

ARTICLES FROM THE TIMES
FROM 1880 TO 1905
CONCERNING ARTHUR MONTAGU REIS

These fifteen newspaper articles from 1880 to 1905 appeared in the London Times (and one in the Daily Mail) and dealt with the monetary affairs of Arthur Montagu Reis (1858–1944), the son of Jonas Reis (1820–1877) and Marian Samuel (1825–1900). The series begins with a short notice about the bankruptcy of Jonas in 1869, which is not counted among the fifteen. Items that consist of just one line notices are counted as ‘articles’. There are references to other publications, such as the *Mercantile Guardian*, which have yet to be tracked down. So this collection is not complete, yet. Also, there are some words that could not be made out from the original microfilm of the Times. These are indicated with [...] or [?]. I have found *Vanity Fair* drawings of some of the judges and lawyers involved in some of the cases and have scattered these about the text to liven it up a bit. Since these articles will be rechecked for accuracy at a later date and others may be added. This document was created in March 2003 and this version is dated April 2003. The four articles marked NEW were added in April 2003.

David Man
New York City
April 2003

* * * * *

The Times, January 16, 1869 Page 5, Col D.

BANKRUPTS

Reis, Jonas, Liverpool, bullion merchant -- Jan 25, Liverpool.

Article No. 1

The Times, August 18 1880, Page 9, Column F.

SUSPENSION OF A LIVERPOOL BANK

The following circular was sent yesterday to the creditors of Messrs. J. Reis and Co., bankers and merchants, Liverpool:-

“I am instructed by Messrs. J. Reis and Co., of this city, to inform you that to their very great regret, owing to the late severe loss, non-receipt of remittances from aboard, and other causes which will be communicated to you, they have been compelled to suspend

payment. A meeting of the creditors of the said Messrs J. Reis and Co. will be called in due course at an early date, when a full statement of their affairs will be laid before you. I am, gentlemen, yours obediently, R. Steinforth.”

Messrs. Reis and Co. have been established in Liverpool for many years. The first meeting of creditors is arranged for the 2nd. Proximo.

Article No. 2

The Times, October 25 1880, Page 6, Column E.

A Bank Failure – The case of A . M. Reis was before the Liverpool Bankruptcy courts on Saturday, when there was a sitting for public examination. Mr. Reis was described as a banker and African merchant, trading in Liverpool under the style of “Jonas Reis & Co.” The failure took place in August and is attributed principally to the non-arrival of remittances from the West Coast of Africa, the claims of the bankrupt on his correspondents there amounting to £5,570. A statement of affairs filed shows an indebtedness of £9,413, against assets £2,324, consisting of book debts estimated to produce £2,056 and other property £250. For the Trustees, it was stated that he was satisfied the bankrupt had made a full discovery of his property, and there was no objection to the public examination being passed. The bankrupt signed the usual declaration and passed his public examination.

Article No. 3

The Times, November 11, 1880, Page 6, Column ?

BANKRUPTS

(Notices of Adjudication and First Meetings of Creditors)

(Under the Bankruptcy Act of 1869)

In the Country

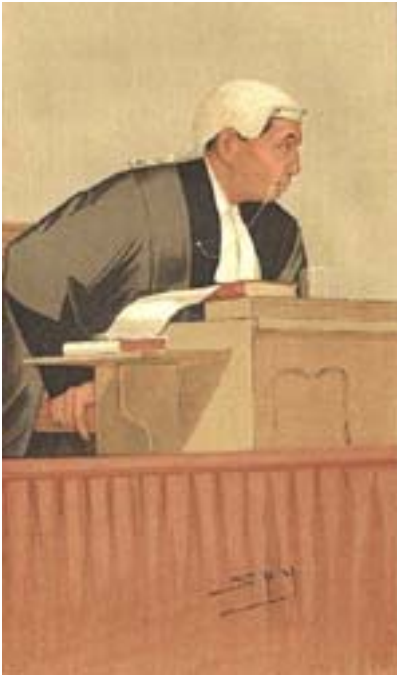
Reis, Arthur Montagu, Liverpool, Banker, Sept. 22, Liverpool

Article No. 4

The Times, July 20, 1895, Page 6, Column D.

Civil Actions: Reis –v- Jones

(before Mr. JUSTICE KENNEDY¹ and a Common Jury.)

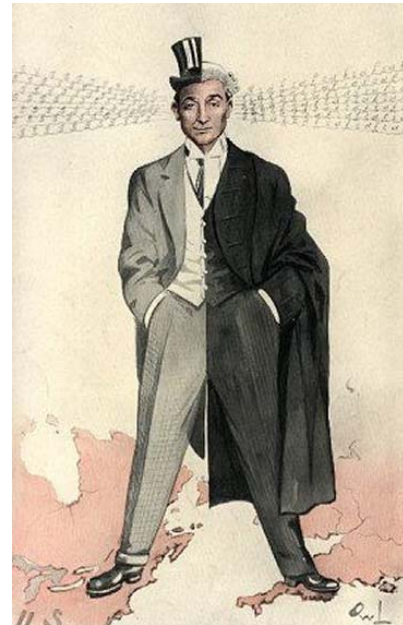


This action was brought to recover damages for libels, which it was alleged, had appeared in two issues of the *Mercantile Guardian* of which paper the defendant was the proprietor. The plaintiff at the time was carrying on business at Gresham-house, Old Broad street, as a merchant. About June, 1894, he was compelled by reason of the non-receipt of the remittances and of a considerable amount of his capital having been locked up in landed property on the river Gambia and being for the moment unrealizable, to lay a statement of his position before his creditors and to ask their consideration in regard to the payment of his indebtedness to them, for which purpose he issued a circular to the above effect, containing a statement of his position. The first libel complained of appeared on July 21 1894 and was headed, "The Affairs of Mr. Arthur Reis". It gave what purported to be an account of his career, and generally spoke of him and of the business in which he had been engaged in language which, it was

alleged, ridiculed and held him up to contempt, and implied that he had never for any length of time remained in one place, or had a money stake in the trade he was carrying on, and had caused heavy losses to others, while he had lost nothing. The second publication complained of consisted of two notices announcing that he (the Plaintiff) had executed a deed of inspectorship with a view to the gradual winding up of his estate and the payment of the creditors in full with interest at 3 per cent.; and that the unsecured liabilities amounted to £5,714 5s. 8d. with estimated net assets *nil*. The defence as to the first of these paragraphs was, after admitting the publication, that its true interpretation was not defamatory to the plaintiff, and that the words were no libel, but fair and bona fide comment upon matters of public interest, and printed and published in good faith by the defendant without malice towards the plaintiff. The remaining paragraphs were accurate, except as to the statement that the assets were nil, and that the defendant immediately of being informed thereof had printed and published a correction and an apology stating that he had been informed by Mr. Reis's solicitors that the estate was sufficient to pay 20s. in the pound, and that a dividend of 5s. in the pound, had already been paid. The defendant further pleaded that in two actions brought by the Plaintiff against Perry and Co. and *Stubbs Gazette* he had recovered damages for a similar misstatement respecting the assets, and the defendant sought to give this in evidence in

¹ Justice Kennedy is shown left

mitigation of damages. The plaintiff, in his reply, said that the so-called correction or apology was not sufficient or proper under the circumstances, and further that the *Mercantile Guardian* was not a newspaper within the meaning of the statute 51 and 52 Vict., cap. 64, and that, therefore, the defendant was not entitled to give in evidence, in mitigation of damages, that the plaintiff had recovered damages for a libel to the same purport, and effect. Upon these pleas issue had been joined, and came for trial in this action. H. F. DICKINSON Q. C. and Mr. RUFUS ISAACS (below) were for the plaintiff, and Mr. E. FORBES LANKESTER for the defendant. After Mr. Dickinson had opened the plaintiff's case at considerable length, Mr. Arthur Reis was called, and said he was the plaintiff. He was educated at Liverpool College, and in 1871 entered his father's business as a clerk, he then being 14 years of age. The business was that of a banker, and had been carried on for 30 years. His father died in 1877 at a time when he (witness) was not of age. He carried on the business for the benefit of his mother, and on coming of age he took over the business, with its assets and liabilities, and agreed to allow his mother £280 a year. The capital in the business was found by relatives, but within a year they drew it out, in consequence of which he was compelled to file a petition in bankruptcy. He obtained his discharge upon the creditors passing a resolution that the failure arose from circumstances over which he had no control. He then became manager to Messrs. Samuel & Co. in Liverpool, and stayed there a year, when he went to Alexandria. He made money there, but had to leave owing to the cholera breaking out. He brought back savings amounting to £500, after payment of all his expenses. He started then as a dealer in fancy goods at Charing-cross, and later on opened premises at 45, King William street. He made money in these concerns. The rent paid at Charing-cross was £450 and £950 at King William-street. The two were going at the same time. He subsequently sold both businesses and moved to Gresham-house in 1890, trading there as a general merchant. He employed 11 clerks and still carried on the same business. He sent out the circular to his creditors in May, 1894. He had then large sums owing to him, which he could not for the moment collect, and his capital was tied up in the Gambia. At the time he had no debts in connection with the Charing-cross or King William-street businesses. He executed the deed of insolvency on October 16, 1894. His attention was first called to the statements in the *Mercantile Guardian* when he was cross-examined with reference thereto in other proceedings. The estate was still being worked for the benefit of the creditors, who had already received 5s. in the pound. The statement of his affairs was prepared by a chartered accountant appointed by the creditors. It was totally untrue that there were no assets, or that his father had failed, so far as he knew. The other statements published concerning him and his business career were untrue.



