

## MATRIMONIAL JURISDICTION.

*Before Chitty, J.*

BATEMAN

v.

BATEMAN AND NICAOKI.\*

1914

March 13.

*Divorce—Husband's Petition—Security for Wife's Costs—Practice.*

In a husband's petition for dissolution of marriage, where both parties are subject to s. 4 of the Indian Succession Act (X of 1865), and the wife has no means of her own, the Court has a discretion to order the petitioner to furnish security for the respondent's costs.

*Proby v. Proby* (1), *Young v. Young* (2), *Thomas v. Thomas* (3) *Thomson v. Thomson* (4), *Walling v. Walling* (5), *Jahans v. Jahans* (6) and *Mayhew v. Mayhew* (7) considered.

## MOTION.

This was an application by the respondent in a husband's petition for dissolution of marriage for an order that the petitioner should pay to the respondent the amount of her costs already incurred, together with such further sum or sums of money as and by way of security for such future costs as might be incurred as to the Court should seem meet.

Both husband and wife were of Indian domicile and so subject to section 4 of the Indian Succession Act. It was admitted that the wife had no property of her own and had, since the institution of these

\* Application in Matrimonial Suit No. 21 of 1913.

(1) (1879) I. L. R. 5 Calc. 357.

(4) (1867) I. L. R. 14 Calc. 580.

(2) (1886) I. L. R. 23 Calc. 916n.

(5) (1910) April 22 (unreported).

(3) (1896) I. L. R. 23 Calc. 913.

(6) (1902) 6 C. W. N. 414.

(7) (1894) I. L. R. 19 Bom. 258.

1914  
 BATEMAN  
 v.  
 BATEMAN  
 AND  
 NICAGHI.

proceedings, been living on an allowance of Rs. 75 per mensem made to her by the husband.

The husband's income was Rs. 450 per mensem.

*Mr. Langford James* for the respondent. Orders for security for the wife's costs are made as of course in England. They are made even in cases where the wife has means of her own: *Allen v. Allen* (1).

[CHITTY, J. The only question appears to be whether I am bound to follow *Proby v. Proby* (2).]

In point of fact security has often been ordered in cases like the present where the wife has no means. The head-note to *Jahans v. Jahans* (3) to the effect that want of means is not a "special circumstance" is not supported by the judgment of Stephen, J. Also it is clear that the learned Judges in *Proby v. Proby* (2) did not appreciate the true reason for the rule. Since the passing of the Married Women's Property Act, 1882, the position of a married woman in England is as advantageous as that enjoyed by a married woman in India who is subject to section 4 of the Indian Succession Act, but the English Court has continued to order the husband to furnish security. The Bombay and Madras High Courts have not followed *Proby v. Proby* (2). See *Mayhew v. Mayhew* (4), *Natal v. Natal* (5).

*Mr. P. L. Buckland* for the petitioner. The law in India is as laid down in *Proby v. Proby* (2). That decision has been followed by Pigot, J. in *Young v. Young* (6); and also by Ameer Ali, J. in *Thomas v. Thomas* (7). It would also have been followed by Trevelyan, J. in *Thomson v. Thomson* (8) had it not

(1) [1894] P. 134.

(2) (1879) I. L. R. 5 Calc. 357.

(3) (1902) 6 C. W. N. 414.

(4) (1894) I. L. R. 19 Bom. 299.

(5) (1885) I. L. R. 9 Mad. 12.

(6) (1886) I. L. R. 23 Calc. 216n.

(7) (1896) I. L. R. 23 Calc. 218.

(8) (1887) I. L. R. 14 Calc. 580.

been that there the parties had been married before the passing of the Indian Succession Act.

Although the head note in *Jahans v. Jahans* (1) is incorrect, it is clear that in that case security was not ordered although the wife had no means.

The matter is therefore concluded by authority as far as this Court is concerned.

If security is to be ordered in every case where the wife has no means, *Proby v. Proby* (2) is meaningless, since the wife will not in any event get an order for security if she has means of her own.

*Cur. adv. vult.*

CHITTY, J. In this case the petitioner, M. E. Bateman, prays for a dissolution of his marriage with the respondent, G. E. Bateman, on the ground of her adultery with the co-respondent, A. S. Nicachi. The present application is presented by the respondent asking that the petitioner may be required to give security for a sum to meet her costs of suit. The parties are domiciled in this country, and it is conceded that the petitioner's income is Rs. 150 a month, and that he is at present making his wife an allowance of Rs. 75 a month. It is not suggested that she has any separate property or means of her own. The application is resisted by the petitioner, and his counsel relies on the case of *Proby v. Proby* (2). In that case it was held that such an order should be made under special circumstances only; but I do not read that judgment as altogether debarring this Court from the exercise of the discretion which it must undoubtedly exercise in deciding applications of this nature. The principle in *Proby v. Proby* (2) was followed, though not without some hesitation and reservation, by Pigot J. in *Young v. Young* (3), and by Ameer Ali J. without

(1) (1902) 6 C. W. N. 414.

(2) (1879) I. L. R. 5 Calc. 357.

(3) (1886) I. L. R. 23 Calc. 916n.

1914  
 BATEMAN  
 v.  
 BATEMAN  
 AND  
 NICACHI.  
 CHITTY J.

comment in *Thomas v. Thomas* (1). It was distinguished by Trevelyan J. in *Thomson v. Thomson* (2) and was accepted by Pugh J. in the case of *Watling v. Watling* (3), but that was a petition by the wife against the husband, in which somewhat different considerations might arise. The case of *Jahans v. Jahans* (4) is no authority for either contention, as the learned Judge expressed no opinion on the point. It is noteworthy that by the passing of the Married Women's Property Act, 1882, the reason underlying the decision in *Proby v. Proby* (5) has been removed. Notwithstanding the passing of that Act, the rule still obtains in England that, generally speaking, the husband will be required to provide for the wife's costs. This was pointed out by Farran, J., in *Mayhew v. Mayhew* (6). From enquiries I find that security has been ordered in a very large number of cases in this Court notwithstanding the ruling in *Proby v. Proby* (5). Indeed it would appear that such orders are still rather the rule than the exception. It is true that in many of such cases there may have been no contest. This appears to me to be eminently a case in which such an order should be passed. To withhold it might be equivalent to shutting out the wife's defence altogether. I accordingly order that within a fortnight from this date the petitioner do furnish security to the satisfaction of the Registrar for a sum of Rs. 400 to meet the costs of the respondent. The petitioner must pay the respondent's costs of this application.

Attorneys for the petitioner: *Watkins & Co.*

Attorneys for the respondent: *Leslie & Hinds.*

H. R. P.

(1) (1896) I.L.R. 23 Calc. 913.

(2) (1887) I.L.R. 14 Calc. 580.

(3) (1910) April 22 (unreported).

(4) (1902) 6 C. W. N. 414.

(5) (1879) I.L.R. 5 Calc. 357.

(6) (1894) I.L.R. 19 Bom. 299.