WAR/W2H/8#8

C. S.

LEGAL (Miscellaneous) MAVAL & MILITARY (Miscellaneous) MISCELLATEOUS General '

No.36/44. 19 44.

Secretary of State.

SUBJECT.

19 44.

10th January.

Previous Paper.

REMISSION OF DEATH DUTIES IN THE CASE OF PERSONS KILLED AS A RESULT OF WAR ACTIVITIES.

MINUTES.

Circular despatch from S. of S. of 10. 1. 44.

L.A. Our "Prusupal Ord." is 8. 22 of the Probate Ord. (bol. pani). 9 believe our Duties approximate to these of the bits up to an Estate of £5000, above which the U. H. rate Soars vous remains & fu to 9t would seem, there fire, that we should fall wito this, but no doubt we can do it won sunjoly than Identa?

(8)

H.C.S.,

I think we should certainly have this and agree that, for the amount it is likely to be used, the Kenya enactment would be very heavy-weather.

I do not think a 'probate" ordinance is a suitable enactment to amend under Section 1. (2) (d) of the Emergency Powers (Defence) Act, 1939 and suggest a short Bill adding a proviso to Sec. 22 of No. 9 of 1901

PROVIDED that the Governor (or Governor in Council?) may, if he thinks fit, remit the whole or any part of the duty leviable.

The Governor would then, presumably, remit in similar cases to those in the Kenya Ordinance which is compiled from certain sections of the United Kingdom licts.

Subsequent Paper.

28.3.44.

L.A. (4) White 9 their the Kenya Order wa is too Cumbre some for us, 9 Resitate about the wording Suggested in (3). The witeutron is, of comese, Cain hed but this Ord. will remain permanoutly on the Patre Book a it quio a complete quedan of action for the feeture which is modably not

I could we say?

desirable.

1. Provaided that the Governor in Connat way it le Humis fit remit the whole or any part of the duty leviable on the estate of any person whose death, in his opinion, was directly attributable to action participation ui warfen against the King's ensures. 2. The provisions of this Order ance shall apply only in respect of deather occurring on or after the third day of September 1989.

-N. B. F. . T- Their tae. 3. (1) (a) of the Rough Pra. -would the thouse 2 1 st fits in The - to the for in the dear it 23-5-44.

Your Excellency.

If I read the Legal Adviser's suggestion correctly it is that we should acheive our object by adding the following proviso to Section 22 of Ordinance No. 9 in 1901.

- 1. "Provided that the Governor -in-Council may, if he thinks fit, remit the whole or any part of the duty leviable on the estate of any person who dies from wounds inflicted, accident occurring, or disease contracted within three years before death, while on active service which, in the opinion of the Governor in Council, is of a warlike nature or involves the same risks as active service, and was, when the wounds were inflicted, the accident occurred or the disease was contracted, subject to any naval, military or air force law...
  - 2. The provisions of this proviso shall apply only in respect of deaths occurring on or after the 3rd September, 1939."

Ser Laures & Chief and Reprint Beenbackto be aprice sure and the OCCUPATION OF THE REIGN OCCUPATION. MANUAL

bate/

3. It maget be as well to add S(1) (b) of the Kenya Ordwance to com enillans. c. 9. 7.9. girls worning in sunitions.

3. 94 4. F. agrees with this wethood of dealing with the mather I will am the L.A. to prepare a Paich

Legal Adviser,

I discussed this with His Excellency this morning and he agrees with the wording suggested in 6 with the addition of Section 3 (1) (b) of the Kenya Ordinance down to the word "war". We think it might also be desirable to insert in this new sub-section between "received" & "the words " or disease contracted" You will no doubt agree that this sub-section is necessary in order to deal with civilians.

2. His Excellency would be grateful for a draft Bill accordingly.

A. B. J. Draft Bake Love

Non. B. Austin Cathis . 28, 7-6-44. At Col the Son J. R. Lordgate . 010.7. 20.000
Son J. G. Girlis L. L. 1/1/4

Circulated pl. The Bill will be
considered at the next meeting of Ex. Council.

Extract from Minutes of a marting of the Executive Council held on the 26th of June, 1944.

"Council advised that the Bill should be proceeded with.

This Encellency concurred and directed accordingly."

