

# A Marriage Settlement

G E Fenn

Ann FENN, the widow of Richard Fenn, died in 1740. On 20th September 1736, she made a Will, which included the following:

*"...AND WHEREAS for and in consideration of a marriage, had and solemnized between Richard Fenn, late of Horsell, aforesaid, carpenter, and me, the said Ann Fenn, being aforesaid Ann FULKE, widow, he the said Richard Fenn, by our obligation, bearing date the ninth day of July, Anno. Dom. 1697, did bind himself, his heirs, executors and administrators unto William WHEELER and John RAWLINS, both of the Parish of Horsell aforesaid, in the sum of SIXTY POUNDS, with a condition there underwritten to pay THIRTY POUNDS to such person or persons as I, the said Ann Fenn, then going by the name Ann Fulke, in and by my Last Will and Testament, in writing, sealed in the presence of two or more credible witnesses, or any other writing or writings, direct or appoint to give and bequeath the same, and to be paid within one year of my decease..."*

In essence what this required was Richard Fenn to create a Trust of £60, with the Trustees being William WHEELER and John RAWLINS with £30 of that Trust to be disbursed by Ann Fenn in her Will or other writing, properly witnessed. Ann was born Ann STEDMAN and the question is, why was this contract entered into?

The average wage in 1700 was around £7-£8 per annum, and this had risen to £12-£13 per annum by 1750. An equivalent to the £60 today, based on average earnings, would be around £60,000. Ann's Will said that Richard was a carpenter, so a further question is, how did a carpenter have such a sum of money to place in Trust?

Richard Fenn was born on 2nd August 1659, the fifth son of George Fenn, who was the son of John Fenn, yeoman, and Barbara Fenn, who lived in Castle House, Horsell. George was the middle born of three sons and he, like Richard, was a carpenter. John Fenn made a Will on 7th June 1658 which was proved on 6th June 1659. The eldest son John had died before the Will was made and George, thereupon the eldest son, received the largest part of his father's assets in land, money and property, which was substantial for those times. John Fenn's widow, Barbara, died in 1662 and in her Will, made on 24th December 1661, after making some specific bequests, left all her property to George, who would, as a result, be a wealthy man. This, then, is how Richard got his money. From his father, George, who died on 11th April 1676. £60 would be well within his financial capability.

Richard was 38 years of age when he married Ann. He made a Will on 12th August 1710, and died in 1716, when they were living at Thorneash, Horsell, inherited from his father. He left the use of certain rooms, part of the orchard, the brewhouse and the well to Ann during her lifetime, so long as she remained a widow, together with specific bequests to her absolutely of curtains, furniture and furnishings. After specific bequests to blood relatives, his brother George received all his property and land, on condition that he paid to Ann £8 per year in quarterly amounts. No mention was made in the Will of any Marriage Settlement, Contract, or Trust. Richard had land in Thorpe as well as Horsell and some of his cash bequests were of substantial sums of money. For example, George, as his Executor, had to pay to their sister, Sarah LAMBERT, the sum of £40, £20 within 6 months of Richard's death and the remaining £20 after Richard's widow, Ann, died. Although in her Will Ann describes her dead husband as a carpenter he was, in fact, a wealthy land- and property-owner. The question still remains as to why the settlement was made.

Ann Fenn's first husband, Nicholas Fulke, a yeoman, died in 1696, a year before she married Richard Fenn. He made a Will on 25th November 1695, which was proved on 20th May 1696. In his Will Nicholas left furniture, bedding, utensils and other goods to Ann, together with the interest from £90 of his money, plus the interest from the money realised by his stock. On Ann's death that money was to go to his six brothers, as had the rest of his money on his death. He did not specify Ann's bequest should cease if she remarried, so his brothers had to wait over 40 years to get their share of it, whilst during that period interest accrued to Ann. This Will is the reason for the Marriage Settlement.

Separation of Property, the principle that marriage has no effect on property rights, has only been part of English Law for little more than a century. Before that, at Common Law,

a married woman could not acquire, own, or dispose of chattels, ie any property other than freehold land. Any chattels she owned at the time of marriage became the husband's. The Court of Equity did intervene to allow a married woman to hold 'separate property' in the form of a Trust held by Trustees and which had been created by a formal transaction, as in the case of Richard and Ann. The reason for the Marriage Settlement made before Ann married Richard was to safeguard her property, particularly the interest accruing to her during the marriage which otherwise would automatically have become Richard's property.

Before 1753, a valid marriage could be contracted very informally. All that was required was for the parties to have exchanged consents. A church or other formal ceremony was not necessary. This created problems. First, there was not any record a marriage had taken place, opening up great scope for disputes. Claims were often made that a marriage had not taken place or that it was void because one of the parties was already 'married'. This could have disastrous consequences; children could become illegitimate and disqualified from succeeding to their father's property, which, by law, then went to the father's brothers and sisters. There were men who deliberately sought a rich heiress and 'married' her, in secret, thus making themselves instantly rich. Some did not even live thereafter with the woman they had thus 'married'; her property was all they were after.

