

1965

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 : Brief of Respondent

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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
COMPANY, Executor of the Last Will
and Testament of NETTIE KATHLEEN
MILLER, Deceased, and VIOLET
MILLER CARLSON,

Defendants and Appellants

BRIEF OF RESPONDENTS

APPEAL FROM A DECREE OF THE
THIRD DISTRICT COURT
SALT LAKE CITY
HONORABLE A. J. HARRIS, Judge

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MILES LORRAINE MILLER and
IRVINE B. MILLER,

Plaintiffs and Respondents,

vs.

WALKER BANK & TRUST
COMPANY, Executor of the Last Will
and Testament of NETTIE KNUDSEN
MILLER, Deceased, and VIOLA
MILLER CARLSON,

Defendants and Appellants.

Case
No.
10272

BRIEF OF RESPONDENT

STATEMENT OF FACTS

Appellant's statement of facts so far as it relates to circumstances surrounding the execution of the will is correct, but it is not complete.

At the same time the will under consideration was executed, Nettie Knudsen Miller, the testator's wife, made and executed her own last will and testament in which she devised and bequeathed all of her property to her husband, Miles E. Miller. The two wills bear the same date, were obviously written on the same typewriter

and are witnessed by the same individuals. She revoked this will after her husband's death.

A few years prior to the execution of these wills, Miles conveyed to Nettie the home in which he and his first wife had lived and in which he and Nettie were then living.

The four-plex apartment was constructed by Miles with the aid of his eldest son. Nettie used the income from this property for her support and maintenance, but she did not attempt to sell or dispose of it in her lifetime. It is this property which the plaintiffs claim to have an undivided interest in and title to.

The decree of final distribution in the matter of the estate of Miles E. Miller, deceased, was made and entered without notice of any kind to anyone. Neither did any one interested in the estate other than the petitioner waive notice of hearing upon the petition. It is purely an ex parte decree and is without any binding force or effect upon anyone except Nettie.

ARGUMENT

POINT I.

THE WILL CREATED AN IMPLIED TRUST
IN FAVOR OF THE TESTATOR'S CHILDREN
WITH RESPECT TO ANY PROPERTY
NOT CONSUMED OR DISPOSED OF BY
HIS WIDOW.

In the appendix to this brief we have set forth a copy of the will which forms the subject matter of the

present litigation. We contend that the devise to Nettie "of all my property" is not absolute but is restricted to the extent that any of such property which she did not consume or dispose of in her lifetime was to be divided equally between the four children named. Such was the intention of the testator as expressed in the will and the law implies a trust to give effect to that intention. As stated in 1 Perry on Trusts and Trustees (6th Ed.) Sec. 112 approved and applied by this court in *Re Dewey's Estate*, 45 U. 98, 143 Pac. 124 at 126.

"Implied trusts are those that arise when trusts are not directly or expressly declared in terms, but the courts, from the whole transaction and the words used, imply or infer that it was the intention of the parties to create a trust. Courts seek for the intention of the parties, however informal or obscure the language may be; and, if a trust can fairly be implied from the language used as the intention of the parties, the intention will be executed through the medium of a trust."

The statute directs that, "A will is to be construed according to the intention of the testator. Where his intention cannot have effect to its full extent, it must have effect as far as possible." Section 74-2-1 U.C.A. 1953. This is the cardinal rule of construction of wills and is the one to which the others must yield. *Johnson's Estate*, 64 Utah 114, 228 Pacific 748. Of course the intention must be ascertained from the language of the will, but the words must be read in the light of the circumstances under which they were written. Section 74-2-2.

A subordinate rule of construction, but one which is specifically applicable in this case is the one which requires that, "The words of a will are to receive an interpretation which will give to every expression some effect rather than one which will render any of the expressions inoperative." Section 74-2-9.

With these rules in mind we proceed to examine the will in controversy.

As appellant says the testator was frugal in the use of language disposing of his property. This is not without significance as we shall point out later. All of his property is disposed of in a single sentence. In the first few words he devises to Nettie all of his property. If he had stopped at this point, there would be no question but that the devise to Nettie would be absolute. But he did not stop there. He did not even end the sentence. Without pausing, he proceeded to qualify the devise to Nettie. He qualified it by naming his children as beneficiaries and segregating the "remainder of my estate" from all of his property. He says in effect that he gives all of his property to Nettie because he knows she will divide among his children any of his property which she does not use or dispose of.

