[HIGH COURT OF AUSTRALIA.]

WILLIAMS AND OTHERS . . . . . APPELLANTS;
RESPONDENTS,

AND

LLOYD AND ANOTHER . . . . . RESPONDENTS.
APPLICANT AND RESPONDENT,

IN RE HENRY MORGAN WILLIAMS.

ON APPEAL FROM THE COURT OF BANKRUPTCY.

H. C. OF A. 1933-1934.

SYDNEY, *Nov.* 16, 17, 20, 1933.

MELBOURNE, *Mar.* 6, 1934.

Gavan Duffy C.J., Rich, Starke, Dixon, Evatt and McTiernan JJ.

Bankruptcy—Dispositions of property—Voluntary settlements for benefit of wife and children—Declaration of trust—Bona fides—Contemplated speculation—Protection of assets—"Intent to defraud creditors"—Subsequent bankruptcy—Rights of official receiver—Passing of settlor's interest—Bankruptcy Act 1924-1932 (*No.* 37 *of* 1924—*No.* 31 *of* 1932), *sec.* 94 (1), (5)*—*Conveyancing Act* 1919-1930 (*N.S.W.*) (*No.* 6 *of* 1919—*No.* 44 *of* 1930), *sec.* 37A*—13 *Eliz. c.* 5.

By two several documents, dated 6th January 1926 and 27th November 1926 respectively, a father purported to dispose of certain of his assets to members of his family. He was then in a sound financial position, but contemplated investments of a speculative character. The dispositions, which were voluntary, were made at the instance of his wife. He continued in control of the assets until 1929, and in every way he, and also the donees, acted as if the assets remained his property. The father did not

* The *Bankruptcy Act* 1924-1932, by sec. 94, provides, as far as material, "(1) Any settlement of property . . . shall, (i) if the settlor becomes bankrupt within two years after the date of the settlement—be void against the trustee in the bankruptcy; and (ii) if the settlor becomes bankrupt at any subsequent time within five years after the date of the settlement—be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the settlor's interest in the property passed to the trustee of the settlement or to the donee thereunder on its execution . . . (5) 'Settlement' for the purposes of this section includes any conveyance or transfer of property."

The *Conveyancing Act* 1919-1930 (N.S.W.), by sec. 37A (inserted by sec. 10 of the *Conveyancing (Amendment)*

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

account for income to the donees, particulars of which were shown in his income tax return only. As a result of his speculations the father became insolvent at the end of 1929, and his estate was sequestrated in 1930. The official receiver claimed that the dispositions were void as against him (*a*) by virtue of 13 Eliz. c. 5, or the *Conveyancing Act* 1919-1930 (N.S.W.), sec. 37A, on the ground that they were made with the intent to defraud creditors ; and (*b*) under sec. 94 (1) of the *Bankruptcy Act* 1924-1932.

Held, by *Rich*, *Dixon*, *Evatt* and *McTiernan* JJ. (*Gavan Duffy* C.J. and *Starke* J. dissenting), that the evidence failed to show that the dispositions were made with the intent to defeat or delay creditors.

The document of 6th January 1926 purported to be a memorandum of agreement whereby it was mutually agreed and declared by the donor, his wife and a daughter, that all shares in a certain company registered in the donor's name, except a specified number which he retained to assure his qualification for directorship, were the joint property of the wife and the daughter, and all interest thenceforth accruing therefrom was for their sole benefit and was to be used at their discretion. The shares were not in fact transferred to the wife and daughter, nor did they receive any income therefrom. After he became insolvent the donor, by various methods, sought to have the document regarded as a declaration of trust.

Held that the document was imperfect as a gift and did not pass any interest in the shares to the wife and daughter ; and that the donor's conduct and declarations after his insolvency, could not, having regard to his motives, have any retroactive effect as evidence of intention.

On 1st August 1928 the father lent moneys to a borrower on the security of shares in a company. On 21st November 1929, after judgment had been signed against him for a large sum, the father obtained from the borrower in respect of the loan, a mortgage dated 1st August 1928, in which a daughter was shown as the mortgagee. The evidence did not show that the moneys lent were the moneys of the daughter, and the transaction did not take the form of a discharge by the father of any liability to his daughter.

Held, that under sec. 94 (1) of the *Bankruptcy Act* 1924-1932, the daughter's title to the beneficial interest in the mortgage was void against the official receiver, and upon his intervention she held the mortgage as trustee for him.

On 19th November 1929, upon which date judgment was signed against him for a large sum, the father opened a Savings Bank account in the name of his

Act 1930 (N.S.W.)), provides : " (1) Save as provided in this section, every alienation of property, made whether before or after the commencement of the *Conveyancing* (*Amendment*) *Act* 1930, with intent to defraud creditors, shall be voidable at the instance of any person thereby prejudiced. (2) This section does not affect the law of bankruptcy for the time being in force. (3) This section does not extend to any estate or interest in property aliened to a purchaser in good faith not having, at the time of the alienation, notice of the intent to defraud creditors."

The *Conveyancing* (*Amendment*) *Act* 1930 (N.S.W.) provided, by sec. 1, *inter alia*, that the Act " shall be read and construed with the *Conveyancing Act* 1919," and by sec. 2 the statute 13 Eliz. c. 5, was wholly repealed so far as it applied to New South Wales.

wife and a daughter, and transferred to it, from a similar account in his own name, the sum of £1,000. The money remained in the new account until after the bankruptcy.

Held, that the payment was a settlement within the meaning of sec. 94 of the *Bankruptcy Act* 1924-1932, and was avoided by the provisions of sub-sec. 1 of that section.

Per Starke J.: The *Bankruptcy Act* 1924-1932 does not supersede and is not inconsistent with the provisions of 13 Eliz. c. 5, or of sec. 37A of the *Conveyancing Act* 1919-1930 (N.S.W.), and an official receiver under the first-named statute may avail himself of the provisions of the other two statutes.

Decision of the Court of Bankruptcy: *Re Williams*; *Ex parte Lloyd*, (1933) 6 A.B.C. 58, in part affirmed, subject to variations, and in part, reversed.

APPEALS from the Court of Bankruptcy (District of New South Wales and the Territory for the Seat of Government).

These were appeals from decisions of Judge *Lukin*. The facts material to this report were stated substantially as follows in the judgment of his Honor:—

These are four motions in each of which the official receiver, Charles Fairfax Waterloo Lloyd, as trustee of the estate of Henry Morgan Williams, seeks declarations, orders and an injunction against all, or some, of the respondents hereto. Henry Morgan Williams (hereinafter referred to as the bankrupt) was, up to the year 1926, a colliery superintendent living at Kurri Kurri in the State of New South Wales. Jane Williams, now deceased, was the wife of the bankrupt. The bankrupt and his wife had one son, David Williams, and two daughters, Rosina Williams and Winifred Williams, who are directly concerned and two other daughters who are not directly concerned with the matters in dispute. The order of sequestration was made on 27th October 1930. The bankrupt died on 23rd February 1931. Jane Williams (then his widow) died on 28th February 1931, and by her will appointed David Williams and Rosina Williams as executors.

The matters arising for consideration under the four motions are so interwoven and so inter-related that the parties agreed, with the approval of the Court, to have them dealt with together. I take the motions in the order in which it is contended the bankrupt's property has been improperly disposed of.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

The first motion seeks as against the daughter Rosina, personally, and as against the son David, and Rosina, as executor and executrix respectively of the estate of the bankrupt's widow :—(1) A declaration that 4,640 shares in the capital of the Kurri Kurri and South Maitland Amusement Co. Ltd. standing in the bankrupt's name are the absolute property of the official receiver, and the respondents have not, nor has either of them, any interest in the same; (2) a declaration that the settlement hereinafter, for convenience, called the first settlement, purporting to be dated 6th January 1926, and to have been executed by the bankrupt in favour of Jane Williams and Rosina Willaims, was, and is, void as against the official receiver, and orders for consequential relief, on the ground: (a) that such shares belonged to the bankrupt at the commencement of his bankruptcy free of any interest in the said respondents or either of them; (b) that such settlement or declaration of trust was, and is, void as against the official receiver, by virtue of sec. 94 of the *Bankruptcy Act* 1924-1932; (c) that it was made with intent to defraud creditors of the bankrupt, and was, and is, void, by virtue of the statute 13 Eliz. c. 5, and of the *Conveyancing Act* 1919-1930 (N.S.W.), sec. 37A, as against the official receiver; and (d) that it was a mere cloak or sham for the purpose of retaining a benefit for the bankrupt. The second motion seeks, as against the son David, and the daughter Rosina Williams, personally, and as against them in their capacity as executor and executrix respectively of the estate of their mother, Jane Williams :—(1) A declaration that certain property in the schedule to the motion particularized, belongs absolutely to the official receiver as trustee. (2) A declaration that the memorandum of agreement, or declaration of trust, hereinafter for convenience called the second settlement, purporting to be dated 27th November 1926, and to have been executed by the bankrupt in favour of his wife, his son David, and his daughter Rosina, was, and is, void against the official receiver as trustee, and consequential relief, on grounds similar to those contained in the first motion *mutatis mutandis*. The property referred to in this motion includes five pieces of land and the buildings thereon, two mortgages over land, and six lots of shares consisting of 2,000 ordinary fully paid up shares in the Neuralite Paving Co. of Sydney, registered in the name