About 16

Cler of the Executive Council.

Despatch, No. 36 from S. of S. of 21. 9. 44. 12. Go fou as I can see we should amend the Bill ly ouitaing the words in bracueto, but need : make to Alex, change. KB 5-12-44 A.C.S
PP. note this in my heq. Co when for surenduced in the Canuttee chage. UB. Despatch, No. 92 to S. of S. of 28 12. 44 15. Gazette Molice, No. 26 of 17. 7. 145. . 28. 5. 1+5. 16. 17.

COLONIAL OFFICE 15920/62/43 PAGE NO.1 **OTROULAR** Downing Street, 10th January, 1944. Sir, I have the honour to inform you that I have had under consideration the question of the remission of death duties in the case of persons killed as a result of war activities, and that my attention has been drawn to the fact that while, in certain Colonial Dependencies legislation for this purpose has been introduced, considerable variations exist as regards the nature and extent of the provision made. Furthermore, in some Dependencies having estate duty enactments no legislation on the subject of rewision in respect of deaths from war causes the subject of remission in respect of deaths from war causes yet emists. 2. I enclose, therefore, a copy of a note on the legislation existing in the United Kingdom and would suggest that it is desirable that existing Colonial legislation should be adapted, or new legislation introduced as the case may be, so as to make similar provision for remission of death duties in respect of deaths from war causes as exists in the United Kingdom. 5. It may be observed that legislation on the lines of the United Kingdom legislation would:be comprehensive, i.e. cover all cases of death through war causes of land, sea and air service personnel, and civilians; provide for the remission or repayment of the whole duty up to a defined limit, and for a proportion of the excess over the limit; adopt the provisions of the Finance Act, 1918, Section 44, and of the Finance Act, 1941, Section 46, extending remission to cases of property passing to Vidovers, brothers and (a) sisters and their descendents; provide for property passing more than once, and for the apportionment of benefits between the persons who would have paid the death duties. 4. I accordingly recommend the adoption in the case of the territory under your administration of legislation based on the above principles and would suggest that the accompanying Kenya Ordinance, (XXVII of 1941), will be of service as a guide. I shall be glad to learn in due course whether you propose to take action in the sense suggested. I have the honour to be, Sir, Your most obedient, humble servant, OLIVER STANLEY G 7992 The Officer Administering the Government of

15920/62/43

COLONIAL OFFICE

PAGE NO.2

COPY.

# Note on remission of death duties on death due to ver. Finance Act. 1894 (57 & 58 Geo. V.C. 30) Section 8(1).

"The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of the Act and so far as the same are applicable, apply..... for the exemption of the property of common seamen marines or soldiers who are slain or die in the service of Ber liajcaty...

#### Financo Act. 1900 (63 Geo. V. C.7).

3 years Finance 100,1919

amended by 1919

600 1914

4 300 1914 and 1918

Li(1) Where any person dies from younds inflicted, accident occurring, or disease contracted, within twelve monthst before death, while on active service assinst an enemy whether on sea or land, and was, when the wounds were inflicted, the acoldent occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to military law, whether as an officer, non-commissioned officer, or coldier, under Part V of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty as the case required, remit, or in the case of duty already paid repay, up to an amount not exceeding one hundred and fifty pounds in any one case, the whole or any part of the death duties (within the meaning of subsection three of section thirteen of the Finance Act, 1894), leviable in respect of property passing upon the death of the deceased to his widow or lineal descendants if and 1918 the total value for the purpose of estate duty of the property so see 1914 passing does not exceed five thousand pounds.

> (2) This postion shall take offect in the case of any percon dying since the eleventh day of October one thousand eight hundred and ninety-nine.

