

## Act No. 24, 1904.

STAMP DUTIES  
(AMENDMENT)  
(No. 2).

An Act to impose certain stamp duties ; to amend the Stamp Duties Act, 1898, the Probate Duties (Amendment) Act, 1899, and the Stamp Duties Amendment Act, 1900 ; and for purposes consequent thereon or incidental thereto. [13th December, 1904.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows :—

## PART I.

## PRELIMINARY.

Short title.

1. This Act may be cited as the "Stamp Duties (Amendment) Act, 1904," and shall be construed with the Stamp Duties Act, 1898, the Probate Duties (Amendment) Act, 1899, and the Stamp Duties Amendment Act, 1900.

Division of Act.

2. This Act is divided into Parts, as follows :—

PART I.—PRELIMINARY—*ss.* 1-4.

PART II.—DUTIES ON INSTRUMENTS—*ss.* 5-19.

PART III.—DUTIES ON ESTATES OF DECEASED PERSONS—*ss.* 20-24.

PART IV.—SUPPLEMENTAL AND GENERAL—*ss.* 25 and 26.

Definitions.

3. In this Act—

"The Principal Act" means the Stamp Duties Act, 1898.

"The State" means the State of New South Wales.

Repeal.

4. Subsections three and four of section thirty-seven and the whole of section thirty-eight of the Principal Act, and so much of the said Act as exempts from such duties any instruments in respect of which stamp duties are imposed by this Act are hereby repealed.

## PART II.

## DUTIES ON INSTRUMENTS.

*Charge of stamp duties.*

Charge of duties on  
instruments  
mentioned in  
Schedule I.

5. There shall be charged, levied, collected, and paid for the use of His Majesty under the provisions of the Principal Act, the Stamp Duties Amendment Act, 1900, and this Act, and to form part of

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of the Consolidated Revenue Fund for and in respect of the instruments mentioned in Schedule I hereto, duties of the several amounts and at the several rates therein specified: Provided that nothing in this Part of this Act or in Schedule One shall operate so as to reduce any duty which may be levied under section forty-nine of the Principal Act and the Probate Duties (Amendment) Act, 1899.

*Conveyances on sale or exchange.*

6. (1) Where the consideration or any part of the consideration for a conveyance on sale consists of an annuity, the conveyance is to be charged with ad valorem duty on the value of the annuity, capitalised on an actuarial basis of five per centum per annum. How consideration consisting of annuity to be charged.

(2) Provided that no conveyance on sale chargeable with ad valorem duty in respect of any annuity and containing also provision for securing the payment of the annuity, is to be charged with any duty in respect of such provision, and no separate instrument made in that case for securing such payment is to be charged with ad valorem duty or a higher duty than that payable in respect of such instrument. Proviso.

7. Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the same, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be charged with ad valorem duty in respect of the consideration for the sale to the original purchaser, or in respect of the consideration for the sale by the original purchaser to the sub-purchaser, whichever consideration is the larger. Duty where conveyance on sale is by original seller to sub-purchaser.

8. Where a person having contracted for the purchase of any property, but not having obtained a conveyance, contracts to sell the whole or any part or parts thereof, and the property is in consequence conveyed by the original seller to sub-purchasers in parts or parcels, the conveyance of each part or parcel shall be charged with ad valorem duty as assessed by the commissioner in respect of the consideration moving from the sub-purchaser thereof, or in respect of an amount which bears the same proportion to the consideration for the sale to the original purchaser as the value of such part or parcel bears to the value of the property originally contracted to be sold, whichever amount is the larger. Conveyance to several sub-purchasers.

The sub-purchaser shall at the request of the commissioner and within such time as he may require, lodge with the commissioner an affidavit by some competent person stating the values of the property originally contracted to be sold and of the part or parcel conveyed to the sub-purchaser, to the best of his knowledge, information, and belief, and shall within one month after the execution of the conveyance or after it has first been received in the State, in case it is first executed

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executed at any place out of the State, lodge with the commissioner the conveyance or a true copy thereof. The commissioner shall thereupon assess the duty in respect of the instrument.

Penalty.

If default is made in lodging the affidavit or the conveyance or a true copy thereof within the time limited by this section, the sub-purchaser shall be liable to a penalty not exceeding twenty pounds in addition to the fine payable on stamping the instrument.

Duty where conveyance is by way of exchange.

