Procedure Code to frauds similar to that proved in the case before us.

I think, too, that the wilful attempt of the accused, by means of false statements, to use the process of the Court to recover money twice over, comes within the mischief at which section 210 of the Indian Penal Code (XLV of 1860) strikes. In the reported cases, such attempts are censured by the High Courts as "fraud," "gross fraud," or "cheating;" and it is difficult to imagine any reason why the Legislature should have considered them less proper objects of criminal punishment than other fraudulent claims.

I agree with my brother Birdwood in holding that what the prisoner did, brought him within the words of sections 511 and 210 and of section 193 of the Indian Penal Code (XLV of 1860), and I would uphold the convictions under those sections.

Conviction and sentence under sections 193 *and* 511 *and* 210 *of the Indian Penal Code upheld. Conviction under section* 199 *reversed.*

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

DÁDÁJI BHIKÁJI, (ORIGINAL PLAINTIFF), APPELLANT, *v.* RUKMABÁI, (ORIGINAL DEFENDANT), RESPONDENT.*

1886. *March* 12, 18.

Husband and wife—Restitution of conjugal rights among Hindus—Suit by a husband—Marriage during wife's infancy—Non-consummation of marriage prior to suit.

A., a Hindu aged nineteen years, was married by one of the approved forms of marriage to B., then of the age of eleven years, with the consent of B.'s guardians. After the marriage B. lived at the house of her step-father, where A. visited from time to time. The marriage was not consummated. Eleven years after the marriage, *viz.*, in 1884, the husband called upon the wife to go to his house and live with him, and she refused. He thereupon brought the present suit, praying for restitution of conjugal rights, and that the defendant might be ordered to take up her residence with him. The Court of first instance held that the suit was not maintainable[1].

* Suit No. 139 of 1884.

[1] See I. L. R., 9 Bom., 529.

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Held, in appeal, reversing the decree, that the suit was maintainable, and that the case should be remanded for a decision on the merits.

APPEAL from a decree made by Pinhey, J., on the 21st September, 1885, whereby he passed judgment for the defendant with costs.

The suit was brought by the plaintiff, who was a Hindu, against his wife for restitution of conjugal rights. The parties had been married about ten years previously, the plaintiff being then nineteen years of age and the defendant thirteen. They had never lived together, and the marriage had never been consummated.

The defendant admitted the marriage. In her written statement she alleged the following reasons for refusing to live with her husband:—

"(1) The entire inability of the plaintiff to provide for the proper residence and maintenance of himself and his wife, the defendant; (2) the state of the plaintiff's health, in consequence of his suffering frequently from asthma and other symptoms of consumption; and (3) the character of the person under whose protection he was living in the house in which he called on the defendant to join him."

At the hearing before Pinhey, J., the defendant was not called upon to go into her case. At the close of the plaintiff's case the Judge gave judgment for the defendant. (See the case reported at I. L. R., 9 Bom., 529.)

The plaintiff appealed.

Macpherson, *Vicáji* and *Mánkar* for the appellant:—The marriage is admitted. The rights of the parties are complete when the marriage ceremony is performed. The wife becomes a member of her husband's family, and ought to reside with him—West and Bühler (3rd ed.), 232; *Sri Virádá Pratápá* v. *Sri Brozo Kishoro*(1). Consummation is not necessary to effectuate marriage. The husband has a right to the society of his wife, and the Court is bound to enforce that right (Mayne's Hindu Law, para. 89). It is to be enforced, although consummation has not taken place—*Kateerám Dokánee* v. *Mussámut Gendhenee*(2);

(1) I. L. R., 1 Mad., at p. 81. (2) 23 Calc. W. R. Civ. Rul., 178.

