

13. The general rule to guide a trustee in investment of trust funds was reiterated and interpreted recently by the Surrogate of Kings County, New York. Here the Court had before it the question of construction of the words of a will providing that the funds in certain trusts established under the will “shall be safely and conservatively invested by my executors and trustees.” At the time of his death a large portion of the testator’s investments were in securities other than those authorized by statute. The Court held that this provision did not grant authority to invest in other than legal securities. In this case the Court enunciated the duty of a trustee thus :—

The just and true rule is that the trustee is bound to employ such diligence and prudence in the care and management as, in general, prudent men of discretion and intelligence in such matters employ in their own like affairs. This necessarily excludes all speculation, all investments for an uncertain and doubtful rise in the market, and, of course, everything that does not take into view the nature and object of the trust, and the consequences of a mistake in the selection of the investment to be made. It therefore does not follow that, because prudent men may, and often do, conduct their own affairs with the hope of growing rich, and therein take the hazard of adventures which they deem hopeful, trustees may do the same; the preservation of the fund and the procurement of a just income therefrom are primary objects of the creation of the trust itself, and are to be primarily regarded.

Thus it will be seen that the investment of trust funds is a very important element in the administration of estates, and that a trustee is not like a man investing his own money, whose object may be the securing of a larger present income than he could derive from a safer security.

An eminent English authority stresses this point in much the same language :—

Trustees are bound to preserve the money for those entitled to the corpus in remainder, and they are bound to invest it in such a way as will produce a reasonable income for those enjoying the income for the present; and, in doing so, they must use such caution as a reasonably prudent man would use with reference to transactions of a similar nature in which he might be engaged. Not that this means that a different degree of care is required in regard to the conduct of the business of a trust according to whether the trust fund is held in trust for future interests or for one beneficiary absolutely. The question, in either case, is the due care of the capital sum; and, in either case, the trustee is not allowed the same discretion in investing the trust fund as if he were a person, *sui juris*, dealing with his own estate. His duty, rather, is to take such care as an ordinary prudent man would take if he were minded to make an investment for the benefit of other people for whom he felt morally bound to provide: that is, the kind of business “the ordinary prudent man” is supposed to be engaged in. Business men of ordinary prudence may, and frequently do, select investments which are more or less of a speculative character; but it is the duty of a trustee to confine himself not only to the class of investments which are permitted by the settlement or by statute, *but to avoid all* such investments of that class as are attended with hazard.

To the Public Trustee, handling as he does such a huge amount of trust funds, their due investment is a matter of special moment. This has long been recognized, and the investment system in vogue in his Department since 1891 is exceptionally advantageous, and offers to clients in the alternative methods of the Common Fund and the special investment scheme a unique choice.

THE COMMON FUND.

14. In last year’s report I made detailed reference to the creation and administration of the Common Fund, and therefore it is not necessary to cover the ground again this year. It is a matter of interest and satisfaction to report that the Common Fund has attracted attention in the United States of America, where corporate trustees are finding it increasingly necessary to adopt investment systems somewhat similar to that employed by the Public Trust Office of New Zealand for nearly forty years. Speaking of this, the publisher of a journal devoted to trust, banking, and financial interests in the United States has acknowledged the influence which the New Zealand scheme has had in the conception and the launching of this new development in American trust service, and adds :—

There is so much keen interest on this subject, and the evidences on all sides are that trust companies of this country must do something similar to what your Office has been doing these many years.

To my knowledge your Office has been the pioneer in operating such a Common Fund for estate or trust investments, and your experience is therefore of very practical value at this time, notwithstanding that your Common Fund has official background and the Common Funds here are operated by privately incorporated institutions.