The second registered design was not put in evidence in the court below, and I am not satisfied that it differs from the first only in colourable details. No proof of an actual sale was given, and I think it would be dangerous to allow the plaintiffs' title, if otherwise unimpeachable, to be defeated by means of evidence so loose and unsatisfactory. In my opinion this appeal must be dismissed with costs.

On the application of the appellants' counsel, who intimated that the appellants might desire to appeal to the House of Lords, it was ordered that the costs should be paid on the usual undertaking by the solicitors to refund them in case the decision should be reversed.

*Appeal dismissed.*

Solicitors for the appellants, *Ward, Perks,* and *McKay.*

Solicitors for the respondents, *John B.* and *F. Purchase.*

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*March* 11, 14, 15, 16, *and May* 17, 1904.

(Before VAUGHAN WILLIAMS, STIRLING, and COZENS-HARDY, L.JJ.)

*Re* REIS; *Ex parte* CLOUGH. (*a*)

APPEAL FROM THE KING'S BENCH DIVISION. IN BANKRUPTCY.

*Bankruptcy — Marriage settlement — Husband's covenant to settle all after-acquired property except business assets — Validity — Notice to suspend payment—Act of bankruptcy—Subsequent transfer of property to trustees of the settlement—Title of trustee in bankruptcy — "Becoming bankrupt"—Bill of sale—Registration*—13 *Eliz. c.* 5 — *Bankruptcy Act* 1883 (46 *&* 47 *Vict. c.* 52), *ss.* 4, *sub-s.* 1 (*h*), 43, 47, *sub-s.* 2, 49—*Bills of Sale Act* 1878 (41 *&* 42 *Vict. c.* 31), *ss.* 4, 10—*Bills of Sale Act* 1882 (45 *&* 46 *Vict. c.* 43), *s.* 8.

*By his marriage settlement, executed in* 1879, *A. covenanted to settle all his after-acquired property, both real and personal, except business assets. In* 1880 *he was adjudicated a bankrupt, but he obtained his discharge in* 1882.

*In* 1901 *he purchased a house and furniture, in which he lived with his wife and family. Early in* 1903 *he was in financial difficulties, and on the* 23*rd May the trustees of the settlement served a written notice requiring him to transfer the house and furniture. On the* 26*th May he intimated to his principal creditors that he would be unable to meet his liabilities to them. On the* 10*th June he conveyed and assigned the house and furniture to the trustees by two deeds. On the* 15*th July a receiving order was made against him on an act of bankruptcy committed on the* 29*th June, and on the* 23*rd July he was adjudicated a bankrupt.*

*Held, that the intimation by the debtor to his principal creditors on the* 26*th May did not amount to a notice of suspension of payment to his creditors as a body, and was not an act of bankruptcy within sect.* 4, *sub-sect.* 1 (*h*), *of the Bankruptcy Act* 1883.

Re Scott; Ex parte Lewis (74 *L. T. Rep.* 555; (1896) 1 *Q. B.* 619) *and* Lord Hill's Trustee *v.* Rowlands (74 *L. T. Rep.* 556; (1896) 2 *Q. B.* 124) *considered and applied.*

*Decision of Wright, J.* (90 *L. T. Rep.* 62) *reversed.*

*Held also, that the marriage settlement was not void under* 13 *Eliz. c.* 5.

Ex parte Bolland; Re Clint (29 *L. T. Rep.* 543; *L. Rep.* 17 *Eq.* 115) *overruled.*

*Held also, that the covenant to settle all after-acquired property was not too vague and general to be enforceable.*

Lewis *v.* Madocks (8 *Ves.* 150; 17 *Ves.* 48) *and* Hardey *v.* Green (12 *Beav.* 182) *followed.*

*Held also, that the covenant was not released by the bankruptcy of the debtor in* 1880 *and the discharge in* 1882 *so as to render the two deeds of conveyance and assignment of the* 10*th June voluntary and void under sect.* 47 *of the Bankruptcy Act* 1883.

Collyer *v.* Isaacs (45 *L. T. Rep.* 567; 19 *Ch. Div.* 342) *and* Hardy *v.* Fothergill (59 *L. T. Rep.* 273; 13 *App. Cas.* 351) *distinguished.*

*Held, also, that the assignment of the* 10*th June was a "marriage settlement" within sect.* 4 *of the Bills of Sale Act* 1878, *and did not require registration under that Act.*

Wenman *v.* Lyon (64 *L. T. Rep.* 88; (1891) 1 *Q. B.* 634, *on appeal,* 65 *L. T. Rep.* 136; (1891) 2 *Q. B.* 192), *and* Courcier *v.* Badili (27 *Sol. Jour.* 276) *followed.*

IN Sept. 1879 a debtor named Reis executed on the occasion of his marriage a deed of settlement whereby he settled certain furniture and other personal property upon trusts for the benefit of his wife and children; and he thereby (amongst other things) covenanted that all real and personal property except business assets) to which he should become entitled during the joint lives of himself and his wife should, as soon as circumstances would admit, be assured by him to the trustees of the settlement to be held by them on the trusts therein-before declared.

At the time of his marriage the debtor was engaged in a business as a banker and bullion merchant, which proved unsuccessful, and in 1880 he was adjudicated a bankrupt, but he received his discharge in 1882.

In 1894 he failed for some 5000*l.*, and paid a composition of about 5*s.* in the pound. He then started as an outside stock and share broker.

By the year 1901 he had made profits amounting to about 50,000*l.*, and he then invested some 17,000*l.* in purchasing and furnishing a freehold house, where he resided with his wife and family.

In April and May 1903 the debtor found himself in financial difficulties in respect of Stock Exchange operations, and was doubtful as to how he could meet the settlement which was to take place on the Stock Exchange at the end of May of that year.

Accordingly on the 26th May he, through his solicitor, intimated to some of his principal Stock Exchange creditors (who were his only unsecured creditors) that he would be unable to discharge his liabilities to them on the 29th May, which was settlement day on the Stock Exchange.

He did this in order that they might exercise their own discretion as to whether or not they would at once close his accounts with them.

