hibition: *Herbert* v. *Easton*, 43 Ala. 547; *Williams* v. *Haines*, 27 Iowa 251; *Rutland* v. *Copes*, 15 Rich. 84; *Kirtland* v. *Molton*, 41 Ala. 548. But on the other hand, where a mortgage contained a power to the creditor to sell on breach of condition, it was held that a subsequent law giving the mortgagor twelve months to redeem the property from the purchaser at such sale, so altered the remedy of the creditor as to impair the obligation of the contract. TANEY, C. J., said: "If such rights may be added to the original contract by subsequent legislation, it would be difficult to say at what point they must stop. An equitable interest in the premises may, in like manner, be conferred upon others; and the right to redeem may be so prolonged as to deprive the mortgagee of the benefit of his security, by rendering the property unsalable for anything like its value:" *Bronson* v. *Kinzie*, 1 How. 311; *Howard* v. *Bugbee*, 24 Id. 461; *Malony* v. *Fortune*, 14 Iowa 417. And again, a state law forbidding property levied on execution to be sold for less than two-thirds of its appraised value, so far obstructs the remedy as to impair the obligation of the contract, and cannot apply to debts accrued before its passage: *McCracken* v. *Hayward*, 2 How. 608; *Moore* v. *Fowler*, 1 Hemp. 536.

XIV. *State Constitutions.*—State constitutions are "laws" within the meaning of the limitation: *Railroad* v. *McClure*, 10 Wall. 511; *Lehigh Valley Rd. Co.* v. *McFarlan*, 31 N. J. Eq. 706. But "there is nothing in the constitution of the United States which forbids Congress to pass laws violating the obligation of contracts, although such a power is denied to the states individually:" *Evans* v. *Eaton*, Pet. C. C. 337.

H. CAMPBELL BLACK.

Williamsport, Pa.

RECENT ENGLISH DECISIONS.

High Court of Justice; Probate Division.

HAWKINS v. HAWKINS & HOPE.

A petitioner and respondent separated by mutual consent shortly after the marriage, and only met once afterwards. The petitioner allowed her a small sum for her support, and sixteen years after the marriage discovered that she had committed adultery: *Held*, under the circumstances, that the petitioner had conduced to the adultery. Petition dismissed.

THIS was a petition for the dissolution of marriage by reason of the adultery of the wife.

The parties were married on the 13th of July 1863, at St. James' Church, Piccadilly. The petitioner had become acquainted with the respondent (who was a shop girl) some short time previously, and had been improperly intimate with her, and compelled by her father to marry her. At the time of the marriage the petitioner was entirely dependent upon his uncle and aunt, and it was arranged between him and the respondent that the marriage should be kept secret.

A few days after the marriage the parties separated and never cohabited again, the petitioner allowing his wife from 2*l.* to 4*l.* a month, which he remitted to her by letter. They met once at Charing Cross about sixteen years after the marriage, when something was said about living together, but neither party seemed desirous of doing so. With that exception they had not seen each other until shortly before the institution of this suit, when the petitioner discovered that the respondent had been, for some years, living in adultery. The petitioner's uncle died in 1870 leaving all his property to the aunt, and she died in 1881, bequeathing a considerable fortune to the petitioner.

The respondent's adultery was proved, and she was called as a witness in support of her case.

Sir J. HANNEN (President).—The petitioner in this case seduced the respondent when she was a young woman, and her father having brought pressure upon him to marry her, the petitioner required her to keep the marriage secret, as if it was known to the uncle and aunt they would not leave him their property; but even after the uncle's death the petitioner continued to live apart from his wife, although he introduced her to his aunt as the person whom he intended to marry. Every husband is bound to give his wife that protection which the society of a husband affords, and the fact that the respondent had been familiar with him before marriage made that duty more incumbent upon him, she being a person who might be more likely to yield to temptation. Having regard, therefore, to the petitioner's conduct in leaving his wife without a husband's protection, and being of opinion that that conduct conduced to her adultery, I consider that he is not entitled to a dissolution of his marriage. Petition dismissed with costs.

Collusion and connivance, it is universally agreed, prevent a husband from obtaining a divorce. They both are but phases or shades of the same disposition,

intent, desire or willingness on the part of the husband that his wife shall commit some act, which is by statute made a cause of divorce. The divorce statutes seldom, if ever, expressly declare that such conduct of the husband shall bar his divorce, but inasmuch as their language generally is that divorces "may be" granted for such and such causes, the courts practically interpret it to mean that in some cases they may not be, and that in their discretion they can and will refuse it, although the act alleged be fully proved, if the husband himself has been a consenting party, though not guilty of any similar act, or of any conduct warranting a divorce on the wife's application.

Indeed, the law of recrimination rests upon a similar ground. The statute law does not expressly say that adultery by the husband is an absolute bar to obtaining a divorce from the wife for the same cause, nor *vice versa*.

But the courts refuse to exercise their power in all such cases, on the broad ground that a party guilty of violating the marriage bond shall not have the assistance of the court to enforce any marital right: *Hope* v. *Hope*, 1 Sw. & Tr. 107.

And connivance is a bar therefore, on the broad general ground that consent takes away any remedy. *Volenti non fit injuria*.

