

In regard to small estates of under £400 in value which are reported to the Office for administration, the Public Trustee may file in the Supreme Court an election to administer according to the will, where the deceased died testate, or under intestacy, where the deceased left no will. This procedure is simple, expeditious, inexpensive, and most useful. It may happen that, after filing an election to administer, further assets are discovered which raise the value of the estate above that previously estimated. In that event it is provided by statute that, should the increased value of the estate not exceed £600, no further action is required. Where, however, the increased value exceeds £600 the Public Trustee is required to file in the Supreme Court a memorandum stating this fact, and then to proceed to obtain a grant of probate or administration in the usual way. The number of elections filed during the past year totalled 664.

It frequently becomes necessary to approach the Court for authority to pursue certain courses or to take certain action in connection with the administration and management of estates. Applications of this nature are usually made in Wellington, and during the past year the number of such applications was 147—five more than were made during the preceding year. The nature of the applications is most varied, including proposals to sell, lease, mortgage, purchase, or exchange land; to carry on a business; to effect necessary improvements on trust properties; to sanction modifications of trusts rendered necessary by unforeseen circumstances; to enable the shares of missing beneficiaries to be dealt with, and the like; and, except in those cases where special reasons exist for the employment of a private practitioner, this work is all performed by the Office Solicitor and his staff. As the Public Trustee represents such varied interests, it will readily be recognized that he must frequently become a party to litigation. It should also be remembered that the Supreme Court is empowered to appoint the Public Trustee to represent the interests of infants, absentees, or other persons not *sui juris* in contentious proceedings to which the Public Trustee was not an original party. During the year a number of contested matters were heard and decided, in each case the Public Trustee having been either an original party to the suit or having appeared on behalf of a particular beneficiary or class of beneficiaries, infants, absentees, or persons not *sui juris*. The following are the most important of these:—

(1) *The Public Trustee v. the Bank of New Zealand* (Reference, 1927 G.L.R. 1).—The wife of X (who was indebted to the Bank of New Zealand) executed a memorandum of mortgage in favour of the Bank over certain land belonging to her. The mortgage recited that the husband was indebted and might thereafter become further indebted to the bank, and that the wife had agreed to secure in the manner thereafter appearing the repayment to the bank, on demand, of all and every sum of money that might at the time of making such demand be due, owing, or payable by the husband to the bank. The charge on the land was thus expressed: “and for the better securing to the bank the payment in the manner aforesaid of all moneys (including interest) which it is hereinbefore recited should be secured, and also all moneys (including interest) which it is hereinbefore provided shall be included in this security, I hereby mortgage to the bank all my estate and interest in the said land above described.” The mortgage contained a declaration modifying the provisions of the Land Transfer Act in so far as the same were contradictory to or inconsistent with the terms of the mortgage itself; it set forth in full the covenants and powers conferred upon the bank by the mortgage; and continued by declaring that the provisions of the mortgage should, as between the mortgagor and the bank, be deemed for all purposes that of a principal obligant and not that of a surety.

It was held by the Court of Appeal that the whole scheme of the mortgage and the nature and character of its provisions were consistent with a mortgage or charge on the land only, and that the parties did not contemplate that the mortgagor should undertake a personal responsibility for her husband's indebtedness, and that the mortgage, therefore, did not contain or imply a covenant on the part of the mortgagor to pay the moneys thereby secured.

(2) *McCrostie v. Quinn and Others* (1927 G.L.R. 37).—A testator was at the date of his death possessed of shares in a private limited company, which shares formed part of his residuary estate. He had in his lifetime lent money at interest