On the following 15th July a receiving order was made against the debtor on a bankruptcy petition presented against him by one of his Stock Exchange creditors, grounded on a judgment obtained against him on the 22nd June on

(*a*) Reported by E. A. SCRATCHLEY, Esq., Barrister-at-Law.

a suit issued against him on the 29th May and on an act of bankruptcy committed on the 29th June.

On the 23rd July he was adjudicated a bankrupt.

In the meantime—namely, on the 10th June—the debtor, in pursuance of a written letter served upon him on the previous 23rd May by the trustees of his marriage settlement, by two deeds conveyed and assigned to them the house and furniture to be held by them upon the trusts of that settlement.

In the circumstances the trustee in bankruptcy alleged that the debtor committed an act of bankruptcy on the 26th May, and that his title related back to that date.

Accordingly, he applied before Wright, J., sitting in bankruptcy, to set aside the deeds of the 10th June 1903, of the house and furniture, on the ground that it was made after the commencement of the debtor's bankruptcy.

The question turned to a great extent on the meaning of the words "becoming bankrupt" in sect. 47, sub-sect. 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 trustee in the bankruptcy."

It was decided by the learned judge (90 L. T. Rep. 62) on the evidence that the debtor had committed an act of bankruptcy on the 26th May, and that the words "becoming bankrupt" in sub-sect. 2 of sect. 47 must be construed in the light of sect. 43 of the Act. That being so, the debtor was deemed to have become bankrupt on the 26th May, 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 the 10th June 1903.

From that decision the trustees of the settlement now appealed.

*Horridge*, K.C. and *Muir Mackenzie* for the appellants.—The first point raised by this appeal, being that upon which Wright, J. decided the case in the court below, is whether the debtor committed an act of bankruptcy on the 26th May 1903, when he gave notice to some of his creditors that he was unable to pay his debts in full; and that he had suspended or was about to suspend payment thereof. See

*Crook* v. *Morley*, 65 L. T. Rep. 389; (1891) A. C. 316.

We rely upon the passage in Lord Selborne's opinion in that case, at p. 320, and in Lord Watson's, at p. 324 of (1891) A. C. As to that question, Wright, J. held that the deeds executed by the debtor in June 1903, pursuant to the covenant contained in his marriage settlement, were void under sect. 47, sub-sect. 2, of the Bankruptcy Act 1883 as against the debtor's trustee in bankruptcy on the ground that he had "become bankrupt," an act of bankruptcy having been so committed by him on the 26th May 1903 under sect. 4, sub-sect. 1 (*h*), of the same statute. The consequence was that the deeds, in the view taken by the learned judge, were executed after the commencement of the bankruptcy. We submit, however, that the notice did not amount to a statement by the debtor that he intended to deal with his creditors as a body. There was no such notice of an intention to suspend payment as to constitute an act of bankruptcy within the meaning of the statute as explained by the authorities:

*Lord Hill's Trustee* v. *Rowlands*, 74 L. T. Rep. 556; (1896) 2 Q. B. 124, at p. 129;
*Re Scott; Ex parte Lewis*, 74 L. T. Rep. 555; (1896) 1 Q. B. 619, at pp. 623-4.

See also

*Ex parte Attwater; Re Turner*, 35 L. T. Rep. 917; 5 Ch. Div. 27, at p. 30.

The question is, What is the meaning of the words "becoming bankrupt" in sect. 47, sub-sect. 2? The words are not "commencement of the bankruptcy," as they would have been if a mere act of bankruptcy had been in contemplation. We submit that they mean "being adjudicated bankrupt." A debtor does not "become bankrupt" when he commits an act of bankruptcy. He does not "become bankrupt" until an order of adjudication is made. Even a receiving order may be rescinded. Therefore the property was actually transferred before the debtor became bankrupt and vested in the appellants as the trustees of the marriage settlement. But at any rate the furniture had long before the 26th May 1903 been brought into the house which was the matrimonial domicil and was in the joint possession and actual enjoyment of the husband and wife. That constituted as effectual a transfer as was possible under the circumstances. Possession must be attributed to the persons in whose enjoyment the furniture was:

*Re Satterthwaite*, 2 Manson 53.

They referred also to

Bankruptcy Act 1883, ss. 20, 49.
*Davis* v. *Howard*, 24 Q. B. Div. 691;
*Stein* v. *Pope*, 86 L. T. Rep. 283; (1902) 1 K. B. 595;
*Smith* v. *Topping*, 5 B. & Ad. 674;
*Lyon* v. *Weldon*, 2 Bing. 384.

[Vaughan Williams, L.J. referred to *Holroyd* v. *Marshall* (10 H. of L. Cas. 191) and *Re Miller* (83 L. T. Rep. 545; (1901) 1 K. B. 51).]

*Herbert Reed*, K.C. and *A. J. David* (with them *Adler*) for the respondent.—The distinction suggested by the appellants between sects. 47 and 49 comes to nothing, although, of course, they deal with different subject-matters. The appellants cannot rely on sect. 49, because the provisions of that section are subject to sect. 47. The case of *Crook* v. *Morley* (*ubi sup.*), citing *Re Lamb; Ex parte Gibson and Bolland* (55 L. T. Rep. 817), is the authority which is generally referred to upon this question whether a notice to suspend payment of debts is an act of bankruptcy under sect. 4, sub-sect. 1 (*h*). A case in which a notice to creditors of intention to suspend payment was held to be an act of bankruptcy was

*Re Simonson; Ex parte Ball*, 70 L. T. Rep. 32; (1894) 1 Q. B. 433.

The words "become bankrupt" in sect. 47, sub-sect. 2, must be taken in the sense in which business men would attach to them, and mean the commencement of the bankruptcy. The title of the trustee in bankruptcy relates back to the date of the commencement of the bankruptcy when the debtor committed the act of bankruptcy under sect. 43—that is to say, the 26th May 1903 in the present case—which was prior to the "actual transfer" of the property to the trustees of the marriage settlement, pursuant to the covenant contained in that settlement. Assuming, however, that the decision of the learned judge in the court below was wrong on this point, then we submit that the execution of the deeds conformably with the covenant by the husband in the marriage settlement was void against creditors under the statute of Elizabeth (13 Eliz. c. 5), the deeds being fraudulent conveyances. A covenant by a settlor to settle all his after-acquired property falls within the principle of

*Ex parte Bolland; Re Clint*, 29 L. T. Rep. 543; L. Rep. 17 Eq. 115.

