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A.J. White Hutton

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# LEGISLATION

## THE FIDUCIARIES ACT OF 1949.

By

A. J. WHITE HUTTON\*

A signal achievement of the Pennsylvania General Assembly of 1949 was the enactment of the new fiduciaries law to supplant the Act of 1917 and known as Act No. 121, approved April 18, 1949 and effective January 1st, 1950. Another measure passed at the same session was Act No. 144, approved May 26, 1949, THE FIDUCIARIES INVESTMENT ACT OF 1949, bringing "together in an orderly form, the investment provisions relating to Pennsylvania fiduciaries, except personal representatives, whether subject to the jurisdiction of the orphans' court or of the common pleas court."<sup>1</sup>

It is the purpose of the present article to discuss THE FIDUCIARIES ACT OF 1949.

### *Historical Resume*

The law of decedents' estates in Pennsylvania is of statutory origin and it is a trite observation that the jurisdiction of the register of wills and of the orphans' courts rests upon the statute law. The development and evolution of this law extends over two and one half centuries of the history of Pennsylvania, as a colony and as a commonwealth. The early statutes are found in Volume 2, Statutes-at-Large, a set of books of incalculable value to the legal historian. However, for general purposes the statutory law is traced to the basic acts, the result of the labors of the codifiers of 1830 appointed by Governor George Wolf pursuant to a resolution of the General Assembly "to revise, collate and digest all such public acts and statutes of the Civil Code of this State, and all such British Statutes in force in this State, as are general and permanent in their nature."

By the terms of Resolution 6, it was stipulated, "That the Revisers be and they are hereby directed to revise the several statutes relative to the settlement of accounts before registers, and proceedings in the Orphans' Court, as soon as conveniently may be, and report the same for the determination of the General Assembly at their next session."

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\*A. B., Gettysburg; A. M., Gettysburg; LL. B., Harvard; LL. D., Gettysburg; Professor of Law, Dickinson School of Law; former Member-Pennsylvania House of Representatives; Author of Hutton on Wills in Pennsylvania; Member of Pennsylvania and Franklin County Bar Associations; Member of Advisory Committee, Law of Decedents' Estates and Trusts, Joint State Government Commission of Commonwealth of Pennsylvania.

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<sup>1</sup> For both these acts see Report of the Joint State Government Commission of 1949 where the same are annotated and explained. See also *Fiduciary Review*, May and June, 1949, articles by Robert Brigham, Esq., of the Philadelphia Bar and Chairman of the Advisory Committee on Law of Decedents Estates and Trusts.

The revisers worked for almost two decades in the codification generally of the civil law and a period of about six years to the law of decedents' estates. The fruits of their labors appear in the following:

THE ACT OF MARCH 15, 1832—Registers and their Courts.

THE ACT OF MARCH 29, 1832—Orphans' Courts.

THE ACT OF APRIL 8, 1833—Wills.

THE ACT OF APRIL 8, 1833—Intestacy.

THE ACT OF FEBRUARY 24, 1834—Executors and Administrators.

By joint resolution of April 10, 1867, the General Assembly again called upon the Governor to appoint a commission for revision of the law but the work done did not affect materially the labors so well performed by the Commissioners of 1830. Eighty five years after the appointment of the latter commission, the Governor of the Commonwealth was authorized and required by the Act of April 23, 1915, to appoint a commission to codify and revise the law of decedents' estates and their work is reflected in the seven acts which were recommended to and enacted by the General Assembly in 1917, *viz.* **INTESTATE ACT, WILLS ACT, FIDUCIARIES ACT, PARTITION ACT, REVISED PRICE ACT, REGISTER OF WILLS ACT AND ORPHANS' COURT ACT.**<sup>2</sup>

"Pursuant to Senate Resolution No. 46 of the regular session of the Legislature of 1945, the Joint State Government Commission of the General Assembly," as it states in the Foreword of its Report,<sup>3</sup> "was directed to study, revise and prepare for reenactment the Orphans' Court Partition Act, the Revised Price Act, the Wills Act, the Register of Wills Act, the Intestate Act and the Fiduciaries Act, together with all of their supplements and amendments and all separate laws that should properly be incorporated therein, and to present them for the consideration of the General Assembly at its next session." It was in accordance with this mandate and its performance by the Commission that the Legislature in 1947 enacted an Intestate Act, a Wills Act, an Estates Act and a Principal and Income Act.<sup>4</sup>

Following up this work by Senate Resolution Serial No. 34 of the regular session of the General Assembly of 1947, the Commission was directed "to further study, revise and prepare for reenactment the Orphans' Court Partition Act, the Orphans' Court Act, the Revised Price Act, the Register of Wills Act and the Fiduciaries Act."

