

WORKING WITH ADVISORY TRUSTEES.

6. In a recent issue of an American publication devoted to matters of interest to corporate fiduciaries reference is made to the generally unfavourable experience of trust companies in acting jointly with co-executors or co-trustees. The writer of the article describes the problem as one of the most difficult administrative problems encountered by trust companies and banks as fiduciaries, and stresses the greater difficulty in the cases where the co-executor or co-trustee is a relative, a personal friend, or a former business associate of the testator lacking experience in trust administration than where he is a person with technical knowledge in regard to trustee law. The writer goes on to remark that the difficulty is accentuated where the co-fiduciary is also a beneficiary, in which case his (or her) interests as beneficiary may often conflict with the obligations and duties imposed on such person as trustee. Where a business partner is appointed a similar conflict of interests is likely to arise, and in the case of personal friends or relatives the element of impartiality may often be destroyed.

The article concludes with the statement that “seldom is anything added by the appointment of co-executor by way of financial responsibility, experience, permanence, or accessibility which are inherent in trust-company administration.”

This was recognized by those responsible for the establishment of the Public Trust Office, and so from its inception it has been provided that the Public Trustee should not act jointly with a co-executor or co-trustee. The Public Trust Office Amendment Act, 1913, however, made provision for a testator who wished to do so to join with the many advantages of Public Trust administration the benefit of specialized knowledge in some particular sphere of business, professional or commercial activity, or the helpful advice of some person in whose judgment he had confidence. This was done by the creation of the position of “advisory trustees,” who may not only be appointed by testators in their wills or settlors in their settlements, but also by the Court, either upon application by the Public Trustee or by any other interested party.

When the Public Trustee acts in conjunction with advisory trustees he has the sole control of the estate, and the assets are vested in him alone. The advisory trustees are, however, consulted on all estate matters of importance, and their advice is sought as to the course of action to be adopted in the various estate matters which arise for decision.

Should there arise between the Public Trustee and the advisory trustees any difference of opinion which cannot be amicably settled, the law provides a simple and ready means of adjusting the difficulty by reference to a Judge in Chambers. It is, however, quite unusual to have any such difference which cannot be settled by friendly conference.

The experience of the Office has been that the system of acting in conjunction with advisory trustees has generally been most satisfactory from the point of view of the beneficiaries, the advisory trustees, and the Office. That it is satisfactory to clients of the Office is amply proved by the increasing number of cases where advantage is taken of these provisions of the Office Acts.

The provision for the appointment of advisory trustees may also be availed of in the administration of intestate and mental-patient estates.

It will be seen that the difficulties with co-fiduciaries referred to in the article mentioned above, which are no doubt more or less common experience with corporate fiduciaries throughout the world, are happily, through the wise provisions of our Legislature, non-existent in the case of the Office.

SECURITY OF TRUST MONEYS.

7. The main concern of a trustee must rightly be the security and conservation of the funds entrusted to his management, so that when the time comes for accounting to the persons entitled they will receive the full benefit of the bequest or share due to them. Pending the arrival of that time, it is the duty of a trustee to invest the funds in one or other of the prescribed forms of trustee investment so that a satisfactory return is secured for the beneficiaries ultimately entitled or for the persons