

1951.] *The Perpetual Executors, Trustees and Agency Company (W.A.) Limited.*

THE PERPETUAL EXECUTORS, TRUSTEES AND AGENCY COMPANY (W.A.) LIMITED

15° and 16° Geo. VI.

AN ACT to amend The Perpetual Executors, Trustees and Agency Company (W.A.) Limited Act, 1922.

[Assented to 19th December, 1951.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as *The Perpetual Executors, Trustees and Agency Company (W.A.) Limited Act Amendment Act, 1951*, and shall be read as one with The Perpetual Executors, Trustees and Agency Company (W.A.) Limited Act, 1922, hereinafter referred to as the principal Act. Short title.

2. Section seven of the principal Act is amended by inserting after the words "issued by" in line eleven the words "the Government of the Commonwealth of Australia or by". Amendment of s. 7.

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Amendment
of s. 14.

3. Section fourteen of the principal Act is amended by deleting the words "motion and notice of the intended application shall be advertised three times in one daily newspaper published in Perth seven days before the making thereof and in case of an executor or administrator of a testator or intestate who died in Western Australia a like notice shall also be advertised once in some local newspaper (if any) circulating in the district in which the testator or intestate resided at the time of his death" and by substituting therefor the words "application to a Judge in Chambers".

4. Section sixteen of the principal Act is repealed and the following new section inserted in lieu thereof:—

Company
to be paid a
commission
on moneys
received
by it.

16. In addition to all moneys properly expended by the Company and chargeable against any estate heretofore or hereafter committed to the administration or management of the Company as executor, administrator, trustee, receiver, committee, trustee in bankruptcy or guardian, or as such guarantor or surety as aforesaid, or as attorney the Company shall be entitled to charge, retain or receive against from or out of such estate—

- (a) a commission, to be fixed from time to time by the directors of the Company, not being less than twenty-five pounds and not exceeding two pounds ten shillings for every one hundred pounds of the gross value of such estate and a commission of five pounds for every one hundred pounds of income from such estate;
- (b) a fee (according to the value of the services rendered) for the preparation of income and land taxation returns, the inspection and report upon real estate, the arrangement of insurances, and the keeping of books of account (including the preparation of balance sheets and profit and loss accounts) in respect of any business;

- (c) in respect of any business wholly belonging to, or in which an interest as partner is held by, the estate an additional fee at the rate per annum of one-half of one per centum of the whole, or as the case may be such proportional part as the interest of the estate bears to the whole, of the book values of the assets employed in such business.

Such commission and fees shall be received and accepted by the Company as a full recompense and remuneration for acting as aforesaid and no other charges beyond the said commission and fees shall be made by the Company but if in any case the Court shall be of opinion that any commission or fee charged is excessive it shall be competent for the Court to review and reduce the same provided that commission chargeable under paragraph (a) of this subsection shall not exceed the amount of the scale of commission published by the Company from time to time but so that this subsection shall not prevent the charging of any commission or fee directed by a testator or a settlor in lieu of such commission.

5. Sections are inserted in the principal Act as follows—

Common
Trust Fund.

21A. (1) The Company may in addition to other modes of investment permitted by law for investment of trust moneys (unless expressly prohibited by the instrument creating the trust) invest trust moneys as part of a fund to be called a "Common Trust Fund" which may be established by and kept in the books of the Company.

(2) The moneys constituting the Common Trust Fund may be invested in any of the modes of investment permitted by law for the investment of trust moneys.

(3) Investments made from moneys forming part of the Common Trust Fund shall not be made in the name or on account of, nor shall they belong to, any particular estate, trust, property, or person but the Company shall keep an

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account in its books showing at all times the current amount for the time being at credit in the Common Trust Fund on account of each estate, trust, property or person.

(4) Any capital profits or losses upon realisation of any investment in the Common Trust Fund shall be credited or debited (as the case may require) to the Common Trust Fund and be rateably added to or deducted from the several amounts at credit in the account referred to in paragraph (3) of this subsection at the time of such realisation.

(5) The Company may in its discretion at any time withdraw from the Common Trust Fund any amount at credit in the Common Trust Fund on account of any estate, trust, property or person.

(6) In respect of each amount withdrawn from the Common Trust Fund the estate, trust, property or person in respect of which such withdrawal is made shall as from the date of such withdrawal cease to have any claim to accruing income from the Common Trust Fund.

(7) If for the purpose of providing for any withdrawal any investment is realised then for the purpose of this section that part of the moneys arising from such realisation as is equal to the amount of interest accrued on such investment shall be deemed to be income of the Common Trust Fund and the balance shall be deemed to be capital.

(8) As on the first day of every month during which there shall be any withdrawal from the Common Trust Fund the Company shall determine the value of the investments in the Common Trust Fund (without regard to accrued income thereon) and shall adjust as necessary the account referred to in paragraph (3) of this section and each withdrawal from the Common Trust Fund during any month shall be effected on the basis of such valuation.

(9) At quarterly intervals the Company shall distribute the income from time to time received

from the investments constituting the Common Trust Fund between the estates, trusts, properties and persons entitled thereto according to their shares and interests.

21B. In any case in which the Company shall, as trustee for the investment thereof, hold moneys belonging to more than one estate, it shall be lawful for the Company to invest such moneys as one fund in one or more investments of the nature for the time being authorised by law or by the instrument creating the trust and to distribute the income arising therefrom rateably among the several estates to which the moneys so invested shall belong; and any loss arising from any such investment shall likewise be borne rateably by the same several estates.

Contributory
investments.