Cross-examined by Mr. LANKESTER — He was a commission merchant, but often he acted on his own account. He was now an outside broker in Old Broad-street and issued

circulars. It was true that he had had a varied experience. His father was a bullion merchant. He was clerk, not partner, in that concern in his father's lifetime. He did not know as a fact that his father failed in 1869. He objected to the article that he went there and everywhere and did not pay anybody. He was a relation of Mr. Samuel, but he never was a partner of his. He did not tell his creditors at the meeting that his business had been successful. He believed the case was the contrary. He did not tell the creditors there was no money to be made at Alexandria. When he came back from there he first went to Mark-lane, to continue trading with Egypt, but his partner on returning to Alexandria died from cholera. He could not give the name of this gentleman. He remembered he was a Scotchman. He dealt in fancy goods, chiefly at Charing-cross. He had an interest in the firm W_____ and Co., but it was not his business. One of the partners was a lady who had once been his clerk. She came into money and started this business. He did not find money for her. He considered the property in the Gambia worth £20,000. When it was put up for sale, there might have been only one bid of £500 for it. In his statement it was estimated to be worth £8,000. He had recovered £80 and costs in all the actions together.

This was the case for the plaintiff.

Mr. Lankester called no witnesses but addressed the jury in mitigation of damages should they arrive at the conclusion that the articles were libelous.

The jury, after retiring for a quarter of an hour, came into Court at 5.30 p. m., and found for the plaintiff £125.

Judgment accordingly.

Article No. 5

The Times, March 2, 1899, Page 13, Column D.

Before Mr. JUSTICE GRANTHAM² and a special jury

The Attorney General –v- Reis.

This was an information filed by the Attorney-General on behalf of the Crown against Mr. Arthur Reis, an outside stockbroker to recover certain penalties from him for alleged offences under the Stamp Act, 1891. The information contained 67 counts, and the principal allegations against the defendant were that he had stamped certain contract notes with stamps which had been previously used, and that other



² Grantham is shown right

contract notes he had stamped insufficiently, thereby rendering himself liable to penalties amounting in all £2,720. The defendant pleaded “Guilty” to the counts of the information which charged him with having stamped certain contract notes insufficiently, but maintained that such insufficient stamping arose through error. He denied that he had ever fraudulently used stamps twice over. (Picture right is Grantham)

The Attorney-General, Mr. Danckwerts, and Mr. Vaughan Williams appeared in support of the information; and Mr. Caesin Q. C. and Mr. Montagu Lush were counsel for the defendant.

The ATTORNEY-GENERAL, in opening the case, stated that it was provided by the Legislature (56 and 57 Vict. C. 7., section 3), all contract notes for the purchase or sale of stocks or shares should, if the transaction amounted to over £100, be stamped with a shilling stamp. If the contract note contained more than one transaction then there must be a shilling stamp affixed for each such transaction. The Stamp Act of 1891 provided (section 8, subsection 1) that “An instrument ... is not deemed to be duly stamped with an adhesive stamp unless the person required by law to cancel the adhesive stamp cancels the same by writing on or across the stamp his name or initials ... or otherwise effectively cancels the stamp and renders the same incapable of being used for any other instrument.” Section 9 provided that “If any person fraudulently removes or causes to be removed from any instrument any adhesive stamp or affixes to any other instrument ... any adhesive stamp which has been so removed, with intent that the stamp may be used again He shall, in addition to any other fine or penalty to which he may be liable, incur a fine of £50.” In this information, the case for the Crown was that from February to May in 1897 the defendant did in a number of instances affix to contract notes adhesive stamps which had been taken off previous contract notes. The first 23 counts of the information dealt with affixing previously used adhesive stamps to contract notes; the next 23 dealt with [uttering?] the stamps; and the last 21 counts were addressed to the fact that certain contracts were executed without being duly stamped, and for each of these offences the defendant was liable, under section 53, subsection 2 of the Act, to a penalty of £20. The facts were these. Mr. Reis, the defendant, was an outside broker, who had been represented to be in large way of business. It appeared, however, that he occupied one or two rooms and employed a clerk and a typewriter. He kept in his office a box containing stamps which he used for his contract notes, and he used to stamp these documents himself. It seemed that he had a number of transactions with a Mr. M’ Callum, against whom he brought an action and he obtained judgment. Mr. M’ Callum was made a bankrupt, and in the course of the bankruptcy proceedings it came to Mr. M’ Callum’s knowledge that stamps which had been previously used had been affixed by Mr. Reis to contract notes which he had given to him. Mr. M’ Callum thereupon informed the Inland Revenue authorities. From the middle of February to May 1897, 23 contracts stamped with stamps which had been previously used by mistake, Mr. Reis’s only proper course was to have returned them as spoiled stamps, and he would have been compensated [?]. Five of the contract notes were insufficiently stamped, and for each of these contracts the defendant was liable to a penalty of £20. He had admitted that the five contracts were not duly stamped and had offered to pay £100 in settlement of the whole

amount. That was declined by the Commissioners of Inland Revenue, and these proceedings were taken.

Expert evidence was given by a chemist and Government analyst that he had carefully examined the contract notes in question, and he found that the stamps on them had been stripped off other documents and had been previously cancelled or regummed.

An office boy named Jackson, who had been in the defendant's employment, said that Mr. Reis used to affix the stamps to the contracts himself and used to cancel them with a rubber die. He had seen used stamps mixed up with the others in the box where they were.

Mr. Carson, in opening the case for the defendant, pointed out that the penalties claimed from the defendant amounted to £2,720, and it was suggested that, in order to save 23s., the value of stamps which ought to have been affixed to these contract notes, he had incurred that heavy liability. The defendant could not possibly gain anything by placing on these documents stamps already used, because he was entitled to charge his clients for the cost of the stamps. Counsel submitted that there had been no fraud at all on the part of the defendant. It was true that some of the contracts had been insufficiently stamped. The defendant admitted that and said that these errors arose through mistakes on the part of his clerks, and he had offered to pay what those mistakes made him liable to pay. The defendant had never fraudulently removed a stamp from one contract note and used it on another. It was not denied that certain stamps had been used twice in one sense. Stamps had been put on documents, and afterwards it had been found that those documents were wrongly stamped, and then they were removed and used for others. There was no fraud whatever on the Revenue on this, because contracts originally stamped were never issued, and so the documents had never done duty as effective documents. According to the Crown, the defendant's course of conduct must have been this. He must have sent the contract to his client and then have obtained it back, or at all events the stamp from it, in order to use it again. The stamps, the subject of this case, were not, however, stamps he had obtained from old contract notes, but from his own notes, and no evidence had been brought to show that old customers had sent him back either the contract notes or the stamps. This fraud was not made out unless it was proved that these stamps had been used effectively or fraudulently a second time.

Mr. Arthur Reis, the defendant, said that he had carried on business as a stockbroker for five years. He was not a member of the Stock Exchange, but all his business was conducted through the Stock Exchange. He issued from 50 to 100 contracts during the week. He sometimes stamped the notes himself, and sometimes it was done by his clerks. He used a rubber die for canceling the stamp. Frequently it happened that a wrong stamp was put on to a note, and when that happened witness used to take the stamp off and use it for a subsequent contract note. The ineffective contract notes he destroyed after taking off the stamps. He had never used a stamp twice over. Clients were charged for the stamps put on the contracts. From February 26 to May 10, 1897, he had 84 bargains with M'Callum. He issued 300 contracts to him altogether. Five contract notes were insufficiently stamped; that was entirely a mistake.