Gáthá Rám Mistree v. *Moohitá Kochin Atteah*[1]; *Gáthá Rám Mistree* v. *Moohita Kochin Atteah Domoone*[2]; Mayne's Hindu Law, p. 80. The Civil Procedure Code (XIV of 1882), sec. 260, recognizes the right, and provides a means of enforcing it. In England by Stat. 47 and 48 Vic., cap. 68, sec. 2, the means of enforcing the right have been abolished, but by the above section of the Civil Procedure Code (XIV of 1882) the right can still be enforced in India. Thus we have the right admitted and the remedy provided. If the right and its incidents be the same among Christians, Mahomedans, Pársis and Hindus, why should the remedy be denied to Hindus? The Court has no discretion—*Scott* v. *Scott*[3]. Counsel also cited *Ardaseer Cursetjee* v. *Perozebye*[4]; *Moonshee Buzloor Ruheem* v. *Shumsoonissa Begum*[5]; *Umed Kiká* v. *Nagindás Narotamdás*[6]; *Jogendronundini Dossee* v. *Hurry Doss Ghose*[7]; *Yámunábái* v. *Náráyan Moreshvar*[8]; Morley's Digest, p. 288; Stephen's Commentaries (8th ed.), Vol. 2, p. 237; English Divorce Act, 1857; *Motirám Harkisan* v. *Bái Manchá*[9]; *Basápá Bylápá* v. *Ningi*[10]; *Bápálál Tárachand* v. *Bái Amrat*[11]; *Uká Bhagván* v. *Bái Heta*[12]; *Hemchand Hurjivan* v. *Shiv*[13]; Banerjee's Tagore Lectures for 1878, p. 108; Specific Relief Act I of 1877, illustration to section 43; Limitation Act XV of 1877, Sched. II, arts. 34 and 35; Vyavastha Chandrika, Vol. 2, pp. 480 and 482; Strange's Hindu Law, Vol. 2, pp. 25 and 26.

Latham (Advocate General) and *Telang* for the respondent.

Latham :—We support the judgment of the Court below, on two grounds: (i) we say that a suit for restitution of conjugal rights does not lie between Hindus; (ii) we support it on the ground taken by Pinhey, J., *viz.*, that the present case is one without precedent, being a suit to enforce rights not yet enjoyed. There is no English authority for enforcing the commencement of cohabitation, and we submit that the Court below was right in refusing to go beyond previous decisions.

(1) 23 Calc. W. R. Civ. Rul., 179.
(2) 14 Beng. L. R., 298.
(3) 34 L. J. P. & M., 23.
(4) 6 Moore's Ind. Ap., 348.
(5) 11 Moore's Ind. Ap., 551.
(6) 7 Bom. H. C. Rep., 122, O. C. J.
(7) I. L. R., 5 Calc., 500.
(8) I. L. R., 1 Bom., 164.
(9) Printed Judgments for 1876, p. 129.
(10) Printed Judgments for 1878, p. 6.
(11) Printed Judgments for 1875, p. 247.
(12) Printed Judgments for 1880, p. 322.
(13) Printed Judgments for 1883, p. 124.

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As to the first point, I admit that we are asking the Court to decide contrary to a series of cases between Hindus, which appear in the Indian reports. The earliest of them, however, is only ten years old: they all seem to have followed, as authorities, two cases decided by the Privy Council—*Ardaseer Cursetjee* v. *Perozebye*[1] and *Moonshee Buzloor Ruheem* v. *Shumsoonissa Begum*[2], the first of which was a Pársi case and the latter a case between Mahomedans. In none of them do the Courts appear to have considered what the Hindu law is upon the subject.

A suit for restitution of conjugal rights was not part of English Common Law or English Equity. It was peculiar to the Ecclesiastical Courts. The former Courts only interfered on information that a party was in contempt of the Ecclesiastical Courts, these Courts being compelled to have recourse to the Courts of law and equity to enforce their process for contempt which the Ecclesiastical Courts could only enforce by excommunication. The English authorities cited by the other side are cases in the Ecclesiastical Courts. Now, the Privy Council have declared in *Ardaseer Cursetjee* v. *Perozebye*[3] that ecclesiastical law has no application in India, that we are to have regard only to the law and usages of the people of this country. If the principles of ecclesiastical law are to be applied at all, they should be applied in their integrity, and then it would be necessary for the plaintiff to prove marriage by free consent, which he must necessarily fail to do. Suits of this kind are repulsive to civilised notions[4], and we ask that they should not be extended to Hindus, unless shown to be known to Hindu law.

