

1949
NEW ZEALAND

PUBLIC TRUST OFFICE

(REPORT OF THE) FOR THE YEAR ENDED 31st MARCH, 1949

Presented to Both Houses of the General Assembly in accordance with Section 47 of the Public Trust Office Amendment Act, 1913

PURSUANT to section 47 of the Public Trust Office Amendment Act, 1913, I have the honour to lay before Parliament the attached report on the working of the Public Trust Office for the year ended 31st March, 1949.

The new business accepted for administration during the year reached the satisfactory total of £7,679,136, representing 3,614 estates and funds, an increase in number of 63 over the figure for the previous year. The continued confidence of the public in the efficiency and service rendered by the Department is shown by the number of persons, 7,881, who have made wills in the year under review appointing the Public Trustee executor. This is a record for any peacetime year.

Wage increases granted to officers of the Department in common with other members of the Public Service have resulted in higher operating costs, and this matter is dealt with in the Public Trustee's report. By using simplified methods the staff has been reduced from 935 as at the 31st March, 1948, to 902 at the same date this year without impairing the services rendered to clients of the Department.

On the 31st March, 1949, Mr. W. G. Baird, C.M.G., who had occupied the position of Public Trustee since the 1st July, 1942, and Mr. C. J. Playne, Assistant Public Trustee, retired on superannuation. In succession to Mr. Baird, Mr. H. W. S. Pearce, who had earlier in the year been appointed Assistant Public Trustee, *vice* Mr. F. Menneer, retired on superannuation, was appointed Public Trustee. Messrs. G. E. Turney, formerly Assistant Public Service Commissioner, and Mr. D. R. White, Office Solicitor, were appointed to the vacant positions of Assistant Public Trustee.

H. G. R. MASON,

Minister in Charge of the Public Trust Office.

Wellington, 16th August, 1949.

REPORT OF THE WORKING OF THE PUBLIC TRUST OFFICE FOR THE YEAR ENDED 31st MARCH, 1949

SIR,—

Public Trust Office, Wellington C. 1, 10th August, 1949.

I have the honour to submit a report on the working of the Public Trust Office for the financial year ended the 31st March, 1949.

NEW BUSINESS

During the past year 3,614 estates and funds of a total value of £7,679,136 were accepted for administration, compared with 3,551 of a value of £7,702,601 in the previous year. Notwithstanding a slight reduction in value, the new business for the year was satisfactory.

An outstanding result has been the substantial number of wills deposited appointing the Public Trustee executor and the number redrafted on behalf of living testators. The new wills reached a total of 7,881, which constitutes a peacetime record and an increase of 1,061 on the previous year's figures. The 144,360 wills now held on deposit for living testators constitute a solid reserve of future business.

Testators are advised to review their wills from time to time. Changes in a person's assets and circumstances make this essential if hardship is not to be inflicted on beneficiaries. That the public is becoming increasingly aware of this is indicated by the greater use being made of the service available. The number of wills redrafted at the request of testators has increased from 3,991 in 1939 to 6,589 in the past year.

ADMINISTRATION OF ESTATES AND KINDRED DUTIES

The main function of the Public Trustee is to act as executor, trustee, attorney, administrator, or in various other fiduciary capacities. During the year the administration of 4,275 estates and funds was completed, and assets to the value of £8,939,843 were transferred or distributed to the beneficiaries.

Over the past ten years two trends in estates administration have become noticeable. The first—a result of the buoyant financial conditions ruling in the Dominion—is the ready market for the sale of all classes of assets. The turn-over of estates for the year has shown a marked increase over that of a decade ago, when the administration of 3,245 estates was completed, 1,030 less than for the year ended 31st March, 1949. The second trend is the decreasing number of testators who provide for life tenancies under their wills. The low rate of interest obtainable on investments has doubtless been the reason for testators preferring to make outright gifts of their estates rather than to create life interests.

Both these factors are responsible for the reduction in the number and value of estates and funds under administration at the close of the year, 18,953, valued at £58,834,467, as against 19,612, valued at £59,879,674, for the previous year.

