

1948

Heber O. Cronquist and Idella N. Cronquist v. Utah State Agricultural College : Reply Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc1



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

L. E. Nelson; Attorney for Plaintiffs and Appellants;

Recommended Citation

Reply Brief, *Cronquist v. Utah State Agricultural College*, No. 7197 (Utah Supreme Court, 1948).
https://digitalcommons.law.byu.edu/uofu_sc1/910

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (pre-1965) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

HERSCHEL BULLEN, administrator of
the estate of HEBER O. CRONQUIST,
deceased, and wife IDELLA N.
CRONQUIST,

Plaintiffs and Appellants

vs.

UTAH STATE AGRICULTURAL
COLLEGE a corporation,
Defendant and Respondent.

Appellant's Reply Brief

FILED

NOV 8 - 1948

L. E. NELSON,
Attorney for Plaintiffs
and Appellants

CLERK, SUPREME COURT, UTAH

Appeal from the District Court of the First Judicial
District of the State of Utah, in and for Cache County.

IN THE SUPREME COURT OF THE STATE OF UTAH

HERSCHEL BULLEN, administrator of
the estate of HEBER O. CRONQUIST,
deceased, and wife IDELLA N.
CRONQUIST,

Plaintiffs and Appellants

vs.

UTAH STATE AGRICULTURAL
COLLEGE a corporation,
Defendant and Respondent.

STATEMENT OF CASE

Respondent in its brief, fails to discuss the pertinent facts set forth by appellant to establish a spendthrift trust, viz., — the plain and unmistakable language used in the will; distributing the trust property to the trustee to hold for 20 years, with full and complete control and management for that period of time. Appellant points out on page 2 of his brief that the court, following the terms of the will distributed the greater ^{part} ~~port~~ of his estate outright. Respondent at page 1 of its brief says the same thing by using figures instead of words, and adds, that only property subject to a lease was put in trust. This indicates that decedent wanted to preserve the leased or trust property for the benefit of whosoever of the persons named in the will were alive at the end of 20 years.

And in page 2 of its brief, respondent states that various assignments of the rentals were paid by assignment, to various persons. Heber Cronquist no doubt needed money, had no other way of raising it, and so gave an assignment. No doubt his dealings with his assignees presented no dispute. It is also submitted that there is a vast difference, legally, between assigning the income after it has accrued, than disposing of the trust estate. But this problem is not involved here, nor can the mere fact that Heber made an assignment of the income and paid it, have any bearing on or change the provisions of decedent's will. After all, the interpretation of decedent's will is in issue here. Respondent also points out that Heber gave a mortgage to the First Security Bank. But it will also be seen that this property was included as additional security; and moreover, it further appears that the bank required all of Heber's heirs to sign the mortgage. (See Trans. 085). Apparently the bank did not regard Heber as having any ^{vested} ~~vest~~ interest in the property.

Respondent at page 2 of its brief says appellant retained the \$4,000.00, made no protest until his brother and sister, some three years later, had sold their share for a higher price. This is hardly the fact, and is immaterial to the issues involved in this case. He has consistently offered to do equity by accounting for the \$4,000.00. When the trustee attempted to terminate the trust, Heber appeared by counsel, filed a demurrer, and the decree itself distributes the property subject to the rights of Heber and the respondent. (See Ex. 2, pages 223, to 240.) A dispute had arisen between appellant and respondent, the exact time does not appear, regarding the validity of the

agreement entered into. (See Transcript). Certainly appellant could not have acted sooner. The additional so called "facts" respondent refers to, therefore, for the most part, adds nothing to the facts given by appellants, but rather tends to divert attention from the real issues presented by this appeal. The interpretation of decedent's will, not Heber's act in assigning the income from the trust, is here involved.

ARGUMENT AND AUTHORITIES

I

Respondent at page 3 of its brief refers to Dean Griswold's work, "Spendthrift Trust," page 38-270 and page 634, to the effect that the doctrine of spendthrift trust is based on public policy, not on sound logic. The writer does not have access to Mr. Griswold's work, but certainly neither 54 Am. Jur. 128, or Kelley vs. Kelley, 79 Pac. (2d) 1059, support any such contention. In fact 54 Am. Jur. 128, Sec. 153, says exactly the contrary. We quote:

"The validity of a spendthrift trust is grounded fundamentally in the principle of *cujus est dare, ejus est disponere*. In other words, *the law recognizes a public policy allowing a donor to condition his bounty as suits himself as long as he violates no law in so doing*. However, the law is not in the remotest way, in connection with the validity of such a trust, concerned with considerations for the beneficiary. *There is no sound public policy in denying a settlor such a right*. Creditors of a beneficiary have no reason to complain that a settlor did not give his bounty to them." (*Italics supplied*).

