

[103] FOREIGN LAWS AND CUSTOMS.

CASE 1.—SARAH MEYNELL, Widow, and others,—*Appellants*; GEORGE MOORE,—*Respondent* [27th March 1727].

[Mew's Dig. vi. 1428: See 1 Dick. 30: 3 Atk. 409.]

[By the laws of Antigua, all deeds relating to estates within that island must be registered there, in order to make them effectual.—And by the same laws, all the stock, utensils, erections, and buildings upon a plantation, are subject and liable to the payment of debts, except negroes and other slaves, which are deemed to be affixed to the freehold, and cannot be sold for that purpose, unless there is a deficiency of general assets.]

** This case does not appear in any other book, and seems to be entirely confined to its own circumstances, and not to afford any precedent of general law.

ORDER of the Lord Chancellor partly reversed, but for the most part AFFIRMED.**

Lawrence Crabb in 1690, went to the island of Barbadoes, and there intermarried with the appellant Sarah, who was one of the three daughters and coheirs of George Fletcher of that island.

The said George Fletcher died seised in fee of five messuages and one acre of land, with several negroes, and other live and dead stock in Barbadoes, of £470 per ann. and also of a plantation, messuages, and lands, with several negroes, and other live and dead stock in the island of Antigua; which, on his death, descended upon his three daughters; and two of them soon after dying without issue, the appellant Sarah became thereupon entitled to the reversion of all the said premises, expectant on the death of her mother, the widow of the said George Fletcher, and who afterwards intermarried with Francis Young.

Lawrence Crabb carried the appellant Sarah to Jamaica with him, and in 1691, embarked from thence for England; but in their passage, the ship and all her cargo was lost, they themselves narrowly escaping; and Crabb being in mean circumstances, the appellant Sarah's mother, in regard to his necessities, surrendered the plantation and premises in Antigua to the appellant Sarah; who, in 1695, went with her husband to Antigua, and took possession thereof; but finding the plantation unprovided with a sufficient stock, and in want of several necessities, Crabb [104] wrote to his correspondents in England, to send him coppers and other things necessary for the same; but not being able to procure any supply from them, and being by reason of his very low circumstances unable to procure the same himself, he and the appellant Sarah went to Barbadoes, to persuade her mother to agree that the appellant Sarah's estate there, which she was entitled to after her mother's death, might be sold, and the money arising therefrom applied in erecting proper buildings upon, and to supply and stock the plantation in Antigua. This the mother at first declined; but at last she consented to such sale, on Crabb's agreeing, that the money arising therefrom should be employed in supplying and stocking the Antigua plantation, and that then the buildings, negroes, and stock thereon, together with the plantation itself, should be settled upon the appellant Sarah and her issue.

The Barbadoes estate was accordingly sold, and the money arising by such sale laid out in supplying and stocking the Antigua estate with the necessary works, negroes, and cattle; and according to the said agreement, Crabb and the appellant Sarah, by indenture dated the 10th of April 1699, in consideration of £1200 conveyed to Thomas Lasher, his heirs and assigns, all the said plantation in Antigua, together with all the houses, out-houses, cattle, mills, edifices, and buildings thereon, and all coppers, stills, worms, utensils, and other things whatsoever thereunto belonging; and also sixty-seven negroe slaves, with their increase, together with thirty-five neat, able, working cattle, and their increase, etc. *habend'* to the said Thomas Lasher, his heirs and assigns for ever; who, by indenture, dated the 15th of the same month, for the like consideration, conveyed the said

plantation and premises back again to Lawrence Crabb and the appellant Sarah, their heirs and assigns, *habend'* to them, their heirs and assigns, to the uses, intents, and purposes following, viz. To the use of Lawrence Crabb and the appellant Sarah, for their lives and the life of the survivor; remainder to the use of the children of the appellant Sarah in fee; subject nevertheless to the payment of such portions and legacies as the appellant Sarah should by her will appoint. And these deeds were duly recorded in Antigua, according to the laws of that island.

After this transaction, the appellant Sarah and her husband Crabb came to England, where they stayed till 1708, and were very conversant with the respondent; who during all that time never made any demand upon them, until they had actually agreed for their passage back to Antigua, and put on board divers goods and merchandize, and were ready to go on board themselves: and then, when there was no time left to settle or look into accounts, the respondent arrested Crabb, and would not discharge him till he had given bond for £2500 principal money, wherein the appellant Sarah was made to join.

