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The Effect of the Depression on the Duties and Liabilities of the Trustee in Relation to Trust Fund Investments

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Today there is no such pressure upon one accused of crime. A defendant has been made a competent witness in his own behalf.[39] He may speak, and when he can refute the charges brought against him by so doing, yet fails to testify, the inference of guilt arises. To permit comment on such failure to forward an explanation is to recognize and validate an existing fact.

If the amendment to the New York Code of Criminal Procedure proposed by the Judicial Council is so worded as to allow the prosecuting attorney to comment on the defendant's failure to testify only when the evidence against the accused is such that, were he innocent, he could refute the charges against him, then it may well be considered constitutional, just and expedient. But it must be borne in mind that until the prosecution has made out a case against the defendant calling for a reply other than that furnished by his witnesses, till then his silence cannot be considered an indication of guilt, and no comment thereupon should be permitted.

G. Robert Ellegaard.

The Effect of the Depression on the Duties and Liabilities of the Trustee in Relation to Trust Fund Invesments.

The trustee who has acted prudently, with reasonable diligence, and in good faith will not be held liable for trust fund losses caused by the depression. "Executors [1] and trustees cannot be watchers of the tape, nor gamblers in stocks," declared Surrogate Slater in *In re Winburn*.[2] "There is no need for executors to jettison worthwhile stock during a financial panic." The *Winburn* case further indicates that if "worthwhile" or "seasoned" securities decline because of a general business depression, the trustee has done all that a reasonable man can do, and is not to be held liable for any loss.[3] Whether the security is "seasoned" or not is determined through the media of several tests: "What has been the history of the companies during a period of years? Have they paid fair dividends regularly? Have they a proper capital structure? Are they wisely officered? Has a successful business continued over a period of time? Have they

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[39] *Supra* note 19.

[1] Both the executor's and trustee's investment duties and liabilities have been treated alike. *In re* Kent's Estate, 146 Misc. 155, 159, 261 N. Y. Supp. 698 (1932).

[2] 140 Misc. 18, 22, 249 N. Y. Supp. 758, 763 (1931) (Executor consulted Moody's Book of Stock Ratings).

[3] *In re* Winburn, *supra* note 2; see Matter of Thompson, 41 Misc. 420, 84 N. Y. Supp. 1111 (1903).

achieved a standing in commercial circles? Have they behind them an established dividend record over a period of years?"[4]

The trustee must make a reasonable and diligent effort in good faith[5] to apply these tests. In New York, Section 265 of the Surrogate's Act requires the trustee to be "without fault." This was recently construed to mean "a common sense standard of prudence and proper diligence,"[6] so that the tests remain the same. An exemption by the testator of the trustee from all liability, except if he is grossly negligent, does not relieve the trustee from complying with Section 265.[7] An error in judgment, however, does not necessarily mean that the trustee is imprudent or not diligent.[8]

This standard of prudence and proper diligence is, as we shall see, the ultimate test employed by the courts to ascertain the trustee's liability for losses to the trust fund due to the depression, no matter what type of trust, be it mandatory, discretionary, or the trust without specific instructions for the trustee. Whether the trustee has complied with the standard can only be determined by an examination of the peculiar circumstances surrounding each case,[9] and the effect of six years of economic stringency upon the circumstances has been duly noted by the courts.

The duties and liabilities of the trustee, to whom the settlor or testator has given discretion to make the original investment of the fund, have undoubtedly been influenced by the depression. Once there has been an investment by a discretionary trustee in "seasoned securities" a general depression cannot create liability in a trustee for resulting losses.[10] Whether the securities are seasoned or not is determined, as we have said, by prudent and diligent examination. When such examination reveals "a wildly fluctuating market like that of 1929, with uncertainty as to railroad bond payments and widespread mortgage foreclosures" one "should condone the trustee's hesitancy in investing even though he must keep the funds constantly invested or subject himself to a possible surcharge of a legal rate

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[4] *In re* Winburn, *supra* note 2; see In re Leonard, 118 Misc. 598, 193 N. Y. Supp. 916 (1922).

[5] *In re* Stort's Estate, 142 Misc. 54, 253 N. Y. Supp. 834 (1931).

[6] *In re* Drake's Estate, 152 Misc. 395, 274 N. Y. Supp. 198, 200 (1934).