### Denth Duties (Killed in War) Act. 1914. (4 & 5 Geo. V. C. 76).

- 1(1) Section fourteen of the Finance Act, 1900 (which relates to the remission of death duties in case of persons killed in war), shall have effect as respects the present war as if it applied to property passing to lineal ancestors as well as to property passing to the widow or lineal descendants, and as if the amount of the duty to be remitted or repaid under that section were, instead of the amount therein mentioned, the following amounts: -
  - (a) Where the value for the purpose of estate duty of the property passing to the vidow, lineal descendents, or lineal ancestors does not exceed five thousand pounds, the whole of the death duties leviable in respect of that property; and
  - (b) Where the said value exceeds five thousand pounds
    - in respect of the first five thousand pounds, the whole of the death duties; and
    - so much of the duties leviable in respect of (11)the remainder as exceeds the sum which, if accumulated at compound interest at the rate of three per centum per annum from the date of death with helf-yearly roots would, at the

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expiration

expiration of the period of the normal expectation of life of a person of the age of the deceased at the time of death (calculated in accordance with the Tables of Mortality of Government Life Annuities, 1912), amount to the whole of the duties so leviable.

- (2) The benefits of the relief given by this section as respects the first five thousand younds shall be apportioned rateably among the several persons who would otherwise bear the duties remitted or repaid according to the amounts which they would so bear and without regard to their respective rights of priority.
  - (3) Saving for s. 15 of Finance Act, 1914:-

Pinance Act. 1918 (8 and 9 Geo. V. C. 15) section 44.

References in the Act of 1914 to lineal ancestors to include references to brothers and sisters and their descendants.

Pinence Act. 1919 (9 and 10 Geo. V. G.22) section 31. Section 11; of Act of 1900 and Amendments to have effect as if "three years" were substituted for "twelve months", and the words underlined included wounds, accident or disease in the course of operations arising directly out of the war, but after its termination.

Finance Act. 1921 (11 & 12 Geo. V. C. 32). Section 43.

Extension to deaths arising out of disorders in Ireland.

Pinance Act 192h (14 & 15 Geo. V. C. 21) Section 38 (1) The relief under the Act of 1900 as amended by the above in respect of the death duties payable on property passing on the death of certain persons killed in the late war to be given in respect of death of any person to whom the section applies from vounds, accidents or disease, etc. on active service against an enemy or on service which is of a varlike nature or which in the opinion of the Treasury otherwise involver the same risks as active service.

The section applies to members of H.M.'s forces who are subject to the Naval Discipline Act or to military law under Part V of the Army Act or to the Air Force Act.

Finance Act. 1940. Section 64. The Act of 1924 to have effect in relation to masters and members of the crews of ships and fishing boats, and pilots, dying from causes arising during the present emergency out of the operations of war. Treasury Act on recommendation of Minister of Shipping.

Finance Act. 1941. Section 46. Commissioners of Inland Revenue to give relief as under the Act of 1924 if they are satisfied that death is one of a person from injuries received during the period of the present emergency and within twelve months of his death being injuries caused by operations of war.

Reference in previous enactments to a widow to include a reference to a surviving husband.

The section does not apply to deaths from causes mentioned in the Act of 1924 or the Act of 1940 to parsons to whom those sections apply.

NOTE. The Acts of 1914, 1940 and 1941 contain special provision for record (and subsequent) deaths to which the Acts apply.

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COLONIAL OFFICE

15920/62/43

PAGE NO.4

### ORDINANCE NO. XXVII of 1941

# An Ordinance to Amend the Estate Duty (Commodidation) Ordinance 1926

ENACTED by the Governor of the Colony of Kenya, with the advice and consent of the Legislative Council Phoreof, as follows:-

1. This Ordinance may be cited as the Estate Duty (Consolidation) (Amendment) Ordinance, 1941, and shall be read as one with the Estate Duty (Consolidation) Ordinance, 1926, hereinafter referred to as the Principal Ordinance.

Short title.

No. 13 of 1926.

2. In this Ordinance my reference to a widow shall, Interpretation. in the case of a married woman whose hysband survives her, be deemed to include a reference to the surviving husband.

J. (1)(a) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within three years before death, while on active corvice against an enemy, whether on sea, land or air, or on service which, in the opinion of the Governor in Council, is of a warlike nature or involves the same risks as active service, and was, when the wounds were inflicted, the accident occurred or the disease was contracted, subject to any naval, military or air force law; or

Remission of estate duty in case of persons killed in war.

