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Oct. 8.

Appeal Suit No. 170.

UMED KIKA' .....*Appellant.*
NAGINDA'S NAROTAMDA'S .....*Respondent.*

Hindú Law—Betrothal—Marriage—Specific Performance—Damages for Breach of Contract by Father to marry his Daughter—Decree—Imprisonment for Disobedience of Decree—Civ. Proc. Code, Secs. 78 *and* 200.

The Court will not order the father of a Hindú girl, in a suit to which the girl is not a party, to specifically perform the marriage of his daughter with a person to whom the daughter has been betrothed. It will, however, award damages against the father for breach by him of the contract of betrothal.

Semble that, according to Hindú law, a betrothal is not to be treated as an actual and complete marriage.

No order for enforcing a decree by imprisonment under Sec. 200 of the Code of Civil Procedure should be made until the defendant has had an opportunity of obeying the decree, or has contumaciously refused to obey it.

THE plaint stated that the plaintiff and the defendant were Hindús of the Dízá Zavlá caste, and that on the 23rd of May 1866 the defendant betrothed his daughter Bái Jharmá to the plaintiff, and signed a Gujaráti acknowledgment of such betrothment, purporting to be addressed to Narotamdás Sambhudás, the father of the plaintiff, but in reality intended for the plaintiff, the name of his father, who was then dead, being used as a mark of respect. That from the date of the betrothment down to the month of September 1869 the defendant had always treated the plaintiff as the betrothed husband of the said Bái Jharmá, but on or about that date the defendant refused to send the said Bái Jharmá to visit the plaintiff, as she had been in the habit of visiting him, and, on the plaintiff remonstrating, repudiated the said betrothment. That the plaintiff thereupon caused a meeting of the caste to be summoned, who decided that the betrothment was according to the custom of the caste, and binding on the defendant. That the plaintiff was of the age of twenty-six years, and Bái Jharmá of the age of twelve years. The plaintiff then submitted that the betrothment constituted a

valid and complete marriage according to Hindú law, and that he was the husband of Bái Jharmá, and alleged that all conditions had been fulfilled necessary to entitle him to have Bái Jharmá to cohabit with him, and that there was no good reason why she should not do so; but that the defendant refused to allow her so to cohabit, and, as the plaintiff believed, intended to betroth Bái Jharmá to some other person; and that the plaintiff had suffered much humiliation among the people of his caste by reason of such repudiation by the defendant of the betrothment.

The plaint then prayed (a) that if the court should be of opinion that the betrothment constituted a valid marriage according to Hindú law, the plaintiff should be declared, by virtue of such betrothment, to be the husband of Bái Jharmá, and that the defendant might be restrained from preventing Bái Jharmá from leaving his house and going to the house of the plaintiff; (b) that if the court should be of opinion that the betrothment constituted an agreement to give Bái Jharmá in marriage to the plaintiff, then that the plaintiff might be decreed specifically to perform the agreement, and to do all things necessary towards performance of the same; (c) that the defendant might be restrained from betrothing or giving in marriage, or affecting to betroth or give in marriage, Bái Jharmá to any person other than the plaintiff; (*d*) that if the court should not decree that the marriage of the plaintiff and Bái Jharmá should be carried into effect, the defendant might be decreed to pay to the plaintiff Rs. 10,000 as damages; (e) that the defendant might be decreed to pay the costs of the suit.

The translation of the acknowledgment of betrothment was as follows:—

"Shri 1¼. I bow to Shri Ganesh.—To Shá Narotamdás Sambhudás, by caste Dízá Zavlá Vániá, written by Gándhi Shá Umed Kikábhái, by caste Dízá Zavlá Vániá (to wit). My daughter Bái Jharmá has been betrothed to your son Nagindás. I am duly to receive from you according to the custom of our caste *Palá* (marriage portion) and marriage presents, &c. (Dated) Samvat 1922, Vaisák Vad 4th (3rd May 1866).

