

1959

# Nathan G. Chugg v. Dale Chugg and La Beta Chugg : Brief of Appellant

Utah Supreme Court

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Arthur Woolley; Ira A. Huggins; Attorneys for Plaintiff and Appellant;

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IN THE SUPREME COURT

of the  
STATE OF UTAH

FILED

DEC 16 1959

NATHAN G. CHUGG, *Incompetent*,

Clerk, Supreme Court, Utah

By ORLEY J. CHUGG, *the Guardian of his Estate*,

*Plaintiff and Appellant*,

vs.

DALE CHUGG and LA RETA CHUGG, *his wife*,

*Defendants and Respondents.*

Appellant's Brief

ARTHUR WOOLLEY,

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*Appellant.*

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### Point:

The Option, Deeds and Bill of Sale were obtained by undue influence and fraud, or were signed by a grantor so incompetent that he could not and did not realize the impact of his actions, or both.

## AUTHORITIES AND CASES CITED

Deeds—16 Am. Jur. Page 462—Sec. 40.....	42
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**IN THE SUPREME COURT**  
**of the**  
**STATE OF UTAH**

NATHAN G. CHUGG, *Incompetent,*

By ORLEY J. CHUGG, *the Guardian of his Estate,*  
*Plaintiff and Appellant,*

vs.

DALE CHUGG and LA RETA CHUGG, *his wife,*  
*Defendants and Respondents.*

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**PRELIMINARY STATEMENT**

Plaintiff appeals from the judgment and decree of the Trial Court in these, that the Court erred in these:

1. In finding that Nathan G. Chugg was mentally and legally competent to sign the Option, the Deeds and the Bill of Sale, or any of them.
2. In finding the Option valid.
3. In finding that Nathan G. Chugg executed and delivered to defendant a valid Deed and Bill of Sale.
4. In finding that Nathan G. Chugg executed and delivered to defendants, for value, or at all, a valid deed on June 24, 1957, or at any other time.
5. In finding that defendants did not use fraud, undue influence, trickery, or take advantage of confidence reposed in them by Nathan G. Chugg in obtaining said or any of said instruments.

**6. In making conclusions of law, viz:**

(1) That the Complaint of the plaintiff be dismissed, no cause for action.

(2) That the Option of January 31, 1957, the Deed and Bill of Sale of June 24, 1957, and the Deed of July 17, 1957, are, and that either of them is good or valid or binding, and that any interest that Nathan G. Chugg had in any of the property described in said instruments, either legal or equitable, passed to Dale J. Chugg or La Reta Chugg by said instruments.

**7. In ordering, adjudging and decreeing—**

(a) That plaintiff's Complaint be dismissed and dismissing the same, "No Cause for Action".

(b) That defendant, Dale J. Chugg, is the owner of any and all interest, legal or equitable, which Nathan G. Chugg had in the property described in the Option dated the 31st day of January, 1957, executed by Nathan G. Chugg and covering the property described in said subparagraph of the Judgment.

(c) That defendant, Dale J. Chugg, is the owner of any and all interest, legal or equitable, which Nathan G. Chugg had in any and all of the property referred to in paragraphs B and C of said Decree.

(d) In ordering, adjudging and decreeing that said Option, Bill of Sale and Deeds, or any of them, are good, valid and binding.

(e) In adjudging that plaintiff pay his costs.

**The record on appeal is in five parts, viz:**

- 1. The Court's file with index.**
- 2. Transcript of testimony in two volumes.**

3. Exhibits of Plaintiff, with index, (in separate envelope).
4. Exhibits of Defendant, with index, (in separate envelope).
5. The Clerk's Exhibit Sheet.

## STATEMENT OF FACTS

This Cause was tried before Judge Charles G. Cowley, without a jury, in the District Court of Weber County.

The issues joined and tried were as to the mental competency of Nathan G. Chugg to make a valid option and deed conveying real estate, and the practise of fraud, undue influence and trickery upon him.

The Court found for the defendant upon both issues.

### The Parties

Nathan G. Chugg was upwards of 63 years of age at the time of these transactions. He had never married and has no issue.

He operated a dairy farm at Farr West in Weber County, Utah.

The land comprising the farm is in four tracts totaling 72.90 acres, more or less.

Title to the First Tract, (described in the Complaint) containing 9.97 acres, (less 0.54 acre conveyed away) was conveyed to Nathan G. Chugg by Zenia V. Chugg, his mother. The deed reserved a life estate in the grantor, Zenia V. Chugg. It has never been released and she is in being. (Tr. 127)

The dwelling house and dairy barn and other improvements are on this tract.

The Second Tract, containing 10.03 acres was likewise deeded by Zenia V. Chugg to Nathan G. Chugg, with a life estate reserved to Zenia V. Chugg. (Tr. 127).

Title to the Third Tract, containing 41.9 acres was in Nathan G. Chugg. (Tr. 128)

Title to the Fourth Tract, containing 11 acres was and is vested in Zenia V. Chugg. (Tr. 130)

The mother, Zenia V. Chugg, who is 92 years old, has lived there, continuously for upwards of 75 years, except for a brief interval. The mother moved out of the house when Dale Chugg was hired by Nathan, and moved in with his family.

The furniture and furnishings in the house belong to the mother.

(When it was discovered that Dale Chugg claimed ownership of the home and land, a separate suit by Zenia V. Chugg against Dale Chugg for possession of these premises and the furnishings and to quiet her title was commenced. The suit has gone to judgment in favor of Zenia V. Chugg.)

On July 3, 1956, Nathan G. Chugg made his last will and testament. Exhibit ..... It was prepared by his attorney, Ira A. Huggins, and witnessed by Rita Stoddard and D. Gordon Huggins. This instrument provides:

SECOND: I hereby declare that I am an unmarried man; that my mother, Mrs. Zenia V. Chugg, is still living and is of the age of 90 years, and that I have the following brothers and sisters: Orley J. Chugg, Myrtle C. Leatham, Ray R. Chugg, Mable C. Powelson, Maude C. Foster, Vera C. Payton and Iva C. Bown; that my mother and I have resided together at my farm in Farr West, Weber County, Utah, for many years; she has been very kind and considerate to me and I have done my best to make

life pleasant for her, she having been a widow for many years, and it is my desire, in the event she survives me, to make provision for her of my own volition and in keeping therewith I hereby provide that my executor, hereinafter named, shall pay to her from my estate the sum of \$200.00 or so much thereof as may be necessary to provide for her care and support during the remainder of her life time, said sum payable monthly.

THIRD: It is my desire to remember each of my brothers and sisters equally in the distribution of my estate since I love each of them equally and I do not desire to favor either or any of them over either or any of the others; therefore, all of the rest, residue and remainder of my estate, both real, personal and mixed and wheresoever located, of which I shall die possessed or in which I shall have any interest, I hereby give, devise and bequeath in equal shares, share and share alike, unto my brothers and sisters, as follows, to-wit: Orley J. Chugg, Myrtle C. Leatham, Ray R. Chugg, Mable C. Powellson, Maude C. Foster, Vera C. Payton and Iva C. Bown, provided that in the event that either or any of my said brothers or sisters shall precede me in death leaving legal issue him, her or them surviving, then and in that event I hereby provide that such legal issue shall take the share in equal shares, share and share alike, that their father or mother would have received under the terms hereof had such parent survived me.