Since the decision, in 1867, of *Moonshee Buzloor Ruheem* v. *Shumsoonissa Begum*[5] by the Privy Council it has been assumed by the Courts in India that a suit for restitution of conjugal rights lies between Hindus. That case was a suit between Mahomedans, and the observations made in the judgment were not intended to apply to cases between Hindus.

(1) 6 Moore's Ind. Ap., 348.

(2) 11 Moore's Ind. Ap., 551.

(3) 6 Moore's Ind. Ap.: see p. 387.

(4) See *per* Melvill, J., in *Ardesir Jehángir Frámji* v. *Avábái*, 9 Bom. H. C. Rep. at p. 293; and *per* Markby, J., in 23 Calc. W. R. Civ. Rul., at p. 182.

(5) 11 Moore's Ind. Ap., 551.

The case of *Kateerám Dokánee* v. *Mussumut Gendhence*[1] has been relied on, but in that suit there was no decree against the wife. She was a minor, and was not sued through her guardian. She was not really a party. In the case of *Gáthá Rám Mistree* v. *Moohitá Kochin Atteah*[2] no decree was made. The decree that Markby, J., was prepared to make was apparently not a declaration for restitution of conjugal rights, but a declaration that conjugal rights existed: so that case is no authority for the decree asked for in the present suit. The cases of *Yámunábái* v. *Náráyan Moreshvar*[3] and *Jogendronundini Dossee* v. *Hurry Doss Ghose*[4] merely proceeded upon the authority of *Moonshee Buzloor Ruheem* v. *Shumsoonissa Begum*[5] and *Gáthá Rám Mistree* v. *Moohitá Kochin Atteah*[6]. I submit that was a mistake. It does not follow that such a suit lies between Hindus according to their law, because it lies between Mahomedans according to Mahomedan law.

No inference can be drawn from the provisions of section 260 of the Civil Procedure Code (XIV of 1882). Those provisions may be requisite for the enforcement of decrees in suits of this nature, where such suits are maintainable, as they are, no doubt, between Christians, Mahomedans and others in India; but they do not show that such suits are maintainable between Hindus.

Next, as to the point on which the judgment of the Court was really based, *viz.*, the absence of precedent. We submit the Court was right, and that there is no precedent for the order asked for in this case. There is no English authority for ordering a wife to go to her husband where the marriage has never been consummated. Only two cases in India have been cited, *viz.*, *Khooshal* v. *Bhugwan Motee*[7] and *Kateerám Dokánee* v. *Mussumut Gendhenee*[8], and these do not apply, for in the first the wife was not a party, and in the second she was a minor. Here the decree is asked for against an adult wife. It has been argued that the whole question is whether the parties are man and wife.

(1) 23 Calc. W. R., Civ. Rul., 178.

(2) 23 Calc. W. R., Civ. Rul., p. 179; S. C. 14 Beng. L. R., 298.

(3) I. L. R., 1 Bom., 164.

(4) I. L. R., 5 Calc., 500.

(5) 11 Moore's Ind. Ap., 551.

(6) 23 Calc. W. R., Civ. Rul., p. 179; S. C. 14 Beng. L. R., 298.

(7) 1 Borradaile, p. 155 (ed. 1862.)

(8) 23 Calc. W. R., Civ. Rul., 178.

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We submit that the question of consummation is of material importance. The very title of the suit in England shows that it lies only where the wife has already granted conjugal rights. The provisions of section 18 of Act XXI of 1866 show that the Indian Legislature regard consummation as a material circumstance.