And the case of *Kelley vs. Kelley*, 79 Pac. (2d) 1059, on page 1063, lays down the following rule citing cases:

“It is of the essence of a spendthrift trust that it is not subject to voluntary alienation by the cestui, nor subject to involuntary alienation through attachment or other process at the suit of his creditors. * * * A voluntary assignment executed before payment to the beneficiary confers on the assignee no right to demand payment or delivery from the trustee as it becomes due to the beneficiary.”

Thus it will be seen that both the text and the *Kelley* case indicate that the courts lay down its rules and decisions based upon the intent of testators, — as arrived at from the language of the will. Certainly this Court is not going to decide this case by laying down a rule of public policy (legislate) which will have the effect of nullifying decedent's right to will his property, when his will as made, violates no known rule pertaining to wills as provided by law. No doubt, decedent's intent will be sought after by this court.

II

PENNSYLVANIA CASES

On page 4 of respondent's brief, counsel attempt to show that the rule adhered to in the early Pennsylvania case of *In Re: Stambaugh*, 135 Pa. 585, has been overruled in later Pennsylvania cases. The cases of *Trask vs. Shaffer*, 14 Alt. (2d) 211, and *McCurdy vs. Bellefont*

Trust Co., 292 Pa. 407, are cited, but a careful examination of the facts in both of these cases distinguish them from the facts in the instant case. For instance, in *Trask vs. Shaffer*, supra, the will placed the testatrix's property in trust for and during the life of her 7 children, giving the earned income from each share and \$200.00 from the principal to each child if necessary in the judgment of the trustee. Thus, the trustee had discretionary powers not given to the trustee named in the Cronquist will. In *McCurdy vs. Bellefont*, supra, the testatrix created a trust for the life of her three children, and upon their death to certain named grandchildren. The Will also provided that the trustee could sell the real estate with the approval of George Bush, one of the beneficiaries. Thus the trustee as well as the beneficiary, could exercise discretionary powers with respect to sale of trust res. And, moreover, the note sued upon which resulted in judgment and attachment was signed jointly by the testatrix, Mrs. Bush, and beneficiary George Bush. Hence, the judgment holder was a creditor of testatrix's estate. It will thus appear that these Pennsylvania cases are clearly distinguishable on the facts from the case at bar. And naturally the decision of the court is affected by the particular facts involved in the case.

ILLINOIS CASES

On page 8 of respondent's brief, counsel cite the Illinois case of *O'Hare vs. Johnston*, 113 N.E. 127, and a federal case, *Commissioner of Internal Revenue vs. Blair*, 60 Fed. (2d) 340, and contends that these cases have shown a tendency of the Illinois courts, to restrict the rule

laid down in the earlier Illinois cases cited by appellants, viz., *Bennett vs. Bennett*, 75 N.E. 339; *Wagner vs. Wagner* 91 N.E. 66; and *Wallace vs. Foxwell*, 95 N.E. 985.

It will be seen however, that when the cases cited by counsel are carefully examined, they neither overrule nor restrict the rule laid down in the *Bennett*, *Wagner*, and *Wallace* cases. In fact, *O'Hare vs. Johnston*, *supra*, is authority for appellant, and although the court stated that there was no evidence to show that Johnston's children were spendthrifts, nevertheless, Johnston's will directs that certain of his property be placed with the Union Trust Company, in trust, for a period of 30 years after his death, that the trust company shall invest the funds and said trust company shall pay one-half of the net income arising from said trust fund, to his son William and one-half to his daughter Hazel, and that said payments shall be made semi-annually. At the expiration of said period of 30 years, to pay to his said son and daughter, each certain property (describing it) and that in the event of the death of either William or Hazel after the testator's death and before the expiration of said trust period, that their respective shares shall then be paid to the child or children of said son or daughter.

It will thus be seen that the Johnston will is identical with the Cronquist will. The Illinois Court drew the following conclusion which is applicable to the Cronquist trust:

"We think the conclusion might well be drawn that the reason for creating this trust was based on

the desire of the testator to keep his property in his own decedants and prevent it from going, in the next generation, to strangers to his blood. This trust was certainly an appropriate method for bringing about this result. But we are of the opinion that it is unnecessary to decide whether or not the trust created by clause 4 is classified as a spendthrift trust, so far as concerns the determination whether the trust estate was vested or contingent.”