FOURTH: I hereby further declare that I have spent the greater part of my life in the acquisition and development of a farm with the necessary buildings and improvements, at Farr West, in Weber County, Utah, and a herd of purebred Jersey cattle, the individual members of which I have carefully selected and obtained through careful breeding over a long period of years, and in my opinion said farm with the buildings and improvements and the herd of cattle aforesaid, should remain intact as a complete operating unit and I, therefore, provide that all of said property shall



be sold by my executor as an operating unit and the same kept intact and the proceeds therefrom disposed of as hereinabove specifically set forth.

The oldest brother, Orley J. Chugg is named executor. In the event he should not qualify, Maude C. Foster, a sister, is named as executrix, to serve without bond.

Dale Chugg, the defendant, (Tr. 391) was ..... years of age, a second cousin of Nathan G. Chugg, and married, with one child, and his wife expecting.

He was employed by Nathan G. Chugg to help on the farm, and then after several months, the family took the mother, Zenia Chugg away from her home, and Dale and his family moved in with Nathan.

Orley J. Chugg took the mother on a trip to California about January 22, 1957. Mrs. Foster came and helped Dale's wife clean up the house. (Tr. 404)

Two or three days after they moved in, "Nate" was "not feeling well", so Dale took him to see Doctor Moncrief. (Tr. 404)

(Dr. Moncrief was at the same time Dale's physician, caring for his wife through birth of a child.)

The doctor directed that he be taken to the hospital. (Tr. 405)

He was admitted to St. Benedict's Hospital January 29, 1957, at 2:45 P.M. This was a "Re-admit". (St. Benedict's Summary Sheet).

## HOW THE OPTION WAS SECURED

The patient bethought himself of his income tax, and returned home to get his papers. His income tax man was a Mr. Erickson, with offices in the Eccles Building. He had a son in the same profession in the same suite.

Dale Chugg testified—(Tr. 405)—“We (Dale and Nathan) went up there and, of course, Nate took care of his income tax matters and told Mr. Erickson to fix up an instrument so Dale would get the farm to protect him.” (Tr. 405)

And further Dale Chugg testified—(Tr. 406)—“Well Mr. Erickson told him it was a little complicated for him, and Nate told him, Helmer said it would have to be done by a lawyer. Nate said, ‘I’ve got to go to the hospital right now.’ Mr. Erickson said ‘I will get it taken care of and we will bring it up to the hospital for you to sign.’ Nate said, ‘That will be O. K.’ \* \* \* \* “Yes, Helmer asked him how he wanted it fixed up, or what was the price. He said ‘Just anything to make it legal for Dale.’” (Tr. 407)

Dale took him to the hospital. He was admitted to St. Benedicts Hospital in Ogden on January 29, 1957. (St. Benedicts Chart—Plaintiff’s Exhibit “B”).

Dale Chugg testified he returned to the Erickson office. (Tr. 407)

Attorneys Dale Browning and George B. Handy had their offices in the Eccles Building. Mr. Browning was Erickson’s attorney. He was not in, or was busy, and Dale Chugg and Erickson went to Handy’s office.

Dale Chugg further testified:

“Mr. Erickson’s boy, Elgreed \* \* \* \* told Mr. Handy *to fix up something that would protect me and wanted me to have the farm and then the instrument; I think Mr. Handy drew up an option.*”

He testified that “After it was drawn up, well, Mr. Handy gave it to me and I went up and showed it to Nate and read it to him. \* \* \* \*

"He just said, that would be fine. \* \* \* \* that would protect me." (Tr. 408)

Dale Chugg further testified that "The next day Mr. Handy and myself and his brother, (Donald Handy) went up and Nate signed the option." (Tr. 408)

It further appears, (Tr. 408-409) that at this time the spaces for the consideration, for the option, and the price to be paid for the property were both *blank*.

"Mr. Handy said, 'What do you want, a \$1.00, a \$1,000.00 or \$10.00?' He said, 'Well, make it a \$1,000.00 on the option'." (Tr. 408)

He testified that no money was transferred at that time. (Tr. 408). On further question by his counsel, he testified:

"For consideration, I think I gave him \$10.00." (Tr. 409)

## THE INSTRUMENTS OF TITLE

Four instruments of Title are produced from defendant, viz:

(1) Def's Ex. 6—Option bearing date January 31, 1957, acknowledged before George B. Handy.

(2) Def's Ex. 4—Warranty Deed bearing date *blank* day of February, 1957. Acknowledged before George B. Handy on *blank* day of February, 1957.

(3) Def's Ex. 5—Bill of Sale, written for signature "this ..... day of February, 1957"—"24" written in blank for day and "February" scratched out and "June" written under.

(4) Def's Ex. 3—Warranty Deed bearing date July 17, 1957, witnessed by La Reta Chugg and George Handy,

and acknowledged before George B. Handy, Notary, on July 17, 1957.

They were all prepared by Mr. Handy, acting as attorney for Dale Chugg.

A glance at the typewriting of these instruments permits of a conclusion that the option, (Def's Ex. 6) and the Deed of July 17, 1957, (Def's Ex. 3) were written upon the same typewriter and, with the same ribbon; whereas it strikes the eye that the Warranty Deed bearing date the .....day of February, 1957, (Def's Ex. 4), and the Bill of Sale typed for "this ..... day of February, 1957", (Def's Ex. 5) were written upon the same typewriter as Exhibits 3 and 6, but with a new ribbon!

The testimony of Mr. Handy, touching the preparation and execution of the four instruments, in the light of what the eye sees, merits this reference. (Tr. 650-669).

Further the "Option" recites that it is given "subject to the life estate in favor of Zenia V. Chugg", but neither the Warranty Deed of ".....day of February, 1957", nor the Warranty Deed of "17th day of July, 1957" contained any such reservation or limitation.

All of the signing—the Option, the Bill of Sale and *two* Warranty Deeds (to the same premises) were all composed by Mr. Handy, as attorney for Dale Chugg, the beneficiary of the instruments.

The "consideration" for the Option was \$10.00, the price for the real estate was \$1,000.00. The price for the personal property— "60 head of Registered Jersey Cattle, (35 cows, 14 heifers, 1 bull, 10 calves)" and a long list of farm equipments and "miscellaneous furniture", (apparently belonging to mother Chugg) and to be sure nothing was left out Mr. Handy wrote into this instrument these words,

*"In fact, everything I possess of whatsoever name or nature belonging to me and now in my possession at my farms."*

(Def's Ex. 4)

under the Bill of Sale was "One Dollar and the other valuable consideration, the receipt of which is hereby acknowledged."

#### AS TO THE COMPETENCY OF NATHAN G. CHUGG

Physicians, specializing in nervous and mental diseases and hospital charts called by the Plaintiff:

SISTER DAVIDANNE, Medical Records' Librarian at St. Benedicts Hospital in Ogden, produced and identified the hospital record or chart of Nathan G. Chugg for January 27, 1957 to June 23, 1957. Exhibit "B". (Tr. 121-125)

DOCTOR WILLIAM D. O'GORMAN of Ogden, Utah, a physician specializing in nervous and mental diseases, called by the plaintiff, testified: (Tr. 162-168 Direct; Tr. 168-180 Cross; Tr. 180-181 Re-direct.)

Licensed in Montana, Nebraska, New Jersey and Utah, and by the American Board of Neurology and Psychiatry; this specialty in Ogden and vicinity for ten years.

He made an examination and study of the chart and clinical record of Nathan G. Chugg in the St. Benedicts Hospital, and particularly on or about the 31st day of January, 1957.