Again, this suit may be looked at as one for specific performance, and all the circumstances of the case must be considered before the Court will grant a decree—*Umed Kiká* v. *Nagindás Narotamdás* (1).

We submit that, in such a case as the present, the Court has a discretion. It has been argued that the Court is bound to make a decree, and *Scott* v. *Scott* (2) has been relied on. That case, however, was in an English Court administering ecclesiastical law, and does not apply. Even, however, in ecclesiastical cases the rule in more recent times has been less rigid—*Moloney* v. *Moloney*(3). In *Marshall* v. *Marshall*(4) a plea by the wife on equitable grounds was allowed, which would never have been permitted in the Ecclesiastical Courts: see also Stat. 20 and 21 Vic., cap. 85, sec. 22. The present case should be regarded as a suit for specific performance, not of the marriage contract, but of the obligations arising out of that contract. If this be a suit for specific performance, the section 22 of the Specific Relief Act (I of 1877), clause 2, enables the Court to consider the question of hardship. One of the illustrations to section 21 says that a contract of marriage cannot be enforced. That is an aid to the Court in exercising its discretion under section 22: see also clause (*b*) of section 21. Here the Court is asked as against the wife to enforce one detail of the contract. But others, equally imperative, must be left untouched.

[SARGENT, C. J.:—What are the circumstances of the case which ought to influence us in exercising our discretion in refusing the relief asked for ?]

(1) 7 Bom. H. C. Rep., 122, and see at p. 135 *per* Green, J.

(2) 34 L. J. P. & M., 23.

(3) 2 Adam's Ecc. Rep., 249.

(4) 5 Pr. Div., 19.

One circumstance is the fact of the marriage having taken place when the wife was incapable of giving a reasonable consent, the complete absence of consent on her part. Also the poverty of the husband and his social position.

[SARGENT, C. J.:—No evidence has been taken as yet upon these points, as the defence was not gone into. The case before us appears to be simply this, that the defendant when she arrives at puberty refuses to go to her husband, because she does not like him.]

That is so, no doubt. If the defendant must go into the points raised in her defence, the evidence must be taken before the Court can be asked to say that these facts constitute a defence. The case of *Jogendronundini Dossee* v. *Hurry Doss*(1) shows the large discretion the Courts will exercise even when granting a decree: see also *Paigi* v. *Sheonáráin*(2).

Telang on the same side:—The Hindu law books prescribe the duties of husband and wife, but say little as to the mode of enforcing their performance. Their duties are religious, and are enforced by religious machinery. *Placitum* 3 of sec. i of Chap. I of the Mayukha mentions the duties of man and wife as a specific head of law, but the only mode of enforcing those duties is by fine to the king: see Vyavahár Mayukha, Chap. XX; Stokes' Hindu Law Book, p. 164. The only case contemplated by the law is that of a husband abandoning his wife, and that only results in a fine to the king. There is no provision at all for the case of a wife separating from her husband, and in the absence of such provision we must assume that the same remedy or punishment would be applied. There is no suggestion of what is known as restitution. No doubt the caste might always have ordered the wife to go to her husband, but the caste may do that still. The caste can enforce social duties. The Civil Courts will not. The Civil Courts now exercise the authority which belonged to the king when the Hindu law books were written: so that the functions of the Court are to be ascertained by reference to what are laid down as the duties of the king: see *Khetramani Dási* v. *Káshi-*

(1) I. L. R., 5 Calc., 500: see p. 508. (2) I. L. R., 8 All., 78.