(Signed) "UMED KIKA."

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The decision of the caste, referred to in the plaint, was embodied in a document of which the following (bearing date 9th, October 1869) is a translation :—

"On the occasion the whole caste community of Dízá Zavlá assembled at Shri Himjá Mátá's : Shá Narotamdás Sambhudás complained as follows :—On the 4th of Váisák Vad, S. 1922, my son Nágindás was betrothed to Jharmá, the daughter of Gándhi Umed Kiká of Patán, according to the usage of the caste, and writings thereof were made by us mutually, and were signed and delivered by each of us to the other, and attestations were affixed thereto; and subsequently thereto we both parties, of (our own) pleasure, invited (the bride and the bridegroom), and with the assistance of a Zavlá Bráhman performed the *puja patri* (ceremonies) according to the usage of the caste; invited (the bridegroom and the bride) (to the houses of) each other, and several ornaments were put on the daughter-in-law and delivered to Umed Gándhi, and the *Goro* (ceremonies) have been performed, and the Diváli and the Holi (presents) have been made up to this time according to the usage. Now a short time ago words passed between the two *Vevávis* for certain reasons, in consequence whereof Umed Kiká disavows the betrothal. Dayábhái, the son of Shá Narotamdás Sambhudás, made a complaint to the caste respecting the same as follows :—'The caste should settle this matter by examining our writings and papers, and witnesses and evidences; in consequence whereof, the whole community having assembled this day, and having examined the above-mentioned matters and writings, were satisfied that the said betrothal had taken place according to the usage of the caste; and all the members of the caste told Umed Kiká that, as the said betrothal had taken place according to the usage, he should not utter a cross word, and they explained to him in many ways the usages of the caste; but Umed Gándhi refused to abide by the said betrothal. Therefore the whole caste community assembled have resolved as follows :—The marriage ceremony of the said boy and girl shall be performed. Should this girl be betrothed to another (person), no caste intercourse shall take place with Umed Kiká, and whomsoever may accept this girl. The *writi* (official remuneration) of our priest Zavlá Bráhman shall be stopped by (our) caste if he should join in performing the betrothal (ceremonies) again. Should the same take place in Bombay, or in any other country, intercourse shall be stopped with that (person) also; and caste intercourse shall also duly be stopped with such person as may espouse his part."

This document was signed by thirty-three members of the caste.

After the plaint had been filed, and the summons served in this suit, upon affidavits alleging that the defendant had no immoveable property within the jurisdiction, and that he was about to leave the jurisdiction, with his daughter, with intent to avoid the plaintiff and obstruct the execution of any decree that might be passed, BAYLEY, J., made an order

Virdachala Nattan v. *Ramasvami Nayakan* (*a*). The present is a contract of which Courts of Equity in England would not decree specific performance: (I.) Because to enable the defendant to obey the decree it would be necessary for him to obtain the consent of a third party: *Howell* v. *George* (*b*); Fry on Specific Performance, paras. 291, 293: (II.) Because this is a contract involving a peculiar personal relation, the enforcement of which might lead to disastrous consequences. [WESTROPP, C. J., referred to *Fitzpatrick* v. *Nolan* (*c*), *Stocker* v. *Brockelbank* (*d*), and *Johnson* v. *The Shrewsbury* and *Birmingham Railway Company* (*e*), in which cases the court refused to decree specific performance of contracts for hiring and service; and in the last of which, Knight Bruce, V. C., said: "We are asked to compel one person to employ, against his will, another as his confidential servant for duties with respect to the due performance of which the utmost confidence is required. Let him be one of the best and most competent persons that ever lived, still if the two do not agree—and good people do not always agree—enormous mischief may be done. A man may have one of the best domestic servants, he may have a valet whose arrangement of clothes is faultless, a coachman whose driving is excellent, a cook whose performances are perfect, and yet he may not have confidence in him; and while on the one hand, all that the servant requires or wishes (and that reasonably enough) is money, you are, on the other hand, to destroy the comfort of a man's existence for a period of years by compelling him to have constantly about him in a confidential situation one to whom he objects." It may have been somewhat similar considerations to these which render our English Equity Reports completely devoid of precedents of decrees for the specific performance of a promise to marry, and induced our Courts of Equity to refrain from causing what might be irreparable injuries by compelling the union of two persons who might never agree, and to leave the complaining party to seek redress by damages at law.] There never, it is believed, has been an instance in which a contract to marry has been specifically

