APPELLATE CRIMINAL.

Before Mr. Justice Birdwood and Mr. Justice Jardine.

QUEEN-EMPRESS *v.* BA'PUJI DAYA'RA'M.*

1886. *February* 18.

Decree—Fraudulent execution of—The Indian Penal Code (Act XLV of 1860), Secs. 193, 199, 210, 510—*Duty of the decree-holder to inform the Court of private adjustment or satisfaction of a decree—The Civil Procedure Code (Act XIV of* 1882), *Secs.* 235, 258—*Construction of words "any Court" in Section* 258 *of Act XIV of* 1882, *and "satisfied" in Section* 210 *of Act XLV of* 1860.

The rule of Civil Procedure contained in the last clause of section 258 of the Civil Procedure Code (Act XIV of 1882)—that uncertified adjustments of a decree are not to be recognized by "any Court"—does not affect the substantive criminal law.

The words "any Court" in that clause have no application to a Criminal Court investigating a charge of fraudulently executing a decree under section 210 of the Indian Penal Code (XLV of 1860). Those words do not bar any criminal remedy which an injured judgment-debtor may have against a fraudulent decree-holder, whether by a prosecution under sections 193, 210, 406 or any other section of the Indian Penal Code.

In section 210 of the Indian Penal Code the word "satisfied" is to be understood in its ordinary meaning, and not as referring to decrees, the satisfaction of which has been certified to the Court.

Under section 235 of the Code of Civil Procedure (XIV of 1882) the decree-holder, or the party who applies for execution, is bound to state in his application any adjustment between the parties after decree, whether such adjustment has or has not been previously certified to the Court.

Paupayya v. *Narasannah*(1) followed.

Intentional omission to make such statement amounts to an offence under section 193 of the Indian Penal Code (XLV of 1860).

Section 199 of the Penal Code (XLV of 1860) does not apply to applications for execution containing false averments.

THIS was an appeal from the conviction and sentence passed by H. Batty, Joint Sessions Judge of Kaira.

The accused obtained a decree for Rs. 506-0-7 and costs against the complainant in 1880. He applied for execution on 1st June, 1881, and again on 25th May, 1882. No payment appeared to have been recovered under either of those applications. On 10th July, 1882, an adjustment was made between the parties out of Court. Under that adjustment the complainant paid

* Criminal Appeal, No. 193 of 1885.

(1) I. L. R., 2 Mad., 216.

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Rs. 277-11-6 in cash, and executed a bond for Rs. 385, payable in three instalments—two of Rs. 125 each, and one of Rs. 135. The first two instalments were paid by the middle of April, 1885. The accused did not certify to the Court either the fact of the adjustment or the payments made under the instalment bond, nor did the complainant inform the Court of the same. On the 15th June, 1885, the accused presented a third application for execution, in which he gave credit for Rs. 277-11-6—the sum paid in cash by the complainant on the day of the adjustment, but made no mention of the two instalments paid under the bond. He sought to recover Rs. 328-10-6, being the difference between the amount of his decree with costs and the sum for which he gave credit.

More than a year having passed since the last preceding application for execution, the Court issued a notice under section 248 of the Civil Procedure Code (XIV of 1882), and the complainant appearing, alleged the two payments mentioned above. The accused was thereupon examined by the Subordinate Judge, and denied the execution of the bond, as well as the receipt of Rs. 250, or any instalment whatever. His statements were found to be totally false; and he was proceeded against by the Subordinate Judge, who under section 643 of the Civil Procedure Code (XIV of 1882) sent the case to himself as First Class Magistrate, and under section 479 of the Criminal Procedure Code (X of 1882) committed the accused for trial to the Court of Session. He was convicted under sections 193 and 199 of the Indian Penal Code (XLV of 1860) for falsely stating in his verified application of 15th June, 1885, that the sum of Rs. 328-10-6 was due under his decree, whereas a smaller sum was really due, and under sections 210 and 511 for attempting by that application to fraudulently cause the decree to be executed after it had been satisfied. The accused was sentenced to suffer rigorous imprisonment for eight months and to pay a fine of Rs. 200, or, in default, to undergo two months' additional rigorous imprisonment. Against this conviction and sentence the accused appealed to the High Court.