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náth Dás[1]; Colebrooke's Digest (ed., 1801), Vol. II, p. 128, texts lvii and lviii, which seem to contemplate a wife's desertion of her husband. But it is not provided that the king shall order her to go back: so also text lxiii at page 130. It is only where the husband deserts the wife that a punishment is provided: see also Nárada (Jolly's translation, ed. 1876), p. 91, text 95. Text 96 seems to indicate caste influence. Vyavastha Chandrika contains no provision for restitution. We contend, then, that the Hindu law does not contemplate a decree of this kind. The Privy Council in *Moonshee Buzloor Ruheem* v. *Shumsoonissa Begum*[2] say that in India the rights and duties resulting from the contract of marriage can only be ascertained by reference to the particular law of the contracting parties. Acting on that principle, they base their decision on Mahomedan law. That case is, therefore, no authority here; and as the Hindu law does not provide for such a suit as the present, we contend that it does not lie.

Macpherson in reply:—It has been argued that a suit for restitution is a discredited suit. That, however, is a matter for the Legislature, and not for this Court. It is, at all events, a suit recognised both in England and in India. As to the provisions of Hindu law, while admitting there may be no direct authority for the suit in Hindu law we deny that the suit is inconsistent with Hindu law. That law contains nothing forbidding it. The principles laid down in *Moonshee Buzloor Ruheem* v. *Shumsoonissa Begum*[3] are applicable to Hindus. The plaintiff here has a right which has been denied to him. He cited *Patrick* v. *Patrick*[4]; *Brown* v. *Brown*[5].

2nd March. Sargent, C.J.:—This is an appeal from the decision of Mr. Justice Pinhey rejecting the plaintiff's claim for a decree of "institution or restitution of conjugal rights" arising out of the following circumstances, which are not in dispute between the parties:—

The plaintiff, Dádáji Bhikáji was married, according to an approved form, to the defendant, Rukmábái, about ten years ago,

(1) 2 Beng. L. R., 15, A. C. J.
(2) 11 Moore's Ind. Ap. at p. 610.
(3) 11 Moore's Ind. Ap. at p. 606.
(4) 3 Philimore, 396.
(5) 13 Jur., 370.

when he was nineteen or twenty and she was of the age of eleven or twelve years. The defendant was the daughter of the late Janárdhan Pándurang, whose widow was married to Dr. Sakhárám Arjoon at the time of the marriage in question. After the marriage the defendant continued to live with her mother and Dr. Sakhárám Arjoon until March, 1884, when the plaintiff, being desirous that she should come to live with him as his wife, sent his uncle and elder brother to fetch her, and on her refusal to accompany them instituted the present suit. The defendant by her written statement alleged as the reason for her refusal to live with the plaintiff—1. The entire inability of the plaintiff to provide for the proper residence and maintenance of himself and his wife. 2. The state of the plaintiff's health, in consequence of asthma and other symptoms of consumption. 3. The character of the person under whose protection the plaintiff was and is living in the house in which he called on her to join him. After hearing the evidence for the plaintiff, the learned Judge, in the Division Court, delivered judgment, and passed a decree for the defendant with costs.

The grounds of the decision are thus stated by the learned Judge. He says: "It seems to me that it would be a barbarous, a cruel, a revolting thing to do to compel a young lady under the circumstances to go to a man, whom she dislikes, in order that he may cohabit with her against her will; and I am of opinion that neither the law nor the practice of our Court either justifies my making such an order, or even justifies the plaintiff in maintaining the present suit." Whilst admitting that suits for restitution of conjugal rights had been maintained in the Courts of this country, the learned Judge was of opinion that there was no authority for a suit to compel a woman, who has gone through the religious ceremony of marriage with a man, to allow that man to consummate the marriage against her will; and that being so, he was not bound to carry the practice further than he found it supported by the English authorities. The immediate question, therefore, which presents itself for our determination is, whether a suit for institution or restitution of conjugal rights will lie under the circumstances alleged in the plaint.