of the bankrupt; 500 fully paid up cumulative preference shares in the capital of the Sterling Henry Ltd., registered in the name of the bankrupt; 500 fully paid up ordinary shares in the capital of the United States Light and Heat Corporation, registered in the name of the bankrupt; 1,250 fully paid up ordinary shares in the capital of the East Greta Coal Mining Co., Newcastle, registered in the name of the bankrupt; 1,000 fully paid up ordinary shares in the capital of the Australian Securities Ltd., registered in the name of the bankrupt; and 1,000 fully paid up ordinary shares in the capital of the New South Wales Land & Building Co., Sydney, registered in the name of the bankrupt. The third motion, as originally drawn, sought as against the daughter Rosina Williams, a declaration that a mortgage, made in favour of Rosina Williams by P. Olsson in respect of 1,000 shares in the Kurri Kurri and South Maitland Amusement Co. Ltd., and the money secured thereby, were the absolute property of the official receiver, as trustee, and for consequential relief. It since appears that the money due under the mortgage in question has been paid to Rosina Williams. By amendment the trustee now seeks a declaration that such money was, and is, the property of the trustee, and asks for an order that it should be paid to him on grounds similar to those contained in the first two motions. The fourth motion seeks, as against both the daughters, Rosina and Winifred, and the Commonwealth Bank of Australia, a declaration that an amount standing to the credit of the daughters with the respondent bank is part of the estate of the deceased bankrupt, and that the respondents other than the bank were trustees of such money for the official receiver; alternatively, that such amount is a settlement within the meaning of sec. 94 and, as such, is void as against the trustee, and the trustee therefore seeks consequential relief.

Except as to the dates when each memorandum of agreement or declaration of trust was respectively made, the material facts are not in dispute between the parties. The inferences of fact to be drawn therefrom, and the law, and its application to those facts and inferences, are in dispute. The applicant claims that the "settlements" alleged to have been executed on 6th January 1926 and on 27th November 1926 were not in fact executed on those

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

dates, notwithstanding the direct evidence of the attesting witness Stuart, and of the respondents, David and Rosina, to that effect, but were not executed, as the indirect evidence indicates, irresistibly it is said, until some day in November 1929; alternatively, that the settlements, if executed on the dates which they bear, were executed under circumstances that indicate, in each case, that it was not the intention of the grantor or of the grantees that such document should operate immediately on its execution, but that it should not operate until such time, if at all, as the grantor thought it would be necessary to protect his estate from the debts and liabilities he might incur in his then contemplated investments and speculations; that each of such documents was a mere cloak or sham for the purpose of retaining a benefit for the bankrupt; and that such circumstances made them void under the statute 13 Eliz. c. 5, under sec. 37A of the *Conveyancing Act* 1919-1930 (N.S.W.), and under sec. 94 of the *Bankruptcy Act* 1924-1932.

It was estimated that the bankrupt, at the time of his retirement, was worth approximately £20,000. He had then invested, and apparently proposed further investing, his money in various companies, some of which were promoted by a man named McLaren, in whose honesty the bankrupt's wife had some doubts. Subsequently her fears were shown to have been justified. She appears to have pleaded with the bankrupt to take some steps against the possibility of misfortune.

The settlement bearing date 6th January 1926 is headed "Memorandum of Agreement" and is in these words:—"It is hereby mutually agreed and declared by the parties signing this document that all shares in the capital of the Kurri Kurri and South Maitland Amusement Co. Ltd., registered in the name of Henry Morgan Williams are the joint property of Jane Williams . . . and Rosina Williams, spinster . . . and all interest accruing therefrom now and after is for their sole benefit and to be used at their discretion excepting that 250 shares are held by Henry Morgan Williams . . . for the benefit of himself so as to assure his qualification of directorship under the articles of association . . . and the power of attorney executed by Jane Williams, the wife, is to be exercised accordingly. Signed this 6th January 1926. H. M.

Williams (husband) in the presence of H. G. Stuart." Then signed by Jane Williams and by Rosina Williams in the presence of H. G. Stuart. The attesting witness, Stuart, wrote the words "6th January 1926" in his own handwriting. On the same date, that is, on 6th January, Jane Williams signed a general power of attorney constituting and appointing the bankrupt as her attorney in regard to all her property, real and personal. The daughter Rosina Williams does not seem to have signed on this date any document appointing her father as attorney.

The second settlement, which bears date 27th November 1926, is headed "Memorandum of Agreement" and is in these words:— "It is hereby mutually agreed and declared by the parties signing this document that the real estate, properties, mortgages and shares in companies more particularly described in a schedule attached and registered in the name of Henry Morgan Williams are the joint property of Jane Williams, David Williams and Rosina Williams, all of Kurri Kurri, New South Wales, and are held by the said Henry Morgan Williams in trust and all interest accruing therefrom, now and in the future, is for their sole benefit and to be used at their discretion." (The schedule particularizes the four pieces of land and buildings, the two mortgages, and six lots of shares as referred to above.) "In witness whereof we hereunto subscribe our names at Kurri Kurri the twenty-seventh day of November One thousand nine hundred and twenty-six." (It was signed by Jane Williams, David Williams and Rosina Williams in the presence of H. G. Stuart, the same attesting witness as the previous document, and then followed:—) "Accepted and I hereby certify this agreement to be correct. H. M. Williams. Signed in the presence of H. G. Stuart." The words "twenty-seventh day of November One thousand nine hundred and twenty-six" are in the attesting witness's handwriting. The rest of the document is typed. At the same time the three beneficiaries signed a power of attorney appointing the bankrupt their agent "for the purpose of managing our joint properties" and authorizing him "to receive on our behalf all rents and dividends or other interest and to give receipts for same. Also to pay rates and taxes and all other outgoings in connection with our properties, to sell or dispose of any or all of such property and

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

shares if deemed in our best interests and to lodge as security against mortgage, overdraft or otherwise any of the deeds or other title of ownership which we now or may have from time to time."

The bankrupt, throughout, up to his bankruptcy, remained the registered proprietor of the land, the mortgagee of the mortgages, and the registered owner of the shares in the company. Until the bankrupt had reached a condition of insolvency no caveat was entered on the real property register to protect the interest of the beneficiaries; and no notice was given to the mortgagors or to the companies in which the shares were held. The bankrupt retained the possession of all documents of title; dealt with the property as if it were entirely his own; received the rents, profits and dividends, and paid them into his own bank account; made entries of the receipts in a book referred to as his ledger, as if they were his own; and included the amounts he so received in his income tax returns and paid the income tax thereon, his income tax thereby being paid at a higher rate than it would have been as income of the alleged beneficiaries. He paid out of his own banking account all the rates, taxes and other outgoings, and generally behaved as if he had continued the absolute owner.

[After pointing out that during 1928 and 1929 the bankrupt incurred considerable liabilities, and was unable in 1929 to meet the demand of his creditors, his Honor proceeded:—] The bankrupt seems to have decided in November 1929 to take further measures to secure his assets for his family. On 19th November 1929 he closed his Savings Bank account and transferred £1,000 into another bank account in the name of himself and Rosina. On 20th November 1929 he closed his current account, and placed the money therefrom in another account in the name of himself and Rosina. On 21st November he signed a memorandum of transfer under the *Real Property Act* transferring "Louvain," the family home, to David and Rosina, and they signed an acceptance of it. This property was declared by the second settlement to have been held by the bankrupt in trust for the wife, David and Rosina. The transfer was drawn by a solicitor. Apparently no disclosure was made to the solicitor of a settlement, for no document was executed to show how the wife's interest had been extinguished or disposed of. He failed to register

the transfer because a caveat had been lodged. On 4th November 1929 he transferred the insurance policy on the furniture in "Louvain" to one of the members of his family. In May 1930 he notified the companies in which shares were supposed to have been held by him in trust under the settlements. Each notification informed the company that the shares " are held in trust by me and are the joint property of "—the beneficiaries—" and all interest accruing therefrom, *now and in the future*, is for their sole benefit to be used at their discretion." He did not, in these notifications, refer to the date of either settlement.

In August 1928 the bankrupt lent £300 to one P. Olsson and took 1,000 shares in the Kurri Kurri and South Maitland Amusement Co. as security. Up to November 1929 he was paid interest thereon. He then requested Olsson to sign a mortgage to Rosina Williams, stating the money lent had been Rosina's money. Olsson signed the document in November 1929, but it was, at the bankrupt's request, antedated to 1st August 1928.

The alleged settlements were not submitted for stamp duty until February 1931. In February 1930, for the first time, the bankrupt made out a statement of account in regard to the alleged trust moneys he had received. It has been referred to by counsel for the trustee as a faked account in that it apparently was made, not with a view of rendering an account to the beneficiaries, but, *inter alia*, of explaining the withdrawal of the £1,000, referred to above, from his own account and the payment of it through other accounts to the members of his family as the alleged beneficiaries. It, in fact, does not give a correct account of the alleged trust moneys received, for it omits several items and manipulates others, and has been so drawn as to make the £1,000 appear to be the balance due to the beneficiaries under the settlement. This £1,000 was the amount claimed in the fourth motion. The amount is shown in the bankrupt's " Statement of income and expenditure from trust funds January 6th, 1926, and November 27th, 1926." In July 1929 the bankrupt had this £1,000 to his credit in the Savings Bank at Kurri Kurri. On 4th November 1929, when endeavouring to deal swiftly and secretly with his assets, he withdrew the £1,000 and placed it to the credit of his wife and daughter Rosina in an account then opened

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

for the purpose. On 26th February 1930 £950 of this £1,000 was transferred from the last-mentioned account into another account in the name of Rosina opened for that purpose. On 28th March 1930 £876 6s. 8d. (being the £950 last mentioned less £100 drawn and £26 6s. 8d. interest added) was withdrawn from that account and was transferred into an account opened on the previous 26th February 1930 in the name of Rosina and Winifred in the State Savings Bank. Previously £200 had been transferred from an account of Jane Williams, the mother, and Winifred Williams, and £50 of that amount withdrawn, so that the account was £1,026 6s. 8d. in credit. On 7th April 1931 £900 was withdrawn from this last-mentioned account and paid into the Commonwealth Bank to the credit of Rosina and Winifred. Some withdrawals were then made from that account and a balance of £751 14s. 3d. now stands to the credit of that account.