Cross-examined by the ATTORNEY-GENERAL, witness said that he kept no accounts for stamps used in his business. He had done business with his brother in Edinburgh and he had received from him 54 stamps which had been cancelled. That was on February 2, 1897. His brother sent them back because he declined to pay for them. Witness destroyed the stamps at once. The rubber stamp was usually kept in his room. Sometimes the signature came out faint and witness impressed it twice.

Two young ladies, who were clerks in the defendant's employment, said that they frequently put stamps on contract notes and cancelled them with the rubber die. When mistakes were made in the value of the stamp put on, Mr. Reis used to take them off again.

The case was commenced on Monday, but owing to the learned judge's indisposition on Tuesday was adjourned until Monday next.

Article No. 6

NEW The Times March 7, 1899 Page 14 Col. A.

(Before Mr. Justice Grantham and a special jury)

The Attorney-General –v- Reis

The hearing of this information filed by the Attorney-General on behalf of the Crown against Mr. Arthur Reis, an outside stockbroker, to recover from him certain penalties for alleged offences against the Stamp Act, 1891, was concluded this morning. The case was commenced on Monday last, and the first day's proceedings were reported in The Times of March 2. Owing to the indisposition of the learned Judge the further hearing was adjourned till to-day. The information contained 67 counts. The first 46 contained allegations that the defendant had stamped and uttered contract notes with stamps which had been previously used, for each of which offences he was liable to a penalty of £50. The last 21 counts charged the defendant with having issued contract notes not duly stamped, and for each of these offences he was liable to a penalty of £20. The defendant pleaded "Not Guilty" to the charges of having fraudulently used stamps which had been used before, but he admitted that in five instances he had, through error, issued contract notes which were insufficiently stamped. A good deal of evidence was given at the hearing of the case last Monday.

The Attorney-General and Mr. Danckwerts appeared for the Crown and Mr. Carson QC and Montague Lush were for the defendant.

On the sitting of the Court.

The Attorney-General said that, having considered the evidence which had been given in this case, and having regard to the fact that the defendant had no answer to the last 21 counts of the information, there seemed to him to be no evidence which rendered it necessary to insist on proceeding with the first 46 counts. There was no desire to press hardily on the defendant in this case, and on behalf of the Crown he was justified in saying that there was no sufficient evidence of fraudulent removal of stamps for penalties under those counts. The Crown, therefore, would be satisfied with a verdict for penalties for having issued contracts notes not duly stamped. He would consent to a verdict of not guilty on the first 46 counts, and guilty on the last 21 counts.

Mr. Carson, in assenting to what had fallen from the Attorney-General, said that as the first 46 counts contained charges of fraud against his client it was a serious matter for him, and they must have been tried out had not the Attorney-General said that there was not evidence to sustain the charge of fraud. Having regard, however, to what had been said with regard to those more serious charges, the defendant was ready to withdraw his plea of not guilty with regard to the last 21 counts.

The ATTORNEY-GENERAL – I ask for judgment for the Crown for £420 on the last 21 counts. There will be a verdict of not guilty on the first 46 counts.

Mr. JUSTICE GRANTHAM -- I think this termination of the case is a very proper one. There will be a verdict for the Crown for £420 on the last 21 Counts and a verdict of “Not Guilty” on the first 46 counts.

Article, No. 7

The Times, July 29, 1903, Page 4, Column E.

The Bankruptcy Acts, 1883 and 1890 Adjudications

Reis, Arthur – Holland-park, Kensington, W. Stock and share dealer.

Article No 8

The Times, August 7, 1903, Page 13, Column B.

(before Mr. WALTER BOYLE, Assistant Official Receiver)

IN RE REIS

This was the first meeting of creditors of Arthur Montagu Reis, who carried on business as an outside share broker, until the end of June last, and is now described as of an

address in Holland-park, Kensington, W. The liabilities were returned at £15,285, of which £12,083 was unsecured, and the assets were estimated to produce £471. The CHAIRMAN said that the debtor had been examined, and had stated that he formerly carried on business as a foreign banker in Liverpool, where he filed a petition for liquidation, and obtained a discharge. He subsequently carried on a business in London as a fancy goods dealer, and in 1894 executed a deed of insolvency for the benefit of his creditors, who received a dividend of 5s. in the pound. He afterwards began business as an outside stock and share broker, without capital, and attributed his present failure to depreciation in the value of shares, speculations on the Stock Exchange, and bad debts. Mr. Spyer, solicitor, appearing for the defendant, made no proposal for composition, and it appeared that the debtor had already been adjudicated a bankrupt. Mr. W. O. Clough, chartered accountant, was appointed trustee of the estate, with a committee of inspection.

Article No. 9

The Times, August 19, 1903, Page 9 Column B.

IN RE REIS

This was a sitting for public examination. The debtor, Arthur Montagu Reis, formerly carried on business as an outside stock and share broker, and was now described as of an address in Holland-park, Kensington, W. An amended statement of affairs was filed showing liabilities of £13,285. 0s. 2d., of which £12,085. 0s. 3d was expected to [...], and estimated assets of £20,471. 6s. 7d.

Mr. Walter Boyle appeared as Assistant Official Receiver; Mr. Adler for the Trustees; Mr. Spyer for the debtor; and Mr. S. Lushington for parties interested in the proceedings.

Examined by Mr. Boyle the debtor stated that he formerly carried on business as a foreign banker in Liverpool, but owing to the withdrawal of capital from the business he was compelled in 1880 to file a petition for liquidation. His liabilities then amounted to £9,413 on which a dividend of 4s. 3d. in the pound was paid. Having obtained his discharge from those proceedings he went to Egypt, and began business as an importer of English goods, in which he was successful until the outbreak of cholera in 1881, when he had to leave. Subsequently he commenced trading as a general export and import merchant, with a branch at Bathurst, Gambia, where he also had a mahogany and indiarubber estates. In 1894, owing to the lock-up of his capital, he was compelled to call his creditors together; and a dividend of 5s. in the pound was paid on liabilities £6,289. He then commenced business as an outside stockbroker in London, and at first was very successful. In June 1901, his surplus represented by stocks and shares, amounted to £55,000; but the accounts afterwards went against him, until in May the "slump" caused him to stop, all his capital having disappeared through depreciation in the value of securities and losses through speculations. Since he started the business his turnover had amounted to £60,000,000.

Further evidence having been given, the examination was concluded.

Article No 10

NEW

DAILY MAIL August 19, 1903

£55,000 LOST IN TWO YEARS BANKRUPT'S CLAIM AGAINST STOCKBROKERS.

The public examination in the Bankruptcy Court of Arthur Reis, formerly a foreign banker in Liverpool, and more recently an outside stock and share broker in London, took place yesterday.

The statement of affairs showed liabilities amounting to £15,285, of which £12,085 was unsecured, and assets £20,471. Included in this is a claim of £20,000 against certain brokers.

The debtor began business as a stock and share broker in 1894. His transactions were conducted with four firms of stockbrokers, and were so successful that in June 1901 he had securities to the value of £55,000 at his bankers uncharged. Out of that sum he expended £10,200 in purchasing the freehold of a house in the Holland Park-road and £1,000 on furniture for the same. In so doing he was carrying out the covenants of his marriage settlement entered into some years before. During the last two years his business had brought him in £2,360, and his expenditure had amounted to £4,170. The difference in his income was accounted for by the fact that business was bad and the profits were correspondingly less than for previous years.

And it was practically within those two years that the whole of your surplus of £55,000 disappeared as the result of speculation? the debtor was asked.

“Yes and in the depreciation in the value of my investments.”

Continuing, the debtor stated that the main item in the assets consisted of claims to the amount of £20,000 against the stockbrokers with whom he had done business for excessive charges on contangos. In every case he had been told that no profits had been made by these brokers upon contango, but within the last few weeks he had obtained information which proved the reverse to be the case. During the last eight years he had dealt in some sixty millions of shares.

The only creditors were the four stockbrokers with whom he had done business throughout. They had been personal friends of his, and all of them had made large profits out of him. One firm had made between 26,000 and 30,000, another one 20,000, and a third firm practically as much as they were now claiming against his estate for. That represented profits on their transactions. He certainly thought up to the time of the bankruptcy proceedings that they would not suffer any great hardship if they did not receive the amount of the difference due them, having regard to the large sums of money they had made. The examination was ordered to be concluded

Article, No. 11

The Times, November 7, 1903, Page 17, Column C.

