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bhatta has a similar operation for the purpose of limitation is to my mind merely to place a premium on dilatoriness.

Therefore I would answer the question referred by saying that the payment of *bhatta* in this case did not constitute a fresh starting point from which the period of limitation began to run.

CANDY, FULTON, CROWE and CHANDAWARKAR, JJ., concurred.

Answer accordingly.

FULL BENCH.

APPELLATE CIVIL.

Before Sir L. Jenkins, Chief Justice, Mr. Justice Candy, Mr. Justice Crowe and Mr. Justice Chandavarkar.

1901. *April* 15.

DHANJIBHOY BOMANJI (ORIGINAL DEFENDANT), APPELLANT, *v.* HIRABAI (ORIGINAL PLAINTIFF), RESPONDENT.*

Husband and wife—Parsis—Suit for restitution of conjugal rights—Limitation—Limitation Act (XV of 1877), section 23, schedule II, article 35—Parsi Marriage and Divorce Act (XV of 1865).

A suit under the Parsi Marriage and Divorce Act (XV of 1865) by a wife for the restitution of her conjugal rights is barred by the lapse of time when restitution has been demanded by her and refused by the husband being of full age and sound mind more than two years prior to the commencement of the suit.

REFERENCE to a Full Bench by a Division Bench (Jenkins, C.J., and Chandavarkar, J.).

The plaintiff Hirabai sued the defendant, her husband, for restitution of conjugal rights.

She alleged that in August, 1883, the defendant had assaulted her and turned her out of his house.

On the 29th June, 1895, the plaintiff through her attorneys gave notice to the defendant requiring him to resume cohabitation with her. On the 11th July, 1898, the defendant replied refusing her request.

* Appeal No. 97 of 1900.

On the 23rd September, 1899, the plaintiff filed this suit for restitution of conjugal rights.

On the 3rd August this case was heard by Fulton, J., and the Parsi delegates. It appeared in the evidence given in the course of the case that there had been an earlier demand (*viz.* in 1886 or 1887) by the plaintiff for restitution of conjugal rights and a refusal by the defendant. The point of limitation was then raised. It was contended for the defendant that the suit ought to have been brought within two years after the first demand and refusal and that the later demand and refusal did not give a fresh cause of action. The objection was overruled and the case proceeded.

On the verdict of the delegates, which was in favour of the plaintiff, the Judge passed a decree granting her restitution of conjugal rights.

The plaintiff appealed. The appeal came on for hearing before Jenkins, C.J., and Chandavarkar, J., who referred the following question to a Full Bench:—

"Whether, having regard to section 23 of the Indian Limitation Act (XV of 1877) and article 35 in the second schedule to that Act, a suit under the Parsi Marriage and Divorce Act XV of 1865 by a wife for the restitution of her conjugal rights is barred by lapse of time when restitution has been demanded by her and refused by the husband being of full age and sound mind more than two years prior to the commencement of the suit."

Section 23 of the Indian Limitation Act (XV of 1877) is as follows:

23. In the case of a continuing breach of contract and in the case of a continuing wrong independent of contract, a fresh period of limitation begins to run at every moment of the time during which the breach or the wrong, as the case may be, continues.

Article 35 of schedule II to the Limitation Act (XV of 1877) provides that "for a suit for the restitution of conjugal rights the period of limitation shall be two years from the time when restitution is demanded and is refused by the husband or wife being of full age and sound mind."

The question referred by the Division Court was argued before a Full Bench consisting of Jenkins, C.J., Candy, Crowe and Chandavarkar, JJ.

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Inverarity (*Scott*, Acting Advocate General, and *Lowndes* with him) for the appellant :—

We contend that under the Limitation Act (XV of 1877) demand and refusal create a complete cause of action and only one suit can be brought in respect of it, and that suit must be brought within two years under article 35 of the Limitation Act. The cause of action arises upon refusal. The refusal is a refusal once for all. It cannot have been intended that a fresh demand followed by a fresh refusal would again create a cause of action for precisely the same matter. That would be to make the provision for limitation a nullity. It is evident, therefore, that section 23 of the Limitation Act cannot apply.

This suit is brought under section 36 of the Parsi Marriage and Divorce Act (XV of 1865). That section is similar in terms to the Indian Divorce Act (IV of 1869), section 32. By section 1 of the Limitation Act (XV of 1877) it is provided that Part II of that Act (which contains section 23) shall not apply to suits under the Indian Divorce Act (IV of 1869).