Particulars of the main classes of estates and kindred matters are dealt with below :—

Wills and Trusts.—As mentioned in previous reports, this class of estates represents the most valuable portion of the Office business. For the year under review the number of wills and trust estates accepted for administration was 2,231, of a total value of £4,766,928, an increase of 134 over the number accepted during the year ended 31st March, 1948. The steady flow of wills and trust estates placed under the Public Trustee's administration continues to be a pleasing feature of the new business, and, having regard to the number of wills deposited with the Office, it is logical to assume that the intake of estates will be maintained and increased in the future.

The problems met with in the administration of these numerous estates are varied and complex; particularly is this so in relation to taxation and death duties. The Public Trustee is bound to ensure that estates and beneficiaries receive all exemptions to which they are entitled and that only the correct amount of duty and taxation is paid. In general, financial difficulties under existing conditions are few, and liquid or readily realisable assets in most estates provide funds for meeting liabilities including taxation and death duties, thus facilitating the winding-up of estates where no trusts are involved.

Intestate Estates.—For some years the number of intestate estates accepted for administration has remained fairly constant at approximately 500 per annum. The number this year, 565 estates, of a value of £140,748, shows a slight increase over the number, 551, accepted in the previous year. The winding-up of this class of estate is sometimes delayed for years owing to the difficulty sometimes experienced in tracing next-of-kin. While the provisions of the Administration Amendment Act, 1944, have made for a more equitable distribution of the estate of a person dying intestate, it is still very desirable that all persons should make a will. The Office, in common with the legal profession and the trust companies, continues to impress this upon the public, and the percentage of intestate estates to wills estates is likely to be a decreasing one.

Estates of Persons Under Disability.—The principal class of estates coming under this heading is that of persons who, through mental illness, are unable to look to their business affairs. Under the provisions of the Mental Defectives Act, 1911, the Public Trustee is appointed statutory administrator of the estates of mentally-defective persons where no other person has been appointed committee or administrator. The occasions where private committees are appointed are not numerous, and even then the Public Trustee has a statutory duty to exercise supervision over the administration of the estate by the committee. During the year 678 estates, valued at £906,910, were accepted, making the total number under administration as at the 31st March, 1949, 3,559, valued at £4,426,352.

The administration of estates falling under this category entails a great deal of work and responsibility. When a person is committed to an institution it devolves upon the Public Trustee to make inquiries as to his or her assets in order that action may be taken to protect the interests of the person under disability. In numbers of cases a great deal of inquiry and investigation has to be made, and steps have to be taken in regard to personal effects and assets of a nature for which little or no remuneration can be obtained. In view of the rising costs involved in carrying out this work and the social service thus rendered to persons unfortunate enough to suffer affliction, it would be reasonable where there are no funds available from the estate for the Department to receive payment for the work done from some other source—*e.g.*, the Social Security Fund or the Division of Mental Hygiene of the Health Department.

Apart from the class of estates mentioned above, the majority of cases in which the Public Trustee acts for persons suffering from disability arises under the provisions of the Aged and Infirm Persons Protection Act, 1912. Where a person is incapable, by reason of advancing years, mental or physical disability, or other causes, of managing his or her own affairs the Public Trustee may be appointed manager of the estate. A number of estates of this nature were reported to the Public Trustee for administration during the year.

In both types of estates—those arising under the Mental Defectives Act, 1911, and the Aged and Infirm Persons Protection Act, 1912—there is provision for the appointment of Advisory Trustees. Section 10 of the Public Trust Office Act, 1913, extends the principle of advisory trusteeship to these estates, making it possible in suitable cases for a relative or some other person to act in an advisory capacity.

Agencies.—During the year an increasing number of persons desiring to be relieved of business affairs or going abroad for an extended visit appointed the Public Trustee to act as their agent. By reason of the Dominion-wide organization the Public Trust Office offers special advantages in agency work. Competent representation in 102 cities and towns in New Zealand and a London representative enables clients to keep in close touch with a responsible representative of the Department. An agency can be created to deal with a specific asset or for the complete control of a person's affairs, including the filing of social security and income-tax returns. That the service rendered is appreciated by clients is shown by the fact that those for whom the Public Trustee has acted as agent generally appoint him executor of their wills. A pleasing feature of this agency work is the number of beneficiaries who appoint the Public Trustee as attorney to manage property descending to them from estates which have been administered by the Office.