(*a*) I. Mad. H. C. Rep. 341. (*b*) I. Maddock 1. (*c*) I. Ir. Ch. 671.
(*d*) 3 Mac. & Gor. 250. (*e*) 3 De G. Mac. & Gor. 914, 926.

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enforced in Courts of Equity in England. The proper course for the court to have taken is pointed out in the passage already cited from the Mitákshará—(namely) a direction to the defendant to marry his daughter to the plaintiff, with an award of damages, there called a fine, in case of refusal; and see Steel's Hindú Castes, pp. 31, 32, ed. of 1827. This has been the course pursued in the only reported cases upon this subject. They are all to be found in Borradaile: see *Khooshal* v. *Bhugwan Motee* (*f*); *Atmaram Kesoor* v. *Sheolal Muloockhund* (*g*); *Kaseeram Jocetram* v. *Bhugwan Poorshotum* (*h*); *Deochund Nath* v. *Juvehur Bechur* (*i*); *Mt. Ruliyat* v. *Madhowjee* (*j*); and this would have been the correct form of decree if it had been made under Sec. 191 or 192 of the Code of Civil Procedure.

If it were possible to treat the betrothment in this case as a marriage, the suit is defective, as it would establish the *factum* of a marriage between the plaintiff and Bái Jharmá, the person principally interested, in the absence of Bái Jharmá.

[GREEN, J., referred to *Ramsurn* v. *Rakhal Doss* (*k*).] Bái Jharmá cannot be treated as a mere chattel.

Then as to damages, we say that this agreement is a social pact, an imperfect obligation, the only remedy for breach of which is that to which the plaintiff has in the first instance resorted—excommunication from caste intercourse; but if that is not so, then we say that the plaintiff has not proved that he has sustained any damages, and this court will not now allow him to rectify that omission, especially as the defendant has already been in custody for more than eight months.

The clause in the decree which directs the defendant to be kept in custody until execution of the decree is improper. That should have formed the subject of a separate order when the defendant had had an opportunity of *obeying the decree* and had disobeyed it (*l*).

(*f*) I. Borr. 155., ed of 1862. (*g*) Ibid. 397. (*h*) 2 Ibid. 528.
(*i*) Ibid. 576. (*j*) Ibid. 739. (*k*) 11 Calc. W. Rep., Civ. R., 412.
(*l*) 1 Ind. Jur. N. S. 327, *in re* Kallachand Dass.

The Honorable A. R. Scoble (Acting Advocate General) and *Macpherson*, for the respondent: There is nothing in the nature of this contract to prevent the court from specifically carrying it into effect. A similar obligation was declared enforceable by the Privy Council in *Moonshee Buzloor Ruheem* v. *Shumsoonissa Begum* (*m*). [WESTROPP, C.J.:—The marriage in that case was complete, and was, moreover, followed by cohabitation. Is there any case in which specific performance of a betrothal was decreed in the late Supreme Court?] No. But the absence of such cases is accounted for by the gradually lessening influence of caste. Formerly the remedy afforded by the caste was adequate to compel the performance of such an agreement as the present one. In this case it has proved futile. The betrothment is really a marriage; nothing more is needed to complete that marriage but consummation: Strange, vol. I., pp. 35—37; Macnaghten, H. L., pp. 57, 58 (ed. of 1829); Manu, ch. 9; Grady, H. L. pp. 7—9; Digest, vol. II., p. 173, para. 169, (Mad. ed.); Norton, H. L., p. 4. The remedy pursued in this case is pointed out as the proper remedy in Strange, vol. II., pp. 34—38. The absence of Bái Jharmá is immaterial. The policy of the Hindú law vests the girl absolutely in her parents and guardians, and her consent or non-consent the court would not consider: Grady, H. L., p. 7. This is in fact a suit to compel the father to allow restitution, or, more properly speaking, institution, of conjugal rights, and as such is enforceable in the Civil Courts, the parties being Hindús. The English law has no application to this case, as the Charter expressly reserves their own law of contract, marriage, and succession to the Gentoos. They also cited *Ardaseer Cursetjee* v. *Perozeboye* (*n*); *Chotun Beebee* v. *Ameer Chund* (*o*); *Melaram Nudial* v. *Thanooram Bamun* (*p*); *Ramsurn Mitter* v. *Rakhal Doss and others* (*q*).

