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Miles Lorraine Miller and Irvine B. Miller v. Walker Bank & Trust Co., Executor of the Last Will and Testament of Nettie Knudsen Miller, Deceased, and Viola Miller Carlson : Appellant's Brief

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IN THE SUPREME COURT
of the
STATE OF UTAH

MILES LORRAINE MILLER and
IRVINE B. MILLER,
Plaintiffs and Respondents,

vs.

WALKER BANK & TRUST CO.,
Executor of the Last Will and
Testament of NETTIE KNUDSEN
MILLER, Deceased, and VIOLA
MILLER CARLSON,
Defendants and Appellants.

Case
No.
10272

FILED

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APPEAL FROM A JUDGMENT OF THE
THIRD DISTRICT COURT FOR
SALT LAKE COUNTY
HONORABLE A. H. ELLETT, JUDGE

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UNIVERSITY OF UTAH

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Defendants and Appellants.

Case
No.
10272

APPELLANTS' BRIEF

STATEMENT OF THE KIND OF CASE

This was a suit to quiet title, whereby the plaintiffs and respondents sought a construction of a will to give plaintiffs a remainder interest or a beneficial interest under a trust, following a life interest in defendants' predecessor. The defendants and appellants counter-claimed, contending that an unqualified fee interest in defendants' predecessor was created by the will and confirmed by the decree of distribution.

DISPOSITION IN LOWER COURT

Plaintiffs and defendants both moved for summary judgment. The court granted plaintiffs' motion, holding that plaintiffs were each owners of an undivided one-quarter interest in the real property in question and denied defendants' motion.

RELIEF SOUGHT ON APPEAL

Defendants and appellants seek reversal of the judgment, with determination that the will created an unqualified fee simple interest, with neither trust limitations on the fee nor remainder interests in plaintiffs.

STATEMENT OF FACTS

Miles E. Miller died May 29, 1956, leaving a will dated March 20, 1941 (R. 45, 46), which was admitted to probate in Salt Lake County. The entire probate file, No. 38583 is included in this record (R. 44).

Miles Miller's heirs were his widow, Nettie, and three children by a prior marriage, Lorraine and Irvine Miller, the plaintiffs and respondents, and Viola Carlson, defendant and appellant. Nettie was married to Miles in 1921 (R. 32). Zola Miller Smith, Miles' fourth child and Viola's twin, predeceased Miles, dying in 1954 (R. 23). All of Miles' children were under 12 years of age when Miles married Nettie (R. 32), and Nettie raised these children. The three surviving children were ages 44 to 49 in 1956.

Miles' will named Nettie as his executrix and made one donative provision, namely:

“SECOND. I give, devise and bequeath to my beloved wife, Nettie Knudsen Miller, all of my property, whether the same be real or personal or mixed, and I do this acknowledging all my children hereinafter named, and for the reason that I know that my beloved wife will, care for my children from the remainder of my estate, if there be any, share and share alike; Miles Lorraine Miller, son; Irvine Bagley Miller, son; Viola Miller Carlsen, daughter; Zola Miller Smith, daughter; all residents of the State of Utah” (R. 45).

Notice was given in the probate to the widow and the three surviving children, being plaintiffs Lorraine and Irvine Miller and defendant Viola Carlson. Miles’ estate consisted entirely of one parcel of real property, a four-plex in Salt Lake County, which was appraised at \$34,000. By Decree of Distribution dated September 27, 1956, Miles’ estate was distributed, the decree providing as follows:

“NOW THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That in accordance with the Last Will and Testament of deceased the entire rest, residue and remainder of the estate of Miles Edward Miller, also known as Miles E. Miller, deceased, is distributed and set over to Nettie Knudsen Miller. Said property consists of the following:

Real property located at 2630 to 2650 South 2nd East, Salt Lake County, State of Utah, and more particularly described as follows:

(legal description)

2. All property of deceased hereafter discovered or not now known be, and the same is hereby set over, distributed and transferred to Nettie Knudsen Miller" (R. 17).

Nettie improved and rented the four-plex and used all income for her own purposes to her death on May 17, 1964 (R. 33). Nettie left a will, naming defendant Walker Bank & Trust Company as Executor, and after making certain specific bequests, she gave, devised and bequeathed the entire remainder of her estate to her step-daughter, defendant Viola Carlson, who had cared for and nursed Nettie during the last three years of her life. Walker Bank & Trust Co. is presently acting as the executor of Nettie's estate and is managing the four-plex property in question (R. 9).