Workers' Compensation.—Claims under the Workers' Compensation Act, 1922, constitute an important part of the Office work. Unless the Court of Arbitration otherwise orders, the Public Trustee is statutory custodian of compensation made in respect of the death of a worker. Frequently the Public Trustee is called upon to investigate the sufficiency of the amount tendered by way of compensation or the question of taking action to obtain compensation. Such work calls for specialized knowledge on the part of the Department's officers. When the compensation has been settled the Public Trustee is required either to apply to the Court of Arbitration for an order apportioning the money or to report to the Court on an application by an outside solicitor.

The Public Trustee has a duty in all cases when an application for apportionment is made to the Court to submit a report as to the most equitable method of apportionment having regard to the circumstances of the dependants. This necessitates a great deal of inquiry and investigation in order that reliable information may be placed before the Court. The fee charged by the Public Trustee in such cases is 1 per cent. on the amount received. This fee is the only remuneration for the services rendered, comprising usually protracted negotiations, applications to the Court for an order for apportionment, the payment of maintenance allowances very often over lengthy periods, and in some cases the disbursement of portion of the capital of the compensation-moneys in the purchase of a home for the dependants. The fee of 1 per cent. does not provide adequate remuneration for the work done, and an increase will have to be considered.

Other Estates. In addition to the classes of estates already mentioned there are many other cases arising under various statutes where the Public Trustee is called upon to act in a fiduciary capacity. Thus he may be called upon to deal with unclaimed lands or property, to receive moneys from private trustees to be administered for the benefit of minors, to act as Sinking Fund Commissioner in respect of loans raised by local bodies, to discharge a mortgage on maturity when there is no person in New Zealand authorized to give a discharge, to administer the affairs of convicts or persons undergoing reformatory detention, to administer funds for maintenance under an order of the Destitute Persons Act, 1910. The above examples are not exhaustive, but they give some idea of the many services which the Public Trustee undertakes for the people of New Zealand.

ENEMY PROPERTY EMERGENCY REGULATIONS 1939

During the year the Public Trustee, as Custodian of Enemy Property, has carried out the duties under the Enemy Property Emergency Regulations 1939. Funds amounting to £98,577 are now held, representing enemy property controlled, collected, or realized by the Public Trustee, in addition to the sum of £90,845 previously applied towards German reparations in the terms of the Paris Agreement. Except in the case

of Germany, enemy property controlled by the Custodian is held in trust for all persons having any interest in such property. The money is invested in accordance with the directions of the Minister of Finance.

During the year the Treaties of Peace Regulations 1948 were gazetted, implementing the terms of the Treaty of Peace with Italy in so far as they affect enemy property. Action to dispose of the funds held in accordance with these regulations is now being taken. Inter-governmental agreements covering the disposal of funds held for the nationals of several other countries are in the course of negotiation. The Public Trustee has also collaborated with the Department of External Affairs in submitting the claims of New Zealand nationals against former enemy and enemy-occupied countries in respect of loss and damage suffered to their property.

FINANCE

Investment of Funds.—In common with other lending institutions, the Office has experienced difficulty in obtaining a sufficient number of mortgage investments for the investment of its funds. There has, however, been some improvement in the number and value of loans granted or taken over during the year. The value of mortgage investments held on behalf of the Common Fund as at 31st March, 1949, was £8,965,694, an increase of £260,553 over the amount held at the same date last year. The indications are that the improvement recorded will be maintained as the flow of applications appears to be increasing.

During the last half of the financial year there was a marked increase in the volume of mortgage applications, with the result that for the first occasion for a number of years mortgages formed the predominant part of the investments completed.

In view of the highly competitive state of the lending market this position is gratifying, as it indicates that the public appreciate the terms offered by the Department. Mortgages are granted on a flat or instalment basis, the present interest rates being 4 per cent. on mortgages of £2,500 and over, $4\frac{1}{4}$ per cent. for £1,000 and under £2,500, and $4\frac{1}{2}$ per cent. under £1,000. Instalment mortgages are granted for terms up to thirty years, with the interest-rate reviewable every five years. Where required, liberal rights of repayment are granted. The instalment mortgage is particularly suitable for present-day conditions, as it enables mortgagors to reduce their capital liabilities out of income while prosperous conditions exist. It is significant that during the year more money was advanced on the instalment basis than on a flat basis.