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It was not attempted to be denied that, since the expression of opinion by the Privy Council in *Ardaseer Cursetjee* v. *Peerozebye*[1], the Civil Courts of this country "should afford remedies for the evils incidental to married life," suits for the restitution of conjugal rights had frequently been entertained by the Civil Courts in the case of natives, whether Hindus or Mahomedans. The cases of *Moonshee Buzloor Ruheem* v. *Shumsoonissa Begum*[2] as regards Mahomedans and those of *Gáthá Rám Mistree* v. *Moohitá Kochin Atteah*[3], *Kateerám Dokánee* v. *Mussumut Gendhenee*[4], *Jogendronundini Dossee* v. *Hurry Doss Ghose*[5], *Yámunábái* v. *Náráyan Moreshvar*[6], *Bápálál Táráchand* v. *Bái Amrat*[7] and *Motirám Harkisan* v. *Bai Manchá*[8], as regards Hindus, can leave no doubt that the jurisdiction is well established, and we, therefore, entirely agree with the remarks of Mr. Justice Melvill in the last case, that "so long as that jurisdiction is not taken away by legislation our Courts have no discretion in the matter." We could not, therefore, with propriety entertain any objection which goes to the root of the jurisdiction, such as that urged by Mr. Telang, *viz.*, that the Hindu law books do not recognise a compulsory discharge of marital duties, but treat them as duties of imperfect obligation to be enforced by religious sanction. We may, however, remark that although no text may be found in the Hindu law books which provides for the king ordering a husband or wife to return, no text was cited forbidding or deprecating compulsion, and that it was admitted that the duties appertaining to the relationship of husband and wife have always been the subject of caste discipline, and, therefore, that with the establishment of a systematic administration of justice the Civil Courts would properly and almost necessarily assume to themselves the jurisdiction over conjugal rights as determined by Hindu law, and enforce them according to their own modes of procedure.

But it was contended that a decree for restitution of conjugal rights implies that the marriage has been consummated, and also that there is no authority for a decree for "institution" of con-

(1) 6 Moore's Ind. App., 348.
(2) 11 Moore's Ind. App., 551.
(3) L. R., 14 Beng.
(4) 23 Calc. W. R., 178.
(5) 5 Calc. T. & R., 500.
(6) 1 Bom. (T. & R.), 164.
(7) Printed Judgments for 1875, p. 247.
(8) Printed Judgments for 1876, p. 129.

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jugal rights. This distinction, however, appears to be based on a misapprehension as to the principles on which the Ecclesiastical Courts in England exercised this jurisdiction. In *Weldon* v. *Weldon*(1) Sir J. Hannen says: "The principle derived from the law on which the Ecclesiastical Court proceeded was, that it is the duty of married persons to live together, and that this duty should be enforced by the decree of the Court, unless it be shown that the complaining party had been guilty of some matrimonial offence for which a judgment authorising living apart might have been obtained by the other." In support of this proposition the learned Judge cites the words of Blackstone: "The suit for restitution of conjugal rights is brought whenever either the husband or the wife is guilty of the injury of subtraction, or lives separate from the other without any sufficient reason, in which case they will be compelled to come together again." It thus appears that the gist of the action for restitution of conjugal rights is that married persons are bound to live together, and that one or other has withdrawn himself or herself without lawful cause, as it was not contended that consummation was necessary by Hindu law any more than it is by English law to complete the marriage. It necessarily follows that, whether the withdrawal or "subtraction," as Blackstone terms it, be before or after consummation, there has been a violation of conjugal duty which entitles the injured party to the relief prayed. Owing to the practice of infant marriage in this country, it is admitted to be the custom for the infant wife after the celebration of the marriage to return to her own house until she arrives at puberty, and it may be (although having regard to the remarks of Mr. Justice Mitter and Mr. Justice Markby in *Kateerám Dokánee* v. *Mussumut Gendhenee*(2) it cannot be considered free from doubt) that, in view of the above custom, the Court would not order the wife to join her husband until she was of mature age. In the present case, however, the defendant is long past the age of puberty.

It was urged, however, that although there might be no technical objections in the present case to a suit for "institution or

(1) L. R., 9 Pr. Div., 52. (2) 23 Calc. W. R., Civ. Rul., 178.