The case of *Hemchand* v. *Siva*[1] was decided under the Limitation Act (XIV of 1859) which did not contain any special provision for such suits. The case of *Bai Sari* v. *Sankla Hirachand*[2] merely followed that case, although the Limitation Act of 1877 was then in force. That decision is wrong. The latest case on the point is *Fakirgauda* v. *Gangi*,[3] and it throws doubt on the previous decisions. They also cited *Ardesar* v. *Avabai*,[4] and Browne on Divorce, page 124.

Robertson for the respondent :—

We contend that section 23 of the Limitation Act (XV of 1877) applies. The cases already cited are in our favour. Husband and wife have a continuing right to each other's society. That right lasts as long as the relationship lasts. The lapse of two years after a demand and refusal does not sever the relationship and does not destroy the right. The right still remains and becomes enforceable by suit whenever a demand is followed by a

(1) (1883) 16 Bom. at p. 715 *note*.
(2) (1892) 16 Bom. 714.
(3) (1898) 23 Bom. 307.
(4) (1872) 7 Bom. H. C. R. 290.

refusal. *Binda* v. *Kaunsilia*[1] supports our contention. They also cited Maxwell on Statutes, pages 112, 264 and 277.

JENKINS, C.J.:—The question referred for the opinion of this Full Bench is, "Whether, having regard to section 23 of the Indian Limitation Act, 1877, and article 35 in the second schedule to that Act, a suit under the Parsi Marriage and Divorce Act (XV of 1865) by a wife for the restitution of her conjugal rights is barred by lapse of time, when restitution has been demanded by her, and refused by her husband, being of full age and sound mind, more than two years prior to the commencement of the suit."

It has been held that in the case of neither Hindus, nor Parsis, is the suit barred, and an opinion has been expressed that the law would be the same in the case of Mahomedans. At the same time the Act itself particularly excludes from its operation all Christian marriages (see section 1). If these decisions are right it is difficult to see what the purpose of article 35 is in a Limitation Act.

One of the earliest reported decisions on this article is *Binda* v. *Kaunsilia*.[2] It was there held that article 35 did not govern a suit brought by a Hindu husband for restitution of conjugal rights. The *ratio decidendi* appears to be that article 35 can only apply to suits where demand and refusal are necessary, and, as this is not a necessary condition of a suit by a Hindu husband or wife, the article has no application to such a suit. It was further held that article 120, read with section 23, provided the period of limitation; in other words, that such a suit never was barred. This decision has been cited with approval in *Bai Sari* v. *Sankla Hirachand*.[3]

In my opinion, however, there is a fallacy underlying this train of reasoning. It proceeds on the assumption that the 3rd column of the 35th article describes the conditions on which alone the particular suit can be brought. But this is not so: it merely describes the event, from which the period of limitation runs, without in any way providing or declaring that the

(1) (1890) 13 All. 123. (2) (1890) 13 All. 126.
(3) (1892) 16 Bom. 714.

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happening of that event is an essential condition to the competence of the suit. *Bai Sari* v. *Sankla Hirachand*[1] was decided by Jardine, J. and Telang, J., but beyond the expression of a general concurrence in the decree the only judgment is that delivered by Jardine, J. That learned Judge, though citing *Binda's case* as supporting his view, really based his decision on *Hemchand* v. *Shiv*, reported in the note, which he considered "applicable to the Limitation Act of 1877 in the absence of any words in articles 34 and 35 of the second schedule removing those articles from the operation of section 23." But the judgment in *Hemchand* v. *Shiv* was under Act XIV of 1859, which contained no article specially dealing with suits for the restitution of conjugal rights, a circumstance obviously most material in estimating the applicability of that decision. There is, however, one point on which the judgment in *Hemchand* v. *Shiv* has a direct bearing, and that is the determination that the refusal of the wife to return and allow the husband the exercise of his conjugal rights, and the retention of the wife constituted "continuing wrongs giving rise to constantly recurring causes of action on demand and refusal." But the opinion that there were constantly recurring causes of action on *demand and refusal*, is opposed to that which is the basis of *Binda's case*, so that Jardine, J.'s treatment of the authorities cannot be regarded as critical. In my opinion article 35, standing alone, would impose no bar in the absence of demand and refusal, but if demand and refusal (though unnecessary for the purposes of the suit) be made, the position for the purpose of limitation is crystallized and time begins to run.

