

1954

In the Matter of the Estate of James John Latsis : Petition of Respondent Virginia Latsis Zambukos for Rehearing

Utah Supreme Court

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now

**In the Supreme Court
of the
State of Utah**

In the Matter of the Estate of
JAMES JOHN LATSIS (sometimes
known as "Latses"),

Deceased.

} Case No. 7954

RESPONDENT UTAH SAVINGS & TRUST
COMPANY'S PETITION FOR REHEARING

MULLINER, PRINCE & MULLINER

Attorneys for Respondent.

FILED
JUL 26

Clerk, Supreme Court,

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In the Supreme Court of the State of Utah

In the Matter of the Estate of
JAMES JOHN LATSIS (sometimes
known as “Latses”),

Deceased.

} Case No. 7954

PETITION OF RESPONDENT UTAH SAVINGS & TRUST COMPANY FOR REHEARING AND FOR CLARIFICATION

This petition by this Respondent, who is now charged to proceed as administrator by the opinion of the Court herein, will present serious errors in the opinion herein,

as well as suggestions for assistance of the trial Court, and in the further administration, if that would still be necessary.

To now take up the administration which was discontinued, if not concluded, by what the opinion designates "the decree of distribution and order discharging the administrator," entered October 9, 1945, will certainly present difficulties, and some of these may be avoided by reexamination of the opinion, or by clarification as suggested herein.

We accept our share of responsibility for some of the errors we now complain of, because we attempted to follow the order of appellants' brief and therefore did not present our points effectively, or in the order of their importance. We thought at the time this way might be more convenient to the Court.

We did, however, attempt, as did the trial Court, to prevent some of the confusion and difficulty now involved here by trying to have the complainants' case presented by complaint in equity, with proper parties, and with the issues defined, as the Rules require.

Our points in support hereof are now presented in order with a separate supporting memo following each point, as follows:

I.

It seems to be an error of importance here that this Court did not decide the question raised by our motion to dismiss (R. 153) and decided by the trial Court. The trial Court ruled (R. 205) that the

attempted procedure by petition was not proper under the Rules of Civil Procedure, and certain express statutes, and the decisions of this Court. The only matter presented to this Court for decision therefore was whether this was the proper way to proceed. That question is not discussed or decided in the opinion.

MEMO SUPPORTING I.

As a matter of procedure not only may matters of "mistakes in settlement" after *discharge* be presented only "by an action in equity" (75-14-23); and, Rule 60-b says "*any relief* from a judgment" after three months "shall be * * * by an independent *action*." And this rule allows the Court to "entertain such action * * * to relieve a party from a judgment * * * for fraud upon the Court," and then also of course (75-1-7) as to *real property* where administrator is appointed, as here, "*no objection* to any subsequent order or decree * * * can be taken * * * on account of any * * * defect or irregularity * * * other than on direct application * * * at any time before distribution, or on appeal." Appellants' petition is an "objection" based on a "defect," if it is anything.

But even more vital is the fact that this opinion is ineffective because it can not possibly restore the former property of the estate to the custody of the administrators or the trial Court for further probate. This of course applies to the personal property, and to money paid out by order of Court to petitioners' attorney representative or others, but particularly applies to the

nine parcels of real estate (R. 129) which immediately passed into private hands more than eight years ago.

In fact, appellants, before this appeal, filed an action in the Third District Court by complaint, a certified copy of which we understand has been presented to this Court, with William Latsis and Sigmund Helwing, Administrator, et al, as plaintiffs, and 32 defendants, in which it is alleged that the plaintiffs and all these defendants claim or assert some right or interest in some portions of these former estate properties.

Furthermore, the procedure here, by petitions, which met the trial Court's objection, can not and does not seek to divest any owner or claimant of any right. If such challenge could be made by petition, it is not made as against anyone, not even the widow. She and this Respondent are here, as indicated by the Court's opinion, only by complaint of their conduct as administrators.

It must be evident therefore that this opinion can not have any effect to restore the status existing when the estate was closed. Isn't this a futile and fruitless, if not in fact an unauthorized, procedure?

The possibility of actions by administrators to repossess some or all of the properties may not be entirely precluded, but such suits could be numerous and long drawn out, and, because of factual situations as referred to under the next point, could fail. According to a theory advanced by appellants here, each of these foreign heirs is entitled to claim a small fractional interest in each piece of real property amounting to the proportion which his claim bears to the total of all other interests. While

this could serve to complicate things even more here, it doesn't seem to be sound or to have been adopted by the Court. As we pointed out in our brief (p. 35), any percentage interest of any one appellant is very small here, and no such interest would have been of any conceivable benefit.