From this examination he formed an opinion of the mental capacity of the patient named, and testified:

"A. The conclusion that I would draw would be first of all from the clinical history as presented, the laboratory findings, the nurses' reports, that are written daily, in my opinion when Mr. Chugg was admitted to the St. Benedict Hospital on January 29th, he was a very sick person suffering from

a uremia secondary to the obstruction in the kidneys first from a kidney disturbance primarily a nephrosclerosis and secondly from an obstructive disturbance from an enlarged prostate. Laboratory results that were routine in the hospital on his admission revealed a noticeable uremia as well as an extremely high blood ureanitrogen which is the measurement of the accumulation of toxic products in the blood. The nurses' notes record that he was involuntary bladder and bowels, irritable, lethargic, dozing, did not converse, and appeared unable to comprehend. As to his mental status at that time I would think that he was quite a disturbed person and would agree, in view of the laboratory findings, and the observation of those who were noticing him, that he was quite a mentally disturbed person as well. A neurological examination revealed one important finding at the time and that was the fact that at the time his right pupil was smaller than the left and reacted sluggishly. That is not an uncommon finding in severe toxic reactions of the central nervous system, or the possibility too of having had a vascular disturbance in the brain which is a frequent finding too in uremia. In following the case from a laboratory point of view, there was persistence of severe enema in spite of transfusions that he had, the blood chemistry was quite markedly disturbed. His hospital course was slow and indicated a considerable degree of disturbance and that persisted until shortly before he was discharged in February and when he was readmitted later again, he was very disturbed and then he became a little bit more alert before he was discharged the second time in June.

Q. I show you what I have had marked plaintiff's exhibit E, an instrument called "option" apparently having been signed by Nathan Chugg January 31, 1957. An examination of this instrument indicates that for a dollar and other valuable consideration which included one thousand dollars, an option for ten years was given from the date of this option to the purchaser, one Dale J. Chugg, of various tracts of land described particularly including

all water rights and other items, and subject to a life estate of *Zena Y. Chugg* with a recital, inasmuch as there are other considerations for the sale of the above-said property other than the stated sale price, the stated sale price is not intended to be adequate or to represent the true value of said property. State whether or not you have an opinion and have formed an opinion from that record as to whether or not this man at that time was capable of understanding the nature and significance of that document.

A. In my opinion, I do not think he would be able to understand the nature and significance of a document as complicated as this seems to be, particularly at that time where there was such a disturbance that was systemic as well as dealing with the central nervous system.

Q. There has been produced here in evidence a clinical record of the Veterans Hospital both the 12th Street and Fort Douglas concerning this same person Nathan G. Chugg. I show it to you as it has been produced here and marked plaintiff's exhibit B, have you had occasion to examine this chart?

A. Yes, I have.

Q. And have you made an analysis of it similar to what you have from the other to inform yourself as to whether or not you can form an opinion and do have an opinion as to the mental capacity of this same person on the 17th day of July 1957?

A. Yes.

Q. Will you state to the court what you have considered, what your opinion is?

A. The records of the V. A. Hospital reveal Mr. Chugg to have continued with his disturbance of uremia, the same diagnosis applied, that of a hypertrophied prostate nephrosclerosis. The nurses' notes indicated he persisted in being apathetic, lethargic, involuntary, these reactions would fluctuate somewhat but about July which was the last record of the nurse dealing with psychiatric and

neurological things, it was expressed that he was very depressed. A laboratory examination of blood chemistry on the 15th of July 1957 revealed an elevated blood urea nitrogen of 54. In my opinion, Mr. Chugg's condition continued to be as severe, the uremia persisted and I would continue to think that he would not be in a position to know the nature of what he was doing entirely in detail during that time. From the record there were indications of a progressive deterioration of the brain from the time he was admitted to the time he was released from the 12th Street Hospital where he then went to the psychiatric hospital at Fort Douglas and was put on a closed section because his behaviour was such that they couldn't handle him on an open service. In my opinion this continues to be a severe toxic brain syndrome.

Q. I call your attention to Plaintiff's exhibit C which is a form of warranty deed by Nathan G. Chugg to Dale J. Chugg and reciting a consideration of one dollar and describing various tracts of land and executed on July 17, 1957.

From your examination of the record, have you an opinion as to whether or not on this day that this man was capable mentally of understanding the nature of this transaction, and competent to make this conveyance?

A. In my opinion, I don't think he was competent to know the nature of a complicated document like that, on the date that you mention, the 17th of July.

Q. 1957?

A. 1957.

---

And on cross examination Dr. O'Gorman testified:

Q. Do you have any opinion as to how far back this mental degeneration goes?

A. I would make, judging again from my observation, not necessarily this record that is pre-



sented here, there is one previous to this, I think he would show some sign of this uremic disorder in 1956.

Q. This uremic disorder. That effects his kidneys, does it?

A. I think uremia is secondary to the disturbance, the urinary system, the kidneys and obstruction in the urinary tract.

Q. That has nothing to do with your strokes?

A. In uremia there may be vascular accidents.

Q. That does not indicate there was, though, does it, though he did have uremic trouble?

A. No.

Q. And these vascular accidents you are talking about, they don't effect all people the same way, do they?

A. No.

And he testified that from a record of this patient covering a prior period in the hospital, that some sign of this uremic disorder would show in 1956.

And that this disorder does effect the mind. "It may not be evident to the average person, but in some of the fine discriminations you can see it." "I think it does affect the mind." (Tr. 174)

"He was a very disturbed person, physically and mentally."

"On the 29th of January, 1957, the patient was given secanol. That would make him lethargic."

He gave further emphasis to his opinion upon re-cross examination. (Tr. 179-181)

He also examined the patient's chart from the Veterans Hospital and gave opinion upon that record that the patient was incompetent at the time of the signing of the deed there.

## PLAINTIFF'S WITNESSES

Orley J. Chugg	5-18; 39-41
Ray R. Chugg	207-219; 696-701
Zenia Chugg	By Deposition Page 755
Sister Davidanne	121-125
James D. Dockstader	75-89
Frank McEntire	89-94; 100-101
Henry F. Bartolussi	103; 158-161
George W. Leatham	110-115
Maude C. Foster	42-58; 688-696
Wildon A. Hales	131-134
Si Hickox	139-144
Ira A. Huggins	226-230
Dr. Victor Kassel	723-727; 744-746
Myrtle C. Leatham	192-207
Dr. Wm. D. O'Gorman	162-168; 168-180; 180-181
Ephraim Olson	181-185
Mable C. Powelson	144-149
Alberts S. Vloandear, Abstracter	126

ORLEY J. CHUGG, (Tr. 5—Direct; 18—Cross; 39—Redirect; 41—Recross) was appointed guardian of Nathan G. Chugg and as such brings the suit. He is 71 years old, the oldest of the family and a resident of Ogden. He owns and operates a picture and art store.

The "Option"; (Def's Ex. 6) was signed by Nathan G. Chugg, January 31, 1957, and notarized by George B. Handy.)

At about February 3, 1957, a checking account was opened at Utah State Bank of Ogden in the joint names

of Nathan G. Chugg and Orley J. Chugg. Orley made a trip to California. He had no knowledge of or concerning the making of the "Option" of January 31, 1957, (Def's Ex. 6), nor of the Deeds or Bill of Sale. Nathan signed checks on the account while Orley was away.

A check, (Def's Ex. 1) dated March 11, 1957, in the handwriting of Dale Chugg, except the signature, which appears to be by Nathan G. Chugg, is to Dale Chugg, \$175.00—the amount of his monthly wage, paid through the joint account.

