

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Simon and others v. Vernon (procurator of Wardlaw Cortlandt Anderson and Margaret Jane Trotter, his wife, widow of the late Joshua Le Bailly), from the Royal Court of Jersey; delivered, June 12th, 1883.

Present:

LORD WATSON.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR ARTHUR HOBHOUSE.

MARGARET Jane Trotter, now the wife of Cortlandt Anderson, was previously married, on the 14th April 1863, to the late Joshua Le Bailly, of "Les Vaux," Jersey. By an ante-nuptial contract, entered into in contemplation of their marriage, Miss Trotter renounced all legal claims competent to her, as widow, upon the estates real and personal of her husband; and, in consideration thereof, Mr. Le Bailly engaged, for himself, his executors and administrators, that, in the event of her surviving him, his heirs, executors, and administrators should, immediately after his decease, "duly pay to her out of his personal estate the sum of 500*l.* sterling for her own use and benefit exclusively," and should also, from and after the day of his decease, pay to her, out of "his estates real and personal," an annuity for life of 200*l.* sterling. This contract was registered in the Public Register of the Island of Jersey, pursuant to an Order of the Royal Court, obtained on the joint application of the spouses, dated the 7th day of April 1863.

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On the 23rd August 1873, the goods of the said Joshua Le Bailly were, by an Order of the Royal Court, declared *en désastre*, and his personal property was sequestrated for the benefit of his creditors. By a subsequent Order of the same Court, bearing date the 9th January 1875, his movable and heritable estates were adjudged to be renounced, and leave was given to certain of his creditors "*de faire décréter les dits heritages.*"

The proceedings *en décret*, so far as it is necessary to refer to them for the purposes of the present case, are as follows: A list is made up, before the Greffier, of the whole creditors of the insolvent, each creditor being ranked according to the priority of his debt or claim. But in the list or *codement* prepared by the Greffier the order of priority is inverted, the creditor having the first charge being placed last, whilst the first entry embraces all the unsecured creditors, who are ranked *pari passu* in one group. The Greffier next summons the creditors before him, and calls first the unsecured creditors to accept or reject the insolvent's estate. If they reject, their claims are considered as cancelled, and the Greffier proceeds to make the same call upon the *puisné* encumbrancer. If he rejects the estate, his claim is in like manner considered as cancelled, and the Greffier calls upon the next encumbrancer in the order of the *codement*; and the same process is repeated until a creditor accepts, who is then declared to be "*tenant*," and thereby becomes entitled to the estate of the insolvent, and absolutely liable to pay, or settle in full, all claims inserted after his own in the *codement*. The obligation thus imposed upon the "*tenant*" is, in other words, the consideration for which he becomes purchaser of the insolvent's estate.

Margaret Jane Trotter, then the wife of Joshua Le Bailly, appeared as a claimant in the proceed-

ings *en décret* which followed upon the Order of 9th January 1875, and gave in her marriage contract, together with the Act of Court, of the 7th April 1863, authorising its registration. The Greffier entered her in the *codement* as an unsecured creditor under that contract, and called upon her, along with the other claimants *sans hypothèques*, to declare whether she elected to become "*tenante*" or to renounce. The lady thereupon objected, and maintained, by her Counsel, "Qu'elle n'est pas obligée de parler en ce moment, l'acte de la cour qu'elle a inséré étant daté du 7 Avril 1863, et enregistré au registre public à la dite date, devant porter la dite date dans ce décret." The obvious meaning of that contention was that the lady objected to her claim under the contract being dealt with as *sans hypothèque*, and insisted that the legal effect of its registration in the Public Register of the island by the authority of the Royal Court was to make her conventional provisions a charge upon the heritable estate of her husband from and after the 7th April 1863, the date of the Order authorising registration.

The Greffier referred the question thus raised to the Court, and at the same time submitted to the Court his reasons for dealing with the lady's contract claims as an unsecured debt. The view taken by him was, in the first place, that no date could be assigned to the contract, because, even on the assumption that its insertion in the Public Register would have created a *hypothèque*, the documents given in did not contain any note by the registrar stating the day upon which the contract came into his hands; and, in the second place, that the registration of the contract in the Public Register was for preservation merely, and did not make the wife's provisions a charge upon the heritable estate of her husband, which could only be effected by its insertion in the proper register, viz., the "*livre des obligations*."

When the question came before the Court, two creditors *sans hypothèques*, entered in the *codement*, appeared to resist the claim of Margaret Jane Trotter, and, *inter alia*, maintained, “ qu’en vertu de la pièce produite, la dite dame
 “ ne peut prétendre à une hypothèque quel-
 “ conque sur les biens de son mari, au préjudice
 “ tant des créanciers de celui-ci, que des per-
 “ sonnes qui ont transigé avec lui depuis la date
 “ de son mariage.”

The main issue raised for the decision of the Court was whether the recording of her marriage contract in the Public Register did or did not confer upon Dame Margaret Jane Trotter a right of hypothec, in respect of its provisions, which entitled her to be ranked in the *codement* as a secured creditor from and after the date of the Order of Court giving authority to register. After hearing parties, the Court, on the 20th March 1875, rejected the views submitted to them by the Greffier, and gave this decision in her favour;—“ Considérant que le contrat de
 “ mariage dont s’agit a été enregistré au registre
 “ public, la Cour a jugé qu’il doit porter au re-
 “ gistre ou codement du décret du dit Josué Le
 “ Bailly, la date de l’acte ordonnant son enregis-
 “ trement, savoir le 7 Avril 1863.”