It is said that that case has never been followed, but it certainly has never been dissented from, distinguished, or doubted. Other authorities on this point are

*Tailby* v. *Official Receiver*, 60 L. T. Rep. 162; 13 App. Cas. 523;
*Alton* v. *Harrison*, 19 L. T. Rep. 1001; L. Rep. 4 Ch. App. 622;
*Ex parte McBurndie's Trustees*, 1 De G. M. & G. 441.

[VAUGHAN WILLIAMS, L.J. referred to *Colombine* v. *Penhall* (1 Sm. & Giff. 222). *Horridge*, K.C.—The case of *Fraser* v. *Thompson* (1 Giff. 49) is the last on the point which was decided in *Colombine* v. *Penhall* (*ubi sup.*).] There is a short point upon which the court can dispose of this case, and that is that the covenant to settle all his after-acquired property was released by the bankruptcy of the husband in 1880 and his subsequent discharge in 1882, the trustees of the settlement not having proved in the bankruptcy, with the result that the deeds of 1903 were rendered voluntary and therefore void under sect. 47, sub-sect. 1, of the Bankruptcy Act 1883:

*Collyer* v. *Isaacs*, 45 L. T. Rep. 567; 19 Ch. Div. 342;
*Hardy* v. *Fothergill*, 59 L. T. Rep. 273; 13 App. Cas. 351.

There is likewise the case of *Robinson* v. *Ommaney* (49 L. T. Rep. 19; 23 Ch. Div. 285) which, however, apparently does not affect the decision in those cases. Again, are not these deeds of the 10th June 1903 settlements which are voluntary—that is to say, not made in favour of a "purchaser." We agree that in 1879 the wife was in that position, but on the 10th June 1903 the deeds were not settlements by way of transfers to a purchaser. They referred, also, on this point to

*Re Carter and Kenderdine's Contract*, 76 L. T. Rep. 476; (1897) 1 Ch. 776.

Another point which arises upon the settlement itself is what is the true meaning of that instrument. It was left open in *Tailby* v. *Official Receiver* *ubi sup.*) whether an assignment as wide as this is would be invalid. So also it was left open in

*Re Clarks; Coombe* v. *Carter*, 57 L. T. Rep. 823; 36 Ch. Div. 348.

There is a string of cases ending with *Clements* v. *Mathews* (11 Q. B. Div. 808), of which *Re D'Epineuil*; *Tadman* v. *D'Epineuil* (47 L. T. Rep. 157; 20 Ch. Div. 158) is one, to the effect that it would be wrong of the court to enforce a covenant of this description, as it would prevent the husband from paying his debts and deprive him of the means of subsistence. We submit, further, that the husband's covenant is so vague and general that it cannot be enforced. They referred on this point to

*Lewis* v. *Madocks*, 8 Ves. 150; 17 Ves. 48.

[VAUGHAN WILLIAMS, L.J. referred to *Hardey* v *Green* (12 Beav. 182).] Then as to the exception of the business assets from the debtor's covenant to settle his after-acquired property. Does that mean assets derived from the debtor's business or assets which are continued to be employed in that business. The words may mean assets which are liable to pay the debts, or only assets derived from the business. We say that they mean assets which would in the event of the business requiring assets be used to pay the debts of the business. [VAUGHAN WILLIAMS, L.J.—I should say the expression means assets which a man would not have if not employed in his business.] A last point arises under the Bills of Sale Acts. The assignment of the furniture of the 10th June 1903, although executed in pursuance of the covenant in the marriage settlement of 1879, was not registered as a bill of sale. The furniture, therefore, remained in the "apparent possession" of the debtor. The point was decided in the cases of *Re Satterthwaite* (*ubi sup.*) and *Ramsay* v. *Margrett* (70 L. T. Rep. 788; (1894) 2 Q. B. 18). Unless registered an assignment of personal chattels is invalid under the Bills of Sale Acts. Omission to register avoids the assignment of the 10th June 1903 of the chattels as not valid under the Bills of Sale Acts. The rule applies, and not the exception, laid down in those cases.

*Horridge* K.C. in reply.—As to the validity of the marriage settlement at common law, a case in which *Hardey* v. *Green* (*ubi sup.*) and *Lewis* v. *Madocks* (*ubi sup.*) were cited was

*Re Turcan*, 59 L. T. Rep. 712; 40 Ch. Div. 5.

As to the covenant to assign after-acquired property, the case of *Ex parte Games*; *Re Bamford* (40 L. T. Rep. 789; 12 Ch. Div. 314) is in point. But the only direct authority is the case of *Hardey* v. *Green* (*ubi sup.*). Then, as to whether there is a debt provable in bankruptcy the case of *Re Clarke*; *Coombe* v. *Carter* (*ubi sup.*) seems to dispose of the argument of the respondent upon this point. The judgment in *Collyer* v. *Isaacs* (*ubi sup.*) also assists the appellants here. Again, the case of *Robinson* v. *Ommaney* (*ubi sup.*) is a direct authority apart from *Hardy* v. *Fothergill* (*ubi sup.*) that the deed of the 10th June 1903 would not be void. He referred also to

*Courcier* v. *Bardili*, 27 Sol. Jour. 276;
*Wenman* v. *Lyon and Co.*, 64 L. T. Rep. 88; (1891) 1 Q. B. 634; on appeal, 65 L. T. Rep. 136; (1891) 2 Q. B. 192;
*Re Holland*; *Gregg* v. *Holland*, 86 L. T. Rep. 542; (1902) 2 Ch. 360.