[7] *In re* Jarvis, 110 Misc. 5, 180 N. Y. Supp. 324 (1920); *In re* Curley's Will, 151 Misc. 664, 272 N. Y. Supp. 489, 501 (1934) (Such exemption "is a nugatory provision amounting to nothing more than a waste of good, white paper").

[8] Matter of Lazar, 134 Misc. 261, 247 N. Y. Supp. 230 (1930).

[9] *In re* Parson's Estate, 143 Misc. 368, 257 N. Y. Supp. 339 (1932). "Each case of this class is *sui generis,* and the decision of this court should not be taken as a controlling precedent for other cases." See Matter of Lazar, *supra* note 8. The standard is widely used. *In re* Curran's Estate, 312 Pa. 416, 167 Atl. 567 (1933); Platt v. Jones, 38 P. (2d) 703 (Ore. 1934) and 39 P. (2d) 955 (Ore. 1935); see 2 PERRY, TRUSTS (7th ed. 1935) §914.

[10] *In re* Winburn, *supra* note 2.

of interest."[11] If the trustee, authorized to invest in "non-legals" (securities not included in statutory list), invested in guaranteed mortgage certificates in March, 1931, when such certificates were readily saleable, he would not be held liable for losses due to the stagnant condition that occurred much later in 1932.[12] The courts do not regard guaranteed mortgage certificates as a speculation, and the trustee was considered, therefore, to have acted prudently and diligently. Nor do the courts regard an investment in mortgage participation certificates as a speculation[13] since they have been declared legal by statute,[14] and an investment in "legals" is, *prima facie*, proper.

The caution taught by this and former depressions is responsible for a series of statutes requiring the investment, when discretion or direction to invest is not specifically given by the settlor of trust funds in a list of conservative securities.[15] Some of these statutes are mandatory[16] and violation of any of their provisions creates an absolute liability for any loss.[17] Impliedly, the trustee has the absolute duty to convert securities not on the list, for it is just as dangerous to retain as to purchase non-legals. The mandatory statute, however, is not to be followed blindly. A measure of prudence and diligence is still required of the trustee, and when he observes that a security on the list has defaulted in either principal or interest, he must either convert or refuse to purchase it.[18]

The numerous fatalities among legals during the depression moved the New York legislature to pass a statute arbitrarily ex-

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[11] Robinson and Robinson, *Trustee's Investments in Massachusetts* (1935) 14 B. U. L. REV. 88, at 90. See also Forbes v. Ware, 72 Mass. 306, 52 N. E. 447 (1891).

[12] *In re* De Winter's Will, 154 Misc. 50, 276 N. Y. Supp. 576 (1934).

[13] Matter of Jacob's Will, 152 Misc. 139, 273 N. Y. Supp. 279 (1934); Matter of Frazer, 150 Misc. 43, 268 N. Y. Supp. 477 (1933); *In re* De Winter's Will, *supra* note 12; Note (1935) 48 HARV. L. REV. 1162; Leach, *Lessons from the Depression in the Drafting of Wills and Trusts* (1934) 18 MINN. L. REV. 237; Recent Decision (1933) 8 ST. JOHN'S L. REV. 373; Note (1934) 34 COL. L. REV. 663.

[14] Amendment, N. Y. BANKING L. 1917, c. 385; see MCKINNEY, TRUST INVESTMENTS (1927) 29, 354 (interpreting similar statutes); N. Y. DECEDENT'S ESTATE LAW (1934) §111; N. Y. PERS. PROP. L. (1897) §21.

[15] When no discretion or direction is specifically given, trustee must conform with the statute. Matter of Harriman's Estate, 142 Misc. 164, 254 N. Y. Supp. 158 (1931); Matter of Surpless' Estate, 143 Misc. 48, 255 N. Y. Supp. 730 (1932).

[16] Cal. Gen. Laws of 1931, Act 652, §105 (trust companies only); Fla. Laws of 1931, c. 15064; IOWA CODE (1931) §12772 (proposed investments must be submitted first to the court and all investments must be made from the list); ORE. CODE (1930) §§22, 1216; WIS. STAT. (1931) §§198, 18(5), 231, 232; see Bogert, *The Trustee's Duty With Regard to Conversion of Investments* (1934) 1 U. CHIC. L. REV. 27, n. 74; Note (1934) 47 HARV. L. REV. 510.

