these companies may be filed under the Succession Duty Act:—

1. Dominion of Canada Guarantee and Accident Insurance Company.
2. Guarantee Company of North America.
3. London Guarantee and Accident Company, Limited.
4. Employers Liability Assurance Corporation, Limited.
5. American Surety Company of New York.
6. United States Fidelity and Guarantee Company.
7. Imperial Guarantee and Accident Company.
8. London and Lancashire Guarantee and Accident Company.
9. The Maryland Casualty Company.
10. The National Surety Company of New York.
11. The Guardian Accident and Guarantee Company of Montreal.
12. Railway Passengers Assurance Company of London, England.
13. Ocean Accident and Guarantee Corporation, Limited.
14. Canadian Surety Company.
15. Dominion Gresham Casualty Company.
16. Globe Indemnity Company of Canada.
17. General Accident Assurance Company of Canada.

## APPENDIX C.

ORDERS-IN-COUNCIL, extending the provisions of section 9 as to the allowance of duty paid elsewhere, have been passed on the respective dates set opposite thereto, with respect to the following countries and provinces of the Dominion of Canada.

United Kingdom of Great Britain and Ireland.....	12th January, 1906.
British Columbia.....	2nd July, 1908.
Manitoba.....	30th April, 1909.
New Brunswick.....	23rd July, 1907.
Nova Scotia.....	23rd September, 1907.
Saskatchewan.....	28th August, 1908.
Prince Edward Island.....	14th November, 1912.
Quebec.....	17th October, 1918.
Alberta.....	9th June, 1919.

## APPENDIX B

### The Succession Duty Office

#### MEMORANDUM FOR PRACTITIONERS

PARLIAMENT BUILDINGS,

Toronto, 2nd June, 1919.

Solicitors acting for Estates are requested to

1. Comply as soon as possible with the request for a bond to be fyled with the Surrogate Registrar.

If it is desired to avoid giving bonds for large sums based on the amount of duty appearing *prima facie* exigible let the Succession Duty Office learn the approximate amount of debts and encumbrances even if a regular affidavit of debts cannot yet be made.

2. Obtain at their early convenience and set out in prescribed form of affidavit (a) particulars of the debts of the deceased including encumbrances with interest accrued to the date of death, taxes including the proportion of those for current year to date of death and the amounts of any liens of brokers or the like.

The statement of these matters in the inventory is not sufficient as the Succession Duty Office is entitled to learn from a proper affidavit of debts (form 5 under Succession Duty Act) that the deductions claimed have been incurred by deceased for full consideration and that no right of re-imbusement exists. The affidavit of debts should be sent when the debts are ascertained.

(b) funeral expenses.

(Nothing will be allowed for a monument or for transportation of a corpse from any point outside Ontario to the border of the Province).

and (c) disbursements in the Surrogate Court for letters probate or letters of administration.

(Nothing will be allowed for solicitors' fees obtaining grant or for any expenses of administration; items for premiums on surety bond, auctioneer's, appraiser's or accountant's charges incurred after death or for advertisements for creditors should not be inserted in the affidavit of debts.)

3. Make a notarial copy of probate or letters of administration as soon as issued and forward it to the Succession Duty Office; if the dispositions are complex, let a copy of the will be furnished to the Surrogate Registrar to accompany the affidavit of value:

(The Succession Duty Office is entitled to know that a will has been admitted to probate or that an intestacy is established. If litigation is imminent or some question of construction is in dispute, let the Succession Duty Office be informed forthwith.)

4. Show in affidavit of value the ages of the various annuitants or life tenants, or if not procurable when affidavit is drawn evidence of the ages should be forwarded as soon thereafter as practicable.

The values of annuities are always required to be designated in the statements issued by the Succession Duty Office; in the case of life interests with remainder to beneficiaries of the same class and subject to the same rate of duty, such designation is not always essential, but the information should nevertheless be in all cases furnished, in anticipation of its being of use.