Judge *Lukin* made the following declarations and orders :—

On the first motion, a declaration that the memorandum of agreement or declaration of trust purporting to be dated 6th January 1926 was and is void as against the official receiver ; that the 4,640 shares referred to were the absolute property of the official receiver, and that none of the respondents had any interest therein. The respondents were ordered to forthwith deliver up to the official receiver all scrip certificates in respect of the shares, and to pay the costs of the motion :

On the second motion, a declaration that the memorandum of agreement or declaration of trust purporting to be dated 27th November 1926 was and is void as against the official receiver ; that the whole of the properties referred to in the schedule belonged absolutely to the official receiver, and that none of the respondents had any interest therein. The respondents were ordered to forthwith deliver up to the official receiver all documents of title, and other documents relating to the said properties ; to execute such documents as might be necessary to perfect the title of the official receiver, and to pay the costs of the motion :

On the third motion, a declaration that the sum of £300, and interest thereon, received by Rosina Williams from Olsson was the property of the bankrupt at the date of his bankruptcy and on such

bankruptcy became the property of the official receiver and was payable to him as such. The respondent was directed and ordered to pay forthwith, such sum, together with the interest received on account thereof, to the official receiver, and to pay the costs of the motion:

On the fourth motion, a declaration that the sum of £751 14s. 3d., the amount standing to the credit of the respondents' account with the respondent bank, was part of the estate of the bankrupt, and that the respondents, other than the Commonwealth Bank of Australia, were the trustees of the money for the bankrupt; that the respondents, other than the Commonwealth Bank of Australia, were accountable to the official receiver for the full amount of £876 6s. 8d. paid into their joint account on 25th March 1930, that was, to the sum of £751 14s. 3d., and a balance of £124 12s. 5d. The respondents were ordered to execute and deliver to the official receiver all documents necessary to withdraw the sums from the bank, which was directed to pay the amounts over to the official receiver. The respondents, Rosina and Winifred Williams, were directed to pay the balance of £124 12s. 5d., or such part as had not been paid under a previous part of the order, and to pay the costs of the motion.

Costs of the allegation of antedating the settlements were not allowed on the ground that although the fraud charged was perpetrated, it was not perpetrated by the antedating: *Re Williams*; *Ex parte Lloyd* (1).

From these decisions the respondents to the respective motions, other than the Commonwealth Bank of Australia, now appealed to the High Court.

By consent of the parties *Starke* J. ordered that the four appeals be heard together.

The Commonwealth Bank of Australia, a respondent to the appeal, did not appear at the hearing thereof.

Loxton K.C. (with him *Gain* and *Donovan*), for the appellants At the time the settlements of 6th January 1926 and 27th November. 1926 were made, the settlor (the bankrupt) was solvent, and was in

(1) (1933) 6 A.B.C. 58.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

a position to satisfy his then creditors in full without needing to have recourse to the properties the subject of the settlements. The document of 6th January states a fact, that is, that certain shares registered in the name of the bankrupt were the property of his wife and one of his daughters. His retention of control was so that owing to his greater experience a greater measure of benefit would accrue to the members of his family. One of the essentials of a gift is that the actual property should pass, whereas in a trust all that is required is the expression of intention that the settlor will hold the property in the future for the benefit of somebody other than the owner of the property. During the hearing an admission was made that the settlements were voluntary. The bankrupt disclosed his intention to constitute himself a trustee for his wife and daughter. All the requisites of a trust are defined in the document of 6th January 1926. The nature of the document, e.g., the reservation of a number of shares sufficient to qualify the bankrupt to hold office as a director, shows that it was intended to operate immediately. The company was notified of the trust before the official receiver's title accrued. The statement of account made by the bankrupt in February 1930 was, doubtless, intended to show the true position as to the capacity in which he held the various assets, whether he held them as owner, or as trustee. No suggestion as to the ante-dating of documents was made until after the voluntary nature of the settlements had been admitted. A person charged with fraud is entitled to be informed as to the fraud alleged, and if that fraud is not established the person charged is entitled to a decision. The acts of the bankrupt were those ordinarily done by a solvent person. Payments made by him were made during solvency and in discharge of the duties of his trust. Each settlement should be judged by the circumstances attending its execution. The onus is upon the respondent to establish a dishonest intention. The respondent is not entitled to relief in respect of a matter substantially different from that charged (*Bell* v. *Lever Brothers Ltd.* (1)). Here what was relied upon for relief was a fraud as to antedated documents. In this respect there is a difference between bankruptcy procedure and equity procedure. The admission as to

(1) (1932) A.C. 161, at pp. 197, 198.

the voluntary nature of the settlements, forced from the appellant by the respondent in one matter, should not be used by the respondent against the appellant in another matter for the purpose of establishing relief on a case which is substantially different. Fraud must be alleged clearly and proved as alleged (*Brindley* v. *Scott* (1); *Hickson* v. *Lombard* (2)).

[Counsel was stopped until after argument had been addressed to the Court on behalf of the respondent.]

Abrahams K.C. (with him *C. D. Monahan*), for the respondent. The settlements were not genuine settlements intended to operate immediately. If it were otherwise, the documents would have been stamped shortly after the date of execution; caveats would have been registered in respect of the land under the *Real Property Act*; notification in respect of the shares would have been sent within a reasonable time to the companies concerned; policies of insurance would have been suitably indorsed; the bankrupt, as donor, would have gone out of the beneficial ownership of the properties, and, instead of the properties being included in the bankrupt's income tax returns, they would have appeared in the returns of the beneficiaries. The facts show that even if the documents were executed in 1926 they were executed with the intention that they should remain inoperative until such time as the bankrupt became insolvent. Thus the bankrupt's intention was to defraud his creditors, which brings the transactions within sec. 94 of the *Bankruptcy Act*, sec. 37A. of the *Conveyancing Act* 1919-1930 (N.S.W.), and the statute 13 Eliz. c. 5. The appellants were informed that the respondent relied upon those statutory provisions and that the charge of fraud was based upon antedated documents. The admission as to the voluntary nature of the "settlements" was not forced from the appellants. After it was made the appellants refused an offer of an adjournment. It is more than a coincidence that during 1926, the year shown on the documents as that in which they were executed, the bankrupt entered upon a course of speculation, and into many guarantees which committed him to heavy financial liability. For income-tax

(1) (1902) 2 S.R. (N.S.W.) Eq. 49; 19 N.S.W.W.N. 79.
(2) (1866) 1 E. & I. App. Cas. 324.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

purposes the bankrupt treated the properties, and the income therefrom, as his own for the years 1928, 1929 and 1930; no allowance was claimed in respect of his wife. The frauds by the bankrupt commenced in November 1929, at which time, as the evidence shows, he was in serious financial difficulties. The evidence shows that the moneys advanced to Olsson were the moneys of the bankrupt, and not the moneys of his daughter Rosina; therefore the transfer to his daughter, by way of mortgage executed in her favour in November 1929, of the right to such moneys is challengeable by the official receiver. The date of the settlements, for the purpose of sec. 94 of the *Bankruptcy Act*, is not the date the respective documents bear, but is the date on which they became effective as legal documents, that is to say, the date upon which use was first made of them. The true date is not the date of the document, or when the estate or interest passes, but is the time when it is settled. A declaration of trust is a settlement (*Shrager* v. *March* (1)). If the documents do not evidence declarations of trust then they must evidence voluntary gifts, in which case the property concerned would be the property of the bankrupt at the time of bankruptcy. Counsel's opening address is merely a statement of the facts for the guidance of the tribunal and is not binding upon the counsel (*Fletcher* v. *London and North Western Railway Co.* (2)). The evidence clearly shows that the money referred to in the fourth motion is the balance of the money paid on 4th November 1929, by the bankrupt to the credit of his wife and daughter in an account opened for that purpose, and hence is properly claimed by the official receiver.

Loxton K.C., in reply. A trustee is not under any obligation to disclose his affairs. The fact that a settlor continues to manage and deal with the settled property as if it were his own, and to pay income arising therefrom into his own account, is immaterial in the case of a settlement (*Shrager* v. *March* (1)); this, however, does not apply in the case of a gift.

[DIXON J. Sec. 47 of the *Bankruptcy Act* 1883 (Eng.) has been amended since the decision in *Shrager* v. *March* by the insertion of the word "donee."]

(1) (1908) A.C. 402.

(2) (1892) 1 Q.B. 122.

