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much difference of opinion, "from any notions of expediency" (or morality we may add) "which I may entertain, to go beyond that which I find written." We are "compelled to deal with the Acts of Parliament according to the expressions" we "find there." Applying this rule of construction we cannot, in the proper exercise of our function as a Court of construction, do more than give effect to the plain and unambiguous language of the section. We may add, however, that we agree with the Chief Justice of the Madras High Court in his opinion that clause (*d*) in the section applies only to a state of facts existing at the time of the purchase of the actionable claim. We must, therefore, discharge the rule, with costs.

Rule discharged.

MATRIMONIAL JURISDICTION.

Before Mr. Justice Farran.

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November 4

W. G. MAYHEW (PETITIONER) *v.* SARAH ANNA MAYHEW (RESPONDENT).*

Divorce—Husband and wife—Suit against wife—Costs of wife—Practice—Procedure.

In a suit for a divorce instituted by a husband against his wife the Court has a discretion to make the husband pay the wife's costs already incurred, and to give security for her future costs.

Rule 158 (as amended 14th July, 1875) of the English Rules and Regulations in divorce cases which govern the practice of the Court in England(1), ought, having regard to section 7 of the Indian Divorce Act IV of 1869, to govern the practice of Indian Courts.

* Suit No. 407 of 1894.

(1) Rule 158.—After direction given as to the mode of hearing or trial of a cause or in an earlier stage of a cause by order of the Judge Ordinary, or of the Registrars, to be obtained on summons, a wife who is petitioner, or has entered an appearance as respondent in a cause, may file her bill or bills of costs for taxation as against her husband, and the Registrar, to whom such bills of costs are referred for taxation, shall, when directions as to the mode of hearing or trial have been given, ascertain what is a sufficient sum of money to be paid into the Registry, or what is sufficient security to be given by the husband to cover the costs of the wife of and incidental to the hearing of the cause; and shall thereupon issue an order upon the husband to pay or secure the said sum within a time to be fixed by the Re-

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SUMMONS in chambers. This was a suit brought by the petitioner against his wife for dissolution of marriage on the ground of her alleged adultery. The petition was filed in August, 1894. The respondent denied the charge against her, and prayed for a judicial separation on the ground of the petitioner's cruelty.

The co-respondent also filed a written statement denying the alleged adultery.

On the 19th of November, 1894, the respondent obtained a summons calling on the petitioner to show cause why her costs "should not be taxed from time to time as her attorneys may think fit, and why the petitioner should not be ordered to pay such costs when so taxed to the respondent's attorneys, and why the petitioner should not be ordered to secure to the satisfaction of the Prothonotary of this Honourable Court the due payment of such sums to the extent of Rs. 1,000 and such further sums as the Taxing Master of this Honourable Court may from time to time certify to be sufficient to cover the costs of the respondent of and incidental to, and up to and including the hearing of this suit, and why until such security be given all proceedings herein should not be stayed, and why the petitioner should not pay the costs of and incidental to this application."

The petitioner filed an affidavit in which he stated that he had come to India in 1849, and that he intended to pass the remainder of his life here, and that at the date of his marriage with the respondent and at the date of suit he was domiciled in Bombay. He further stated that the respondent was born in Bombay, where her father had long been resident, and that he and his wife (the respondent's mother) were Eurasians and were both domiciled in India. He further stated that his salary was Rs. 500 a month, out of which he had to pay income-tax, insurance, &c., and that he was not possessed of any property.

gistrar; provided that in case the husband should by reason of his wife having separate property, or for other reasons, dispute her right to recover any costs pending suit against him, the Registrar may suspend the order to pay the wife's taxed costs, or to pay or secure the sum ascertained to be sufficient to cover her costs of and incidental to the hearing of the cause, for such length of time as shall seem to him necessary to enable the husband to obtain the decision of the Court as to his liability (see Browne and Powles on Divorce (5th Ed.), p. 588).

Turner, for the respondent, in support of the summons:—He cited Macrae on the Indian Divorce Act, pp. 151—154; *Proby* v. *Proby*[1]; *Natall* v. *Natall*[2]; *Thomson* v. *Thomson*[3]; *Allen* v. *Allen*[4]; Civil Procedure Code (Act XIV of 1882), sections 220, &c.

Brown, for the petitioner, showed cause:—The parties are domiciled in India, and no such order as the summons asks for can be made—Macrae on the Indian Divorce Act, p. 154; Act IV of 1869, sections 7, 34, 35, 45; *Broadhead* v. *Broadhead*[5].

FARRAN, J.:—This is an application by the respondent that the petitioner may be ordered to pay her costs hitherto incurred, and to lodge in Court sufficient money to cover her costs likely to be incurred. The application is resisted by Mr. Brown, who has appeared for the petitioner, and has contended that (1) the Court has no power to make the order; (2) the Court ought not to make the order under the special circumstances of this case.