The form of the decree is correct. The Court at the hearing is entitled to continue the imprisonment until execution:

(*m*) 11 Moo. Ind. App. 551. (*n*) 6 Moo. Ind. App. 348, 390.
(*o*) 6 Calc. W. Rep, Civ. R. 105. (*p*) 9 Ibid. 552.
(*q*) 11 Ibid. 412.

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Sec. 78 and 200 Civ. Proc. Code: *Dwarkanath Doss* v. *Unnoda Churn Doss* (*r*); I. Ind. Jur. 327.

The defendant in this will be assumed to have disobeyed the order of the Court: "*omnia præsumuntur recte esse acta.*" It is for the defendant to rebut that presumption.

If the court will not decree specific performance, the plaintiff must be entitled to substantial damages. We ask the court either itself to assess those damages, or to remand the case to the lower court for the purpose of having them assessed there.

Latham was heard in reply.

Cur. adv. vult.

On the 8th of October the judgment of the Court was delivered by

GREEN, J. (who, after stating the pleadings and the two writings above set out, proceeded):—On the 17th day of January (on which day the plaint was accepted) the plaintiff, made an application to the court, supported by affidavits stating (amongst other things) that the defendant was about to leave the jurisdiction of the court with his daughter, with intent to avoid the plaintiff in this suit, and to obstruct the execution of any decree that might be passed against him. An order was made to bring up the defendant to show cause why he should not give good and sufficient bail for his appearance to answer any judgment that might be passed against him in the suit. On the 20th of January 1870 the defendant was brought up before the Judge in chambers, on a warrant of arrest issued in pursuance of the said order; and it was then ordered, the defendant not showing any good and sufficient cause against imprisonment, that the Sheriff should detain the defendant in custody until further order, unless the defendant should furnish, to the satisfaction of the Prothonotary, security to the amount of Rs. 3,000, and that the plaintiff should pay to the Sheriff, by monthly instalments in advance, diet-money at the rate of four annas per diem. The defendant, not having furnished security,

(*r*) 8 Calc. W. Rep., Civ. R., p. 318.

remained in custody, under the order of the 20th of January, till the suit came on for hearing, on the 2nd day of April last. On this occasion the defendant was not represented by counsel, and the learned Judge who tried the case had not the advantage of the full discussion which it has received before this court. The only issue raised by the court at the hearing was whether the plaintiff is entitled to the relief prayed or any part thereof. The acknowledgment of betrothal of the 3rd of May 1866 was admitted by the defendant, and indeed the fact of the betrothal having taken place is not disputed by him. In his examination as a witness the plaintiff deposes that Rs. 800 is the customary *palá* or marriage portion in his caste, and that he was to give Rs. 200 worth of ornaments, and Rs. 200 to the defendant for his expenses; that Rs. 800 were deposited by him (the plaintiff) with one Dosábhái Kharsetji, on the 1st of May 1866, in the joint names of himself and Bái Jharmá; that on the 2nd of May 1866 he gave to the defendant two promissory notes for Rs. 200 each, one payable after one month, the other on demand; and that he had presented ornaments worth Rs. 374 to Bái Jharmá, which, according to custom, would be in the defendant's custody. He further deposes that, according to the usages of the caste, Bái Jharmá was old enough to come and live with him, being nearly twelve. The rest of the evidence given was principally with regard to the caste meeting of the 9th of October 1869, and the substance of what passed at that meeting is embodied in the paper already mentioned. At the hearing the learned Judge made the decree now under appeal, and which is as follows :—

