

RECENT ENGLISH DECISIONS.

EVIDENCE—ADMISSION BY MASTER OF SHIP.

Turning now to the cases in the Probate Division we find only two necessary to be noticed here. The first is *The Solway*, 10 P. D. 137, in which the short point is how far a letter of a master of a ship to her owners was evidence against the owners; and it was held by the President, Sir Jas. Hannen, that the letter was evidence against the owners in regard to the facts stated therein, but that the opinion of the master expressed in such a letter is not evidence.

SEPARATION DEED—AGREEMENT NOT TO SUE FOR RESTITUTION OF CONJUGAL RIGHTS—PUBLIC POLICY.

The other case in the Probate Division which we think it useful to note is *Clark v. Clark*, 10 P. D. 188. It may be remembered that at one time it was considered that the living of husband and wife apart is against the policy of the law, and therefore that the Court should neither sanction nor enforce agreements of that kind. An instance of this may be found in our own Courts in the case of *Gracey v. Gracey*, 17 Gr. 114, where Spragge, C., refused to make a decree for alimony upon the consent of the parties, considering that it was incumbent on the wife to make out a case on the merits for the intervention of the Court. This view of the law was, however, considered by Strong, V.C., to be contrary to the current of the later English decisions, and in *Henderson v. Bushin*, which came before him in 1873, he declined to adopt the rule laid down in *Gracey v. Gracey*. The case of *Clark v. Clark* confirms the opinion of Strong, V.C. The question in that case was as to the validity of an agreement entered into by a wife for valuable consideration, and without fraud or duress, that she would not take proceedings to compel her husband to return to cohabitation; and the Court of Appeal held that it was a valid agreement and a bar to proceedings for restitution of conjugal rights. The case is also noteworthy from the fact that the Court held that the recital of the agreement to live separate, being contained in a deed to which the wife was a party, was evidence of a contract by her to allow her husband to live separate from her, and that after accepting the benefits under the deed, she could not be heard to say that she had not contracted, because the covenant not to sue

was entered into only by the trustees and not by her. The following opinion of Sir James Hannen in *Marshall v. Marshall*, 5 P. D. 19, was quoted by Baggallay, L.J., with approval:—

There has been considerable fluctuation of opinion as to the extent to which voluntary engagements of married persons to live separate should be recognized by the Courts of law. But since the decision of the House of Lords in *Wilson v. Wilson*, 1 H. L. C. 538, it can no longer be contended that there is anything illegal or contrary to public policy in an agreement between married persons that no suit for restitution of conjugal rights shall be instituted by either of them. For my own part I must say that the opinion I have formed after several years' experience in the administration of the law in this Court is that it is in the highest degree desirable, for the preservation of the peace and reputation of families, that such agreements should be encouraged, rather than that the parties should be forced to expose their matrimonial differences in a Court of justice.

We may also observe that upon the argument of the appeal the junior counsel for the respondent disputed the authority of *Marshall v. Marshall*, which his leader did not desire to impugn, and the Court, though thinking it inconvenient, nevertheless, entertained the junior's argument on this point. See *ante*, Vol. XIX., p. 358.

ASSIGNMENT OF DEBT—MARSHALLING—LIEN.

We turn now to the cases in the Chancery Division. *Webb v. Smith*, 30 Chy. D. 192, is described by Lindley, L.J., as an "experiment." It was an attempt to invoke the doctrine or marshalling under the following circumstances. The defendants were auctioneers and had two funds in their hands belonging to a man named Canning; one of these funds consisted of the proceeds of some furniture, and the other was part of the proceeds of the sale of a brewery, on which latter fund the defendants had a lien for their charges in connection with the sale. Canning, being indebted to the plaintiff, gave him a letter charging the proceeds of the sale of the brewery with the payment of his debt; this letter was sent to the defendants who acknowledged its receipt, and afterwards paid Canning the proceeds of the furniture, and applied the balance of the proceeds of the brewery to the payment of their charges. The plaintiff contended that the defendants should have marshalled the funds in their