

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Jane
Catherine Broomer, widow of James Arthur
v. Walter Arthur, from the Royal Court of
the Island of Jersey; delivered 3rd August
1898.*

Present :

LORD WATSON.

LORD HOBHOUSE.

LORD DAVEY.

SIR HENRY STRONG.

[*Delivered by Lord Watson.*]

The late James Arthur, son of Nicolas Arthur, married the Appellant Jane Catherine Broomer, who was the only child of William Broomer. The said William Broomer died on the 9th July 1885; and the Appellant's husband died on the 27th July 1896 intestate, the heir entitled to succeed to his real estate being his nephew, Walter Arthur, the Respondent in this Appeal.

After their marriage, and before the date of the contract or deed after mentioned, the Appellant became, in accordance with the Laws of Jersey, separated from her husband *quant aux biens*. The legal effect of the separation was to place all real property which the Appellant was possessed of at the time, and all real and personal property which she might afterwards acquire during the subsistence of the marriage, under her own control, and at her own disposal, free from the debts and engagements of her husband,

and that the Appellant became entitled to sue, and liable to be sued in respect of such property as a *feme sole*.

On the 22nd November 1884, four parties, these being, the late James Arthur, his father Nicolas Arthur, the Appellant, and her father William Broomer, appeared in Court, and formally executed a deed of conveyance and contract, the terms of which have given rise to this litigation.

By that deed, the only person who made a conveyance of property was William Broomer. He thereby conveyed seven different parcels of land in Jersey, subject to certain ancient charges, to James Arthur, and the Appellant, his separated wife, "*conjointement par ensemble à qui plus vivra plus tiendra et le plus suffisant des deux pour le tout et pour ses hoirs.*" The conveyance was made upon the express consideration and condition that a pension or annuity of a specified amount was to be received by Mr. Broomer during his lifetime, and that each parcel conveyed was to be hypothecated for a proportion of such pension or annuity. The Appellant and her husband personally bound themselves, the survivor of them, and their heirs for payment of the annuity. Nicolas Arthur became a party to the deed, to the extent only of binding himself and his heirs, as guarantors of the personal obligation undertaken by the spouses.

Upon the dissolution of their marriage by the death of James Arthur in July 1896, the Appellant, as survivor, entered into possession of the whole parcels of land conveyed as aforesaid. The present suit was brought against her, before the Royal Court of Jersey, by the Respondent, as heir-at-law of the deceased James Arthur, for annulment of the dispositive words quoted in the preceding paragraph, and for recovery of the

entirety of the lands thereby conveyed, upon the ground that, by the law of Jersey, a wife could not, during the subsistence of the marriage, take any title to real estate, except for behoof of her husband and his heirs.

The Court of First Instance held that the rule of law upon which the Respondent's demand was based did not apply, because, at the date of the deed of November 1884, the Appellant was separated *quant aux biens* from her husband. But they gave the Respondent decree for one moiety of the lands which he claimed, in deference to a well-established rule of the law of Jersey, which invalidates any gift or conveyance of his real estate, made by a husband, *stante matrimonio*, in favour of his wife, to the prejudice of his lawful heir. That decision was affirmed on appeal by the Full Court upon the same ground.

The decisions of both Courts below necessarily proceed upon the assumption that James Arthur had an interest, to the extent of one half, in the fee of the lands conveyed by his father-in-law, which would have passed upon his death to his heir-at-law, had it not been settled by him upon the Appellant, as surviving spouse. If that were held to be the real substance and effect of the arrangement embodied in the deed of 22nd November 1884, counsel for the Appellant did not dispute that such a disposition of his heritage by the deceased James Arthur to his wife could not avail the Appellant in competition with the Respondent.

In dealing with this point, it is necessary to keep in view that James Arthur and his wife at no time acquired any interest in the lands which are the subject-matter of this action, or disposed of any interest which they may have had in these lands, except under the deed of 22nd November

1894. Having regard to the arguments which were addressed to their Lordships for the Respondent, it may not be superfluous to add, that neither of the spouses can be held to have disposed, by that deed, of any interest which the deed did not give them.

Counsel for the Respondent maintained that the transaction embodied in the deed of November 1884 was in substance an onerous purchase by the two spouses of the fee of the lands conveyed by William Broomer, coupled with a disposition by each of them of his or her interest in the purchase, to the other, in the event of his or her survivance. Their Lordships do not think that the provisions of the deed can, upon any fair canon of construction, be resolved into these elements. It is true that the spouses gave consideration for the deed, in this sense, that they came under a personal obligation to pay Mr. Broomer's annuity. But the annuity was also made a charge upon the property conveyed, and, to that extent, it was in the nature of a reservation from the conveyance.

Their Lordships are of opinion that, in its true character, the deed is not a contract of sale and purchase, but a family arrangement. The consideration emanating from the spouses was not for a conveyance of the lands in fee, to be disposed of or settled at their pleasure. It was given for a conveyance and settlement of the lands in terms which William Broomer was willing to execute. According to the conveyance which he did execute, which is the measure of their right, each of the spouses took nothing more than a conjoint interest in the settled lands during their joint lives, with the chance of getting the fee of the whole, in the event of his or her survivance. James Arthur was the predeceasing spouse, and his interest expired with

him. He never had any interest in the fee which could pass to his heirs.

For these reasons their Lordships will humbly advise Her Majesty to reverse the judgments appealed from, and to order that the Respondent shall pay to the Appellant the costs incurred by her in both Courts below. The Respondent must pay to the Appellant her costs of this appeal.