It is true also that we have other partition statutes and which, though not as comprehensive or as fittingly applicable here as 75-14-25—the one used by the trial Court—nevertheless would permit of sale and which (see 75-12-16) would permit the whole property to be assigned by the Court to the widow if she would accept and pay the other parties their just proportion of the value, or (see 75-12-17) the property may be set off by referees to any of the parties who will accept it upon similar payment being made to the others. Admittedly, some of the complications may in this way be aided if not eliminated. It is substantially the same thing that the Court and the appellants' attorney representative, did back in 1945.

II.

Another matter of serious irregularity, confusion, and injustice is that this Court by its opinion has decided the whole case before the evidence is in. This case is on appeal from the order granting our motion to dismiss. The defending parties, and all parties interested in the properties involved, have not been permitted to plead to the facts presented by the appellants' petitions and briefs, or be heard on the facts pleaded by appellants, or facts to be pleaded in defense of the probate proceedings heretofore taken.

MEMO SUPPORTING II.

The administrators are now treated as defendants in the opinion, but denied opportunity to defend their administration. Derogatory allegations in the petitions may be treated as true for the purpose of our motion to dismiss, but may not be so treated for the purpose of final determination of, or to prejudice any future determinations that may be involved.

More seriously, some misstatements of fact found in appellants' brief are erroneously adopted by the Court in the opinion, and there are several assumptions of material facts not alleged, and, of course, not proved. So that by this summary disposition of this case by this high Court parties interested in the properties and probate of this estate cannot hereafter ever be expected successfully to contradict these misstatements and erroneous assumptions as recited in the opinion, or to establish the contrary either in the Court below or in this Court on future appeals.

As a separate matter of future procedure, should not we and should not the trial Court know now whether this Court, by its order to complete "the probate by further proceedings," intends us to proceed as if all these things are settled and foreclosed and as if the original funds and properties are still in the hands of the administrators and the Court, and how this can possibly be done?

As illustrating our references to conclusions in the opinion from disputed facts, it is asserted therein that the partition and distribution by the lower Court resulted

from litigation over whether certain properties of the value of about \$12,000.00 belonged to the estate or to the widow. The opinion (p. 3) speaks of "inconvenience and prejudice" as if such had happened to the appellants from the settlement and distribution here, and speaks of this as coming "from a dispute as to the amount of property which should be included in the estate."

There are a number of factual things like this, which not only should not be determined without proper hearing, but they gave an entirely wrong impression of the Probate Court's conduct of this orderly probate proceeding, and they have plainly been allowed to influence the opinion here. These things not only have not been heard, but they are contrary to what the record now shows as to the reason or basis for this settlement.

First, the petition for the partition and distribution (R. 86) was filed before the opinion here says that litigation was abandoned by the widow. Such abandonment, if any there was, could only have the effect of admitting that the property in question did belong to the estate, and, as a matter of fact, the proceeding and order were had on that basis, and, therefore, appellants were not at all prejudiced. The petition by their attorney representative and others, said that they were in need and desired to have their portion of the estate and further that, "the parties hereto have estimated as best they can from the appraisals and other information the value of said estate and of the interest of said four heirs and have determined the value of their interest at approximately \$10,000.00." This is fully supported by the evi-

dence on the hearing (R. 243).

The Probate Court directly raised the question (R. 250) as to whether the heirs were making a compromise stipulation or whether the proposed partition was to be based upon determination of values, then:

“THE COURT: The point that I make is if it amounted to considerably more than ten thousand dollars and this was just merely a compromise settlement in order to get it quicker—

“MR. COTRO-MANES: No, no.

“THE COURT: Or avoid litigation, or something of that nature, that is one thing, but if this is an approximation as nearly as you can reach, of what they would receive upon final distribution—

“MR. MULLINER: That is right.

“MR. COTRO-MANES: That will be about it, your honor. I will state to the court further if it were not for certain litigation that we had, probably we would never have got any settlement at all. We might have eventually received some money.”

Then (R. 252):

“MR. COTRO-MANES: So that \$12,000 we are not concerned with that now.

“THE COURT: The only matter which is before me is the question of approving this \$10,000 in settlement of their *distributive* share.

“MR. COTRO-MANES: That is right.