*Herbert Reed*, K.C. replied upon the further cases cited, and, in addition, referred to

*Buckwell* v. *Norman*, 78 L. T. Rep. 248; (1898) 1 Q. B. 622;
*Seaton* v. *Lord Deerhurst*, 72 L. T. Rep. 453; (1895) 1 Q. B. 853.

*Cur. adv. vult.*

*May* 17.—The following judgments were delivered:—

COZENS-HARDY, L.J. read his judgment first, as follows:—This is an appeal from the order of Wright, J. declaring certain deeds executed by the bankrupt in June 1903 pursuant to a covenant contained in his marriage settlement in 1879, void under sect. 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 the 26th May. 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, payments of his debts—(see sect. 4 (1) (*h*) of the Act). Now, the meaning of this sub-section has been fully explained by Vaughan Williams, L.J. in two cases: *Re Scott* (74 L. T. Rep. 555; (1896) 1 Q. B. 619) and *Lord Hill's Trustee* v. *Rowlands* (74 L. T. R. 556; (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 the 26th May 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 sub-section. This was the only point on which Wright, J. 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 respondent has relied before us upon other grounds. It is urged that the covenant by the husband in the marriage settlement of 1879 was first void under the statute of Elizabeth against creditors; secondly, that it was so vague and general that the court ought to decline to grant specific performance of it; and, thirdly, that it was released by the bankruptcy of the husband in 1880, with the result that the deeds of June 1903 were voluntary and therefore void under sect. 47 (1). In order to succeed upon the first contention—that is, that the deeds were void under the statute of Elizabeth against creditors—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 is a party, is of such a nature that it cannot be deemed other than a fraudulent deed. The decision of Bacon, C.J. in *Ex parte Bolland; Re Clint* (29 L. T. Rep. 543; L. Rep. 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. Then, as to the next point—that the covenant is so vague and general that the court ought to decline to grant specific performance of it—I think the husband's covenant is not too vague and general to be enforced. Lord Eldon in *Lewis* v. *Madocks* (8 Ves. 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 sup.*) is to the same effect. As to to the third point—that the covenant was released by the bankruptcy of the husband in 1880, with the result that the deeds of 1903 were voluntary, and therefore void under sect. 47 (1)—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 *Hardy* v. *Fothergill* (59 L. T. Rep. 273; 13 App. Cas. 331) which justifies 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 on the 29th June, and that is the date to which the title of the trustee relates. Now, a marriage settlement is not a bill of sale within the definition of the Bills of Sale Acts; and it is urged by Mr. Horridge that 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 the 10th June 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 the 10th June 1903 as to transferring the property to them. The question arises whether that deed is a marriage settlement within the exception in sect. 4 of the Bills of Sale Act 1878, or is an absolute assignment of personal chattels within sect. 8 of that Act, which cannot be the foundation of a title as against the trustee in bankruptcy. Now, the deed of the 10th June may, I think, be fairly regarded as forming part of the marriage settlement. It was executed 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 *Courcier* v. *Bardili*, a note of which is found in 27 Sol. Jour., at p. 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 as to the chattels.

STIRLING, L.J.—The first question to be considered in this case is whether Mr. Reis committed an act of bankruptcy on the 26th May 1903. Wright, J. finds that he did, the act being

that he gave notice to his creditors, or some of them, that he was about to suspend payment of his debts, that being an act of bankruptcy under sect. 4, sub-sect. (1) (*h*) of the Bankruptcy Act of 1883. It is my misfortune to differ from the conclusion at which Wright, J. arrived, but in that respect I only differ from him on the question of fact which he decided, and I do not quarrel with any of the law which he laid down in his judgment. In considering the meaning of the sub-section with which we have to deal particularly, it has to be borne in mind that by sub-sect. (*f*) of sect. 4 it is an act of bankruptcy if there is filed in the court an intention of an inability on the part of the debtor to pay his debts. Those two sub-sections were much considered by the House of Lords in the case of *Crook* v. *Morley* (65 L. T. Rep. 389; (1891) A. C. 316). Lord Selborne, in addressing the House (at p. 320 of (1891) A. C.) says: "It is undoubtedly possible that there might be a document speaking of inability to pay a man's debts in such a context and in such a manner as not to imply 'that he had suspended, or that he was about to suspend, payment of his debts.' But, on the other hand, there might be a document of which the language might amount to 'a declaration of his inability to pay his debts,' which, taking it with all its circumstances and in its context, would practically, and according to the common sense of mankind, be a 'notice to his creditors that he had suspended, or was about to suspend, payment of his debts.'" In the same case Lord Watson (at p. 324 of (1891) A. C.) says: "A declaration of his inability to pay his debts may be made by a debtor to one or more of his creditors, in terms and under circumstances which do not suggest that he means to stop payment of his debts as they fall due. But that such a declaration may be couched in language which clearly implies that the debtor means to pay nobody in full, and to place his assets at the disposal of his creditors, does not appear to me to be doubtful." The result of those observations is that in each case all the circumstances must be looked at; and we have to find, beyond a simple declaration of inability to pay, some evidence of an intention on the part of the debtor to suspend payment of his debts; that is to say, to abstain from paying his debts as they fall due, at least for a time. Now, in the present case Mr. Reis was an outside stockbroker who found himself in difficulties as to the settlement which was to take place on the Stock Exchange at the end of May 1903. He consulted a solicitor, and that solicitor, by his instructions, saw two of the largest stock Exchange creditors on the 26th May. This was the day on which, at midday, the amount which would have to be paid by Mr. Reis at the settlement would be ascertained. But that amount would not be actually payable till the 20th May. The solicitor informed those two Stock Exchange creditors that Mr. Rees would have difficulty in paying them, they being large creditors, on the 29th May. He informed them that he had Mr. Reis's authority to give power, if they saw fit, to close the accounts between them and Mr. Reis before the 29th May; a step which might be for the benefit of the Stock Exchange creditors, and which he was willing they should take if they saw fit so to do. They agreed to avail themselves of this permission, but one of them said to the solicitor that if there were any other Stock Exchange creditors they ought to have the same liberty. Thereupon the solicitor undertook to communicate a like liberty to the other Stock Exchange creditors, who were not creditors to nearly the same extent as the two with whom he was dealing; and he did in point of fact communicate with them that they were at liberty to close their accounts in the same way as the two largest creditors. Besides those Stock Exchange creditors there were others—two at least, and one of them of considerable importance—namely, his bankers—and no reference was made as to any dealing with them whatever. In these circumstances I am unable to agree with Wright, J. that the debtor did give notice to his creditors that he had suspended, or was about to suspend, payment of his debts. Certainly he did nothing which would indicate an intention on his part to place his assets entirely at the disposal of his creditors, or to preclude himself from dealing as he might think fit with others, with whom no communication appears to have been made, nor, I think, with the Stock Exchange creditors. For these reasons I am unable to agree with the conclusion of fact at which Wright, J. arrived. The next point which I have to consider is this, whether Mr. Reis was released from the covenant in his marriage settlement by the previous bankruptcy. The marriage settlement was executed in Sept. 1879. Mr. Reis became bankrupt in 1880, and he received his discharge in 1882. At that time, so far as appeared, Mr. Reis had not acquired any property within the covenant in the marriage settlement; there was no proof by the trustees of the settlement in the bankruptcy. But it is said that the liability of Mr. Reis under the covenant was provable in the bankruptcy, and consequently that the bankrupt was released from it by the order of discharge. At the time in question the Bankruptcy Act in force was that of 1869, the material sections of which are sects. 12, 31, and 49. The material provisions of those sections are incorporated in the present Act of 1883. Now those sections were considered in two cases—namely, *Collyer* v. *Isaacs* (45 L. T. Rep. 567; 19 Ch. Div. 342) by the Court of Appeal and *Hardy* v. *Fothergill* (59 L. T. Rep. 273; 13 App. Cas. 351) in the House of Lords. In *Collyer* v. *Isaacs* (*ubi sup.*) the case to be considered was one in which there was given as the security for the debt an assignment of future chattels. The debtor became bankrupt, and after the bankruptcy and the order of discharge he acquired chattels which answered the description in the security. But the creditor did not prove this debt in the bankruptcy, and it was held that the security, so far as affected his future chattels, was discharged by the bankruptcy. It is obvious that the case there was entirely different from the present case, in which we have to deal with a covenant in a marriage settlement for the settlement of after-acquired property. The Master of the Rolls, Sir George Jessel, in giving his judgment in that case, carefully guarded himself against saying that what was decided in that case would apply to the case of a marriage settlement containing a covenant to settle after-acquired property, saying that when you have a debt and a covenant to secure that debt in a particular way it would be a strange result if it barred the debt and not