9. (1) Where a conveyance is as to the whole or part of the consideration by way of exchange, the parties to the exchange or one of them shall, within one month after the execution of the exchange, or after it has first been received in the State, in case it is first executed at any place out of the State, lodge with the commissioner an affidavit by some competent person stating to the best of his knowledge, information, and belief, the value of the property exchanged and the amount of any money passing to equalise the dealing, together with the conveyance or a true copy thereof. The commissioner shall thereupon assess the duty payable in respect of the conveyance.

Penalty.

(2) If default is made in lodging the affidavit or the conveyance or a true copy thereof within the time limited as aforesaid, the parties to the exchange shall each be liable to a penalty not exceeding ten pounds in addition to the fine payable on stamping the instrument: Provided that not more than one such penalty shall be imposed in respect of the same conveyance.

Where consideration does not fairly represent value of property conveyed.

10. (1) Where the commissioner is of opinion that the consideration on a conveyance on sale or exchange does not fairly represent the value of the property the subject of the conveyance, he may require any of the parties to the conveyance to lodge with him within the time specified by him an affidavit by some competent person stating, to the best of his knowledge, information, and belief, the value of the property.

The commissioner shall thereupon assess the said value, and such value as so assessed shall, for the purposes of the Principal Act, the Stamp Duties Amendment Act, 1900, and this Act, be deemed to have been the consideration for the conveyance.

Penalty.

(2) If any person, being so required, fails to so lodge the affidavit within the time so specified, he shall be liable to a penalty not exceeding ten pounds, in addition to the fine payable on stamping the instrument: Provided that not more than one such penalty shall be imposed in respect of the same conveyance.

*Voluntary conveyances.*

Voluntary disposition to a company deemed to be a voluntary conveyance.

11. Where any person, after the commencement of this Act, makes a voluntary disposition of any property to or for the benefit of a company then formed or to be formed, the instrument by which such disposition is made shall, for the purpose of this Act, be deemed a voluntary conveyance of such property. 12.

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12. (1) The person making a settlement, deed of gift, or voluntary conveyance (not being an ante-nuptial settlement, or the appointment merely of a new trustee) of any property shall, within one month after making the same, or after it has been first received in the State, in case it is first executed at any place out of the State, lodge with the commissioner an affidavit by some competent person stating, to the best of his knowledge, information, and belief, the value of such property, together with the settlement, deed, or conveyance, or a true copy thereof. The commissioner shall thereupon assess the duty payable in respect of the instrument.

Valuation of property passing under voluntary conveyance.

(2) If the person making such settlement, deed, or conveyance, fails to comply with the provisions of this section within the period therein prescribed, it shall be lawful for the Supreme Court or a Judge thereof, on application made by the commissioner, to order the said person to lodge the affidavit, or the settlement, deed, or conveyance, or a true copy thereof within the time and as directed by such order; and the costs of and incidental to the order shall be paid as the Court or Judge may direct.

*Mortgages.*

13. (1) Where a disclaimer under the Bankruptcy Act, 1898, or a foreclosure order is executed or made, the disclaimer or foreclosure order shall be lodged by the mortgagee with the commissioner within one month after the execution or making of the same.

Disclaimer or foreclosure order.

(2) If default is made in lodging the disclaimer or order within the time limited by this section, the person so making default shall be liable to a penalty not exceeding ten pounds in addition to the fine payable on stamping the instrument.

Penalty.

*Contract or agreement to sell mining property.*

14. (1) Where ad valorem duty has been paid in respect of a contract or agreement to sell, exchange, or transfer a gold-mining or mineral claim or lease, or mineral conditional purchase, no conveyance or transfer executed in pursuance of such contract or agreement shall be charged with ad valorem duty or a higher duty than that payable in respect of such conveyance or transfer.

Ad valorem duty on agreement to sell mining property.

(2) Where in respect of any such contract or agreement the consideration or any part of the consideration for the sale, exchange, or transfer consists of any stock or marketable security, such contract or agreement shall be charged with ad valorem duty in respect of the value of such stock or security.

Where consideration is marketable security.

(3) Where such consideration or any part thereof consists of any security, not being a marketable security, such contract or agreement shall be charged with ad valorem duty in respect of the amount due on the day of the date thereof for principal and interest upon such security.

Where consideration is any other security.

(4)

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Where consideration  
is a debt.

