and not for the satisfaction or security of any particular creditor or creditors, they were not reducible under the Act 1696, cap. 5. The Sheriff is of opinion that this contention is unsound. It has been repeatedly held that a trust-disposition granted by a bankrupt within sixty days of his bankruptcy to a trustee for behoof of his general creditors, is ineffectual against, and may be reduced at the instance of, non-acceding creditors (*Mudie*, M. 1217; *Peters*, M. 1218; *Johnson*, M. App. Bankrupt, No. 5). The Sheriff is not aware of any recent decisions to a contrary effect. A trust-disposition granted by an insolvent who was not bankrupt in terms of the Statute has, no doubt, been held to be in a different position; but the distinction between the two classes of cases is clearly brought out in the decisions (*Snodgrass*, M. 1209; *Hutchison*, M. 1221). The case of *Ker* v. *Graham's Trustees*, C. S. 73 and 270, does not appear to the Sheriff to be against the above view. In that case the trustees were infeft under the trust-disposition of a life interest of an heir of entail in an entailed estate, and a reduction of that deed under the Act 1696, cap. 5, having been brought by the non-acceding creditors, on the ground that the granter had been made bankrupt within sixty days of its date, and the creditors having also obtained decree of adjudication of the life interest, the Court refused, while the action of reduction was pending, to prevent the trustees from cutting the wood on the estate, the same being thought to be for the advantage of all parties, and the trustees being considered sufficiently responsible for the price,

"If the two deeds in question are void and null under the Act 1696, cap. 5, it seems to be settled that the petitioner is entitled to have them set aside in the present action in the Sheriff-court, by way of exception, including reply (*Dickson*, 4 Macph. 797). No objection was stated by the respondent to the relevancy of the petitioner's averments in regard to the Act 1696, cap. 5, and the Sheriff was unwilling, therefore, where there had been already so much delay by both parties, to open up the record at this late stage in order that the petitioner's averments might be made more precise. These deeds being set aside, it appears to the Sheriff that the petitioner is, in the circumstances, entitled to interdict as craved."

The bankrupt and Grant advocated.

Clark and M'Lennan for them, argued, that the trust-deed and the subsequent disposition in Grant's favour were not of the class of deeds struck at by the Acts 1621 and 1696; and, further, that these deeds could not be set aside except by way of "action or exception" which did not include "reply," but was confined to reduction on the one hand, and exception against a party suing on the deed on the other. The respondent could not succeed without an action of reduction.

Mackenzie and Crichton for respondents, answered, that the trust-deed and the first disposition granted in favour of Grant were both null and reducible under the Act 1696, as being voluntary deeds granted within sixty days of bankruptcy, and under the Act 1621, as being in defraud of begun diligence. The disposition *omnium bonorum* in favour of the incarcerating creditor was a deed which the bankrupt was bound to grant, and which the law recognised as a mode of distributing the estate among the bankrupt's creditors. This gave the incarcerating creditor a statutory title to possession of the estate, subject to the obligation of accounting to the other creditors in terms of law.

The Court held that a trust-deed or other deed in favour of a trustee chosen by the bankrupt himself, after diligence had begun against him, and when he was in contemplation of bankruptcy, and within sixty days of its occurrence, was void both at common law and under the Acts 1621 and 1696. They further held that, while the term action might be held limited to action of reduction, and was therefore not competent in the Sheriff-court, the term "exception," in the modern sense, was sufficiently wide to cover "reply," and so to entitle a pursuer, when a deed of this sort was proponed against him, to object to it, just in the same way as if he were sued upon it directly.

Agents for Advocator—Murdoch, Boyd, & Co., W.S.

Agents for Respondents—D. Crawford & J. Y. Guthrie, S.S.C.

Saturday, May 16.

FIRST DIVISION.

MOOR *v.* OLIVER.

Reparation—Breach of promise to marry—Issue. Issue adjusted in action on breach of promise to marry.

This was an action of damages for breach of promise of marriage. It appeared that at Whitsunday 1855, the pursuer, a domestic servant, entered the service of the defender's father, an innkeeper, and continued in that service until Whitsunday 1857. During that time the defender resided with his father, and the pursuer alleged that about two months before Martinmas 1855 the defender made her an offer of marriage, which she accepted. From about June 1855 to Whitsunday 1857, the pursuer alleged, the defender continued to court her, and, for several years after she left the service of the defender's father, the defender continued his attentions to her, and repeatedly talked of fulfilling his promise of marriage. The pursuer proposed this issue:—

"Whether, between the month of September 1855 and the month of May 1857, both inclusive, the defender promised and engaged to marry the pursuer? And whether the defender has wrongfully failed to implement the said promise, to the loss, injury, and damage of the pursuer?"

The defender objecting to the issue, the Lord Ordinary (Barcaple) reported the case with this note:—

"The defender objects to the latitude of time in the issue in regard to the promise of marriage, on the ground that it is set forth in the record (condescendence 3), as having been made about two months before Martinmas 1855. Though the statements on record are not very clearly expressed in this respect, the Lord Ordinary is disposed to think that they import a promise and engagement, reiterated and kept up during the period from about two months before Martinmas 1855 until the pursuer returned to her father's house at Whitsunday 1857. In this view of the record, he thinks the issue need not be restricted to the point of time first mentioned."

