

1896.

BAT
SHIR INBAI
v.
KHARSHEDJI.

for the appellant that the Assistant Judge has not understood the distinction between practice and custom, and that his finding amounts to nothing more than (what is conceded) a finding as to the common practice of infant marriages amongst Pársis. The Assistant Judge, however, finds that *the custom was both common and recognized as binding*, which shows that he fully appreciated the distinction as we should expect that a judge of the judicial acumen and knowledge of the Assistant Judge in this case would certainly do.

It is lastly urged that by the upheaval of opinion amongst enlightened Pársis upon this subject which resulted in the passing of Act XV of 1865 the custom, if it prevailed as a custom, was as it were broken up, and that after that time no such custom could as a binding custom exist, but we cannot accede to that argument. No doubt the more enlightened amongst Pársis revolted against the practice and desired that it should cease to be treated as a custom, but it is impossible to read the passages to which our attention was directed without seeing that the writers of them believed that the custom against which they inveighed in their view existed as such. If they thought that infant marriages allowed children the option of repudiating them on attaining years of discretion, there would have been no need for their asking for special legislation in the matter. The Pársi law would in this view have been in accord with the English law upon the same subject. The practice only would have needed reformation. We must confirm the decree with costs.

Decree confirmed.

CRIMINAL REFERENCE.

Before Mr. Justice Parsons and Mr. Justice Bannard.

IMPERATRIX v. NARAYAN VAMANAJI PATIL.

1896.
September 3.

Criminal Procedure Code (Act X of 1882), Sec. 545—Compensation—Injury caused by the offence committed—Indirect consequences resulting from the offence.

Compensation for loss caused by inability of the complainant to attend to his work on account of his time being taken up with the prosecution of the accused.

* Criminal Reference, No. 80 of 1896.

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IMPERATRIX
v.
NARAYAN.

cannot be ordered to be paid under section 545 of the Code of Criminal Procedure (Act X of 1882), which deals with expenses incurred in the prosecution and with compensation for the injury only.

This was a reference by H. F. Silcock, District Magistrate of Násik, under section 438 of the Code of Criminal Procedure (Act X of 1882). The accused was convicted by the Second Class Magistrate of Dindori under section 504 of the Indian Penal Code (Act XLV of 1860) and sentenced to pay a fine of Rs. 12.

Rs. 5 out of the fine, which was recovered, were ordered by the Magistrate to be given to the complainant as compensation for the trouble and annoyance he had to suffer in prosecuting the accused and for the loss sustained by him for stoppage of his work.

Thereupon the District Magistrate of Násik referred the case for the orders of the High Court under section 438 of the Code of Criminal Procedure (Act X of 1882). He was of opinion that the Magistrate's order was illegal "inasmuch as the section (section 545, clause *b*) allows the fine to be applied in compensation for the injury caused by the offence committed." He referred to 7 Mad. H. C. Rep., Appx. XIII and to the *Queen v. Reddon*⁽¹⁾.

There was no appearance either for the accused or for the Crown.

The reference was heard by a Division Bench (Parsons and Ranade, JJ.)

PER CURIAM:—The Magistrate has ordered compensation for loss of time, in that the complainant could not go on with his field work on account of the prosecution of the accused. We do not think that this comes within the provisions of section 545 of the Criminal Procedure Code which deals with expenses incurred in the prosecution and with compensation for the injury only.

We reverse the order of compensation.

Order reversed.

(1) I. L. R., 6 Mad., 286.