the ancillary covenant. In the case of *Hardy* v. *Fothergill* (*ubi sup.*) the question again was of an entirely different nature. The question related to the liability of the assignee of a lease for a term of years who had covenanted to indemnify the lessee against damages for breach of the covenants. In that case it was held that the claim of the lessee was barred under sect. 49 of the Bankruptcy Act 1869, the effect of sect. 31 being to make the assignee's future and contingent liability on his covenant to indemnify a debt provable in the bankruptcy unless an order of court declared it to be a liability incapable of being fairly estimated. In advising the House of Lords, Lord Selborne says (at p. 360 of 13 App. Cas.) this: "There may be contracts, such, for example, as a promise to marry (not broken), or a covenant not to molest, or not to carry on a particular trade within certain limits, &c., which on a fair interpretation of these words ought to be excluded as having a different object from the payment of money in any contingency; although if they were broken a jury might award damages for their breach. I must guard myself against being supposed to lay down any rule applicable to cases of that kind, or to any others in which an injunction or specific performance would be the most proper remedy." These observations of Sir George Jessel, M.R. in *Collyer* v. *Isaacs* (*ubi sup.*) and of Lord Selborne in *Hardy* v. *Fothergill* (*ubi sup.*) of course do not amount to decisions; but I think that they afford guidance in the decision of the present case. In my judgment the covenant in the present case is one in which specific performance is the appropriate remedy, and that it ought not to be held barred by the order of discharge in the first bankruptcy. The next point to be considered is whether the covenant is too vague or too wide to be capable of specific performance in a court of equity. On this we have the guidance, as it appears to me, of clear authority. In the case of *Lewis* v. *Madocks* (8 Ves. 150) there was a covenant in a marriage settlement on the part of the husband that he would "by deed or will convey, give, devise, and assure all and singular his ready money, goods, chattels, personal estate, and effects, to and for the use and behoof of him, the said Richard Madocks, and Ann his said intended wife and the survivor of them for ever" upon certain trusts. Lord Eldon decreed specific performance of that contract after the death of the husband. The form of the judgment is stated at the end of the report (p. 158), and it began with a declaration that the personal estate of which the husband was possessed during the coverture was liable under the contract. In a subsequent case of *Hardey* v. *Green* (12 Beav. 182), Lord Langdale held that property coming to a husband after marriage was bound by a stipulation contained in articles executed previous to the marriage "by which the husband and wife agreed that all property, estate, and effects to which the husband or wife might thereafter become entitled should be settled to such uses as the wife should appoint, and in default on trusts for the husband, wife, and children." The decree gave specific performance of the stipulation in the articles. Those cases have never been overruled, and they form strong authority in favour of the proposition that the language of the covenant with which we have to deal in the present case is not too vague to be binding. If anything more is required, I should desire to refer to the judgment of Bowen, L.J. in *Re Clarke*; *Coombe* v. *Carter* (57 L. T. Rep. 823; 36 Ch. Div. 348, at p. 355) and the observations of Lord Macnaghten on that case in *Tailby* v. *Official Receiver* (60 L. T. Rep. 162; 13 App. Cas. 523, at pp. 550, 551). But a further objection was made that the covenant was so wide that it would be wrong of the court to enforce it on the ground that if fully carried into effect it would prevent the husband from paying his debts and deprive him of the means of subsistence. On that the observations of Cotton, L.J. in the case of *Re Clarke*; *Coombe* v. *Carter* (at p. 352 of 36 Ch. Div.) and *Re Turcan* (59 L. T. Rep. 712; 40 Ch. Div. 5) were referred to. Now, to this objection there appear to me to be two answers: first, from the covenant in the marriage settlement in the present case, the business assets of husband are expressly excepted, and that appears to me to constitute a substantial exception. Secondly, if there were no such exception it would still seem to me that the same case of *Lewis* v. *Madocks* (*ubi sup.*), at a subsequent stage, is an authority for holding that such a covenant is not to be so construed as to prevent the husband from paying his debts and maintaining his family. *Lewis* v. *Madocks* (*subi sup.*) came on for further consideration, and the decision of Lord Eldon at that stage is also reported (17 Ves. 48). In the course of the argument (according to the statement on p. 55 of 17 Ves.) Lord Eldon said that "he could not adopt the construction that annual produce, for instance, dividends of stock, was property acquired during the coverture in the sense of this bond; except only to the extent in which the husband himself might think proper to lay up that produce as capital, otherwise they would not be at liberty to spend a shilling; but in providing for their maintenance and comfort they could not go beyond income." For these reasons I think that effect ought not to be given to this objection. Next it was urged that the covenant was void under the statute of Elizabeth (13 Eliz. c. 5). As a general rule a marriage settlement cannot be set aside as a fraud on creditors of the husband, unless evidence is given that the wife was party to the fraud: (see *Kevan* v. *Crawford* (6 Ch. Div. 29). No such evidence was adduced in the present case. It was said, however, that the wife must be taken to have known the terms of the settlement, and that those terms were, on the face of them, in the language of the Lord Justice in *Ex parte McBurnie's Trustees* (1 De G. M. & G. 441) grossly out of proportion to the station and circumstances of the husband, or so extravagant as that they ought to awaken inquiry. I am unable to come to that conclusion. On this part of the case *Hardey* v. *Green* (*ubi sup.*), already referred to, is a direct authority. The case of *Ex parte Bolland*; *Re Clint* (27 L. T. Rep. 543; L. Rep. 17 Eq. 115) which was much relied upon on behalf of the creditors, if rightly decided, is distinguishable, for there the covenant extended to all after-acquired property of the husband, while here, as I have already pointed out, the business assets constitute an exception. Last of all it was urged that there had been no actual transfer pursuant to the contract before the commencement of the bankruptcy under sect. 47, sub-sect. 2,