The words, "I know she will care for my children," obviously do not mean he knows she would support and maintain his children. When the will was drawn, all of the children were married and supporting themselves. Furthermore, Nettie could not support his children out of property which remained undisposed of at the time

of her death. The words, "care for my children," obviously mean to give to my children or divide among my children. The words, "share and share alike," make certain that some property is to be divided among the children. The phrase "remainder of my estate, if there be any," refers to any of the testator's property which Nettie did not use or dispose of in her lifetime. Since the testator indicates that the reason he gave all of his property to Nettie was that he knew she would divide equally among his children any of it that she did not consume in her lifetime, the conclusion is irresistible that the devise to Nettie is qualified to the extent that she was prohibited from disposing of any of the property after her death. It is this qualification of the devise to Nettie that creates the implied trust in favor of the children.

The will involved in *Re Dewey's Estate*, cited above, devised all of the rest, residue and remainder of the testator's property of every kind and nature whatsoever to Hubbard Tuttle. This apparently absolute devise was followed by a provision which stated that it was the testator's desire that Tuttle distribute the remainder among the testator's nephews and nieces and to such of them and in such proportions as Tuttle should deem just and proper, his decision upon such matters to be final. This court properly invoked the statutory instruction that all of the language of the will must be given effect, if possible, and decided that Tuttle held the remainder of the testator's estate in trust for his nieces and nephews. We quote from this opinion:

"It is quite true that if we stop at the end of the first sentence of the bequest wherein the

residue of the property is disposed of, the language is sufficient to pass the whole residue to the trustee, but we cannot stop at that point for the reason that the testatrix did not do so. She proceeded further, and by what she said she created a trust. Again, as we have already pointed out, if she did not intend to create a trust, she would not have made the bequest of the residue of her property in the form it was made, but would have given the trustee all the residue in the preceding paragraph of the will."

The only difficulty there can be in ascertaining the testator's intention in this case arises out of his use of the word "know." Had he used the word "request," "desire," or "wish" our search for his intention would be ended. It is our contention that the word "know" is much less precatory than either of the suggested terms and that it is equivalent to a command to Nettie prohibiting her from diverting any property from the children by a testamentary disposition. The authorities are uniform in holding as this court did in *Re Dewey's Estate*, *Supra* that precatory language will be construed as mandatory if the testator intended to give that effect to it.

In *Colton vs. Colton*, 127 U.S. 30, 8 S. Ct. 1164, 32 L.Ed. 138, David Colton gave to his wife all of his estate, real and personal, of which he died seized or possessed or entitled to, but, "I recommend to her the care and protection of my mother and sister and request her to make such gift and provision for them as in her judgment will be best." The testator's sister sued the wife to require her to make provision for the sister out of the estate. The Supreme Court of the United States held

that the will created a trust for the benefit of the testator's sister. It cited numerous authorities and quoted with approval from *Briggs v. Penny*, 3 Macn. & Gord. 546, 554.

“‘I conceive the rule of construction to be that words accompanying a gift or bequest expressive of confidence, a belief, or desire, or hope that a particular application will be made of such bequest, will be deemed to import a trust upon these conditions; first, that they are so used as to exclude all option or discretion in the party who is to act as to his acting according to them or not; secondly, the subject must be certain; and, thirdly, the objects expressed must not be too vague or indefinite to be enforced.’ The most recent declarations of the English courts of equity do not modify this statement of the law.”

In *Warner vs. Bates*, 98 Mass. 274, the testatrix's will gave her husband a life estate in the entire income from her property “in the full confidence” that he will upon my decease, as he has heretofore done, continue to give and afford my children such support as either of them may stand in need of. The children referred to were not the children of the husband. One of them became seriously in need of support and filed a bill in equity against the husband to require him to furnish that support out of the income from the testatrix's property. The court ordered him to pay a monthly sum to the needy child.

The opinion noted that it was the universal rule that words of entreaty, recommendation or wish addressed to a legatee will create a trust.

