Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Edward Taylor and John Roy as Trustees of Bertha Sturrock v. *Bertha Sturrock and Annie Cuthbert as Executrixes of John Thompson Sturrock (deceased), William Sturrock intervening, and of William Sturrock* v. *Bertha Sturrack and Annie Cuthbert as Executrixes of John Thompson Sturrock (deceased), two appeals consolidated), from the Supreme Court of Natal; delivered 17th February* 1900.

Present at the Hearing:

LORD HOBHOUSE.
LORD MORRIS.
LORD DAVEY.
SIR RICHARD COUCH.

[*Delivered by Lord Hobhouse.*]

John Thompson Sturrock and Bertha his wife were married in the year 1875 at Lydenburg in the South African Republic. For nearly 20 years before J. T. Sturrock's death which took place in the year 1896, they resided at different places in the Colony of Natal. It is not disputed that the law attaching to them at the time of their marriage was the ordinary Roman-Dutch law of community of goods, or that they remained under that law unless they altered their status by certain transactions which took place in the year 1892.

Law No. 22 of 1863 was passed for the purpose of preventing community of goods

attaching to certain marriages, and of enabling married persons to make other arrangements. Section 2 says :—

"Community of goods or any of the liabilities or privileges "resulting therefrom shall not attach to or exist between or be "deemed to have attached to or existed between any spouses "who have been or shall be married elsewhere than in South "Africa unless such spouses shall by an instrument in writing "signed by each of them in the presence of two persons who "shall subscribe thereto as witnesses, express their wish to be "exempt from the provisions of this law, and such instrument "shall be registered with the Registrar of Deeds within six "months after execution thereof, the person requiring such "registry paying therefor and thereupon the fee of 1*l.* "sterling."

Section 7 says :—

"This law shall extend to any marriage already had or to be "had before or after the passing of this law in Natal or else-"where in South Africa, if the spouses of such marriage shall "by an instrument in writing . . . . . express and "signify their wish, desire or intention to be brought within "the provisions of this law, and such instrument in writing "shall be capable of being registered by the Registrar of Deeds, "and upon every such registration there shall be paid by the "person requiring the same to be registered a fee of 1*l.* sterling "and no more, and such instrument shall not be binding if not "registered in the Registrar of Deeds Office within six months "after execution."

On the 14th August 1892 the husband and wife executed a post-nuptial contract. It first recites :—

"Whereas the said appearers were duly married in com-"munity of property at Lydenburg in the South African "Republic on the 7th day of July 1875. And whereas the "said appearers do and each of them doth hereby express and "signify their and his and her wish, desire and intention to "be brought within the provisions of the Law No. 22 of 1863 "(Natal) 'intituled' to prevent community of goods attaching "to certain marriages and to enable the spouses of such "marriages to devise their properties" and the Laws No. 17 of 1871 (Natal) and No. 14 of 1882 (Natal) amending said Law No. 22 of 1863.

They then went on to make other dispositions of their property. The Appellants Taylor and Roy were appointed trustees for the wife.

On the same day the husband executed a bond by which he declared himself debtor to Taylor and Roy in their capacities as trustees of

the wife, being so appointed by the post-nuptial contract of the same day. The debt declared was 6,223*l.* 10*s.* sterling arising from and being the amount due and payable to them in their said capacity as trustees of the said Bertha Sturrock, being her portion a moiety of the estate of the debtor and his said wife under their marriage in community of goods which said joint estate was declared by the debtor to be at this present date of the value of 12,447*l.* sterling. The bond was made payable five years after date.

For reasons set out in the Record, but not material to state, the post-nuptial contract was never registered. After the death of the husband the trustees brought an action on the bond against his executors; and the question whether his estate was liable was the question in the first of the two suits in which this Appeal is presented. The Chief Judge in Equity decided that the contract was void for lack of registration, and that the bond must share its fate. From that decision the trustees appeal.

For the Appeal reliance has been placed on the judgments of Lord Esher and Lord Justice Bowen in the case of *Gowan* v. *Wright* 18 Q.B. Div. 201. They were construing the enactment that a Judge's order for judgment made by consent of the Defendant in a personal action should be filed in the way prescribed, and otherwise should be void. This they held to mean void as against creditors, not as against the parties to the order. And they refer to analogous cases in which the Courts have held that the object of the enactment under their consideration was to protect creditors or other persons not parties to the transaction under consideration, and have therefore restricted to that object the nullity of the transaction which the enactment declares in unqualified terms. A similar restriction is contended for in this Appeal.

