

insurance assigned to him by defendant, together with the six positive promissory notes deposited with him by the defendant. Two of these notes are not forthcoming. If they are not found within the aforesaid time, the plaintiff is to make them good.

If the decree is not satisfied within six months, the plaintiff is to be at liberty to sell the policy of insurance and the said notes, and the proceeds thereof are to be applied to the satisfaction of the decree.

As a high rate of interest has been provided for by the bond, and has, therefore, been granted, up to the date of the decree, and as the consideration for the bond itself was made up largely of interest due on a former bond, and as the cash actually received by the defendant on both bonds amounted only to Rs. 3,750, and as the defendant paid Rs. 2,050 as interest, I make no order for the payment of interest on the judgment.

Judgment for plaintiff.

Attorney for the plaintiff.—Mr. *E. Wilkin.*

Attorney for the defendant.—Mr. *A. F. Turner.*

MATRIMONIAL JURISDICTION.

Before Mr. Justice Hart.

ARTHUR BOWLES, PETITIONER, *v.* MARY J. BOWLES, RESPONDENT
AND ANOTHER (CO-RESPONDENT).*

August 2.

Practice—Procedure—Staying suit until costs of a previous suit in a foreign Court have been paid.

The Courts in India have no power to stay proceedings in a suit instituted therein, because the costs of a previous suit between the same parties brought in the High Court of Justice in England have not been paid.

SUMMONS obtained by the respondent calling on the petitioner to show cause why the petitioner should not pay the respondent, or her attorney on her behalf, the sum of £63-16, being the amount of the respondent's taxed costs in the suit brought by the petitioner in the High Court in England in the Probate Divorce and Admiralty Division against the respondent, and which suit

* Suit No. 76 of 1884.

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was dismissed for disobedience, by the petitioner, of the order of the Court; and why, in default of such payment, all further proceedings in this suit should not be stayed.

On 14th July, 1882, the petitioner brought a suit in the High Court of Justice in England for dissolution of his marriage with the respondent on the ground of her adultery. The respondent filed a defence in which she denied this charge made against her, and charged the petitioner with adultery and cruelty. According to practice the costs of the respondent were duly taxed, and by order of Court dated 26th May, 1883, the petitioner was ordered to pay to the respondent's solicitor the said taxed costs. By a further order of Court dated 2nd August, 1883, the petitioner was directed to pay to the respondent's solicitor the sum of £400 to cover the costs and expenses of a commission to Aden for the purpose of examining the respondent's witnesses. By reason of the non-compliance of the petitioner with the above orders of Court his petition was dismissed with costs on the 12th February 1884.

On the 27th February, 1884, the petitioner filed a fresh suit in the High Court of Bombay, praying for a divorce.

The petitioner not having paid the respondent's costs of the previous suit, this summons was obtained for the purpose of staying the proceedings until such costs were paid.

Inverarity, for the petitioner, showed cause against the summons.—The summons has been taken out by the respondent to enforce the payment of costs directed by the orders made by the Courts in England in the previous suit. By those orders the payments were to be made to the respondent's solicitor who applied to the Court, and it is he, and not the respondent, who is entitled to enforce this. He is not represented here. Further these orders are foreign judgments, and can only be enforced by a suit.

[Hon. C. F. Farran.—We do not insist on the part of the summons which asks for payment.]

Then the whole summons falls to the ground. The summons orders payment, and in default stays proceedings. The Divorce Court in England can enforce its own orders,

The Court here has no power to stay proceedings in a suit until a party pays the costs of a solicitor in another suit brought in another country. If the former suit had been brought here the present suit might be stayed. Here the respondent can from day to day, as the suit goes on, obtain her costs from the petitioner—Macrae's Law of Divorce in India, p. 150.

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Hon. C. F. Farran (Acting Advocate General).—Section 7 of the Indian Divorce Act (IV of 1869) provides that the English practice is to be followed here—*Fowle v. Fowle*⁽¹⁾; the English rules as to costs were adopted: see also *Jones v. Jones*⁽²⁾. The question, then, is—would the English Courts have stayed proceedings if a previous suit in India had been dismissed? There is no direct authority upon the point; but the principles laid down in other cases show that where the cause of action is the same in both suits, the second suit will be stayed where the costs of the first are not paid. Here the petitions in both suits allege the same acts of adultery. This Court is a co-ordinate Court with the English Courts. The latter have jurisdiction over divorce cases heard here. Act IV of 1869 merely provides a cheaper machinery in cases where the marriage or adultery takes place in India—*Jago v. Jago*⁽³⁾; *Yeatman v. Yeatman*⁽⁴⁾. This case lays down the principle that the cause of action must be the same. If it is, I submit it is immaterial that the costs of former suit have been incurred in another Court—*In re United Telegraph Company*⁽⁵⁾.

Here also the question was whether the costs were incurred in the same matter, not whether they were incurred in another Court—*In re Orrell Colliery Company*⁽⁶⁾. Here the proceedings in winding up were stayed until costs incurred in another Court were paid. *Yeatman v. Yeatman*⁽⁷⁾ shows this principle is applied in divorce cases. The general principle is laid down in Daniell's Chancery Practice (6th new ed.), p. 1942; *Robertson v. Robertson*⁽⁷⁾; *Smith v. Smith*⁽⁸⁾.

(1) I. L. R., 4 Calc. 260; see p. 269.

(2) 2 P. & D., 338.

(3) 3 Sw. & Tr., 103.

(4) 39 L. J. P. & M., 37.

(5) 24 W. R., 593.

(6) 28 W. R., 145.

(7) 6 P. & D., 119.

(8) 7 P. D., 84.

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Inverarity in reply.—Section 7 of the Act of 1869 does not apply. This is not a question of costs, but whether proceedings should be stayed. In *Abbott v. Abbott*⁽¹⁾ it was decided that section 7 does not apply to procedure.

The question in *Fowle v. Fowle*⁽²⁾ was as to who should pay costs—whether the wife should get her costs. Section 45 of Act IV of 1869 applies. Nothing in the Civil Procedure Code authorizes the Court to stay proceedings here, because the costs of a suit in England have not been paid. In the English cases cited the previous suit has failed. Here the plaintiff did not fail. There was no trial, and no verdict. The case did not go on, because the plaintiff is poor. The principle is that where a party has had judgment, he shall not go on again until costs are paid—*Yeatman v. Yeatman*⁽³⁾. The cases cited from the Weekly Reporter were cases in the same Court. By the English Judicature Act there is now only one Court. Here, however, one suit was in England, while the present one is in India.

HART, J.—I do not think I have power to stay the proceedings in this suit, because the costs of a previous suit in a foreign Court have not been paid. The English Courts are, with regard to the Courts in India, as much foreign Courts as the Courts of France or of any other country, and it could hardly be contended that a suit here should be stayed because the costs of a former suit in a French Court had not been paid. The summons must be discharged; and the rule being that a wife who unsuccessfully makes an interlocutory motion is not entitled to her costs⁽⁴⁾, the parties must bear their own costs.

Summons discharged.

Attorney for the petitioner.—Mr. A. F. Turner.

Attorneys for the respondents.—Messrs. *Payne, Gilbert and Sayani*.

(1) 4 Beng. L. R., O. C. J., 51.

(2) I. L. R. 4 Calc., 269.

(3) 39 L. J. P. & M., 37.

(4) See rule as to costs of interlocutory motion made by a wife—*Macrae's Law of Divorce*, p. 158.