(b) where any porson, other than a person referred to in paragraph (a) of this sub-section, dies from injuries received within three years of his death and which were, in the opinion of the Governor in Council, caused by the operations of war,

the Governor may, if he thinks fit, remit, or in the case of eatate duty already paid, repay, in any one case, the whole or any part of the eatate duty leviable under the Principal Ordinance in respect of property passing upon the death of the deceased to his widow or lineal descendants or lineal succestors, or to his brothers or misters or the descendant of such brothers or sisters, not exceeding the following amounts:-

- (i) where the value for the purpose of such estate duty of the property passing to the widow, lineal descendants, lineal ancestors, brothers or sisters, or the descendants of such brothers or sisters does not exceed seven thousand five hundred pounds, the whole of such estate duty in respect of that property, and
- (ii) where the said value exceeds seven thousand five hundred pounds --
  - (a) in respect of the first seven thousand five hundred pounds the whole of estate duty; and
  - (b) in respect of the remainder an amount not exceeding one-half of the estate duty leviable under the Principal Ordinance in respect of such remainder.

COLONIAL OFFICE

15920/62/43

PAGE NO.5

2.

No. XXVII

Estate Duty

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(2) The benefits of the relief given by this section as respects the first oven thousand five hundred pounds shall be apportioned rateably among the ceveral persons who would otherwise such estate duty remitted or repaid according to the amounts which they would so bear and without regard to their respective rights of priority.

Remission of estate duty in case of property passing more than once owing to deaths vd boanno the war.

- 4. (1) where the Governor is satisfied that estate duty leviable under the Principal Ordinance has become payable on any property passing on the death of any person to which section 3 of this Ordinance applies and that subsequently such outsto duty has again become payable on the same property or any part thereof passing on the death of some other person to which section 3 of this Ordinance applies, the whole of such outsto duty payable on such subsequent death in respect of the property so passing shall be remitted, or in ease such estate duty has been paid, repaid, and the property shall not be aggregated with any other property passing on such subsequent death for the purpose of determining the rate of such estate duty.
- (2) This scotion shall apply whether or not on any such death any property passes to the widow, lineal descendents, lineal anscentors, brothers or sisters, or the descendents of such brothers or sisters, of the daneaned.

Application

5. The provisions of this Ordinance chall apply only in respect of deaths occurring on or after the third day of September, 1939.

Passed in the Legislative Council the cloventh day of December in the year of Our Lord one thousand nine hundred and forty-one.

This printed impression has been earefully compared by me with the Bill which passed the Legislative Council and is presented for authentication and ascent as a true and correct copy of the said Bill.

R. P. ARMITAGE

Auting Clerk to the Legislative Council.

### A Bill

# To amend the Probate and Unrepresented Estates Ordinance, 1901.

BE IT ENACTED by the Governor of the Colony of the Falkland Islands, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Probate and Unrepresented Estates (Amendment) Ordinance, 1944, and shall be read and construed with the Probate and Unrepresented Estates Ordinance, 1901, hereinafter referred to as the Principal Ordinance.

Short title

2. There shall be added to Section 22 of the Principal Ordinance the following proviso.

Addition to Section 22.

Provided that the Governor-in-Council may, if he thinks fit, remit the whole or any part of the duty leviable on the estate of -

- (a) any person who dies from wounds inflicted, accident occurring, or disease contracted, within three years before death, while on active service which, in the opinion of the Governor-in-Council, is of a warlike nature or involves the same risks as active service, and was, when the wounds were inflicted, the accident occurred or the disease was contracted, subject to any naval, military or air force law, or
- (b) any person who dies from injuries received, or disease contracted, within three years of his death, and which were, in the opinion of the Governor-in-Council, caused by the operations of war.

This proviso shall only apply in respect of deaths occurring on or after the 3rd day of September, 1939.

Passed by the Legislative Council this day of , 1944.

Clerk of the Legislative Council.

Assented to by the Governor and given under the Public Seal of the Colony this day of , 1944.

Colonial Secretary.

## A Bill

# To facilitate the preparation of a Revised Edition of the Laws.

BE IT ENACTED by the Governor of the Colony of the Falkland Islands, with the advice and consent of the Legislative Council thereof, as follows:-

- 1. This Ordinance may be cited as the Revised Edition of the Laws (Statute Law Revision) Ordinance, 1944.
- 2. For the purpose of facilitating the revised edition of laws, the amendments specified in the fourth column of the Schedule to this Ordinance, being amendments designed to shorten or simplify phraseology or being amendments of a minor nature, shall be made in the enactments specified in the first, second and third columns of that Schedule.