It is observable that in Section 6 of the law now under examination, a section which relates to earnings, creditors are expressly protected, showing that the framers of the law had clearly in their minds the distinction between creditors and others. But their Lordships will not rest their decision on this narrow ground, thinking that there is a much broader ground of distinction between this law and the other enactments on which the Appellants rely, with regard to the general purposes at which they aim.

The object of this Natal law is to range whole classes of people under general laws of property differing in kind; and it may well have been considered important, not only for creditors but for the parties themselves and for their successors, to place it beyond doubt, so that all might know, under which law any given married couple was living. That object would be best secured by requiring registration in a public office and providing that unless an individual choice of law is registered it shall not take place.

A comparison of the two converse or complementary Sections 2 and 7 makes the point very clear. Section 2 deals with persons married not in South Africa, and it enacts a general law for them, viz., that community of goods shall not apply to them. But it enables individual married couples to withdraw themselves from that law, and to remain as they were before. It does so by saying that the new general law shall apply to them unless they shall by a written instrument express their wish to be exempt and such instrument shall be registered. The language of the section leaves no ground for saying that parties can remain under the law of community of goods by any other method than that of a registered deed.

Section 7 deals with persons married in South Africa to whom the new law does not

directly apply. They may elect to bring themselves under it. The method prescribed for that object is a written instrument which shall be capable of being registered, and shall not be binding if not registered. There can be no reasonable doubt but that in each case the prescribed method is the same, and such is the result if the words used in Section 7 are construed in their obvious and literal sense.

The result is that the post-nuptial settlement executed by the Sturrocks is not binding on anybody; that no trust was created for the wife, and that Taylor and Roy never acquired the characters in which alone the bond was given to them. Their Lordships agree with the learned Chief Judge in Equity; and the Appeal fails on this point.

The question raised in the second suit relates to the construction of a joint will executed by the husband and wife on the 15th July 1894. The suit was instituted against the executrixes of the testator by William Sturrock who under the will is one of his pecuniary legatees and a sharer in his residue. The question is whether the Plaintiff is entitled to be paid at once, or not till after the death of the widow. The Chief Judge in Equity held that the gifts became payable on the testator's death. His decision applies to several other legatees.

By the structure of the will the testator is made to speak first, then the testatrix, and then the two jointly. After giving some legacies the testator divides his residuary estate among a number of persons. His wife takes no interest at all. The testatrix gives the sum of 4,500*l.* to be divided among five legatees, and bequeaths her residuary estate to the testator for his life, and on his death to be divided among a number of persons. The joint direction runs as follows:—

"The testator and testatrix further will and direct that the "executors hereinafter named shall so soon as convenient after

"the death of the testator sell and realise his estate and effects "to the best advantage, and so soon after the death of the "testatrix as may be, pay the specific legacies mentioned "herein, and also to pay and divide the residue and remainder "of her estate and effects as herein directed should she survive "the testator, but in the event of the testatrix pre-deceasing "the testator, then to pay and divide the residue and remainder "as soon as convenient after the death of the testator."

The contention of the Appellants is that the payment of legacies is suspended until after the widow's death, and that the income is undisposed of. It must be confessed that the draftsman of the will, labouring to be brief, has become obscure; yet their Lordships cannot feel any serious hesitation in agreeing with the Court below that the will leaves nothing undisposed of. If a pause be made after the words "to the best advantage," there is up to that point no defect in the will as regards the testator's estate. His legacies would become payable immediately by force of the original gift which there would not be anything to qualify. Everything would be disposed of. Then the rest of the joint direction may be confined to the estate of the testatrix. It was desirable in her case to distinguish between the pecuniary legatees (the will does not contain any specific legacy) and the residue, because she had given the testator a life interest in the residue, thereby postponing the ultimate division. But she directs what are called the specific legacies to be paid at once. That construction brings a harmonious result out of the will without any violation of its language, though the writer has failed to make two people speak clearly in one sentence.

As their Lordships agree with the Court below, the Appeal fails on this point also. They will humbly advise Her Majesty to dismiss it.

The costs must follow the usual rule and be paid by the unsuccessful Appellants.