Another check, on April 15, 1957, in like handwriting and amount by Nathan G. Chugg to Dale Chugg in the sum of \$175.00.

Again, May 11, 1957, in like handwriting, signed by Nathan G. Chugg is check to Dale Chugg for \$175.00. Obviously paid as wages earned by Dale under employment by Nathan.

Defendant's Exhibit 4 is a Deed by Nathan G. Chugg to Dale Chugg to the same premises as recorded in the Option—the date is typed ".....day of February, 1957," and the acknowledgment by George B. Handy is likewise typed "on the.....day of February, 1957."

A Bill of Sale, (Def's Ex. 5)—from appearance made on the same typewriter at the same time as the next proceeding paper, (Def's Ex. 4)—was written out for the .....day of February, 1957. By a different ink and pen and hand the blank for the day of the month was written in "24" and "February" typed in was crossed out and "June" written by hand under February.

The list of items recited in this instrument is imposing and includes a kitchen stove, refrigerator, table, cabinet, etc., etc., and "miscellaneous furniture", and not to miss anything a recital: *"In fact, everything I possess*

*of whatsoever name or nature belonging to me and now in my possession at my farms."* (Ex. 5)

George B. Handy, the attorney for Dale Chugg, testified as a witness that this Warranty Deed, (Def's Ex. 4) was not used. However, it is carried into the Findings of Fact prepared by Mr. Handy; but the reference is in error, viz: the Bill of Sale (Def's Ex. 5) was dated (by scratching February) "this 24 day of June, 1957."

The Warranty Deed (Def's Ex. 4) was not re-dated.

HENRY F. BARTOLUSSI, Assistant Register at the Veterans Administration Hospital in Salt Lake City—(Tr. 103)—Testifies Nathan G. Chugg was admitted to the Twelfth Avenue Hospital June 25, 1957 and transferred to the Fort Douglas Hospital September 19, 1957, and produced his chart.

Testified that the first operation of the patient shown on the chart was on June 27, 1957. The operating doctor was a Doctor Lloyd.

He quoted from the chart a statement by Doctor A. C. Wilson as of 7-12-57: —

"Particularly doubtful if mental and motor recovery will ever occur."

Objection to further testimony from the chart was sustained by the Court.

Tr. 723.

DOCTOR VICTOR KASSEL, 37 years of age, residing in Salt Lake City, specializing in geriatrics—the branch of medicine concerned with the care of the aged; engaged in private practice and a part time employee of the Veterans Hospital at Fort Douglas; in charge of the geriatric unit, testified for plaintiff, viz:

Nathan G. Chugg has been "his responsibility" since

October 22, 1957. (Tr. 724)

The complete Veterans Hospital Chart of the patient was before him.

He testified—(Tr. 724)

“As long as I have had him, he has been impaired mentally \* \* \* also \* \* \* physically.”

“He was at the 12th Avenue branch of the hospital until September 19, when they felt his acute medical needs were completely handled, and he required rehabilitation and referred him to the physical medical section at Fort Douglas, and he remained there until they transferred him to me for further care. During this time or the period of time I have had him he has been obviously impaired mentally.” (Tr. 725)

“ \* \* \* He has had no surgery of the brain. He has had apparent destruction of the brain as a result of what is felt to be a stroke following his surgery in Ogden.” (Tr. 726)

“ \* \* \* In April, 1957 the patient had a T UR which is a trans urethral resection, and two weeks later he suffered a bout of coma lasting seven days, from which the patient recovered only partially, *and that he is now poorly oriented at best.* (Tr. 726)

Q. “What is your opinion as to whether or not he will improve in his mental capacity or will he remain the same?”

A. “He will remain permanently impaired.”

#### LAY WITNESSES

Lay witnesses testified, touching the competency of Nathan G. Chugg and the execution of the Instruments of Title.

Called by the Plaintiff:

JAMES D. DOCKSTADER, (Tr. 75-89) a patient in

the Veterans Hospital at 12th Street, saw the signing of the Deed, (Defendant's Exhibit "3") on July 17, 1957.

He testified that at the time of the signing:

"the O. D., Doctor Neeley, was in the room—to relieve me of some distress—'catherizing me' at the foot of the bed. Dale Chugg and Mr. Handy came in. \* \* \* \*

"Mr. Handy asked Dr. Neeley to witness a signing, but the doctor did not respond.

A paper, "like a legal document that you would make a deed on" was put before Chugg.

He testified that in his opinion, Nathan Chugg was not capable of understanding the nature of a business transaction, to-wit: signing a deed conveying all of his property to someone else.

FRANK McENTIRE, (Tr. 89-94; 100-101) of Ogden—occupation heavy duty equipment operator for the Road Commission.

Mrs. Chugg and his mother are sisters.

He visited Nathan in Twelfth Street Hospital three times, during July of 1957, or thereabouts, on Sunday each time.

"He mumbled and drooled, very much incapacitated. \* \* \* Twice we had him up in a chair and he would be pitched forward with his hands down to his side, drooling at the mouth. His eyes were bloodshot and maybe he would raise up a minute and then mumble something \* \* \* that was incoherent. \* \* \* "

"I woulddn't say he was capable of understanding and knowing and really carrying on a business transaction involving the sale of his farm and property." (Tr. 94)

GEORGE W. LEATHAM, (Tr. 110-115) a brother-in-

law of Nathan G. Chugg, testified he and his wife, (a sister to Nathan) went to see him at the St. Benedicts Hospital.

“As soon as we heard he was in the hospital  
\* \* \* \* We came right up. It was January 30 or 31, 1957. He was just lying there, that’s all and staring. He was in no condition to talk. He was a very sick man.”

\* \* \* \* “My wife set there and *hold* of his hand.”  
“We couldn’t commune with him at all. He seemed as though he heard us but he just laid there and stared *with his bloodshot eyes*. He just laid there. That was all. *I couldn’t tell any muttering that he made.*” (Tr. 172)

\* \* \* \* “He was so sick he couldn’t conduct any type of business.” (Tr. 182)

Leatham visited Nathan on July 18th, and met Mr. Dockstader who told him about the signing, also the doctor. (Tr. 116)

He “came right back to Ogden and got Orley and we went over to the records and found that there had been a deed recorded.”

MAUDE C. FOSTER, (Tr. 42-58; 688-696) 54, of Ogden Utah, a sister to Nathan G. Chugg.

Nathan went into the Saint Benedicts Hospital January 29, 1957, and left February 24.

He had “collapsed” at home. (Tr. 47) Dr. Moncrief took him to the hospital.

He went again May 27, 1957, to June 23, 1957.

About June 25, 1957, he went to the Veterans Hospital in Salt Lake City.

She had never learned or heard about the signing of any papers pertaining to title. It had never been discussed.

While they were building him up he could hardly talk above a whisper. He was too weak to think of anything about business.

Dr. Moncrief put a tube in his side to draw out the poison.

He wore a tube in his side after he left the hospital.

He was returned to the hospital May 27, to "remove the tube and have an operation in his prostate gland." He was very ill. They didn't think he would live.

They took him home. Dale was going to take care of him. He called her the next morning and told her something would have to be done "about Nate. I can't take care of him." (Tr. 52)

She called Dr. Moncrief and asked him to help them get him to the Veterans Hospital.

Lee Foster, (her son) and Dale took him down.  
(Tr. 52 - a)

When home, "He could sit up for a little while and finally fall forward or over to the side. \* \* \* \* it was a terrible ordeal—he couldn't walk."

