

114. A point unknown or overlooked by many is that there is afforded to the proceeds of life-insurance policies a certain measure of statutory protection from the claims of creditors and legatees. The Life Insurance Act, 1908, provides that life-insurance policies to the amount of £2,000, together with accrued or allotted profits thereon, or annuities to the amount of £104 by the year, shall not pass in bankruptcy or become available for payment of debts on intestacy, nor, when the life-policy holder died leaving a will, be applied for payment of debts or legacies unless the will expressly provides for this to be done. Neither a general bequest of personal estate in trust for payment of debts and legacies, nor a general direction for the payment of debts or legacies out of any portion of the estate of which, under the will, the life-policy proceeds would form a part, is sufficient to render such moneys available for payment of debts or legacies: the direction must be specific.

During the year a large number of death claims were settled in connection with the estates under administration. These included policies in most of the principal life-insurance concerns throughout the British Empire. In regard to life-insurance companies incorporated in England, it is provided by section 19 of the Revenues Act, 1889 (Imperial), that where the only asset in England consists of a life policy and the policyholder dies elsewhere, the moneys payable thereunder may be collected without a grant of probate or administration being taken out in England. All that is required is the production of the grant in the jurisdiction where the deceased died. This provision is availed of whenever circumstances are applicable, and by this means the collection of the proceeds considerably expedited.

PROVIDING FOR THE LIABILITIES OF AN ESTATE.

115. It is surprising how many people fail to understand just what is involved in the administration of estates. They have hazy impressions of the assets and perhaps a few liabilities, and they may vaguely realize that the latter have to be provided for. It is natural for people to think and speak of assets rather than liabilities, and to regard thoughtlessly gross assets as net, hoping that, somehow or other, any existing debts will be paid. A man owning a house worth £2,000 if mortgaged for £1,000 likes to regard himself as owning a £2,000 property, and perhaps, consciously or unconsciously, gives that impression to his family, his friends, and sometimes his creditors. Unfortunately, liabilities seldom shrink without actual payment, and frequently they not only fail to diminish, but are more likely to augment from accumulated interest, taxes, &c. An estate may be a valuable one, but it may be largely involved in debt at the time of the death of the owner, and may be without assets which are liquid, or readily rendered so, to provide for the payment of the liabilities. As has been truly said, death creates further liabilities, including funeral and testamentary expenses and estate and succession duty, which must be liquidated within a comparatively short period.

Testators sometimes overlook the necessity for making provision for the early payment of death duties on their estates, their debts, and the legacies under their wills, with the result that financial difficulties confront the executor or administrator in the administration of their estates. At times, too, dependants may have to suffer by reason of there being no ready cash available for their maintenance. The Public Trustee has special facilities (referred to elsewhere in this report) for financing in suitable cases estates administered by him, and thus providing funds to meet obligations, bequests, &c.

A substantial number of estates were so financed during the past year. For one reason or another, however, it is not always possible to arrange the required finance, and provision for these liabilities and obligations might often be conveniently made during a person's lifetime by the creation of a trust, directing investment either in the Common Fund or in special investments outside the Common Fund of such a sum as may be deemed adequate to cover them. Under such an arrangement provision may be made for the regular payment of the resulting income to the settlors during their lives or for its accumulation and capitalization towards the purposes of the trust.