The following deductions made by the Illinois Court applies to the case at bar:

“Manifestly, the testator intended to provide for every contingency which he thought might arise in regard to the death of one or both of his children, either before or after his death, with or without issue, and to make gifts over in anticipation of such contingencies. (Italics supplied).”

And the following conclusion applies to the case at bar:

“We have reached the conclusion that the will provided that the gifts to the grandchildren should vest in them at the death of their parents. This construction is plainly warranted by the language of the will and gives effect and carries into execution the testator’s intention.” (Italics supplied).

In the Blair case *supra*, the Federal Circuit Court of Appeals, decided a case where the facts were very similar to the facts in the case at bar. The court reviewed the

Illinois cases and it definitely appears that the federal court followed the rule laid down in the Bennett, Wallace & Wagner cases. The court also held that the will under consideration created a spendthrift trust and that the beneficiary could not assign his interest to the income until after the actual receipt thereof. In the closing portion of the opinion, the court said:

“It is quite obvious to us, under the Illinois decisions to which we have referred, that the trust created by the will in the instant case is a spendthrift trust, and that respondent had no right to alienate it.”

CALIFORNIA CASES

On pages 13-15, of respondent's brief, counsel have referred to and discussed the following California cases cited in appellants brief, viz., Seymour vs. McAvoy, 53 Pac. 946; In Re: Blakes Estate, 108 Pac. 287; Fletcher vs. Los Angeles Trust & Savings Bank, 187 Pac. 425; and In Re: De Lano's Estate, 145 P. 2d. 672. It is respectfully submitted that the foregoing California cases support the appellants contention that the Cronquist will creates a spendthrift trust and the courts attention is particularly invited to a review of these cases on pages 11-14 of appellant's brief.

Defendant cites the case of Kelley vs. Kelly, (Cal.), 79 Pac. 2d 1060, as authority for its contention that the Cronquist will does not create a spendthrift trust. However, when the Kelly case is carefully read and analyzed, it will be seen that Kelly, a stepson of the testator, took a vested remainder in one-half of the property that had

previously been placed in trust for the life of his mother. That case would be analogous to the Cronquist case had Olif Cronquist's wife survived him, and had he placed in trust the property in question for her life with the remainder over to his three children. Then had Heber during the life of his mother, made an assignment of an expected interest in his property, he would have made the assignment as a devisee of Olif Cronquist, but as having a vested interest subject only to the life time of his mother, and not as a beneficiary under a trust which came into effect after his father's death.

The facts in that case will also disclose that Kelley had a vested interest in said property upon the death of his mother, and something which he could, therefore, definitely assign or agree to assign. Then too, it must be remembered that enforcement of his contract could in no way interfere with the enjoyment by his mother of the terms of the trust. And the terms of the trust were fully complied with and its objects attained upon her death and thereafter there was nothing left to do except to distribute Kelley's portion of the residue of the property to him.

However, in the Cronquist trust, there was no certainty that Heber would ever succeed to any property. And moreover, by the terms of the trust, Olif Cronquist provided that in any event Heber shall succeed to no property until after the end of twenty years, thus providing in the meantime that he could not in any way dissipate or alienate the trust property. Olif even went so far as to provide against Heber's improvidence by vesting the legal title in the property in the Cache Valley Bank, as trustee.

If effect is now given to respondent's contention, then the intent of Olif Cronquist to provide against Heber's improvidence will be completely destroyed, and we submit that if Heber could destroy the effect of his father's will on the date of the purported agreement, then it follows that he could have likewise destroyed the effect of said will the day after the trust went into operation.