Gokaldás Káhándás for the accused :—Section 258 of the Civil Procedure Code (XIV of 1882) debars "any Court" from recog-

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nizing an uncertified adjustment of a decree. The words "any Court" are not confined to a Court executing a decree, but apply to any Court before which the question of an uncertified adjustment is raised—*Pátankar* v. *Devji*(1). It was held in *Vináyek* v. *Jagoji*(2) that uncertified payments cannot be recognized by a Court in an inquiry under section 248. It follows, therefore, that the only payment, adjustment, or satisfaction of a decree that the law requires to be mentioned in an application under section 235 is a payment, adjustment, or satisfaction that has been previously certified to the Court. Omission to mention an uncertified adjustment does not, therefore, constitute any offence. As to the charge under section 210 of the Penal Code (XLV of 1860), I submit that the word 'satisfied' in that section is not used in its ordinary sense. It should be construed in the light of section 258 of the Civil Procedure Code (XIV of 1882). Under the last clause of that section, no Court, whether civil or criminal, can take cognizance of any satisfaction of a decree which has not been certified.

Pándurang Balibhadra, Acting Government Pleader, for the Crown:—Sections 235 and 258 of the Civil Procedure Code (XIV of 1882) are to be read together. Under both sections the decree-holder is bound to bring to the notice of the Court every adjustment of a decree, whether made through Court or out of Court. The last clause of section 258 no doubt debars "any Court" from recognizing uncertified adjustments. But there is nothing in section 235 to show that it imposes on the party applying for execution the duty of mentioning only such adjustments as have been certified. On the contrary the Madras High Court has held in *Paupayya* v. *Narsannah*(3) that section 235 requires all adjustments, both those which are certified and those which are not to be mentioned in a *darkhást*. Omission to mention such adjustments amounts to the offence of giving false evidence.

The expression "any Court" in the last clause of section 258 is held to mean "a Court executing a decree," and to refer to execution proceedings—*Sita Rám* v. *Mahipal*(4); *Shádi* v. *Gangá Sahái*(5). It does not debar a Court from entertaining a separate

(1) I. L. R., 6 Bom., 146.
(2) Printed Judgments for 1884, p. 202.
(3) I. L. R., 2 Mad., 216.
(4) I. L. R., 3 All., 533.
(5) I. L. R., 3 All., 538.

suit for recovering money fraudulently obtained under a decree—*Tegh Singh* v. *Amin Chand*[1]; *Viraraghava Reddi* v. *Subbakka*[2]; *Ishan Chunder* v. *Indro Náráin*[3]; *Porománand Khasnabish* v. *Khepoo Paramanick*[4]. Thus the High Courts of Calcutta, Allahabad and Madras are agreed in restricting the application of those words. In one case alone—*Pátankar* v. *Devji*[5]—this Court has put a wide construction upon those words. But even that ruling does not go the length of extending the application of those words to a Criminal Court inquiring into an offence under section 210 of the Penal Code (XLV of 1860). That this was not the intention of the Legislature, is plain from the fact that section 643 of the Civil Procedure Code (XIV of 1882) expressly empowers a Civil Court to take judicial notice of an offence under section 210 of the Penal Code (XLV of 1860), and send the accused for trial to a Criminal Court—*Queen* v. *Mutturaman Chetti*[6].

The rule contained in the last clause of section 258 of the Civil Procedure Code (XIV of 1882) does not bar the jurisdiction of Criminal Courts.

BIRDWOOD, J.:—There is no ground for holding that the evidence in this case has been wrongly appreciated by the Joint Sessions Judge and the Assessors. The question is, whether the conduct of the accused, as disclosed by the evidence, is punishable under the sections of the Indian Penal Code under which he has been convicted and sentenced.

The accused obtained a decree in the Civil Court, for Rs. 506-0-7 and costs, against the complainant, in April, 1880. The decree was confirmed, in appeal, in January, 1881. Applications for execution were made in June, 1881, and May, 1882. No payment seems to have been recovered under the first application. After the second application had been presented, an adjustment was made between the parties, in July, 1882, out of Court, by which the complainant agreed to pay Rs. 325, in cash, in Bábáshai currency, and to execute a bond for Rs. 385,

(1) I. L. R., 5 All., 269.
(2) I. L. R., 5 Mad., 397.
(3) I. L. R., 9 Calc., 788.
(4) I. L. R., 10 Calc., 354.
(5) I. L. R., 6 Bom., 146.
(6) I. L. R., 4 Mad., 325.