“If the objects of the supposed trust are certain and definite; if the property to which it is to attach is clearly pointed out; if the relations and situation of the testator and the supposed cestuis que trust are such as to indicate a strong interest and motive on the part of the testator in making them partners of his bounty; and above all, if the recommendatory or precatory clause is so expressed as to warrant the inference that it was designed to be peremptory on the donee; the just and reasonable interpretation is, that a trust is created, which is obligatory and can be enforced in equity as against the trustee by those in whose behalf the beneficial use of the gift was intended.”

Both the will and the surrounding circumstances now under consideration are closely analogous to those in *Merrill vs. Pardun*, 125 Neb. 701, 251 Northwestern 836. The testator gave to his wife “all of the residue and remainder of my property of whatever kind and where-soever situated to be hers absolutely,” but in the following sentence stated, “It is my request, however,” that any of said property remaining at the death of his wife should go to his daughter and in case of her death then to her children, share and share alike. All of the property was distributed to the widow, but she had on hand at the time of her death some \$8,000.00. The daughter, Margaret, brought suit to have this \$8,000.00 impressed with a trust for her benefit. The Supreme Court of Nebraska held that the daughter was entitled to this fund. In the course of a well considered opinion, it said:

“In determining what the testator meant by the word “request,” we have to take into consider-

ation the situation of the parties at the time. The testator in this case was married a second time. He had no children of the second marriage, but he had one daughter by a former marriage. He desired to provide for his wife during her lifetime, and the necessary inference would be taken that he then desired that his property go to his blood relations. His daughter being his nearest of kin, he therefore made this bequest to his wife, and then requested that so much thereof as remained at her death should be given to his daughter. The use of the word "request" in a disposition by will limiting an apparently absolute bequest to a widow does not imply that it is optional, discretionary or recommendatory, particularly when the context of the will does not demonstrate an alternative choice or option in the pursuit of a recommendation or an exercise of discretion, but if it is definite as to a person and quantum of estate, if there was no clear discretion or choice, if the person benefited is a natural object of the testator's bounty, and if the person affected by the limitation is in close or fiduciary relation to the testator as a widow, the use of the word "request" imports, although in courteous and polite form, a command or direction, imperative and dispositive in legal effect. It therefore is a bequest to his daughter, Mildred I. Merrill, or all property remaining on the death of his said wife, to be hers absolutely."

In *Tucker vs. Myers*, 151 Neb. 359, 37 N.W. 2d, 585; the testator after making an absolute and unqualified devise to his wife stated that it was his desire that in the event she left no heirs of her body, that she make a will bequeathing the property "I leave her to my brothers and sisters to be distributed equally among those living at the time of her death." The Court said:

“(6) The general rule in this state is that, in construing a will, where the will in one clause makes an apparently absolute bequest of property, but a subsequent clause makes a further bequest of the remainder after the death of the legatee taking under the first clause, the two clauses are to be construed together to ascertain the true character of the estate in fact granted by the first clause; and in such case, contrary to the ancient rule at common law, the second clause is effective and operates to define and limit the estate granted by the first as a life estate with power of disposition, and the second is effective and operative to grant an estate in remainder in the unused, unexpended, or undisposed property granted for life by the first.”

In another case in which the testator gave, devised and bequeathed to his wife all of his property, both real, personal and mixed of whatever kind and nature soever and wherever located, but proceeded to state that if at the time of his wife's death there should be any property left, “it is my request that it be divided between my two children, George and Mable, to share and share alike,” the court did not have any problem in ascertaining the testator's intention to be that these two children should share equally in any property that the wife had not consumed. It said:

“(5-7) In determining what the testator meant by the word “request,” account should be taken of the relative situation of the parties, the ties of affection subsisting between them, and the motives which would naturally influence the mind of the testator, as well as the existence of a moral duty on his part toward the party who will benefit from compliance with his desires

and recommendations. *Morrison v. Tyler*, 266 Ill. 308 107 N.E. 602; *Abrahams v. Sanders*, 274 Ill. 452, 113 N.E. 737. The fact that, in the event a trust is declared, the person who will be benefited is a natural object of the testator's bounty, is entitled to strong consideration in determining whether the word "request" or "desire" in a will imports a command. *Cumming v. Pendleton*, 112 Conn. 569, 153 A. 175; *Merrill v. Pardun*, 125 Neb. 701, 251 N.W. 834. A construction which conforms, as far as possible, to the Statute of Descent (Ill. Rev. Stat. 1939, c. 39) is to be preferred. *Dahmer v. Wensler*, 350 Ill. 23, 182 N.E. 799, 94 A.L.R. 1; *Smith v. Garber*, 286 Ill. 67, 121 N.E. 173. Under these principles, it was held in the *Conneticut* case, *supra*, that the word "desire," and in the *Nebraska* case, *supra*, that the word "request," in a subsequent clause after a preceeding absolute devise, were intended to be words of command.