In my opinion the words of article 35, read by themselves, do impose on the special remedy of restitution of conjugal rights a time-bar, when there has been a demand and refusal, though that may not be a necessary part of the cause of action. But in disparagement of this as a complete view, it is said that such a result leaves out of account section 23 of the Act. The husband's conduct, it is argued, is a continuing cause of action, whether it be regarded as a breach of contract or a wrong

(1) (1892) 16 Bom. 714.

independent of contract. For the sake of argument I will assume this to be so; still it has to be seen how far this will affect the bar imposed by article 35.

In the first place it must be borne in mind that section 23 is general in its terms: the 35th article, on the other hand, is particular and deals with a special form of remedy under defined conditions. If there be a repugnancy, the particular provision should prevail, but I see nothing repugnant in the imposition of a bar on a suit for a particular remedy, even though the cause of action be continuing. The Act itself furnishes apt illustrations of this: thus a suit to restrain waste is barred after two years from the time when the waste *begins* (article 41). Then again a suit for wrongfully detaining specific moveable property becomes barred under article 49: and, to come near to the point now under consideration, a suit for the recovery of a wife is barred two years after possession is demanded and refused (article 34), though her retention would seem to be as much a continuing wrong to the husband as the withholding by the wife herself of the rights which belong to him as incidental to the married state.

It has been suggested that the words of the section would be satisfied by holding that no suit could be brought except within two years after *some* demand and refusal: it seems to me, however, that a Limitation Act is hardly the place for such a provision. The result then is that I would answer the question referred to us in the affirmative.

CANDY, J.:—As I was a party to the judgment in *Fakirgauda* v. *Gangi*,[1] which expressed the doubt and difficulty involved in the question now referred to a Full Bench, I will indicate briefly the reasons which have led me to the conclusion that the answer in the affirmative proposed by the learned Chief Justice is the least unsatisfactory solution of the difficulty.

The effect of the decision of the Punjab Full Bench in 1879 was that, quite independently of section 23 of Act IX of 1871 or of Act XV of 1877, there was practically no limitation to suits for restitution of conjugal rights or for possession of a wife from a third party, because the law allows repeated demands, and if a

(1) (1898) 23 Bom. 307.

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suit is barred because brought more than two years after a demand and refusal, there is nothing to prevent a plaintiff making a fresh demand, and on meeting with a refusal bringing a fresh suit. When the case was in the Division Court at Lahore Mr. Justice Elsmie had been of a contrary opinion. He then held that the only reasonable interpretation which could be placed on articles 41, 42 of schedule II of Act IX of 1871 (answering to articles 34, 35 of schedule II of Act XV of 1877) was that the Legislature considered that if a husband has treated his wife's refusal to live with him with indifference for a period of two years she should not be compelled to return to his custody against her will, and possibly it would not be difficult to give reasons in support of the wisdom of such an enactment. Unless some such explanation of articles 41, 42 was accepted, their presence in the Act would seem to be for all practical purposes inoperative, a result which could hardly have been contemplated by the Legislature. In the Full Bench he did not adhere to this view, and he came to the conclusion that the articles were for all practical purposes inoperative.

Then came the decision in *Hamchand* v. *Shiv*.[1] In that case the husband in 1873 sued his wife, and a person who was harbouring her, for restitution of conjugal rights and for possession of his wife. The first Court found that the husband had disappeared for several years, but that he returned home in 1872, and filed the suit within the prescribed period (six years under section 1 (16) of Act XIV of 1859) from the attempt made by him to recover his wife. There was apparently only one such attempt.

On appeal the Assistant Judge held that the view taken by the Subordinate Judge was based on the Limitation Act of 1871, but in Act XIV of 1859 there was no provision as to the time from which the cause of action should date. He held that the cause of action arose when the wife went through "natra" ceremony with the second defendant with whom she was living; and as plaintiff had not brought his suit within six years from that date the bar of limitation arose.

(1) P. J. for 1883, 124; see 16 Bom. 715 note.

But on second appeal Sargent, C.J., and Kemball, J. (adopting terminology to be found in Acts IX of 1871 and XV of 1877, but not in Act XIV of 1859,) held that the refusal of the plaintiff's wife to return to him and to allow him the exercise of his conjugal rights, and the retention of the plaintiff's wife by the second defendant with whom she was living, constituted continuing wrongs, giving rise to constantly recurring causes of action on demand and refusal, and therefore the plaintiff's action, whether as against his wife or the second defendant, was not barred.

