

ADVISORY TRUSTEES.

5. A phase of the Office administration to which reference has been made in previous reports is the system of advisory trustees. Although this has been dealt with at length in the past, there still appears to be a certain amount of misapprehension concerning it, and, moreover, a number of not wholly disinterested critics have seen fit to make more or less misleading statements regarding its operation. Accordingly I deem it advisable on this occasion again to make some comments in reference to this system.

Co-trusteeship presents many inherent difficulties and drawbacks. From the inception of the Public Trust Office it has been provided that the Public Trustee should not act jointly with a co-executor or co-trustee. The principal reason for this prohibition is the obviously good one that, while a State may guarantee against a misfeasance of its own officers, it cannot undertake the defaults of private persons also. For some time prior to 1912 there were under discussion ways and means of bringing about some arrangement whereby the Public Trust Office system would be preserved in its entirety and at the same time there would be provided for the Public Trustee in his administration of estates special advice in discretionary matters, such as realization of assets, which would benefit the beneficiaries and also afford the Office protection against imputations of collusion or of failure to obtain the best results in the management and the realization of estates.

When the Royal Commission of 1913 was making its investigations the idea was suggested to its members, and so in its report the Commission recommended that statutory authority be obtained for the appointment of one or more persons as advisory trustees whom the Public Trustee might consult in the administration of estates. According to the recommendation of the Commission, the functions of advisory trustees should in substance be confined to the period of realization and to consultation regarding the management of estates, and also the maintenance and education of infants where those objects have to be considered by trustees and not by their guardians.

Thus in 1913 the Office Amendment Act of that year made provision for the appointment of advisory trustees. This appointment may be made expressly by testators in their wills or settlors in their settlements, and also by the Court upon the application of any interested party, or of the Public Trustee, or any person having power to appoint a new trustee. In applications by persons other than the beneficiaries, the Court has intimated that the consent of the adult beneficiaries must be filed, and also that the Court must be satisfied that such an appointment, which may add to the cost of administration, is necessary and would be an advantage in the administration of an estate.

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

When the Public Trustee acts with advisory trustees the trust property vests in him, and, whilst he has all the powers of a sole trustee, he is authorized to consult with the advisory trustees on any matters relating to the estate. The suggestion that the Office has always been antagonistic to the scheme of advisory trustees is wholly unjustified. The innovation has all along been welcomed by those responsible for the running of the Department, and by propaganda and otherwise every effort has been made to extend its use in appropriate cases.

The advisory trustees are consulted on all estate matters of importance, and their advice is sought as to the course of action to be adopted in various cases which arise for decision. Of course, the matters on which their advice is sought are those upon which they are qualified to advise, and especially those concerning which a trustee has to exercise his discretion. Obviously, it would be futile to consult advisory trustees in respect to the mandatory duties of a trustee—*i.e.*, the duties which he is by law compelled to perform, as, for example, payment of debts, death duties, legacies, &c. Moreover, the Public Trustee or any other trustee would not be justified in following the advice of advisory trustees if the course they suggest is plainly illegal—*e.g.*, the retention of unauthorized investments for which no suitable indemnity or protection could be obtained.