ANANTHAYA v. VISHNU.

mother was a dancing girl by caste. But both Courts find that respondent is the illegitimate son of his father, and as this is a question of fact, the finding is binding upon us. The position of the mother as a dancing girl by caste is only important as showing that her connection with the father was casual and *not* continued concubinage, but in the present case the Judge referred to evidence showing that respondent's mother was the concubine of his father for a long period of years. This appeal cannot be supported and we dismiss it with costs.

APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Shephard.

1893 July 10.

MUHAMMED ALIM OOLLAH SAHIB (PLAINTIFF), APPELLANT,

v.

THE SECRETARY OF STATE FOR INDIA (DEFENDANT), RESPONDENT.*

Suit against Secretary of State in Council—Dismissal of suit with costs—Review of taxation—Remuneration of the Advocate-General and Government Solicitor by fixed salaries—Liability of party condemned in costs.

Assuming that the arrangement between the Government and its Solicitor is that the latter should receive a salary and in addition the costs awarded to Government, this arrangement cannot affect a third party condemned in costs; neither is it illegal or contrary to public policy.

APPEAL against the judgment of Wilkinson, J., sitting on the Original Side in civil suit No. 128 of 1891.

The facts of the case appear sufficiently for the purposes of this report from the judgment of

WILKINSON, J.—"This is an application to review the taxa-"tion of the defendant's bill of costs in the above suit to set aside "the allocation of the taxing officer and to lay down the mode "in which and the principle on which the bill should be taxed.

"The suit was one by a private individual against the Secre-"tary of State. At the first hearing the Secretary of State was

* Appeal No. 16 of 1893.

"represented by the Advocate-General, instructed by the Gov-
"ernment Solicitor, and the suit was dismissed, the plaintiff
"being ordered to pay the costs of the Secretary of State.

"The taxing officer's notes show that before him the plaintiff
"objected to defendant's bill of costs on the ground that defend-
"ant had incurred no costs 'unless for the time of their officers'
"(whatever that may mean). The Government Solicitor replied
"that the taxing officer was not at liberty to go behind the order
"to tax, that costs were given as a penalty, and that it had for
"more than thirty years been the invariable practice of the Court
"to tax Government bills of costs in the same way as other bills
"of costs. The taxing officer accepted the plea of the Govern-
"ment Solicitor and taxed the costs as between party and party.

"Mr. Norton appears for the plaintiff and argues that as
"Government pay the Government Solicitor a fixed monthly salary
"to do its legal work, the Secretary of State, the defendant in this
"case, cannot be said to have incurred any cost; that, as the
"Government Solicitor cannot recover from the Government the
"items mentioned in the bill of costs, Government cannot recover
"them from the plaintiff, and that the principle upon which the
"Court ought to proceed in fixing costs is to ascertain what was
"the actual damnification caused to the successful party and to
"award to him the sum which he is actually out of pocket. Mr.
"Norton's argument proceeds on the assumption that the plaintiff
"is entitled to the benefit of any arrangement entered into by the
"Government with the Solicitor whose services the Government
"see fit to retain by the payment of a monthly salary. I do not
"think that he is. The principle applicable in cases like the
"present appears to be that laid down in the case relied on by the
"Advocate-General, *Raymond* v. *Lakeman*(1). In that case the
"Taxing Master allowed a company which employed standing
"solicitors at a fixed salary such costs as the company would
"be bound to pay to their solicitors. It was argued before the
"Court that as the standing solicitors were paid a fixed salary,
"the company had no right to charge the unsuccessful party
"more than their own standing solicitors could have charged
"them. The Master of the Rolls maintained the order of the
"Taxing Master, holding that the unsuccessful party could not

(1) 34 Beav., 584;

MUHAMMED ALIM OOLLAH SAHIB v. THE SECRETARY OF STATE FOR INDIA.

"have the benefit of any private arrangement between the solici-
"tor and the company as to costs. The case appears to me on all
"fours with the present case. The unsuccessful party, the plain-
"tiff, has been ordered to pay to the defendant the costs incurred
"by him. The defendant asserts that costs have been incurred by
"the employment of a solicitor to receive the summons, to instruct
"counsel, put in written statements, &c. It is not denied that the
"costs which the present defendant claims to recover from the
"plaintiff are such as any other defendant must have incurred in
"defending the suit and would be bound to pay to his solicitor.
"But it is argued that unless the Government Solicitor proves that
"he can recover the costs from Government, Government cannot
"recover them from plaintiff. This is entirely beside the question,
"which is one between plaintiff and defendant, not one between
"plaintiff and the Government Solicitor as Mr. Norton suggests.
"The plaintiff has no right to assume that the defendant has
"not expended these sums, nor is he entitled to call upon the
"defendant to prove the nature of the contract between him and
"his solicitor. The case of *Barnes* v. *Attwood*(1) is not really
"in point, as there the taxing officer had been induced by false
"affidavits to allow a larger sum as expenses to commissioners
"than had actually been paid. It is true that Mr. Norton's whole
"argument proceeded on the assumption that the bill of costs put
"in by the defendant in this case represents absolutely fictitious
"transactions as between the Government Solicitor and the Gov-
"ernment. But it is unnecessary to consider that question. The
"only question is—Has the defendant incurred any, and if so,
"what costs. The answer is—The defendant has employed a
"solicitor, who has done certain acts and is entitled to charge for
"his time and work, and the defendant is liable to remunerate the
"solicitor. Whether Government chooses to do by a fixed salary
"and whether the costs, if recovered, go to the Government treasury
"or into the solicitor's pocket is not a matter into which the
"taxing officer is competent to inquire.

"The petition must be dismissed with costs."

The plaintiff (appellant) preferred this appeal.

Messrs. *Branson* and *Branson* for appellant.

(1) 5 C.B., 164.

The Government Solicitor (Messrs. *Barclay*, *Morgan* and *Orr*) for respondent.

JUDGMENT.—It is by no means clear what are the exact terms on which contentious business is done as between the Government Solicitor and Government. Assuming, however, that the arrangement is that he should receive a salary and, in addition, the costs recoverable from third parties in those cases in which costs are awarded to Government, we are unable to see how that arrangement can affect a third party who is condemned in costs. *Raymond* v. *Lakeman*(1).

The arrangement does not appear to be contrary to public policy, and there is no Act under which it is made illegal. *Jennings* v. *Johnson*(2).

The appeal is dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Muttusami Ayyar and Mr. Justice Best.

KOORMAYYA AND OTHERS (PETITIONERS), APPELLANTS, 1893. September 4.

v.

KRISHNAMMA NAIDU AND OTHERS (COUNTER-PETITIONERS), RESPONDENTS.*

Limitation—Act XV of 1877, sched. II, art. 179—Step in aid of execution—Request for payment of money realized in satisfaction of a decree.

A request for the payment of money realized in satisfaction of a decree is sufficient to keep the decree alive, being a step in aid of execution. *Venkatarayalu* v. *Narasimha* (3) approved and followed.

Whether a particular act is or is not an application for, or step in aid of execution, depends upon the nature of the act rather than the time at which it may possibly be done. *Hem Chunder Chowdhry* v. *Brojo Soondury Dabee*(4) qualified.

APPEAL against the order of H. G. Joseph, Acting District Judge of Ganjam, in original suit No. 2 of 1883.

The plaintiff, holder of a decree dated 14th October 1884,

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* Appeal against Order No. 53 of 1892.

(1) 34 Beav., 584.
(2) L.R., 8 C.P., 425.
(3) I.L.R., 2 Mad., 174.
(4) I.L.R., 8 Calc., 89.