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the caveator, for it is general in its terms, specifying no item of property and prejudging nothing to the detriment of the appellant. It has been suggested that a grant of Letters might involve peril to the appellant's interest, but this is not so, as on the grant of Letters adequate security is taken. The result then is Mr. Justice Russell's decree is confirmed with costs.

Appeal dismissed.

Attorneys for the appellants—*Messrs. Nadirshah & Tyabji.*

Attorneys for the respondents—*Messrs. Dixit, Dhanjishah & Co.*

ORIGINAL CIVIL.

JUDGMENT IN CHAMBERS.

1904.
October 3.

Before Mr. Justice Chandavarkar.

IN RE BULLOCK.

Witness—Application in Chambers—Expenses for attendance in Court—High Court Rule 195.

A witness who attends the Court on a subpœna is entitled to demand at any time his reasonable expenses of such attendance from the party issuing the subpœna even though he only gives evidence as a witness for a party to the suit other than the party summoning him.

THE facts of this case appear fully in the judgment.

CHANDAVARKAR, J. :—This is an application made to me in chambers by Mr. Bullock in connection with suit No. 205 of 1904, which was decided by me on 26th August, 1904.

Mr. Bullock was a witness subpœnaed by the plaintiff to produce certain documents, but was not examined for the plaintiff; the defendants examined him as their witness. He urges, however, that he attended the Court for four days, waiting to be examined for the plaintiff, and claims expenses from the plaintiff on that account at the rate of Rs. 10 *per diem*.

Mr. Bicknell of Messrs. Bicknell and Merwanji, plaintiff's solicitors, contests the claim on two principal grounds :—

(1) That the Court has no jurisdiction to deal with it; and

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(2) That Mr. Bullock is not entitled to any of the expenses he claims.

As to the first point, the application is made to me under Rule No. 195 of this Court which runs as follows:—

"Witnesses in civil suits who have not been paid such reasonable sum for their expenses as the Court allows by its rules may apply to the Court at any time in person to enforce the payment of such sums as may be awarded to them."

Now, Mr. Bicknell's argument is that this as an application to the Court to enforce payment, cannot lie because under this rule it is essential that a sum should have been awarded before payment of it could be enforced. He contends that the sum could have been claimed by the witness and awarded by the Court only before the witness gave evidence, not afterwards, because it is urged his right to claim and the Court's summary jurisdiction to award the reasonable expenses ceased the moment he gave evidence without insisting upon payment beforehand or an order for such payment.

I must overrule this preliminary objection, having regard to the decision of West, J., in the *London, Bombay and Mediterranean Bank* v. *Mahomed Ibrahim Parkar*[1]. It appears from the report of the learned Judge's decision in that case, that the same objection that is now raised before me was raised before him, *viz.*, that a witness who had failed to make his claim before giving his evidence could recover any sum due to him only by a suit. It was there contended, as Mr. Bicknell contends now, after the authority of West J.'s decision has stood unquestioned for nearly a quarter of a century, that no such order as the Court was asked to make had ever been made at this side of the Court. But West, J., said: "The assertion seems not to have been altogether warranted. On enquiring from the Chief Justice"—*i.e.*, Sir Michael Westropp—"I learn that he has frequently made orders for the payment of witnesses' expenses after they had given their depositions"[2]. And then West, J., goes on to say that the case is exactly covered by Rule No. 188 of the late Supreme Court. That rule, it will be observed, is in the same terms as our present Rule No. 195, except that the words "as the

(1) (1880) 4 Bom. 619. (2) (1880) Ibid p. 621.

Court shall think fit" in the former are altered for the words "as the Court allows by its rules" in the latter.

Passing, then, to the merits of Mr. Bullock's application, one of the grounds on which it is opposed is that the plaintiff, having subpœnaed him only to produce certain documents the witness might have deputed his clerk for that purpose instead of attending the Court himself. I do not think this is a reasonable ground to urge. When a witness has been summoned to produce documents, whether he should produce them himself or by one of his servants is a question which must be left to his discretion, unless the summons distinctly tells him that he might depute one of his servants with the document. The next objection urged is that as Mr. Bullock now admits, and as he admitted in his deposition in the suit itself, that he had no documents to produce, he might have saved himself all the trouble and expense of attendance at the Court by simply writing to the attorneys of the plaintiff to that effect. Mr. Bullock says that in a letter written to them previous to the suit he had given that intimation, but Mr. Bicknell points out that the intimation was that Burdett and Company's papers which he had with him had been taken away by one Patuck. I think that the plaintiff's solicitors ought to have clearly ascertained from Mr. Bullock before summoning him whether he had any of the documents they wanted or not. It does not lie in the mouth of a party summoning a witness to produce a document or documents to say that if the witness had no documents to produce he was bound to tell them instead of attending the Court in obedience to the summons. Witnesses are generally laymen not familiar with the law or rules of our Courts, and I should not interpret any rule or law so as to lay a trap for them. Lastly, I understand Mr. Bicknell to contend that Mr. Bullock, having given evidence for the defendant, has lost his right to ask for his expenses from the plaintiff. The decision of West, J., already cited is an authority for holding that a witness subpœnaed by a party to a cause does not lose his right to be paid the reasonable expenses of attendance at the Court by that party merely because he has not been examined for the said party. In this case there is no doubt the other circumstance that the witness was examined for the other party. But that circumstance

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cannot, in my opinion, make any difference and extinguish the right which the witness had against the party who subpœnaed him if the witness attended the Court on that subpœna.

The only question that remains is—for how many days did Mr. Bullock attend the Court on the plaintiff's account? Mr. Bullock says he attended for four days. At the last hearing of this motion Mr. Bicknell disputed that and insisted that he should be allowed to put Mr. Bullock on oath and ascertain from him the number of days. Mr. Bicknell is not present to-day and no one appears for the plaintiff. Had any one on plaintiff's behalf been present, I should have allowed him to examine Mr. Bullock, but as no one appears, I refer the question of the reasonable expenses to be paid to Mr. Bullock to the Prothonotary to settle.