Repayments were again heavy during the year. Some mortgages for large sums were lost through the securities being taken over for rehabilitation of ex-servicemen. In other cases mortgagors having surplus funds available as a result of the good prices ruling for primary produce and the general buoyant business conditions have exercised the right of repayment either to repay their mortgages in whole or to reduce them substantially.

The new investments completed during the year, excluding short-term deposits, totalled £2,569,633, compared with £2,827,416 for the year ended 31st March, 1948, a decrease of £257,783. The reduction is more than accounted for by the fact that whereas in previous years the Public Trustee was responsible for the investment of the whole of the funds of the various Government Superannuation Funds, that responsibility has now been almost exclusively assumed by the new Government Superannuation Board.

The total investments completed by the Office and still held at 31st March, 1949, inclusive of those held on behalf of certain estates and Funds whose moneys are required to be specially invested, totalled £32,946,686, which represents a decline of £1,930,354 when compared with the total investments held at 31st March, 1948. The decline is explained by the transfer to the Government Superannuation Board of various holdings of Government securities previously held by the Public Trustee on behalf of the Public Service, Teachers', and Railways Superannuation Boards.

Annual Accounts.—Mainly as a result of the operation for a full year of the new scale of charges which came into operation on 1st October, 1947, the revenue for the year under review increased by some £23,000 to £539,574, but as an offset the Office was faced with further heavy expenditure under the headings of salaries and of subsidy of the staff's contributions to the Government Superannuation Fund. The amount involved in those two items alone, including the provision for arrears of the recently granted general salary increase, had the effect of transforming what would have been a satisfactory profit on the year's working into a loss of £5,801, which, in accordance with the provisions of section 24, Finance Act, 1929, has been charged to the Office Assurance and Reserve Fund. In that connection it is appropriate to observe that, under the legislation referred to, when the Office Profit and Loss Account for any year discloses a profit, one-half thereof is payable to the Consolidated Fund, but if in any year there is a deficiency, the whole of such deficiency must be met out of the Office Assurance and Reserve Fund. The result has been that since 1929 the Office has paid to the Consolidated Fund the sum of £89,160, representing one-half of the profits made in various years, but in the few years when working losses have been sustained such losses have been wholly borne by the Office Reserves. It is hoped that, in view of the difficult conditions which have operated during the past few years, some relief from the provisions of the existing legislation will be given in the near future.

Advances to Estates and Beneficiaries.—In those estates where it is necessary to provide funds for the payment of debts or death duties or for the financial accommodation of beneficiaries, the Public Trustee is, subject to the security being adequate, able to make advances on the security of the assets of the estate. No legal charges are incurred since the Public Trustee has a statutory charge over the assets of the estate as security for the advance, subject, of course, to any prior encumbrances. Other features of this advantageous method of providing ready money are the low rate of interest payable on such advances, the avoidance of forced realizations, and the fact that immediately moneys are received for application in reduction of the advance interest ceases thereon.

On 31st March, 1949, the total amount of current advances by the Office to estates and beneficiaries was £476,000.

Local Bodies' Sinking Funds. The Public Trustee is Sinking Fund Commissioner of a considerable number of local bodies' sinking funds, and is called upon each year to provide substantial sums from these funds to meet debentures maturing either annually or in one sum on the maturity of the loan. In addition, this year, to meet the requests of several local bodies who desired to take advantage of the favourable exchange situation in order to redeem loans domiciled in Australia, the Public Trustee, as Sinking Fund Commissioner, released additional funds amounting to approximately £220,000. In none of these cases had the loans fallen due for repayment, but, to assist the local bodies concerned to rearrange their finances under favourable circumstances, the Public Trustee arranged for the release of the sinking funds on dates suitable to each local body.

Safe-deposit Lockers. The advantages of keeping negotiable securities and other valuables in safe custody are fully recognized by the many clients of the Office who have taken leases of these lockers. At the Head Office and at many of the branches of the Department, safe-deposit lockers, designed to guard against theft or fire, are installed in the Office vaults or strong-rooms. The rental of these lockers is moderate, and access to them may be obtained by lessees at any time during ordinary business hours.

