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district judges on evidence shall be those now in force in the United States district courts," by going further and adopting rules providing in effect that the trial judge, in his discretion, may limit the examination of prospective jurors to such questions as he shall propound; and that instructions must be given at the conclusion of the arguments and may be either oral or written. This the Supreme Court may do, by virtue of either its inherent or statutory powers, under the authority of Walton v. Walton, 86 C. 1, and Kolman v. People, 89 C. 8.

While probably not within the scope of this paper, I may mention another minor difference, that of some $6,000 per year, in the salary of a Federal District Judge and a state District Judge. This association has done much tending to the correction of some of this inequality. Now that the depression is over, it should continue the good work in an effort to obtain concrete results. I do not apprehend any dissent from the state judges on this point.

PREPARATION OF WILLS—THE INVESTMENT CLAUSE

By C. E. KETTERING, *Judge of the County Court, City and County of Denver*

This article is intended to direct the attention of lawyers and others (see People vs. Anthony Jersin, — Colo. —, not yet reported), who are drafting wills, to a common omission which in many cases is resulting in estates being administered contrary to a testator's intention in a material respect. I refer to the necessity of the lawyer (in the event it happens to be a lawyer) advising the testator of the law relating to the investment of estate funds.

The problem, if discussed with the testator, is extremely simple; if not, is frequently most perplexing to the executor and beneficiaries, with serious and unnecessary disputes and uncertainties as to the duty and extent of discretion of the executor in disposing of stocks and other "non-legal" investments which may comprise the assets of the estate.

The lawyer should discuss the problem with the testator. He should explain that if the will is silent on the subject, this makes it the duty of the executor to proceed with reasonable dispatch to liquidate all "non-legal" investments and reinvest

the available proceeds in legal investments as defined in the statutes. This means that an executor who delays such liquidation in what may be a conscientious endeavor to obtain a better price for his securities, on an anticipated future rising market, may be confronted by a falling market and by parties interested in the estate who may wish to inquire into whether the executor acted with "reasonable promptness."

A cautious and responsible executor could hardly be blamed if he refuses to run the risk of a court inquiry into what constitutes "a reasonable time," by selling non-legals immediately after his letters are issued regardless of stock market trends or special considerations effecting the specific stock. He cannot be blamed if he proceeds immediately to liquidate even the best of stocks, yielding 5 and 6 per cent, and reinvests in 2 and 3 per cent "legal" securities.

Such an executor can, and in my opinion should reason, that if the testator wanted the executor to exercise his discretion in determining the most advantageous time to sell non-legals, taking into consideration the state of the market, etc., all he had to do was say so in the will. Therefore, the testator's failure to so provide in the will must mean that he intended the executor to keep the estate funds invested in those securities which the statutes of Colorado define as being the "exclusive" securities in which estate funds may be invested, viz., so-called legal securities, and that the testator did not want the executor to indulge in any bouts with the stock market in trying to guess (or if you prefer, "to determine by careful analysis of business trends, conditions and futures") whether the stock market would rise or fall in the week, month or year following the death of the testator, and if so, when and how much.

It is certainly not the intention of this article to discuss or advocate the respective merits of requiring an executor to invest estate funds in legal securities, or, on the other hand, leaving the matter of investments to his absolute or limited discretion—I am only advocating that a testator be advised that such a problem exists and be given the opportunity to state his views on the same, so that where he remains silent on the subject, we may interpret his silence to mean an adoption of the statutory provisions, and not merely that he failed to consider the matter.