“THE COURT: You represent to me that that is approximately, as nearly as you can compute it?

“MR. COTRO-MANES: That is right, and in my judgment it is for the best interests of these heirs.”

So that this is it. This \$10,000.00 was “in settlement

of their distributive share," and the order (R. 95) then recites that the amount of the agreed settlement "is a reasonable amount to be expected from the estate of the heirs thereof other than Virginia Latsis, and considering the properties of the decedent * * *."

And then the administrators —

"are authorized and directed to pay and distribute" the said amount ratably to the heirs named (R. 96) such "distribution" to be made through the Hellenic Bank or American Express, "whichever source is selected by the above mentioned attorney for the heirs, and that the issuance and delivery of checks to such source shall relieve administrators herein from further responsibility therefor."

Thus the Court not only acted pursuant to the language of the statute, but uses the language of the statute as to it being a "distribution."

We can't, of course, anticipate all the facts that may be properly raised if this case were tried on the petitions and responsive pleadings, but we know from connection with it that many factual matters affecting the rights of parties will be foreclosed or prejudiced by this premature adjudication. The false allegations by appellants of their lack of knowledge of the probate proceedings here, and facts of their own laches and acquiescence in this proceeding with actual as well as constructive knowledge, as well as all the facts affecting their rights to have an adverse determination of titles to real estate which has been held and occupied adversely for nearly nine years now, should all be allowed to be pleaded and to be fairly tried.

Other factual matters assumed without proof appear under Point V *infra*.

III.

The Court has seriously erred in refusing to apply the plain language of 75-14-25, U.C.A., and by mistaken comparison with other and different statutes, and different proceedings in other jurisdictions, has destroyed its further use, or any future dependence on this statute in cases like this, and has left all titles dependent on its use in doubt, even though its validity or proper application was here in no way presented in issue herein.

MEMO SUPPORTING III.

The appointment or authority of their attorney representative under this statute is not questioned here, but is affirmatively alleged by appellants (R. 84) who, in fact, recognize throughout that the attorney represented these heirs as therein provided, and had presented the petition and evidence upon which the settlement and distribution was determined and made; and they also allege that the attorney assumed the duty of distribution of the fund as ordered, and undertook this (R. 190).

No issue as to limitation of his powers or the power of the Court as now decided, was ever intimated in a pleading, but was suggested only in the reply brief of appellants filed August 23, 1953, after the case had been briefed and set for argument, and nine and one-half years after the appointment. Nothing of this was before the trial Court on its ruling presented to this Court for review; nor here presented either in the Points relied

upon as filed, or as set forth in appellants' brief.

Furthermore, the appellants misled the Court by erroneously treating the proceedings taken pursuant to the authority given the Court and the attorney representative by the express language of the statute itself, as "stipulating away appellants' rights" or stipulating to "preclude them" from claiming their share of the estate, and by charging their attorney as having "waived" their rights.

So the Court (p. 3) cites and quotes some such language as this from a California case (66 Pac. 30). We very respectfully point out, that this case involved absolutely nothing that is in our case here, and nothing that is in our statute, and there is nothing to indicate that California has a statute involving the applicable language in our statute, and certainly no "similar statute" is cited or indicated. The dicta quoted in the opinion here was used in connection with the lower Court's attempt to pay out of protestants' share of an estate, attorney's fees to the Court appointed attorney for services while the protestants were, in fact, being represented by attorneys employed by themselves, after the period of appointment of the former attorney had expired. There is not the remotest similarity in the applicable law or facts.

This seems, therefore, to be not only a wholly gratuitous opinion on this, but also a terrifically drastic off-hand way to destroy a State statute which obviously is important because of the unusual number of immigrant people here who naturally have foreign heirs.

The orderly procedure taken under this statute was

not a "stipulation" or a "waiver" of anything. True, there was an agreement as to what would constitute a fair partition and distribution, and this was recited in a petition. It was not a matter in which the administrators, as such, were directly interested. The procedure, however, was by (1) petition as it had to be, and then (2) by complete hearing (R. 243-260), the complete good faith of which has not been and, if fairly examined, we are sure will not be questioned, and then (3) a partition and distribution were approved and ordered by the Court. How can 75-14-25 or the authority therein "for * * * settlements, partitions, and distributions" of estates and provisions that the attorney is by his appointment "thereby charged to represent" the persons for whom he is appointed "in all proceedings subsequent to appointment," ever be used or carried out except exactly as it was done here, by petition, hearing, and order of settlement partition and distribution. No right was stipulated away because there were no rights beyond what the Court, having complete jurisdiction, regularly determined was the value of the interests in the estate, then partitioned and distributed.