The complaint of plaintiffs Lorraine and Irvine Miller (R. 1-3) sought to quiet title to the four-plex property, alleging that Miles Miller had "devised his real estate to his widow for her use and maintenance during her lifetime, the remainder to be divided at her death among his four children, share and share alike" (R. 1), and that plaintiffs are each the owner of a one-fourth undivided interest in fee simple in said property and are entitled to joint possession with defendant Viola Carlson and the heirs of Zola Smith, deceased. Plaintiffs did not question the decree of distribution, but conceded that distribution was "in accordance with said last will and testament" (R. 2).

Defendants answered and counter-claimed, alleging that under the residual provision of Miles' will an unqualified fee simple interest was devised to Nettie and that the Decree of Distribution of September 27, 1956, in distributing the entire residue to Nettie made the residuary devise *res judicata*, final and impervious to plaintiffs' collateral attack (R. 8-11).

Defendants and plaintiffs filed motions for summary judgment which were heard on the basis of the affidavits of Viola Carlson (R. 23) and Grant H. Bagley (R. 32, 33), the Miles Miller probate file (R. 44) and the Miles Miller will (R. 45, 46).

At the hearing before Judge Ellett, counsel for plaintiffs argued that an implied trust for the benefit of Miles' children was created by the language of the will which followed the residuary provision. Defendants contended that Miles' will in giving the entire residue to Nettie created in her an unqualified fee simple interest, that the simple reference to the will in the decree of distribution showed only that Miles died testate, but did not allow reference back to the precatory words of the will to qualify the fee, and that after 8 years the probate decree was final and not subject to collateral attack.

The judgment (R. 37-39) denied defendants' motion, granted plaintiffs' motion and adjudged that plaintiffs were owners in fee simple title of an undivided one-quarter interest each in the four-plex property, and that plaintiffs, defendant Viola Carlson and the children of Zola Smith, deceased, *per stirpes* were entitled to possession of said real property as tenants in common.

ARGUMENT

POINT I.

THE PROBATE DECREE OF DISTRIBUTION PROPERLY CONSTRUED THE WILL AND GAVE TO NETTIE MILLER AN UNQUALIFIED FEE SIMPLE INTEREST.

If any further construction of Miles Miller's will can be made at this late date, an examination of Paragraph Second (R. 45) clearly shows the work of a frugal draftsman, who combined three separate provisions in one paragraph, and in fact in one compound sentence. The first part is the entire residuary provision, stating, "I give, devise and bequeath to my beloved wife, Nettie Knudsen Miller, all of my property, whether the same be real or personal or mixed, . . ." Next is stated the necessary acknowledgment of Miles' children, as follows: "and I do this acknowledging all my children hereinafter named, . . ." And finally, there is the added expression of hope and confidence, "and for the reason that I know that my beloved wife will, care for my children from the remainder of my estate, if there be any, share and share alike: Miles Lorraine Miller, son; Irvine Bagley Miller, son; Viola Miller Carlsen, daughter; Zola Miller Smith, daughter; all residents of the State of Utah."

This court has clearly answered any question as to the proper construction of the Miller will by its decision in *In re Call's Estate*, 15 Utah 2d 1, 386 P.2d 125. The Call will devised the residue in one provision, then in subsequent language provided that the residue should go to other beneficiaries on the deaths of the first devisees. The court held that when the estate is given in

fee simple absolute in one clause, "the interest so devised cannot be taken away or diminished by any subsequent provisions of *doubtful import*, or by any inferences deductible therefrom repugnant to the estate given." (Emphasis added.) The court gave emphasis to the fact that the entire rest, residue and remainder of that testatrix' estate was given and devised, stating:

"Such language certainly expresses an intention of the testatrix that a fee simple title to her property be conveyed to the children upon her death. This paragraph of the will is controlling unless it *clearly appears* from other provisions that the testatrix intended to convey a lesser estate."

The court cited 74-1-36 UCA 1953, which provides:

"74-1-36. *Devise Conveys All of Testator's Interest.* Every devise of land in any will conveys all the estate of the devisor therein which he could lawfully devise, unless it clearly appears by the will that he intended to convey a less estate."

