

Judges present. This may probably account for the judgment, which, I apprehend, is contrary both to law and equity.

The *hypothèque* or mortgage claimed is under the marriage-settlement of Mrs. *Smith* and Mr. *Brown*. It is material, therefore, to examine that instrument, which must be construed by the law prevailing in *France* previous to the Code Civil, which is the *coutume* of *Paris*. The settlement is ante-nuptial, and comprises the personalty or moveables of Mrs. *Smith* only, and which is to remain "*nature de propres*," that is, a conversion into real estate. (1) The property converted is to be to the separate use of Mrs. *Smith* during coverture; there is to be no "*communauté de biens*;" the effect of which is to defeat the husband's right in case of survivorship, and to exempt, according both to the tenor of the instrument as well as the effect of the law, any debts contracted by the husband attaching on her property (2).

The settlement then stipulates that there shall be no dower, neither *douaire coutumier* or *préfix*, by which provision the *hypothèque*, which the children of the marriage would have otherwise acquired, is absolutely excluded (3).

Then Mrs. *Smith* is to have the sole disposition of her estate by Will.

Now the effect of all these provisions is to convert the personalty, for the purposes of descent, into realty, which, in case of the intestacy of the lady, would descend as real estate to collateral heirs, in default of issue; and in case of issue dying in the lifetime of the father, the father would succeed as heir (4).

(1) Denoyan's Coll. Tit. *Propres-Actes*.

(2) *Pothier, Tr. de la Com.*, p. 1, c. 3, no. 461. Code Art. 1529.

(3) *Pothier, Tr. du Dou.*, no. 299, 328.

(4) *Pothier, de la Com.*, p. 1, c. 3, s. 2, Art. 4, s. 2.