"Another circumstance frequently held to indicate that precatory expressions were intended to be mandatory is that the person to whom they were addressed is the spouse of the testator, to whom it is not to be expected that commands would be expressed in such forcible language as between strangers."

See *Keizer vs. Jensen*, 373 Ill. 184, 25 N.E. 2d 819,

The English authorities are in accord with the view that precatory language in a will may be construed as mandatory if it appears that the testator intended to restrict or qualify what would otherwise be an absolute bequest or devise.

In *Wilson vs. Mayor*, 11 Ves. Jun. 205, 32 Eng. Reprint 1066, the testator devised real property to his

wife "upon full trust and confidence" that at her death she would make proper distribution to his children; held that upon the death of the wife the title vested in the children.

In *Massey vs. Sherman*, 27 Eng. Reprint 335, a devise to the wife in fee with "no doubt but that my wife will dispose of the same to and amongst my children as she shall please" was held to create a trust in favor of the children of the property remaining at the death of the wife.

In *Malin vs. Keighley*, 30 Eng. Reprint 659, the English rule was said to be: "I will lay down the rule as broad as this; wherever any person gives property and points out the object, the property and the way in which it shall go, that does create a trust unless he shows clearly that his desire expressed is to be controlled by the party and that he shall have an option to defeat it."

See also the following cases:

Pierson vs. Gamet, 39 English Reports 20.

Wynne vs. Hawkins, 28 Eng. Reprint 1068.

All of the points relied upon by appellants in their brief deal with the legal effect of the decree of distribution in the decedent's estate. Only incidental consideration is given to the provisions of the will. They do, however, interpret the will as devising an absolute and unqualified estate to Nettie. In this connection reliance is placed on Section 74-1-36 which states that every devise of land in any will conveys all of 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 support afforded appellants by this statutory rule is extremely weak. It deals with quantity of estates rather than quality. No one would deny that the language of the devise up to a certain point is legally sufficient to convey to Nettie a fee simple title to the fourplex property. But the testator was not devising legal titles; he was disposing of a parcel of land. The question with which we are concerned is not how much title was given to Nettie, but whether there were any conditions or qualifications imposed upon her power to dispose of the land.

In any event the rule stated in 74-1-36 is subordinate and must yield to that set forth in 74-2-1. If the intention of the testator is discernible it will prevail and it is useless to indulge in degrees of clarity. A good analysis of the functions of these two rules of construction will be found in *Colton vs. Colton*, 127 U.S. 300, 8 S. Ct. 1164, 32 L.Ed. 138.

None of the cases relied upon by appellants involve testamentary situations sufficiently similar to those now under consideration to justify any specific comment. Wills may be compared to human faces in that no two of them are identically alike. Even if the language of the wills were the same, the difference in the surrounding circumstances under which each was drawn would be sufficient to distinguish them. Since it is the intention of

the testator with which we are dealing, every word and every circumstance has its own peculiar significance. Not only the testator's words, but his lack of words have a bearing upon what he had in mind when he signed the instrument.

Although the above observations apply to in Re Call estate cited in appellant's brief, we respectfully submit that it is erroneously decided. In our opinion it frustrates the testator's intention. It treats the will as though the testatrix had devised legal concepts instead of the small home where she had spent her life and reared her family. Although it gives lip service to Section 74-2-9, no use whatever is made of this rule. Actually the opinion is in the very teeth of this rule. It ignores five full paragraphs of the will, each of which is plainly dispositive in character and in which the nephew is specifically named.

The opinion states that the appellant's argument is not without merit. This lack of confidence of the court in its own opinion is readily understandable.

POINT II.