Deposits under the Insurance Companies' Deposits Act.—In terms of the Insurance Companies' Deposits Act, 1921–22, and its amendments, the Life Insurance Act, 1908, and its amendments, deposits in cash or approved securities are required to be lodged with the Public Trustee by all insurance companies carrying on business in New Zealand (other than those incorporated under the Mutual Fire Insurance Act, 1908, or those concerned solely in earthquake or marine insurance). The maximum amount of the deposit required by each company varies in accordance with the nature of the business conducted.

On 31st March, 1949, the capital amount of deposits held under these Acts on behalf of sixty-seven companies was £2,427,854.

Pursuant to the Workers' Compensation Amendment Act, 1947, the Public Trustee will be required to refund statutory deposits, amounting to some £550,000, to various insurance companies which, from the 1st April, 1949, will no longer be engaged in employers' liability insurance business.

LEGAL DIVISION

The legal work in Head Office is under the control of the Office Solicitor and his staff. This work includes the consideration of and advising on the more difficult points of law which arise in the administration of estates, the preparation of and appearance on applications to the Supreme Court on matters relating to estates and trusts on which the Court's directions or authority are required, of reports and applications to the Compensation Court in regard to the apportionment of compensation-moneys paid under the Workers' Compensation Act, 1922, of reports to the Supreme Court on the apportionment of damages recovered under the Deaths by Accident Compensation Act, 1908, and the determination of the next-of-kin in intestate estates where this presents special difficulties, or the amount to be distributed is large. In order to avoid as far as possible difficulties which might arise in the interpretation of a testator's will after his death or in the administration of his estate, all wills except simple ones, are subject to an independent check by the Legal Division.

Except where a private solicitor is employed (at the direction of either the testator or the beneficiaries) to perform the legal work of the estate, it is the practice to file in the Supreme Court Office at Wellington all applications for administration, including grants of probate, orders to administer, and elections to administer. The Court papers are prepared in part by the legal staff at the district offices, and are completed, checked, and filed by the Legal Division in Head Office. Where some assets of estates administered by the Public Trustee are situated abroad, the Division also extracts exemplifications of the New Zealand grant of administration, and in converse cases—*i.e.*, where there are assets situated in New Zealand of estates administered in other British Dominions and the Public Trustee has been asked to get them in—it arranges for the resealing of the foreign grant of administration in the Supreme Court at Wellington. The preparation of powers of attorney to enable the collection of assets situated abroad is also undertaken by the Division.

During the year ended 31st March, 1949, administration was obtained in 2,518 estates, 95 exemplifications of New Zealand grants were sealed, and 29 foreign grants were resealed. Powers of attorney during the year totalled 61, and 105 applications to the Supreme Court were made for authority and directions on various estate matters.

The legal staff in the various branch offices prepares the wills of testators and revises existing wills to meet changes in the circumstances of the testators or in general economic conditions. The district legal staff also performs the greater part of the conveyancing work involved in the administration of estates (including applications to the Land Valuation Court for its consent to sales, leases, &c.), prepares securities for mortgages, and conducts various proceedings in the Magistrate's Court, in addition to giving opinions on legal matters which are not of a nature which renders it advisable to refer them to Head Office. The question of delegation to branch offices of the filing of elections to administer is at present receiving consideration.

REPRESENTATION

To enable the closest personal attention to be given to the work of the Office and to meet the convenience of clients, the Public Trustee maintains a wide representation throughout the Dominion. During the year further representatives were appointed at Alexandra, Featherston, Mangakino, and Waiuku. As at the 31st March, 1949, the

Public Trustee was represented in 102 towns in the Dominion. This representation comprises 26 District Public Trustees, 22 District Managers, 13 part-time offices, and 41 agencies.

INSPECTIONS AND AUDIT

To ensure a high standard of work all branches are inspected regularly by a trained and experienced staff. The inspections include the investigation of accounting arrangements, as well as the administration of estates and securities and the conduct of farms and other businesses being carried on by the Public Trustee. The staffing requirements are also regularly reviewed. In addition to the foregoing, a comprehensive system of internal check of the cash securities and valuables is maintained continuously in every branch. The cash transactions are subject to a supplementary audit by the Government Audit Department. The flow of the new business from the various offices and for the Dominion generally is closely followed up in conjunction with the inspection of the branches.