"That the defendant do specifically perform the agreement, contained in the said betrothment of the defendant's daughter, Bái Jharmá, to the plaintiff, and do all things on his part towards the performance of the same; that the defendant be restrained from betrothing or giving in marriage, or affecting to betroth or give in marriage, the said Bái Jharmá to any person other than the plaintiff; that the defendant do pay to the plaintiff the sum of Rupees 819-12-0 for his costs of suit; and, lastly, that the defendant be retained in custody until the execution of this decree."

Under this decree the defendant has since remained in custody, no process in execution other than as aforesaid

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having been issued from the court. Against this decree the defendant, Umed Kiká, has appealed, and in support of his appeal his counsel has urged several objections, which may be stated as follows:—(1) That to a suit in which such a decree as the one in question is pronounced, the person alleged to have been betrothed, namely, Baí Jharmá, is a necessary party; (2) that treating the betrothment in question (as the decree does) as a contract for a marriage to be performed at a future time, it is a contract of such a nature as cannot be decreed by the court to be specifically performed; and (3) that the part of the decree ordering the retention of the defendant in custody until execution of the decree, is irregular, and not in accordance with the provisions of the Code of Civil Procedure.

Taking the decree in connection with the prayer of the plaint, it must, we consider, be regarded as a decree for specific performance of a betrothal which in itself did not constitute a marriage. The decree, in our opinion, treats the betrothal as not in itself constituting a marriage, and contemplates some further acts, either ceremonial or otherwise, as being necessary to give a matrimonial character to the relation between the plaintiff and Bái Jharmá, and it is the specific performance of these acts (which, however, neither the plaint nor the decree precisely determines) which the decree is directed to enforce.

The remedy by a decree for specific performance given by the law of this court is, as is well established, not by any means a remedy necessarily incident to all contracts, and the ground of its exercise is generally referred to the incompleteness as relief of a mere award of damages. Further, it is a remedy granted only in certain classes of contracts, and to a considerable extent is a matter of discretion with the court in each particular case. It is a remedy certainly not granted in Courts of Equity in England in cases of breaches of promise to marry—the remedy in damages being considered an adequate remedy, or at all events, if not an adequate, still the only, remedy which the law of that country affords for

breaches of that contract, and nothing that can be considered as an authority of any weight has been cited in the present argument to show that a promise to marry has ever been enforced specifically by a decree of any Anglo-Indian court in the sense in which specific performance is known to the English law—that is, that in the event of disobedience of the decree of the court specifically to perform such promise, the party disobeying such decree is subjected to imprisonment. Five cases from Borradaile's Reports, viz., *Khooshal and others* v. *Bhugwan Motee Barr*, *Atmaram Kesoor* v. *Sheolal Mulookchund and another*, *Kaseeram Joeetram* v. *Bhugwan Purshotum*, *Deochund Nutha* v. *Juvehur Bechur*, *Mt. Ruliyat and another* v. *Madhowjee Panachund*, have been cited in the course of the argument, in which the court whose decisions are there reported has administered, or attempted to administer, relief in the case of a repudiated betrothal. These cases, however, when examined, do not amount to more than this—that the court directed the betrothal or promise of marriage to be carried into effect, and decreed that if it was not carried into effect within a certain limited period, the defendant should pay a certain sum by way of damages. In substance there is little distinction between a decree of this nature and the judgment for the plaintiff in an action of detinue before the Common Law Procedure Act of 1854, when the defendant had the option to deliver the goods, or to retain them and pay the value assessed by the jury; but such a decree is a very different thing from a decree for specific performance, by virtue of which the defendant must do the very thing ordered by the decree, or submit to imprisonment till he obeys: and a decree of this nature (and which the decree under appeal is) has, so far as the authorities cited in the argument go, and, so far as we are aware, never been pronounced by any Anglo-Indian court in the case of a breach of a contract to marry or give in marriage. The absence of such authority seems, in our opinion, to show that in those courts the case of the breach of such a contract has been always considered to be not a proper case for the exercise of the court's jurisdiction in decreeing specific performance.