It is significant that the California case of *In Re: De Lano's estate* 145 P. 2d 672, was decided by the appellate Court of California, subsequent to the decision of *Kelly vs. Kelly*, *supra*, and it will be seen that the California court in the De Lano estate decision definitely approves of and follows the earlier decisions in California, Illinois, and Kansas, herein cited and also cited in appellants brief. But, the Kelly case was not even cited or referred to in *Re: De Lano's estate*. Therefore, counsel and the court in the De Lano estate case, *supra*, must not have considered the Kelly case as authority. The following rules, which were contended for by appellant as determinative of the Cronquist will, are laid down by the California court in the DeLano case, *supra*, in the following language and citing cases:

"It is sufficient if the intent is reasonably plain upon a consideration of the will as a whole. *Seymour v. McAvoy*, 1898, 121 Cal. 438, 442, 53 P. 946, 41 L.R.A. 544; *San Diego Trust, etc., Bank v. Heustis*, *supra*, 121 Cal. App. 675, 10 P. 2d 158; *Jones v. Harrison*, 8 Cir., 1925, 7 F. 2d 461. It is not necessary that the instrument creating the trust contain all of the restrictions and qualifications incident to spendthrift trusts. 1 *Underhill on Wills*, p. 695, sec. 529;

3 Page on Wills, p. 829, sec. 1308; Wagner v. Wagner, 1910, 244 Ill. 101, 91 N.E. 66, 70, 18 Ann. Cas. 490; Bennett v. Bennett, 1905, 217 Ill. 434, 75 N.E. 339, 341, 4 L.R.A., N.S., 470; Wallace v. Foxwell, 1911, 250 Ill. 616, 95 N.E. 985, 50 L.R.A., N.S., 632; and cases listed in Sherman v. Havens, 94 Kan. 654, 146 P. 1030, Ann. Cas. 1917B, page 400. The courts will not inquire whether the restrictions upon the use of the trust property were necessary for the protection of the beneficiary. Wagner v. Wagner, *supra*.”

KANSAS CASES

On page 19 of respondent's brief, an attempt is made to distinguish the case of Everett vs. Haskins (Kan.) 171 Pac. 632, from the case at bar. and counsel say without any justification therefor, that, — “the trend of the Kansas Court is in the same direction as the courts of Pennsylvania, Illinois, and California.” There is nothing in the cases cited by respondent to justify the conclusion that any ~~trend~~ ^{trend} exists. The following excerpt from Evertt vs. Haskins, *supra*, will refute any such conclusion:

“The trustee's control, discretion, and power of disposition cannot be regulated or directed at the suit of creditors. The exercise of such authority by the courts *would be in contravention of the terms of the will. ..Why did the testator put these provisions in his will?* The answer is that he intended that William Henry Haskins should not exercise any discretion concerning, *or any control or power of disposition over,* the property that was placed in the hands of the trustee.” (Italics supplied.)

And a very recent Kansas case, *In Re: Watts*, 162 P. (2d) 82, although the trustee was given power to decide when he should terminate the trust, yet it was held that the trustee's judgment must be upheld by the court when the facts justified it. This indicates how far the courts will go to uphold the solemnity of a trust.

COLORADO CASES

Counsel cite the Colorado case of *Newell vs. Tubbs*, 84 P. (2d) 820, on page 23 of their brief. The language creating the trust in that case had the earmarks of a vested remainder, because it did not contain a limitation over to the heirs at law of the beneficiaries named in the trust. However, the Court did recognize the rule that if the will had created a spendthrift trust, Newell's assignment would have been invalid. The court said:

"The only question presented is whether that paragraph creates such a trust. If it does, *Newell's assignment of his interest is invalid and such a holding necessarily would result in a reversal of the judgment.*" (Italics supplied).

It is interesting to contrast the case of *Newell vs. Tubbs*, *supra*, with an earlier Colorado case of *Snyder vs. O'Conner*, 81 P. (2d) 773, where the trust provision of the will was very similar to that in the Cronquist will as will be seen by the following language of the Court:

"By his will the testator provided among other things that all but \$1,000 of the residue of his property should be held in trust by his executors in

“Fund B” and that the income therefrom should be paid semi-annually to his five children, Morris, Max, Irving, Rose and Annie, equally. *In case any of the five children die, that child's share of the income was to be paid to his or her issue equally, and if no issue survived the share was to be added to the shares of the surviving children.*” (Italics supplied.)

And although the will did expressly provide against anticipation and alienation, yet the court predicated its decision largely upon the fact that Max Snyder, one of the beneficiaries, held only a contingent remainder, and that in case of his death before the trust period of 10 years expired, his share would go to his issue if he left issue, otherwise his share would be added to the shares of the surviving children. In other words, he held only a contingent remainder. And in reaching the conclusion that the assignment was void, the court said:

“Until the county court orders the trust fund distributed, the property is in a real sense in *custodia legis*. Moreover, it is wholly uncertain whether in 1942 Max Snyder will be among the then surviving beneficiaries who are to share in the corpus of the trust. We cannot allow the district court to create, by a sort of judicial prophecy, what amounts to an anticipated lien that may never exist.” (Italics supplied).