As noticed above, the only demand and refusal in the case was in 1872. The suit was filed in 1873. But the language used by the learned Judges seems to show that in their opinion for a cause of action to arise in such a suit there must be a demand and refusal, and that there may be repeated demands followed by refusal, each one giving rise to a fresh cause of action, the period of limitation under Act XIV of 1859 being six years from the time the last demand and refusal occurred. This is the position which was attacked by Mr. Justice Mahmood in 1890 in *Binda* v. *Kaunsilia*.[1] He held that demand and refusal were not a condition precedent to the maintainability of such a suit by a Hindu husband, and that they had not been made so by articles 34, 35 of schedule II of Act XV of 1877, the effect of these two articles being merely a general indication that the Legislature intended two years to be the period of limitation for such suits, to be calculated from the starting point described in the third column, *where such description applies*, but in other cases the matter would be governed by the ordinary rules of applying limitation, calculating it from the time when the right to sue accrued. With reference to section 23 of the Limitation Act, Mr. Justice Mahmood agreed with the Panjab and Bombay rulings; but he hesitated to determine how far he was prepared to accept those rulings in so far as they may be understood to lay down that successive demands and refusals are either required or could be made as foundations of successive actions for restitution of conjugal rights, with the result that there would be no limitation or any other plea *in limine* barring such

(1) (1890) 13 All. 126.

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suits so long as they were brought within two years from some demand and refusal. He, however, observed that much doubt and difficulty have arisen in consequence of not realizing clearly the distinction between a demand which by the substantive law forms an essential element of the cause of action, that is the gist of the action, and, as such, a condition precedent to the enforcement of the right by suit, and demands which do not constitute the gist of the action and which therefore the law does not render indispensable. The practical effect of Mr. Justice Mahmood's decision was to hold that articles 34, 35 must be read as inapplicable to suits by Hindu husbands and therefore virtually superfluous, and to apply the general article 120, and reading it with section 23 to hold that limitation does not bar the suit, either against the wife or against the other person who is harbouring her, although the demand and refusal of conjugal rights were superfluously made about five years before the suit. He considered it unnecessary that the plaintiff should be required to accept the dismissal of his suit, and to make a fresh demand the basis of another suit against the same parties and for the same relief, or to decide whether such a second suit would be maintainable.

The next case is *Bai Sari* v. *Sankla Hirachand*[1] in which plaintiff sued his wife for restitution of conjugal rights. The wife had left her husband's house in 1884. About six months afterwards the husband went to his father-in-law's house to fetch his wife, but she declined to return to his house. In 1888 the suit was filed. On the day before the institution of the suit the husband attempted by force to take his wife to his house, but the police intervened, and she returned to her father's house. Both the lower Courts held that as the last demand and refusal took place only a day before the institution of the suit it was not barred by limitation.

Mr. Justice Jardine upheld this view, being of opinion that the decision in *Hemchand* v. *Shiv* (noted above), being based on general consideration of the rights arising under the bond of marriage and not on the phraseology of Act XIV of 1859, is applicable to the Limitation Act of 1877, in the absence of

(1) (1892) 16 Bom. 714.

any words in articles 34 and 35 of the second schedule removing those articles from the operation of section 23. He added: "I am supported in this opinion by the reasons given in *Binda* v. *Kaunsilia*, interpreting the Act of 1877." But the ruling in *Binda* v. *Kaunsilia* was that articles 34 and 35 were inapplicable and superfluous.

Lastly, there is the case of *Fakirgauda* v. *Gangi*[1] decided by the late Sir Charles Farran, C.J., and myself in 1898. That was in substance a suit for restitution of conjugal rights, to which we held article 35 to be appropriate. But we held that the demand and refusal deposed to on behalf of the defendant must be eliminated from consideration for the purposes of limitation, because the wife was not then of full age. Assuming that the Limitation Act recognizes the necessity of a husband asking his wife to join him or to return to his house before he can file a suit to compel her to do so, there was evidence, which apparently the District Judge did not disbelieve, that there had been a demand and refusal about a year before suit. Thus there was a cause of action and no bar of limitation. But we did not wish to express an opinion as to whether, if the prior demand and refusal had been valid for the purposes of limitation, the present suit by the plaintiff would have been absolutely barred, nor as to whether section 23 of the Limitation Act applies to such a case. "The question, apart from the authorities, appears to us to be one of doubt and difficulty."