In March 1709, Lawrence Crabb died intestate at Antigua, leaving the appellant Sarah his widow, and the appellant Isaac [105] their eldest son, about 16 years old, and six other children; but he left no real estate whatever behind him, save what was so settled as aforesaid. Whereupon the governor of the island, as ordinary, appointed Colonel Codrington and others to inventory and appraise his personal estate, who did accordingly truly inventory and appraise at their full value, all the intestate's personal estate, save only four negroes of his purchase, which were wholly unprofitable, and rather a charge than a benefit to the plantation, and three sucking children reckoned of no value, which were therefore omitted; the value of which personal estate, as so appraised, amounted to £440.

Soon after Crabb's death, the appellant Sarah intermarried with Richard Meynell, her second husband; whereupon one Joshua Redhead brought his action, and recovered judgment against the appellant Sarah and the said Richard Meynell, for £484 ls. 4d. and Isaac Ryall in like manner recovered judgment against them for £66. These two sums the appellant Sarah and Meynell actually paid; and the appellant Sarah, during her widowhood, also paid £137 7s. 1½d. for the funeral expences of Lawrence Crabb, and several other of his debts; so that she actually paid in discharge of the intestate's debts £150 and upwards, beyond the amount of his assets.

In Michaelmas term 1716, the respondent preferred his bill in the court of Chancery against the appellants, and the said Richard Meynell, setting forth, that by indenture dated the 1st of November 1692, from Lawrence Crabb and the appellant Sarah to the respondent, and by a fine levied pursuant thereto, they conveyed to the respondent and his heirs, all the said premises in Barbadoes and Antigua, together with all the negroe slaves and plantation utensils, and all the appellant's estate in the said island; in trust for the appellant Sarah for her life, and after her death, for the said Lawrence for his life; and after both their deaths, then as to one moiety, in trust for the heirs of the body of the appellant Sarah, and for want of such issue, to the appellant Sarah in fee; and as to the other moiety, in trust for the said Lawrence Crabb, and his heirs for ever; and that this deed and fine were duly registered in Barbadoes and Antigua.—That in 1706, Lawrence Crabb and the appellant Sarah became bound to the respondent in a bond of £5000 penalty, conditioned for payment of £2500 by annual instalments of £200. That Crabb was further indebted to him by another bond, dated the 5th of May 1708, in £218 4s. 6d. and in near £7000 above the principal and interest due on those two bonds; and therefore prayed that the appellant Sarah, and her then husband Richard Meynell, might account with the respondent for Lawrence Crabb's personal estate, and pay what was due to him for principal and interest; and in case such personal estate was not sufficient, that the reversion of the moiety of the premises in Barbadoes and Antigua, expectant on the appellant Sarah's death, and all other [106] the said Lawrence Crabb's real estate of which he died seised, might be sold, and the respondent thereout paid his said debts with interest.

To this bill the appellant Sarah, being in England, answered alone, her husband Meynell being then in Antigua; and by her answer insisted, *inter alia*, that the conveyance of November 1692, and the fine set up by the respondent, if any such there

were, were executed and levied by her during her infancy and coverture, and were not registered and recorded in the proper offices in Antigua, as several acts of that island direct; and that for want of such registry, the same could not operate upon, or bind any estate there: she further insisted, that the bond for £2500 was, as to her, void, she being then a feme covert, and entering into the same under the coercion of her husband; that the buildings, works, negroes, and cattle on the said plantation, at Lawrence Crabb's death, save only twelve negroes and three children, were part of, or the produce or increase of those left her by her father, or erected and purchased by the monies arising out of her and her mother's estate in Barbadoes, and other negroes that came to her on her mother's death; and that no part of the said buildings or works were erected, or any part of the said negroes or cattle bought at the expence or with the money of Lawrence Crabb, save only the said twelve negroes and three children; that he never had money of his own to purchase the same with, and that he never did, or could lay out any money in erecting works, or replenishing the plantation at Antigua with fresh stock, or any other necessities; and therefore she insisted, that she was entitled to the same, together with the plantation, for her and her children's benefit, freed and exempted from the debts of the said Lawrence Crabb; and she further insisted, that several consignments had been made to the respondent, in discharge of what was due to him.