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The learned counsel for the respondents have, however, contended that the court ought to regard the betrothal in this case as an actual marriage, and to enforce the relation so constituted, by ordering the defendant to deliver his daughter to her husband, the plaintiff; and in support of this contention they have cited certain dicta from Macnaghten's Principles and Precedents of Hindú Law and other text-books.

In the present case, however, we consider that the decree of the court below, as well as the evidence, precludes this view from being adopted. The decree has dealt with the betrothal as an executory contract, as something to be performed, not as an actual marriage. There is no evidence in the present case that the betrothal was of such a character as to make applicable to it the authorities or dicta above referred to. The evidence indeed is rather the other way; the caste meeting above referred to do not so treat it in their resolution; they say, "The marriage (ceremonies) of the boy and girl shall be performed," thus indicating that, in their opinion at least, the betrothal did not, without more, constitute the plaintiff and Bái Jharmá husband and wife. We think, further, notwithstanding the dicta last referred to, that Hindú law-books of authority recognise the principle that a betrothal is not to be treated as an actual and complete marriage: see the Mitákshará, Ch. II., sec. XI., pp. 26, 27, and 28; and Steele's Summary, 1st ed., pp. 31, 32, and 162-163. According to the former book, the repudiation or a retractation of a betrothal is to be punished by a fine to the King, and the affiancer has to repay to the bridegroom anything expended on account of the espousals; but there is no hint of any remedy like specific performance being applied to such a case. It is also to be observed that, according to the same authority, a retractation is authorised if there be good cause for it, and the only good cause there specifically mentioned is "if a preferable suitor present himself."

The respondent's counsel have pressed upon our consideration certain propositions laid down in the judgment of the Privy Council in the case of *Moonshee Buzloor Ruheem* v.

Shumsoonissa Begum (*ubi suprà*). The facts of that case, it must be observed, are materially different from those of the present one. There the parties were actually husband and wife, had cohabited together, and had had issue of their marriage; and the Privy Council lay down the propositions that in these circumstances a Musselmán husband may institute a suit in the Civil Courts of India for a declaration of his right to the possession of his wife, and for a sentence that she return to cohabitation, and that such a suit must be determined according to the principles of the Muhammadan law. That case, we think, would have been a pertinent authority had this suit been one in which an actual marriage was alleged, and proved to exist, between the plaintiff and Bái Jharmá, and which asked for a decree that she return to, or, perhaps, commence cohabitation with, him. But the decree under appeal here is based, in our opinion, on the supposition that an actual marriage has not taken place; and seven had the decree been according to the 1st paragraph of the prayer of the plaint, and declared the plaintiff to be, by virtue of the said betrothment, the husband of the said Bái Jharmá, such a decree would, in our opinion, have been irregular and erroneous, owing to the absence, as a party to the suit, of Bái Jharmá, the person most interested in contesting the making of such a declaration, and most immediately affected by it, and would have been unsupported by evidence, there being, as we consider, no proof that the ceremony or ceremonies which were performed on the occasion of the alleged betrothal amount to a marriage as between Hindús of the caste to which the plaintiff and Bái Jharmá belong. We are, therefore, of opinion that the decree in its present form cannot be sustained, and we cannot accede to the contention of the respondent's counsel that the circumstances of the case, or the frame of the suit, admit of any decree being made declaring the betrothal to constitute a valid marriage, and giving consequential relief in the nature of a decree enforcing cohabitation.