Upon the unanswered affidavit of the petitioner I assume that his domicile, as well as that of the respondent, is in British India, and was so at the time of the marriage in 1882, and that the provisions of section 4 of the Succession Act (X of 1865)are applicable to the parties to this suit. It does not appear to me that these provisions affect the rule as to costs which ought to be applied to the case. The rule has always been that an order as to costs pending the hearing ought not to be made against the husband, if the wife is possessed of means (technically styled separate property) sufficient to enable her to pay her own costs in the first instance. The reason for the continuance of the rule (whatever may have been its origin) being "that it is not considered just either that a wife should be left without the means of putting her case fairly before the Court, or that a practitioner should run the risk of losing the proper remuneration for his labours if he take up a case which he honestly believes to be genuine, but which may after all turn out to be unfounded" (Browne and Powles on Divorce, 5th Ed., p. 342). It is a rule of public policy.

(1) I. L. R., 5 Calc., 357.
(2) I. L. R., 9 Mad., 12.
(3) I. L. R., 14 Calc, 580.
(4) L. R. (1894), Pr., 134.
(5) 5 Beng. L. R., App. 9.

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Section 4 of the Succession Act (X of 1865) enlarges the possibilities of the wife possessing means to pay her own costs, but (if she does not possess such means) does not do away with the advisability of the rule. The passing of the Married Women's Property Act in England, even that of 1882 (45 and 46 Vict., c. 75), has not produced any alteration in the rule of the Divorce Court there. Rule 158, as amended in 1875, still continues to govern the practice of the Court in England (see *Allen* v. *Allen*(1)), and ought, I think, having regard to section 7 of our Act (IV of 1869), to govern the practice of Indian Courts.

This view is in accordance with the practice hitherto followed in this Court and with the judgment in *Natall* v *Natall*(2) and *Broadhead* v. *Broadhead* (3), but opposed to the decision in *Proby* v. *Proby*(4), which was recognized in *Thomson* v *Thomson*(5). Too much stress seems to me to have been placed on the origin of the rule in *Proby* v. *Proby* (4), and too little upon the real reason for its continuance (see *Allen* v. *Allen* (1)). The general rule is, therefore, I hold, applicable to the parties in this case.

The Court has, however, a discretion in the matter, and the further question which arises is whether there are sufficient grounds shown in this case to induce me to depart from the usual practice. The circumstances bring it near the border line, but I have come to the conclusion that the petitioner has not shown enough to exempt him from the operation of the general rule. It is manifestly a case in which the costs of the respondent ought to be kept within the narrowest possible limit consistent with her being able to place her case fairly before the Court. No extravagances in the way of costs can be allowed against the petitioner.

The order will be that the respondent's costs be taxed as between party and party down to the 8th day of January, 1895, other than the costs of the issuing of the commission to Madras, of which I have reserved the costs, and that such first mentioned costs be paid by the petitioner to the attorneys of the respondent, and that the Taxing Master fix a sum sufficient to cover the

(1) L. R. (1894), Pr., 134.
(2) I. L. R., 9 Mad., 12.
(3) 5 B. L. R., App., 9.
(4) I. L. R., 5 Calc., 357.
(5) I. L. R., 14 Calc., 580.

respondent's further costs, and that the petitioner give security for the same, or at his option pay the same into Court.

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Costs to be costs in the cause.

Attorneys for petitioner:—Messrs. *Brown and Moir.*

Attorneys for respondent:—Messrs. *Turner and Hemming.*

INSOLVENT JURISDICTION.

Before Mr. Justice Farran.

IN THE MATTER OF HORMARJI ARDESIR HORMARJI, AN INSOLVENT.

1894.

December 5.

Insolvency—Indian Insolvent Act (Stat. 11 and 12 Vict., C. 21), Sec. 86(1)—Entering up judgment against insolvent—Final discharge.

Under section 86 of the Insolvent Act (Stat. 11 and 12 Vict., c. 21) the Court has a discretion to grant or refuse an application to enter up judgment against an insolvent for the amount of his debts. In exercising this discretion the Court must be guided by the circumstances of the insolvency.

APPLICATION for discharge under section 60 of the Insolvent Act (Stat. 11 and 12 Vict., c. 21).

(1) Section 86 of the Indian Insolvent Act (Stat. 11 and 12 Vict., c. 21):—

"86. Provided always, and be it enacted, that in all cases where any Insolvent shall not have obtained his discharge in the nature of a certificate as aforesaid under this Act, the said Court for the Relief of Insolvent Debtors may, if in the circumstances of the case it shall think fit, before making such order for such discharge, direct a judgment to be entered up against such Insolvent in the Supreme Court of the Presidency within which such Court for the Relief of Insolvent Debtors shall be situate in the name of the Assignee or Assignees, or of such Official Assignee as the Court shall think fit, for the amount of the debts or demands stated in the schedule of such Insolvent as due or claimed, and of such as shall be established in the said Court against the said Insolvent's estate, or so much thereof as shall appear at the time of such order to be due, which said order shall be filed in the said Court for the Relief of Insolvent Debtors in India; and the production of such order, or of a copy of such order, under the seal of the said Court, of which order, copy and seal no proof shall be requisite other than the production of such order or copy, shall be sufficient authority to the proper officer for entering up the said judgment; and then in every such case, and notwithstanding the provisions hereinbefore contained, if at any tims it shall appear to the satisfaction of the said Court that such Insolvent is of ability to pay such debts or demands, or any part thereof, or that he is dead, leaving assets for such purpose, and that under the circumstances the same is reasonable and proper, the said Court may, if it shall think fit, order execution to be taken out upon such judgment against the property of such Insolvent, whether the