APPELLATE CIVIL.

Before Sir Owen Beasley, Kt., *Chief Justice*, *and Mr. Justice King.*

SESHA AMMAL (PETITIONER), APPELLANT,

1934, September 11.

v.

VENKATANARASIMHA BHATTACHARIAR AND ANOTHER (RESPONDENTS), RESPONDENTS.*

Indian Lunacy Act (IV of 1912)*—Costs—Proceedings started and pursued* bona fide *and in the best interests of the lunatic—Proceedings unsuccessful—Power to order successful defendant to pay the costs of such a plaintiff—(English) Lunacy Act,* 1890.

In proceedings under the Indian Lunacy Act, the Court has no discretion to order a successful defendant or respondent to pay the costs of an unsuccessful plaintiff or petitioner even though the said proceedings were started and pursued *bona fide* and in the best interests of the alleged lunatic, as there is no provision to that effect in the Indian Lunacy Act similar to section 109 of the (English) Lunacy Act, 1890.

In re Cathcart, [1892] 1 Ch. 549, referred to.

APPEAL against the Order of ANANTAKRISHNA AYYAR J., dated the 20th day of February 1934 in Original Petition No. 264 of 1933 in the exercise of the Ordinary Original Civil Jurisdiction of the High Court.

K. S. Krishnaswami Ayyangar for *V. V. Srinivasa Ayyangar* for appellant.

T. M. Krishnaswami Ayyar for *R. Gopalaswami Ayyangar* for first respondent.

S. Sankara Sastri for *K. E. Rajagopalachari* for second respondent.

Cur. adv. vult.

* Original Side Appeal No. 22 of 1934.

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The JUDGMENT of the Court was delivered by BEASLEY C.J.—This is an application under the Indian Lunacy Act by a wife for an order directing an inquisition whether her husband is of unsound mind and incapable of managing himself and his affairs. The application was heard by ANANTHAKRISHNA AYYAR J. He himself examined the respondent and questioned him for more than an hour and heard the medical evidence and came to the conclusion that the respondent was not of unsound mind, though subnormal, and was not quite capable of managing his affairs though he was capable of managing himself. What has to be found under the Act is that the person is of unsound mind and that the unsoundness of mind is such as to make him incapable of managing his affairs. A person who is incapable of managing his affairs is not necessarily of unsound mind and a person of unsound mind may not be incapable of managing his affairs. The Court must hold that both unsoundness of mind and incapacity to manage his affairs are present and that the latter is due to the former. Here the evidence is that the respondent, thirty-three years of age, has an intellectual development of a boy of not more than twelve, due to an attack of infantile paralysis when aged three, which has arrested his mental development, but it does not follow that because that is so he is of unsound mind. We have been referred to the medical evidence in the case and we have the advantage of the learned trial Judge's comments on the answers and demeanour of the respondent when under examination by the Court. The learned trial Judge was in a far better position to weigh

that evidence by reason of having the witnesses before him and we here, having ourselves read through the evidence and seen the comments thereon of the learned trial Judge, see no reason whatever for differing from the opinion which he has given. It must be made quite clear that the first finding to be arrived at is with regard to unsoundness of mind. When once that has been proved, then the Court has to consider whether that unsoundness of mind is of such a nature as to render the respondent incapable of managing his affairs. Here we have got a finding that the respondent was not of unsound mind and it was therefore not necessary to proceed beyond that point.

For these reasons, this appeal must be dismissed. On the question of costs the appellant asks us to order that the appellant's costs are to be paid out of the estate of the husband (respondent) because, although the appeal has failed, the application for an inquisition was a *bona fide* one made in the best interests of the husband (respondent) and the appeal a reasonable one ; and our attention has been drawn to *In re Cathcart*(1). There, a petition had been presented by a husband for an enquiry into the mental condition of his wife. The result of the enquiry was that the petitioner's wife was found to be of sound mind and capable of managing herself and her affairs. An application was made by the petitioner for a direction that all the costs of the proceedings should be paid by his wife, and it was held by the Court of Appeal that, upon the evidence, there were sufficient grounds to justify the petitioner in instituting

(1) [1892] 1 Ch. 549.

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the enquiry, and an order was made for the petitioner to receive two-thirds of the amount of his costs of all the proceedings out of the property belonging to his wife. It is clear from the judgments that the Court would not have been able to make such an order but for section 109 of the Lunacy Act of 1890 which invested the Court with such a discretion. Otherwise, the Court would have had no discretion to order a successful defendant or respondent to pay any of the costs of an unsuccessful plaintiff or petitioner. We are of the opinion that the application here was a *bona fide* one and made in the best interests of the husband (respondent) and that the appeal was a reasonable one despite its failure. We are, however, unable to make such an order as to costs as was made in *In re Cathcart*(1) as most unfortunately there is no provision in the Indian Lunacy Act similar to section 109 of the Lunacy Act of 1890. We have, therefore, no such discretion as that section gives to the English Courts. We are strongly of the opinion that the attention of the Legislature should be drawn to this serious defect in the Indian Lunacy Act. We order the parties to this appeal to bear their own costs.

G.R.

(1) [1892] 1 Ch. 549.