Thus it has come about that after careful study the revised Fiduciaries Act of 1949 has come into being and will supplant the Fiduciaries Act of 1917, going into effect January 1, 1950.<sup>5</sup>

<sup>2</sup> See Hutton-Wills-pages 11-13.

<sup>3</sup> Report of Commission in 1947-page 1.

<sup>4</sup> See Report of Commission in 1947 for these acts with annotations.

<sup>5</sup> Report of Commission in 1949 giving Act annotated.

From this historical review is shown the development generally of the statute law of decedents' estates over a period of almost one hundred and twenty years.

### *General Purpose*

The Commission of 1917 in its Report to the General Assembly<sup>6</sup> said:

"So far as concerns our recommendations for substantive changes in the law, we have endeavored to be conservative, and yet have not hesitated to suggest important changes where we thought them distinctly beneficial. It has been often said, and with truth, that the burden of proof is upon him who advocates a change in the law, and this rule is distinctly applicable to that department of the law which has been referred to us. For the law of the decedents' estates in this Commonwealth is and has been for many years, certainly since the Revised Acts drafted by the Commissioners of 1830, most admirable in its theory, and in practice most satisfactory to the community. We have therefore been careful to limit our recommendations to those changes, which we felt after our careful deliberation and unanimous conclusions would meet with the approval of the representatives of our fellow citizens, and deserve a practical trial."

With the passage of thirty two years since their utterance and in retrospect it may be justly and appropriately declared that these worthy predecessors in the work of codification indeed wrought better than they knew.

In reciting the experience in the collation of the Fiduciaries Act of 1917 there is this statement:<sup>7</sup>

"In this voluminous Act, the Commissioners have endeavored to arrange in one connected and systematic statute the law relating to the administration and distribution of the estates of decedents and of minors, and of trust estates, and particularly the jurisdiction, powers and procedure of the orphans' court relative to fiduciaries. The intricacy of the subject is greater than any one will readily believe who has not taken the trouble to examine it himself; and the labors of the Commissioners have been principally directed to the revision and consolidation of existing statutes and the repeal of those that have become obsolete, rather than to the introduction of novel legislation. The changes recommended are for the most part designed to simplify and harmonize the procedure, which, in many instances, has become complicated by the passage of numerous statutes relating to specific matters of detail."

After the passing of a generation and sixteen regular sessions of the legislature with the various amendments and supplements to the original legislation, it would appear that the excerpts just quoted from the remarks of the codifiers of 1917 were singularly apt and appropriate in justification of the new legislation.

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<sup>6</sup> Report of Commission of 1917, pages 3-4.

<sup>7</sup> Report of Commission of 1917, pages 9-10.

### *A Procedural Act*

The present act, as well as its predecessor of 1917, is primarily one of procedural matters, in other words it treats of adjective rather than substantive law. It furnishes the means for implementing the substantive law of decedents' estates and trusts. This feature was given due emphasis by the codifiers of 1917 in the remarks already quoted. Likewise, in discussing the new act, an eminent authority lays equal emphasis in this observation:<sup>8</sup>

"The Fiduciaries Act of 1949 is the fourth step in the revision of the law of decedents' estates and trusts. As distinguished from the Wills, Intestate, and Estates Acts of 1947, which dealt primarily with substantive law, the Fiduciaries Act of 1949 deals primarily with procedure."

### *Mechanical Features*

The new act, following the modern mechanical trend in statute drafting, is assimilated to a text book and is more streamlined than the old act. Moreover, it is more concise in language and consequently briefer. For example, the old act as set up in the Report of the Commission of 1917 embraces two hundred and four pages, including annotations but not of course the shower of amendments and supplements since. In contrast the new act is set forth in the Report of the Commission of 1949 in one hundred pages, including the annotations. There are fourteen topics, designated as articles, and subdivided into sections, the topics or articles being arranged in sequence following as nearly as possible the course of the administration of an estate.

These topics will now be considered. They treat after preliminary provisions the following subjects: (1) decedents' estates, (2) trust estates, (3) minors, (4) foreign fiduciaries, (5) absentees and presumed decedents, (6) sureties, (7) re-peals.