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restitution" of conjugal rights, still suits of this nature had become discredited, and that to compel the defendant who had had no voice in her marriage with the plaintiff, to join him against her will for the purpose, as it was said, of consummation, would be more than ordinarily revolting to delicate feelings. The Court should exercise a discretion and refuse the decree sought. Now, doubtless, in England, legislation following upon the case of *Weldon* v. *Weldon*(1) has recognized in Stat. 47 and 48 Vic., cap. 68, the propriety or, at any rate, the advisability of abolishing the practice of enforcing a decree for restitution of conjugal rights by imprisonment, and confining the consequence of disobedience of such a decree to an order for alimony or similar provision in favour of the husband. In this country, on the contrary, notwithstanding the wish of Mr. Justice Markby, as expressed in 1875 in *Gáthá Rám Mistree* v. *Moohitá Kochin Atteah*(2), to regard the decree for restitution of conjugal rights as a mere declaration of rights, the Code of Civil Procedure (XIV of 1882) so far from treating the suit as a discredited one, or giving effect to Mr. Justice Markby's views, provides in express terms by section 260 for the enforcement of such a decree by imprisonment or attachment of property, or by both. It would be difficult, therefore, to say that the suit for restitution of conjugal rights stands discredited in this country. Legislation has, on the contrary, done its best to provide means to enforce the decree, consistently with the general provision contained in section 342 of the Code limiting imprisonment to six months.

Lastly, as to the discretion which the Court has been asked to exercise in favour of the defendant, because she had no voice in the choice of her husband, and has never adopted her guardian's choice, it was not suggested that the marriages of Hindu children are not perfectly valid without the exercise of any volition on their part. It is plain, therefore, that the Court is virtually asked to disregard the precepts of Hindu law, which treats the marriage of daughters as a religious duty imposed on parents and guardians, and to look at the matter from the purely English point of view, which sees in marriage nothing but a contract to which the husband and wife must be consenting parties.

(1) L. R., 9 Pr. Div., 52.

(2) 14 Beng. L. R., 298.

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As to the question of delicacy, which was much relied on by the learned Judge in the Division Court, we apprehend that the Civil Courts having assumed the jurisdiction cannot draw fine distinctions between a woman who has never lived with her husband and is averse to joining him and one who has lived with him and perhaps acquired a physical or moral loathing for him, and objects to returning. It may be advisable that the law should not adopt stringent measures to compel the performance of conjugal duties; but as long as the law remains as it is, Civil Courts, in our opinion, cannot with due regard to consistency and uniformity of practice (except, perhaps, under the most special circumstances) recognise any plea of justification other than a marital offence by the complaining party, as was held to be the only grounds upon which the Divorce Courts in England would refuse relief in *Scott* v. *Scott*[1].

We must, therefore, reverse the decree of the Division Court, and remand the case for a decision on the merits after hearing the defendant's case. Costs of this appeal to abide the result.

Attorneys for appellant.—Messrs. *Chalk and Walker.*

Attorneys for respondent.—Messrs. *Payne, Gilbert and Sayáni.*

(1) 34 L. J., 23.

INSOLVENCY JURISDICTION.

Before Mr. Justice Bayley.

IN THE MATTER OF THE PETITION OF EDWARD JAMES SYDNEY SHREWSBURY, AN INSOLVENT.

KESHAVLA'L GOVARDHANDA'S, OPPOSING CREDITOR.

1886. *March* 17.

Insolvency—Indian Insolvent Act, Stat. 11 and 12 Vic., Cap. 21—Personal estate of the insolvent—Expectant or contingent interest—Deduction from salary for a provident fund and mutual assurance fund—Right of Official Assignee.

S., a clerk in the employment of the G. I. P. Railway Company, agreed with the Company that 5 per cent. of his salary should be deducted every month as his contribution or subscription to a fund called the Provident Fund, and a further rate of 1 per cent. as his subscription to another fund called the Mutual Assurance Fund. By the rules of these funds he was entitled to receive back his