[17] Estate of Fouks, 213 Wis. 550, 252 N. W. 160 (1934); Schroeder v. American Nat. Red Cross, 254 N. W. 371 (Wis. 1934). But *cf. In re* Lawson, 244 N. W. 739 (Iowa 1932).

[18] 1 BOGERT, TRUSTS (1935) 44.

cluding from computation the years 1931, 1932 and 1933 if their inclusion in the analysis would cause railroad bonds to become ineligible for investment.[19] The prudent and diligent trustee may invest without liability in railroad bonds that were legal in 1930, and may disregard their status during the depression. But if the railroad had defaulted, it would seem that the statute would not prevent the courts from holding the investing trustee to be imprudent.[20]

The courts have repeatedly refused to state in general terms when the prudent and reasonably diligent trustee should sell investments during a declining market.[21] The trustee, after a diligent and prudent examination of the peculiar circumstances of the case, must decide for himself when to convert. In *Matter of Lazar*,[22] the trustee sold out, during the first months of the depression, an account of high-grade speculative stock. The court held that he had converted within a reasonable time. In *In re Pettigrew's Estate*,[23] the executors revealed in an accounting filed in 1932 that they had retained certain securities and realty that had been purchased by the testator. The court, in absolving the executors, said, "For the precipitous decline in the market and the general depression which followed, the executors cannot be held to account. In not then selling, they did as hundreds of thousands of other ordinarily prudent and cautious persons." The trustee or executor has been considered properly diligent, even though he was able,[24] yet refused to, sell nonlegal securities six months after the great crash of 1929 at a higher level than their value at the time of appraisal of the estate. The court held that "most men of that degree of prudence and caution that we call ordinary did not foresee" that a widespread decline would follow the 1931 recovery. In *In re Parson's Estate* [25] the trustee retained investments in dividend-paying securities, ordinarily highly regarded, but which declined in the "financial cataclysm." [26] In *In re Stort's Estate* [27] the testator gave the trustee full discretionary powers to sell, invest, and reinvest the proceeds. Here, too, the trustee was

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[19] Laws of 1932 and 1933, Ch. 5, c. 329.

[20] BOGERT, *loc. cit. supra* note 16.

[21] *In re* Westfield Trust Co., 117 N. J. Eq. 429, 176 Atl. 101 (1935); *In re* Pettigrew's Estate, 115 N. J. Eq. 401, 171 Atl. 152 (Ch. 1934); Matter of Jacob's Will, 152 Misc. 139, 273 N. Y. Supp. 239 (1934); Creed v. McAleer, 275 Mass. 353, 357, 175 N. E. 761 (1931); see BOGERT, *loc. cit. supra* note 16; Recent Decision (1933) 30 COL. L. REV. 166; Notes (1932) 77 A. L. R. 505.

[22] 139 Misc. 261, 247 N. Y. Supp. 230 (1930).

[23] 115 N. J. Eq. 401, 171 Atl. 152, 155 (1934).

[24] *In re* Westfield Trust Co., 117 N. J. Eq. 429, 176 Atl. 101, 103 (1935) (authorized to sell or retain).

[25] 143 Misc. 368, 257 N. Y. Supp. 339 (1932) (trustee consulted bankers and brokers and kept informed of market).

[26] At page 343, a usual characterization, revealing what importance the court will attach to this factor in determining the trustee's liability. *In re* Westfield, 117 N. J. Eq. 429, 176 Atl. 101, 102 (1935); *In re* Pettigrew, 115 N. J. Eq. 401, 171 Atl. 152, 155 (Ch. 1934).

[27] 142 Misc. 54, 253 N. Y. Supp. 834, 837 (1931).

not held liable for retaining securities through the depression, the court declaring that "The rules noted in *Matter of Pollock's Will*[28] (good faith and reasonable diligence) are to be applied with even greater liberality in favor of a fiduciary who lawfully retains non-legal investments made by the testator, in the reasonable expectation that they may regain some of their depreciated value, particularly in abnormal times as the present."

The court, apparently, believes that any reasonable retention of an investment made by the testator can be justified by existence of a depression. It is to be noted that Stort's securities, although non-legals, were not termed "speculative," as in *Matter of Lazar*,[29] where a sale of speculative securities during October and November of 1929 was considered a prudent act. In *In re Stumpp's Estate*[30] (a recent New York case), executors, authorized to sell or retain securities—common shares formerly held by the testator—had refused to sell, although they could have obtained in 1931 a price better than that at which the securities were inventoried. Such retention, Surrogate Delehanty declared, was a speculation, and held the executors liable. He sounded a warning to all trustees and executors who took *In re Stort's Estate* and *Matter of Clark*[31] too literally.