This was an application for an order of discharge of Mr. Arthur Montagu Reis, who was described in the receiving order (dated July 15, 1903) as of an address in Holland-park, Kensington, and had carried on business as an outside stock and share broker.

Mr. Egerton S. Grey appeared as Official Receiver; Mr. Sington for the trustees; and Mr. E. W. Hansell for the bankrupt.

The proofs and probable claims amounted to £12,360 13s. 4d., and the assets had hitherto realized £94 12s. 10d. There were further assets in the form of claims against certain brokers, but the claims were vague and undefined, and neither the trustee nor the Official Receiver could estimate the amount, if anything, which would be realized from them. It was improbable that any dividend could be paid to the unsecured creditors. Early in 1879, the bankrupt purchased the business carried on by his late father in Liverpool under the style of Jonas Reis and Co. On September 6, 1880, the debtor was adjudged bankrupt, his liabilities amounting to £9,413 7s. 4d., and on October 27 1882, he obtained his discharge, dividends amounting to 4s. 3d. in the pound being paid to the creditors. Between that time and 1894 he carried on various businesses, and in the last-mentioned year executed a deed of insolvency, with liabilities amounting to £6,289 on which a dividend of 5s. in the pound was paid. In 1900 he obtained his release. The bankrupt had in 1894, begun business in London as an outside stock and share broker, and at that was very successful, but after September 1901, he speculated heavily on his own account, and from time to time made serious losses. The bankrupt attributed his present failure to alleged over charges made by brokers, to losses amounting to £45,000, through speculations on the Stock Exchange, to depreciation of investments (£16,613 13s. 7d.), and to bad debts. The Official Receiver reported that the bankrupt's assets were not of a value equal to 10 s. in the pound on the amount of his unsecured liabilities; that the bankrupt had omitted to keep proper books of account; that he had contributed to his bankruptcy by rash and hazardous speculations and unjustifiable extravagance in living; that he had, within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given an undue preference in favor of the trustees of his marriage settlement; and had previously been adjudged bankrupt; and had made an arrangement with his creditors.

MR REGISTRAR BROUGHAM asked whether any steps were being made to recover the property in respect to which an undue preference was alleged to have been given to the trustees of the bankrupt's marriage settlement.

MR. SINGTON said that private sittings had been held and a further sitting was pending. He asked that this application might be adjourned, in order that the validity of the settlement might be tested.

MR. HANSELL intimated that he disputed that the bankrupt had given an undue preference to the trustee of the settlement.

Mr. REGISTRAR BROUGHAM adjourned the application until December 4.

Article No. 12

NEW The TIMES. January 19, 1904 Page 13. col c.

(Sittings in Bankruptcy before Mr. Justice Wright)

RE REIS – EX PARTE CLOUGH

This was an application by the trustee in bankruptcy to set aside a conveyance of a freehold house and an assignment of household furniture and effects, both dated June 10, 1903, and executed by the debtor in favour of the trustees of his marriage settlement, on the ground that the conveyance and assignment were made after the commencement of the debtor's bankruptcy under these circumstances. In September, 1879, the debtor, then a banker and bullion merchant, executed on the occasion of his marriage a deed of settlement by which (amongst other things) he covenanted to convey all his after acquired property (except his business assets) to the trustees of his marriage settlement, to be held by them upon trusts for the benefit of his wife and children. In the year 1894 the debtor failed for some of £5,000, and paid a composition of about 5s. in the pound. He then started business as an outside stock and share broker, and in the year 1900 made a profit of nearly £50,000, and purchased a freehold house in Holland Park for £4,700 and furnished it luxuriously and lived there with his wife and family. In April and May, 1903, he was in difficulties in respect of Stock Exchange transactions, and on May 20 he intimated to his principal Stock Exchange creditors that he would be unable to pay the differences that would be due from him on May 28. On July 14 a receiving order was made against him in a judgment obtained against him on June 22 on a writ issued against him on May 29 by one of his Stock Exchange creditors. In the meantime the debtor had had on June 10, in pursuance of a notice served upon him by his settlement trustees on May 23, conveyed and transferred to them his house and furniture in Holland-park. The debtor's liabilities amounted to some £12,000 and his assets (exclusive of the house and furniture in question) did not exceed £60. The trustee in bankruptcy alleged that an act of bankruptcy had been committed on May 26, and that his title related back to that date. The question turned to a great extent on the meaning of the words "becoming bankrupt" in section 47 (subsection 2) of the Bankruptcy Act, 1883, which enacts that "any

covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage ... any estate or interest ... shall on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant be void against the trust in bankruptcy.”

Mr. REED, K.C., Mr. A. J. DAVID, and Mr. ADLER appeared for the trustee in bankruptcy, and contended (1) that the debtor committed an act of bankruptcy on May 26; and (2) that the words “becoming bankrupt” should be read in an ordinary commercial sense. Consequently the debtor had become bankrupt on May 26, before the property in question, had been transferred to the trustee of his marriage settlement.

Mr. HORRIDGE, K. C. and Mr. MUIR MACKENZIE, who appeared for the settlement trustees, argued, *contra*, that the debtor did not commit an act of bankruptcy on May 26. But if he did the words “becoming bankrupt” should be construed strictly, and meant “being adjudicated bankrupt.” If so the property in question had been actually transferred to the settlement trustees before the debtor was adjudicated bankrupt on July, 1903. Mr. Hansell appeared for Mrs. Reis.

Mr. JUSTICE WRIGHT held on the evidence that the debtor had committed an act of bankruptcy on May 26, and that the words “becoming bankrupt” in subsection 2 of section 47 must be construed in the light of section 43 of the Act, which provided that the bankruptcy of a debtor “shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being committed, on which a receiving order is made against him or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and to commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition.” That being so, the debtor must be deemed to have committed an act of bankruptcy on May 26, on which day he committed an act of bankruptcy to which the title of the trustee related back, and this was before the property in question had been actually transferred to the settlement trustees. The trustee in bankruptcy was therefore, entitled to set aside the two deeds of June 1903.

Article No. 13

The Times, January 23, 1904, Page 4, Column D.

(Sittings in bankruptcy before Mr. Registrar Brougham.)

In Re REIS

This was an adjourned hearing of an application for an order of discharge. The bankrupt, Mr. Arthur Reis, was described in the receiving order (dated July 15, 1903), as of an address in Holland – park, Kensington, W and had carried on business as an outside stock and share broker. The application, which was first before the Court on November 6, was

reported in the Times of November 7, and was adjourned to enable the trustee in bankruptcy to move for a declaration that a transfer by the bankrupt of property on June 10, 1903, to the trustees of his marriage settlement, was void against the trustee in bankruptcy. It now appeared that the trustee had been successful in obtaining such declaration.

Mr. Walter Boyle appeared as Assistant Official receiver; Mr. Adler was for trustee in bankruptcy; and Mr. F. W. Hansell for the bankrupt.

MR. REGISTRAR BROUGHAM in giving judgment, said the Official Receiver had reported, that the debts of the bankrupt were £12,360, and the assets, which were entered in the statement of affairs at £20,471 had realized only £91. The principal assets consisted of certain claims amounting to £20,000, but nothing had been received in respect to them. The first allegation against the bankrupt, was that his assets were not equal to 10s in the pound, on the amount of unsecured liabilities. As to that there was no doubt, but the assets might be increased to a point not far short 10s in the pound by the setting aside of a transfer of property made by the bankrupt in favour of the trustees of his marriage settlement. The second allegation related to the insufficiency of the bankrupt's book of account, but that was not a serious offence in this case. The third offence was that the bankrupt had contributed to his failure by rash and hazardous speculations and unjustifiable extravagance in living. In extenuation of that offence, it appeared that the creditors were Stock Exchange creditors, and knew the bankrupt's position. The Official Receiver had reported, as a fourth offence, that the bankrupt had, within three months preceding the date of the receiving order, when unable to pay his debts as they became due, "given an undue preference in favor of the trustees of his marriage settlement." Those were not the words of the Bankruptcy Act, 1890, section 8, subsection (3) i. The words of the subsection were: - "given an undue preference to any of his creditors". He did not propose to include this offence in his order suspending the bankrupt's discharge. The alleged undue preference consisted of a transfer of property by the bankrupt to the trustees of his marriage settlement. Even if the trustees of the Settlement could be said to be creditors of the bankrupt – a question which he could not decide without hearing the trustees – the alleged offence of transferring the property was minimized by the fact that the bankrupt acted on the advice of his solicitor, who told him the transfer must be made. On the other grounds, and also by reason of a previous bankruptcy and an arrangement with creditors, the bankrupt's discharge would be suspended for three years to date from November 6 last, when this application was first before the Court.