The court showed that it was not unmindful of 74-2-9 UCA 1953, which provides that all provisions of a will should be given effect, if possible, and also 74-2-1 UCA 1953, which generally provides that the testator's intention "must have effect as far as possible," and cited are *Schomp v. Brown*, 215 Ore. 714, 335 P.2d 847, *In re Shira's Estate*, 82 Ohio Law Abs. 307, 165 N.E.2d 60, and 4 *Bowe-Parker: Page on Wills*, p. 647.

Schomp v. Brown involved reciprocal husband and wife wills, with a provision for the residue to go to the surviving spouse. Following was a provision that the

survivor would be bound not to change the share which children would ultimately receive by the reciprocal will. The Oregon court held:

“It is a well-recognized rule that when an estate in an absolute fee is given in one clause of a will, as in Article IV here, the interest which the devisee then obtains cannot be taken away or diminished by any subsequent or general expressions of doubtful import, or by any inference deductible therefrom that may be repugnant to the estate given.”

Cited is 1 *Underhill on Law of Wills*, Sec. 358, and an Oregon statute which is almost identical in language to our 74-1-36 UCA 1953.

In re Shira's Estate distinguished situations where (1) remainders were clearly created, with or without powers of disposal or use in the first taker, and (2) the situation created by the Miller will, where there is a devise to A generally, with no power of disposal expressed or with an absolute power but followed by a devise to B of what shall remain undisposed of at A's death. In the latter situation, the Ohio court held that A takes a fee simple and that the attempted limitation over is impossible and void. The court said:

“The testator is, in effect, attempting to make a will for the first devisee, to take effect in case the first devisee fails to make one for himself, or otherwise disposes of the property. This the testator cannot do . . . A fee once given, cannot be cut down by other provisions of the will. A remainder cannot be engrafted on a fee.”

4 *Bowe-Parker: Page on Wills*, p. 647, states the rule:

“If words creating a fee are clear, it will not be cut down to a lesser estate by words which are vague or from which an intention to cut down the fee can be drawn only by inference.”

4 *Bowe-Parker: Page on Wills*, p. 652, states:

“Where testator devises realty to one, with suggestions as to its ultimate disposition by devisee, which are not mandatory, and which do not amount to a precatory trust, the devisee takes a fee simple.” Cited are *In re Hayward Estate*, 57 Ariz. 51, 110 P.2d 956, and *Schuster Estate*, 137 Cal. App. 125, 289 P.2d 847.

The *Hayward* case involved the following language after an absolute devise: “My wish is that my estate be kept within my descendants.” These were held to be precatory words only and were not testamentary, and the Arizona court quoted the general rule from 19 *Am. Jur.* 575, Sec. 120:

“Where there is in an absolute devise of property, a subsequent clause expressing a wish, desire or direction for its disposition after death of devisee or legatee will not defeat the devise or limit the estate in the property to a right to possession or use during the life of the devisee, but rather the absolute devise stands and the other clause is to be regarded as presenting precatory language.”

In the *Schuster* case, the testator gave the residue to the beneficiary with the provision that he should “distribute as he deems wisest.” This bequest was held not

to create a trust or to limit the outright and absolute character of the bequest.

In *Newhall v. McGill*, 69 Ariz. 259, 212 P.2d 764, the court held that where the testator named his sister as executrix and devised property to her "to be cared for and disposed of according to my personal directions to her," the quoted words were merely precatory, that the devise was in fee and not in trust, and that mere precatory words will not create a trust.

In *re Ferdun's Estate*, 91 Cal. App. 622, 205 P.2d 456, involved a will with the following language: "Everything I own to John. Keep the vinyard as long as you live and at the time of your death, you leave it to Ernest." The court held that this did not create a trust; that there must be imperative language — not wishes, hopes or precatory words.

The general rule is stated in 96 *C.J.S.* 231, Sec. 802, as follows: "Broadly speaking, an estate or interest devised or bequeathed by will is neither enlarged nor reduced by subsequent language unless there is a clearly expressed intent to do so." Cited is *Bills v. Bills*, 77 Iowa 179, 45 N.W. 748, as the leading case, with the rule there restated:

"When there is an absolute or unlimited devise or bequest of property, a subsequent clause expressing a wish, desire or direction for its disposition after the death of the devisee or legatee, will not defeat the devise or bequest, nor limit the estate or interest in the property to the right to possession and use during the life of the de-

visee or legatee. The absolute devise or bequest stands, and the other clause must be regarded as presenting precatory language. The will must be interpreted to invest in the devisee or legatee the fee simple title of the land, and the absolute property in the subject of the bequest."

