

Then, again, we find persons who a number of years ago dutifully made a will, and, satisfied that a duty had been performed, have given no further thought to the matter. In the interval which elapsed since then probably many changes have taken place, and it may be that a direction to trustees that was perfectly good and sound at the time the will was made is totally inadequate to meet the altered conditions of the present time, and, indeed, as has been said, “in the vicissitudes of circumstances the document that has been executed may be worse than useless.”

130. One cannot stress too plainly the importance of a well-drafted will to ensure that the wishes of the testator are unmistakably expressed in the document and that proper provision is made for the administration of the estate. The law relating to the making and interpretation of wills is full of pitfalls, and when a will becomes operative the testator will not be here to explain what he meant. The legal construction of the language employed may be quite different from his wishes, and, in any case, ambiguous wording and other irregularities in wills drawn by inexperienced persons have often lead to costly litigation and much heart-burning. A frequent cause of trouble is the home-drawn will, especially where a printed form is employed. These forms have been repeatedly referred to by high judicial authorities as traps for the unwary, and are a never-ending source of litigation. Before making his will a testator should settle many important points. It is not possible or necessary to set out these at length, but a few may be cited by way of illustration: Are there sufficient assets realizable in the estate to provide for the payment of estate and succession duty, and testamentary expenses, and other liabilities? Is the estate likely to change in nature or value? What advancements have been made to the children? Is the business to be carried on; and, if so, for what period and under what conditions? How is the estate to be best legally conserved? What disposition should be made in favour of the next-of-kin, and how can the interests of the improvident and stand-easy members of the family be best provided for? All these and many other questions should be fully and carefully considered before the testamentary document is actually completed.

The legal officers of the Department to whom will-drafting is entrusted have had a long experience not only in the actual drafting of wills, but, what is equally important, in the administering of them after the death of the testator. Where the Public Trustee is appointed executor and trustee, officers will advise testators as to the drawing of their wills and prepare the document for signature free of charge.

I am satisfied that, of all the services rendered by the Office, there is none which proves more beneficial to the community than the drafting of wills. By means of this persons have an opportunity of having their wills prepared by a qualified man, and kept in safe and convenient custody.

131. A will is a highly confidential document, and its contents must be held inviolate during the lifetime of the testator. The contents of wills entrusted to the Public Trustee for safe-keeping are held in the strictest secrecy. Moreover, every employee of the Public Trust Office, every member of the Public Trust Office Board, and the Investment Board is required by the Office legislation to take an oath of fidelity and secrecy. Section 42 of the Public Trust Office Amendment Act, 1921, provides as follows:—

(1) Every member of the staff of the Public Trust Office, every agent of the Public Trustee, and every member of the Public Trust Office Board and of the Public Trust Office Investment Board—

(a) Shall maintain and aid in maintaining the secrecy of all matters coming to his knowledge appertaining to the business of the Public Trust Office or to the affairs of any estate under its administration or in relation to the affairs of any person concerned therein, except as may be authorized by law to a person directly interested and entitled to information or for the purpose of assisting to carry out the powers and functions of the Public Trustee and his own proper duties:

(b) Shall take and subscribe such oath of fidelity or declaration of fidelity and secrecy as may be prescribed, which oath or declaration may be administered by or taken before the Public Trustee, Assistant Public Trustee, or any District Public Trustee.

(2) Every person who wilfully acts in contravention of this section or of the true intent of such oath or declaration is liable on summary conviction before a Magistrate to imprisonment for any term not exceeding six months or to a fine not exceeding one hundred pounds.