5. If an adopted child or person to whom the deceased stood *in loco parentis* is a beneficiary, state fully the circumstances under oath in order that the proper rate of duty may be determined or (possibly) exemption be allowed and consent to probate given with expedition.

6. In case assets of the estate are *situate out of Ontario*, obtain statements of the duty paid elsewhere showing the basis of valuation and forward to this office for inspection.

This will facilitate the proper adjustment of the values and the making of all proper allowances when rendering a statement of the duty payable in Ontario. The aim is that the statement rendered by the Ontario Succession Duty Office should show the gross amount of duty claimed, and the deduction to be made of the duty charged in other jurisdictions no notice being taken either of discount allowed or fine incurred and then indicate any allowance to be made for prepayment. The statements and vouchers for payment are both required. (It must be remembered that Alberta and the various States of the American Union have not as yet entered into arrangements with Ontario for the reciprocal allowance of duty; nevertheless under section 5 of the

Succession Duty Act of Ontario, the amounts paid in those jurisdictions may be allowed as a deduction from the "Succession" in Ontario although not as a deduction directly from the duty). It might be well for solicitors to retain a copy of the Succession Duty affidavit and schedules and affidavit of debts apart from the copies fyled with the Surrogate Registrar in order that more copies may be made for use in other jurisdictions.

7. Bear in mind that Succession Duty is payable eighteen months after the date of death, and that if a settlement is not then made, the penalty of interest at five per cent. per annum from date of death will be incurred.

The fyling of the affidavit of value must in many cases necessarily be delayed for some time, and having regard to the time which has elapsed, the period which is left for the adjustment of the duty should be considered by the legal advisers of the estate and all pains taken to comply with the requirements of the Succession Duty Office as soon as possible. If it is desired to make a settlement immediately after the fyling of the affidavit of value, the office will give attention to the matter so far as such action does not involve neglect of the cases about to mature at an earlier date. As an instalment of duty on an annuity is payable 12 months after death (instead of eighteen) a separate memorandum of the amount will be furnished if the net amount of the total estate is approximately settled, so as to fix the rate.

8. Bear in mind that after first exchange of correspondence it is not the practice of the Succession Duty Office, unless requested, to resume consideration of the matter until about three months before the expiration of the period of grace (eighteen months after death) when all cases where the period of grace is to expire are considered and the solicitors are reminded that any material which has not already been forwarded should be sent at once.

While making every effort to facilitate matters for the representatives of estates and their legal advisers, the Succession Duty Office cannot undertake to furnish statements of succession duty at short notice upon a hasty examination of the material. It is the hope of the Solicitor of the Succession Duty Branch and his staff, that precision in the form of the papers, and material when first fyled and attention to all requirements at an

early stage in the correspondence will obviate any necessity for this.

The Succession Duty Office makes inquiries into the values of the real estate and will, without prejudice to the right to employ an independent valuer, be pleased to hear at the outset any remarks the solicitors may offer as to the basis of their valuation.

It also enquires into the values of shares in companies not listed on exchange or known on curb; in such cases a copy of the opinion of a broker or of an officer of the company should be furnished—failing any recent transactions on an important scale, or in case of stock closely held, it is usual, if the deceased was a large holder, to require copies of the financial statements for the three years prior to his death, with the addition of such information as is available for the current year. Valuers of the department are frequently directed to make special reports.

9. If securities of the Province of Ontario are among the assets, designate date, series, maturity and statutory authority, as some of these are exempt from duty.

10. When paying duty, deduct from the cheque the proper allowances for duty paid elsewhere, and for prepayment, in the latter case reckoning from the actual date of payment up to the expiration of eighteen months from the date of death.

11. Make cheques, etc., payable to the Treasurer of Ontario, but send them to this office, in order that after the payment and its correctness have been noted, the remittance may be forwarded to the Treasury Department, whence an official receipt to the representatives of deceased will be sent to them or their solicitor.

