

In many cases satisfactory details in support of claims are not forthcoming or the circumstances are such that payment would not be warranted except under a judgment of the Court. In circumstances such as these an executor or administrator very often has no option but to disallow claims and to put claimants to the proof in the Court if the claims are persisted in. On occasions individuals bitterly resent the disallowance of their claims, but consideration should show that in the case of a person acting in a fiduciary capacity such a course is necessary and desirable whenever a claim cannot otherwise be clearly established.

During the year a number of troublesome and difficult claims against estates were dealt with in the course of the administration work. Court action was resorted to by claimants in some of these cases, and this involved considerable correspondence and investigation.

DEATH DUTY.

105. A prominent factor in the administration of estates is the assessment and payment of estate and succession duty. It is the duty of every executor or administrator to file with the Commissioner of Stamp Duties a statement in the prescribed form showing specified particulars regarding the dutiable estate of the deceased and with respect to the interests of the several successors of the deceased.

It is often a difficult matter to arrive at the value of the various assets and interests which form part of the dutiable estate—*e.g.*, goodwill in business or hotels, shares in family or private trading concerns not quoted on the Stock Exchange, interests in patents, &c. The greatest care is taken by the Public Trustee to protect the estates under his control and to see that no more duty is levied than is properly payable. The legislation governing death duty is complicated, and requires expert and careful study to enable the operation of the various provisions to be fully comprehended. The departmental officers, by reason of their constant handling of so many estates, are well acquainted with the provisions of the relative Acts and familiar with their effect. In a number of cases where estates which were formerly administered by other trustees have been subsequently transferred to the Office it has been found that the proper apportionments of estate and succession duty amongst the various beneficiaries have not been made, and in some instances adjustments involving substantial amounts have had to be made.

106. In New Zealand provision is made for two concurrent levies in the nature of death duties upon estates of deceased persons—that is to say, (1) estate duty, levied over the whole of the estate, irrespective of its mode of distribution amongst beneficiaries, and (2) succession duty, imposed in respect of every interest “acquired or possessed by any person as the successor of the deceased within the meaning of the Act.”

107. Certain questions of difficulty frequently arise in the administration of estates regarding the adjustment, as between successors of the payment of estate duty and succession duty. The object of the Death Duties Act, 1921, is primarily to provide for the payment of duties, and to secure such payment to the Crown. In effecting this object the Act has disregarded the difficulties and questions which may arise between the various successors in connection with the apportionment of this duty *inter se*, and particularly between life tenant and remaindermen. The Act provides that estate and succession duty are payable as between the several successors in accordance with the directions of the will, “so far as regards any property which is subject to the dispositions of that will.” Subject to such directions, succession duty is payable out of the property in respect of which it is assessed. The administrator has to provide these duties within the prescribed period, which is almost immediately, and so in the absence of testamentary exoneration there arises the necessity of withholding the whole of a life tenant’s income or an annuitant’s instalments of annuity until the impounded amounts provide for the liability of such successor for any duty which may be payable.

Apart from the practical difficulties which are constantly confronting an executor or administrator in the adjustment of estate and succession duty on the interests of life tenants and remaindermen, it is obvious that hardship must often operate to these persons, especially life tenants and annuitants, from the impounding of their income or allowances. As Edwards, J., pointed out in *In re Holmes* (1913