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payable in three instalments—two of Rs. 125 each and one of Rs. 135. The bond was duly executed and attested. The cash payment, agreed to, was made in July, 1882. The first instalment, due under the bond, was paid in two sums; the second payment having been made in November, 1883. The second instalment was paid in four sums, the fourth payment having been made in April, 1885. The third instalment of Rs. 135 has not yet been paid. The adjustment of July, 1882, was never certified by the accused to the Court, under section 258 of the Code of Civil Procedure (XIV of 1882), nor did the complainant inform the Court of it within the period of twenty days allowed him by article 161 of Schedule II of Act XV of 1877, as amended by Act XII of 1879. In June, 1885, the accused presented a third application for the execution of his decree, in which he gave credit to the complainant only for the sum of Rs. 277-11-6, (being the equivalent, in British currency, of Rs. 325 in Bábáshai currency), paid by the complainant in July, 1882, and claimed payment of Rs. 328-10-6, being the difference between the amount of his decree, with costs,—which amounted to Rs. 100-5-5,—and the sum for which credit was given. When examined by the Subordinate Judge, the accused denied the execution of the instalment bond and the receipt of any instalments under it.

Such being the facts of the case, it was for falsely stating in his verified application of June, 1885, that the sum of Rs. 328-10-6 was then due to him under his decree of 1880, that the accused was convicted under sections 193 and 199 of the Indian Penal Code (XLV of 1860), and for attempting, by that application, to fraudulently cause the decree "to be executed, after it had been satisfied" that he was convicted under sections 210 and 511; and, the questions of fact arising in this appeal having, as we are of opinion, been rightly decided by the Court of Session against the accused, the questions of law which remain to be decided are:—

(1). Whether the accused was "bound by law to make a declaration," in his application of June, 1885, upon the subject of the payments made by the complainant under the instalment bond of July 1882?

(2). Whether, by stating that a sum of Rs. 328-10-6 was due

under his decree, he gave false evidence, within the meaning of section 191 of the Indian Penal Code (XLV of 1860) ?

(3). Whether he gave such evidence in a stage of judicial proceeding ?

(4). Whether the declaration made by him as to the sum remaining due, under his decree, was one which the Civil Court was "bound" or authorized by law to receive as evidence of any fact ?

(5). Whether the statement contained in that declaration, that the sum of Rs. 328-10-6 was due, was one "touching any point material to the object for which the declaration" was "made?"

(6). Whether the plaintiff's decree was "satisfied" within the meaning of section 210 of the Indian Penal Code (XLV of 1860), in respect of the payments, under the instalment bond, aggregating Rs. 250, for which no credit was given in the application of June, 1885 ; and,

(7). Whether, by ignoring those payments, in his application of June, 1885, the accused attempted to commit the offence made punishable by section 210 ?

Before giving our answers to these questions, we observe that, after the case was committed to the Court of Session, it was referred to the High Court by the late Joint Sessions Judge, Mr. Crawford, with a view to the commitment being quashed, for reasons which he thus succinctly stated, with reference to those heads of the charge on which convictions have now been finally recorded by his successor, Mr. Batty :—"Under section 235 of the Civil Procedure Code (XIV of 1882) the judgment-creditor is bound to state in his *darkhást* 'whether any and what adjustment of the matter in dispute has been made between the parties subsequent to the decree.' It is argued that the word 'adjustment' here includes adjustments not certified to the Court under section 258. But adjustments not so certified are not to be 'recognized by any Court;' it would, therefore, appear to be improbable that the Legislature should have wished to compel a judgment-creditor to make statements in his *darkhást* of matters which the Court could not

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recognize. If it be argued that he would not be compelled to set out matters, which, having been certified to the Court, were within its knowledge, it may be answered that he has to set out other matters equally within its knowledge, such as whether an appeal has been made, and the previous applications for execution, if any. It has been, moreover, held that payments not certified to the Court cannot be recognized by it in an inquiry under section 248—*Vináyak* v. *Jagoji*(1). I feel, therefore, no doubt that such an adjustment as that in question was not required under section 235 to be mentioned by accused in his *darkhást*, and that his omission to mention it does not constitute a false statement under sections 199 and 193 of the Indian Penal Code (XLV of 1860).

