

counsel to admit that, if the defendants do raise these issues, the case cannot be tried within the limits proper to a short cause, I direct the case to be transferred to the long-cause list; costs to be costs in the cause.

1882

RUNGRAV
RAVJI
v.
SIDHI
MAHOMED
EBRAHIM.

Case transferred.

Attorneys for the plaintiff.—Messrs. *Balcrishna and Bhagwandas*.
Attorney for the defendants.—Mr. *Mirza Hoosein Khan*.

MATRIMONIAL JURISDICTION.

Before Mr. Justice West.

HARRIETTE A. KING, PETITIONER, v. J. S. KING, RESPONDENT.*

June 12.

Divorce—Husband and wife—Appeal by a wife from order made in suit for divorce—Wife's costs—Security for costs—Memorandum of appeal admitted without requiring security—Limitation Act XV of 1877, Section 5—Period of limitation expiring during vacation—Power of Prothonotary to receive and file memorandum of appeal presented on the day the Court re-opens.

In a suit for divorce brought by a wife against her husband, the wife obtained a decree *nisi* which ordered the respondent to pay a monthly sum by way of alimony to the wife, and also ordered him to pay the wife's costs of suit. Under this decree a sum of Rs. 3,369 was due to the wife on the 26th May 1882. The wife appealed from an order made in the suit, and the Court, under the circumstances, admitted the appeal without requiring from the appellant the usual security for costs.

Where the period of limitation for the filing of an appeal has expired during vacation, a party to a suit has a right, under the provisions of the Limitation Act (XV of 1877), to have his appeal admitted on the day the Court re-opens, and the Prothonotary of the High Court has power to receive and file a memorandum of appeal on that day.

APPLICATION that a memorandum of appeal against the order made by Bayley, J., in this case on the 4th May, 1882, should be received and filed; that the said appeal should be admitted without requiring security for costs from the appellant, or, if such security should be required, then that the same should be taken by staying (to the amount of the security required) execution of the decree for alimony and costs already passed against the respondent.

In this case a decree *nisi* was made, on the 26th July, 1881, for the dissolution of the marriage between the petitioner and the respondent, and by that decree it was ordered that the respondent

*Sait No. 195 of 1881.

1882

HARRIETTE
A. KING
v.
J. S. KING.

should pay to the petitioner, or her attorneys, Messrs. Crawford and Boevey, as alimony the monthly sum of Rs. 300 from the date of the said order, and should continue to make such monthly payment on or before the 26th day of each succeeding month until the said decree should be made absolute or until further order, and, further, that the respondent should pay to the petitioner her costs of and incidental to the suit and of and incidental to the petition for alimony filed on the 6th May, 1881.

On the 23rd day of April, 1882, the petitioner moved to make absolute the said decree *nisi*, and by an order made on the 4th May, 1882, Bayley, J., adjourned the said motion until the 4th August, 1882, in order that certain allegations made in affidavits filed by the respondent's solicitor might be investigated (1). From this order the petitioner now desired to appeal.

From an affidavit made by the petitioner's solicitor it appeared that there was a balance of Rs. 2,327-6-7 due from the respondent to the petitioner in respect of the alimony granted by the decree *nisi* and that there was a further sum of Rs. 1,042-4-6 due by the respondent to the petitioner for her costs, making, in all, a sum of Rs. 3,369-11-3 due to the petitioner from the respondent on the 26th May, 1882.

By a rule of Court an appellant, upon lodging a memorandum of appeal, was required to deposit in Court as security a sum of Rs. 500. The present petitioner, being without means, now applied to be allowed to appeal without giving the usual security, or, if such security were required, then that it should be taken by staying execution of the decree against the respondent to the extent of Rs. 500 out of the sum due by him under the decree.

The time for filing the appeal had expired during the May vacation, and on this day (12th June), being the day on which the High Court re-opened after vacation, the memorandum of appeal was presented to the Prothonotary, who refused to receive it, and required that an application should be made in Court.

Inverarity for petitioner.—The time for appeal expired during the vacation, and by section 5 of the Limitation Act (XV of 1877) the appeal is admissible when the Court re-opens.

(1) See *supra*, p. 452.

1882

 HARRIETTE
 A. KING
 v.
 J. S. KING.

I also apply that the appeal should be admitted without requiring the appellant to deposit the usual security. This is a suit for divorce by a wife against her husband. She wishes to appeal against an order made in the suit. She should not be required to give security to her husband. She is still his wife notwithstanding the decree *nisi*: *Norman v. Villars* (1). It would be absurd to make a wife give security for costs when she could not be made to pay costs. No order requiring a wife to pay costs is ever made, except where she has separate property. Mrs. King has none.

If, however, the usual security must be given, we ask that it be given by staying execution of the decree against the respondent to the amount of Rs. 500. He owes the petitioner Rs. 3,369-11-3. Even if the decree *nisi* should be reversed by the Court, the order for alimony would stand, and would not be affected: *Whitmore v. Whitmore* (2). So the security would still be good. The right of a wife to costs only ceases on the day on which she is declared guilty of adultery. So the respondent in any event would have to pay the petitioner's costs: *Robertson v. Robertson* (3).

WEST, J.—I think this appeal may be admitted. I do not consider that, with respect to this part of the present application, it was necessary to come to the Court. The Prothonotary, as chief executive officer of this Court, had power to receive and file a memorandum of appeal on the day the Court re-opens, where, as in this case, the period of limitation has expired during the vacation. A party to a suit has a right, under the provisions of the Limitation Act, to have his appeal admitted under such circumstances.

With regard to the second part of this application, it is necessary that an order should be made at once, as the period of limitation has expired: so I will admit this appeal without requiring security, in order to save the right of appeal to the petitioner; but if the respondent should think fit to apply to have the order rescinded, I will reconsider the matter.

Appeal admitted without security.

Attorneys for the appellant.—Messrs. *Crawford and Boevey*.

(1) 2 Ex. D. 359.

(2) 1 Pro. & Div. 96.

(3) 6 Pro. & Div. 119.