> "The courts have recognized and will continue to recognize the unusual burden cast upon fiduciaries by the unprecedented shrinkage in values beginning in the fall of 1929. Similar recognition was accorded by the courts to conditions which followed prior industrial depressions.[32] Nothing in *Matter of Clark* warrants any fiduciary to ask as of course that losses in his trust shall be excused because of the depression. Fiduciaries who have honestly struggled with a difficult situation without seeking personal gain at the expense of their trusts will be given the benefit of that consideration which should be extended to good faith, honest effort and a fair performance of fiduciary duty. The fundamentals of fiduciary duty remain unchanged and misuse and deliberate mishandling of fiduciary property for selfish ends must be condemned by the courts. Speculation still is forbidden to fiduciaries. Prompt liquidation of speculative assets is still the standard rule."[33]

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[28] 134 Misc. 212, 217, 236 N. Y. Supp. 149 (1929).

[29] *Supra* note 22.

[30] 153 Misc. 92, 274 N. Y. Supp. 466 (1934).

[31] 257 N. Y. 132, 117 N. E. 397 (1931), 77 A. L. R. 499 (1932).

[32] The trustee has been similarly treated during previous depressions. In Matter of Gray, 27 Hun 455 (N. Y. 1890), a case arising out of the 1873 panic, the trustee held securities that dropped from $80 per share to $15 per share but was not liable since no reasonable person would expect such a depression in prices. See also Beam v. Patterson, 83 N. J. Eq. 628, 92 Atl. 351 (1914) (dealing with the 1907 crisis).

[33] *In re* Watson's Estate, 145 Misc. 425, 261 N. Y. Supp. 327 (1931).

citing *In re Hammersley's Estate.*[34] Existence of a depression, it seems, will permit a reasonable retention of non-legals *that are not speculative,* even though the trustee has been either directed or authorized to sell.

Professor Bogert is also of the opinion that only in extraordinary cases, where reasonable diligence and prudence is shown, may a trustee retain non-legals, whether delivered to him by the testator or bought by himself.[35] Cases arising during a depression are considered extraordinary. *Matter of Kent*[36] was one of many such cases and Surrogate Foley explains therein what is meant by "reasonable diligence and prudence." The executor had retained stock purchased by the testator despite a decline during the depression from $90 per share to $40 per share. But before the executor made his decision to retain the securities he made frequent examinations of the company's financial affairs through examination of the current reports in three different publications of recognized standing in financial circles together with various indices and reports of general business conditions and situations in the electrical industry specifically. Such activity, the court believed, revealed an exercise of reasonable diligence and proper prudence. Another concrete example of the proper degree of diligence and prudence is given in *Matter of Clark,*[37] where the trustee retained sugar stock during a precipitous decline, one company's stock falling from $22 per share to $7 per share and the other from $12 per share to $0.50 per share. The trustee consulted authorities on sugar, persons of note in business and Stock Exchange Members. The stocks, both the trustee and the court found, were those of companies with unimpaired assets and a sound cash position. The testator had declared the trustee to be "without any personal liability" as to investments and directed him to continue the investments. The court held[38] that the corporate trustee, aside from the immunity clause, had performed his duty diligently and prudently and therefore was not liable, because although "it may have been deficient in prevision and prophecy, it was not lacking in the exercise of care." Once the trustee had consulted the various authorities and followed their advice in good faith, the courts will consider him, no matter how poor a prophet he may turn out to be, to have acted diligently and prudently.[39] A case[40] arising out of an earlier depression explains this view:

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[34] 180 N. Y. Supp. 887, not reported in state report (1920).

[35] BOGERT, *loc. cit. supra* note 16.

[36] 146 Misc. 155, 261 N. Y. Supp. 698 (1932).

[37] *Supra* note 31.

[38] Matter of Clark, *supra* note 31.

[39] *Ibid.;* Matter of Kent, *supra* note 36; Matter of Lazar, *supra* note 22; Chemical Bank and Trust Co. v. Reynaud, 150 Misc. 821, 270 N. Y. Supp. 301 (1933).