On the facts before the Court the transactions must be taken to have occurred in 1926 instead of in 1929. Upon that basis subsequent happenings have no significance. A wrongful intent on the part of the bankrupt must be actually proved by the official receiver (*Ex parte Mercer*; *In re Wise* (1)). The statute 13 Eliz. c. 5 was not in force at any relevant period so far as this case is concerned. That statute was repealed by sec. 2 of the *Conveyancing (Amendment) Act* 1930 (N.S.W.). The right to set aside these settlements is not protected by sec. 4 of the *Conveyancing Act* 1919-1930 (N.S.W.). Sec. 37A of that Act does not operate in these transactions. The law of bankruptcy which is now being exercised by the Court is not affected by the section. This Court's jurisdiction as to bankruptcy is purely statutory. In administering bankruptcy law the provisions of 13 Eliz. c. 5, and the *Conveyancing Act* of New South Wales, particularly sec. 37A, cannot be availed of. At the date the statute 13 Eliz. c. 5 was repealed there was no title in the official receiver. His title does not date back further than six months from the date of sequestration. Consequently there was no right capable of being protected; also, assuming it was a right that came within the class which might be protected, it was not a right which accrued (*W. Morris* v. *A. Morris* (2)). The Federal *Bankruptcy Act* did not follow the State Act. The repeal of the State Act is a complete answer to these proceedings. Sec. 94 (1) of the *Bankruptcy Act* 1924-1932 contains the only provisions which are material in this suit. So far as Olsson's mortgage is concerned, it was not a case of antedating an instrument. The bankrupt merely took advantage of Olsson's application to have the true position, as from the date of the original advance, correctly recorded by the appropriate documents. For a transaction to be a settlement within the meaning of the *Bankruptcy Act* there must be involved the idea that it was intended to be a gift. A bankrupt is entitled to make gifts of sums of money (*In re Player*; *Ex parte Harvey* (3); *In re Vansittart*; *Ex parte Brown* (4); *In re Tankard*; *Ex parte Official Receiver* (5); *In re Plummer* (6)). The money referred to in the fourth motion was not a settlement but was a gift. It is significant that it was paid

(1) (1886) 17 Q.B.D. 290.
(2) (1895) A.C. 625.
(3) (1885) 15 Q.B.D. 682.
(4) (1893) 1 Q.B. 181, at p. 183.
(5) (1899) 2 Q.B. 57.
(6) (1900) 2 Q.B. 790.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

into a Savings Bank account which can be operated upon from day to day without the use of cheques. The recipients of the money were beneficiaries, under a trust, to whom money was due. Even if he be in embarrassed circumstances, a trustee is justified in paying moneys in satisfaction of claims of his cestui que trust. Notwithstanding the fact that at the time of payment the debtor was in serious financial difficulties, any payment in discharge of a debt made more than six months prior to the date of the sequestration order, as here, can be attacked only on the ground that it was a "settlement." In this case it was a sum of money, not a settlement, and hence is not open to attack under the *Bankruptcy Act*. No suggestion of mala fides as regards this sum of money was made in the notice of motion, nor was it argued in the Court below. When the legal estate is retained under a settlement the fact that certain powers are exercised or exercisable is not an indication of an intent to defeat or delay creditors (*Shrager* v. *March* (1); *Purcell* v. *Deputy Federal Commissioner of Taxation* (2)). Even assuming that the bankrupt was influenced by other motives, they do not vitiate the transactions, because his real intention was that the various beneficiaries should benefit (*Deputy Federal Commissioner of Taxation* v. *Purcell* (3)). A voluntary settlement, bona fide on the face of it, made by a settlor who, at the time of making it, had sufficient assets otherwise to meet his obligations, ought not to be treated as fraudulent and void merely because some time later it has the effect of defeating or delaying subsequent creditors of the settlor (*In re Lane-Fox*; *Ex parte Gimblett* (4)). The evidence supports the inference, which this Court should draw, that the position as to the ownership of the money under consideration was as stated by the bankrupt, a statement made by the latter against his proprietary interest. The evidence on this point was uncontradicted, and was not disbelieved by Judge *Lukin*.

Abrahams K.C. The right of the official receiver to avail himself of State law was dealt with in *Stellwagen* v. *Clum* (5); *Inglis* v. *Dalgety & Co. Ltd.* (6).

Cur. adv. vult.

(1) (1908) A.C. 402.
(2) (1920) 28 C.L.R. 77.
(3) (1921) 29 C.L.R. 464, at pp. 472, 475.
(4) (1900) 2 Q.B. 508, at pp. 512-514.
(5) (1918) 245 U.S. 605.
(6) (1930) 2 A.B.C. 194.

The following written judgments were delivered :—

RICH J. I have had the advantage of reading the judgment of my brother *Dixon*, and agree with it and the order proposed by him.

STARKE J. These four appeals, which were heard together, concern certain dispositions, or attempted dispositions, of property by one Henry Morgan Williams, a bankrupt, against whom on 27th October 1930 a sequestration order was made. On 6th January 1926 the bankrupt, his wife and daughter, executed the following document :—" Memorandum of Agreement.—It is hereby mutually agreed and declared by the parties signing this document that all shares in the capital of Kurri Kurri and South Maitland Amusement Company Limited registered in the name of Henry Morgan Williams are the joint property of Jane Williams the wife of the said Henry Morgan Williams and Rosina Williams, spinster, both of Kurri Kurri and all interest accruing therefrom now and in the future is for their sole benefit and to be used at their discretion, excepting that two hundred and fifty (250) of the said shares are held by Henry Morgan Williams, the husband, for the benefit of himself so as to assure his qualification of directorship under the articles of association of the Kurri Kurri and South Maitland Amusement Company Limited And the power of attorney executed by Jane Williams, the wife, is to be exercised accordingly." On 27th November 1926 the bankrupt, his wife, daughter and son, executed the following document :—" Memorandum of Agreement.—It is hereby mutually agreed and declared by the parties signing this document that the real estate properties, mortgages and shares in companies more particularly described in schedule attached and registered in the name of Henry Morgan Williams are the joint property of Jane Williams David Williams and Rosina Williams all of Kurri Kurri New South Wales And are held by the said Henry Morgan Williams in trust And all interest accruing therefrom now and in the future is for their sole benefit and to be used at their discretion. Schedule Referred To.—Land and buildings thereon situated at Wangi Wangi being Lot 62 Wangi Point Estate Reference No. vol. 3455 fol. 61 ; land and buildings thereon situated at Wangi Wangi being Lot 61 Wangi Point Estate Reference No. vol. 3845 fol. 137 ; land and buildings

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

Starke J.

thereon situated at Coronation Street Kurri Kurri being Allotment 6 Sec. 51 Reference No. vol. 1577 fol. 243 ; land and buildings thereon known as ' Beldor Flats ' situated at Newcomen Street Newcastle Reference No. vol. 3289 fol. 6 ; land and buildings thereon known as ' Louvaine ' situated at Rawson Street, Kurri Kurri, being Lot 16 Section 28 ; mortgage to Thomas Anthony and Letitia Anthony on land and buildings at Kurri Kurri, being part of Portion 171, Reference No. vol. 2241 fol. 96 ; mortgage to Alexander Murray on property situated at Edward Street, Kurri Kurri, being Lot 18 Section 43, Reference No. vol. 2024 fol. 104 ; 2,000 ordinary shares of £1 each in Nurolite Paving Co. Ltd. Sydney ; 500 cumulative preference shares in Sterling Henry Ltd. Sydney ; 500 ordinary shares of £1 each in U.S. Light and Heat Corporation ; 1,250 ordinary shares of £1 each in East Greta Coal Mining Co. Ltd. ; 1,000 contributing ordinary shares in Australian Securities Ltd. ; 1,000 ordinary shares of £1 each in the New South Wales Land and Building Co. Ltd."

In August 1928 the bankrupt lent £300 to one Peter Olsson, and took one thousand shares in the Kurri Kurri and South Maitland Amusement Co. as security. About November 1929 Olsson at the request of the bankrupt executed a document reciting that Rosina, a daughter of the bankrupt, had agreed to lend to him £300 secured in manner therein appearing, and that with a view to the intended security, Olsson had transferred to Rosina the thousand shares in the Kurri Kurri and South Maitland Amusement Co., acknowledging receipt of the said sum, and covenanting to pay the same on 1st August 1930 with interest thereon in the meantime. This document, though signed in November 1929, was dated as of 1st August 1928. Olsson paid the sum of £300 to Rosina about October 1932, and presumably redeemed the thousand shares. About November 1929 the bankrupt had a sum of £1,000 standing to his credit in the Government Savings Bank of New South Wales. He transferred this sum on 19th of that month to an account in the same bank opened on that date in the name of his wife and his daughter Rosina. In February 1931 £950, part of this sum of £1,000, was transferred to an account in the same bank opened in the name of Rosina. In March 1931 the sum of £876 6s. 8d., being part of this sum of £950,

and interest thereon, was transferred to an account in the same bank in the names of Rosina and another daughter of the bankrupt, Winifred. In April 1931 the sum of £900 was deposited in the Commonwealth Savings Bank in the names of Rosina and Winifred. This money was withdrawn from the account of Rosina and Winifred in the Government Savings Bank of New South Wales, but a sum of £76 6s. 8d. was left standing at the credit of that account. So at least £800 of this sum of £900 can be traced to the original credit of £1,000 standing in the name of the bankrupt. Sums amounting to £170 were withdrawn from the account in the Commonwealth Savings Bank, and interest amounting to £21 14s. 3d. was added thereto, leaving a balance of £751 14s. 3d. now standing to the credit of this account.

The official receiver of the sequestrated estate of the bankrupt made four separate motions to the Court of Bankruptcy, seeking declarations that each of the four dispositions of property already mentioned was void against him by reason of the provisions of the statute 13 Eliz. c. 5, or the now substituted provision in the *Conveyancing (Amendment) Act* 1930 of New South Wales (1930, No. 44, sec. 10), or of the provisions of sec. 94 of the *Bankruptcy Act* 1924-1932, and ancillary orders. These motions were heard together by Judge *Lukin*, the Judge of the Court of Bankruptcy, and he made declarations and orders substantially as sought by the official receiver; and it is from these declarations and orders that the present appeals are brought.

