

TEETZEL, J.

JULY 25TH, 1911.

RE CUMMER MARRIAGE SETTLEMENT.

Marriage Settlement—Construction—Remainder—“Heirs of the Body”—Failure of—“Right Heirs”—Attempted Revocation of Executed Trusts—Invalidity.

Motion by the trustees under the marriage settlement of Lockruan A. Cummer and Flora Ann Creen, and by the executors of the will of Lockruan A. Cummer, under Con. Rule 938, for an order determining questions arising upon the construction of the settlement, and for an order, under the Vendors and Purchasers Act, declaring that the executors could make a good title to certain lands.

- G. S. Kerr, K.C., for the applicants.
- S. F. Washington, K.C., for the Creen heirs.
- C. W. Bell, for the Cummer heirs.
- E. C. Cattanach, for infants.
- J. G. Farmer, K.C., for the purchaser.

TEETZEL, J.:—The deed of settlement is dated the 28th November, 1864, by Lockruan A. Cummer, of the first part, Flora Ann Creen, of the second part, and trustees of the third part, and recites that a marriage is shortly to be had between the parties of the first and second parts, and that it has been agreed that the lands thereafter described shall be granted to the trustees on the trusts thereafter declared, and, in consideration of the marriage, and for making provision for the maintenance and support of the party of the second part during her life, if the marriage should take place, and she should happen to survive the party of the first part, and also for the issue, if any, of the intended marriage, and five shillings, the party of the second part granted to the trustees the lands therein described, “in trust for the said party of the second part, her heirs, executors, administrators, and assigns, until the said intended marriage shall be had and solemnised, and from and immediately after the solemnisation thereof upon trust to the use of the said party of the second part and her assigns during the term of her natural life, and from and immediately after her decease to the use and benefit of the heirs of the body of the party of the first part on the body of the party of the second part to be begotten, and in case of the death of the said party of the second part without