We wish to add that, contrary to the language of the California Court quoted in that situation, it seems certain that our District Court under our statute in this matter of partition and distribution may do more with the aid of the attorney representative properly appointed thereunder by way of "partition" and "distribution" than it might do without the use of this statute and

this appointment, just as the Court with the aid of referees under our other partition statutes (75-12-12, 16, 17) may make such partitions and distributions by payments in cash. The legislative authority therefor is the same.

And here he does not, as there stated, receive "his authority only from the Court." He receives it and so does the Court under our statutes from the Legislature, and certainly succession is all a "matter of legislative control." And here he obviously is more than a mere attorney-at-law. He is a statutory representative, with all the authority the statute clothes him and the Court with, in these matters.

(See: *State v. Dist. Court*, 85 P. 1022.)

IV.

The Court has done an unprecedented thing here by holding, on its own motion, that a decree, which by its own terms makes final distribution and discharge, is not a final decree, and that such, after more than six years, may be collaterally attacked by a petition in probate, contrary to the Rules of Civil Procedure and the decisions of this Court as well as to the Statutes of Utah, as to time and grounds for such attack.

MEMO SUPPORTING IV.

This decree can not be treated as void before it is attacked at all, and is therefore plainly not subject

to collateral attack, or to be treated as a nullity by the Court, in violation of its rules and decisions, as well as the Statutes of the State.

And again, we cannot find that this issue is anywhere alleged in the petitions which are now being treated as complaints here. These petitions seem to recognize that the distribution had been made, and attempt to charge us with fraud or misfeasance in having made it (R. 156, 172). Certainly, the validity of the Decree was not an issue before the trial Court or in the order sustaining our motion (R. 153, 205) which order alone was appealed from.

Should it not be required that before an issue of this kind and importance can be decided by the Supreme Court that it must have been properly presented to the parties, or at least to the Court whose decision is up for review? This seems especially important here because certainly other persons depending on this decree for title to properties will be prejudiced by the opinion on this, even if it could not actually bind them in future appeals.

We present the point to suggest that the decision of this matter at all was inappropriate under the circumstances and for such interpretation and future guidance as the Court may consider helpful in this probate proceeding. We believe it is will taken, but do not argue it further because the very next point, and a most important one, bears upon this also.

V.

The plainly erroneous conclusion that this final “decree of distribution and order of discharge” in fact “was conditional” is astoundingly based entirely on utterly false statements as to what the decree itself says, as well as on erroneous statements as to matters already of record here.

MEMO SUPPORTING V.

We use the term “false” advisedly and correctly, but knowing, of course, that the Court was misled by appellants and did not know this to be so. Again on this point, we have the fact that this vital matter of decision was not presented in issue in the trial Court below by the petitions, or was it in issue on our motion or the Court’s order appealed from.

Passing this, we will call attention directly to the following numbered basic misstatements in the opinion itself:

Error 1 (p. 3):

“***even if the *stipulation* had been binding it expressly provided that approval of the settlement by the court was subject to the heirs accepting payment, executing the necessary receipts, assigning their interest, and releasing the estate from liability.”

(Note (R. 87) that it did not expressly or otherwise say this, and no party to this petition attempted to, or could, make the court’s order “subject” to anything, and it wasn’t.)

Error 2 (p. 4):

“***that the stipulation and the *order* confirming it *expressly provided* that the heirs are to be bound *only* if they accept payment, execute the necessary receipts, assign their interest and release the estate from liability, ***”

(Note, that this order neither “expressly” or otherwise says anything about this.)

Error 3 (p. 4) :

“***the decree of distribution approves and incorporates the stipulation,***”

(Note that the decree of distribution nowhere mentions the stipulation, let alone approving or incorporating it, and neither directly or indirectly refers to its contents.)

Error 4 (p. 3) :

This one refers to the order of Feb. 27, and the same matters mentioned in Errors 1 and 2, and says: “This must have been ordered by the court advisedly and for the purpose of safeguarding the rights of these foreign heirs.”

(Note, that the Court never ordered this at all, or ever used the expression quoted in Error 1 above (R. 95-97), or any language of like import.)