It was these problems that created the pressure which resulted in the passage of Lord Hardwick's Marriage Act of 1753, which made a marriage valid only (with some exceptions for other religions) if it had been solemnized in a public ceremony in a Church of England after banns had been properly called and where those under 21 years of age had parental consent. Until 1753, therefore, a Marriage Settlement was the only device available to keep property inherited by a wife out of her husband's control. However, it did not apply to a wife's earnings during marriage as these automatically went to the husband.

Ann's Marriage Settlement was clever. It circumvented the accruing to Richard of the interest earned by her first husband's £90. Had she died shortly after her marriage to Richard he would have been the loser because the £90 would not have earned the £30 she could leave in her Will. However, as Richard died in 1716, 19 years after the Marriage Settlement was made, he would probably have made money out of it as Ann's interest would go to him during the marriage.

After Richard's death Ann would be very comfortably off as the interest on the £90 would then be hers. Certainly her Will left considerable sums of money - much in excess of the £30 stipulated in the Marriage Settlement - to her blood relatives, to whom all her property was left. Her brother, David Stedman, received the £30 mentioned in the Marriage Settlement, and all the property left after the specific bequests. He was also the sole Executor.

## Surrey Strays in St Martin-in-the-Fields

Kate Maslen

While looking through the registers of St Martin-in-the-Fields, I noticed the following Surrey marriages:

29 Aug 1746	Thomas STIFF of Chertsey in Surrey = Elizabeth CARLETON of St Martin's
20 Nov 1746	William BERRY of St Martin's = Elizabeth SCOTT of Croydon
3 Feb 1747/8	Michael MANN = Elizabeth MATTHEWS both of Egham
19 Nov 1748	William HOUSEMAN = Mary CALVERLEY both of St Saviour, Southwark
31 Aug 1749	James WALKER of St Mary Whitechapel = Elizabeth GREGORY of Wandsworth
20 Feb 1749/50	Richard FALL of St Saviour, Southwark = Mehetabel WARD of St James, Westminster
9 Apr 1752	William THOMPSON of Mitcham = Ann ASTERLEY of Wandsworth
18 Feb 1754	George PIERCE = Mary WICKS both of Wandsworth



Since writing last time about the book I intended to make for my grandchildren, I wondered recently which member of the family had been having a little stir! My three-year-old granddaughter suddenly said to me last week "You're my Daddy's mummy and Grandpa is my Daddy's daddy!" As it was her father who was featured in the picture in the last article, I wondered whether he had had a sneaky look at the journal, and primed his daughter accordingly!

Yesterday, I was telephoned by the BBC asking if I would help with a TV programme about leisure (not that I know much about that subject!) in which they wanted to feature Family History, computers and the Internet. It was the latter which they wanted me to talk about. By the time you read this, I will either have appeared on TV or they will have decided that I don't know as much about the Internet as whoever recommended me thought I did!

They asked the same question that most people ask about the Internet. "How useful is it for tracing your Family History?" A number of people seem to think that they are going to type in their name and up will come their complete family tree, just as people walk into the Society of Genealogists and ask "Have you got my tree here?". The answer in both cases is a resounding "No way"! Also, where the Internet is concerned, they think they can tap on-line sources which contain original records. Again, this is rarely possible, although the Scottish Register Office are to put their indexes on line very soon with details of how much it will cost to obtain a copy of the original document. There are a few transcripts and indexes available which you can search free of charge, but they are few and far between and you certainly cannot download names from the IGI as you can from the CD version.

I have probably said this before, and will no doubt say it again, but the most useful part of the Internet is the contact you make with other people all over the world. For this purpose, the news-groups on the Internet and the Genealogy Forums on CompuServe are extremely valuable. I don't know very much about news-groups (and I am going to have to learn pretty quickly if I am to talk about them on TV!) but certainly the Genealogy Forums on CompuServe have enabled many people not only to make contact with other people researching the same name, but also to get valuable information on how to research not only in their own country but in other countries as well.

The most remarkable example of this that I can give concerns a lady in America who wrote a message one Friday evening to say that her basement had been flooded and she had four large cardboard boxes full of wet books and wanted to know what was the best way to save them. Within hours, she had been told to put the books in a freezer where they would not deteriorate further until they could be restored one by one, she had been offered freezer space in her local area and been given the telephone numbers of local firms who offered freezer space and also who restored books from frozen. A remarkable experience, in my view.

Having mentioned CompuServe, they are in my bad books at the moment. When I first joined, they had a telephone Help Line which was free. About a year ago, they made it an 0890 number which is a premium rate number at 50p a minute. In the last couple of months they have changed it to an Automated Help Line. I had occasion to phone it over the weekend, and got an automated message which went through the separate departments, inviting me to press a key according to which one I wanted. I pressed key 2 for Technical Support and a voice said my selection had not been recognized. Thinking I had done something wrong, I tried again (another 50p). After the third attempt (another 50p), I gave up. Later, I tried a different phone. I suddenly realized that the phone I had used the first time was not a touch-tone phone. Yet nowhere at the beginning of that recorded message did it say that I should be using a touch-tone phone or what I should do if I didn't have one.

This time I got through and spent about three minutes listening to an American voice going through a list of options and inviting me to press a certain key according to which