Article No. 14

The Times, May 21 1904, Page 9, Column 6

LAW Report, May 20.
Supreme Court of Judicature
COURT OF APPEAL



(before LORD JUSTICE VAUGHAN WILLIAMS, LORD JUSTICE STIRLING and LORD JUSTICE COZENS-HARDY) In RE REIS (EX PARTE L. and A. SAMUEL)

This was an appeal from the decision of Mr. Justice Wright (left), reported in *The Times* of January 19 last and in 20 *The Times Law Reports*, 167. The facts were shortly these. In September 1879, the debtor, then a banker and bullion merchant, executed on the occasion of his marriage a deed of settlement by which (amongst other things) he covenanted to convey all his after acquired property (except his business assets) to the trustees of his marriage settlement, to be held by them upon trusts for the benefit of his wife and children. In 1880 the debtor was adjudicated bankrupt, but he got his discharge in 1882. In 1894 he failed for some £5,000, and paid a composition of about 5 s. in the pound. He then started business as an outside stock and share broker, and in the year 1900 made a profit of nearly £50,000 and purchased a freehold house in Holland-park for £4,700 and furnished it luxuriously and lived there with his wife and family. In April and May, 1903, he was in difficulties in respect of Stock Exchange transactions, and on May 26 he intimated to his principal Stock Exchange creditors that he would be unable to pay the differences that would be due from him on May 28. On July 14 a receiving order was made against him on a judgment obtained against him on June 22 on a writ issued against him on May 29 by one of his Stock Exchange creditors, and on an act of bankruptcy committed on June 29; and on July 23 he was adjudicated a bankrupt. In the meantime the debtor had on June 10, in pursuance of a notice served upon him by his settlement trustees on May 23, conveyed and transferred to them his house and furniture in Holland-park. The debtor's liabilities amounted to some £12,000, and his assets (exclusive of the house and furniture in question) did not exceed £60. In those circumstances, the trustee in bankruptcy alleged that an act of bankruptcy had been committed on May 26, and that his title related back to that date. Accordingly, he applied before Mr. Justice Wright, sitting in bankruptcy, to set aside the conveyance of June 10, 1903, of the house and furniture in Holland-park, on the ground that it was made after the commencement of the debtor's bankruptcy. The question turned to in great extent on the meaning of the words "becoming bankrupt" in section 47 (subsection 2) of the Bankruptcy Act of 1883, which enacts that "any covenant or contract made in consideration of marriage for the future settlement on or for the settler's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest ... shall on his becoming bankrupt before the property or

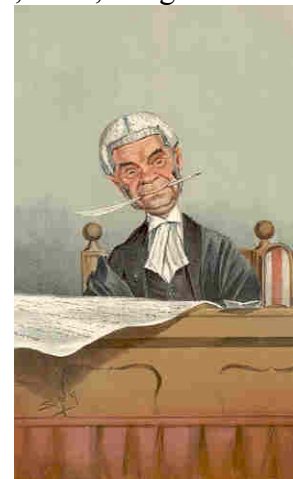
money has been actually transferred or paid pursuant to the contract or covenant be void against the trustee in the bankruptcy.” The learned Judge held on the evidence that the debtor had committed an act of bankruptcy on May 26, and that the words “becoming bankrupt” in subsection 2 of section 47 must be construed in the light of section 43 of the Act, which provided that the bankruptcy of a debtor “shall be deemed to have relation back to and to commence at the time of the act of bankruptcy being committed on which a receiving order is made against him or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to and to commence at the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the one of the presentation of the bankruptcy petition.” That being so the debtor must be deemed to have become bankrupt on May 26, on which day he committed an act of bankruptcy to which the title of the trustee related back, and this was before the property in question had been actually transferred to the settlement trustees. The trustee in the bankruptcy was, therefore, entitled to set aside the two deeds of June 10, 1903. From that decision the trustees of the settlement now appealed.

Mr. Horridge, R.C. and Mr. Muir Mackenzie appeared for the trustees of the settlement and Mr. Reed, K.C., Mr. A. J. David and Mr. Adler for the trustee in the bankruptcy.

The appeal was argued in March last, when judgment was received.

Their LORDSHIPS delivered judgment on Tuesday, allowing the appeal.

LORD JUSTICE COZENS-HARDY (shown below) delivered the first judgment as follows:- This is an appeal from an order of Mr. Justice Wright’s declaring certain deeds executed by the bankrupt in June, 1903, pursuant to a covenant contained in his marriage settlement in 1879, void under section 47 (2) of the Bankruptcy Act, 1883, as against the trustee, on the ground that he had “become bankrupt” – i.e. had committed an act of bankruptcy – on May 26. The act of bankruptcy relied on was that Reis on that day gave notice to his Stock Exchange creditors that he had suspended, or that he was about to suspend, payment of his debts – section 4 (). Now the meaning of this subsection has been fully explained by Lord Justice Vaughan Williams in two cases “Re Scott” (1896, 2 Q.B., 619) and “Lord Hill’s Trustee –v- Rowlands” (1896 2 Q. B., 124). The result of the authorities is that a statement by a debtor that he is unable to pay his debts in full is not by itself an act of bankruptcy, although it may be such if it amounts to a statement that he intends to deal with his creditors as a body. The transaction of May 26 does not, in my opinion, fall within this category. Reis and his solicitor gave each of his Stock Exchange creditors, individually, permission at once to close his account, which they could not have done without such permission. Each broker acted for himself, each brought an action for the balance due. I cannot regard this as falling within the subsection. This was the only point on which Mr. Justice Wright gave a decision, although various other points were argued before him



upon which it was not necessary for him to express an opinion. But as we are differing from the learned Judge, the respondents have relied before us upon other grounds. It is urged that the covenant by the husband in the marriage settlement of 1879 was (a) void under the statute of Elizabeth against creditors; (b) so vague and general that the Court ought to decline to grant specific performance of it; (c) released by the bankruptcy of the husband in 1880, with the result that the deeds of June, 1903, were voluntary and therefore void under section 47 (1); (d) in order to succeed in this contention it is necessary to show that the wife was party or privy to the fraud. Of this there is, and can be, no direct evidence. But it is urged that the deed itself, to which she was a party, is of such a nature that it cannot be deemed other than a fraudulent deed. The decision of Chief Judge Bacon in "Ex parte Bolland, V Clint" (L.R. 17, Eq. 115) undoubtedly supports this view. But in my opinion that decision is inconsistent with a line of authorities, of which "Hardey v. Green" (12 Beav., 182) need alone be referred to. The judgment of Lord Langdale in that case seems to me to establish that such a covenant is not, on the face of it, fraudulent. (b) I think the husband's covenant is not too vague and general to be enforced. Lord Eldon in "Lewis v. Maddocks" (8 Vict. 150, 17 Ves. 48)) held that such a covenant, on construction, must attach to and affect capital only, and not income, unless, "laid up as capital," and that the Court ought to give effect to the covenant. "Hardey v. Green" (*ubi supra*) is to the same effect. (c) I think this objection cannot prevail. When once it has been decided that the covenant is one of which specific performance can be obtained, it follows that the right to specific performance is not barred by the bankruptcy. The covenant is not ancillary to a debt which was released by the bankruptcy. And there is no evidence of any breach of the covenant before the bankruptcy was closed. There is nothing in "Hardey v. Fothergill" (13 App. Cas., 351) which justifies the respondent's contention on this point. Lastly an objection was taken to the assignment of the furniture on the ground that the deed was not registered as a bill of sale, and that the furniture remained in the apparent ownership of the bankrupt. The only act of bankruptcy which can be relied on was June 29, and that is the date to which the title of the trustee [relies?]. Now a marriage settlement is not a bill of sale within the definition of the Bill of Sales Acts, and it is urged by Mr. Horridge, the furniture was bound in equity by the covenant in the marriage settlement of 1879, which did not require registration, and that the deed of June 10, 1903, was only for the purpose of completing the legal title by means of an actual transfer of the property. There has not been any transfer of the furniture by delivery to the trustees. They must rely upon the deed of June 10, 1903, as to the transferring of the property to them. The question arises whether that deed is a marriage settlement within the exception in section of the Bills of Sale Act, 1878, section 8 of that Act, which cannot be the foundation of a title as against the trustee in bankruptcy. Now the deed of June 10 may, I think, be fairly regarded as forming part of the marriage settlement. If it was expected in pursuance of a covenant in the deed of 1879, and was in the nature of a further assurance. A post-nuptial settlement executed in pursuance of an ante-nuptial agreement falls within the term "marriage settlement" in the Bills of Sale Act. This is the conclusion at which I should have arrived apart from authority, and it accords with the view taken by the Court of Appeal in the case of "Coureier v. [?]" a note of which is found in 27 *Solicitor's Journal*, page 276, but which is not fully reported anywhere else. The result is that in my opinion the appellants succeed both as to the leasehold house and to the chattels.