The facts are very fully stated in the judgment of the learned Judge, but a summary is necessary for the right understanding of that judgment. (1) The bankrupt, who had been a colliery superintendent, retired in 1926, worth some £20,000. His wife was living, and also a son, David, two unmarried daughters, Winifred and Rosina, and two other daughters who are not concerned with the matters now in contest. (2) The bankrupt had invested moneys, and was proposing to invest further moneys, in various companies promoted by a man named McLaren. (3) The bankrupt's wife had no confidence in McLaren, and urged the bankrupt to take steps against the possibility of misfortune. (4) The result was the dispositions of 6th January and 27th November already mentioned.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

Starke J.

(5) These dispositions were voluntary; but it was admitted by the official receiver that the bankrupt was throughout the year 1926 able to pay all his debts without the aid of any of the property comprised in the dispositions. (6) The bankrupt remained the registered proprietor of the land, the mortgagee of the mortgages, and the registered owner of the shares mentioned in the dispositions, and no notices of alienation were given to the mortgagors or to the companies in which the shares were held. The bankrupt retained possession of all documents of title, dealt with the property as if it were entirely his own, received the rents, profits and dividends, and paid them into his own bank account, made entries of these rents, &c., in his books as if they were his own, included the amounts he so received in his income tax returns, and paid the income tax thereon, and generally behaved as if he were the absolute owner of the property. (7) The bankrupt, in the years 1928 and 1929 incurred liabilities amounting to more than £50,000. These liabilities were incurred in respect of guarantees to companies or individuals or upon promissory notes. (8) The bankrupt was hopelessly insolvent by the end of the year 1929. (9) The transfers already mentioned, of the Olsson security to Rosina, and of £1,000 in the Savings Bank to an account in the name of the bankrupt's wife and Rosina, were made at the end of the same year. Both were voluntary dispositions and were made at a time when the bankrupt knew he was insolvent.

The learned Judge found that the dispositions were made by the bankrupt to the end, purpose and intent of delaying, hindering and defrauding his creditors, and were consequently void against the official receiver by reason of the provisions of the statute of Elizabeth and the *Conveyancing (Amendment) Act* of 1930. "It is established by the authorities that in the absence of . . . direct proof of intention" to defeat creditors, "if a person owing debts makes a settlement which subtracts from the property which is the proper fund for the payment of those debts, an amount without which the debts cannot be paid, then, since it is the necessary consequence of the settlement (supposing it effectual) that some creditors must remain unpaid, it would be the duty of the Judge to direct the jury that they must infer the intent of the settlor to have been to

defeat or delay his creditors, and that the case is within the statute" (*Freeman* v. *Pope* (1)). But the learned Judge in Bankruptcy did not rely upon any such presumption: he found an express or actual intent to defeat or delay creditors. "A voluntary disposition is void under the statute, as against subsequent creditors of the grantor, if it was made by him with the express or actual intention of delaying, hindering, or defrauding his creditors thereby; whether the grantor was then in embarrassed circumstances or not; and whether or not any debt he then owed remains unpaid." A disposition is void if its object is to screen the grantor's wife and children from the risks of the unknown, and to preserve his property from his future creditors (*Mackay* v. *Douglas* (2); *Ex parte Russell*; *In re Butterworth* (3); *May* on *Fraudulent and Voluntary Conveyances*, 3rd ed. (1908), pp. 43-47). Fraud, however, is not to be presumed: the burden of proof is upon those who impeach the disposition (*Re Holland*; *Gregg* v. *Holland* (4)). The fact that the dispositions in the present case were in favour of the testator's wife and children, and, as to the 1926 dispositions, were made at a time when he was not embarrassed, is a circumstance entirely favourable to the bankrupt, for it is but natural and proper that a man should make provision for his wife and children without any intent whatever of defeating his creditors. But the Court must decide each particular case upon its own circumstances, and in its own surroundings. And in the present case there is ample evidence in support of the finding of the learned Judge in Bankruptcy.

The bankrupt and his wife died in 1931, before the present proceedings. But the son David and the daughter Rosina were both called and examined before the learned Judge. David, for instance, made this remarkable statement:—"Q. In fact you have never taken the slightest interest in the settlement? A. Not the slightest. Q. Although it made you a comparatively wealthy man, according to you you did not take any notice whatsoever. A. No, I left it to father. [Judge *Lukin*: What do you mean by that?] A. We left everything to him. Q. To do anything he pleased with it? A. Yes. Q. That is to say, if he liked he could have torn it up.

(1) (1870) L.R. 5 Ch. 538, at p. 541.
(2) (1872) L.R. 14 Eq. 106.
(3) (1882) 19 Ch. D. 588.
(4) (1902) 2 Ch. 360, at p. 381.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

Starke J.

A. Yes, as far as we were concerned." Rosina was equally unimpressed.—" Q. You were becoming a rich woman that day ? A. I did not think of it that way. Q. You were getting a lot of property handed over to you ? A. I did not think that was making me a rich woman. Q. Why ? A. I did not think much about it at all. Q. You did not bother about it that day ? A. No. Q. When did you first bother about it ? A. I have never bothered about it. Q. What ? A. I have never bothered about it. Q. You never took any interest in it after ? A. I would not say that. Q. Very little ? A. Very little indeed." It is difficult, in the face of evidence such as this, to regard the dispositions made by the bankrupt as genuine provisions for his family. The badges of fraud are many—the secrecy of the transactions, the continued possession of the property by the bankrupt and his dealings with it as his own, the antedating of the Olsson mortgage, and the false statements and recitals in that mortgage, and the fact that he denuded himself of the Olsson security and £1,000 in the Savings Bank when he knew he was insolvent. The two last-mentioned acts give colour to the bankrupt's general intent and purpose, which cannot be wholly disregarded in considering the dispositions of 1926. It appears to me that the finding of the learned Judge of the Bankruptcy Court is well warranted by the facts proved or admitted before him, and should not be disturbed. It rests to some extent, I should say, upon the evidence of David and Rosina, whom the learned Judge saw and heard and thus had an opportunity of noting their demeanour and attitude in regard to the various transactions—an additional reason for not disturbing his finding.

Some suggestion was made in the course of the argument that the official receiver under the *Bankruptcy Act* 1924-1932 could not avail himself of the Statute of Elizabeth or the *Conveyancing (Amendment) Act* 1930 of New South Wales. In my opinion the suggestion cannot be supported. The official receiver represents the creditors, and dispositions void against creditors are void against trustees or receivers lawfully appointed (*Doe d. Grimsby* v. *Ball* (1)). And there is nothing in the *Bankruptcy Act* which supersedes or is inconsistent with the provisions of the Statute of Elizabeth or the

(1) (1843) 11 M. & W. 531 ; 152 E.R. 916.

Conveyancing (Amendment) Act 1930. (Cf. *Stellwagen* v. *Clum* (1); *Pobreslo* v. *Boyd Co.* (2); *Johnson* v. *Star* (3).)

But the judgment can also be supported on other grounds as to the disposition of January 1926, and the transfers of the Olsson security to Rosina, and of the £1,000 in the Savings Bank to the bankrupt's wife and Rosina. It was suggested during the argument before this Court that the disposition of January 1926 was an imperfect gift and therefore ineffective. The point was not raised before the Court of Bankruptcy, but as the contention really arises upon the face of the document, and in any case all the facts relevant to a decision upon the point are before the Court, it is permissible to deal with it. (Cf. *The "Tasmania"* (4).) The disposition of January 1926 was voluntary, and admittedly imperfect as a gift. The shares mentioned in the disposition were not transferred to the donees. It was said, however, that the disposition operates as a declaration of trust. But equity will not treat an imperfect gift as if it were a declaration of trust—as if the giver intended to retain his rights but to impose on himself an onerous obligation. (See *Higgins* J., *Federal Commissioner of Taxation* v. *Clarke* (5), and cases there collected.) Upon its true construction, the disposition in question treats the shares as the property of the donees by the mere force of the agreement. It is mutually agreed that all shares, &c., are the joint property of Jane Williams and Rosina Williams. It contains no express declaration of trust, nor can any be inferred from the words used. Consequently the disposition of January 1926 is ineffective, both against the bankrupt and against the official receiver of the estate.

The *Bankruptcy Act* 1924-1932, sec. 94, avoids the transfer of the beneficial interest in the Olsson security to Rosina, and also the transfer of the £1,000 from the Savings Bank to the bankrupt's wife and his daughter Rosina. The section avoids against a trustee in bankruptcy voluntary settlements of property if the settlor becomes bankrupt within two years after the date of the settlement. It will be remembered that the sequestration order in the present case was on 27th October 1930, and the transfer of the Olsson security

(1) (1918) 245 U.S. 605.
(2) (1933) 287 U.S. 518.
(3) (1933) 287 U.S. 527.
(4) (1890) 15 App. Cas. 223.
(5) (1927) 40 C.L.R., at p. 284.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

Starke J.

and the transfer of the £1,000 from the Savings Bank were made in 1929. A settlement of property is a conveyance or transfer of property, and "the voluntary settlements to which this section applies are only such conveyances or transfers of property as are in the nature of settlements in the sense of being dispositions of property to be held for the enjoyment of other persons, i.e., where the donor contemplates the retention of the property by the donee, either in its original form or in such a form that it can be traced" (*Wace* on *Bankruptcy* (1904), p. 241; *In re Player*; *Ex parte Harvey* (1); *In re Vansittart*; *Ex parte Brown* (2); *In re Tankard* (3); *In re Plummer* (4)). The mortgage or security given by Olsson to Rosina was not void. But the form of disposition procured by the bankrupt vested in Rosina the chose in action and the security to the exclusion of any interest in the bankrupt; it operated as a settlement by the bankrupt of that interest. The form of disposition, however, is not now material, for Rosina has obtained payment of the sum so settled from Olsson, and claims to hold it in her own right, and not in trust for the bankrupt's estate or as part of that estate. In my opinion the claim cannot be supported in the face of the provisions of sec. 94. The transfer of the £1,000 from the Savings Bank account to the bankrupt's wife and his daughter Rosina was made simply to save something from the wreck of his fortunes. It was a settlement in the sense already indicated, and is avoided by the provisions of sec. 94.

