

Arnett Vs. Reade

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Court : US Supreme Court

Decided On : Apr-03-1911

Appeal No. : 220 U.S. 311

Appellant : Arnett

Respondent : Reade

Judgement :

Arnett v. Reade - 220 U.S. 311 (1911)

U.S. Supreme Court Arnett v. Reade, 220 U.S. 311 (1911)

Arnett v. Reade

No. 98

Argued March 14, 1911

Decided April 3, 1911

220 U.S. 311

*APPEAL FROM THE SUPREME COURT OF
THE TERRITORY OF NEW MEXICO*

SYLLABUS

Under the law of New Mexico of 1901, providing that both husband and wife must join in conveyances of real estate acquired during coverture, a deed of the husband in which the wife does not join is ineffectual to convey community property even though acquired prior to the passage of the act.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a suit to quiet title, brought by the appellee against the widow of Adolpho Lea, for whom her heirs were substituted upon her decease. Adolpho Lea married in 1857. He bought the land in question in 1889 and 1893, and it became community property. In 1902, he sold it to the appellee, shortly before his death in the same year, his wife not joining in the conveyance. By the laws of New Mexico of 1901, c. 62, 6(a),

"neither husband nor wife shall convey, mortgage, encumber, or dispose of any real interest or legal or equitable interest therein acquired during coverture by onerous title unless both join in the execution thereof."

The courts of New Mexico gave judgment for the plaintiff on the ground that the husband had vested rights that would be taken away if the statute were allowed to apply to land previously acquired, citing *Guice v. Lawrence*, 2 La. Ann. 226, *Spreckels v. Spreckels*, 116 Cal. 339, etc. The defendants appealed to this Court.

There was some suggestion at the argument that the husband acquired from his marriage rights by contract that could not be impaired; but, of course, there is nothing in that, even if it appeared, as it does not, that the parties were married in New Mexico, then being domiciled there. *Maynard v. Hill*, [125 U. S. 190](#) , [125 U. S. 210](#) , *et seq.*; *Baker v. Kilgore*, [145 U. S. 487](#) , [145 U. S. 490](#) -491. The supreme court does not put its decision upon that ground, but upon the notion

that, during the joint lives, the husband was in substance the owner, the wife having a mere expectancy, and that the old saying was true that community is a partnership which begins only at its end. We do not perceive how this statement of the wife's position can be reconciled with the old law of New Mexico embraced in 2030-2031 of the Compiled Laws 1897, referred to in the dissenting opinion of Abbott, A.J., that, after payment of the common debts, the deduction of the survivor's separate property and his half of the acquest property, and subject to the payment of the debts of the decedent, the remainder of the acquest property and the separate estate of the decedent shall constitute the body of the estate for descent and distribution, and, in the absence of a will, shall descend one-fourth to the surviving husband, etc. For if the wife had a mere possibility, it would seem that whatever went to the husband from her so-called half would not descend from her, but merely would continue his. The statement also directly contradicts the conception of the community system expressed in *Warburton v. White*, [176 U. S. 484](#) , [176 U. S. 494](#) , that the control was given to the husband "not because he was the exclusive owner, but because by law he was created the agent of community." And, notwithstanding the citation in *Garrozi v. Dastas*, [204 U. S. 64](#) , of some of the passages and dicta from authors and cases most relied upon by the court below, we think it plain that there was no intent in that decision to deny or qualify the expression quoted from *Warburton v. White*. See 204 U.S. [204 U. S. 78](#) . *Los bienes que han marido y mujer que son de ambos por medio*. Novisima Recopilacion, Bk. 10, title 4, Law 4.

It is not necessary to go very deeply into the precise nature of the wife's interest during marriage. The discussion has fed the flame of juridical controversy for many years. The notion that the husband is the true owner is said to represent the tendency of the French

customs. 2 Brissaud, Hist. du Droit Franc. 1699, n. 1. The notion may have been helped by the subjection of the woman to marital power; 6 Laferriere, Hist. du Droit

Franc. 365; Schmidt, Civil Law of Spain and Mexico, Arts. 40, 51, and in this country by confusion between the practical effect of the husband's power and its legal ground, if not by mistranslation of ambiguous words like *dominio*. See [United States v. Castillero](#), 2 Black 17, [67 U. S. 227](#) . However this may be, it is very plain that the wife has a greater interest than the mere possibility of an expectant heir. For it is conceded by the court below and everywhere, we believe, that in one way or another she has a remedy for an alienation made in fraud of her by her husband. Novisima Recopilacion, Book 10, Title 4, Law 5; Schmidt, Civil Law of Spain and Mexico, Art. 51; *Garrozi v. Dastas*, [204 U. S. 64](#) , [204 U. S. 78](#) . We should require more than a reference to [Randall v. Kreiger](#), 23 Wall. 137, as to the power of the legislature over an inchoate right of dower to make us believe that a law could put an end to her interest without compensation consistently with the Constitution of the United States. But, whether it could or not, it has not tried to destroy it, but, on the contrary, to protect it. And, as she was protected against fraud already, we can conceive no reason why the legislation could not make that protection more effectual by requiring her concurrence in her husband's deed of the land.

Judgment reversed.

MR. JUSTICE Mc KENNA, dissenting:

I dissent from the opinion and judgment of the court for the reasons set forth in the opinion of the Supreme Court of New Mexico. See also *Spreckels v. Spreckels*, 116 Cal. 339.

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