LORDS JUSTICE VAUGHAN WILLIAMS and Stirling delivered judgments to the same effect.

Article No. 15

NEW

The Times, August 2nd, 1905

(Before the LORD CHANCELLOR, LORD MACNAGHTEN and LORD ROBERTSON.)

CLOUGH V. SAMUEL AND OTHERS.

This was an appeal from a decision of the Court of Appeal (Lords Justices Vaughan Williams, Stirling, and Cozens-Hardy), dated May 17, 1904, by which an order of the late Mr. Justice Wright, dated January 18, 1804, was discharged. The case is reported 20 The Times Law Reports, 547; L.R. [1904], 2 K.B., 769 ; 73 L.J., K.B. 829. The arguments were heard on June 5, 8, and 27 last, when judgment was reserved. The appellant was the trustee in bankruptcy of the property of one Arthur Reis, against whom a receiving order in bankruptcy was made in the High Court on July 15, 1903, on the petition of a creditor founded on an act of bankruptcy committed by Reis on June 29, 1803. The respondents, Lawrence Samuel and Alfred Samuel, were the present trustees under the indenture of marriage settlement, dated September 9, 1879, made by Reis upon his marriage with the respondent, Lilian Reis who at the time of the settlement was Lilian Samuel. Mr. Justice Wright's order was made upon a motion by the appellant as trustee of the property of Reis, in which the appellant claimed certain property, consisting of a freehold house No. 68, Holland-park, Kensington, and the furniture and household and other effects therein, which property Reis, by two indentures dated respectively June 10, 1903, had conveyed and assigned to Lawrence Samuel and Alfred Samuel. The appellant based his claim on the grounds that the indentures of June 10, 1903, were void as against him, and also that the indenture of settlement of September 9, 1879, was so far as it purported to affect property acquired after its date, fraudulent and void as against the Appellant. Mr. Justice Wright held that the indentures dated June 10, 1803, were void as against the appellant. The Court of Appeal held that the indentures were not void as against the appellant, and also held that the indenture of settlement of September 9, 1879, was valid and operative upon the after-acquired property of Reis, which had been actually transferred to the settlement trustees before he had become bankrupt. The material facts proved or admitted were as follows :—

On September 9, 1879, Reis by an indenture of that date made between Reis of the first part, the respondent Lilian Reis, then Lilian Samuel, of the second part, and the respondent Lawrence Samuel, and another person as trustees of the third part, being an ante-nuptial marriage settlement made in consideration of the marriage of Reis with Lilian Samuel, certain furniture and other personal, property were assigned to the trustees upon trusts declared in the indenture for the benefit of Lilian Reis, and for the benefit of

Reis and of the children of the marriage. The indenture contained, amongst other clauses, a covenant to convey all future-acquired property except business assets to the trustees to be held on the trusts of the settlement. At the date of this settlement Reis was carrying on business as a banker and bullion merchant. On September 6, 1880, Reis was adjudged a bankrupt. His estate paid a dividend of 4s. 3d. in the pound, and on October 27, 1882, he obtained his discharge. In the year 1894 Reis commenced business as a dealer in stocks and shares (not on the Stock Exchange). He was successful in his business, and there was evidence before the Court, which was not disputed, that in 1901 he was a prosperous man, and that in September, 1901 (the date of the purchases of property next mentioned), the value of his assets exceeded the amount of his liabilities by not less than £50,000. In the month of September 1901, Reis purchased a freehold house, 68, Holland-park, which was conveyed to him on September 28, 1901. The purchase price was about £4,700. He also purchased large quantities of furniture and other effects worth some thousands of pounds. On May 23, 1903, the respondent trustees by their solicitors served on Reis a notice and, demand in writing requiring him to convey the house and furniture to them, to be held on the trusts of the settlement of 1879. On May 25, 1903, Messrs. Spyer and Sons, the Solicitors of Reis, by a letter of the said dates addressed on his behalf to the solicitors of the respondent trustees, replied that Reis would fulfill his obligations, and that they would approve a proper deed on his behalf. Two deeds were accordingly prepared and executed on June 10, 1903. By the first Reis transferred to the respondent trustees, as trustees of the original marriage settlement, the freehold house, 68, Holland-park, Kensington. By the second Reis, a beneficial owner, assigned to the respondent trustees all the personal chattels and other personal property described in the schedule and contained in 68, Holland-park. On June 22, 1903, one of the creditors of Reis obtained judgment against him in an action commenced on May 29, and on June 29, 1903, Reis committed an act of bankruptcy by failing to comply with the requirement of a Bankruptcy notice issued upon the judgment and served upon him. On July 15, 1903, a receiving order in bankruptcy was made against Reis in a petition presented by the judgment creditor founded on the judgment. On November 27, 1903, the appellant as trustee of Reis's property gave to the respondents notice of a motion before Mr. Justice Wright for a declaration that the conveyance and assignment dated respectively June 10, 1903, might be set aside and declared to be void as against the appellant on the following grounds, as stated in that notice of motion:—" (a) That the same are voluntary settlements. (b) Or fraudulent conveyances or assignments of property within the meaning of the Bankruptcy Act or the statute 13 Eliz., c. 5. (c) That the said conveyance and assignment were made after the commencement of the bankruptcy. (d) That the said assignment of chattels is void under the Bills of Sale Acts. And also that if and so far as was necessary the indenture dated September 9, 1879, might, as regards after-acquired property of Reis, be declared fraudulent and void as against Reis's creditors. One of Reis's Stock Exchange creditors, Mr. A. H. Hart, in his affidavit, stated, amongst other things, as follows :—"On May 26, 1903, I attended a meeting of creditors of the bankrupt, at the office his solicitors, Messrs. Spyer and Son, of London-wall, in the City of London, in pursuance of a message by telephone which I had received for that purpose. There were present Mr. Robert Lumsden and myself. At the said meeting on May 26, 1903, Mr. Spyer, on behalf of the debtor, informed the creditors present that the said Arthur Reis was in difficulties and could not meet his engagements, and the house

and furniture in his possession belonged to the trustees under his marriage settlement.” The motion was heard by Mr. Justice Wright on December 14, 1903, and January 18, 1904, and on the hearing of the motion evidence of witnesses was adduced *viva voce* in support of and in opposition to the motion. On the evidence before him, and after argument, Mr. Justice Wright held: -- First, that on May 26, 1903, Reis committed an act of bankruptcy by giving notice to two of his creditors that he had suspended, or was about to suspend, payment of his debts. Secondly, that on May 29, 1903, Reis “became bankrupt” within the meaning of section 47 (2) of the Bankruptcy Act, 1883. Thirdly, that the house and premises and chattels comprised in the deeds dated June 10, 1903, had not been actually transferred to the respondent trustees before the date on which Reis became bankrupt, and that, therefore, the conveyance and assignment dated June 10, 1903, must be set aside so far as might be necessary to pay the debts in the bankruptcy of Reis. An order declaring the deeds of June 10, 1903, to be void was accordingly made. This decision was reversed by the Court of Appeal. For the appellant it was contended (1) that an act of bankruptcy was committed by Reis on May 26, 1903, (2) That the Marriage Settlement of September 9, 1879, so far as regards the covenant to assign after-acquired property was void against the appellant (as representing creditors) under the statute 13 Elizabeth, cap. 5, and as being a fraud upon the Bankruptcy Laws as necessarily enabling a trader to employ all his assets in a business so long as it succeeded, and to withdraw them from the business and bring them into settlement when creditors’ claims arose. (3) That the agreement to settle after-acquired property was too general to be enforced, and was void as against public policy being in restraint of trade. (4) That the bankrupt’s obligations under the settlement of 1879 to convey his future property had been extinguished by the bankruptcy of 1880 and the discharge thereunder of 1882. (5) That the assignment of furniture of June 10, 1903, was void under the Bills of Sale Act, 1878, as regarded the chattels comprised therein which were in the apparent possession of the bankrupt at the time of the bankruptcy, and that the chattels comprised in the deed of June 10, 1903, passed to the appellant as trustee under the bankruptcy.