THE DECREE OF DISTRIBUTION IS IN ACCORDANCE WITH THE TERMS OF THE WILL AND DOES NOT CUT OFF THE INTERESTS OF RESPONDENTS IN THE PROPERTY.

The petition of the executor for final distribution of the estate made the will a part of the petition by reference thereto and stated that all of the property on hand

should be distributed according to the will to Nettie Knudsen Miller. The prayer of the petition was that the remainder of the estate be so distributed.

It is of importance to note that no notice of any kind was given of the hearing upon this petition and no hearing was ever held. None of the respondents were even mentioned in the petition other than indirectly by the incorporation of the will by reference. On the same day the petition was filed the decree of distribution was entered. This decree specifically provided that in accordance with the last will and testament of the deceased, the entire residue and remainder of the estate of Miles Edward Miller, etc. is distributed and set over to Nettie Knudsen Miller. In other words the terms of the will are made the terms of the decree. It follows that Nettie took nothing by the terms of the decree other than the interests which were devised to her under the will.

It likewise follows from these considerations of the decree that it did not impair or affect the interest of the plaintiffs in the four-plex property. Since the distribution was in accordance with the terms of the will, the implied trust created by the will was in no way affected by the decree and there is no occasion for the plaintiffs to attack it either collaterally or directly.

Plaintiffs admit that the will gave Nettie the full use and enjoyment of the property during her lifetime and that she had also the power to dispose of it in her lifetime. The only restriction upon her title was that she was prohibited from disposing of it by will or other testamentary disposition.

Title to real estate in Utah vests upon the death of the testator in the devisees designated in the will. The probate court is without jurisdiction to distribute or divide the property contrary to the provisions of the will. It cannot divest a devisee of his interest in the property nor can it award the interest of one devisee to another. The only jurisdiction which the probate court has is to administer the estate of the decedent in order that creditors may be satisfied, taxes paid and funeral expenses discharged.

It is true, of course, that we do not have in this State probate courts as such. Probate jurisdiction is exercised by the district courts. It would be more accurate to describe the probate court as a division of the district court. In this situation the only matter of substance to be considered is the due process clause of our constitution. If a controversy arises in the probate proceedings and the parties are given proper notice and an opportunity to be heard, they will be bound by the judgment rendered, regardless of the division of the court which renders the decision. On the contrary if such notice has not been given and no opportunity to be heard has been afforded, the court can make no binding adjudication whether it sits as a probate court or as a court of general jurisdiction.

So far as the present controversy is concerned, there is nothing in the petition for distribution which even intimated that the petitioner was seeking any judgment or decree that would adversely affect or impair the plaintiffs' interests under the will of their father. The prayer

of the petition was that the property be distributed as provided by the terms of the will. The plaintiffs were not mentioned in the petition and their rights under the will were not assailed or attacked in any way. No notice of any kind or character was given to any of the plaintiffs or anyone else. The decree was entered immediately upon filing the petition. To construe it as cutting off the plaintiffs' interests in the property as appellants contend that it did, is to ignore the constitution as well as elementary rules of pleading.

Although this court has rendered conflicting decisions with respect to the integrity of decrees entered in course of probate of decedent's estates (See *In Re Rices Estate*, 111 Utah 428, 182 Pac. 7, 111) there has been no departure from the proposition declared by Judge Wolfe in his concurring opinion in *McLaren v. McLaren*, 99 Utah 340, 106 P. 2d 766. He stated:

"The case is different where the court has proceeded to hear the issues and render judgment. In such cases where the allegations are sufficient to invoke the proper jurisdiction and to present the issues cognizable within the jurisdiction which should be invoked and the parties are served in a manner to bring them under that jurisdiction, there seems to be no reason why the label given the the action in the caption should control. I think the law in Utah is now clearly to the effect that if the above requirements are met the matter will be considered as having been addressed to the side of the court to which it should have been addressed, and actions taken by the court in the matter will be considered as having been taken in pursuit of the authority it exercises when functioning in that capacity. The matter of a change

of caption or a redocketing of the case or of the proceedings is a matter which may be adjusted ministerially.

