

95. Shares and other unauthorized investments raise the question of the duty of personal representatives in regard to conversion. It may be fairly said that such representative is expected to take the same care and interest in the estate under his control as a man of prudence would take for the benefit of other people for whom he is morally bound to provide. He should endeavour within one year from the date of death to pay the debts, funeral and testamentary expenses, and the legacies bequeathed by the will. There is no inflexible rule as to the time within which executors are bound to get in the assets, and each individual estate must be considered on its merits. An eminent judicial authority has said that if executors were bound at once to convert the assets without considering how far it was to the interests of the persons beneficially entitled there would, of necessity, be always an immediate sale, perhaps at a great sacrifice. In the estate which was then under review the Judge held that the executors were entitled to exercise a reasonable discretion according to the circumstances of each particular case. The will which was the subject of this judgment had directed conversion "with all convenient speed," which direction, the Judge observed, was only the ordinary duty employed in the office of every executor. It may be gathered from this that although an executor should be diligent he should not sacrifice the assets if the market is unfavourable or the time inopportune for sale. Where a testator bequeathed his personal estate to his executor upon trust to divide it equally amongst four persons designated, all of whom were *sui juris*, the Court held, in respect of bonds in a foreign company which the executors retained beyond the end of the executors' year, that, as they had acted with a view to what they deemed beneficial to the beneficiaries and in the exercise of their discretion considered it more prudent to wait, they ought not to suffer because they had committed an error of judgment. As James, L.J., observed in the Court of Appeal, it would be very hard upon executors who have been saddled with property of this speculative kind, and have endeavoured to do their duty honestly, if they were to be fixed with a loss arising from their not having taken what, as is proved by the result, would have been the best course.

Where an absolute discretion is vested in executors to postpone the sale or conversion of the estate, it seems they are not bound by the ordinary *prima facie* rule to convert the property within a year, and in the absence of *mala fides* they will not be responsible for any loss that may arise by not converting. Nevertheless, they must exercise their discretion wisely. In a case where the testator died possessed of shares in a banking company which involved a liability without limit, and the shares remained for many years, the Judge stated that there was no fixed rule that the conversion must take place at the end of one year, but that such was the *prima facie* rule, and executors who did not convert by that time must show some reason why they did not. In that case the Court directed an inquiry whether any loss had occurred by the neglect to sell at the end of one year from the date of death of the testator, and declared the executor responsible for any such loss.

Frequently, in making wills, testators, moved by the desire to make available as much of the income as possible for their beneficiaries, do not direct conversion of those parts of their estates which consist of shares which are paying good dividends, but leave to the discretion of the trustee the question as to whether such shares are to be sold or not. In one case which came under notice recently the testator directed that his trustee sell only such part of his investments as should be required to pay duties and other charges and debts, adding the expression of his wish that as much of the income as possible should be preserved for the beneficiaries under his will. In these circumstances, as there is no definite direction to hold and refrain from conversion, the question of realization of the shares is one upon which the trustee must exercise a discretion. A mere discretion to leave the whole holding of shares unsold in order to get as much income as possible would not free the trustee from liability for any loss arising from failure to realize within a reasonable time such of the shares as a prudent business man would have converted owing to their having a falling tendency or being unduly hazardous.

96. I mention all this to show how much care and anxiety are involved in handling on behalf of estates and various clients and interests shareholdings in all sorts of concerns, the total value of which represents a very large capital value indeed.