of the Bankruptcy Act 1883. In the present case the bankrupt, in pursuance of the written notice served on him on the 23rd May 1903 by the trustees of the settlement, executed on the 10th June 1903, before the commencement of the bankruptcy, two deeds, by one of which the house was conveyed to the trustees, and by the other the furniture in that house was assigned to them—in both cases upon the trusts of the settlement. No question was raised as to the conveyance of the house being an actual transfer sufficient to prevent the operation of sect. 47, subsect. 2 of the Act of 1883. But it is contended that the assignment of the furniture is a bill of sale within the meaning of the Bills of Sale Act 1878, and is void against the trustee in bankruptcy under sect. 8 of the Amendment Act of 1882, by reason of its not having been registered in accordance with sect. 10 of the Act of 1878. To this it is answered that by sect. 4 of the Act of 1878 marriage settlements are excepted from the operation of the Bills of Sale Act, and that the assignment of the 10th June 1903 is a marriage settlement within the meaning of the exception. I think that this is a valid answer to the objection. Unquestionably a wide meaning has been given to the expression "marriage settlement" in these Acts. Thus it was held in *Wenmam* v. *Lyon* (64 L. T. Rep. 88; (1891) 1 Q. B. 634); on appeal, 65 L. T. Rep. 136; (1891) 2 Q. B. 192), by the Divisional Court and by the Court of Appeal, that an agreement for a marriage settlement which provided for the execution by a subsequent assignment to trustees of certain property of the intended husband was such a marriage settlement, and was effectual to protect the property against the trustee in the husband's bankruptcy, although the agreement was registered, and no assignment to the trustees was ever executed. In *Courcier* v. *Bardili* (27 Sol. Jour. 276) it was also held by the Divisional Court and by the Court of Appeal that a post-nuptial assignment in pursuance of an ante-nuptial settlement was within the exception of the enactment of 1878 and did not require registration. In my opinion the principle of those decisions applies. The assignment of the 10th June 1903 was a "marriage settlement" within the exception in the Bills of Sale Act 1878 and did not require registration, and the objection founded upon the point of registration appears to me to fail. I think, therefore, that the appeal ought to be allowed.