ARKANSAS CASES

POOL vs. CROSS COUNTRY BANK, 133 S.W. (2d) 19

The above case is distinguishable from the case at bar. It appears from the facts that the beneficiary had a

vested remainder and also had a quitclaim deed from the remaining beneficiaries who also held vested remainders. Then too, it appears that the trustees, the brothers of the testatrix, could exercise their discretion in determining how long to continue the trust. The court observed:

“We get the impression, and are of the opinion that while the testatrix sought to protect her son from his improvidence and from misfortune, and to that end, created what would otherwise be a spendthrift trust, yet it was to be such only so long as the trustees, her brothers, should in their discretion, continue it as such.”

MILLER vs. MARYLAND CASUALTY COMPANY,
180 S. W. 581.

We agree with the quotation from the above case appearing at top of page 25 of respondent's brief. The last clause says:

“or a clear and undoubted intention is expressed in in the will.”

It is our contention that this clause applies to the Cronquist will.

NUN vs. FITCHE-GOETTENGER, 245 S.W. 421.

It will be seen that the above case recognizes the doctrine that, —

“It is not necessary however, that the instrument creating a spendthrift trust *should contain an express*

*declaration that the interest of the beneficiary shall not be transferred, assigned, or subjected to the payment of his debts provided such appears to be the clear intention of the donor or testator, as gathered, from all the parts of the instrument construed together in the light of attending circumstances. * * ** The trust created by the will under consideration is of this class.” (Italics supplied).

The foregoing rule is certainly authority for appellant's contention that the Cronquist will creates a spendthrift trust.

MARYLAND CASE

The case of *Baker vs. Keiser*, 75 Md. 332, 23 Alt. 735, is cited by respondents on page 25 of their brief. An examination of this case discloses that Louis Keiser left certain property in trust for and during the life of his six children, giving each child a one-sixth share of the income from the trust during their life and after their death a one-sixth of the trust property was to be equally divided between the children of each child. Levina Cramer, one of his married daughters and husband were indebted upon a promissory note which was reduced to judgment in the sum of \$395.98, and an attachment was levied against her income in the sum of \$205.52 then accrued and, in the possession of the trustee. The trust property was not attached but merely the accrued income. The court held in effect that since the income had already accrued and was in the possession of the trustee, that it was subject to attachment by a creditor. It will therefore be seen that the Keiser case is distinguishable from the

case at bar because in that case the trust estate was not involved and in the case at bar the income is not involved. However, it may be strongly inferred from the decision in that case, that had the attachment been levied against the trust estate, the court would have held that the same was not subject to attachment by a creditor because of the fact that there was a limitation over to the children of Levina Cramer, and therefore it constituted a spendthrift trust.

From an analysis of the above cases, it will be seen that they may be grouped in the following classes: Three of them relate to discretionary trusts; and in two of them the beneficiary had a vested remainder, and in one of them the income had accrued and was in the possession of the trustee, and for that reason the court held the income could be attached, so that these cases are distinguishable from the facts in the case at bar. But in the remaining six cases, where the facts are similar to the case at bar, the courts held that spendthrift trusts were created, hence the latter cases are authority for appellants.

III

Counsel for respondents attempt to leave the impression that appellants' position is inequitable because of the purported agreement entered into. It is apparent that any such contention must fail because appellants have offered to make an accounting of the \$4,000.00 paid. Furthermore, any such contention simply confuses or attempts to bury the real issue in this case which is, — giving effect to the plain language contained in the will of Olaf Cronquist.

The courts invariably follow the rule of law as given by Scott on Trust Vol. 1, Sec. 152.3, wherein he says:

“Even if the assignee pays value for the assignment, the assignment is ineffective as a transfer of the beneficial interest, and the *beneficiary can at any time revoke it*. It seems clear, however, that if the beneficiary revokes the assignment, the assignee is entitled to recover the amount which he paid for the assignment on the ground that there is a failure of consideration. He *thereby becomes a creditor of the beneficiary for the amount so paid*, and he can maintain an action against the beneficiary for the amount so paid, and can reach and apply to the satisfaction of his claim any property of the beneficiary which is not exempt from the claims of creditors. 64 L.R.A. 1917 A. 988.” (Italics supplied).