(4) Where such consideration or any part thereof consists of a debt due to the person to whom the sale, exchange, or transfer is to be made, or where the contract or agreement is subject, either certainly or contingently, to the payment or transfer of any money or stock, whether being or constituting a charge or encumbrance upon the claim or lease or conditional purchase, such contract or agreement shall be charged with ad valorem duty in respect of the amount of such debt, money, or stock.

Where consideration  
is shares in a  
company.

(5) Where such consideration or any part thereof consists of shares in a company or association formed or to be formed, the value of such shares shall be taken into account in determining such consideration, and shall be assessed by the commissioner.

In case of sub sale.

(6) Where the proposed purchaser has paid the said ad valorem duty, and before having obtained a conveyance of the claim, lease, or conditional purchase, enters into a contract or agreement for the sale, exchange, or transfer of the same, the contract or agreement shall be charged, if the consideration for that sale is in excess of the consideration for the original sale, with ad valorem duty payable in respect of such excess consideration or of the fixed duty of one pound, whichever amount is the larger, and in every other case with the fixed duty of one pound.

Return of duty.

(7) Provided that the ad valorem duty paid upon any such contract or agreement, less the fixed duty of one pound, shall be returned by the commissioner in case the contract or agreement is afterwards rescinded or annulled, or for any other reason is not substantially performed or carried into effect, so as to operate as or be followed by a conveyance or transfer.

Duty denoted by  
impressed stamps.

(8) The duty in respect of any such contract or agreement shall be denoted by impressed stamps.

*Drafts.*

Penalty in respect  
of unstamped draft.

**15.** Whosoever issues, endorses, transfers, uses, negotiates, presents for payment or pays any draft liable to duty and not duly stamped, shall be liable to a penalty not exceeding ten pounds.

*Instruments to complete title.*

When several  
instruments required  
to complete title.

**16.** Where ad valorem duty has been paid in respect of a conveyance on sale or by way of exchange, or a mortgage, or in respect of a conveyance by an official assignee to a mortgagee, or a disclaimer of mortgaged property by an official assignee or trustee, or a foreclosure order, or a settlement, gift, or voluntary conveyance, no separate instrument for completing the title of the person taking under such conveyance, mortgage, disclaimer, order, settlement, or gift shall be charged with ad valorem duty, or a higher duty than that payable in respect of such instrument.

*Stamping*

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*Stamping of instruments.*

17. (1) In the case of the instruments mentioned in Schedule II to this Act, the following provisions shall have effect:—

- (a) The instrument, unless it is written upon duly stamped material, shall be duly stamped with the proper duty before the expiration of two months after it has been first executed, or two months after it has been first received in the State in case it was first executed at any place out of the State, unless the assessment of the commissioner with respect to the amount of duty with which the instrument is chargeable is required by or under the Principal Act, or this Act.
- (b) If the assessment of the commissioner is required as aforesaid, the instrument shall be stamped in accordance with the assessment within fourteen days after notice of the assessment.
- (c) If any such instrument executed after the commencement of this Act is not duly stamped in conformity with the foregoing provisions of this section, the person in that behalf specified in the said Schedule shall be liable to a fine not exceeding twenty-five pounds.

Instruments mentioned in Schedule II to be stamped within two months.

(2) Provided that the commissioner may, if he thinks fit, mitigate or remit any fine payable on stamping.

(3) The payment of any fine payable on stamping is to be denoted on the instrument by a particular stamp.

Proviso.

Fines.

*Assessment of duty.*

18. Where under this Part of this Act an assessment may be made by the commissioner of the duty payable on any instrument, the commissioner may assess the duty on the footing of the value of any property referred to or dealt with in such instrument as stated in any affidavit lodged with him in accordance with the provisions of the said Part. But if he is dissatisfied with the value stated in such affidavit, or if no affidavit is required to be lodged with him or no affidavit has been lodged with him within the time limited in that behalf, he may cause a valuation of the property to be made by some person appointed by him, and may assess the duty payable on the footing of such valuation.

Assessments of duty by the commissioner.

Any person dissatisfied with any assessment made by the commissioner under this Part of this Act may, within twenty-one days after the making of such assessment, and on payment of duty in conformity therewith, appeal therefrom to the Supreme Court, and may for that purpose require the commissioner to state and sign a case setting forth the grounds upon which his assessment was made; and the provisions of subsections two to five inclusive of section eighteen of the Principal Act shall apply in respect of any such appeal.