"But it is argued that the decree having been satisfied, though out of Court, the charge of an offence, under section 210, holds good, and the decision of the Madras High Court in *The Queen* v. *Mutturaman Chetti*(2) is cited in support of this view. But if the Court, which alone had jurisdiction in the matter—*Pátankar* v. *Devji*(3)—could not recognize the claim as satisfied, it follows that accused was legally entitled to renew it, and he cannot be said to have done fraudulently what he was entitled to do legally."

The Division Bench of this Court, before which the reference came, declined to decide any questions of law arising on the merits of a case, the trial of which had already commenced. The trial, therefore, proceeded and has resulted in the convictions now appealed against. We would observe generally, with reference to the objections taken by Mr. Crawford to the commitment, that, if the effect of the change in section 258 of the Code of Civil Procedure of 1877, made by Act XII of 1879, which is embodied in the present Code of 1882, is to bar the criminal prosecution of a judgment-creditor who seeks to execute a decree which has already been satisfied out of Court, but of which the satisfaction has not been certified to the Court, then section 210 of the Indian Penal Code (XLV of 1860) would become practically inoperative as regards frauds of this kind. No diffi-

(1) Printed Judgments for 1884, p. 202. (2) I. L. R., 4 Mad., 325.
(3) I. L. R., 6 Bom., 146.

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culty would probably have been felt in connection with the present case, but for the decision of this Court in *Pátankar* v. *Devji*[1], which puts a wider construction on the words "any Court," in the concluding clause of section 258, than has been put on those words by the High Courts of Calcutta and Allahabad. In Civil Reference No. 27 of 1884, Sargent, C.J., and Kemball, J., held that the language of that clause was "too distinct and peremptory to allow of a payment which has not been certified, as required by that section, being recognized by the Court in an inquiry under section 248"—*Vináyak Vishnu Lonkar* v. *Jagoji* [2]. But that ruling alone would not warrant such an extended construction of the words in question as would bar the recognition by a Criminal Court of any satisfaction of a decree which had not been duly certified; for sections 248 and 258 of the Code both occur in Chapter XIX, which relates to the execution of decrees, and it has not been held by any of the High Courts that the concluding clause of section 258 would not apply to all Courts whose duty it might be to execute decrees. This Court held, however, in *Pátankar* v. *Devji*[1], which was decided by Melvill and Pinhey, JJ., that the recovery of money paid to a judgment-creditor out of Court, and not certified, is barred by section 244 *c* of Act X of 1877 and the last paragraph of section 258, as amended by Act XII of 1879. Melvill, J., said: "The Court regrets to come to the conclusion that judgment-debtors have been thus deprived by a change in the law of a remedy against fraud which they previously possessed." The Court, in effect, held the section to be applicable, not only to a Court executing a decree, but to a Court hearing a suit by the judgment-debtor for "damages for the breach of the implied promise" by the decree-holder to certify to the Court the payment made by the plaintiff, and "thereby make it effectual in execution;" for that is the true nature of such a suit, as pointed out by Turner, C. J., in *Viraraghava Reddi* v. *Subbakka*[3]. The Allahabad High Court has held, in *Sitá Rám* v. *Mahipal*[4], that the words "any Court" have reference to proceedings in execution, and refer to the Court or Courts ex-

(1) I. L. R., 6 Bom., 146.
(2) Printed Judgments for 1884, p. 202.
(3) I. L. R., 5 Mad., 397.
(4) I. L. R., 3 All., 533.

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ecuting a decree. "They have no application," remarks Straight, J., "to a Civil Court entertaining a separate suit asking for specific and legitimate relief of the character now prosecuted by the plaintiffs-appellants." That was a suit by a judgment-debtor for the recovery of the decree against him, which had been assigned to him by the judgment-creditor by way of sale. The same High Court affirmed the same view as to the application of the last paragraph of section 258 of the Code in *Shádi* v. *Gangá Sahai*(1). And these two cases were followed by the Calcutta High Court in *Poromanand Khasnabish* v. *Khepoo Paramanick*(2). The Bombay case—*Pátankar* v. *Devji* (3)—was referred to by the Calcutta High Court, but not followed. It is not for us, in the present case, to express any opinion on the particular question as to the right of a judgment-debtor to maintain a suit against a fraudulent decree-holder which was decided in *Pátankar's* (3) case. We have referred to that case, however, as it shows that the restricted interpretation placed on the last paragraph of section 258 of the present Code by other High Courts has not yet been adopted by this Court. But we hesitate to extend still further the interpretation of the paragraph by applying it to Criminal Courts. Having regard to the position of the section in a law which relates only to civil procedure, we are not prepared to say that it was the intention of the Legislature, by enacting it, to bar any criminal remedy which an injured judgment-debtor might have had against a fraudulent decree-holder, whether by a prosecution under sections 193, 210, 406, or any other section of the Indian Penal Code (XLV of 1860).