### *Preliminary Provisions*

Article I considers certain essential but preliminary matters embraced in Sections 101-106, all of them reasonably obvious, therefore requiring no especial reference except Section 104- Title to Real Estate, wherein after stating the usual principle that legal title to real estate of a decedent passes at his death to his heirs or devisees, adds this proviso:

"Subject, however, to all powers granted to the personal representative by this act and lawfully by the will and to all orders of the court."

Section 103, on the other hand, states the usual rule that legal title to all personal estate of a decedent passes to his personal representative and for clarity specifies the time of passing, viz., "as of the date of his death." The marked change is in the administration of real estate which is to be done much the same as personal property. As appears later the real estate is inventoried, included in the ac-

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<sup>8</sup> Brigham, *Fiduciary Review*, May, 1949.

counting and schedule of distribution and awarded in distribution much the same as if it were an item of personal property, such as stock. The draftsman has stated:

"In England the distinction for administration purposes was abolished by the English Land Transfer Act of 1897, and the English Administration of Estates Act of 1925 under which real estate is made to vest in a decedent's personal representative at his death. In Pennsylvania the trend was apparent in the 1917 acts which, among other things, abolished the old distinction between the descent of real property and of personal property."

The treatment of real estate for administrative purposes under the new act is in substantial accord with the California Probate Code (Deering 1931) section 300, in part, as follows:

"When a person dies, the title to his property, real and personal, passes to the person to whom it is devised or bequeathed by his last will, or in the absence of such disposition to the persons who succeed to his estate . . . but all of his property shall be subject to the possession of the executor or administrator and to the control of the superior court for the purpose of *administration*, rule, or other disposition."

### *Administration Unnecessary*

In the adjustment or settlement of the estates of the dead the usual procedure is by application to the register of wills of the appropriate county for some form of letters of administration. These letters constitute the warrant of authority to the recipient to assume control and direction of the otherwise suspended affairs, material and pecuniary, of the deceased person. But letters may not be necessary and this lack of requirement by the law is based upon some social policy either of family or economic smallness.

Article II entitled "Dispositions, Independent of Letters" sets forth in sections 201-202 under sub-topic "A. Wages or Salary and Small Estates", two situations where letters are superfluous.

### *Wages or Salary*

The present law of Section 49 (f) of the Fiduciaries Act of 1917 is enlarged by Section 201 particularly in eliminating any waiting period, including either spouse, broadening not only the amount of money to be paid but also the type as "wages or salary" and designating "any child" as entitled after the spouse. It likewise clearly absolves "any employer" so paying from liability whether letters had been granted or not for application of the sum so paid. There is likewise omitted any specifying of classes rendering services to whom payment may be made under this section, leaving this feature to the following Section 202, where the deceased employee leaves no spouse, child, father or mother, sister or brother. In a word the employer may pay the wages due the deceased employee as specified without recourse to and despite letters of administration.

### *Small Estates*

On the principle *de minimis non curat lex* Section 202 likewise provides a short cut where the gross value of the estate of a decedent does not exceed the sum of one thousand dollars. In calculating this sum real estate, wages or salary are excluded but the family exemption claimed out of the personal property is included. In such instances the short cut is within the discretionary control of the orphans' court of the county wherein the decedent was domiciled at the time of his death and by petition so directed "by any party" in interest. This course of procedure is based upon the present Sections 2 (c) and 12 (f), amended, of the Fiduciaries Act of 1917.

### *Family Exemption*

This topic is included under the general theme of dispositions independent of letters for it may be that the estate is small and the exemption practically absorbs it. Several noteworthy features of Section 211 setting forth the claim are as follows: (1) it is now allowable to either spouse out of the estate of the deceased spouse; (2) the amount is increased to seven hundred and fifty dollars in value; (3) the family relationship developed in case law is better defined in the phrase "form a part of the decedent's household"; (4) the claim is specified not only as "an exemption" but further "as a reasonable requirement for support during the settlement of the estate," thus bringing it within the benefit of a deduction for Federal Estate Tax purposes.<sup>9</sup> The claim is restricted as against the estates of persons dying domiciled in Pennsylvania, the present law applying to the estate of either a decedent of this Commonwealth or otherwise "but whose estate is settled in this Commonwealth."