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If there is no appeal as aforesaid against such assessment, it shall be in the discretion of the commissioner, having regard to the merits of the case, to charge the whole or any part of the expenses of and incidental to the making of the valuation to the person liable to pay the duty, and to recover the same from him as a debt due to His Majesty.

If there is an appeal as aforesaid against such assessment, the payment of such expenses shall be in the discretion of the court hearing the appeal.

*Exemption of certain receipts.*

Receipts for refunds made by Government exempt from receipt duty.

**19.** Receipts for refunds made by the Government or a department of the Government of the State shall not be liable to the stamp duty payable on receipts.

## PART III.

## DUTIES ON ESTATES OF DECEASED PERSONS.

Sec. 49 (2) (a) to extend to special powers.

**20.** Paragraph (a) of subsection two of section forty-nine of the Principal Act shall be deemed to have extended and shall extend to the case where the authority under which the disposal was made was a special or limited power of appointment: Provided that nothing in this section shall affect any suit or action pending at the commencement of this Act.

Certain duties under s. 49 (2) (a) payable by executor.  
23 & 24 Vic., c. 15, ss. 4, 5.

**21.** Where, under paragraph (a) or paragraph (b) of subsection two of section forty-nine of the Principal Act, as amended by the Probate Duties (Amendment) Act, 1899, duty is payable in respect of a disposal by will, settlement, or voluntary disposition of any estate—

- (a) such estate shall, for the purposes of those Acts, be deemed to be the estate of the person dying;
- (b) the duty shall be payable by the executor or administrator of the said person;
- (c) the duty shall be a charge on the estate, and shall be paid thereout by the trustees or owners thereof according to the value of their respective interests therein to the executor or administrator.

Payment of other duties under s. 49 (2).

**22.** Where, under subsection two of section forty-nine of the Principal Act, as amended by the Probate Duties (Amendment) Act, 1899, duty is payable in respect of any estate, the following provisions shall (except in the case provided for in the last preceding section) have effect:—

44 & 45 Vic., c. 12, s. 39.

- (a) Every person who as beneficiary, trustee, or otherwise acquires possession or assumes the management of any such estate, shall,

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shall, upon retaining the same for his own use, or distributing or disposing thereof, and in any case within three months after the death of the deceased, deliver to the commissioner a full and true account verified by oath of such estate: Provided that the time for delivering the account may be extended by the commissioner.

- (b) If the commissioner is satisfied with the account, or with any amended account made on his requisition, he may assess the duty on the footing of such account, and the duty as so assessed shall be paid.
- (c) If the commissioner is dissatisfied with the account, he may, with the approval of the Colonial Treasurer, cause an account to be taken by some person to be appointed by him in that behalf and assess the duty on the footing of that account, and the duty as so assessed shall be paid, subject to appeal in the manner provided in section eighteen of the Principal Act.
- (d) Any person directed by this section to deliver an account of any estate shall within one month after the assessment of the duty on such estate be liable to pay the said duty.
- (e) The duty shall be a charge on the estate.
- (f) For the purpose of assessing the amount of the duty, the estate shall be deemed to be the estate of the person dying.
- (g) A person who wilfully fails to comply with any of the foregoing provisions of this section shall be liable to pay to the commissioner twenty pounds: Provided that the commissioner, or in any proceeding for the recovery of such penalty, the Court, may reduce any such penalty.

23. Subsection two of section one of the Probate Duties (Amendment) Act, 1899, as amended by this Act, shall not apply to the estate of a person who dies after the commencement of this Act domiciled at some place outside the State. Section 1 (2) of Act of 1899 not to apply to persons domiciled out of the State.

24. The proviso in subsection two of section one of the Probate Duties (Amendment) Act, 1899, that where the total value of the estate, after deducting all debts which may in pursuance of the Principal Act be deducted, does not exceed fifty thousand pounds, the duty mentioned in the section shall, in the circumstances therein set forth, be calculated at one-half only of the percentage mentioned in the Schedule to that Act, or so as to charge one-half only of the duty upon certain distributive shares, or upon property devised or bequeathed or otherwise disposed of as therein mentioned, is hereby, with respect to the estate of any person dying after the commencement of this Act, restricted to the case where the total value of such estate after deducting all debts which may in pursuance of the Principal Act be deducted, does not exceed thirty thousand pounds. Restriction of proviso in section 1 (2) of Act of 1899 to estates not exceeding £30,000.