[40] Matter of Thompson, *supra* note 3, at 422.

"To foresee such periods of general depression, or periods where high prices prevail, is the constant effort of the keenest intellects in the financial world, but notwithstanding their tireless vigilance and efforts stimulated by the hope of great gains, they frequently find such knowledge too high for them. The law does not require such prescience of administrators."

When the trustee is given full discretion to sell the testator's securities, and these are not speculative, judging from such ratings as Moody's, Poor's or Standard Statistical Service, they are not to be "timidly and hastily sacrificed." [41] Here the standard of prudence and diligence surely applies. Surrogate Slater continues, "Even where there is a direction to sell * * * a reasonable time must be given and what that shall be, shall be determined in each case by its own facts." This relieves the trustee of a possible unjust penalty, for, if a trustee were forced to sell securities, by reason of a mandatory provision, during a declining market, and subsequently prices went up, he would be liable for the difference in prices,[42] not because of any negligence on his part, but simply because he obeyed the trust instrument's provisions. The allowance of a reasonable time to sell makes it unnecessary for the trustee to obey blindly the testator's or settlor's will.[43]

When the trustee is given the express authority to retain securities,[44] he may hold them until it becomes very apparent to him that it will be disastrous to keep them any longer.[45] But the trustee must exercise "ordinarily good business judgment of foresight" to secure facts revealing the disastrous situation,[46] so that even though the trustee is authorized to retain the securities, he is still subject to the standard of prudence and diligence in the performance of his duties.

Where the trustee has been expressly directed to retain the stock of a certain corporation, the trustee may, nevertheless, sell such stock if the "marketability of the product" or "capital structure" has been altered by the depression, or where "the risks and vicissitudes" have increased.[47] No matter how severe the provision of retention is,

[41] *In re* Winburn, 140 Misc. 18, 22, 249 N. Y. Supp. 758, 763 (1931). Even though the will contains the direction that the executor must sell the securities "as soon as may be" the executor may retain them as long as he thinks prudent. Matter of Varet, 181 App. Div. 446, *aff'd,* 224 N. Y. 537 (1918).

[42] Matter of Mercantile Trust Co., 210 N. Y. 83, 103 N. E. 884 (1913); Beam v. Patterson, 83 N. J. Eq. 628, 92 Atl. 351 (1914).

[43] *In re* Schinasi's Estate, 153 Misc. 114, 274 N. Y. Supp. 480 (1934), 93 A. L. R. 1521 (1935).

[44] *In re* Jarvis, 110 Misc. 5, 180 N. Y. Supp. 324 (1920).

[45] Matter of Clark, 257 N. Y. 132, 177 N. E. 397 (1931); *In re* Taylor's Estate, 277 Pa. 518, 529, 121 Atl. 310 (1923), 37 A. L. R. 553 (1925).

[46] *In re* Linnard's Estate, 299 Pa. 32, 148 Atl. 912, 914 (1930).

[47] Mertz v. Guaranty Trust Co., 247 N. Y. 137, 141, 159 N. E. 188 (1923), 57 A. L. R. 1114 (1928); *In re* Harriman's Estate, 142 Misc. 164, 254 N. Y. Supp. 158 (1931).

equity will, when an economic crisis has caused securities to become unproductive and greatly impaired in value, imply or read into the will a power of sale in order to avert the destruction of the trust *res*. The court in *Matter of Pulitzer*[48] did exactly that, permitting the sale of stock because of a considerable decline in value.

The Massachusetts courts have held the trustee liable for failure to diversify his holdings,[49] but in the face of a general decline in the market the trustee who has invested the entire trust fund in one security will not be held liable for non-diversification.[50] The New York courts, however, have never definitely required the trustee to diversify his holdings, and the depression has not caused the court to alter its position.[51]

It may be said that the trustee who has consulted diligently the proper authorities in the manner suggested in *Matter of Clark*,[52] *Matter of Kent*,[53] *Matter of Lazar*[54] and *Matter of Hurlbut*,[55] and has drawn from them a reasonable conclusion as to whether he should sell or not, will be relieved by the courts of liability for ensuing losses.