Turning, then, to the particular questions raised by this appeal, which we have set forth already in sufficient detail, we find that section 257 of the Code of Civil Procedure (XIV of 1882) provides three different methods for the payment of money under a decree: (*a*), payment into the Court executing the decree; (*b*), payment out of Court to the decree-holder; (*c*), payment otherwise, as the Court which made the decree may direct. If payment is made out of Court, or if the decree is otherwise adjusted, or if any payment is made under section 257A, then section 258 distinctly

(1) I. L. R., 3 All., 538. (2) I. L. R., 10 Calc., 354. (3) I. L. R., 6 Bom., 146.

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imposes on the decree-holder the duty of certifying such payment or adjustment to the Court whose duty it is to execute the decree. No option is given him in the matter by the first paragraph of the section. He acts illegally if he does not certify the payment or adjustment. Now, section 235 of the Code, which relates to the form and contents of an application for execution, must, we think, be read with section 257, just as section 258 must be read with it. The law, apparently, intends that, when an application is made for execution, there shall be no concealment of any payments or adjustments which it was the duty of the decree-holder to certify. It seems to give the decree-holder indeed the opportunity of making good any omissions which he may have been guilty of from negligence or fraud. It prescribes a tabular form for applications for execution, in column (*e*), of which the decree-holder is required to state "whether any and what adjustment of the matter in dispute has been made between the parties subsequently to the suit," and in column (*g*) he must state "the amount of the debt * * * , if any, due upon the decree, * * ." In *Paupayya* v. *Narasannah*[1] the Madras High Court has held that "section 235 puts on the party applying for execution the obligation of stating any adjustment between the parties after decree,—that is, any matter not done through the Court, as well as any agreement through the Court." And we concur in that ruling; for the language of section 235 and the first paragraph of section 258 is as distinct and peremptory as the language of the last paragraph of section 258; and there is nothing in section 235 to suggest that it was the intention of the Legislature to limit the application of clauses (*e*) and (*g*) of section 235 only to such payments or adjustments under sections 257 and 257A as had already been certified to the Court, and to exclude its application to payments made under clause (*b*) of section 257 which it was nevertheless the bounden duty of the decree-holder to certify under the first paragraph of section 258. No doubt, the payment or adjustment, till certified, would be ineffectual in satisfaction of the decree. In the present case, the accused could not have brought a suit on the instalment bond passed to him by the complainant. The bond was not legally binding on him,

(1) I. L. R., 2 Mad., 216.

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being without consideration—*Pándurang Rámchandra Chowghule* v. *Narayan*(1). But, nevertheless, he actually recovered money under the bond; and such money was, at all events, paid under the decree, in the manner contemplated in clause (*b*) of section 257, though it could not be recognized by a Court executing the decree, till certified; and the accused's fraud and disobedience of the law, in concealing the adjustment of July, 1882, and the payments under the instalment bond, from the Court, cannot be regarded as consonant with the intention of the Legislature, as expressed in section 235. No authority was cited to us, on behalf of the appellant, in opposition to the ruling of the Madras High Court, in *Paupayya* v. *Narasannah*(2), which we have adopted.

We, therefore, find, on the first point which arises for determination in this appeal, that the accused was bound by section 235 of the Code of Civil Procedure to make a declaration in column (*e*) of his verified application of June, 1885, as to the adjustment of July, 1882, and, (as column (*g*) must be read with column (*e*)), to give credit in column (*g*) for the payments made under the instalment bond. By falsely stating in column (*g*) that the sum of Rs. 328-10-6 was then due, whereas a smaller sum was really due, under the adjustment, which the accused was bond to refer to in column (*e*), we are of opinion that the accused made a statement which was false, and which he knew to be false; and, as a statement is within the meaning of section 191 of the Indian Penal Code, whether made "verbally" (*i.e.*, orally) "or otherwise," we find, on the second point for determination, that the accused gave false evidence; and as the presentation of his application was clearly a stage of a judicial proceeding, we affirm the conviction under section 193 of the Indian Penal Code.