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PART IV.

SUPPLEMENTAL AND GENERAL.

Definitions of "executed" and "execution." 54 & 55 Vic., c. 38, s. 27.

25. The definitions in section three of the Principal Act of the words "executed" and "execution" are repealed, and the following definitions are substituted for them:—

"Executed," with reference to instruments under seal, means signed and sealed, and with reference to instruments not under seal means signed.

"Execution," with reference to instruments under seal, means signature and sealing, and with reference to instruments not under seal means signature.

Inspection of documents which ought to be stamped

26. The commissioner may require the production of and inspect any documents which he has reason to believe are not but ought to be stamped in pursuance of the Principal Act or the Probate Duties (Amendment) Act, 1899, or this Act.

Whosoever refuses or wilfully neglects to produce for inspection any such document when duly required under this section to do so shall be liable to a penalty not exceeding fifty pounds.

SCHEDULES.

SCHEDULE I.

	£	s.	d.
ACKNOWLEDGMENT by executor or administrator in lieu of conveyance under section eighty-three of the Wills, Probate and Administration Act, 1898	1	0	0
APPLICATION to bring land under the Real Property Act or to be registered under that Act as the proprietor of an estate in land where not otherwise liable to stamp duty, not being transmission application	1	0	0
APPOINTMENT OF A NEW TRUSTEE, and appointment in execution of a power of any property or of any use, share, or interest in any property by any instrument not being a will	1	0	0
CONTRACT OR AGREEMENT to sell, exchange, or transfer any gold-mining or mineral claim or lease or mineral conditional purchase. The same duty on the amount or value of the consideration for the sale, exchange, or transfer, as on the consideration for a conveyance or transfer on sale or exchange of such claim or lease.			
CONVEYANCE of any property by way of exchange. Same duty as on conveyance on sale of such property as assessed under this Act.			
CONVEYANCE of any property by the official assignee to a mortgagee or disclaimer by the official assignee under the Bankruptcy Act, 1898. The same duty on the amount at which the security has been valued by the mortgagee as on the consideration for a conveyance on sale of such property.			
DECLARATION made in New South Wales under Colonial or Foreign Marine Policy, 3d. for every £100 and fractional part of £100 insured.			

FORECLOSURE

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FORECLOSURE ORDER. The same duty to be assessed under this Act on the value of the property mortgaged as on the consideration for a conveyance on sale of such land.

SETTLEMENT DEED OF GIFT OR VOLUNTARY CONVEYANCE (NOT BEING AN ANTE-NUPtIAL SETTLEMENT, OR THE APPOINTMENT MERELY OF A NEW TRUSTEE) OF ANY PROPERTY, ad valorem duty as on a conveyance on sale; but the duty hereunder may be deducted from any duty under section forty-nine of the Principal Act, and the Probate Duties (Amendment) Act, 1899, if, on the death of the settlor or donor, such duty be leviable and collected in respect of the property included in such settlement, deed of gift, or voluntary conveyance.

SCHEDULE II.

Title of instrument.	Persons liable to penalty.
Acknowledgment under s. 83 of Wills, Probate and Administration Act, 1898.	The devisee.
Application to bring land under the Real Property Act or to be registered under that Act as the proprietor of an estate or interest in land.	The applicant.
Appointment of a new trustee or in execution of a power...	The person making the appointment.
Contract or agreement to sell, exchange, or transfer a claim or lease.	The proposed vendee or transferee.
Conveyance or transfer on sale or by way of exchange, conveyance by official assignee, or conveyance of any other kind.	The vendee or transferee.
Declaration under marine policy ... ..	The person making the declaration.
Deed or instrument (separate)— (1) for securing money payable periodically on conveyance on sale.	The vendee.
(2) for completing the title to any person taking under another instrument.	The said person.
Deed not otherwise mentioned in this Schedule ... ..	The person executing the deed.
Foreclosure order ... ..	The mortgagee.
Lease ... ..	The lessee.
Memorandum of transfer under Real Property Act ...	The transferee.
Policy (fire or marine or otherwise) or renewal receipt ... ..	The person in this State by or on behalf of whom the policy or renewal receipt was made or signed.
Settlement, deed of gift, or voluntary conveyance ...	The settlor.
Transfer of run or station ... ..	The transferee.