As, with the principal part of the decree ordering specific performance, the accessory parts which order an injunction

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and the imprisonment of the defendant until execution of the decree must fall, it is not perhaps necessary to express any opinion as to that part of the decree which orders the retention of the defendant in custody until execution of the decree. We think, however, that any order for the imprisonment of a defendant until execution of the decree made under Sec. 78 of the Civil Procedure Code should be made before the hearing, or at any rate upon application in the manner pointed out in Secs. 74—77, and that an order under Sec. 78 should not form any portion of the decree itself, and that any order for enforcing a decree by imprisonment under Sec. 200 should not be made till after the defendant has at least had opportunity of obeying the decree, or has contumaciously refused to obey it.

Though we are of opinion that the decree, as it stands, cannot be sustained, we consider that some relief can be given to the plaintiff in the present suit in the way of damages. We consider that the plaintiff has sustained damages by the refusal of the defendant to give effect to the admitted betrothal of his daughter, and the cases cited from Borradaile's Reports, and the passages of the Mitákshará referred to, furnish authority for granting the plaintiff relief pecuniarily in respect of such damages. The plaintiff has, in the expectation of that betrothal being carried into effect, presented ornaments and clothes to the girl, of the value of Rs. 374; he has delivered two promissory notes for Rs. 200 each to the defendant, and has deposited Rs. 800 with Dosábhái Kharsetji Wádiá, in the joint names of himself and his expected wife. He has also, we think, necessarily sustained some damage to his credit and reputation by reason of the refusal of the defendant to give his daughter according to his promise; but in estimating the amount of damages to be awarded, we have considered it proper to have regard to the fact that the defendant has already suffered imprisonment for nearly nine months.

The decree of this court is that the decree of the 2nd of April 1870 be reversed, and in lieu thereof the following

decree be substituted:—That the defendant do return to the plaintiff the two promissory notes for Rs. 200 each, delivered to him by the plaintiff on or about the 2nd of May 1866; declare that the amount now due in respect of the deposit made with Dosábhái Kharsetji Wádiá, in the joint names of the plaintiff and Bái Jharmá, on the 1st of May 1866, is discharged from any claim in respect of the betrothal or the contract to marry in the plaint mentioned; and that the plaintiff is also entitled to receive from the Prothonotary the ornaments and clothes delivered to him by the defendant (as a condition of being allowed to appeal *in formâ pauperis*); and decree that the plaintiff do recover from the defendant, as damages in respect of the breach of the contract of betrothal in the plaint mentioned, the sum of Rs. 301, and the sum of Rs. 819-12-0, his costs of the suit in the court below, the Court being of opinion, and certifying, that by reason of the general importance of the case it was fit to be brought in the High Court. With regard to the costs of the appeal, we order that the same be paid by the respondent. The Court also orders the immediate discharge of the defendant from custody.

Decree accordingly.

Attorney for the appellant: *R. A. Dallas,* Attorney for Paupers.

Attorneys for the respondent: *Acland, Prentis, and Bishop.*

Suit No. 814 *of* 1868.

Nov. 17.

MEGRA'J JAGANNA'TH..... (*Defendant*) *Appellant.*
GOKALDA'S MATHURA'DA'S..... (*Plaintiff*) *Respondent.*

Hindú Law Merchant—Hundi—*Notice of Dishonour*—*Fraudulent Detention of* Hundi—Peth—*Notice of Loss.*

In order to charge the indorser of a dishonoured *hundi*, the holder must give reasonable notice of such dishonour to the indorsor he seeks to charge. The demand of a *peth* cannot be deemed to be equivalent to a notice of dishonour.

THE plaint in this case stated (1) that on the 8th of March 1868 one Shivnáráyan Javerimal by his *hundi* directed to Lachhmandás Choturám at Haidarábád in the Dakhan,