Points (4) and (5) arise with reference to the conviction under section 199. We doubt whether that section was intended to apply to applications for execution containing false averments, inasmuch as section 193 already provides for such averments. Nor is there, apparently, any express provision of law which

(1) I. L. R., 8 Bom., 300. (2) I. L. R., 2 Mad., 216.

binds or authorizes a Court to receive a verified application as "evidence of any fact," although, for the purposes of sections 191 and 193, a false averment in such an application is regarded as false evidence—*In re Haran Mandal*[1]. We, therefore, reverse the conviction recorded by the Joint Sessions Judge against the accused under section 199 of the Indian Penal Code, and acquit the accused of the offence of which he was convicted under it.

For the reasons already given, we are of opinion that the words "any Court," in the last paragraph of section 258 of the Code of Civil Procedure, have no application to a Criminal Court investigating a charge under section 210 of the Indian Penal Code. In construing section 210, it was necessary, we think, for the Joint Sessions Judge to attach to the word "satisfied" its ordinary meaning, and not to understand it as referring only to decrees, the satisfaction of which has been certified. The word 'satisfaction' is used in its ordinary sense in the first paragraph of section 258 of the Code of Civil Procedure; and if the Legislature had intended the last paragraph of that section to have any application to Criminal Courts, care would probably have been taken to express such an intention clearly. We are of opinion, therefore, that the accused's decree was 'satisfied,' within the meaning of section 210 of the Indian Penal Code, in respect of the payments, aggregating Rs. 250, under the instalment bond of July, 1882, for which no credit was given in the application of June, 1885; and, if this view is correct, then, there can be no question that, by presenting that application and denying the execution of the bond, the accused attempted to commit the offence made punishable by section 210. He attempted to fraudulently cause a decree to be executed against the complainant for the two payments in question, in respect of which it had been satisfied. We, therefore, affirm the conviction under sections 210 and 511.

The appeal is dismissed as regards the convictions under sections 193 and 511 and 210 of the Indian Penal Code; and allowed as regards the conviction under section 199. It is dismissed as regards the sentence.

(1) 2 Beng. L. R., Ap. Ju., Cr., 1.

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JARDINE, J.:—I think the Joint Sessions Judge was right in holding that the rule of civil procedure contained in the last clause of section 258 of the Code of Civil Procedure does not affect the substantive criminal law. That Code requires that adjustments made out of Court shall be certified, and provides a procedure for the purpose. Uncertified adjustments, it goes on to say, are not to be recognized by any Court. But the words do not seem to me to be used in order to bar the jurisdiction of the Criminal Courts. The learned Judge is right in seeking analogies in enactments about limitation, or those which prohibit the Civil Courts from admitting as evidence unstamped or unregistered documents which require stamp or registration. To say, however, that claims or documents rejected on grounds like these may not be the subject of criminal prosecution, would be erroneous. Such a doctrine would allow impunity to many frauds; whereas one great function of the Courts is to repress fraud. The argument that the act cannot be fraud, because the Civil Courts, which are Courts of Equity, do not relieve against it, appears to me inapplicable, as section 643 of the Civil Procedure Code empowers the Civil Courts to detain persons accused of having committed the offences described in sections 193, 210 and other sections of the Indian Penal Code, and to send such persons before Magistrates. The power relates to "any such offence;" the language of sections 195 and 476 of the Criminal Procedure Code, which also relate to criminal prosecutions, is equally wide; no exceptions are made with reference to adjustments unrecognized by Civil Courts, nor has any such exception been created by the Act passed to amend the Indian Penal Code in 1882, or that to amend the Criminal Procedure Code passed in 1884. The interpretation we adopt not only avoids the result of leaving fraud unpunished, but assists in carrying out the plain intention of the Civil Procedure Code, sections 235 and 258 of which impose on decree-holders the duty of giving the Court information about adjustments made out of Court. We have not been referred to any decision to the contrary; and *The Queen* v. *Mutturaman Chetti*[1] is a direct authority, as to the applicability of the provisions of section 643 of the Civil

[1] I. L. R., 4 Mad., 325.

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. RUKMÁBÁI, (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.