The language of the Miles Miller residuary bequest and devise was clear in giving all interest of the testator to his wife. It was followed by the statement that the testator did have four named children and that the devise was made acknowledging that fact. If any emphasis of the fact of a devise of an absolute fee interest was necessary, the testator gave such by those added words.

The language which follows the devise at best expresses Miles' wish or hope. He said: "*I know that my beloved wife will care for my children from the remainder of my estate, if there be any, share and share alike...*" Each of the italicized words or phrases actually creates an ambiguity from which could be taken different meanings, if any one of those words or phrases required an exact construction.

"*I know*" certainly indicates a wish, feeling of confidence, desire or direction, but not a mandate, and certainly nothing to create a remainder or a beneficial interest under a trust. "*Will care for*" normally means to support, maintain or physically take care of someone on a current day to day basis. See 41 *Words and Phrases* 17. In *Hewey v. Metropolitan Life Ins. Co.*, 100 Me. 523, 62 Atl. 600, "care" was defined as "responsibility or oversight, watchful regard and attention." In *Ballenger v.*

Ballenger, 208 Ala. 147, 94 So. 127, "take care of" was construed to mean "to support, maintain, feed and clothe look after, attention in sickness." To give the phrase "*will care for*" any other meaning in the vernacular would only compound the confusion and emphasize the uncertainty of all of the language following the devise of the fee.

A will speaks as of, or takes effect only upon the death of the testator; however, for purposes of testamentary interpretation the will must be considered with reference to the circumstances existing at the time of execution. 57 *Am. Jur.* 795, Sec. 1209. "*From the remainder of my estate, if there be any,*" can only mean that Miles had in mind all of his estate in 1941 and including property owned by him then but not in 1956 at his death, and not just the one parcel of real property now in question. This again shows an expression of hope and wish. "*Share and share alike*" refers to the four of Miles' children alive in 1941, all of whom were then adults (R. 23). Zola Smith died in 1954, predeceasing Miles by two years. No provision is made for Zola's children. This phrase and its legal application can add only more uncertainty as to the wishful thinking of the testator and the legal effect of that language, if it should be considered as a qualification of a fee interest previously given to Nettie.

The respondents indicated in their complaint that they assumed that a life estate was given to Nettie with remainder interests in the children (R. 1, 2). At the hearing before the District Court the respondents argued that the will created an implied trust with Nettie being

the trustee. Respondents' failure to consistently hold to one theory for construction of these words is itself proof of the uncertainty and ambiguity of the language.

Before Judge Ellett the respondents argued for a construction of an implied trust, relying on *In re Dewey's Estate*, 45 Utah 98, 143 P. 124, in arriving at Miles' intent. The *Dewey* case involved a direct appeal from a contest in probate regarding distribution. In the *Dewey* will the testator gave clear instruction to one Tuttle to distribute and sprinkle the residue among certain persons, and it provided a specific separate bequest for Tuttle, which gave further reason for the court's finding of a trust in the residue. There was no ambiguity and on the contrary a mandate for distribution.

The instant judgment (R. 37-39) would seem to follow the theory of a life estate with remainders, as it gives Miles' deceased daughter's children remainder interests.

The language following the clear devise of a fee simple absolute expressed only Miles' general wishes. It is ambiguous and uncertain. It cannot subtract from the fee clearly devised by the prior and separate provision. The intention of the testator, expressed in 1941, was patently a devise in fee simple absolute, followed by wishes and sentiments. No construction of Miles' will should now be allowed which would trade a certainty for a doubt.

POINT II.

THE DECREE OF DISTRIBUTION WAS COMPLETE, CERTAIN, UNAMBIGUOUS AND FINAL AND ALLOWED NO REFERENCE BACK TO THE WILL FOR INTERPRETATION.

The respondents seem to avoid considering their present suit to quiet title as any attack on the Decree of Distribution entered September 27, 1956. No fraud, lack of jurisdiction, or other matter going to the validity of the decree was alleged, and in fact, respondents alleged in Paragraph 4 of their complaint that distribution in Miles' estate was made "in accordance with the will" (R. 2). They argued before Judge Ellett that this phrase in the decree of distribution was incorporation by reference of the will into the decree.

