in every way to order an accused person to be tried over and over again for the same offence, unless under very peculiar circumstances. In the present instance there is nothing peculiar in the circumstances to warrant a third trial: and it seems to us wrong and improper (within the meaning of s. 294) that an order should be made directing the prosecution to be now recommenced.

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IN THE MATTER OF THE PETITION OF MOHESH MISTREE.

The order of the 10th of February and all the subsequent proceedings are quashed.

Order quashed.

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Pontifex.

HARRIS *v.* HARRIS.

HARRIS *v.* KOYLAS CHUNDER BANDOPADIA.

1876
May 16.

Husband and Wife—Married Woman's Property Act (III of 1874), ss. 7 and 8—Succession Act (X of 1865), s. 4—Action for Trover—Wife against Husband.

The plaintiff was, at the time of her marriage in 1870, possessed in her own right of certain articles of household furniture, given to her by her mother. Since January 1875 she had lived separate from her husband, but the furniture remained in his house. In February 1875, her husband mortgaged the property to *B*, without the plaintiff's knowledge or consent. In June 1875, one *KCB*, a creditor, obtained a decree against the husband and *B*, in execution of which he seized the furniture as the property of the husband, and it remained in Court subject to the seizure. In July 1875, the plaintiff instituted a suit in her own name in trover to recover the articles of furniture or their value from her husband, on the ground that they were her separate property, and in August 1875 she preferred a claim in her own name to the property under s. 88 of Act IX of 1850. It was found on the facts that the furniture was the property of the plaintiff. The husband and wife were persons subject to the provisions of the Succession Act, s. 4, and the Married Woman's Property Act, 1874.

Held that, under s. 7 of the latter Act, the suit was maintainable against the husband.

Held also, that the judgment for the plaintiff in the suit, to recover the furniture or its value from the husband, could not, without satisfaction, have the

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effect of vesting the property in the husband from the time of the conversion, and therefore the claim under Act IX of 1850 was also maintainable.

Brinsmead v. *Harrison* (1) followed.

CASE referred for the opinion of the High Court, under s. 55, Act IX of 1850, by G. C. Sconce, the officiating first Judge of the Calcutta Small Cause Court.

The material portion of the reference was as follows:—

"The first suit was instituted, in her own name, on the 12th July 1875, by Ella Harris, a married woman, against her husband. It is a suit in trover to recover certain household furniture, alleged by the wife to be her separate property, or its value.

"Ella Harris is an East Indian woman. She was married to her husband P. H. Harris in Calcutta, on the 24th of January 1870, at the Church of the Sacred Heart, Dhurrumtollah. They are both Roman Catholics. They lived and cohabited together at 22 Kenderdine's Lane, where the husband still resides. The wife's mother, Mrs. Noel, lived with them, and still resides there with Mr. Harris. P. H. Harris is the son of one J. M. Harris, who died in Calcutta in 1865. The son believes that his father was born in England, but he had long made Calcutta his home, and had acquired a domicile here. P. H. Harris was born in Calcutta, where he has always lived, and he had no other domicile. He has no relatives in England. He is 25 years old, and employed in the Military Secretariat. On the 20th January 1875, Mrs. Harris left her husband, and eloped with a man called Margray, who was afterwards prosecuted by the husband to conviction for adultery. The wife has not since returned to her husband, but lives with some friends at 7 Emambaugh Lane in Calcutta. The marriage has never been dissolved.

"The plaintiff, was at the time of marriage, possessed of the articles of furniture in her own right, which were given to her by her mother. A wing almirah was bought by Mrs. Noel, the mother of Mrs. Harris, about a year after her daughter's marriage, and given by her to her daughter. The present value of all the property is stated to be Rs. 200. The property until very lately remained in the husband's house and under his charge. Subsequently to the separation, the plaintiff demanded

(1) L. R., 6 C. P., 584.

the above property from her husband, who, on the 11th June 1875, sent her the following letter: "It is not for me to deprive you of your property, you are, therefore, at liberty to take it away whenever you want, and in whatever way you please." Mr. Harris afterwards refused to give up the property, telling his wife, she might, if she could, recover it through the Court. After his wife left him, Mr. Harris mortgaged the property in February 1875, without her knowledge or consent, to one Mr. Bouchez, but the property remained in his (Harris') own house. Bouchez subsequently, on the 17th June, obtained a decree against him, which is still unsatisfied. On the 12th July, Mrs. Harris instituted in her own name the suit in trover against her husband, to recover the property or its value. The husband did not appear to defend the suit brought against him, but I considered his evidence necessary in both suits which are now before the Court, and I desired his attendance that he might be examined personally."