Therefore, it was held in *Pierce* v. *Pierce*, 3 Pick. 299 (1825), that though the adultery of the wife was proved, the divorce must be refused, because there was "reason to think that the husband was the cause of its being committed." "It would be," say the court, "a dangerous principle to establish, that a husband who had suspicions of the infidelity of his wife, shall be allowed to lay a train which may lead her to the commission of adultery, in order that he may take advantage of it to obtain a divorce. As we are clear that the adultery proved was committed with the knowledge and consent of the libellant, and probably with his connivance, a divorce will not be granted."

Actual "connivance," therefore, is always recognised as a bar to a decree. See *Cairns* v. *Cairns*, 109 Mass. 408.

The more delicate question is what state of mind, or will, on the part of a husband, not amounting to contrivance or connivance exactly, but merely willingness, or perhaps indifference on his part is sufficient to have the same effect. This question arose in *Morrison* v. *Morrison*, 136 Mass. 310 (1884), in which the judge who tried the cause found simply this state of facts: "The husband did no act directly to encourage the adultery in his wife, and he did nothing to prevent it. He went to bed early, sometimes leaving her and another man together in the sitting room, and suspecting that they might commit adultery, and knowing that the detective previously employed by him, would probably be on the watch to discover it; he made no remonstrance or objection against their being together; he concealed his suspicions from both of them; he took no pains to protect her from seduction. And from the various circumstances," said the judge, "I find that from the time when his suspicions were first excited, he was in his own mind willing that she should commit adultery, provided he could thereby obtain a divorce; and he expected that she would commit adultery, and that he should obtain proof of it, and thus be enabled to procure a divorce." And his refusal to grant a divorce was sustained by the full court, on his report whether his decision was right. The court say that this was sufficient to warrant the finding of connivance, whether they should or should not have drawn the same inference from the existing facts. If there was any mistake here, it was in drawing too unfavorable a conclusion against the husband from the facts actually proved. The presiding judge does not exactly say, on his

report, that he found the actual fact of a "connivance," although the court above seem to have so considered it.

Mr. Bishop, in his valuable book on Marriage and Divorce, thus states the law on this point:

"The law requires the husband to watch over the morals of his wife; and protect her against associations which might expose to hazard her purity, or by lowering her standard of virtue, prepare the way for the approaches of the seducer. Hence, while his want of attention to her selection of associates, to her morals, and to her conduct in other respects, is not of itself connivance, it may be strong, sometimes satisfactory evidence of it:" 2 Mar. and Div., sect. 17. Elsewhere he says, that though connivance may be passive as well as active, yet there must be a complete consent on his part; and there can be no connivance without such consent, active or passive; and as the law does not take cognisance of thought merely, there must be some act, word, or omission of duty blending with a passive willingness to have the wrong committed. And that a real intention to have the wife transgress, or at least an intention to allow her to do so undisturbed and unprevented, must exist in order to amount to connivance, very distinctly appears from the important cases of *Phillips v. Phillips*, 3 Notes of Cases 444; 4 Id. 524; *Moorsom v. Moorsom*, 3 Hagg. 105; *Hoar v. Hoar*, Id. 137; *Hoges v. Hoges*, Id. 123.

Elsewhere, however, it is said, that "willing acquiescence in the continuation of an adulterous intercourse by the other party is sufficient." See *Boulting v. Boulting*, 3 Sw. & Tr. 335 (1864).

The necessity of corrupt intention to constitute connivance, was also distinctly held by the Supreme Court of Massachusetts, in the very recent case of *Robbins v. Robbins*, yet unreported. The evidence there clearly showed a scheme to detect the libellee in adultery if she was guilty, but no corrupt intent that adultery should be committed, nor any consent to it, or connivance at it. And it was held that the husband was entitled to his divorce.

But whatever may be the law of connivance, or from whatever acts that fact may be considered as sufficiently proved, it is obvious that the principal case goes a step further—and a very important step further—in the law of divorce. It is not claimed that the husband in any way consented, assented, or desired the adultery of his wife, or knew of its probability, or that she was actually exposed to any danger. The whole averment simply is, that by separating from her, by mutual consent, he thereby, although continuing to support her, exposed her to danger, and therefore "conduced" to the violation of her marriage vow. If this be legal cause for refusing a divorce, few divorces would be granted. It is comparatively seldom there is not some fault, or neglect, to be found on the part of the husband, ere a wife will be guilty of such misconduct. And if such acts, merely as inattention, neglect, and the like, establish "conducement," and so bar him from divorce for her adultery, it can be but regarded as establishing a very important principle in this branch of the law.

Perhaps the strnogest case in our American courts looking to such a conclusion is that of *Barber v. Barber*, 14 Law Rep. 375 (1851) in the Superior Court of Connecticut. The libel by the husband was on the ground of "habitual intemperance." The defence was that the wife, being sick and nervous, acquired the habit of taking large quantities of morphine, which the husband procured for her, with the advice of her physician: and that subsequently, in order to wean her from its use, she, with his advice, began to take large quantities of gin, which he procured for her. This was held to prevent him from obtaining his divorce, although the judge