A very general rule is set out at 34 *C.J.S.* 453, Sec. 529(a), that a decree of distribution is subject to interpretation when its language is vague, uncertain or ambiguous; however,

"An absolute and unequivocal final decree of distribution is not made ambiguous by a recital that the distribution is according to the will, and where the final decree of distribution necessarily construes the will and is not ambiguous or made subject to the will, the will cannot be resorted to in order to modify or affect it."

In re Miller's Estate, 132 Minn. 316, 156 N.W. 349, cited by *C.J.S.*, held:

"In the case of the estate of a testate the final decree of distribution of the probate court necessarily construes the will in distributing the estate, and, unless made subject to the provisions of the will or unless ambiguous or uncertain on its face,

the will may not be resorted to for the purpose of modifying or affecting the decree.

“A final decree of distribution which in absolute and unequivocal terms has assigned the whole estate to one person is not affected with uncertainty or ambiguity by a recital that the distribution is in accordance with the terms of the will.”

The California court in *In re Wallace's Estate*, 98 Cal. App. 285, 219 P.2d 910, stated:

“A plain and unambiguous provision in the decree of distribution, once the decree has become final, cannot under the doctrine of *res judicata*, be impaired or contradicted by a reference to the will, even if incorporated in the decree by way of recital.”

See also *Shipley v. Jordan*, 206 Cal. 439, 274 P. 745.

The rule appears to be clear that the decree of distribution, where it is clear and unequivocal, is final and may not be impeached by reference back to the will, even if the decree is erroneous, except on appeal. *In re Ryan's Estate*, 96 Cal. App. 2d 787, 216 P.2d 497; *In re Haney's Estate*, 174 Cal. App. 2d 1, 344 P.2d 16; *In re Loring's Estate*, 29 Cal.2d 423, 175 P.2d 524.

In *In re Ewer's Estate*, 170 Cal. 660, 171 P. 683, reference in the decree of distribution was made to the will by the language “in accordance with the last will,” and the court held the decree to be impervious to attack, the decree to prevail over the will, and the quoted language not to make any possible incorporation by reference to allow further construction of the will.

Our court in *Nelson v. Howells*, 75 Utah 461, 286 P. 631, has held that a will is interpreted by the probate decree of distribution and that it is not subject to a different interpretation on a collateral attack. In *Auerbach v. Samuels*, 10 Utah 2d 152, 349 P.2d 1112, the decree recited that administration and distribution was "in accordance with the testator's will," and further interpretation after the final decree was not allowed. See also *Lucre Latsis Estate*, 3 Utah 2d 365, 284 P.2d 479, regarding finality of the decree when clear on its face.

Appellants submit that the Decree of Distribution of September 27, 1956 was clear and unequivocal in stating:

"1. That in accordance with the Last Will and Testament of deceased, the entire rest, residue and remainder of the estate of Miles Edward Miller, also known as Miles E. Miller, deceased, is distributed and set over to Nettie Knudsen Miller."

No possible ambiguity or uncertainty existed on the face of the decree. The reference to the will was a recital to show that Miller died testate. It is not an incorporation by reference under the general rule and cases referred to above, and the decree in its absolute form must prevail over any other possible construction of the will. The decree, unappealed from, was final and concluded the rights of all parties interested under the will. The will merged into the decree. All parties' interests thereafter are measured by the decree and not the will. See *Keating v. Smith*, 154 Cal. 186, 97 P. 300; *Bank of America, N.T. & N.A. v. Hennelly*, 102 Cal. App. 2d 750, 229 P.2d 76.

POINT III.

THE 1956 DECREE OF DISTRIBUTION WAS FINAL AND MAY NOT NOW BE COLLATERALLY ATTACKED OR REVIEWED.

75-1-7 UCA 1953 makes probate decrees final and conclusive, where the court had jurisdiction and after proper notice appointed the executor, and after time for appeal. 75-1-8 UCA 1953 specifically prohibits impeachment of such final decrees by collateral attack.

Respondents conceded in Paragraph 4 of their complaint (R. 2) that the will of Miles Miller "was duly admitted to probate in the above entitled court and the real estate above particularly described was thereafter distributed by said court in accordance with said last will and testament." No fraud of any kind, lack of jurisdiction or other matter going to the validity of the decree was alleged by respondents, and thus, respondents' suit to quiet title is in no way a direct attack in equity on the decree.