A reasonable quantum of the prophetic sense seems a desirable constituent of the trustee's nature. Judge Kellogg in *Matter of Clark*[56] probably intended to condone only that "deficiency in prevision" from which the ordinarily prudent and diligent person suffers. He must have recognized that *some* degree of foresight is exercised

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[48] Matter of Pulitzer, 139 Misc. 575, 249 N. Y. Supp. 87 (1931); Gleason v. Hastings, 278 Mass. 409, 180 N. E. 129 (1932) (the court has the power to order a conversion in the case of an emergency); *In re* Garvin, 256 N. Y. 518, 177 N. E. 24 (1931) (trustee, even though the testator expressed the desire that stock be retained, cannot permit it to become worthless. He must pay full value to child of testator who had not acquiesced in his retention); *In re* Roche's Will, 233 App. Div. 236, 251 N. Y. Supp. 347 (4th Dept. 1931) (although the testator positively directed retention of certain bank stocks [non-legals] the trustee would be bound to sell in view of the shrinkage in value or yield, or else be liable for loss if it were shown that such retention was unreasonable and imprudent).

[49] *In re* Davis, 183 Mass. 499, 67 N. E. 604 (1903). See RESTATEMENT, TRUSTS (Tent. Draft. No. 4, §220, Comment c); Note (1935) 48 HARV. L. REV. 347.

[50] First National Bank of Boston v. Truesdale Hospital, 192 N. E. 150, not reported in state report (Mass. 1934).

[51] *In re* Balfe's Will, 150 Misc. 21, 270 N. Y. Supp. 301 (1933).

[52] *Supra* note 31.

[53] 146 Misc. 155, 261 N. Y. Supp. 198 (1932).

[54] 138 Misc. 261, 247 N. Y. Supp. 230 (1930) (consultation with broker handling stock is sufficient).

[55] 210 App. Div. 456, 206 N. Y. Supp. 448 (2d Dept. 1924) (consultation, however, with a trust company interested in the sale of the bonds in question does not excuse the trustee from liability in purchasing bonds of a shipping company on the verge of the collapse of the shipping boom. Trustee had discretion to invest in what he thought best but nevertheless he must act prudently, and he did not so act).

[56] *Supra* note 31.

by every man and that the same should at least be expected of a trustee.

It has been decided that this duty of prophecy is satisfied if the trustee "merely did as hundreds of thousands of other ordinarily prudent and cautious persons did" [57] and even though "most men of that degree of prudence and caution that we call ordinary did not foresee" [58] the "financial cataclysm," the courts cannot harshly condemn them.

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DUAL OFFICE HOLDING—FEDERAL, STATE AND MUNICIPAL.

It is a fundamental principle of the law of government that under certain circumstances a person may not simultaneously hold two governmental offices. The rule had its origin in the common law, and has been reiterated and extended by constitutional provisions, statutory enactment and executive order. The common law rule pertaining to dual office holding is that the acceptance by a public officer of a second incompatible office terminates *per se* the ability of the acceptor to hold the first office as effectively as would a resignation therefrom.[1] The theory of incompatibility underlying the common law rule is set forth in *People ex rel. Ryan* v. *Green* as follows:

> "Incompatibility between two offices, is an inconsistency in the functions of the two; as judge and clerk of the same court—officer who presents his personal accounts subject to audit, and officer whose duty it is to audit it. * * * The force of the word in its application to this matter is, that from the nature and relations to each other, of the two places, they ought not to be held by the same person, from the contrariety and antagonism which would result in the attempt by one person to faithfully and impartially discharge the duties of one toward the incumbent of the other." [2]

Whether the offices involved are incompatible is a judicial question,[3] and the true test to be applied is whether the two offices are

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[57] *In re* Pettigrew's Estate, 115 N. J. Eq. 401, 171 Atl. 152 (1934).
[58] In re Westfield Trust Co., *supra* note 21.

[1] Millard v. Thatcher, 2 T. R. 81, English Rul. Cas. 320 (1787); Rex v. Patteson, 4 B. & A. D. 9 (1832); State v. Bus, 135 Mo. 325, 36 S. W. 636 (1896); Oliver v. Jersey City, 63 N. J. L. 96, 42 Atl. 782 (1899); State v. Brinkerhoff, 66 Tex. 45, 17 S. W. 109 (1886); MECHEM, THE LAW OF OFFICES AND OFFICERS (1890) §420.
[2] People *ex rel.* Ryan v. Green, 58 N. Y. 295, 304 (1874).
[3] *Ibid.*