In consequence of that decision, the *codement* was altered so as to give effect to it; and the entry of Margaret Jane Trotter’s name and of her documents of debt was transferred from the class of unsecured to that of the secured creditors, the date assigned to her security being the 7th April 1863. After the usual procedure, Edwin Taylor, one of the creditors, ranked as *sans hypothèque*, elected to become “tenant,” but by arrangement he transferred his rights and liabilities as such to Pierre Jean Simon; and these two gentlemen were, on the 27th March 1875, declared by the Greffier to be respectively the “tenant” and “tenant subrogé” of all the heritages which had

belonged to the insolvent, subject to the condition expressed in these words:—"à la charge au dit " tenant et au dit tenant subrogé de payer toutes " les dettes et hypothèques qui ne sont pas re- " noncées faute d'insertion." By Order of the 13th April 1875, the Royal Court duly confirmed the appointment of Messieurs Taylor and Simon as tenant and "tenant subrogé."

After the death of Mr. Le Bailly, which occurred on the 19th March 1881, the widow claimed payment of her marriage contract provisions from the Appellant, Thomas Simon, as the eldest son and representative of Jean Simon, the original "tenant subrogé." The Appellant did not dispute his liability to pay the annuity of 200*l.* provided to the widow, but he refused to make payment to her of the sum of 500*l.* specified in the contract. The widow, on the 29th April 1881, instituted a suit, before the Royal Court of Jersey, for recovery of that sum, with interest from the date of her husband's decease; and the Court, on the 6th June 1881, decided in favour of the widow. Against that decree an appeal was taken to the full Court, who, on 19th April 1882, confirmed the judgment of the Court below, and dismissed the appeal with costs.

The case, as it has been presented to this Board, really involves no questions as to dower or as to the other rights to which a widow is entitled by the law or customs of the Island of Jersey. The Appellant does not maintain that the widow must be remanded to her legal rights; on the contrary, his contention is, that she must take her conventional provisions, but that the provision of 500*l.* out of the personal estate of her husband is, by its very terms, not recoverable from him. Nor does the Appellant dispute that, as representing the "tenant subrogé," he is bound to satisfy the widow's contract claims to

the extent to which these were sustained by the Order of the Royal Court in the reference made to them by the Greffier with regard to the widow's demand to be ranked in the *codement* as a secured creditor.

An able and ingenious argument was addressed to us, with the object of showing that the Royal Court, in directing Dame Margaret Jane Trotter's name and documents of debt to be entered in the *codement*, under date the 7th April 1863, only intended to treat her annuity of 200*l.* as a secured debt, and neither intended to attach, nor did, in point of fact, attach, any *hypothèque* to the claim of 500*l.* It was urged that the Order of the Court is expressed in general terms, without special mention of the provision of 500*l.*, and is therefore open to construction. The argument was rested not so much upon the terms of the Order, or of the pleadings submitted to the Court before it was pronounced, as upon certain extrinsic considerations bearing upon the improbability of the Court having intended to decide that the claim for 500*l.* had been converted into a preferable debt by the registration of the marriage contract in the Public Register. The Appellant's contention really went no further than this, that if it were held that the Court so decided, they must be held to have given a bad decision, and therefore it must be presumed that they did not give it.

There seems to be no reason to doubt—indeed, it was not controverted—that if the Court had decided, in express terms, that the debt of 500*l.* was entitled to the same priority as the 200*l.* annuity, the Appellant could not now have challenged that decision. It necessarily follows that, if the reasonable inference to be derived from the terms of the judgment be that the Court did so decide, the Appellant's challenge is equally barred, and he is liable to pay the sum sued for.

Their Lordships are unable to come to the conclusion that the decision of the Royal Court, of date the 20th March 1875, was an adjudication upon part only of the widow's claims under her marriage contract. When a creditor, appearing in proceedings for the distribution of his insolvent debtor's estate, produces and claims upon a document of debt which contains two separate obligations to pay by the insolvent, he must, unless something appear to the contrary, be understood as preferring a claim for both debts. Accordingly, it must be taken that Margaret Jane Trotter did claim, in the proceedings "*en décret*," to be ranked for the principal sum in question, as well as for her annuity. If it be assumed, as we think it must, that the lady claimed her provision of 500*l.*, as well as her annuity, it appears to be matter of necessary inference that she also claimed priority for both debts. It never was suggested, either before the Greffier or before the Court, that there was or even that there might be a distinction between the two provisions in favour of the widow contained in the marriage contract produced. The claim of the widow as well as the objections of the Greffier and the opposing creditors were stated and maintained on the footing that, as regarded priority, the same *rationes* were applicable to all the widow's marriage contract provisions; and the Court, by its Order of 20th March 1875, affirmed her claim to priority in substantially the same terms in which that claim was preferred before the Greffier.

It was further argued for the Appellant that the widow cannot insist, as against him, for payment of the 500*l.* in question, seeing that by the terms of the marriage contract that sum is payable out of a special fund,—viz., the personal estate of the insolvent,—and that the "tenant subrogé" has, in point of fact, taken nothing except heritable estate. It is by no

means clear that an onerous obligation by A. to pay 500*l.* out of his personal estate must be dealt with on the same principle as if it were a bequest of that amount by A., payable out of a special fund forming part of that estate. In the opinion of their Lordships, it is quite unnecessary to decide that point. The argument, if well founded, might, if it had been put forward in March 1875, have induced the Royal Court to uphold the ruling of the Greffier in so far as it related to the provision of 500*l.*; but it does not appear to their Lordships to afford a good reason for disturbing the ranking of the widow's claims in the *codement*, as then settled by the judgment of the Court, and for relieving the "tenant subrogé" or his representatives of a debt the payment of which was made an essential condition of the title by which they acquired the heritable estates of the insolvent, the late Joshua Le Bailly.

Their Lordships will, therefore, humbly advise Her Majesty that the judgments appealed from ought to be confirmed, and the Appeal dismissed with costs.