They took him to the Veterans Hospital. There wasn't a week she did not visit him there.

"He was not coherent." (Tr. 54)

Nate denied signing the farm away. (Tr. 54)

She testified that Dr. Moncrief said he was a very sick man when he went to the hospital, (January 29, 1957) that "he was wandering. He didn't even know where he was." (Tr. 62)

WILDON A. HALES, (Tr. 131) of Ogden, a carpenter and farmer, a witness for plaintiff, testified that he became acquainted with Nathan Chugg about the time he



bought the farm, December of 1955—was interested in buying the Chugg farm.

On January of 1957 John Chugg told him that Dale was trying to buy Nate's farm for \$20,000.00 He called Nate and asked him if he was going to sell it. Nathan told him to come back in a week or ten days. He didn't know what he did want to do with it at that time. He called Nathan a few days later and Nathan said:

"I am so sick. I don't know what I am doing or what I want to do."

SI HICKOX, (Tr. 139-144) of Ogden, Utah.

He went to the Twelfth Avenue Veterans Hospital on 9th of July and got out on the 16th of September.

"Nathan G. Chugg was in the end corner next bed to me in the ward." (Tr. 140)

"Our beds were about four feet apart."

He saw Chugg on the 16th of September, 1957. They had just got him back from the operating room a day or two before.

"He was just lying there like a dead man to me." (Tr. 142)

He wasn't able to take care of himself; he wasn't able to feed himself; he wasn't able to get out of the bed. They had rails around the bed to hold him in there, to keep him from falling out. The man wouldn't talk—only to the doctor.

"I couldn't understand what he would say. it would be just kind of a mumble. \* \* They were getting him ready to go to the operating room when I left." (Tr. 143)

IRA A. HUGGINS, attorney of Ogden, Utah, testified that he had known Nathan G. Chugg for twenty-five years

and had transacted legal business for him; been out to his farm looking over water rights, and had been friendly with the members of the family, and they had visited with him on occasions socially, at weddings and anniversaries and that sort of thing.

On or about July 5, 1956, the witness saw Nathan G. Chugg and drew a will for him. (Ex. F—copy.)

If the witness had not thought Chugg had testamentary capacity to make the decision about his property he would not have drawn the will.

MYRTLE C. LEATHAM, (Tr. 192-207) a sister to Nathan G. Chugg, a resident of Kaysville.

She visited Nathan while he was in the St. Benedicts Hospital, before he was operated on.

“He was in a most pitiful condition. He couldn’t talk, and you didn’t even know whether he knew us or anything. \* \* \* he tried to say something which was awful hard to even talk.” (Tr. 193)

That was before the tube was put in.

She would see him every chance she had.

Patient just didn’t talk. He used to sometimes try to. You couldn’t understand him. His arms were all bruised up where they were feeding him. He had a drawing tube.

“He would cry and he was in a most pitiful condition \* \* \* it seemed impossible that he could ever live. \* \* \* his eyes looked like they would pop out of his head and they were all bloodshot.” (Tr. 194)

He looks a hundred per cent better since they took him up to Fort Douglas.

\* \* \* “Anyone who saw him at St. Benedicts would know that he didn’t have ability to do any

business whatsoever." (Tr. 197)

At the 12th Street hospital she "had to hold his head up to help him hold his glass to drink"—a cool health drink. (Tr. 198)

You just couldn't understand his talk.

"We heard about him signing some papers 'through the grapevine'."

"It was just as impossible as could be for him to understand the matter of selling his farm." (Tr. 199)

He was never able to carry on a logical conversation while at St. Benedicts. (Tr. 206)

EPHRAIM OLSON, (Tr. 181-185) 64, of Ogden, Utah, retired "tool monkey" at the arsenal.

A veteran, he was in the 12th Avenue Veterans Hospital for surgery—September 30—

"And I came back the third time."

He was in the same ward with Nathan G. Chugg.

\* \* \* "He would lay there or sometimes they would raise his head and he would just sit there and stare. \* \* \* You couldn't get heads or tails to what he said." (Tr. 184)

They would bring his food and "he would sit there staring in space."

MABEL C. POWELSON, (Tr. 144-149) Salt Lake City, sister of Nathan G. Chugg, a teacher.

She visited Nathan about once a week.

He cried a good deal. You couldn't carry on a conversation with him.

He definitely was not mentally capable of understanding business and business transactions, particularly for the

sale of his property, his interest in land on or about July 17, 1957.

#### DEFENDANT'S WITNESSES

Ward Barker	341-344
A. W. Cheney	294-299
Ella Chugg	345-351
Dale Chugg	391-513
John A. Chugg	260-288
La Reta Chugg	357-375
James A. Davis	237-247
Ernest R. Ekins	624
Delbert Erickson	626-630
H. E. Erickson	635-646; 648-669
Theron Gregg	309-318
J. Donald Handy	491-495
George B. Handy	650-669
Nolan Harris	678-680
Charles Jones	330-332
Hyrum Austin Marble	336-338-340
Earl Paul	505-508
A. C. Richardson	600-612-643
Edgar S. Smoot	481-488
Joseph W. Turner	301-307
Harvey P. Wheelwright	613-617
Dr. Irvn H. Moncrief	445-461

#### CALLED BY THE DEFENDANT

WARD BARKER, (Tr. 341-4) operates a trout spring farm at North Ogden.

About the middle of April, 1957, Nate Chugg and Dale Chugg came to the farm.

Q. Was there anything to indicate to you that he didn't have full possession of his faculties?

A. No, there wasn't. He was able to catch fish. \* \* \* \*

A. W. CHENEY of Soda Springs, Idaho, about the middle of May, 1957, visited Nathan G. Chugg at the farm, seeking a listing on his farm.

Testified Mr. Chugg told him the farm was not for sale.

“because he had signed an option with Dale that if Dale would take care of the place and him, take care of the livestock, that he was going to let him have it for the price of \$1,000.00. He said that would take care of his burial expenses.”

Asked by the witness what he thought the place was worth if it were for sale, he quoted that \* \* \*

“I would have to have \$155,000.00. That price would include livestock, the machinery and everything.”

(Tr. 345)

ELLA CHUGG—mother of Dale Chugg—visited Nathan G. Chugg at St. Benedicts Hospital about the middle of January of 1957. He talked about the farm and the cows. He wanted to go home. She thought he was “just fine”—“mentally competent”.

On July 23, while the posse was performing in Salt Lake City, she visited him at the 12th Street Veterans Hospital in the afternoon. He gave opinion he was mentally competent.

“I knew he was sick and that he had something the matter with his bladder and kidneys and he was really sick.” (Tr. 356)

DALE CHUGG, the defendant, (Tr. 391-513) on direct he was asked by his counsel:

Q. \* \* \* In your opinion, was he mentally competent at that time?

A. Well, he must have been or he couldn't have done what he did.

Q. In your opinion was he?

A. Certainly. (Tr. 406)

He testified that after Nathan was operated on \* \* \*

“Something happened to him. \* \* \* He went into a coma for about seven or eight days. \* \* \* He was released about two weeks later. \* \* \* ”

He, the patient “came back for three or four days, just prior to going to the Veterans Hospital. A deed had been made up prior and a deed and a bill of sale at the time the option was signed.”

He was awfully weak.

Mr. Handy brought it out and it was signed, (Def’s Ex. 4)—(Tr. 419.)