Sections 212-216 follow and point out the procedural features of acquiring or having awarded the exemption out of either personal or real property or both and the steps are quite similar to the present law and practice under the control and direction of the Orphans' Court.

### *Decedents' Estates*

Articles III to VIII inclusive relate to the administration and distribution of decedents' estates, specifying the procedure in chronological order from the grant of letters to the accounting and distribution and the particular course provided as to legacies, annuities, and other charges.

### *Article III*

This article relates to the personal representative, his appointment, bond, removal and discharge and embraces Sections 301-311, 321-324, and 331-333.

### *Grant of Letters*

Section 301 follows Section 2(a) of the Fiduciaries Act of 1917 and the case law as evolved. It will be noted that domicile is used in conjunction with resi-

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<sup>9</sup> Tentative Draft-page 3.

dence and that "the family or principal residence" retained from the present law is further qualified by the word "last" as a substitution for "at the time of his decease." The distinction is clearly drawn between domestic and foreign decedents as in the present law and in domestic cases the county of "the family or principal residence" retains the exclusive jurisdiction over the commonwealth. However, in the case of foreign decedents the present law conferring jurisdiction on the register of the county" when the principal part of the goods and estate of such decedent within this commonwealth shall be" has been changed as follows:

"If the decedent had no such domicile in the Commonwealth, letters . . . may be granted by the register of any county wherein property of the estate shall be located and when granted, shall be exclusive throughout the Commonwealth."

The effect of the change is to allow the place for ancillary administration to be selected by the parties interested which is in substantial accord with the present case law as to choses in action,<sup>10</sup> extending this doctrine to both classes of personal property.<sup>11</sup>

Section 302 preserves the restriction in Section 2 (b) of the present law on the issuance of letters "after the expiration of twenty one years from the decedent's death."

Section 303 sets forth in paragraphic detail the contents of the petition for the grant of letters, thus enlarging Section 2(d) of the present act, which introduced for the first time the requirement of a written application to the register.

Section 305 designates those entitled to letters both testamentary and of administration. As to the first the register has no discretion if executors named have no disqualifications as later specified. As to the second the order set forth, although in different words, is in substantial accord with the present act and the case law.<sup>12</sup> The right of nomination is given specific recognition for the first time in our statutory law.<sup>13</sup> A time limit is likewise by the new act placed upon rash haste or hurry in the issuance of letters, Section 305 (c) stipulating that except with the consent of residuary legatees, spouse or heirs at law, no letters shall issue to creditors or other fit persons "until seven days after the decedent's death." The commission of 1830 had suggested somewhat similarly a five day waiting period after death as a part of the proposed Act of 1832 but it was not adopted.<sup>18a</sup>

<sup>10</sup> Sayre's Exrs. v. Helme's Exrs. 61 Pa. 299 (1869).

Viosca's Estate, 198 Pa. 280 (1900) 57 A.233.

Long's Estate, 301 Pa. 429 (1930) 152 A.570.

Brown's Estate, 105 Pa. Super. 236 (1932) 161 A. 471.

<sup>11</sup> Cf. Section 10 (b) and Section 11, Intestate Act of 1947.

<sup>12</sup> Cf. as to spouse, Friese's Estate, 317 Pa. 86 (1934) 176 A. 225.

<sup>13</sup> Cf. Section 5, Register of Wills Act of 1917; McClellan's Appeal, 16 Pa. 110.

<sup>18a</sup> Report-Commission-1917 page 94, note Cf. Comfort's Estate, 12 Pa. C.C. 571 6, York 164 (1893).

### *Disqualification*

Section 306 specifies three instances of disqualification for letters, *viz.*: (1) minority of person, (2) lack of corporate power to act as fiduciary in the Commonwealth and (3) a person other than executor designated by name or description in the will, found by the register to be unfit to be entrusted with the administration of the estate.

These are disqualifications generally designated in text books as absolute and have been adopted in our case law. The present act has nothing on this topic except the provision of Section 4 as it applied to minor executors.

Section 307 further extends the matter to relative disqualification arising out of non-residency. The comments to these Sections by the draftsman are helpful.<sup>14</sup> Sections 308-310 cover the special forms of administration as provided in the present act and Section 311 continues the requirement as a qualification to the office of personal representative that he shall take the oath of office.

