

claims, and a further claim comes in, within twelve months from the date of death, of £60 or £100, then it is clear I am by law personally answerable to those claimants for the balance of the moneys over and above the amount then remaining in my hands. I submit that that is a position I should not be subjected to. I suggest to the Commissioners the desirability of an alteration of the law in that respect, by which the Public Trustee shall be at liberty to pay claims rendered before the expiration of, say, three months, and that if he do so pay he shall not be answerable to creditors rendering their claims after the proper date, further than the amount of money in his hands may enable him. That is a course which I advocated many years ago, and I believe it would have been the means of staying a very great deal of the irritation which undoubtedly has arisen on account of the apparent delay. But it is quite unreasonable to suppose the individual holding the office of Public Trustee shall run a tremendous risk in every estate he administers, simply because he wishes to pay claims at an earlier date than the law anticipates or permits.

68. *The Chairman.*] Can you point to any case bearing on this question, where claims have come in, even under the present system, after the funds in the estate have been distributed?—There are many such cases. This next is a case relating to section 19 of the Administration Act of 1879, which says,—

When an estate of any intestate, of which administration shall have been or shall be granted to the Public Trustee, shall not exceed one hundred pounds after payment of debts, and such intestate shall have left any child or children under age, the Public Trustee may pay or cause to be paid the balance of such estate, either in one sum or from time to time, as he thinks fit, after payment of the debts of such intestate, to his widow or to any person having the care or custody of his children, without seeing to the application thereof, and without incurring any liability in respect of such payment, and shall certify to an account in favour of such widow or other person accordingly.

I wish the Commissioners to note that the wording of the Act is, “Where an estate shall not exceed £100 after payment of debts the Public Trustee may pay the balance to his widow or to any person having the care or custody of his children.” I have before me the papers of an estate of a man named Bailey. There the man left a widow and three children surviving, and I had realised the estate with the exception of one cottage at Waitara, near New Plymouth. I had in hand, after payment of all known claims, £22 15s.; and I addressed the following memorandum to the office Solicitor: “On the 1st September next I purpose paying over the residue to the widow under section 19 of the Administration Act of 1879, and conveying the realty, for which my upset of £40 cannot be obtained. Do you see any objection in law?” That was on the 11th June, 1889. His reply is, “I do see a legal objection. In my opinion, section 19 does not apply to realty, but to personalty only. Whilst a Judge can now order the sale of realty for purposes of distribution, yet, in my judgment, he could not order a conveyance to the widow alone of that which belongs to widow and children according to their distributive shares, and an administrator cannot of his own motion convey as above intended. It may be a hard case: that cannot be helped.” I directed payment to the widow of the money in hand, and inform her that this winds up the estate except the cottage. I had arranged for a purchaser of this same cottage for the sum of £40. This was in October following. I then say to the Solicitor, “Is there any objection under section 19 of the Administration Act to pay the widow the balance in hand, and also the £40 when received?” He replies, “Looking further into this matter, I modify my opinion given on a former record. There must be a difference intended between administration by the Public Trustee and an administrator. The order granted to the Public Trustee is to administer all the real and personal estate. The order to an individual is to administer the estate and effects, although the Act of 1879 makes it to include realty. The order to the Public Trustee is granted under section 15 of the last Act, and section 19 gives the power to pay the widow the balance of the estate. It seems to me that, this estate being all the real and personal estate, the balance must be the outcome of the same. At first sight section 18 of the Amendment Act of 1888 is against this. There the proceeds of any sale shall be assets in the hands of the administrator for purposes of the Act of 1879, and by that Act (section 7) the purposes are strictly limited. I consider, therefore, still that the Public Trustee could not convey land to a widow, nor rightly apply for an order to sell lands without disclosing the reason for applying, but that when land has been sold for payment of claims any accidental surplus may be called ‘estate’ within the meaning of section 19 of the Act of 1879, and applied accordingly; with this limitation, however: that such balance, together with the value of the unsold land, shall not altogether exceed £100. If so, the widow could only receive her share. It seems to me section 19 should be acted on with the wariest of discretion. Where doubt exists section 7 of the Act of 1876 is always open for action.” What I wish to suggest to the Commissioners is that section 19 should be amended to place the matter beyond doubt that where the whole of an estate does not exceed £100 the Public Trustee shall have power to hand, whether realty, personalty, or anything else, to the widow.

69. Or next-of-kin?—No. You see this is a provision which is intended to give a small estate to a widow who has children in order to enable her to maintain them.

70. And to the children if no widow exists?—I have another note which will go in the direction you are intending. Power undoubtedly should be given to the Public Trustee to make the best use of an estate possible where there are orphans who require maintenance and education. At present he locks up money in his office, and has to ask for Court orders and institute expensive proceedings. There is no necessity for it. If the Public Trustee is an officer to be trusted, as he must be, then he ought to be fully trusted to do what the discretion of any reasonable man would require him to do. There is too much tying up.

71. You contend, and rightly so, that he is either fitted or unfitted for his office. If he is unfitted, he should be got rid of. If fitted, he should have those powers which will enable him to conduct the Public Trust Office properly and with facility. That, I take it, is what you mean?—That is so, and I have felt it very much indeed during my eleven years of service in the office. An instance of hardship