Vaughan Williams, L.J.—I have had the advantage not only of reading the judgment of Cozens-Hardy, L.J., but of having had communicated to me the views of Stirling, L.J. in this case; and that being so I did not consider that I should be doing any good service to the law in merely multiplying judgments which were intended to say the same thing as other judgments had already said. I feel that the judgments of Cozens-Hardy and Stirling, L.JJ. have covered the whole ground. I propose, therefore, to say very little. First, I propose to say, out of respect for Wright, J., that I entirely agree in the view of Stirling, L.J., that there is nothing in our judgments to-day which interferes with any proposition of law which was laid down by Wright, J. All that we are doing to-day is differing from Wright, J. as to a conclusion in fact. Wright, J. came to the conclusion that the solicitor who was acting on behalf of the bankrupt, Mr. Reis, was making a communication which was intended as a communication having reference to all his creditors—a communication that he intended to suspend payment—a communication of such a character that if he had made that statement the bankrupt would have been guilty of a breach of faith if he had, after making that statement, made any arrangement with any particular creditor for the discharge of his debt. I have come to a different conclusion in fact. I have come to the conclusion that all that the solicitor was doing on behalf of the bankrupt when he made the communication to the two larger Stock Exchange creditors, was to negotiate with those particular creditors as regards their particular debts. He agreed that they should be entitled to do that which they could not have done without his consent, that is, to close the accounts. Upon that point I have no more to say. I do propose, however, to say a few words as to two of the many points which were raised in this case. But before I do so I should like to say at once a word in respect of the case of *Ex parte Bolland; Re Clint* (29 L. T. Rep. 543; L. Rep. 17 Eq. 115). Although I do not know that I have really anything to add to what Stirling, L.J. has said about it. That case of *Ex parte Bolland; Re Clint* (*ubi sup.*), I can say of my own personal knowledge and experience as a bankruptcy judge, is a case which has been frequently dealt with. I think that hereafter the case of *Ex parte Bolland; Re Clint* (*ubi sup.*) ought not to be treated as a standing authority. I am quite well aware that there is a distinction as to the wideness of the property covered being much wider in the case of *Ex parte Bolland; Re Clint* (*ubi sup.*) than it is in the present case and that one might decide the present case without impugning at all the authority of *Ex parte Bolland; Re Clint* (*ubi sup.*) on the ground of these differences that have been referred to. But speaking for myself, I repeat that I prefer to say that I do not think that *Ex parte Bolland; Re Clint* (*ubi sup.*) ought any longer to be regarded as a standing authority. Having said that, there are two points upon which I mean to say a few words. First, the point as to the effect upon the marriage settlement of the prior bankruptcy, and, secondly, upon the point of the necessity for registration of the formal instrument of assignment which followed the original marriage settlement. Now, with regard to the first of these points, the facts are simply these: Mr. Reis made a marriage settlement in 1879, a marriage settlement as to which I may mention in passing that to my mind it is impossible with regard to that marriage settlement to suggest that the execution of it involved any intention by Mr. Reis to defeat and delay creditors so as to bring the case within the operation of the statute of Elizabeth (13 Eliz. c. 5). That marriage settlement contained a covenant very wide in its terms with regard to the future property of the bankrupt, not the whole of his future property, but future property, to put it shortly, to the exclusion of his business assets. Subsequently to 1879 Mr. Reis—I think it was in 1880, but the exact date does not much matter—became bankrupt. The suggestion made is this, that the effect of that first bankruptcy was to relieve Mr. Reis, the bankrupt, for ever from the obligation in that marriage

settlement and that covenant. Of course if that were so the result would be that there would be no instrument in the field of operation under which it could be said that as the husband from time to time acquired property other than his business assets, such property would in equity pass to the trustees of this marriage settlement. I really should not have mentioned this point at all—seeing that I entirely agree with the observations that have been made by my brethren about it—if it were not for the fact that this is a new point as to which there is no positive authority whatsoever. There is the passage in the judgment of Sir George Jessel, M.R. in *Collyer* v. *Isaacs* (45 L. T. Rep. 567; 19 Ch. Div. 342) to which Stirling, L.J. referred; and there is also the passage in the judgment of Lord Selborne in *Hardy* v. *Fothergill* (59 L. T. Rep. 273; 13 App. Cas. 351, at p. 360). I do not propose to go into those two passages in detail. They have been read. It is sufficient to say of those passages that they certainly show that neither of those learned judges was then prepared to affirm the proposition that the bankruptcy and discharge of the husband, after a marriage settlement like this, would discharge him from all obligations under a marriage settlement. But I do propose to read two or three earlier words from the same passage to which Stirling, L.J. referred in the advice given by Lord Selborne to the House of Lords. It is a passage also upon p. 360 of 13 App. Cas. After quoting the words of the Act of 1869, which, so far as this point is concerned, do not differ from the words of the present Act of 1883, Lord Selborne, reading those words, says: "'All debts and liabilities, present or future, certain or contingent, to which the bankrupt is subject at the date of the order of adjudication' are to be deemed debts provable in bankruptcy." Now come the important words: "and the word 'liability' is, for the purposes of the Act, defined as including 'any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether such breach does or does not occur, or is or is not likely to occur or capable of occurring before the close of the bankruptcy, and generally any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money or money's worth, whether such payment be, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation; capable of being ascertained by fixed rules, or assessable only by a jury or as a matter of opinion.'" Having quoted those words, then Lord Selborne proceeds: "There may be contracts, such, for example, as a promise to marry (not broken) or a covenant not to molest, or not to carry on a particular trade within certain limits, &c., which on a fair interpretation of these words ought to be excluded as having a different object from the payment of money in any contingency, although if they were broken a jury might award damages for their breach." It will be observed that amongst these contracts which Lord Selborne suggests might upon a fair reading of the construction of the definition which I have read from the Act of Parliament, be excluded from it, there are not only negative covenants, but there is in one example certainly, a positive contract, as a promise to marry not broken. In concurring, as I do entirely, with the judgments of my brethren upon this point, I wish to say shortly that the ground upon which I concur is that in my judgment the marriage settlement does not fall within this definition of liability. It is a contract which has been made with a different object from the payment of money in any contingency. I wish to add, by way of caution, that no amount of difficulty in the estimate of the value would justify the exclusion in this court of a proof of debt, because, in my judgment, the plain words of the statute show that, if once the debt or liability, as the case may be, is shown to come within the definition, the only court which can exclude that debt from the operation of bankruptcy and its consequent discharge in freeing the debtor is the Court of Bankruptcy, and the Court of Bankruptcy dealing with the particular bankruptcy which has occurred. Therefore in this case it would not make the very slightest difference that the debtor, Mr. Reis, was the same in the 1880 bankruptcy as he is in the 1903 bankruptcy. This court would not have jurisdiction now to declare the value of the debt or liability incapable of estimate. The ground upon which I have come to the conclusion that this liability of the bankrupt under this marriage settlement is not discharged by the earlier bankruptcy is because, in my judgment, it does not fall within the definition of "liability" which I have read. As to this point, I may say, in passing, that Wright, J. did not have to deal with any of these matters because, having arrived at the conclusion there was a prior act of bankruptcy, it was sufficient for the point he had to decide. The only other matter to which I propose to refer at all is the necessity for the registration of the instrument which was executed in pursuance of the marriage settlement of 1879. The marriage settlement of 1879 contemplates that there may be executed from time to time by the husband a formal instrument assigning to the trustees of the marriage settlement the property in the goods—the subject-matter of it—as they came into existence. That being so, in the year of this last bankruptcy, 1903, the trustees of the marriage settlement apparently got anxious in the matter, and they thought it desirable to get the debtor to execute certain instruments in the nature of assignments, which he did, and the date of those instruments is the 10th June 1903. The petition itself was based on a subsequent act of bankruptcy at the end of the month of June. We have negatived the act of bankruptcy by the notice of intention to suspend, which was the key of the decision of Wright, J. It has been said that the rights of the trustees under this marriage settlement had been voided because the second document—that is to say, the instruments, there were two of them, of the 10th June 1903 had not been registered as they ought to have been under the Bills of Sale Acts. I think that there is sufficient authority already for the proposition that such a document does not require registration. But, as the point has not been raised in very clear form, I thought it better to add a word or two upon that matter. The last point made on behalf of the respondent was that the goods and chattels, the subject of the settlement of 1879,