### *Bonds*

Sections 321-324 covering the requirement of bonds of personal representatives are in substantial accord with present law with a qualification as to liability in cases of joint bonds as pointed out in the comments. Under the present act all administrators and all foreign executors must give bonds. Under the new act all administrators give bonds together with foreign executors, unless the latter are excused by the testator. On the other hand the domestic executor may also be required to furnish bond, if the testator so specifies by the will, or the same is ordered by the court.

### *Removal and Discharge*

Sections 331-333 provide for removal and discharge of personal representatives, the same being based upon Sections 52-54 of the present act.

### *Inventory and Appraisalment*

Article IV, Sections 401-404 cover the topic of inventory and appraisalment and the following is quoted from the remarks of the draftsman:

"This article replaces Section 11 of the 1917 Act with the following principal differences:

1. The period for filing the inventory is increased from thirty days to three months.

2. All real estate is included, but real estate located outside of Pennsylvania is not extended into the totals and appears in memorandum form only.

3. No procedure is set forth (as in Section 11(b) of the 1917 Act) for compelling the filing of the inventory. There is adequate machinery

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<sup>14</sup> See also Sharpe's Appeal, 87 Pa. 163 (1878).

in the Orphans' Court Act (Sections 16 and 18) for compelling compliance with all duties of fiduciaries.

4. There is no detailed listing of types of property to be included in the inventory."

*Personal Representatives: Powers, Duties and Liabilities*

Article V embraces the above topics in Sections 501-523 and 541-549. Of these the most striking in the matter of change are Sections 501, 541, 543 and 547. An excellent summary of this article is given by Chairman Brigham of the Committee.<sup>15</sup>

Under the new law the powers of representatives over real estate, particularly in cases of intestacy, are greatly enlarged. Under Section 501 the representative is given the right to possess, manage and administer the real estate left by the decedent with the exception of that occupied by an heir or devisee. The comment on the section in part as follows:<sup>16</sup>

"With regard to personal estate, this section restates existing law. With regard to real estate, it is a distinct departure from existing Pennsylvania law and is based on the premise that the personal representative except as stated should have the duty as well as the right to control real estate until it is sold or distributed by decree or until control is relinquished to the heir or devisee because it is not needed for administration."

Under present law at death of the owner the title to personalty vests in the representative, so under the new act. Under present law at death of the owner the title to real estate vests in the heir or devisee, so under the new act but the right of control on the part of the representative is extended for administrative purposes and without court order. In the excepted cases of real estate occupied by an heir or devisee the extension may be made by court order. The section closes with this provision:

"Nothing in this section shall affect the personal representative's power to sell real estate occupied by an heir or devisee."

This power of sale is set forth in Section 541, which will be mentioned hereafter. Concluding the discussion of control over the real estate by the representative, by contrast it is noted the present law provides but one instance of any similar power of a representative found in Section 14 of the Fiduciaries Act of 1917, conferring the limited power to collect rents occurring after the death of the owner upon not only the representative but if necessary upon creditors "or any other person interested," when by petition to the appropriate orphans' court it is shown the personal estate is insufficient to meet the debts, the court then making an order authorizing the above to collect.<sup>17</sup>

<sup>15</sup> Fiduciary Review-May, 1949.

<sup>16</sup> Report of Commission 1949 page 32.

<sup>17</sup> Report of Commission 1917, pages 133-134 and notes.

As forecast in the portion of Section 501 already quoted, Section 541 sets forth the plenary power of a representative to sell the real estate as well as the personal at either public or private sale, "except as otherwise provided by the will, if any", likewise including "personal property whether specifically bequeathed or not" and "any real property not specifically devised." The legal philosophy of this section is fully explained in the comment.<sup>18</sup>

It should be noticed that a sale of real estate by the representative under Section 541 does not have the legal effect of a judicial sale, consequently if there are liens of record involved and the results of a judicial sale are sought, the procedure is then under Section 543 by sale pursuant to order of the orphans' court of the county where letters were granted. Furthermore, if the end sought is to sell land specifically devised or to pledge, mortgage, lien, or exchange any such property or grant an option for the sale, lease, or exchange of any such property and the representative is not authorized to do so by the new act or is not authorized or is denied the power to do so by the will, if any, then an order of court must be obtained. In short, Section 541 has not the breadth and scope of Section 543 and Section 547 further outlines the difference in its provisions concerning the title obtained by the purchaser under these processes. Says Chairman Brigham:<sup>19</sup>

"A number of other powers common in wills but new as statutory provisions are given to the personal representative in Article V. They should tend to make wills simpler and shorter. Among them are the power to carry public liability insurance for the protection of the personal representative and beneficiaries (503); to continue the decedent's business with court approval (504); to incorporate the decedent's business with court approval and without the unanimous consent of all parties in interest as required under prior law (505); and to employ a corporate fiduciary to serve as custodian of and perform only ministerial duties with respect to estate assets and to authorize such corporate fiduciary to hold investments in the name of its nominee (511(c))."