The question now referred to the Full Bench compels me to form a definite opinion on the subject, which I still think is of great difficulty. In the first place I think that the withdrawal without reasonable excuse either by husband or wife from the society of the other is a continuing wrong. The wrongful act complained of creates a continuing source of injury. Every moment of time during which the husband or wife remains withdrawn from the society of the other without reasonable excuse, the wrong continues. Section 23 is therefore applicable, and thus a fresh period of limitation begins to run at every moment of the time during which the wrong continues. But, in the next place, the cause of action is the one being withdrawn

(1) (1898) 23 Bom. 307.

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from the society of the other without reasonable excuse. The cause of action is not created by a demand that that withdrawal should cease, and a refusal to comply with that demand. The obligation exists apart from any demand. Further, I agree with Mr. Justice Mahmood that the words in the third column of article 35 cannot be read or interpreted as if the Statute enacted that no suit for the restitution of conjugal rights shall be maintained unless restitution is previously demanded and refused. I cannot add to the arguments set forth at pages 140 to 146 of 13 Allahabad Indian Law Reports.

How, then, are we to reconcile article 35 with section 23 without making the former superfluous or practically inoperative? The only possible way is by holding that when restitution is demanded and is refused by the husband or wife, then the law provides that the suit for restitution must be brought within two years from that time. If the parties are really at arm's length, then the law provides that a settlement of those differences, if desired by either of them in a Court of law, must be sought for within a reasonable time. A husband and wife may live apart without reasonable excuse for a dozen years, and neither may take the trouble to put an end to this state of things. Suppose that after this lapse of time the husband forthwith sues his wife for restitution of conjugal rights or *vice versa*, a plea that she or he would have been willing to return or have her back, had any demand been made, would be no answer to the suit, though it might be a matter for consideration as regards costs. So far section 23 would be given full effect. But if there had been demand and refusal, then the remedy for the wrong which is still continuing must be sought for within two years. This is the solution, which is not entirely satisfactory, but which presents the least difficulty.

No doubt it would be more satisfactory if we could (to apply the language used by Sir J. F. Stephen in 1871) settle the point by considering what arrangement would be most expedient for the public, instead of attempting to determine what an ill drawn law would have meant if it had any particular meaning bearing upon the point. But unfortunately our Courts have to apply the law as it is, not as it ought to or might have been,

and to see what the law is, we must endeavour to find out what the Legislature intended.

The principle of a *continuing* breach of contract or nuisance was first embodied in a Limitation Act by Act IX of 1871. The illustration of a continuing nuisance was the diversion by A of B's water-course. By section 23 a fresh period of limitation began to run at every moment of the time during which the diversion continued. And yet by article 32 of the second schedule of Act IX of 1871 the period of limitation in the case of a suit for diverting a water-course was two years from the date of the diversion. Possibly it was to remedy this anomaly that the Legislature in Act XV of 1877 altered the wording of article 38 to "compensation for diverting a water-course." But, as has been pointed out, there are similar anomalies in regard to other articles in Act XV of 1877. Until the Legislature has declared its mind clearly we must interpret the Act in the way which has the least difficulty. I would answer the question in the affirmative.

CROWE, J.:—I concur for the reasons given by the learned Chief Justice.

CHANDAVARKAR, J.:—I concur both in the conclusion and the reasons of the judgment just delivered by the learned Chief Justice. I think it right to add a word or two as to certain observations of the learned Judges of the Allahabad High Court who decided the case of *Binda* v. *Kaunsilia*,[1] on which Mr. Robertson relied to some extent in support of his contention that a suit for the restitution of conjugal rights is never barred by limitation and gives rise to continuing causes of action on demand and refusal. In the case just cited it was said that the practical effect of holding such a suit barred under article 35 of the Limitation Act would be to dissolve the marriage tie and "involve the conclusion that the Legislature by a side-wind effectually introduced divorce into the Hindu law." I confess I fail to perceive the force of that reasoning, for, in the first place, if that is a correct view of the law, it should logically

(1) (1890) 13 All. 123.