#### SCHEDULE.

Sellebote.			
Number and year of Ordinance.	Short Title.	Section.	Amendments.
4 of 1894.	The Lunacy Ordinance, 1894.	Section 20.	In the interpretation of "Medical Practitioner" for the words "Medical Act 1858, the Acts amending the same and the Medical Act, 1886, of the Imperial Parlia ment", there shall be substituted the words "Medical Practitioners, Midwives, and Dentists Ordinance, 1914".
4 of 1901.	The Administration of Justice Ordinance.	Section 22.	For the word "fifty" there shall be substituted the words "one hundred".
	1901.	Section 24.	For the words "Every other case, wheth er civil or criminal, shall be tried by jury of seven men" there shall be substituted the words "Every other crimina case shall be tried by a jury of seven men and every civil case, if tried by a jury shall be tried by a jury of seven men".
5 of 1902.	The Summary Jurisdiction, Ordinance, 1902.	Section 49.	The words "motor car" and "motor cycle" in subsections (n), (o) and (p) shall be deleted.
9 of 1908.	The Dependencies Ordinance, 1908.	Section 1.	The words after "shall" in the fourthine shall be deleted and the followin words substituted — "be deemed to include and to have included all islands and territories whatsoever between the 20th degree of West longitude and the 50th degree of West longitude which are situated sout of the 50th parallel of South latitude; an all islands and territories whatsoever between the 50th degree of West longitude and the 80th degree of West longitude which are situated south of the 58th parallel of South latitude".
4 of 1914.	The Stanley Cemetery, Ordinance, 1914.	Section 2.	After the words "Burial Board," at the end of the definition of "Burial Board" the full stop shall be omitted and the following words added — "and includes the Trustees of the Stanley Cemetery as a Bod Corporate".
		Section 7.	The words "The Sexton of Christ Churc Cathedral shall act as Clerk to the Boar when required, and perform such oth- duties as the Board may consider neces ary" shall be deleted.

Passed by the Legislative Council this , 1944.

day of

Clerk of the Legislative Council.

Assented to by the Governor and given under the Public Seal of the Colony this day of , 1944.

Colonial Secretary.

(2)

#### FALKLAND ISLANDS

NO. 36

Colonial Office, Downing Street,

212 September, 1944.

Sir,

I have the honour to refer to my circular despatch of the 10th January 1944 with reference to the remission of death duties in the case of persons killed as the result of war and to enclose a copy of some comments on my circular despatch of the 10th of January which have been received from the Board of Inland Revenue. You will no doubt give your consideration to these points in connection with any legislation which has been or may be introduced concerning this matter as a result of the circular despatch.

I have the honour to be, Sir,
Your most obedient, humble servant,

(Lead ) The state of

GOVERNOR

SIR ALLAN CARDINALL, K.B.E., C.M.G., etc., etc.,

(120)

# EXTRACT FROM BOARD OF INLAND REVENUE'S LETTER SENT TO THE TREASURY, DATED 12th AUGUST, 1944.

"In 3(a) of the despatch it is stated that legislation on the lines of the United King on legislation would cover all cases of death through "war sauses". This is not quite correct, as regards either the inited Kingdom or the Kenya legislation: it states the relief too narrowly in the case of the Forces and too widely in the case of civilians. We regard all members of the Forces as on active service in time of war, and consequently their estates are entitled to the relief, whatever the cause of death - e.g. if they are killed in an accident then not on duty. But a civilian's estate is entitled to the relief only when death is due to injuries caused by "the operations of war": this expression is a good deal norrower than "war causes", and we interpret it to mean operations of the Armed Forces of the enemy, or operations of any of H.M. Forces or of the Allied Forces while in action against the enemy or while acting in the ccurse of their duty upon any varning of the imminence of an attack by the enemy. Relief is not due, for instance, where a civilian is run over during the blackout or killed in an accident to a Royal Air Force aeroplane which is on a practice flight.