#### *Property Rights and Obligations of Estates of Decedents*

Article VI embraces the above topics in Sections 601-607 and 611-623. In this article are found the matters pertaining to abatement, survival and control of actions, also of claims, charges, and rights of creditors.

Sections 601-607 pertain to actions and consist of a coordination of Section 35 of the Fiduciaries Act of 1917 with Procedural Rules 2352-2353 and the Act of 1923, P.L. 150, 20 PS 779. Cf. Section 307 (b) of the new act.<sup>20</sup>

The present law as to limitations against debts due to an estate in Section 36 of the 1917 Act is reflected in Section 606 of the new act and likewise matters of execution on judgments against the estate in Section 607 based in part on Section 15 (i) of the 1917 Act.

<sup>18</sup> Report of Commission 1949, pages 40-41.

<sup>19</sup> Fiduciary Review, May 1949.

<sup>20</sup> See article—Ronald A. Anderson, Philadelphia Bar, Fiduciary Review, September, 1949.

Concerning claims, charges and rights of creditors, a noteworthy change is in Section 612 reducing from five years to one year the lien of a judgment against the real estate of a decedent existing at the time of the debtor's death under the rule of automatic extension of Section 15 (g) of the 1917 Act. By the new act it is specified that the lien "shall continue to bind the real estate for five years from the inception or last revival of the lien or for one year from the decedent's death, whichever shall be longer." If the lien is to continue for another five years it must be accomplished by revival.

Concerning ordinary claims against the estate of a decedent the present limitation period of one year is followed in Section 613 of the new act and as under the latter the estate, both real and personal, remains responsible for the debts. Section 614 presents methods of procedure which, if followed by the claimant, the statutory period of one year may be tolled and on the other hand Section 615 provides that as to ordinary claims, they are unenforceable after one year from the decedent's death against a bona fide grantee of, or holder of a lien on real property of the decedent when the heir or devisee has sold or liened the same, either after the one year has expired and no letters are in effect or within the year and no letters have been issued during the year. This is intended to make the real estate freely alienable after one year where (1) no letters are granted or (2) there is a vacancy in letters.<sup>21</sup>

Claims not due and not certain to become due are treated in Sections 617 and 618, having no counter part in the present act but consistent with existing practice.<sup>22</sup>

Section 619 provides some new statutory law relative to claims in litigation in courts other than the orphans' court and Section 620 extends the remedy of specific performance to personal as well as real property. Section 622 sets up the classification and order of payment of debts following Section 13 of the 1917 Act but cutting down the claims for medicine, medical attendance and nursing given priority to the period of six months of decedent's death, likewise the same period for preferred rents, distinguishing a gravemarker from funeral expenses and abolishing the ancient, but now rather extraordinary governmental claim deferment to the very end of the list which has been our law since 1794.<sup>23</sup>

### *Accounting and Distribution in Decedents' Estates*

Article VII embraces the above topics in Sections 701-704, 711-714, 721, 731-736, 751-756. In this article are found the matters pertaining to accounts, audits, review, distribution and rights of distributees. The procedure is for the most part the same as at present keeping in mind that real and personal property are handled similarly in accounting and providing in Section 732 if the distribution is

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<sup>21</sup> Note Comment—Report of Commission, 1949, page 49 as to Sections 615-616.

<sup>22</sup> See Fiduciary Review, June 1944.

<sup>23</sup> See report of Commission, 1917, page 132.

made by the personal representative without the filing, audit or confirmation of his account it is at his own risk. However, if made after one year from the grant of letters the rule of *Ray's Estate*, 345 Pa. 210 (1942) 25 A.2d 803 is recognized and extended to real as well as personal property so distributed.