“But again, warning should be sounded regarding the situation where a civil case is tried as a probate matter and probate matter tried as a civil case when they are respectively purely matters cognizable only as civil and as probate. It is one thing to determine a civil matter as a probate matter or a probate matter as a civil case and quite another thing to try a probate matter as a probate matter and a civil case as a civil case, although they may be addressed to the wrong divisions of the court. The first is a matter of substance; the second a matter of labels and ministerial adjustment.”

Appellants' reliance upon *Auerbach vs. Samuels* is not well placed. The bequest of Mr. Auerbach to his sister was conditioned upon the net value of the estate being in excess of a stated sum. This, of course, was a question of fact. The petition for final distribution in effect alleged that the bequest to the sisters had failed and prayed for a settlement of the account. Due notice of the hearing upon the petition was given to the sisters, but they failed to appear. The court determined that the net value of the estate was not sufficient to give vitality to the bequest to the sisters. This was a decision of a fact question necessarily involved in the probate of the estate and since the sisters had notice of the hearing and an opportunity to be heard, they were held to be bound by the decree. The case is not authority for the proposition urged by the appellants to the effect that the decree of distribution in the *Miller* estate which adopted the

terms of the will and which was entered without notice of any kind was in effect a decree quieting title in Nettie against the adverse claims of the Plaintiffs. This decree did not alter any of the terms of the will or the rights of any of the parties thereunder. It neither enlarged Nettie's interest nor diminished or cut off those of the children.

There is nothing in the Utah Statutes referred to in the appellant's brief which precludes the plaintiffs in this case from asserting their title to the four-plex property. They deal with the finality of probate decrees and collateral attacks upon them. Since the Miller decree distributed the estate in accordance with the terms of the will, it is immaterial to the Plaintiffs case whether it is final or vulnerable to any form of attack.

CONCLUSION

There can be no doubt that the testator intended that his children should have any of his property that his widow did not consume or dispose of in her lifetime. The only question presented is whether that intention has been made known by the words and phrases found within the four corners of the will. The respondents maintain that it has. This intention of the testator must be given effect by imposing a trust upon the four-plex property for the benefit of the children.

The decree of distribution did not alter, impair or affect any of the terms, provisions or conditions of the

will and did not enlarge or diminish the interest of either the widow or the children.

The case was correctly decided in the lower court and the judgment should be affirmed.

Respectfully submitted,

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APPENDIX
LAST WILL AND TESTAMENT OF
MILES EDWARD MILLER

I, MILES EDWARD MILLER, of the age of 55 years, residing in the County of Salt Lake, State of Utah, being of sound and disposing mind and memory and not acting under duress, menace, fraud, or undue influence of any person whomsoever, do make, publish, and declare this, my Last Will and Testament, and do hereby expressly revoke all other and former Wills and codicils to Wills made by me.

FIRST. I direct that all my just debts and funeral expenses be paid as soon after my demise as conveniently can be done, and that I be buried with due regards to my station in life.

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.

THIRD: I direct that should anyone prove a right to inherit from my estate, other than my immediate family, then and in that event, I direct that such person or persons shall receive from my estate the sum of One and no/100 (\$1.00) Dollar and no more; and I further direct that should anyone whomsoever contest this my last

Will and Testament, then and in that event, I direct that such person or persons shall also receive from my estate the sum of One and no/100 (\$1.00) Dollar and no more.

FOURTH. I nominate and appoint my beloved wife, Nettie Knudsen Miller, as the executrix of this, my last Will and Testament, and direct that she shall have all powers necessary or convenient for the performance of her duties without application to the Probate Court, and full power to give to the purchaser or purchasers or the beneficiaries under this, my last Will and Testament, all deeds, bills of sale, and other muniments of title that may be expedient or necessary in carrying out her duties hereunder and I further direct that she shall act as such without posting any bond whatsoever in carrying out my requests.

IN WITNESS WHEREOF, I, MILES EDWARD MILLER, the testator above named, have to this my last Will and Testament, consisting of two pages of paper, hereunto subscribed my name and set my seal this 20 day of March, 1941.

Miles Edward Miller

Signed, sealed, published and declared by said testator, Miles Edward Miller, as and for his last Will and Testament, in the presence of us, who at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses this 20 day of March, 1941.

Roscoe W. Irvine Residing at 411 Felt Bldg., Salt Lake City, Utah.

Alonzo Mackay, residing at Salt Lake City, Utah.