IV

On page 13 of respondent's brief, counsel says: “Would it not be Wisdom, *in interpreting the intention of testator*, Olif Cronquist, to adopt a rule of construction that withstands the test of time,” and again at page 20 in raised type; “We vigorously contend, however, that there is nothing in the Cronquist will from which it may be even inferred that the testator *intended to limit* the power of his beneficiaries to agree to convey their interest in the trust estate.” It is convenient here to discuss both statements together. The first statement sounds “lofty” and does call for a desirable end, but attempts to reach this desirable end by “interpreting the intention of testator”

by ignoring testator's plain words. He, testator, in his will by language too plain for doubt, stated the object and purpose he desired to attain.

It certainly is the duty of the courts to determine testator's intention and sustain it if legally possible. In fact, such is the plain provisions of Chapter 2, Title 101, Utah Code Annotated, 1943, and the decisions of this court. The second statement above, if followed, would lay down a rule of law revolutionary to the decisions of this court hereinafter referred to. It suggests that an inference not contained in the will should overcome the plain language of the will. In fact, this is the effect of all of counsel's statements in their brief as to "public policy," and in this connection it is believed a full and complete answer to all of counsel's comments about "public policy" is that the majority of the courts are against respondent's contention and they hold that effect be given to wills according to testator's intention.

A review of the following Utah cases will be helpful and beginning with the early case of *In Re Campbell's Estate*, 27 Utah 365, 75 Pac. 851, this court quoted with approval the following rule announced by Chief Justice Shaw in the case of *Quincey vs. Rogers*, 9 Cush. 291:

"The intent of the testator is the polar star which shall guide the court in its decision."

In a later Utah case of *In Re Poppleton's Estate*, 34 Utah 285, 97 Pac. 138, this court in interpreting Section 2767, Comp. Laws of 1907, now Section 101-2-1 U.C.A. 1943, quotes the first sentence from that section which reads as follows:

"A Will is to be construed according to the intention of the testator."

Again the Court said:

"This intention is to be ascertained from the language used by the testator in the will. If the meaning is clear from the words used, a resort to rules of construction is neither necessary nor permissible. *** Our duty, therefore, is to ascertain this intention."

The following quotation from that case is also pertinent to the case at bar:

"The testator, however, was disposing of *his own property*, and *he could impose any lawful condition upon any bequest that to him seemed proper*. (Italics supplied).

The next case is *In Re Dewey's Estate*, 45 Utah 98, 143 Pac. 124, where this Court laid down the following rule of construction with respect to the intention of the testator:

"It is the cardinal principle or canon of construction that the intention of the testator must prevail if such intention, when ascertained, is not contrary to the law and the testator has complied with the forms of law in the execution of his will."

This Court also laid down the well known rule with respect to the creation of a trust in the following language:

"One rule, which we think may be said to be of universal application, *is to the effect that no particu-*

lar words are necessary to create a trust, and that if from all the language used by the testator in his will a trust is fairly implied, the courts will enforce the same." (Italics supplied).

In that opinion the following rule was also approved from I Jarman on Wills (6th Ed.), page 355, where it is said:

"For technical language, of course, is not necessary to create a trust. It is enough that the intention is apparent."

In *Re Johnson's Estate*, 64 Utah 114, 228 Pac. 748, this Court said:

"A Will is to be construed according to the intention of the testator."

"In case of uncertainty arising upon the face of a will as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking in view the circumstances under which it was made exclusive of his oral declarations."

And in that case, the Court reaffirmed the following rule in citing earlier Utah cases as follows:

"The intention of the testator 'is the ultimate object to be kept in mind and to which all rules must yield.'" (In *Re Poppleton's Estate*, 34 Utah, 285, 97 Pac. 138, 131 Am. St. Rep. 842) *and "is the polar star which should guide the court in its decision."*

.(In Re Campbell, 27 Utah, 361, 75 Pac. 851; Rumel v. Solomon, 54 Utah, 25, 180 Pac. 419).” (Italics supplied).

The following language is applicable to the case at bar:

“The foregoing principles of law are decisive of this case, and *enable us to give full effect to the manifest intention of the testator.*” (Italics supplied).

It would seem that the above cases fully answer the two statements quoted from the respondent’s brief and show conclusively that they can have no application to the facts in the case at bar. We also submit that no rule of public policy should cause this court in any way to change the effect of its previous decisions which support the majority rule.

