QUEEN EMPRESS v. SUBBARÁYAN.

puberty, we cohabited." Similarly the husband said: "I married Veláyi five years ago: she is 18, the *nuptial ceremony* was performed soon after the (first ceremony of) marriage (or betrothal)." Witness No. 4 is the mother of the wife Veláyi. She swore that she had her daughter married to the prosecutor. None of these witnesses were cross-examined as to the factum or validity of the marriage, and the accused persons in no way impugned its validity.

We entertain no doubt that the marriage has been sufficiently established. We accordingly set aside the first-class Magistrate's judgment of acquittal and direct him to restore the appeal to his file and pass fresh orders upon it.

ORIGINAL CIVIL.

Before Mr. Justice Handley.

1885. Sept. 22.

NATALL

v.

NATALL.*

Divorce suit—Costs of wife—Indian Succession Act, 1865, *s.* 4—*Married Woman's Property Act*, 1874.

A wife without property of her own seeking a divorce is entitled to have provision made by her husband for the payment of her costs in the suit.

Proby v. *Proby* (I.L.R., 5 Cal., 357) distinguished and observed upon.

THE facts of this case appear sufficiently for the purpose of this report from the judgment of the Court (HANDLEY, J.).

Mr. *Branson* for plaintiff.

Biligiri Ayyangár (Solicitor) for defendant.

JUDGMENT.—Application by petitioner (the wife) for an order that her costs up to date be taxed and paid by respondent, and that her costs up to, and of, and incidental to, the hearing may be taxed *de die in diem*, and that respondent be ordered to pay into Court a sufficient sum to cover such costs, out of which sum the costs when so taxed *de die in diem* be paid to petitioner.

I think petitioner is entitled to the order prayed for. I time to consider this matter because I thought at first ther some difference in principle between giving this relief t

* Matrimonial suit No. 2 of 1885.

seeking a divorce, and doing so in the case where the woman is the defending party. Upon consideration I see there is no reason for any such distinction. The English Divorce Courts have always given it in both cases, and the reason, viz., that otherwise the wife will, as a rule, be unable to continue the proceedings, applies equally to both cases. The rules passed by the Courts for divorce and matrimonial causes in England under the English Divorce Act provide for the taxation of costs of a wife, who is petitioner or respondent, before the hearing as a matter of course, and for the registrar's ordering the husband to pay or give security for the costs of, and incidental to the hearing. The decision of the Calcutta High Court in *Proby* v. *Proby*,(1) quoted by the respondent's attorney, does not lay down that in no case can the Indian Divorce Courts properly give such relief to the wife, but only that the main reason for the practice of the English Courts having been removed by the Indian Succession Act, which makes the wife's property independent of her husband, the relief will not be granted by the Indian Courts unless special circumstances are shown calling for it. With great deference to the learned Judges who decided that case, it seems to me that they have over-estimated the effect of the Indian Succession Act upon the status of the wife as entitling her to this relief. If she has property, that property of course will be available for her costs, and in that case the Courts here would probably refuse to make any order that the husband pay her costs until the suit has been decided, as is done by the English Courts when the wife has separate property. But when the wife has no property, the same reason for the practice requiring her husband to provide for her costs, viz., her inability otherwise to continue the proceedings, still remains. That inability is principally caused by her disability to contract, which is untouched by the Indian Succession Act, and is only removed by the Married Woman's Property Act, 1874, so far as relates to her separate property. It is not clear that the Courts here will, in a suit by her Solicitor against the husband after she has been unsuccessful, give a decree against the husband for her costs, and she will therefore find it very difficult to induce any respectable practitioner to undertake her case. She is not certainly, unless she has property, in a position to meet her husband on equal terms, and is therefore

(1) I.L.R., 5 Cal., 357.

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likely to be at a disadvantage, and this inequality between the contending parties is, as I understand it, the reason for the practice in question. In the present case it is alleged by the petitioner, and not denied, that she has no property, and I consider therefore that she is entitled to have some provision made for her costs. The order will be that petitioner's costs up to and including taxation and including the costs of this application be taxed as between attorney and client, and that respondent do pay the amount of such costs when so taxed to petitioner or her Solicitor, and further that the respondent do pay into Court the sum of Rs. 200 to meet the costs of the petitioner of and incidental to the hearing, and that such costs be taxed *de die in diem*, and when so taxed be paid to petitioner or her Solicitor out of such sum to be paid into Court by the respondent as aforesaid.

Solicitor for plaintiff: *P. B. Gordon.*

Solicitor for defendant: *Biligiri Ayyangár.*

APPELLATE CIVIL—FULL BENCH.

Before Sir Charles A. Turner, Kt., Chief Justice, Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar, Mr. Justice Hutchins, and Mr. Justice Brandt.

1885. April 24.

VÉDANTA AND OTHERS (PLAINTIFFS), APPELLANTS,

and

KANNIYAPPA AND OTHERS (DEFENDANTS IN THE SEVERAL CASES), RESPONDENTS.*

Muhtarafa—Trade-tax, Zamíndár's right to collect—Regulation XXV of 1802, s. 4—Regulation XXV of 1832.

The right of collecting the muhtarafa or trade-tax from artisans in his zamíndárí has not been delegated by Government to the zamíndár of Karvaitnagar and cannot be legally exercised by his assignees.

Quære: Whether it was competent for Government to delegate the collection of the muhtarafa to zamíndárs for their own use.

APPEALS from the decrees of D. Buick, District Judge of North Arcot, reversing the decrees of C. Ranga Ráu, District Múnsif of Tirupati, in suits Nos. 725—734 of 1881.

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* Second Appeals 587—596 of 1883.