Error 5 (p. 2) :

This one is doubly important because the above mentioned errors are based upon it. It purports to quote, but misstates the language and meaning of a paragraph of the final Decree, and we capitalize a statement inserted into the decree as follows :

“The settlement, payments and distribution, and provision for distribution, made pursuant to the order herein of February 27, 1945 [THE PETITION AND STIPULATION FILED ON FEBRUARY 13, 1945, HEREINABOVE SET FORTH] is approved and allowed.”

Now, compare the actual language of the Decree, without inserts or changes, as follows:

“The settlement, payments and distribution, *and provision for distribution*, made pursuant to the order herein of February 27, 1945 and as hereinabove set forth, is approved and allowed.”

(Note, again, that the Decree neither here (R. 128) nor anywhere, mentions the “petition” or the “stipulation” and that the words “hereinabove set forth” do not refer at all to the stipulation or even the order, but do refer to the provisions “above set forth” in the Decree for the “payment and distribution” of the \$10,000.00. Also, that what is “approved and allowed” is not the stipulation or the order but the prior provisions in the Decree as to provisions there made for funds to complete payment of the balance of the \$10,000.00.)

A brief reference to the documents mentioned by the Court will more fully establish the above errors:

Petition of 2-13-45:

This is referred to by the Court as a “stipulation,” and is also more appropriately called a petition (R. 86). It is signed by all the heirs, including the two who were here, by themselves, and the three foreign heirs, by their attorney representative, and also by the two administrators, as such, and by their attorneys.

The quoted portions of the petition are correct. But these things are from the petition; they are not in the order, and the word "only" as used near the end of the opinion is added, it doesn't appear even in the petition. And none of this that is quoted in the opinion appears in any court order, as is erroneously asserted in the last paragraph of the opinion.

All that is said even in the petition on this is that "it has been agreed***subject to the approval of the Court. That the said payment and settlement shall become binding and conclusive as to each***upon the *acceptance* of his portion of the said fund and the execution of the *necessary* instruments to receipt therefor and to assign his said interest and release the said estate." This is a statement that the parties were in agreement that two things would make the settlement binding—(1) "acceptance" of the money, and (2) the "execution of the necessary instruments." And this is a correct statement of what would make a settlement binding, regardless of whether it had been so recited or not, and it certainly doesn't say that the parties who made the stipulation may not themselves change the conditions of delivery or acceptance, or that the court may not approve such changed conditions or make other provisions for distribution, as it did. In fact the petition (R. 87) petitioned, "That the court***shall direct the manner of disbursement of the said fund."

A petition means, and is, only a presentation to the Court of something for the Court's consideration. Plainly, everybody connected with it then believed that

the \$10,000.00 distribution was wanted by the heirs who were and would be eager to get the money, and would naturally be expected to receipt for it. Their attorney presented pages of proof of this (R. 243-260) to the Court. Everybody was convinced of it, although it was intimated that war and revolution conditions could delay delivery.

In the statement quoted above in "Error 1," however, the opinion goes completely off the track. The petition doesn't say anything like this quote from the opinion, and it certainly would have been an impertinence for the parties to have said "that approval***by the court was subject" to something they might try to impose. This is a complete reversal of fact and condition. The petition, exactly to the contrary, stated that what was being proposed was "subject to the approval of the***court."

So this stipulation or petition became an agreement, if at all, only if or to the extent approved by the Court. The Court was also petitioned that "such other orders and conditions be made as to the Court shall seem necessary or appropriate," so that even as to the petition alone the opinion seems to have entirely misconstrued its purport, character and its effect.

We are constrained to wonder why this Court goes into such uncertain matters of interpretation at all, and particularly why it adopts the strained interpretations of appellant's attorneys who were and apparently still are, utter strangers to all the proceedings referred to. Why do we not follow the universal rule that requires

and permits pleadings by the parties of their positions on these things, and proof of the surrounding circumstances, of the information that all parties possessed, and of the purpose, conditions and intent of the parties? *The Order of 2-27-45:*

This order is short and merely needs reading to show the errors as to *it*.

The following positive provisions conclusively disprove the facts and conclusions as stated in the opinion. The "administrators***are authorized and *directed* to pay *and distribute*" to each heir, naming him, the sum the Court approved as "a reasonable amount***considering the properties of the decendent." Then the "balance ***of the said estate" (R.96), after the payment of all debts and expenses, "shall be distributed to Virginia Latsis." Thus, we have a determination of heirship and an order of partition and distribution without any conditions therein at all.