Issue being joined, and witnesses examined on both sides, the cause was heard before the Lord Chancellor Macclesfield, on the 8th of May 1719: when his lordship declared, *inter alia*, that as to the real estate of the appellant Sarah, of which a fine was levied and a conveyance, as to one moiety thereof, made to Lawrence Crabb her former husband; it appeared that by the laws of Antigua, all deeds relating to estates within that island, must be registered there, to make them effectual; and that the deed of settlement under which the respondent claimed to make one moiety of the estate liable to his demands, not being registered there, as the said laws required, was thereby become void; and did therefore order, that the respondent's bill, as to such part thereof, as sought to make a moiety of the real estate liable to his demands, should stand dismissed; but as to the personal estate of Lawrence Crabb, his lordship ordered and decreed, that the appellant Sarah should come to [107] an account for the same before the master, who in taking the account, was to make the appellant all just allowances; and the master was also to take an account, and see what Lawrence Crabb was indebted to the respondent, and what the respondent had received towards satisfaction thereof; and what the master should find and certify to be due to the respondent from the said Lawrence Crabb, over and above what he had received towards satisfaction thereof, it was ordered and decreed, that the same should be paid the respondent out of the estate of the said Lawrence Crabb, which should appear to be remaining in the appellant's hands, after all just allowances made her; and the consideration of costs was reserved till after the master's report.

On the 1st of August 1723, the master made his report, and thereby certified, that he found by the proofs in the cause, and the appellant Sarah's answer, that Lawrence Crabb died possessed of a personal estate, consisting of several negroes, buildings, cattle, household stuff, and other things, the particulars and value whereof he annexed to his report by way of schedule, amounting to £4050 7s. 6d. Antigua money; and that the same, upon his death, came to the hands of the appellant Sarah; and which £4050 7s. 6d. was at the time of Lawrence Crabb's death in value £2700 5s. sterling, whereout the master had allowed the appellant £37 sterling for funeral charges, which being deducted out of the £2700 5s. there remained of the assets of Crabb come to the appellant's hands £2663 5s. And the master further certified, that he found due to the respondent from Crabb, on two bonds, and for interest due thereon to the 25th of June 1723, and by money paid by the respondent for Crabb's use and by his order, several sums which he particularly mentioned in the second schedule to his report, amounting to £4416 15s. 2d. but the respondent having admitted before the master to have received of Crabb, in his lifetime, and by goods consigned by him to the respondent, and which came to the respondent's hands after Crabb's death, £288 12s. 9d. the particulars whereof he set out by way of third schedule to his report, which being deducted out of the said £4416 15s. 2d. there then remained due to the respondent on the 25th day of June 1723, £4128 2s. 5d.

To this report the appellants took several exceptions; the first of which was, for that the master had in the first schedule to his report, charged the appellant with the several matters and things following, as part of the personal estate of Lawrence Crabb; whereas by the laws and customs of the island of Antigua, the same belonged to and were part of the freehold and inheritance of the appellants, and ought to go along with the same, being by the decree, and by the settlements therein recited, discharged from the respondent's demands; viz.

	£.	s.	d.
[108] A wind mill erected	600	0	0
Seven large coppers	200	0	0
Thirty-four working cattle at £20 per head	480	0	0
A cattle mill, a curing house, boiling house and still house	200	0	0
Two large stills, two worms, and two worm tubs	130	0	0
Sixty-eight negroes at £20 each, one with the other	1360	0	0

And in which two last particulars, there was an overcharge both as to the number and value.

The third exception was, for that the master had not allowed the appellant Sarah the sum of £484 ls. 4d. being a debt due from Lawrence Crabb to Joshua Redhead, and for which he recovered a judgment at law, against her and her late husband Meynell; nor the sum of £66 paid to Isaac Ryall, in satisfaction of so much due from Crabb, and for which Ryall also recovered judgment at law against the appellant and her said husband Meynell, both which sums ought to have been allowed the appellant.

And the fourth exception was, for that the master had not, but ought to have allowed the appellant Sarah the sum of £137 7s. 1½d. it appearing from the proofs that she paid so much for the funeral expences of Lawrence Crabb, and for mourning for his family.

On the 18th of April 1724, these exceptions were argued before the Lord Chancellor King; when his Lordship was pleased to over-rule them all, and confirm the master's report *in toto*.