JOHN CHUGG, (Tr. 260), father to Dale Chugg, testified that the last of January or the first of February, he visited Nathan G. Chugg at the St. Benedicts Hospital, and he testified:

Q. Now the question was, do you know whether or not at that time he was mentally competent. Was he mentally competent at that time?

A. Yes, I would say he was. (Tr. 276)

After the operation the witness visited the patient again, and asked if he was “mentally competent” at that time,” answered:

“Oh, very much so at that time.”

He saw the patient July 23, 1957, at the Veterans Hospital at 12th Street. He testified \* \* \* \*

“If you talked about things he knew about and was concerned about, about his farm and the cows, he was competent because he knew what you were talking about.”

He gave similar opinion from a conversation on a visit August 5, 1957. (Tr. 285-6)

LA RETA CHUGG, one of the defendants, wife of Dale Chugg, testified at length, (Tr. 357) and asked:

Q. How did Mr. Chugg seem to you then?

A. He seemed very competent.

This was at the moment of signing the deed, Defendant's Exhibit 3.

She testified that Nathan "*always had a little magnifying glass with which he read fine print.*" He didn't have it with him at this signing. (Tr. 377)

JAMES A. DAVIS, (Tr. 237-247) a long time friend of Nathan, asked if in the summer and fall of 1956, from talking with Nathan in a group, there was not "anything about his appearance or actions that would indicate that he was not normal;" or "mentally incompetent." answered "No." (Tr. 242)

ERNEST R. EKINS, (Tr. 624-625) testified:

Q. In your opinion was he competent enough to know his relatives and the nature of his property and what he might want to do with it?

A. Oh yes, indeed I think he was.

DELBERT ERICKSON, (Tr. 626-630), Public Accountant, and Mayor of Pleasant View testified:

"Dad had always made up his (Chugg's) income tax." (Tr. 627)

"Nathan Chugg was in the office January 29, 1957, to see about his income tax. Dad has always made up his income tax. Dale Chugg was with him. He asked "dad" to make up a deed transferring the property from him to Dale."

They suggested he see an attorney and recommended he see Mr. Browning. He was too busy, and the witness took him to see Mr. Handy.

Asked if he had an opinion as to whether or not the client was mentally competent at that time to understand who his relatives were, the natural objects of his family, his property and what he wanted done with his property, he answered:

"I thought he was all right, competent."

They went to Handy's office, but he "was never in the presence of George Handy and Nathan Chugg at the same time." Chugg had no papers with him. He wanted his property and his cows transferred. (Tr. 631)

"I asked George Handy to make a deed or an instrument of some kind transferring the property from Nathan Chugg to Dale Chugg in the way he saw fit." (Tr. 632)

Witness' father was called away.

H. E. ERICKSON, (Tr. 635-646; 648-669) Public Accountant. Did Income Tax Returns for Nathan G. Chugg for many years:—testified:

"He wanted me to make a deed to transfer his property to Dale. I told him to see a lawyer."

"He was mentally competent."

"He was kind of ill there," so the income tax man told him there was no hurry. Chugg said he was "kind of ill." Erickson told him he could come later, because he had until February 15.

Had a conversation with Nathan in the spring at the hospital. His brother, Orley, was there and some of his family. Answering as to "competency", the witness answered:



“He seemed to me to be all right.”

THERON GREGG, (Tr. 309-318) employed by the Veterans Administration as Nursing Assistant at the Twelfth Avenue E Ward, was taking care of Nathan G. Chugg about the middle of July—about the 16th or 17th. He had to have Mr. and Mrs. Chugg and Mr. Handy leave the room while he took care of some patients who were in the room. Asked if, in his opinion, Mr. Chugg was “rational and competent” he answered “Yes”.

He testified that the patient was suffering from a cerebral-vascular accident, commonly known as a stroke. If affected Chugg’s “motivations, movements, and incompetency.”

Asked by Mr. Handy if he had “mental capacity to understand the nature of signing a deed” the witness answered:

A. Yes, he did because if he can recognize people other than relatives, in other wards, recognize his friends in the hospital there, the patients that he came in contact with there—if he can remember names, he is very competent then in recognizing a deed.”

The following testimony was given:

Questioned by Mr. Handy:

Q. During this time or the 17th day of July, 1957, did Mr. Chugg have sufficient control over his hands that he could have signed his name?

A. Yes, sir, that morning, *well he didn't have sufficient control to shave his face*, but he had sufficient control to shave the sides, and then I *finished* him up.”

J. DONALD HANDY, (Tr. 490-495)—(brother to Attorney George B. Handy) a school teacher, testified:

On January 3, 1957, went to St. Benedicts Hospital with Attorney Handy and saw Nathan Chugg.

He testified:

A. You (Attorney George B. Handy) said, that this was an agreement to sell his property to Dale Chugg and Nathan said, *'It was all right, just give it to him'*, and you (his brother) indicated to make this a binding contract that there should be some price offered and indicated that a dollar or a thousand dollars, and at that time Nathan said, *'Well, a thousand dollars would be all right.'*" (Tr.

492)

\* \* \* \*

A. Yes, I believe you read the article to him and showed it to Dale Chugg."

Dale produced from his wallet a bill and gave it to him.

\* \* \* \* \*

"He seemed to be competent to me."

\* \* \* \* \*

As to amounts in the deed the witness testified that Nathan said, "he would *give* him the farm." (Tr. 503)

GEORGE B. HANDY—attorney—testified. (Tr. 650-669)

His testimony covers 19 pages of typewriting.

It is deemed inappropriate to condense or characterize this recital.

Its validity will be determined by comparison with the testimony of plaintiff's witnesses, as well as defendants', and the ethics of the situation.

NOLAN HARRIS, (Tr. 678-680) a Post Office employee, met Nathan Chugg when working for Rasmussen

Grain Company.

Had a talk with Nate in the summer of 1955.

Discussed finding a young man to replace the one working for him.

In 1957 witness was working as "an artificial inseminator", and frequently visited Chugg.

Q. Do you have an opinion as to whether he was competent when you were talking to him?

A. I believe so. Every time I spoke to him, however, I didn't see him at all while he was in the hospital at that time.

CHARLES JONES, (Tr. 330-332) of Salt Lake City, a chemical manufacturing company production foreman, and a cousin.

In March or April of 1957, "I saw Nathan Chugg. He was thoroughly competent at the time I talked with him."

HYRUM AUSTIN MARBLE, (Tr. 336) 46, of Garland, Utah, dairyman and dry farmer.

About April 29, 1957, he had a transaction concerning the transfer papers of a Jersey calf.

A. He was very cheerful and happy about being about his cows."

\* \* \* \*

A. He was perfectly normal as far as I could see, and again, on show day in May, 1957. at Plain City.

\* \* \* \*

A. He always seemed to know what he was talking about.

EARL PAUL, (Tr. 505) of Morgan, Utah, dairyman at Plain City Dairy Days, the middle of May (1956) met

Chugg, and at another time in February or March.

Nate agreed to donate half and sell the other half of a heifer to Utah Jersey Cattle Club.

Q. Did he, Nate, talk intelligently about these things?

A. Very much so. (Tr. 508)

A. C. RICHARDSON, (Tr. 643) a Feed Merchant, called by defendants.

Brought sales slip beginning 10-2-57, charged to "Dale Chugg".

No charge made to the account of Nathan Chugg since that date. (Tr. 644)

Towards the last the transactions Nathan Chugg had were not charge accounts, but on a pay as you go basis. (Tr. 646)

EDGAR S. SMOOT, (Tr. 481) of Centerville, Utah—Dairy Business.