All that remains for consideration is the form of declaration and order made by Judge *Lukin* Substantially they are right as to the dispositions of 6th January 1926 and 27th November 1926, and the sum of £300, and interest, received from Olsson, though I should not give the document of 6th January 1926 the alternative description of a declaration of trust. The declaration as to the amount standing to the credit of the account No. 02796 in the Commonwealth Savings Bank is right as to the sum of £751 14s. 3d. But the order as to the balance of the sum of £876 6s. 8d., namely £124 12s. 5d., should not be made. As I follow the figures, only £800, part of the £1,000 already mentioned, found its way into this account. The balance,

(1) (1885) 15 Q.B.D. 682.
(2) (1893) 1 Q.B. 181.
(3) (1899) 2 Q.B. 57.
(4) (1900) 2 Q.B. 790.

£200, was expended, or, as to £76 6s. 8d., still stands to the credit of Rosina and Winifred in the account No. 10791 of the Government Savings Bank of New South Wales—now, I think, taken over by the Commonwealth Savings Bank—but was not the subject of the notice of motion. Rosina and Winifred withdrew from the account No. 02796, for their own purposes, £70, and they are—or at all events Rosina is—accountable for that sum. But the notice of motion seeks no more than an order that the amount standing to the credit of the account No. 02796 be declared part of the assets of the bankrupt; that sum was and is £751 14s. 3d., and the order should be so limited. Subject to this variation, the appeal should be dismissed.

The *Chief Justice* wishes me to say that he agrees to the form of order which I propose.

DIXON J. These are appeals from orders of the Court of Bankruptcy invalidating, as against the official receiver, four dispositions or attempted dispositions by the bankrupt of his property. The bankrupt, who had for some time occupied an important post, retired from it on 30th September 1926. At the time of his retirement his assets were of the value of about £20,000, and he had no debts which he could not have paid without the aid of any of the property which is the subject of the dispositions. Not long before his retirement his confidence appears to have been gained by a man whose trustworthiness the parties unite in denying. It is said that the bankrupt's wife did not share her husband's confidence in this man, nor in the shares, which, under his influence, her husband acquired as an investment for some of his money. What exactly occurred between husband and wife cannot be known because both died a few months after the order of sequestration, which was made on 27th October 1930. But from evidence given by their son, which appears to have been accepted in the Court of Bankruptcy, it appears that she pressed her husband to make over property in favour of herself and some of their children, and in particular to place some of the property under the son's control. Except for the son their family, which was grown up, consisted of daughters. The bankrupt consented to adopt the course urged upon him by his wife; but,

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

Dixon J.

upon the son's objecting to undertake the control of the property on the ground that he had no time to look after it, his father said that it could be left to him to manage it. A layman's document was prepared and, on 27th November 1926, executed by the bankrupt, his wife, his son and a daughter named Rosina. It contained a schedule or catalogue of many items of property consisting of realty, including the family home, of mortgages and of shares in companies. It expressed an agreement and declaration by the parties that these assets were the joint property of the bankrupt's wife, his son and his daughter Rosina, that he held them in trust, and that all interest accruing therefrom then or in the future was for their sole support and to be used at their discretion. At the same time the donees executed an authority giving the bankrupt full powers of managing the property on their behalf. This transaction constitutes the most important of the dispositions which have been avoided by the orders under appeal. But some months previously, before his retirement, the bankrupt had made an attempt to make over to his wife and his daughter Rosina the shares which he held in a company called the Kurri Kurri & South Maitland Amusement Company Ltd., reserving to himself thereout a number sufficient to qualify himself as a director. This transaction, which was embodied in a document dated 6th January 1926, has also been set aside. It should, perhaps, be taken on the evidence to be the bankrupt's first response to his wife's persuasion to make over property to his family; but no definite account was given of its genesis. No change in his financial condition had occurred between these two transactions, except that he took up shares in five companies which were not fully paid. So far as appears, there was no reason to think that the liability upon these shares exposed the bankrupt to any real danger. After these purported dispositions the bankrupt continued in control of the assets which they affected, and until late in 1929 behaved as if they remained his property. He did not account for income to the donees. They did not include any of the income in their returns for income tax; and, although perhaps upon the issues with which this appeal is concerned the admissibility of the evidence is open to doubt, it was proved that the bankrupt did include the income in his returns. Further, his son borrowed money from him, not a very

large sum, which he repaid out of an overdraft. In seeking the accommodation from his bank, the son failed to say that he was entitled to an interest under the disposition of November 1926. When the bankrupt required security for his own overdraft, he used shares affected by the disposition in favour of his wife, son and daughter. Beginning in May 1928, the bankrupt guaranteed the liabilities of various companies in which he had invested, until, at length, he was responsible up to a limit of £45,000. He incurred other liabilities, many of them apparently in the course of keeping these concerns afloat, and by the latter end of 1929 his ruin must have been quite certain and complete. He concentrated his efforts upon securing his family. He went through his ledger making notes, and even alterations of dates, directed to showing that assets to which it related were held by him as a trustee, that is, pursuant to the dispositions of 1926. On 21st November 1929, notwithstanding that under the terms of the document of 27th November 1926 the family residence should have been held upon trust for his wife, as well as his son and his daughter Rosina, he transferred it into the names of the two latter only. In August 1928 the bankrupt had lent £300 to a borrower who provided shares in a company as security. About 21st November 1929 he obtained from the borrower in respect of the loan a mortgage dated 1st August 1928 in which his daughter Rosina was the mortgagee. On 19th November 1929, a day upon which judgment against him for a large sum was signed, he opened a Savings Bank account in the name of his wife and Rosina and transferred to it, from a similar account in his own name, £1,000. These transactions are the remaining two of the four dealt with by the orders appealed against. He prepared or caused to be prepared an elaborate account attempting to set out and reconcile the income and expenditure from the property covered by the dispositions of 1926, and a copy of this he gave to his son on 21st February 1930. In an addendum to this statement in his own handwriting, the bankrupt included the £1,000 transferred into the names of his wife and Rosina as part of the balance for which he was accountable as their trustee. On 29th November 1930 he caused the two documents of 1926 to be stamped with the appropriate duty and penalty.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

DIXON J.

Upon these facts the validity or effectiveness of the four several attempts of the bankrupt to confer a proprietary interest on members of his family does not depend upon the same legal considerations. It is convenient to deal with the transactions in order of date.

Upon the terms of the document of 6th January 1926 a question immediately arises whether it was effectual to impart any interest to the intended donees. The shares to which it related were not transferred out of the bankrupt's name and, therefore, there was no gift of the legal property. There was no valuable consideration; and, unless the document operated as a declaration of trust, it conferred no proprietary interest (*Anning* v. *Anning* (1)). The terms of the document are as follows :—" Memorandum of Agreement.—It is hereby mutually agreed and declared by the parties signing this document that all shares in the Capital of Kurri Kurri and South Maitland Amusement Company Limited registered in the name of Henry Morgan Williams are the joint property of Jane Williams the wife of the said Henry Morgan Williams and Rosina Williams, spinster, both of Kurri Kurri and all interest accruing therefrom now and in the future is for their sole benefit and to be used at their discretion, excepting that two hundred and fifty (250) of the said shares are held by Henry Morgan Williams, the husband, for the benefit of himself so as to assure his qualification of directorship under the articles of association of the Kurri Kurri and South Maitland Amusement Company Limited And the power of attorney executed by Jane Williams, the wife, is to be exercised accordingly." Unless this document discloses an intention on the part of the bankrupt to constitute himself a trustee of the shares, it cannot operate to give the intended donees any beneficial property. " It is not necessary that the precise words ' trust ' or ' confidence ' should be used, in order to create a trust, and . . . any expressions will suffice, from which it is clear that the party using them considers himself a trustee, and adopts that character " (per *Page Wood* V.C., *Dipple* v. *Corles* (2)). " Down to the time of *Milroy* v. *Lord* (3) a view was taken by some Judges that where a voluntary assignment of something which an intended settlor intended to give

(1) (1907) 4 C.L.R. 1049.
(2) (1853) 11 Hare 183, at p. 184; 68 E.R. 1239, at p. 1240.
(3) (1862) 4 DeG. F. & J. 264; 45 E.R. 1185.

to another could not take effect, the instrument might nevertheless be read as constituting him, if the property was vested in him, a trustee for the person whom he intended to benefit. I think *Milroy* v. *Lord* (1), which has been followed by other cases, has put an end to any such notion " (per *Cotton* L.J., *Re Shield*; *Pethybridge* v. *Burrow* (2)). If the intention is to make over the entire property in the subject of the gift, to divest himself of all title thereto, but the donor adopts a means insufficient to accomplish the purpose, the Court cannot effectuate the donor's intention by treating him as a trustee. " It is true he need not use the words, 'I declare myself a trustee,' but he must do something which is equivalent to it, and use expressions which have that meaning; for, however anxious the Court may be to carry out a man's intention, it is not at liberty to construe words otherwise than according to their proper meaning. The cases in which the question has arisen are nearly all cases in which a man, by documents insufficient to pass a legal interest, has said, 'I give or grant certain property to *A.B.*' . . . The true distinction appears to me to be plain, and beyond dispute: for a man to make himself a trustee there must be an expression of intention to become a trustee, whereas words of present gift show an intention to give over property to another, and not retain it in the donor's own hands for any purpose, fiduciary or otherwise " (per *Jessel* M.R., *Richards* v. *Delbridge* (3)).