In the case of Latimer vs. Holladay, (Utah) 134 Pac. (2d) 183, cited on page 32 of respondent’s brief, the facts disclose that brother and sister (only heirs of mother) entered into a contract to buy one another out as an expectant heir of their mother for a certain consideration. The mother had made a will in which she provided that one-half of her property shall go to each child, and unknown to the daughter, thereafter the mother conveyed to the son. The son defended on the grounds of lack of consideration.

But the facts of the above case ^{and} ~~is~~ so dissimilar to the facts in the Cronquist case, that it would certainly take

a strained analogy to make that case worth anything, when applied to the facts in the case at bar. The property in that case was not impressed with a trust, and the contract was executed before the mother's death .

It is furthermore submitted that the above fully answers any difficulty which counsel imagines might confront a title examiner. Certainly no title examiner would encounter any difficulty in interpreting the meaning of the language employed in the Cronquist will. In fact, respondent had no difficulty in understanding the trust provisions of the will, because in its purported contract, a provision was made requiring Heber and Idella Cronquist to execute and deliver to respondent a warranty deed after the termination of the trust. And of course, in accordance with the recent decision of this court, a quitclaim deed does not convey after acquired title. See *Duncan vs. Remmelwright, et ux.* (Utah) 186 P. (2d) 964.

CONCLUSION

It is respectfully submitted that the Cronquist will created a spendthrift trust for the following among other reasons stated in appellant's brief.

(a) The legal title was vested in the trustee for the full period of 20 years.

(b) That during the trust period Olif Cronquist's children held no vested interest in the trust property. They held merely a contingent interest.

(c) That there was a limitation over to the heirs at law of each child.

(d) That vesting the legal title, as well as the management and control of said property in the trustee, evidenced a clear intent on the part of testator to create a spendthrift trust.

The appellants respectfully submit to this Honorable Court that the findings, conclusion and judgment of the trial court be reversed, remanding the case and directing that the trial court enter findings, conclusion, and judgment in favor of the plaintiffs, ^{and appellants} as prayed in the complaint, and that ^{they} ~~plaintiff~~ be awarded costs expended in the trial court and on this appeal.

Respectfully submitted,

L. E. NELSON,
Attorney for Plaintiffs
and Appellants

INDEX TO BRIEF

Argument and Authorities	3
Statement of Case	1

INDEX TO AUTHORITIES

Baker v. Keiser, 75 Md. 332, 23 Alt. 735	15
Bennett v. Bennett, 75 N.E. 339	6
Com. of Internal Revenue v. Blair, 60 Fed. (2d) 340 ..	5, 8
Duncan v. Remmelwright et ux. (Utah) 186 P. (2d) 964 ..	22
Everett v. Haskins, 171 Pac. 632	11
Fletcher v. Los Angeles T. & S. Bank, 187 Pac. 425	8
In Re: Blakes Estate, 108 Pac. 287	8
In Re: Campbell's Estate, 27 Utah 365, 75 Pac. 851	18
In Re: De Lano's Estate, 145 P. (2d) 672	8, 10, 11
In Re: Dewey's Estate, 45 Utah 98, 143 P. 124	19
In Re: Johnson's Estate, 64 Utah 114, 228P. 748	20
In Re: Poppleton's Estate, 34 Utah 285, 97 P. 138 ..	18, 19
In Re: Stambaugh's Estate, 19 Alt. 1058	4
In Re: Watts, 162 P. (2d) 82	12
Kelley v. Kelley, 79 P. (2d) 1059	3, 4, 8
Latimer v. Holladay (Utah) 134 P. (2d) 183	21
McCurdy v. Bellefont, 292 Pa. 407	4, 5
Miller v. Maryland, etc. 180 S.W. 581	14
Newell v. Tubbs, 84 P. (2d) 820	12
Nun v. Fitch-Goettenenger, 245 S.W. 421	14, 15
O'Hare v. Johnston, 113 N.E. 127	5, 6, 7
Pool v. Cross Country Bank 133 S.W. (2d) 19	13, 14
Seymour v. McAvoy, 53 Pac. 946	8
Snyder v. O'Conner, 81 P. (2d) 773	12, 13
Wagner v. Wagner, 91 N.E. 66	6
Wallace v. Foxwell, 95 N.E. 985	6
I Jarman on Trusts (6th Ed.) 355	20
Scott on Trusts, Vol. 1, Sec. 152.3	17