Called on Chugg many times. Past two years he seemed to be having trouble with his health. Dale Chugg was mentioned. At Plain City Dairy Day Nathan said Dale "had an interest in it now."

Along in June, 1957 saw Nathan:

"He seemed to be feeling better."

Expressed opinion he was competent.

He did not visit Chugg at the hospital.

JOSEPH W. TURNER, (Tr. 301-307) 33, lived at Marriott, Building Contractor for a year. Prior business selling farm equipment and cars.

In August or September, 1956, Nathan told him, "Well,

I have got a deal fixed up." He had signed an agreement.

"It contained something in regard to Dale taking care of Nate for the remainder of his life. I mean Dale was taking the responsibility of providing a home." \* \* \* \* "that Dale would take care of him the rest of his life."

Q. Well, you said that he fixed up a deal in the lawyer's office?

A. Yes, sir.

Q. And then he said, as you understood it is part of the deal, that Dale would take care of him the rest of his life?

A. That would be right. (Tr. 307)

This was in the first part of March, 1957. (Tr. 308)

#### DEFENDANT'S MEDICAL

HARVEY P. WHEELWRIGHT, (Tr. 613-617) a physician—practice limited to psychiatry.

Examined the medical chart from St. Benedicts Hospital on Nathan Chugg.

The patient was ambulatory when admitted.

A note by the intern, January 31, 1957,

"No abnormal neurological findings."

\* \* \* \*

"It would mean that no eviednce of organic brain damage was suggested, but it wouldn't necessarily imply negative about his mental capacity."

Expressed opinion that—

"On the record only \* \* \* \* I would doubt very much that he would be considered incompetent for legal services."

Was of opinion that by this record—

“We have more reason to believe that we could say that he was competent, than we could from ‘the record of the St. Benedicts Hospital on the previous date. However, here again one is almost on shaky grounds in making an opinion about mental competency without actually seeing the patient with that in mind.”

\* \* \* \*

“He would be, as expected, a little bit slow to read it over and respond, but otherwise, *I really think that he would probably understand it.*” (Tr. 617)

DOCTOR IRVEN H. MONCRIEF, (Tr. 445-461) of Ogden, Utah, a practicing physician since 1954, a graduate of the University of Utah School of Medicine in 1954 and interned in the Dee Hospital for one year.

In about March of 1956 had initial contract with Nathan G. Chugg on a “house call.” He was complaining of frequency of urination and fever. (Tr. 446) Witness took a specimen—saw him in the Fall of 1946. He was being observed for his urinary tract infection.

He was hospitalized January 28, 1957, and discharged February 24th. (Tr. 447). His diagnosis was “*chronic pyelonephritis.*”

He has a proven duodenal ulcer.

He had been hospitalized previously for an *acute pyelonephritis*, and he had congestive heart failure.

He had a “benign prostate hypertrophy resulting in urinary bladder outlet obstruction, and resulting elevation of bun blood ureonitrogen.

\* \* \* \* “There is nothing in his laboratory work, that, to my knowledge, definitely would indicate incompetency *as far as his laboratory work is concerned at this admission.*” (Tr. 448)

Asked if the patient would understand the nature and affect of the "Option", he answered:

\* \* \* \* "I would say if it were explained to him and it was designated to him what the mechanics of the transaction that was being performed were, I believe he would understand it, yes."

To the question:

"Would he know who his friends and family were, the natural objects of his bounty, would he know the nature and location and type of property he had?"

the Doctor answered:

\* \* \* \* "excluding the period of time when he was under sedation \* \* \* \* I think I would have to qualify it in that respect. I would say he was competent according to your definition." (Tr. 458)

The doctor further stated that the patient developed a severe depression. He was re-hospitalized on May 27, 1957. He developed

\* \* \* \*

"A very severe stupor, is what I mean, is stupor."

"He developed a very severe depression."

"A very severe stupor, is what I mean, is stupor."

\* \* \* \*

Asked if recovery was indicated as of June 16, 1957, the doctor answered:

"Well, it says the 'affect is almost normal. Patient is somewhat depressed emotionally, however.' 'He wanted to go home'." (Tr. 460)

The patient had anemia. The doctor stated:

"Anemia can affect the thinking process. This particular anemia of 8.9 grams per 'sen' in this individual, I cannot say whether that did or did not." (Tr. 465)

The patient had an active duodenal ulcer, (Tr. 465) and was treated for it.

The doctor expressed some interest in the outcome of this litigation, and used the expression—

“that it would be a nice windfall for a young man.” (Tr. 471)

### ARGUMENT

A careful evaluation of the evidence adduced at the trial of this cause, coupled with an appraisal of the condition and position of the parties involved, shock the normal sensibilities and lead to the conclusion that the deeds and conveyances sustained by the judgment and decree entered herein were obtained by undue influence and fraud or were signed by a grantor so incompetent that he could not and did not realize the import of his actions or both. To permit the judgment to stand is to open the door to designing, aggressive persons to take advantage of persons racked with pain, suffering and other physical and mental or emotional disturbances resulting in weakened natural resistance to influence and susceptible to undue influence as a result thereof.

An appraisal of the parties involved conclusively show, on the one hand a young, vigorous, alert and ambitious person, to say the least, as against an elderly person, never particularly mentally alert, suffering extreme physical and apparent mental disability resulting from (using the defendant's medical testimony) anemia, ulcers, chronic nephritis, heart failure, uremic poisoning with indications of glucomia and senility. The contrast in the two parties independently of all other considerations, incites one to the irrevocable conclusion that these parties could not and did not deal on even grounds at arms length under conditions where each was equally able to protect and defend his own rights.



To add to the disadvantage of plaintiff's incompetence and the advantage of the defendant was the assistance and influence of defendant's attorney. These circumstances and conditions would normally warrant a normal person attempting to transact business of a considerable extent and magnitude with a sick person to insist that one so weakened in mind and body should have the counsel and advice of his close relatives or legal counsel or both. If the transaction in which plaintiff's incompetent conveyed or agreed to convey his property to the defendant was supported by a fair or nearly fair consideration, wherein the said incompetent received perhaps not necessarily the full but a relatively decent consideration, then the result might probably be considered in the light of an error in judgment only, but the circumstances in this case where the incompetent and his parents before him had devoted a life time in the acquisition and development of a substantial estate providing the incompetent financial security for the remainder of his life and under conditions causing the gravest doubt in the ability of the incompetent to know what he was doing, or to weigh fairly and analytically the nature and seriousness of the transaction negotiated, to all intents and purposes pauperizing him and leaving him a burden upon society, leads to no other conclusion than that he was at least unquestionably susceptible to undue influence as a result of old age, mental weakness, complete physical disability or some other cause, with clear and convincing evidence of the opportunity and disposition on the part of the defendant and counsel in his behalf to exercise undue influence. The value of the properties involved was estimated by competent witnesses to be in the neighborhood of \$65,000.00. The defendant admits \$40,000.00 to \$45,000.00.

It is doubtful from the record that the incompetent has any knowledge or ever had any conscious knowledge of the pittance, \$1,000.00, which the defendant claims was

the consideration for the transaction. His testimony must be analyzed in the light of the fact that notwithstanding there was a guardian for the incompetent's estate, yet the \$1,000.00 was deposited, so far as the evidence shows, in a bank of the defendant's own choosing, he kept and now has in his possession and under his control the pass book and all evidence of the deposit. All of defendant's evidence indicates that the negotiations between defendant and the incompetent prior to his hospitalization included not only a financial consideration for the property but the further consideration that the defendant would enter into an undertaking to support and care for incompetent for the remainder of his life time.