In the document now in question there are no words indicating an intention on the part of the bankrupt to retain the legal title in the shares and use the rights it gives for the benefit of the donees. It is tempting to suppose that the words " registered in the name of Henry Morgan Williams " imply that he is to continue to be the legal owner and to eke out the implication by adding the consideration that 250 unidentified shares are not intended to be given and the further consideration that the expression " all interest . . . for their sole benefit " suggests the distinction between title and enjoyment. But it must be remembered that the whole doctrine presupposes a transaction which is not based on a correct appreciation of the mode of transferring a legal title and of the difference between

(1) (1862) 4 DeG. F & J. 264; 45 E.R. 1185.

(2) (1885) 53 L.T. 5, at p. 8.

(3) (1874) L.R. 18 Eq., at pp. 14, 15.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

Dixon J.

doing so and retaining it in the character of a trustee. The words "registered in the name of" are merely descriptive. They are preceded by words expressing agreement. It is true the word "declared" is used, but it seems rather to introduce the statement of the effect of the parties' agreement. The failure to segregate the 250 shares to be retained cannot indicate an intention to hold the whole upon trust in undivided shares bearing the proportion of 250 to the whole number, which in fact was 4,640. Its real significance seems to be that it suggests that the framer of the document paid no more attention to the need of identifying and segregating the subject of the gift than he did to the mode of assuring legal ownership, or to the difference between contract, declaration of trust and transfer. In my opinion the document failed to impart any interest in the shares of Kurri Kurri and South Maitland Amusement Co. Ltd. to the bankrupt's wife and his daughter. The attempts of the bankrupt at the end of 1929 and beginning of 1930 to treat the transaction as the creation of a trust cannot, having regard to his motives, have any retroactive effect as evidence of intention and were too late to operate *per se* to create a trust good against the official receiver. The question whether the document failed to create a trust does not appear to have been gone into in the Court of Bankruptcy, but it is a pure question of law and all the materials which could affect it are before the Court. The order relating to the shares standing in the capital of the Kurri Kurri and South Maitland Amusement Co. Ltd., in my opinion, is right in so far as it declares that they are the absolute property of the official receiver and that the respondents to the motion have not any interest therein.

The grounds upon which the disposition dated 27th November 1926, together with that of 6th January 1926, was held void in the Court of Bankruptcy, as I understand the reasons of the learned Judge, were three in number. He held that the transactions were "a mere cloak or sham to enable the bankrupt to invest and speculate without risk, and to enable him to remove his assets out of the reach of his creditors, in the event of misfortune." He held that the dispositions were alienations of property made with intent to defraud creditors within sec. 37A of the *Conveyancing Act* 1919-1930 and 13 Eliz. c. 5, which it replaced in New South Wales. He

held that the documents containing the dispositions were made subject to a suspensory condition to the effect that they should operate only upon the happening of an event exposing the property to liability for the bankrupt's debts and that consequently, being, as no doubt they are, settlements within sec. 94 of the *Bankruptcy Act* 1924-1932, they did not pass the settlor's interest in the property comprised in the settlements to the donees thereunder upon their execution, and so, notwithstanding that they bore dates more than two years before bankruptcy, could not satisfy an essential condition of validity under par. ii of sub-sec. 1 of sec. 94. These findings I understand to be alternatives. The primary case made by the official receiver before the Court of Bankruptcy was that the documents had in fact been brought into existence not earlier than November 1929 and that they had been fraudulently antedated by the bankrupt to a period when he considered that he was entirely free from pecuniary embarrassment. The learned Judge found against the official receiver upon this issue. But the fact that it was the chief issue at the trial is of importance. It explains why so little attention appears to have been given to ascertaining what exactly the bankrupt was doing and proposing to do in January and November 1926. For, upon the primary issue, the official receiver's case would not be aided by proof that at the dates which the documents bore, chosen, as he said, for their safety by the bankrupt, circumstances in fact existed casting doubt upon any dealing with his property by the bankrupt. Further, upon this issue much evidence was admitted which would be inadmissible upon the question of the intent with which the documents were in fact made at the earlier date. *Ex post facto* statements of a narrative order are not admissible upon the state of mind at a past date of the person who makes them. But, because some of such statements related to ownership, they were relevant to the chief issue, and, because they were declarations against interest, they were admissible as media of proof of the facts stated. But even putting these considerations upon one side, I am of opinion that the findings of the learned Judge were not warranted by the circumstances proved. Once it is acknowledged, as upon the evidence I think it must be,

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

DIXON J.

that in 1926 the bankrupt was in a perfectly sound financial position and had nothing to fear, subsequent conduct and events form an insufficient basis for a finding that the documents were shams, or that he had an intent to defraud his creditors, or that they were made subject to a suspensory condition allowing them to take effect only in case of attack by creditors. The persuasions of his wife to make over the property appear to have been directed not to protecting it against future creditors but to withdrawing the capital from the danger of what she thought improvident or at least hazardous investment. At any rate, the evidence is quite consistent with this view. The conduct of the bankrupt in failing to pay over the income of the property, and in dealing with it as his own, does not, to my mind, establish that there was any dishonesty in the making of the dispositions. The source of the dispositions was the wifely and motherly view that assets which she regarded as family property should be conserved and not put to hazard by her husband. Neither the son nor the daughter nor she herself were likely to concern themselves about separate enjoyment of the income so long, at any rate, as the family establishment was maintained. Reliance upon family relationship rather than proprietary right and performance of parental rather than fiduciary duties very often are found to be the result following upon a formal disposition of the corpus. A real intent to defeat or delay creditors must exist, and the question always is whether, upon all the circumstances of the transaction, the transfer or other disposition was in fact made with that intent. The burden of proof is upon those alleging that it was so made (*Ex parte Mercer*; *In re Wise* (1); *In re Lane-Fox*; *Ex parte Gimblett* (2); *In re Holland*; *Gregg* v. *Holland* (3)). I think the existence of no such intent has been proved. In my opinion the order to set aside the disposition of 27th November 1926 should be discharged.

The next question for determination is whether the official receiver is entitled to the proceeds of the mortgage which in November 1929 was given at the request of the bankrupt to secure payment to Rosina of the sum of £300, which the mortgagor had borrowed from the bankrupt on or after 1st August 1928, a time to which the mortgage

(1) (1886) 17 Q.B.D. 290. (2) (1900) 2 Q.B. 508.
(3) (1902) 2 Ch. 360.

was antedated. Sub-sec. 1 of sec. 94 of the *Bankruptcy Act* 1924-1932 provides that any settlement of property, not falling within either of the exceptions, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in bankruptcy. Sub-sec. 5 defines " settlement " to include any conveyance or transfer of property. Sec. 4 defines " property " to include money, things in action and every description of property and obligations arising out of property. If the borrower had given a mortgage in the first instance to the bankrupt and he had transferred it to his daughter, I should have thought it clear that the transfer would constitute a " settlement " within these provisions (*In re Player*; *Ex parte Harvey* (1); *In re Tankard* (2)). But in the present case the result was produced by a novation with the borrower, who at the request of the bankrupt gave the mortgage in the first instance to Rosina. There is a difficulty in saying that the mortgage so given is void. The mortgagor is not the settlor and the giving by him of a mortgage is not a " settlement " in itself. These considerations are, perhaps, at the root of the objection which was taken that the borrower was a necessary party to the motion, but this objection rather obscures than elucidates the question. It is obvious that the transaction between the mortgagor and the mortgagee cannot be set aside under the section, and it follows that no relief affecting the rights of the mortgagor or borrower can be given. But what the section hits at is the divesting of beneficial ownership from the bankrupt and the investing of some other person with it. When the bankrupt seeks to accomplish this result by means which constitute the other person legal owner in a way which cannot be undone, as, for instance, when at his direction a stranger deals with the intended donee either by transferring land or securities to him or by contracting with him, or by some other means, it appears to me that it is possible to distinguish between the legal title and the beneficial ownership, between the acts of the stranger, which constitute the intended donee the holder of the legal estate or interest, and the consequence aimed at by the bankrupt in procuring those acts, viz., that beneficial ownership shall pass to the donee and not result to the bankrupt. The bankrupt, in effect, took in

(1) (1885) 15 Q.B.D. 682. (2) (1899) 2 Q.B. 57.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

Dixon J.

