

58. Very properly, shares are not trustee investments. It is true that in most countries there have been extensions of the range of these investments within recent years, but in the matter of such increase there is a boundary beyond which it is not safe to go.

Within the last decade considerable agitation has been made in some quarters, particularly in the United States of America, for an extension or diversification of trustee securities, and so we find in that country the admission of corporation stocks warmly advocated by many, including some eminent economists. It is true that the diversification in investments is praiseworthy and practised by many investors, and that the stocks and shares in numerous commercial and other enterprises are good investments, yielding very satisfactory returns. Nevertheless, the element of speculation and risk is so prevalent that a departure from the long-recognized rules would be fraught with uncalled-for hazards and obvious and serious dangers. Insatiable craving for large profits and the speculative enthusiasm aroused to a high pitch in abnormally prosperous times have diverted special attention to stocks and shares. Of course, this is more marked in the United States than anywhere else, inasmuch as the prolonged period of prosperity has there produced high dividend returns and rising stock-markets. Accordingly it is natural that beneficiaries and those whose incomes are derived from investments where the yield is of a more moderate nature should regard with some discontent and envy the profits reaped from prosperous stocks and shares, and should argue strongly for their inclusion in the category of trustee investments. Such persons, however, are not dispassionate critics. To make this inclusion would weaken the fabric and compromise the fundamentals of trusteeship, which imply conservation, as opposed to speculation and risk.

There is a world of difference between trustees exercising discretionary power under wills and other trust instruments to retain shares and stocks already held by the testator or settlor and the conferring on trustees of the power to invest trust funds in shares and stocks. As has been said not long ago,—

In the one case they are acting under delegated instructions and with responsibilities knowingly assumed by the testator, although held to strict judicial accountability. In the other case the fiduciary is legally licensed to depart from accustomed restraints of safety and to become a partner in speculative enterprises.

In reference to this movement for what has been called “the liberalizing of the legal investments,” sound trustee management will not permit itself to be carried away by any speculative enthusiasm, but will continue to observe the long-recognized principle of the best income compatible with safety. No one can claim that the primary duty of a trustee is to make money, and certainly it is not to speculate with the trust funds:—

It is a well-recognized principle in the Courts which pass upon trustee custodianships that they cannot speculate with the assets of an estate, and that the primary duty of the trustee is to safeguard the principal involved. . . . We know from experience that if a trustee were to go to the Court showing a list of investments consisting of common stocks of corporations and even many preferred stocks, even where the trustee was given a rather wide latitude of discretionary power, the Court would criticize the trustee. If a loss were shown by reason of speculative tendencies of the trustee, they would surcharge the accounts of the trustee for the amount of loss. The rule of the Courts has always been that a trustee must use the ordinary care and precaution which the average prudent business man would use in and about similar affairs. This certainly would not permit the trustee to enter the speculative field in investment matters. To make stocks legal investments for trust funds is a dangerous theory, and might well result in considerable loss to widows and orphans of funds accumulated by sacrifice and serious effort on the part of individuals to protect their families, resulting in hardships and even poverty. .

A shrewd business man during his lifetime can afford to take speculative risks which, after his death, should not be assumed by his personal representative. There are the interests of life tenants and remaindermen to be considered, as well as the countless varying requirements and circumstances in each individual estate or trust. Apart from any other consideration, as a matter of practical common-sense the fluctuations in stocks and shares in trading and commercial corporations are so frequent and at times so heavy that investment of trustee funds in them would be very inadvisable. A writer in the United States recently said:—