were not the property of the trustees of the marriage settlement as against the trustee in bankruptcy, because the title of the trustees of the settlement depends upon the deed of transfer of the 10th June 1903, and that that deed is void as a bill of sale for want of registration, or is void as falling within the operation of sub-sect. 2 of sect. 47 of the Bankruptcy Act 1883. I may mention at once in passing, so as not to have to mention it again, no point really arises under sub-sect. 2 of sect. 47, because inasmuch as under our decision the commencement of the bankruptcy is not until the end of the month of June the terms of the section, however strictly construed, are fully complied with by the execution of the instruments of the 10th June 1903. I think that this point under the Bills of Sale Act fails. The question of the necessity for registration depends upon sect. 4 of the Bills of Sale Act 1878, which excepts a "marriage settlement" from the definition of bills of sale. By the very terms of that section "bills of sale" include not only assignments, but also "any agreement whether intended or not to be followed by the execution of any other instrument by which a right in equity to any personal chattels or to any charge or security thereon shall be conferred." It is plain, therefore, that the ante-nuptial document would have required registration but for the exception, and that notwithstanding that the document was intended to be followed by the execution of another instrument, but the exception exempts this document as being a marriage settlement from the necessity to register, and I think there is nothing in the Bills of Sale Act which takes away the equitable right conferred by such a marriage agreement, if in fact it is followed in pursuance of its terms by an assurance or transfer which is not registered. The case of *Wenman* v. *Lyon and Co.* (64 L. T. Rep. 88; (1891) 1 Q. B. 634), decided by Pollock, B. and Charles, J., which was affirmed on appeal (65 L. T. Rep. 136; (1891) 2 Q. B. 192), makes it clear that the words "marriage settlement" include a memorandum of a marriage settlement which conveyed equitable rights only, and would include marriage articles intended to be followed by a formal marriage settlement. It seems to me impossible that the non-registration of an instrument intended to give legal effect to a prior instrument which had by virtue of the exception in favour of marriage settlements already created valid equitable rights could avoid or extinguish those rights. A marriage contract might be so drawn that it would manifest an intention that no property should pass unless and until a further instrument of transfer was executed. Such a contract would create a power to seize something in the nature of a floating security, and would, I think, undoubtedly be a bill of sale, and I am inclined to think a marriage settlement, but I do not think that the present marriage contract is such an instrument. The material words are: "It is hereby agreed and declared that all real and personal property except business assets of the said Arthur Montague Reis to which the said A. M. R. and L. S. or either of them at the time of the said intended marriage of the said L. S. or A. M. R. in his own right or in the right of the said L. S. any time during the joint lives of the said A. M. R. and L. S. shall be or become entitled, whether in possession, reversion, or otherwise" (here follows the exception), "shall so soon as the circumstances will admit and at the cost of the trust estate be assured and transferred by the said A. M. R. and L. S. and all other necessary and proper parties, if any, unto or otherwise vested in the said trustees or trustee." I do not think that according to these words the execution of a transfer or the taking possession by the trustees is a condition precedent to the passing of the property. This being so, it follows in my judgment that the bill of sale point fails. The settlement of 1879 did not require registration, and the equitable rights arising under that settlement, as the subject-matter of it from time to time has come into existence, are not avoided by the non-registration of the instruments of transfer of June 1903. The result of all this is that the appeal is allowed, and is allowed with costs.

*Appeal allowed.*

Solicitors for the appellants, *Nordon, de Frece*, and *Benjamin*.

Solicitors for the respondent, *W. H. Martin* and *Co.*

## HIGH COURT OF JUSTICE.

### PROBATE, DIVORCE, AND ADMIRALTY DIVISION.

#### DIVORCE BUSINESS.

*June* 15, 21, *and* 27.

(Before Barnes, J.)

Evans v. Evans and Blyth (No. 2). (a)

*Divorce—Petition for variation of settlements—Issue as to legitimacy—Trial—Evidence—Witness as to adultery—Liability to answer questions as to adultery—Evidence Amendment Act* 1869 (32 *&* 33 *Vict. c.* 68), *s.* 3.

*Upon the trial of an issue directed to ascertain the legitimacy of a child as the result of a petition to vary marriage settlements, a witness called to prove his or her adultery (the adultery being relevant to the issue) is not protected from answering questions tending to show such adultery either by statute or by the general rule of law that a witness is not bound to incriminate himself or herself. A co-respondent in a divorce suit, therefore, if called as a witness on the trial of such issue, is bound to answer questions put to him as to acts of adultery between himself and the respondent in the divorce suit.*

Trial of issue directed by the court in the course of a petition for the variation of marriage settlement for the purpose of determining the status of a child born during wedlock. The facts of the case and the arguments of the same, when the issue was directed, are set forth *ante*, p. 356.

During the course of the trial of the issue the co-respondent in the divorce suit, Blyth, was called as a witness by the petitioner, he having attended upon subpœna, to prove the adulterous intercourse which had taken place between himself and the respondent to the suit. A question was put to him asking him whether he had not lived with the respondent as man and wife at a time when it was shown that the husband and wife, the petitioner and the respondent in the divorce suit, had been living apart, and when it

(a) Reported by J. A. Slater, Esq., Barrister-at-Law.