12. Make all applications for the extension of time beyond the period of eighteen months, to the Surrogate Judge.

The Succession Duty Office will not be adverse to consenting to reasonable extension, or to obtaining the Treasurer's consent to further extension where necessary. It is the intention, however, to ask for interest during the time of such extension, and the expectation of the office is that the Judge will not be asked to otherwise order, except in a strong case.

The name and definite address of solicitors should always be *endorsed on the affidavit of value.*



# NATIONAL TRUST COMPANY LIMITED

Paid-Up Capital . . . . . \$ 1,500,000  
Reserve Fund . . . . . 1,600,000  
Assets under Administration, over 88,000,000

## HEAD OFFICE:

18-22 King St. East, TORONTO.

W. E. RUNDLE, General Manager.

## TORONTO OFFICE.

J. C. BRECKENRIDGE, Assistant Manager.	W. M. O'CONNOR, Estates Manager.
EDWIN CASSIDY, Secretary.	H. A. CLARKE, H. V. LAUGHTON, H. V. HEARST, Assistant Estates Managers.
CUTHBERT HUCKVALE, Assistant Secretary.	F. B. POUCHER, Manager Real Estate Dept.
J. M. MACDONNELL, F. R. MACKELCAN, Trust Officers.	
G. L. ELLIOTT, Transfer Officer.	

## OFFICES:

Montreal, Que . . . .	JOHN McDONALD . . . .	Manager.
Winnipeg, Man . . . .	D. H. COOPER . . . .	Manager.
Edmonton, Alta. . . .	A. E. SCRABE . . . .	Manager.
Saskatoon, Sask. . . .	J. D. GUNN . . . .	Manager.
Regina, Sask. . . . .	W. G. STYLES . . . .	Manager.

## AGENTS IN GREAT BRITAIN.

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MESSRS. FINLAYSON, AULD & MACKECHNIE, Writers.  
144 St. Vincent Street, Glasgow, Scotland.

## LONDON REPRESENTATIVE.

A. L. NUNNS.  
28 Bishopsgate, London, E.C., 2, England.

## PRESIDENT.

SIR JOSEPH FLAVELLE, BART.

## VICE-PRESIDENTS.

E. R. WOOD,  
President and Managing Director Central Canada Loan & Savings  
Company.

W. E. RUNDLE,  
General Manager National Trust Company, Limited.

**DIRECTORS.**

**HON. MR. JUSTICE BRITTON.**

**CHESTER D. MASSEY.**

Hon. President Massey-Harris Company, Limited.

**ELIAS ROGERS.**

Vice-President Imperial Bank of Canada.

**ALEX. BRUCE, K.C.**

of Messrs. Bruce, Bruce & Counsell, Barristers.

**H. C. COX.**

President and General Manager Canada Life Assurance Company.

**H. H. FUDGER.**

President the Robert Simpson Company Limited.

**H. B. WALKER.**

Manager Canadian Bank of Commerce at Montreal.

**HON. SIR EDWARD KEMP, K.C.M.G.**

Minister of Overseas Military Forces of Canada;  
President Sheet Metal Products Company of Canada, Limited.

**J. H. PLUMMER.**

Director Dominion Steel Corporation, Limited.

**HON. F. H. PHIPPEN, K.C.**

**H. J. FULLER.**

President Canadian Fairbanks-Morse Company, Limited, Montreal.

**F. W. MOLSON.**

Director the Molsons Bank, Montreal;  
Director Montreal City and District Savings Bank.

**T. B. MACAULAY.**

President and Managing Director Sun Life Assurance Company  
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**W. M. BIRKS.**

Vice-President Henry Birks & Sons Limited, Montreal;  
Director the Molsons Bank.

**E. M. SAUNDERS.**

Treasurer Canada Life Assurance Company.

**SIR JOHN AIRD.**

General Manager Canadian Bank of Commerce.

**THOMAS FINDLEY.**

President and General Manager Massey-Harris Company, Limited.

**FRED. W. HARCOURT, K.C.**

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**JAMES RYRIE.**

President Ryrie Bros., Limited.

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