Mr. Herbert Reed, K.C., Mr. A. J. David, and Mr. Berthold Adler were for the appellant; Mr. Gardner Horridge, K.C., and Mr. E. W. Hansell for the respondents.

The appeal was dismissed, Lord Macnaghten dissenting.

The LORD CHANCELLOR.— My Lords, there is only one point in this case upon which your Lordships called upon the respondents to support the judgment of the Court of Appeal, and that was how far the facts in this case show an act of bankruptcy committed by Mr. Reis before the execution of the instrument sought to be impeached by the trustee in bankruptcy. That, in fact, depends upon the facts as relevant to the new act of bankruptcy created by the Act of 1883. That Act for the first time made it an act of bankruptcy if the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts. In order to be an act of bankruptcy it must be a notice, and although the statute does not require any particular form of notice, still it must be a notice. I do not know that the word notice can be made clearer than it is by any verbal explanation, but it must be a notice. The statute might have said that an admission of insolvency should be enough, or that a present state of insolvency should be enough

but it is sufficiently clear that neither one nor the other will be sufficient as an act of bankruptcy. In earlier times bankruptcy was a crime, and in dealing with our law to commit the crime it was necessary to commit an act of bankruptcy. Two most distinguished Judges, Lord Selbourne and Lord Watson, have pointed out in this House, that a declaration of inability by a debtor does not of itself and without reference to context or circumstances satisfy the statute, and if I look to the circumstances or the words used I concur with the Court of Appeal here that the debtor neither did nor intended to do any such thing as to give notice to his creditors or to any of them that he intended to suspend the payment of his debts. What happened is, to my mind, very clear. Some speculative purchases on the Stock Exchange had been depressed in value, and the pay day was very near, and Mr. Reis foreseeing difficulties in the future, went and consulted his solicitor. This solicitor was also solicitor to two of Mr. Reis's largest creditors, who were brokers, and a conversation ensued between the solicitor, who, having Mr. Reis with him at the time, procured these two creditors to come to him at once as he was in telephonic communication with them both. It was, says Mr. Spyer, the solicitor, "rather in the nature of a friendly meeting, so far as Mr. Lumsden and Mr. Hart were concerned" (the two creditors in question), and Mr. Spyer, being asked the question in plain terms whether he said anything about Mr. Reis's other creditors or not being able to meet his other creditors, Mr. Spyer, referring to his professional experience in bankruptcy says, "I was rather careful to say nothing of the sort. The two friends were intended to get authority from Reis to close their accounts so as to diminish the loss as much as possible when pay-day came. It was then suggested that two other brokers were in the same condition, with accounts open, and it would be only fair to let them have the same liberty, and Mr. Spyer undertook to communicate to them his client's consent; but to my mind, the last thing Mr. Reis had in his mind was a notice that he intended to suspend payment of his debts; his whole object was time, and what he thought he explained himself; he thought that two days might make all the difference, and that "a rise was due because the depression was the result of a slump." I have no doubt he was hopelessly insolvent. I have no doubt his expectations of a rise were vain, but I suspect people who gamble on the Stock Exchange very often have vain expectations. But I think he had no intention of giving notice that he intended to suspend payment, either in express words or in anything he said, from which an ordinary business man would infer that what he or Spyer said on his behalf, or what he said himself, was a notice of intention to suspend payment of his debts. I daresay a business man would infer that he was likely to do it, or, perhaps, that he was likely even to become bankrupt, but he would infer that from the circumstances, and not from anything said by either Spyer or Reis. I move, therefore, that the appeal be dismissed.

LORD MACNAGHTEN:—My Lords,—The real point of this case has, I fear been rather obscured by the length of the argument. The question lies in the narrowest compass. The Bankruptcy Act, 1883, creates a new Act of Bankruptcy. It declares that a debtor commits an act of bankruptcy if he gives notice to any of his creditors that he has suspended or "that he is about to suspend payment of his debts." Why was this provision introduced? Certainly not in order to afford the debtor an opportunity of communicating to his creditors the fact of his insolvency, so that they might, if they should think proper, take proceedings to make him bankrupt. A declaration by a debtor of inability to pay his debts filed in the prescribed manner was an act of bankruptcy already. The object of the

new departure is stated, and stated, I think, correctly in the case of "*In re Wolstenholm*" (2 Morrell, 216) by one of the counsel in the course of his argument;---"Before the year 1883," Mr. Yate Lee is reported to have said, "it was common practice for a trader to send out notices saying he was about to suspend payment. Afterwards, however, dealings often took place between the debtor and his creditors. That was felt to be unfair, and the object of the new Act was to meet the evil by making the notice of suspension a new act of bankruptcy in order to defeat those unfair dealings." I do not, of course, cite this passage as an authoritative exposition of the meaning of the Legislature, although it seems to have been accepted by the Court, and the learned counsel, as some of your lordships may remember, was a gentleman of great experience in bankruptcy and the author of a well-known treatise on the subject. But I cannot conceive that this enactment could have had any other origin or any other purpose. Now, when this provision first came under the consideration of the Courts a very narrow construction was put upon it. It was said that the notice must be in writing, and must declare an intention on the part of the debtor to suspend payment. It was said that the notice must be a notice intended to be communicated to all the creditors or to the body of creditors, and that the state of circumstances as disclosed must be such as to render it not merely improper but actually fraudulent for the debtor afterwards to pay anybody. All these glosses, for which there seems to be no foundation in the Act, were, I had thought, swept away by the decision of the Court of Appeal in "*In re Lamb*" (4 Morrell, 25) and by the decision of the majority of the same Court in "*Crook v. Morley*," affirmed in this House (1891, A.C., 316). The notice need not be in writing. It is enough if notice is given to any one of the creditors. No particular form is required. There is nothing said in the Act about the debtor's intention. The question is what effect would the communication have on the minds of the persons to whom it is addressed. That is the test as laid down in this House. It is only a matter of common sense, as A. L. Smith, L.J., observed. All that is required is that a communication proceeding from the debtor, made seriously, should give the creditors or any of the creditors; to understand from the state of circumstances as disclosed at the time that the debtor has suspended or that he is about to suspend payment. If it comes to this — I borrow the illustration from the judgment of Fry, L.J., in "*In re Lamb*," which was referred to by Lord Selborne in "*Crook v. Morley*" — that the debtor has said in effect, "I am in a position at the present moment in which it is impossible for me to go on paying my creditors who may apply to me in the ordinary course of trade, and if I pay the first who apply there will be nothing left for the rest," that is an intimation that he will either immediately suspend payment or that he is about to suspend payment as soon as he reaches the end of his resources. And now, what was the case here? An outside stockbroker has some uncollected debts calculated on a sanguine estimate to produce a few hundred pounds, and which ultimately brought in £60. He has £7 at his bankers, and not another penny in the world. The trustees of his marriage settlement have laid their hands on everything. Within a few hours he must find a sum already ascertained and known to exceed £10,000 or be proclaimed a defaulter. He communicates with his creditors on the Stock Exchange. He makes his solicitor, a Mr. Spyer, his mouthpiece. Mr. Spyer explains to his creditors on the Stock Exchange the state of affairs and his client's hopeless insolvency, with the view apparently of inducing them to accept a composition of something under 2s. in the pound to be paid not by the debtor himself but out of a sum of £1,000 which he hoped to obtain from the trustees of his marriage

settlement. My lords, there can be no dispute about the facts. I am not setting the recollection of one witness against the recollection of another. I accept the statement of Mr. Spyer. Mr. Spyer made at the time, in his bill of costs, a record of what occurred. That record states that he was requested by Mr. Reis to interview the brokers with whom he did business for the purpose of explaining the position, that he did attend Messrs. Lumsden and Hart, both of them together, and afterwards Mr. Harris and Mr. Elliot separately, and that he did explain the position to each of them. The position I have already described. I have no doubt Mr. Spyer put it before the creditors honestly and truthfully. When the offer or suggestion of the £1,000 was rejected and the brokers closed their accounts, refusing to allow Mr. Reis to gamble any longer with their money, it seems to me that it must have been clear to these four stockbrokers, if they were persons of ordinary intelligence and knew anything about business, that Mr. Reis was about to suspend payment. The end was in sight. It might come today or it might come tomorrow or the day after. But come it must. The age of miracles was past. There was nothing for it but suspension. I would hold that Mr. Spyer's communication was notice that Mr. Reis was about to suspend payment of his debts. However, your Lordships think differently, and the result will be that the order under appeal will be affirmed, and the authority of "Crook v. Morley," I am afraid, to some extent impaired.

