

BRAWLEY v. ROGERS.

4-3300

Opinion delivered January 22, 1934.

1. HUSBAND AND WIFE—ANTENUPTIAL AGREEMENT.—The law has always allowed parties in contemplation of marriage to fix the rights of each in the property of the other by an agreement equitably and fairly made between them that will exclude the operation of the law.
2. HUSBAND AND WIFE—MARRIAGE SETTLEMENT.—Marriage is a sufficient consideration for an antenuptial agreement or marriage settlement.
3. HUSBAND AND WIFE—ANTENUPTIAL SETTLEMENTS.—Antenuptial agreements settling property rights should be liberally construed to carry out the intention of the parties.

Appeal from Sharp Circuit Court, Southern District;
John L. Bledsoe, Judge; reversed.

STATEMENT BY THE COURT.

There was a proceeding instituted in the Sharp County Probate Court wherein the appellee, J. E. Rogers, as guardian of Martha J. Murphy, a person of unsound mind, sought to set aside her dower as the widow of S. P.

Murphy, deceased, in and to his real and personal property.

It appears from the record that S. P. Murphy and Jane Spurlock, each living in Sharp County, and their respective ages being approximately 70 and 65 years at the time of their marriage in February, 1919, were the individual owners of separate real and personal property, and each had children by a former marriage. A few days before their marriage they entered into a written contract in which it was recited that each had property and children of their own, and that they agreed that at the death of either party their separate property, both real and personal, should vest in their respective children. This antenuptial agreement or contract was pleaded in bar of the widow's petition for dower, after the death of the said S. P. Murphy.

It appears that the parties entered into the contract in February, 1919, and lived together as man and wife until the death of S. P. Murphy, which occurred in 1930. Approximately two years thereafter, the appellee, on the 9th day of February, 1932, was appointed guardian of Martha Jane Murphy; and at the July term, 1932, in the probate court of Sharp County, filed a petition asking that she be allowed dower in the estate of S. P. Murphy, deceased, to which petition appellant filed a response setting up the antenuptial contract before mentioned as a bar to any right the widow might have to dower in said estate.

The court upheld the validity of the antenuptial contract, but, on appeal to the circuit court, said contract was held to be void for want of consideration, and this appeal is from that judgment to review and reverse same.

Coleman & Reeder, for appellant.

John C. Ashley, for appellee.

KIRBY, J., (after stating the facts). The undisputed testimony shows that S. P. Murphy and Jane Spurlock executed the contract in question, and that it was done in consideration of their approaching marriage, which occurred shortly thereafter. It is not claimed that there was any fraud or undue influence used in the negotiations about the agreement or in the execution thereof; and it

was entered into in good faith for the purposes set out therein, and the parties lived together as husband and wife until the death of the husband.

The evidence does not indicate the value of the property owned by the respective parties at the time of the execution of the contract.

The antenuptial contract is sought to be avoided as one without consideration, it being insisted for the appellee that, under the law and the terms of the said contract, the appellant's intestate could have had no interest in appellee's property by marriage, since she was too old for the possibility of issue being born alive from the union, and since under the law otherwise she would have been entitled to dower, etc., out of his property; and that therefore the antenuptial contract was void for want of consideration.

The statute, §§ 7028 *et seq.*, Crawford & Moses' Digest, authorize the making of antenuptial agreements by parties contemplating marriage. The law has always allowed parties in contemplation of marriage to fix the rights of each in the property of the other by an agreement equitably and fairly made between them that will exclude the operation of the law in that respect. 13 R. C. L., pages 1012-15. It is likewise held that marriage is a sufficient consideration for such antenuptial agreement or marriage settlement. See 13 R. C. L. 1016; 30 C. J. 631; *Oliphant v. Oliphant*, 177 Ark. 613, 7 S. W. (2d) 783, and *Comstock v. Comstock*, 146 Ark. 266, 225 S. W. 621.

There is nothing to indicate that this antenuptial contract was not freely entered into, or that it is unjust or inequitable, and such contracts should be liberally construed to carry out the intentions of the parties. *Oliphant v. Oliphant, supra*. There was no intimation that said contract was not entered into in good faith or without the expectation of the parties living together until death separated them. *Id.*

The court therefore erred in holding the contract was invalid and unenforceable for want of consideration, and that appellee was not bound thereby. The judgment must be reversed, and, the case, appearing to have been fully developed, will be dismissed. It is so ordered.