STAFF

The principal staff appointments made during the year were as follows :—

Head Office—

- Mr. H. W. S. Pearce, Controller, Estates Division, Head Office, and later Assistant Public Trustee, appointed Public Trustee, *vice* Mr. W. G. Baird, retired.
- Mr. D. R. White, Office Solicitor, Head Office, appointed Assistant Public Trustee, *vice* Mr. H. W. S. Pearce, promoted.
- Mr. G. E. Turney, Assistant Commissioner, Office of the Public Service Commission, Wellington, appointed Assistant Public Trustee, *vice* Mr. C. J. Playne, retired.
- Mr. W. Brown, Assistant Solicitor to the Public Trust Office, appointed Office Solicitor, *vice* Mr. D. R. White, promoted.

District Offices—

- Mr. G. L. Caldwell, District Solicitor, Invercargill, appointed District Solicitor, Christchurch, *vice* Mr. J. Dolph, retired.
- Mr. G. A. Revell, District Solicitor, Gisborne, appointed District Solicitor, Dunedin, *vice* Mr. C. N. Irvine.
- Mr. H. B. Robb, District Solicitor, New Plymouth, appointed District Solicitor, Invercargill, *vice* Mr. G. L. Caldwell.
- Mr. E. A. Donovan, Assistant District Solicitor, Auckland, appointed District Solicitor, New Plymouth, *vice* Mr. H. B. Robb.
- Mr. E. S. Rea, District Accountant, Greymouth, appointed Assistant Accountant, Auckland, *vice* Mr. J. G. Nilson, retired.
- Mr. A. W. Roberts, Accounts Clerk, Dunedin, appointed District Manager, Alexandra, position created.

Officers Deceased.—It is with regret I have to record the death of Mr. E. B. Smith, Senior Estates Clerk, Wellington.

The efficient performance of the duties of trustee-administrator calls for the employment of officers with technical qualifications in law and accountancy, as well as experience in business and financial matters. Officers are therefore encouraged to qualify either in law or accountancy. In last year's report details of the qualifications held by officers of the Department were given, and it is pleasing to record that during the year a number of the staff completed one or other of the examinations mentioned.

It is not sufficient that officers have a theoretical knowledge of law and accountancy. The knowledge gained must be capable of being applied to the practical problems encountered in the Office work. To assist in this practical training a staff-training scheme

is in operation which ensures that junior officers are capable of carrying out more senior duties at an earlier period in their service than would otherwise be the case—a very essential consideration in view of the comparatively high wages which must be paid to junior officers. So far as practicable transfers of officers, particularly married ones, have been kept at a minimum. While it is considered desirable that officers should obtain experience in different offices throughout the country, the housing difficulty and the costs involved make restriction of transfers imperative; however in a graded salary scheme transfers cannot be entirely avoided.

ORGANIZATION

In the face of rising operating costs mainly due to salary increases and the lower yield on Office investments, it has become increasingly difficult for the Office to make a profit and at the same time make provision for reserves. For the year ended 1939 the salaries paid by the Office amounted to £283,215, as compared with £427,122 for the year under review, although in the latter year the number of staff had been reduced by 71 compared with the staff for 1939. Expenses are being reduced wherever possible to ensure that the operations of the Department are conducted on a sound financial basis. A careful survey of the Department's organization and systems has been undertaken with a view to simplification of procedures so that more work can be carried out by fewer staff without impairing the efficiency of the services rendered. The staff as at the 31st March, 1949, was 902, a reduction of 33 compared with the number at the same date in 1948. It is expected that as a result of the survey of the organization a further reduction will be effected in the current year. However, in the face of rising costs the Office may not be able to carry out without reasonable remuneration many statutory duties it has done in the past either without charge or for an inadequate return for the services rendered.

CONCLUSION

It gives me great pleasure to place on record my appreciation of the loyal co-operation, the energy, and zeal of the whole staff generally and of the agents of the Office throughout the Dominion. All have worked untiringly in the interests of the Department and its clients throughout the year, and their efforts have been responsible for the efficient working of the Office during the year.

I have, &c.,

H. W. S. PEARCE, Public Trustee.

The Hon. the Minister in Charge of the Public Trust Office.

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