Rosina's name, property, the mortgage, to which he was entitled. In equity this does not itself have the effect of conferring upon Rosina the beneficial interest. On the contrary, if no more appeared, she would hold upon a resulting trust in favour of the bankrupt. What operates to confer the beneficial interest is the accompanying intention of the bankrupt to give, an intention which is presumed prima facie when it appears that the relationship of father and child existed. Sec. 94 (1) does not avoid the entire transaction for all purposes. It makes the "settlement" void against the trustee in the bankruptcy. Such a provision means voidable at the instance of the trustee as from the time as at which his title accrues (*In re Brall*; *Ex parte Norton* (1); *In re Carter and Kenderdine's Contract* (2)). It invalidates the "settlement" only "against the trustee," which means for the purpose of letting in his claim; in order that his demand may be given effect to (*Ex parte Blaiberg*; *In re Toomer* (3); *Sanguinetti* v. *Stuckey's Banking Co.* (4)). In all other respects and after the demands of the trustee have been satisfied the settlement stands (compare *Curtis* v. *Price* (5), per Sir *W. Grant* M.R.; *In re Sims*; *Ex parte Sheffield* (6)). To bring about this result it is enough if the provision includes and nullifies the transmutation of the beneficial interest, or in other words makes ineffectual every step taken by the bankrupt which would otherwise cause the beneficial interest to pass. In the present case I think that it avoids the attempt to confer upon Rosina beneficial ownership in the security and that, upon the intervention of the trustee in the bankruptcy, the official receiver, she became a trustee of the mortgage for the official receiver. It was suggested that, in putting the mortgage in Rosina's name, the bankrupt was doing no more than giving her the legal title to an investment of moneys to which, under the disposition of 27th November 1926, she was entitled. But the moneys lent to the borrower are not traceable to any fund to which she was entitled and the transaction did not take the form of a discharge by the bankrupt of any liability to his daughter. In my opinion, the order affecting this transaction is correct in substance.

(1) (1893) 2 Q.B. 381.
(2) (1897) 1 Ch. 776.
(3) (1883) 23 Ch. D. 254, at p. 258.
(4) (1895) 1 Ch. 176.
(5) (1805) 12 Ves. J. 89, at p. 103; 33 E.R. 35, at p. 40.
(6) (1896) 3 Mans. 340.

The minute, however, adopts a form which declares that the mortgage money was the property of the bankrupt. The order should declare that Rosina's title to the beneficial interest in the mortgage standing in her name became void against the official receiver, and that she held the mortgage upon trust for him.

The last transaction invalidated by the orders under appeal is that by which £1,000 was transferred on 19th November 1929 to a Savings Bank account in the names of the bankrupt's wife and daughter. I have come to the conclusion that this payment was a settlement within the meaning of sec. 94. In *In re Player*; *Ex parte Harvey* (1), *Cave* J., after stating the course of the legislation and judicial decision and discussing the inclusion of "money" in the definition of "property," concluded:—"The transaction must be in the nature of a settlement, though it may be effected by a conveyance or transfer. The end and purpose of the thing must be a settlement, that is, a disposition of property to be held for the enjoyment of some other person. Thus a purchase by the father of shares, which are registered in the son's name, and upon which the son receives the dividends, is within the statute. But where the gift is of money to be expended at once, the transaction is not, in my opinion, within sec. 47 of the Act of 1883"—the provision upon which sec. 94 is founded. This exposition of the provision appears to have gained the approval of the Court of Appeal (*In re Tankard* (2), approved in *In re Plummer* (3); *In re Branson*: *Ex parte Moore* (4)). But it does not mean that there shall be any restriction on the donee's power of disposal, but merely that the retention of the property in some sense must be contemplated and not its immediate dissipation or consumption (*In re Tankard* (5)). In the present case I think that the proper inference is that the sum of £1,000 was put by the bankrupt in the joint names of his wife and daughter as a provision to be retained by them in some form or other, and not to be spent at once. The money remained in this account until after the bankruptcy. No part was spent before the bankruptcy; so that the donees remained accountable for the whole

(1) (1885) 15 Q.B.D., at p. 687.
(2) (1899) 2 Q.B. 57.
(3) (1900) 2 Q.B. 790.
(4) (1914) 3 K.B. 1086.
(5) (1899) 2 Q.B., at p. 59.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

Dixon J.

(see *In re Tankard* (1); *In re Plummer* (2)). The attempt to support the transaction as a payment by the bankrupt of money for which he was accountable under the disposition of 27th November 1926 fails upon the facts. The minute of the order dealing with this transaction does not appear to me to be correct. It purports to make Rosina and her sister Winifred liable for an amount of £876 6s. 8d., being part of the sum of £1,000, on the footing that the £876 6s. 8d. was paid into a joint account in their names on 25th March 1930. As I understand the copies of the bank accounts, this sum was in fact paid into that account on 28th March 1931, i.e., after and not before the bankruptcy. Winifred was a volunteer and, therefore, took subject to the official receiver's equitable title, but I do not think she is personally liable for so much as was spent out of the sum before his intervention. A sum of £124 12s. 5d. was in fact spent, and there does not appear to be any evidence to fix Winifred with responsibility for that sum. I think the order should be modified by omitting the declaration that Rosina and Winifred are accountable for the full sum and substituting for it an order that Rosina pay the balance of £124 12s. 5d. to the official receiver.

The order made by the Court of Bankruptcy went beyond the notice of motion, which referred to the amount standing at the credit of Rosina and Winifred's account with the Commonwealth Savings Bank, i.e., £751 14s. 3d., not £876 6s. 8d., the amount covered by the order. But no objection on this score was made before the Court of Bankruptcy; it is evident that, if such an objection had been taken, an amendment of the notice of motion would have been granted; the grounds taken in the notice of appeal do not include the objection; the point was not specifically made during the argument of the appeal. In these circumstances, I think we ought not to give effect to it.

With reference to costs, a difficulty arises from the joint hearing of the motions, the allegation that the documents were fraudulently antedated, and the partial success of the proceedings on other grounds. I think that the appellants should receive out of the estate a proportion, perhaps two-thirds, of their costs of this appeal

(1) (1899) 2 Q.B., at p. 60. (2) (1900) 2 Q.B., at p. 805.

and of their costs in the Court of Bankruptcy. The official receiver, of course, should receive his costs out of the estate.

EVATT J. I agree with the judgment of my brother *Dixon* ; but on one point, I desire to add a few words.

The learned Judge in Bankruptcy was of opinion that both the documents of January 6th, 1926, and November 27, 1926, were executed by the bankrupt with intent to defraud his creditors (New South Wales *Conveyancing Act* 1919-1930, sec. 37A). Mr. *Loxton's* argument satisfied me that such an intent was not only insufficiently proved but was actually disproved. No doubt, in November 1929, three and four years respectively after the two relevant transactions, the bankrupt set about the task of rescuing his family from the disaster which was then threatening him. But his financial position in 1926 and for some considerable time thereafter was sound, and, in the two transactions I have mentioned, his one desire was to make some reasonable provision for his family, without the slightest wish of putting any of his property out of the reach of his creditors, actual or prospective. A real intent to defraud simply did not exist. I am inclined to think that, had the case for the Official Receiver not been that the 1926 and 1927 documents were fraudulently brought into existence in November 1929, and antedated, the validity of the two transactions would never have been challenged. This case involving charges of fraud, forgery and conspiracy, completely broke down.

Equally unsupported by the evidence, direct and circumstantial, is the Official Receiver's claim to the effect that " although Williams was yielding to his wife's importunity by providing, as he thought, for his family, although his financial position apart from the property dealt with in the two documents was satisfactory, his manœuvres at the end of 1929 show that his object in 1926 and 1927 was to conceal his assets in order to cheat his future creditors." This claim is far-fetched. In support of it much inadmissible evidence was referred to, but, apart from all questions of admissibility of evidence, it is quite impossible to infer from the bankrupt's state of mind at the end of 1929 what it was during 1926.

H. C. OF A. 1933-1934.

WILLIAMS v. LLOYD.

IN RE WILLIAMS.

McTIERNAN J. I agree with the judgment of my brother *Dixon*, and the order proposed by him.

Allow appeal from the order relating to the disposition made by the document bearing date 27th November 1926 *and to the property comprised therein. Discharge such order and in lieu thereof dismiss motion.*

Vary the order relating to the disposition which the document bearing date 6th January 1926 *purports to make and to the property comprised therein, by striking out the first declaration, adding to the order to deliver up scrip certificates the words "in the possession custody or control of them or either of them" and striking out the order as to costs. Subject to such variation confirm the order and dismiss appeal.*

Vary the order relating to the mortgage given by Olsson by substituting for the declaration contained therein a declaration that the title of the respondent Rosina Williams to the beneficial interest in the mortgage of Olsson to her bearing date 1st August 1928 *and to the moneys secured thereby became and is void against the official receiver and that she became and is a trustee of the mortgage and the proceeds thereof for the official receiver, and by striking out the order for costs. Subject to such variation confirm order and dismiss appeal.*

Vary the order relating to the sum of £876 6*s.* 8*d. by omitting the second declaration, viz., the declaration that the respondents to the motion other than the Commonwealth Bank of Australia are accountable to the official receiver for the full amount of* £876 6*s.* 8*d. and by substituting for it an order that Rosina Williams do pay the balance consisting of the sum of* £124 12*s.* 5*d. to the official receiver.*

Order that the official receiver be at liberty to retain out of the estate his costs of the motions and of this appeal taxed as between solicitor and client and that he do pay out of the estate two-thirds of the appellants' taxed costs of the motions and of this appeal.

Solicitor for the appellants, *A. E. Westcott*, Cessnock, by *Whitehead & Ferranti.*

Solicitor for the respondent, *A. W. M. Duke.*

J. B.