30A *Am. Jur.* 762, Sec. 844, states the general rule that:

"A judgment is not subject to collateral attack where the court had jurisdiction of the subject matter and the parties or, in a proceeding in rem, of the res." Cited is *Erickson v. McCullough*, 91 Utah 159, 63 P.2d 595, 109 A.L.R. 332.

Probate matters are in rem. Where jurisdiction is properly acquired and the respondents have conceded this, the only remedy from a decree in probate is by appeal or attack for extrinsic fraud. *Barrette v. Whit-*

ney, 36 Utah 574, 106 P. 522, 37 L.R.A. (NS) 368; *Weyant v. Utah Savings & Trust Co.*, 54 Utah 181, 182 P. 189.

30A *Am. Jur.* 774, Sec. 858, states that a suit to quiet title is a collateral attack on a judgment, where the suit is an impeachment of the rights in property created by the judgment, citing *Kalb v. German Savings & Loan Society*, 25 Wash. 349, 65 P. 557, and *Lee v. Harvey*, 195 Okla. 178, 156 P.2d 134.

Other sections of the probate code, namely, 75-11-37, 75-12-9, 75-14-12 and 75-14-15 UCA 1953, provide for the finality and conclusiveness of probate decrees. These sections were cited and construed by our court in *Auerbach v. Samuels*, *supra*, which held:

“Upon the basis of the notices the plaintiffs were charged with knowledge of the probate proceeding and under a duty to assert any claims they had or be concluded by the decrees entered. The authorities quite uniformly agree that this applies to rights devolving upon the interpretation of the terms of the will; and this is so even though at a later time the decree may be regarded as not in conformity with the correct construction thereof.”

Nelson v. Howells, *supra*, held that the probate decree is the interpretation of the will, and the conclusiveness of probate final accounts and decrees, in absence of fraud, has been determined by our court in construing 75-11-37 UCA 1953 in *In re Linford's Estate*, 121 Utah 113, 239 P.2d 200; *In re Raleigh's Estate*, 48 Utah 128.

158 P. 705; *In re Brook's Estate*, 83 Utah 506, 30 P.2d 1065. The rule was restated by our court in *In re Rice Estate*, 111 Utah 428, 182 P.2d 111, as follows:

“A decree of distribution in probate proceedings after due and legal notice, by a court having jurisdiction of the subject matter, is conclusive as to the fund, property, items and matters covered by and properly included within the decree, until set aside or modified by the court entering the decree in the manner prescribed by law, or until reversed on appeal.”

See also *In re Evans*, 42 Utah 282, 130 P. 217.

75-1-8 UCA 1953 was referred to in *In re Latsis Estate, supra*, where it was determined that an unconditional decree finally closed the probate proceedings and settled the rights of the parties interested in the property involved, the decree demanding the respect to which a final decree is entitled under that statute. *Tiller v. Norton*, 123 Utah 42, 253 P.2d 618, impressed in the law the finality of the probate decree. See also *Snyder v. Murdock*, 26 Utah 233, 73 P. 22.

Trask v. Walker's Estate, 100 Vt. 51, 134 Atl. 853, and *Nelson v. Howells, supra*, are both cited in the *Annotation* at 136 A.L.R. 1183 entitled “Rule of Res Judicata as Applied to Judicial Construction of Wills.” The *Trask* case involved a will with a devise of the residue to the wife of the testator, an acknowledgment of testator's children, and language indicating that the wife should have the use and disposition of the residuary estate. The plaintiffs, as the respondents here, claimed

that the wife took only a life estate, with remainders in plaintiffs. The Vermont court held that this was a devise of a fee to the wife; that the decree of distribution was a construction of the will by the probate court; and that where no appeal was taken, the property vested in fee in the wife, and the decree could not subsequently be attacked. The *Trask* case nicely sums up the whole argument of appellants.

CONCLUSION

Appellants submit that Miles Miller's will created an unqualified fee simple interest in Nettie. The 1956 decree of distribution by clear, unequivocal language gave to and confirmed in Nettie that unqualified fee interest. That decree was the interpretation of the will. The decree was unconditional and final and not subject to collateral attack.

The judgment giving interests to respondents as remaindermen or trust beneficiaries should be reversed and the fee interest in Nettie Miller should be confirmed.

Respectfully submitted,

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