The order does not adopt any of the language of the petition quoted by the opinion here, as to the parties being bound upon executing documents. This language is ignored entirely by the Court and, on the contrary, something entirely different is said as to their being "bound," and this language also recognizes this distribution as being then made, as follows:

"It is further ORDERED that the said agreement and *distribution* shall be binding and conclusive as to each of the said four heirs upon the acceptance by him, or by his heirs at law, of said payments."

This is all. It assumes acceptance of the money, of course, but by no means conditions the order of distribution, even on this, or at all. There is nothing more in the order about anybody being "bound" and this is entirely different from what the opinion says the order contains. Then, and reinforcing the direct and unconditioned order of distribution, the Court leaves the selection of one or the other of two agencies to be used in forwarding the money to the attorney representatives of appellants, and then says that "delivery of checks to such source shall relieve the administrators herein from further responsibility therefor," i.e., for the "distribution" as ordered.

This order is in no way attacked in this proceeding and it stands, and very far from leaving it up to any choice of accepting this distribution or electing a different one, or from making any condition to that effect, the order expressly directs these heirs to furnish receipts and proper acknowledgments. It says, "It is further ORDERED that said heirs shall furnish***a proper receipt," and other documents, or that their attorney shall procure such from them. In other words, this is a plain order that they must give these documents. Thus, there is plainly nothing conditional in this order, nor in the final decree. This is conclusively clear.

If either of them are defective or erroneous, they both are made by a Court of competent and complete jurisdiction and are certainly not void, or subject to this kind of attack.

The Final Decree of 10-9-45:

This solid, valid and clear decree (R. 127), backed by complete jurisdiction and complete orderly probate proceedings is here distorted and misinterpreted out of existence, and illegally ignored.

All this without any pleaded attack on it or any pleaded claim of what the Court has decided as to it. First, it can be truly and directly stated that nothing recited in the opinion as to it approving or even referring to the stipulation is correct. Secondly, this decree nowhere approves the order of Feb. 27, 1945, although it plainly could not possibly have had any effect in making this decree "conditional" if it had.

It is just as plain as it can be that the decree referred to this former order only to cover two matters relating to funds; (1) to approve the distribution as so far made or tendered (R. 127, par 4) and, (2) to approve the prior provisions whereby the widow had provided and deposited the funds to complete this \$10,000.00 distribution (R. 127, par 6). Thus it was that the "checks" were made available to the attorney representative of the heirs and the "sources" referred to, so as to relieve the administrators, and insure complete distribution.

Thus paragraph 6 of the decree recites the fact of this deposit for this purpose. And so the decree gives recognition to the facts, (1) that a distribution previously ordered had already been partially completed, and, (2) that funds had been securely placed to finish it.

This is exactly what this Court in *Tiller v. Norton*, 253 P.2d 618 at 620, indicated should be done under

these circumstances and when the final decree was entered.

And the actual paragraph of this decree quoted in part, and added to and changed by the opinion, didn't refer to the February order as something "hereinabove set forth," and it wasn't; and it didn't refer to that order as being "approved and allowed," and it wasn't. It would have been utterly foolish for that Court to be then approving and allowing an order made and entered seven or eight months before, and, of course, it didn't purport to do this.

But plainly, what is referred to as "hereinabove set forth" are the "payments and distribution" already made and "provision for distribution" as in Paragraph 6 thereinabove recited, and in fact it was this that the decree said "is approved and allowed." This was appropriate and proper to relieve the administrators "from further responsibility," so that their discharge could follow therein, as it did.

The appellants never alleged that this decree was conditional and the Court appears to recognize that such a final decree to be conditional must be plainly made so by its own terms. Otherwise no reliance could be placed on Court decrees.

And so the Court, following utterly misleading statements in respondents' briefs, appeared to think there was such language in this decree. There is not only an utter absence of any such language but the whole decree shows the plain intent that it would wind up the probate proceeding which it said "is now (R. 128)

in condition to be closed." Whatever defects may be claimed for this final judgment its finality is certainly not conditioned on anything.

CONCLUSION

It is respectfully submitted, that for these reasons, a rehearing should be granted herein.

Because of the numerous complications involved, the case could not be adequately argued to the Court in the time available and what little was presented doubtless was largely lost track of before the decision. It is suggested that the case should be reargued, including the matters above presented, so that the Court may have whatever help the parties may be able to contribute.

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