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follow that whenever a Court declines to grant restitution upon some ground, whether of limitation or otherwise, it pronounces by a side-wind a divorce between the parties. But such is not the necessary effect of the dismissal of a suit for the restitution of conjugal rights. For instance, it has been held by all the High Courts in India that where a Hindu husband claims the restitution of conjugal rights from his wife, the Courts are bound to dismiss his suit if legal cruelty and desertion on his part are proved. The effect of such refusal has never been held to be to give the wife a divorce, and yet it ought to have that effect according to the reasoning of the decision just cited of the Allahabad High Court. Where, again, an unchaste wife claims restitution against her husband, I take it that her unchastity would be held to be a good ground for refusing it. But even in such a case the Hindu law allows no divorce—the justifiable abandonment of the wife by her husband under such circumstances does not give her, according to Hindu law, any right to regard the marriage tie as dissolved and marry again. So also it has been held by this Court in *Bai Premkuvar* v. *Bhika Kallianji*[1] that a suit by a Hindu husband suffering from loathsome disease such as leprosy against his wife for the restitution of conjugal rights cannot lie. But because the husband in such a case has his suit dismissed, it does not follow that the wife ceases to be his wife and that all the consequences of a divorce follow from the dismissal of the suit. As remarked by the learned Judges who decided the case of *The Government of Bombay* v. *Ganga*,[2] the mere fact that a party cannot claim domestic and marital rights does not operate as a divorce. This was also the view taken by the Madras High Court in *Administrator General of Madras* v. *Anandachari*,[3] where it was held that a wife's refusal to cohabit with her husband and renounce all material claims upon him does not dissolve the marriage tie. According to the Hindu law, desertion, or natural death, or civil death cannot have the effect of a divorce, the only exception to that rule being degradation of caste or apostacy and even then the rule is that refusal on the part of one of the married couple to associate with his or her

(1) (1868) 5 Bom. H. C. 209. (2) (1880) 4 Bom. 330.
(3) (1886) 9 Mad. 466, at p. 470.

married spouse amounts to a divorce only where "the surviving consort can be allowed to marry." (See Shama Charn Sirkar's Vyavastha Chandrika, pages 490, 491.)

The fallacy of the reasoning of the judgment of the Allahabad High Court on this particular point appears to me to lie in supposing that a statute of limitations destroys the marital rights in such a case, whereas all that it does is to bar the remedy if that remedy is not pursued within the period fixed by the Statute. And the remedy that is so barred is in respect of only *one* of the marital rights—that is, the right which one of a married couple has to enforce on the other what their Lordships of the Privy Council term in *Moonshee Buzloor Ruheem* v. *Shumsoonnissa Begum*[1] "the broad duty of cohabitation," such duty forming the gist of an action for the restitution of conjugal rights. A law of limitation is, generally speaking, concerned with the *active* prosecution of rights but does not lay down that in all cases if the rights are not *actively* enforced within a specified time the rights shall be extinguished. The Indian Limitation Act by section 28 specifies the cases as to which only failure to prosecute a right within the time specified by it destroys the right: but a suit for the restitution of conjugal rights is not one of them. The effect, therefore, of holding that upon the true construction of article 35 of the Limitation Act, a suit for the restitution of conjugal rights is barred if it is not brought within two years from the date when restitution is demanded and is refused by the husband or wife, being of full age and sound mind, is, I think, not to dissolve the marriage tie and pronounce a divorce, but merely to bar the remedy for restitution. The wife would still continue to be the wife of the husband and *vice versâ*, and to have other rights and be subject to other obligations incidental to the marital relation. In the judgment of the Allahabad High Court with which I am now dealing, it is rightly pointed out that it being clear upon the authority of the Hindu law that the sovereign has authority to afford to an aggrieved husband or wife relief by way of restitution of conjugal rights, our Courts have jurisdiction to give that relief, but the

(1) (1867) 8 W. R. 3 at p. 13.

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manner in which the Courts are to protect the right to that relief or enforce it "is to be regulated by the condition of the times." It is perfectly consistent with that view to hold that the Legislature has determined the procedure according to which, while fully recognizing the right of a husband or wife to the restitution of conjugal rights, the law says that the right shall be pursued within a specified period or else the remedy will be barred.

Some argument was addressed to us by Mr. Robertson, based on the ground that if the Legislature had intended that a husband or wife should lose his or her right to restitution if that right were not enforced within a prescribed period, it would have fixed a longer period than two years. But this short period of two years prescribed by the Legislature is, it seems to me, in consonance with the policy and scheme of the Limitation Act, which is to prescribe short periods for all claims involving the settlement of disputes as to such delicate and intricate questions as those of marriage and adoption, on the ground that, as these questions have in this country to be determined mostly by oral evidence, which is often of a conflicting character, aggrieved parties should not be allowed to lie idle for a long time and to come into Court after the best available evidence has disappeared. See the remarks of the Privy Council in *Jagadamba* v. *Dakhina Mohun*.[1]

Attorneys for the plaintiff—*Messrs. Sorabji and Jehangir.*

Attorneys for the defendant—*Messrs. Jehangir and Seervai.*

(1) (1886) 13 I. A. 84; 13 Cal. 308.