Peculiarly enough, as soon as the written documents were signed conveying title to the defendant, the remainder of the bargain, if there was one, was conveniently and completely overlooked and forgotten. While the incompetent had at least some of his faculties he arranged for compensation to the defendant for his services. This compensation consisted of a home for the defendant and his family, all of their meat, butter, eggs, milk and other dairy products, plus \$175.00 per month, so that it cannot be said the incompetent was indebted to the defendant.

In view of the incompetent's will, (plaintiff's exhibit) which he had made and published a few months prior to his illness, it must be concluded that he felt keenly his responsibility to his aged mother who was then living with him and later nudged out of her home by the defendant; that he felt and expressed deep love and affection not only for his mother but for his brothers and sisters and concerned himself with setting up protection, security and an inheritance for them. Notwithstanding that will had been drawn under his direction by an attorney who had done business for and known the incompetent for 25 years or more, yet this man on his sick bed is alleged to have stated "that he did not know any lawyer".

The evidence is either unworthy of belief or else the incompetent, if he made the statement, had so lost his faculties that he was incapable of remembering. All of the medical and psychiatric testimony, it seems to us, is clear and convincing; that from the outset Nathan G. Chugg was incompetent to know or understand the nature and seriousness of the transactions involved in this proceeding. The nurses records at the hospital, his appearance to witnesses who had known the incompetent for many years, together with the physical surroundings, conclusively show, we think, that this man, under the circumstances, was unable, unassisted at least, to protect his interests.

Dr. O'Gorman, a physician and psychiatrist, testified that in his opinion, from the evidence contained on the clinical record, the incompetent would not have been competent to understand and realize the nature of the transaction involved in the signing of the option or any of the other papers. Defendant's medical witness, Dr. Moncrief, indicated some doubt as to the competency of the grantor. His psychiatrist, Dr. Harvey Wheelwright, from his examination of the record, expressed doubt as to the grantor's competency and indicated that his competency was on "shaky grounds". Dr. Kassel, while admitting he first became acquainted with the incompetent in October, 1957, yet after an examination of the clinical record at the Veterans Hospital in Salt Lake City, expressed an opinion from that record and the psychological evaluation made by Dr. Dobson on July 2, 1957, that Nathan G. Chugg was mentally incompetent throughout; that at the date of trial the incompetent had improved considerably yet that he would probably never recover his mental competency although he may yet improve physically; and based upon his testimony the learned trial judge found that Nathan G. Chugg was so incompetent that he could not act as a witness and it was useless for him to

talk to him. Numerous documents, statements, etc., were produced and introduced into the record indicating that throughout his hospitalization incompetent would sign anything placed before him. Of note is the admitted fact by defendant and his counsel that the documents drawn were the brain child of defendant's counsel and not the incompetent. Those documents were drawn in counsel's office without prior consultation with the incompetent. They were taken to the hospital and there he was induced to sign them after what appears to have been at least a very cursory reading, if at all, with very little, if any, conversation or discussion of their contents. Would any normal person divest himself of all his worldly belongings and pauperize himself under these conditions? The incompetent's roommates and the clinical records show fits of crying, almost permanent depression, inability to talk or converse or to even feed himself; the sides of his bed were kept up and he was strapped at times to keep him from falling out. Defendant's counsel himself apparently was fearful of the first deed he had signed because he later took another deed to the hospital and had it signed explaining that he was fearful of litigation. The nurses and doctor present refused to sign as witnesses to the execution of that document. It is interesting to note that the defendant himself took somewhat the lead in placing incompetent in the Veterans Hospital as a public charge.

As early as the middle of January 1957, two weeks before the incompetent was hospitalized, he told the witness, Weldon A. Hales, that he was confused, that he did not know what to do, that he did not know what he wanted to do. Dr. O'Gorman testified that uremic poisoning affects the brain. There is evidence of sedation, drooling at the mouth, no control over his bodily functions, mumbling, crying; that he was in a "pitiful condition"; flights of imagination evidenced by repeated statements that he was in the army, repeated denials that he had signed

any conveyances to the defendant. As against all this evidence defendant produced some witnesses, few, if any of whom saw the incompetent after he was hospitalized except for a fleeting occasional glimpse, and in their opinion he seemed competent, all of them agreed that he was a retiring, easy-going and somewhat odd person under normal conditions.

Further evidence of the ambition and designing nature of the defendant is shown in the nudging of the incompetent's mother, 92 years of age, out of her home she had occupied for 75 years or more, and completely taking over her life estate without any right whatsoever; that his counsel knew incompetent's mother had a life estate in a substantial part of the property and yet prepared and officiated in the execution by the incompetent of a warranty deed. The existence of a family or a confidential or quasi-confidential relationship between the grantor and the grantee in a deed is an important factor in determining the presence of undue influence in the execution of a deed. It seems to us that the conclusion irresistably results that the documents obtained by the defendant under all of the circumstances were obtained either through the use of undue influence or fraud or that Nathan G. Chugg was mentally incompetent to know and understand the nature and importance of the transaction involved herein, or both, and that they should be invalidated, voided and set aside.

## AUTHORITIES AND CASES CITED

Deeds—16 Am. Jur., Pg. 462—Sec. 40:

“The existence of a family or a confidential or quasi-confidential relationship between the grantor and the grantee in a deed is an important factor in determining the presence of undue influence in the execution of the deed.”

DEEDS—16 Am. Jr., Pg. 462—Sec. 39:

"If the will power has been weakened, as by severe sickness, the natural resistance to influence is, of course, impaired. Generally, in order to justify the setting aside of a deed on the ground of undue influence, it must be shown that the grantor was unquestionably susceptible to undue influence as a result of old age, mental weakness, or some other cause, and there must be some clear evidence of opportunity and disposition on the part of the grantee or someone in his behalf to exercise such influence."

Deeds—16 Am. Jur. Pg. 456—Sec. 32.

*"However, an intention formed at the time a promise was made not to fulfill it constitutes fraud and is ground for setting aside the deed. Thus, deeds made in consideration of future support have been set aside for fraud because the grantee never intended to support the grantor.*

Deeds—16 Am. Jur. Pg. 456—Sec. 33.

"However, if the inadequacy of consideration is so glaring as to stamp the transaction with fraud and to shock the common sense of honesty, a court of equity will intervene. If the consideration is grossly inadequate, equity in any case will lay hold of slight circumstances of oppression, fraud, or duress in order to rescind the conveyance. Inadequacy of consideration tends to show fraud.

Bruner v. Cobb—131 Pacific Reporter, 165. Okla.

"Ordinarily mere inadequacy of consideration is not sufficient cause to justify interference by a court of equity in a case of rescission of contract or annulment of deed; but where, as in the case at bar, the consideration given is so grossly inadequate as to shock the conscience and force one's mind to the immediate conclusion that the deed to the land was procured by fraud it not only is the right but the positive duty of a court to interfere and place the parties, especially the innocent and in-

jured one, in the position he was in before the transaction occurred, and it is a matter of no moment whether the fraud was occasioned by the active, deceitful representations, connivance, and acts of him who receives the benefits of the fraudulent transaction, or whether the result was reached on account of the mental incapacity and want of business ability of the one defrauded. The result in either instance is the same; the difference in the moral turpitude involved being only of degree."