Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lemprière v. *Vibert, from the Royal Court of the Island of Jersey; delivered 19th July,* 1862.

Present:

LORD JUSTICE KNIGHT BRUCE.
SIR EDWARD RYAN.
LORD JUSTICE TURNER.

IN this case the deceased wife of the Appellant was, during the marriage and at the time of her death, the owner of a real estate in Jersey, consisting of a certain amount of annual wheat rent; and, as there had been living issue of the marriage, the Appellant, on his wife's death, became, or but for the circumstance about to be mentioned would have become, entitled by the law of Jersey to the enjoyment of the property until his own decease or marriage. He does not appear to have married since her death, and the only ground on which his claim to that enjoyment was or could reasonably have been opposed was, that there had taken place between them a judicial separation "quant aux biens." For that reason his claim has been rejected in the Royal Court of Jersey by two successive, though not unanimous, decisions. They produced the present appeal, which was heard before us *ex parte*. We were desirous of being assured of the accuracy of the alleged facts, and Mr. Reeve, the Registrar of the Privy Council, at our request, communicated on the subject with the present Bailiff of Jersey, who had not been concerned judicially or otherwise, we believe, in the case. His answer leaves no doubt on our minds as to the nature of the separation, which was granted by the Royal Court of Jersey in 1839 upon the application ("à la requête") of the husband and wife. The grant of separation is correctly set forth in the second paragraph of the second page of the Appellant's case in these words:—"A la Cour Royale de l'Isle

de Jersey, l'an mil huit cent trente-neuf, le vingt-troisième jour de Septembre, à la requête de M. Edouard Lemprière et Madame Esther Cardinal, sa femme, séparation quant aux biens leur est accordée."

This, therefore, does not appear to have been a separation caused by any crime, or fault, or disagreement. It probably was (as alleged) one for the convenience both of the husband and wife as to the administration of property; and it seems probable that (as also alleged), they continued to live together, as before, until her death. Upon the point of law the ancient "Coûtumier" and "Rouillé's Commentary," the new "Coûtumier" and "Terrien's Commentary," Basnage, Bérault, and Le Geyt, were cited to us by Mr. Bullar, Counsel for the Appellant. Their Lordships having considered the matter, are satisfied that such a separation "quant aux biens" as took place in the present instance does not affect the husband's "droit de viduité," that the Appellant was consequently right in his suit, and that he is well founded in his appeal.

Their Lordships give no opinion as to the effect or consequences of a separation "quant aux biens," obtained otherwise than upon the request of the husband and wife, or of a "séparation de corps." They think that, in the present instance, the husband may be properly said to have "tenu" the wheat-rent "de par sa femme au tems qu'elle mourut," notwithstanding the "séparation."

It is right, however, to add, that they have also learned from the present Bailiff of Jersey that this wheat-rent was patrimonial property of the wife, belonging to her before and at the time of the separation—not acquired by her afterwards; and the observations which have been made are not to be understood as extending to property acquired by a wife after a separation, as to which we give no opinion.

Their Lordships will humbly report to Her Majesty that the Judgment of the Royal Court of Jersey ought to be reversed, but without costs; and the case be remitted, with a declaration as to the Appellant's right.