



1939

Wit and Humor

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Recommended Citation

(1939) "Wit and Humor," *North Dakota Law Review*. Vol. 16 : No. 5 , Article 5.

Available at: <https://commons.und.edu/ndlr/vol16/iss5/5>

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In *Wm. McKee, Jr., et al., Petrs., Conts., and Appls., v. G. E. Buck, Jr., as Acting Executor of the Alleged Last Will and Testament of Robert J. McKee, Deceased, et al., Respts., Propts. and Apps.*

That where an appeal is taken to this court from the decision of the district court, sitting as an appellate court to review the decision of the county court involving the discretion of the latter court in granting or refusing a rehearing in the matter of a contest of the probate of a will, and it is urged that the district court erred in reversing the county court, it is the judgment of the district court which is subject to review in this court.

That in such a proceeding, where the district court determines that the interests of justice require a rehearing of such contest of the probate of an estate, this court will not reverse the decision of the district court unless the record affirmatively shows error.

That the purpose of a hearing in a contest of the probate of an estate is to ascertain the truth, and where an estate has been probated, and thereafter a contest of the probate of said estate is initiated, and upon a hearing the contest is dismissed by the county court, and thereafter, the judgment of the county court dismissing the contest is reversed upon appeal to the district court and the proceeding remanded to the county court, and thereafter, an application is made to the county court for a rehearing in the contest proceeding which application is denied by the county court, and upon an appeal to the district court, the latter court orders a rehearing of the contest proceedings in the interests of justice, on the ground that because of accident mistake and excusable neglect, all evidence available was not presented to the county court, and the district court decides that a rehearing should be granted for the purpose of enabling the parties to present all the facts relevant to the issue that all the rights may be determined, upon appeal this court is less inclined to reverse a decision which in its very nature tends to secure all available evidence than in a case where a decision would prevent the furnishing of such evidence.

Appeal from an order of the district court of Stutsman County reversing the decision of the county court. Hon. M. J. Englert, Special Judge.

AFFIRMED.

Opinion of the Court by Burr, J.

WIT and HUMOR

The preacher was giving the congregation a heated sermon on drinking, "If I had every drop of liquor in the city I'd dump it in the river."

At the conclusion of the sermon the preacher requested a hymn.

The choir director made the following request: "Everyone will please sing heartily, 'Shall We Gather at the River?'"

A young man had been in the hospital for some time and had a very pretty nurse.

"Nurse," he said one morning, "I'm in love with you and I don't want to get well."

"Don't worry," she replied, "you won't. The doctor's in love with me, too, and he saw you kissing me this morning."—*Morning Star.*

The pompous judge glared sternly over his spectacles at the tattered prisoner who had been dragged before the bar of justice on a charge of vagrancy.

"Have you ever earned a dollar in your life?" he asked in scorn.

"Yes, your honor," was the response, "I voted for you at the last election."