



Literary Executor

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Appointment of a Literary Executor

The appointment of an executor within a Will can be assigned to a specific property or a certain type of property. However, the specified executor must fall within the meaning of ‘executor’ under the Probate and Administration Act 1898(the Act), section 41 to be granted probate which states:

“41 The Court may, if it thinks fit, grant probate to one or more of the executors named in any will, reserving leave to the other or others who have not renounced to come in and apply for probate at some future date.”

This is evident in the NSW Supreme Court case *The Estate of Nicholas Paul Enright* [2017]. Nicholas Enright within his Will appointed two executor’s of his estate and a third ‘Literary Executor’. It was brought to the Court to determine whether the appointment of the third executor fell within the meaning of executor under section 41 of the Act as they weren’t granted probate alongside the other executors, and if so, whether the property was inclusive of “the copyright and other intellectual property in the deceased’s works”. It was noted that the term ‘Literary Executor’ had appeared in other cases.

The Court concluded that Enright’s literary property was a distinct part of his estate and the testator intended to appoint the plaintiff as executor; and as such was granted probate.

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