The appellants therefore appealed from this order, and on their behalf it was argued (C. Talbot, N. Fazakerley), that the buildings, works, coppers, stills, etc. mentioned in the first exception, were the freehold of the appellant Sarah, and part of, or belonging to her plantation, as to which the respondent's bill was dismissed; and that the same, together with the negroes and cattle in this exception also mentioned, were fully proved in the cause either to have been left the appellant Sarah by her father, or to have been erected and bought in with the monies raised by sale of other part of her real estate, and annexed to her plantation in Antigua, subject to a trust to her for her life, and afterwards for the benefit of her children; according to the agreements entered into for that purpose, previous to the sale of the Barbadoes estate. Besides, it was nowhere proved, that any of these negroes, cattle, or stock, were bought by Lawrence Crabb; on the contrary, it was fully in proof, that he never was in circumstances sufficient to purchase the same. Should it be objected, that by an act of assembly passed in Antigua, it is enacted, "That in case any person or persons, tenants for life or will, shall erect or put up any work, such as mills, coppers, or stills, for the improving his interest, all heir or heirs, or his or their representatives, shall pay the value of such mills or coppers, at appraisements, in twelve months; any law or [109] usage to the contrary notwithstanding:" that under this act, the buildings and works in question, were to be considered as personal estate of Lawrence Crabb: that negroes and cattle, though real estate to all other purposes, were personal estate as to the payment of debts; and that therefore, the report and order appealed from were right in these particulars: it might be answered, that this act was not passed until the 18th of June 1702; whereas it was fully in proof, that all the works in question were erected prior to that time, and the act had no retrospect whatsoever; but if it had, it only extended to mills and coppers erected or put up at the proper expence of the persons erecting them; but in the present case, the works were erected and put up at the expence of the appellant Sarah and her mother, being paid for out of the money arising from the sale of their real estate in Barbadoes; and therefore no part of Lawrence Crabb's

estate. As to the third exception, it was insisted, that the appellant Sarah ought to have been allowed the two sums therein mentioned, as being so much really paid by her and her husband Meynell, out of the assets of Lawrence Crabb, in discharge and satisfaction of debts really due from him, and having been actually recovered from her by due course of law, as his administratrix; and therefore the same ought to have been considered as included in the just allowances, which by the decree were directed to be made. But should it be objected, that these being simple contract debts, were of an inferior nature to the respondent's, and that the appellant Sarah ought not to have applied her intestate's assets in discharge of them, until all debts of a superior nature were first satisfied; it was answered, that these sums were recovered by due course of law, the respective creditors having duly obtained judgments for the same, as was fully proved by the respondent's own witnesses. Besides, the appellant Sarah could not give the respondent's bonds in evidence in Antigua, so as to prevent these judgments being obtained against her; and therefore she ought to be allowed whatever she had been obliged to pay under such circumstances. And as to the fourth exception, the appellant ought surely to be allowed the whole of the money therein mentioned, the same having been actually expended by her in and about the funeral of her husband Lawrence Crabb, and was but suitable to his condition; he being at the time of his death a member of the council of Antigua. It was therefore hoped, that the order appealed from would be reversed, and the exceptions allowed.

On the other side it was contended (P. Yorke, T. Lutwyche), that the goods and things mentioned in the first exception, were by the laws and customs of Antigua, subject and liable to the payment of debts; and that they were made, erected, found, and provided by Lawrence Crabb, during his intermarriage with the appellant Sarah, he being, by virtue of such marriage, and of his having issue by her, tenant for life of the plantation; consequently they were part of [110] the stock and utensils provided by him, and ought to be considered as part of his estate for the payment of his debts. That these effects were not discharged from the respondent's demands, either by the decree made in the cause, or by the settlements therein recited; such settlements being voluntary, and made after marriage. For by an act of assembly made at Antigua on the 21st of July 1692, it is enacted, "That all negroe and other slaves, after the date of that act, should be inheritance and affixed to the freehold, and the widow capable of being endowed thereof; provided always, that any executor or administrator might inventory the said negroes, but not take them into his custody; to the intent, that if there should not be sufficient goods and chattels to pay the deceased's debts, then the said negroes were liable to be taken for payment of such debts, and be chattels for that purpose, and not otherwise." That the debt of £484 1s. 1d. due from Lawrence Crabb to Redhead, and the other debt of £66 due to Ryall, were due on simple contract only, and so ought not to have been paid in a due course of administration, before debts by specialty and of a superior nature; the payment therefore of such debts by the appellant Sarah, was a misapplication of her husband's assets, for which she ought to be accountable. That as Lawrence Crabb, according to the allegation of the appellant Sarah, died insolvent, there was no manner of reason to allow her £137 7s. 1½d. for his funeral and her mourning, to the loss and prejudice of his just creditors; and that she had the less reason to complain of not having a sufficient allowance for her husband's funeral, when the master had actually allowed her £37 on that account, which was more than he ought to have done. And therefore it was conceived, that the order made on arguing the exceptions was just, and according to the rules of equity, and would consequently be affirmed with costs.

After hearing counsel on this appeal, it was ORDERED and ADJUDGED, that so much of the order complained of as over-ruled the appellant's third exception, should be reversed; and that the said exception should be allowed; and that the master's report should be varied according to this judgment. And it was further ORDERED and ADJUDGED, that the said order, as to the appellant's other exceptions, should be affirmed. (Jour. vol. 23. p. 88.)