1868. March 9. C. P. No. 224 of 1867.

first and third charges must be quashed, and the 2nd prisoner set at liberty. The conviction of the 1st prisoner on the 2nd charge is supported by the evidence and must be affirmed. But the sentence on that charge is very excessive. Rigorous imprisonment for the term of 2 years we think a sufficiently severe punishment, and the sentence must be accordingly reduced.

Appellate Jurisdiction (a)

Criminal Petition No. 12 *of* 1868.

SUNDARA DASS TEVAN..........................*Petitioner.*

In a charge under Section 498 of the Penal Code, the words of the Section "conceals or detains" must be taken to extend to the enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so, as well as to physical restraint or prevention of her will or action. Depriving the husband of proper control over his wife for the purpose of illicit intercourse is the gist of the offence, and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishments.

1868. March 13. C. P. No. 12 of 1868.

PETITION against the proceedings of F. S. Child, the Session Judge of Tinnevelly, dated the 27th October 1867, held in Case No. 96 of 1867, on the file of the Deputy Magistrate, upon an appeal filed by the petitioner against the sentence passed in the said case.

Mayne, for the petitioner.

The Court delivered the following

JUDGMENT:—We have considered the depositions on record in this case and are of opinion that there is really no evidence of the accused persons having detained the wife of the complainant for the purpose of illicit intercourse. The conviction, therefore, under Section 498 of the Penal Code, must be set aside.

We are not, however, to be understood as deciding the case on the ground that physical constraint of the wife is an essential of the offence. We are quite of a different opinion. The words of the Section "conceals or detains," may and were, we think, intended to be applied to the

(a) Present: Scotland, C. J. and Ellis, J.

1868.
March 13.
C. P. No. 12
of 1868.

enticing or inducing a wife to withhold or conceal herself from her husband, and assisting her to do so as well as to physical restraint or prevention of her will or action. Depriving the husband of his proper control over his wife, for the purpose of illicit intercourse, is the gist of the offence, just as it is of the offence of taking away a wife under the same section (*See Reg.* v. *Kumarasámy,* 2 M. H. C. Rep. 331), and a detention occasioning such deprivation may be brought about simply by the influence of allurements and blandishment.

Here there is no reasonable evidence to show that the woman had not perfect freedom to leave the house, or that any allurement or persuasion was required or used to induce her to remain. There is, however, a difficulty in saying that the statements of the complainant and the 2nd witness are not some evidence of the offence of taking away the woman. But it is very slight evidence, and in our opinion wholly insufficient proof when the other evidence is considered, and therefore does not bring the case within section 426 of the Criminal Procedure Code, which provides against the reversal of a sentence when "in the judgment of the Court the accused person ought on the evidence to have been found guilty of an offence."

The convictions and sentences must be quashed, and the fines levied returned to each of the defendants.

Convictions quashed.