Section 731 provides a short form of accounting by the representative after the expiration of one year from the grant of letters when the gross real and personal estate of a decedent does not exceed the value of one thousand dollars. This section may be compared with Section 202, *ante*, where on petition of any party in interest, and whether or not letters have been issued, an estate, exclusive of real estate, of a gross value not exceeding one thousand dollars may be settled by short form.

Section 734 provides for distribution in kind by order of court and as it includes real and personal estate affords a means of partition much simpler than can be accomplished at present in the case of real estate.

Section 751 sets up the order of abatement where assets are insufficient to pay all claimants and distributees, establishing the priority of distribution, without distinction between real and personal estate. Section 752 provides for court orders of contribution among legatees and devisees to accomplish abatement in accordance with Section 751. Sections 753, 754, and 755 provide for various details relative to legacies and devisees covered by present law. Section 756 affords an expeditious procedure for court determination of title to decedent's interest in real estate.

#### *Legacies, Annuities and Other Charges*

Article VIII embraces the above topics in Sections 801-804 which simplify the procedure incident to these matters. Especially notable are the provisions of Section 804 as to the discharge of old claims created "by will, inter vivos trust or court decree, upon real property" where there is a lapse of twenty years and the arising of the presumption of payment. Provision is made for perpetuation of evidence of payment or acknowledgement and in the absence of such evidence the charge is made irrecoverable. Provision is also made for covering pre-existing charges thus making retroactive application of this section.

#### *Trust Estates*

Article IX covers trust estates in a series of sections for their administration, beginning with appointment, bond, removal and discharge. Then taking up the matters of powers, duties and liabilities of trustees and sales, pledges, mortgages, leases, options and exchanges of trust property.

The procedure is made analogous to the various steps in the administration of decedents' estates already discussed and extends the provisions to trustees appointed under inter vivos deeds as well as those under wills.

### *Minors*

Article X covers the estates going to minors and which are usually administered by guardians as appointed. Here again, as in the matter of trust estates the course of administration and procedure is analogous to that of decedents' estates, pointing out first the instance of small estates requiring no formal guardianship and then taking up the appointment of guardians, bonds, their eventual removal and discharge, followed by liabilities, treating these as general and specific and closing with topics of accounts, audits, reviews and distribution.

Section 1045 makes clear that guardians appointed by inter vivos instruments under the Act of 1945, P.L. 253 have the same powers, duties and liabilities as court appointed ones. Section 1084 broadens the scope of expenditures for the support and education of the minor as is fully explained in the comment.<sup>24</sup>

### *Foreign Fiduciaries: Absentees and Presumed Decedents*

Article XI covers foreign fiduciaries and Article XII that of absentees and presumed decedents. These topics are more closely associated, in fact, a part of decedent's estates, whereas that of the preceding topics on trusts and minors concern estates that usually follow in order the decedent's estate, except when based upon inter vivos instruments. However, fiduciaries as treated in this article include trustees as well as personal representatives deriving authority from a foreign jurisdiction. Under present law the various provisions of Section 58 of the 1917 Act confer the several powers upon the foreign fiduciary, whereas the new law confers general powers and then specifies any limitations.

As to absentees and presumed decedents Article XII in its several sections represents a distinct advance in thought and legal principles as applicable to situations becoming more and more prevalent in our complex forms of present day existence. It was not until the latter part of the 19th century that these matters received any statutory recognition and later culminating in Sections 6 and 60 of the Fiduciaries Act of 1917.<sup>25</sup> The problems arising from situations created by absentees and presumed decedents are now largely assimilated and the procedure and results clarified.

### *Sureties*

Article XIII covers the rights of sureties in the course of administration and also the enforcement of bonds. Generally, it will be noted that the provisions broaden the rights of the surety and also recognize accepted case law concerning the same.

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<sup>24</sup> Report of Commission, 1949, page 88.

<sup>25</sup> Death as a Jurisdictional Fact; Hutton 53 D. L. RR. 108 (1949).

*Repealer*

Article XIV cites the statutes repealed and Section 1401 on the topic is presently important by reason of the portions of the Act of 1917 still left to operate until supplanted by legislation yet to be enacted.

*Conclusion*

The foregoing is a brief summary of the new act, which, it is believed, presents features of improvement in the law, keeping it abreast with the demands of the modern age and yet adhering with due regard to the experience of the past. As to the vast practical and monetary importance of this branch of the law, one need only learn as may easily be done, the dollar volume of business measured by estate values passing annually through the register's office and the orphans' courts of the several counties of the Commonwealth.