LORD ROBERSTON—My Lords,—This is a delicate case; but, after hearing the argument, I have come to a definite opinion in favour of the respondents. It seems to me that in the conception of subsection (h), with which we have to deal, the suspension of payment of his debts is a specific and deliberate (in the sense of intentional) act of the debtor, and the suspension, actual or intimated, must apply to all the creditors. It is something different from and over and above inability to pay. It is one of the several courses which a debtor may elect among, when he finds himself insolvent. A man faced by a balance-sheet which means certain and speedy ruin may try to arrange with his more pressing creditors; or he may put off the evil day and stagger on, leaving the stoppage of his career to be brought about by the action of others. Either of those courses is different from suspending payment of his debts. It is, of course, entirely consistent with this view that the question whether notice of suspension has been given must depend on the import of what was said or written and is relied on as notice. Now, the question is, did Mr. Reis give notice that he had suspended payment of his debts, or was about to suspend it? It seems to me that he did nothing in that direction except to show (to two of his creditors) his circumstances to be such that suspension of payment was one of the courses open to him. The occasion and object of the interview founded on was to arrange with two brokers about closing the account. It is true that, at that interview disclosure was made of a state of affairs which would have justified suspension of payment. But to me it is equally clear that what is relied on as having been paid did not, in its reasonable sense, import notice of an intention to take that step, and it is at least doubtful whether the tenor of the communication did not rather point in the opposite direction. Nor did the other persons present act as if a suspension was announced. I agree in the judgments of the Lords Justices.

BANKRUPTCY LAW.

TO THE EDITOR OF THE TIMES.

Sir,—It may be of interest to your readers to hear of a certain curiosity of our bankruptcy laws, as disclosed by a recent decision of the Court of Appeal.

Following this decision, it is possible for an unscrupulous man to provide, at the outset of his career, a safe harbour of refuge against his creditors when the evil day shall have overtaken him, and by the following simple method. When starting business, perhaps early in life, and with but slender capital, the man who wishes to benefit by what appears to me a very weak spot in our bankruptcy code need only marry and settle, say, £20,000 on his wife; thenceforth the thing works automatically. Of course, he has no capital to settle, so when the trustees of his marriage settlement call for the £20,000 they get nothing, but the deed of settlement still exists. Ten years later, let us say, our trader presents his petition, disclosing debts, for goods had and enjoyed, £10,000; assets, £4,500. But he can still smile. At the first meeting of creditors the trustees of his marriage settlement are allowed to prove for £20,000, and thenceforward, having a preponderating voice at all adjourned meetings, can appoint their own trustee and committee of inspection, and can control the whole winding-up. The net result is that, of the £4,500 which his estate realizes, the debtor and his wife get the benefit of £3,000 in the hands of the trustees of his marriage settlement, while his *bona fide* creditors for £10,000 divide the remaining £1,500 between them.

This is, I understand, the true consequence of the above-mentioned recent decision, and ought, I think, to be worth the attention of all those whose aim in life is to live by their wits at the expense of others.

I am, Sir, yours faithfully,

ARNOLD T. FULLER.

The Stock Exchange, Dec. 19.

BANKRUPTCY LAW.

TO THE EDITOR OF THE TIMES.

Sir,—Kindly allow me a few words to correct the misconception of your correspondent "Ante Nuptial," as shown in his letter in your issue of January 10. If he will read my original letter again he will find nothing therein about a "covenant to settle property to be acquired in the future," which, I believe, is unlawful. The case I alluded to, but do not care to particularize further as it is still in the hands of the Court, was one decided just before the Courts rose for Christmas. It was shown that the settlor made an ante-nuptial settlement of moneys then in his possession, but did not pay these moneys over to his marriage settlement trustees. These sums were afterwards used for the settlor's own purposes, and upon his adjudication the marriage settlement trustees were allowed by the Court to prove against his estate for the full amount.

The case in point is not "*Reis, ex parte Clough*," and I will give your correspondent the reference privately if he desires to have it.

Yours faithfully,

ARNOLD T. FULLER.

TO THE EDITOR OF THE TIMES.

Sir,—With reference to the correspondence on the point raised by Mr. Fuller's letter, the Law Reports version of "*Re Reis*" (1904, 2 King's Bench, p. 769) certainly seems to go as far as this—that if a man makes a settlement such as that described by Mr. Fuller, and can foresee his inability to pay his debts before his creditors suspect it, he may transfer available property, and so defeat them; and, as he does not usually give his creditors the advantage of knowing his affairs as well as he does himself, the device seems capable of being used as Mr. Fuller maintains. But may I point out an equally simple way of defeating creditors, which has the advantage that it can be both initiated and used when a man is actually insolvent? It is indicated in the report of "*Kovan v. Crawford*" (L.R., 6 Ch.D., p. 29), referred to in "*Re Reis*," and is to the effect that if a bachelor or widower makes a settlement on marriage, knowing he cannot pay his debts, that settlement will be perfectly good against his trustee in bankruptcy, if only he refrains from confiding his financial position to the lady. In that case the debtor's bride had no money, and there was a suggestion that she had been his mistress, which was struck out as irrelevant to the issue of the validity or otherwise of the settlement. The inference seems to be that by English law any penniless woman of any or no character can enable a man to defeat his creditors whenever he likes by going through a ceremony they neither respect, and unnecessary save for the purpose in question. Yours obediently,

ALFRED FELLOWS.

8, New-square, Lincoln's Inn.

BANKRUPTCY LAW.

TO THE EDITOR OF THE TIMES.

Sir,—Your correspondent, Mr. Arnold T. Fuller, in his letter appearing in your issue of the 24th ult., is mistaken in his interpretation of the Bankruptcy Laws as affecting the right of proof by trustees of a marriage settlement under a covenant to settle after-acquired property. He states, in effect, that under a recent legal decision it is possible for a penniless man to enter into matrimony and, by means of a marriage settlement containing a covenant to settle out of his own moneys at some future time a large sum in favour of his wife, to give the trustees of the settlement, in the event of the settlor's subsequent bankruptcy, a right to prove and receive dividends in competition with his business creditors, in respect of the amount so covenanted to be settled. Section 47 (2) of the Bankruptcy Act, 1883, however, specially provides that such a covenant shall be void against the trustee in bankruptcy of the settlor.

If the decision referred to as supporting Mr. Fuller's illustration is that in "*re Reis, ex parte Clough*," C. A., XI. Manson's Reports, 223, a reference to the report will show that the judgment of the Court of Appeal does not in any way bear the construction placed upon it, otherwise the Bankruptcy Laws would, in that respect at any rate, merit all the ridicule intended by your correspondent.

Yours faithfully,

ANTE NUPTIAL.

NOTABLE CASES AT THE CLOSE OF THE SITTINGS.

The close of last sittings of the Courts was marked, as is usual, by a large number of decisions, most of them turning on questions of fact, but a few involving important principles. We note very briefly the chief points in some of the latter.

THE HOUSE OF LORDS AND JUDICIAL COMMITTEE.

In "*Clough v. Samuel*" (August 2) was determined what one of the law lords termed "a delicate case" in bankruptcy. The statute of 1883 created a new act of bankruptcy—giving notice by a debtor to his creditors that he has suspended or is about to suspend payment. The debtor in the case before the Court had through his solicitors disclosed to two of his creditors the desperate condition of his affairs, and stated that he could not meet his engagements. The Judge who tried the case thought that this amounted to notice. So did one of the law lords (Lord Macnaghten). "The end was in sight . . . come it must. The age of miracles was past. There was nothing for it but suspension." But the Lords Justices thought otherwise, and two of the law lords agreed with them in thinking that there had not been a notice constituting an act of bankruptcy. In "*Ströms Bruks, Aktie, Bolag v. Hutchison*" (August 5) the House of Lords