After setting out s. 4 of Act X of 1865, and ss. 7 and 8 of the Married Woman's Property Act, 1874, the Judge, who referred the case, continued:—"I entertain considerable doubt whether the Legislature intended so absolutely to abolish the doctrine of unity of person between husband and wife as to enable them to sue each other during the marriage, about the right to possession by one or the other of some portion of the furniture in what should be the common dwelling-house, or about some petty debt: and I do not apprehend that such suits ever would be brought, except upon some domestic difference, more or less serious, arising.

"I now come to the second suit. It is an interpleader suit instituted, on the 18th August 1875, by Ella Harris in her own name, against Koylas Chunder Bandopadia, who obtained judgment against P. H. Harris and Mr. Bouchez on the 25th June 1875 last. Koylas Chunder Bandopadia, on the 11th August, in execution of his decree, by a warrant of this Court, seized all the articles but one which Mrs. Harris claims in the suit against her husband, supposing them to be the property of P. H. Harris his judgment-debtor. The property is at present in Court under the seizure. It was

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seized in the house 22 Kenderdine's Lane, where Ella Harris had left it. Baboo Odoy Chunder Bose, the pleader, who appeared on behalf of Koylas Chunder Bandopadia, contended that, if the plaintiff recovered a judgment against her husband in the trover suit, that such judgment would vest the property in the goods in the husband from the time of the conversion, and that therefore the articles, when seized by Koylas Chunder Bandopadia in execution of his decree, must be deemed to be the property of P. H. Harris, the judgment-debtor."

After referring to the *dictum* of Jervis, C.J., in *Buckland* v. *Johnson* (1) and the case of *Brinsmead* v. *Harrison* (2), and finding on the evidence that the articles claimed in the suits were the property of Mrs. Harris and not of her husband, the learned Judge gave judgment for the plaintiff in both suits contingent on the opinion of the High Court, as to whether, under the circumstances stated, the suits or either of them were maintainable.

No Counsel appeared for either party in the High Court.

The following was the opinion of the Court :

GARTH, C.J.—We are of opinion that both these suits have been correctly decided.

Mrs. Harris was entitled as against her husband to the property in question, and could sue him for it under s. 7, Act III of 1874.

If the suit was to recover the articles themselves or their value, it was in form an action of *detinue*, not of trover; but, whatever the form may have been, we are of the same opinion as the Court of Common Pleas in *Brinsmead* v. *Harrison* (3), that a judgment in such a suit, without satisfaction, does not change the property in the goods. The true explanation of the doctrine attributed to Jervis, C.J., in *Buckland* v. *Johnson* (4)

(1) 15 C. B., 145, see pp. 162 & 163.

(2) L. R., 6 C. P., 384; see p. 588, *per* Willes, J., and the same case on appeal, L. R., 7 C. P., 547, *per* Blackburn and Lush, JJ.

(3) L. R., 6 C. P., 584. (4) 15 C. B., 145.

is this, that a man who has recovered the value of his goods in one action in the shape of damages, shall not be allowed to recover the goods themselves in another action; but this reason only applies when the damages have been actually recovered.

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PRIVY COUNCIL.

JUMOONA DASSYA (PLAINTIFF) v. BAMASOONDARI DASSYA (DEFENDANT).

P. C.*
1876
Feb. 8, 9, & 10.

[On appeal from the High Court of Judicature at Fort William in Bengal.]

Adoption, Suit to set aside—Infant Marriage—Presumption as to Age—Power of Minor to give permission to adopt—Regs. X of 1793, *s.* 33, *and XXVI of* 1793, *s.* 2—*Minor under Court of Wards—Onus probandi—Estoppel.*

The foundation for infant marriages among Hindus is the religious obligation which is supposed to lie on parents to provide for a daughter, so soon as she is *matura viro,* a husband capable of procreating children; the custom being that when that period arrives, the infant wife permanently quits her father's house, to which she had returned after the celebration of the marriage ceremony, for that of her husband. The presumption, therefore, is, that the husband, when called upon to receive his wife for permanent cohabitation, has attained the full age of adolescence and also the age which the law fixes as that of discretion.

According to the Hindu law prevalent in Bengal, a lad of the age of fifteen is regarded as having attained the age of discretion, and as competent to adopt, or to give authority to adopt, a son.

Semble.—The operation of s. 33, Reg. X of 1793, which, read together with s. 2, Reg. XXVI of 1793, prohibits a landholder under the age of eighteen from making an adoption without the consent of the Court of Wards, is confined to persons who are under the guardianship of the Court of Wards.

Quære, whether a decree in favour of the adoption passed in a suit by a reversioner to set aside an adoption is binding on any reversioner except the plaintiff; and whether a decision in such a suit adverse to the adoption would bind the adopted son as between himself and any other than the plaintiff.

APPEAL from a decision of the High Court, Calcutta (KEMP and PONTIFEX, JJ.), dated the 14th February 1873, reversing

* *Present:*—SIR J. W. COLVILE, SIR B. PEACOCK, SIR M. E. SMITH, AND SIR R. P. COLLIER.