J. C. Smith for defender.

Pattison and Scott for pursuer.

The Court approved of the following issue:—

"Whether, between the month of September 1855

and the month of May 1857, both inclusive, the defender courted the pursuer for his wife, and promised and engaged to marry her? And whether the defender has wrongfully failed to implement the said promise, to the loss, injury, and damage of the pursuer?

"Damages laid at £500."

Agent for Pursuer—D. F. Bridgeford, S.S.C.
Agent for Defender—James Somerville, S.S.C.

Saturday, May 16.

FORBES *v.* WILSON.

Reparation—Breach of promise to marry—Seduction—Issue. In an action of damages for breach of promise of marriage and seduction, objection by defender to relevancy, on the ground that the pursuer's averments amounted to averment of actual marriage, *repelled*, and relevancy sustained.

This was an action of damages for breach of promise of marriage and seduction. The pursuer, after stating that the defender visited her repeatedly at her father's house, and began to court her with a view to marriage, alleged that "the defender continued paying his addresses to the pursuer, and to reiterate his love and attachment to her, until one occasion in the month of July 1864, when he offered to marry her, and she accepted him. The subject of their marriage had been frequently talked of before July 1864, but it was not till then that it was finally resolved upon. The defender, in the winter of 1865, and in her father's house, taking advantage of the ascendancy which he had acquired over the pursuer, and the feelings of love and affection for him with which he had inspired her, as well as of his position as the accepted suitor and promised husband of the pursuer, prevailed upon the pursuer to allow him to have carnal connection with her, and succeeded in having carnal connection with the pursuer; and the pursuer was thus seduced by the defender."

The pursuer proposed issues founded on the two grounds of action. The defender objected to any issue being granted, and the Lord Ordinary (Barcaple) reported the case with the following note:—

"The defender objects that there is not a relevant case for an issue, either of breach of promise or seduction. The Lord Ordinary had to dispose of precisely the same question, on a plea to relevancy, in the case of *Craig* v. *Tennent*, in which a reclaiming note was boxed to the First Division of the Court on 23d January 1863. The issue of breach of promise was afterwards withdrawn, and the case went to trial on the issue of seduction, without a judgment of the Court upon the point. But the withdrawal of the issue of breach of promise will not obviate the objection to relevancy, which applies equally to both branches of the case. The Lord Ordinary adheres to the opinion expressed in his note in the case referred to, which is appended:—

'*Note.*—In this action of damages for seduction and breach of promise of marriage, the pursuer makes sufficient averments to support the conclusions of her summons. But the defender pleads that the action cannot be maintained, in respect that the pursuer avers that the defender promised to marry her, and that carnal connection followed thereon. The promise is denied by the defender, as well as all the other material averments. Such a promise could be proved for the purpose of establishing a marriage only by writing (which in the present case is not alleged to exist), or by the oath of the defender. The woman, in such circumstances, is not compelled to betake herself to what may be the hopeless remedy of an action of declarator of marriage, which must be rested upon the oath of the defender, who denies the promise. The Lord Ordinary thinks that she may insist for damages, both for seduction and for breach of promise. It is only a promise proved either by writing or by oath that, when followed by *copula*, constitutes marriage. The pursuer of the present action does not undertake such a proof; and, consistently, she does not conclude for declarator of marriage. The Lord Ordinary is of opinion that her averments must be construed and dealt with in reference to the conclusions of the action.'"

Thoms (with him (D.-F. Moncreiff), for the defender, contended that the averments of the pursuer amounted to actual marriage (1) by *de presenti* interchange of consent, and (2) by promise *subsequente copula*. There was therefore no breach of promise, and no issue could be granted either of breach of promise or of seduction. The Lord Ordinary erred in mixing up the matter of proof with relevancy of averment. The pursuer's averments must be taken at this stage to be all true—that is, if need be, proved by oath; and if so, the case here stated was one of *ipsum matrimonium*.

A. Moncrieff, for the pursuer, was not called on.

At advising—

Lord President—I have no doubt of the relevancy. An engagement to marry, on the strength of which the man prevails on the woman to surrender her person, and then breaks his engagement, is about the worst case of breach of promise and of seduction that can be libelled.

Lord Curriehill concurred.

Lord Deas—If the law were, as is contended by the defender's counsel, it would certainly not be common sense. The only way in which the pursuer can make out her promise is, if it is in writing, but that is not alleged here. The only other way would have been by the oath of the defender; and if he had stated that he was ready to depone to a marriage, on oath, I could have understood his defence, but he has done nothing of the sort.

Lord Ardmillan concurred.

The Court approved of the following issues—

"I. Whether, in or about July 1864, the defender promised and agreed to marry the pursuer; and whether the defender wrongfully failed to perform said promise, to the loss, injury, and damage of the pursuer?

Damages laid at £3000 sterling.

"II. Whether, in or about the year 1864 and 1865, the defender courted the pursuer, and professed intention to marry her; and whether, by means of these professions, the defender, in or about November 1865, seduced the pursuer, and prevailed upon her to permit him to have connection with her, to her loss, injury, and damage?

Damages laid at £3000 sterling."

Expenses to pursuer since date of Lord Ordinary's interlocutor.

Agents for Pursuer—White-Millar, & Robson, S.S.C.

Agents for Defender—Lindsay & Paterson, W.S.