The rubric to Section 4 of the Kenya Ordinance is "Remission of Estate Duty in case of property passing more than once owing to deaths caused by the war;" but the section itself does not limit the relief to cases where the deaths occurred in the present war. The corresponding United Kingdom legislation (Section 64(2) of the Finance Act 1940) applies only where both deaths occurred "during the present emergency". Further, Section 64(2) gives exemption on the second death only if the property passed to the second deceased on the first death. Section 4 of the Kenya Ordinance would appear to affore exemption even where the second deceased had purchased sense property from the executors of the first deceased".

(15b)

Colonial Regulation, No. 153.

# REPORT ON THE PROBATE AND UNKSPRESSIFIED ESTATES (ALENDRETET) ORDINANCE, 1944.

This Ordinance has been enacted at the suggestion of the Secretary of State conveyed in correspondence ending with his despatch, No. 36 of the 21st of September, 1944, and is a simplification, suited to local circumstances, of Kenya Ordinance, No. XXVII of 1941.

(5gg) A. W. GAMD:NALL

COVERNOR.



## FALKLAND ISLANDS.

# Ordinance No. 11 of 1944.

I ASSENT,

(Sgd.) A. W. CARDINALL Governor.

23rd December, 1944.

### An Ordinance

To amend the Probate and Unrepresented Estates Ordinance, 1901.

BE IT ENACTED by the Governor of the Colony of the Falkland Islands, with the advice and consent of the Legislative Council thereof, as follows:—

1. This Ordinance may be cited as the Probate and Unrepresented Estates (Amendment) Ordinance, 1944, and shall be read and construed with the Probate and Unrepresented Estates Ordinance, 1901, hereinafter referred to as the Principal Ordinance.

Short title.

2. There shall be added to Section 22 of the Principal Ordinance the following proviso.

Addition to Section 22.

Provided that the Governor-in-Council may, if he thinks fit, remit the whole or any part of the duty leviable on the estate of –

- (a) any person who dies from wounds inflicted, accident occurring, or disease contracted, within three years before death, while on active service and was, when the wounds were inflicted, the accident occurred or the disease was contracted, subject to any naval, military or air force law, or
- (b) any person who dies from injuries received, or disease contracted, within three years of his death, and which were, in the opinion of the Governor-in-Council, caused by the operations of war.

This proviso shall only apply in respect of deaths occurring on or after the 3rd day of September, 1939.

Passed by the Legislative Council this 20th day of December, 1944.

BROOL, W. Aldridge

Clerk of the Legislative Council.

Assented to by the Governor and given under the Public Seal of the Colony this 23rd day of December, 1944.

K. G BRADLEY

Colonial Secretary.

FALKLAND ISLANDS.

No. 92.

GOVERNMENT HOUSE.

STANLIY,

28th December, 1944.

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led 12. CLOSURE, NO. I. MCLOSURE, NO. IL.

With reference to the correspondence terminating with your despatch, No. 36 of 2ist September, 1944. I have the honour to transmit. for the signification of His Majesty(s pleasure, two authenticated and ten printed copies of Ordinance, No. 11 of 1944, entitled "An Ordinance to amend the Probate and Unrepresented Estates Ordinance, 1901".

2. A Legal Report on this Ordinance is also enclosed.

I have the honour to be,

Sir.

Your most obedient, humble servant. (Seq.) A. W. CARDINAL.

Q. F. G. STANLIN, P. C., M.P. SECRETARY OF STATE FOR THE COLONIES.

E RIGHT HONOURABLE

MOLOSUAE, NO. III.

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28th May, 1945.

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Probate and Unrepresented Estates (Amendment)

11



Colonial Secretary's Crise,

tendey, Salkland Islands,

17th July, 1965.

His ancellancy the Severacy directs it to be notified, for general information, that intimation has been received from the algebra the Secretary of Listo for the colonies to the effect that his lajesty will have be advised to exercise his power of disallowance in respect of the following Ordinances of the registrature of the religions Lalance :-

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Craimmee, No. 4 of 19a4, charles on ordinance to consolidate and asset the law relating to the onle of intoxicating liceor.

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ordinate, to 12 or 19th, entitled an reinance to legalise or their payments made in the grap the thousand line hearing and forty-three in excess of the expenditure senctioned by crainings, so. 11 of 1962.

ACCEPTAGE FOR

colonial secretary.