

# MATRIMONIAL JURISDICTION.

*Before Mr. Justice Stephen.*

GEORGUCOPULAS.

v.

GEORGUCOPULAS.\*

1902  
April 29.

*Husband and wife—Wife's costs, application for—Divorce Act (IV of 1869) s. 7—  
Foreign domicile—Property of wife.*

On an application by the wife for her costs during the pendency of her suit for judicial separation and her husband's suit for divorce :

*Held*, that a wife, whose property is retained by her husband, is entitled to her costs. That, inasmuch as the parties are domiciled abroad and the law of that country is not before the Court, s. 7 of the Divorce Act applies, and the Court will act on the general principles of English law.

*Mayhew v. Mayhew* (1) followed.

THIS was an application made on behalf of the Petitioner, Angelique Georgucopulas, for an order that the Respondent; John George Georgucopulas, should pay into Court such sum of money as in the opinion of the Court would be sufficient to cover the costs already incurred and to be incurred by her in prosecuting and defending two pending suits, or give sufficient security to the satisfaction of the Registrar of the High Court, and that he should deposit or find security for the costs already incurred by her, and also pay her or her attorney *de die in diem* during the hearing of the two suits such sums of money as the Court should think proper, and pay her costs for the hearing of the two suits.

*Mr. Sinha* for the Petitioner. I apply for an order that the husband do pay or give security for his wife's costs in prosecuting and defending the two suits now pending.

The husband is bound to provide for the wife's costs in the two suits now instituted. See Rattigan on *Divorce*, p. 363.

\* Suits Nos. 12 of 1900 and 13 of 1900.

(1) (1895) I. L. R. 19 Bom. 293.

1902

GEORGE CO-  
FULAS  
v.  
GEORGE CO-  
FULAS.

Here, it is admitted, she has no property at all except her marriage portion, which is in her husband's hands. See *Weber v. Weber* (1), *Natall v. Natall* (2), *Mayhew v. Mayhew* (3), *Kelly v. Kelly* (4), *Broadhead v. Broadhead* (5).

This case does not come under s. 4 of the Succession Act. See *Miller v. The Administrator-General of Bengal* (6) and *Hill v. The Administrator-General of Bengal* (7).

I submit on the authorities shown that the property of the parties is not affected by s. 4 of the Succession Act.

Here the husband says he has no means, but that fact is not sufficient to prevent the order being made.

*Mr. Avetoom* for the Respondent. This is not a *bonâ fide* application. The wife instituted her suit on the 29th August 1900, and since 11th April last the case has been on the list of pending suits.

The question raised by the other side as regards succession does not apply here.

In *Proby v. Proby* (8) Pontifex J., p. 362, says this: "The foundation of the practice which prevailed in the Ecclesiastical Court was the absolute right which the law formerly gave the husband upon marriage to the whole of the wife's personal estate and to the income of her real estate, leaving her destitute of all means to conduct her case."

Here the parties are Greeks, and are not governed by English law, but by the law of their country. S. 45 of the Divorce Act regulates the proceedings in so far as divorce is concerned, and says you must fall back on the Civil Procedure Code. Under the Code security is only given where a person is about to leave the jurisdiction. The parties are not governed by the Succession Act, and this matter must be decided by the Civil Procedure Code. *C. LeMesurier v. LeMesurier* (9), *Allen v. Allen* (10), *Ward v. Ward* (11).

(1) (1860) 1 S. &amp; T. 219.

(6) (1876) I. L. R. 1. Calc. 412

(2) (1825) I. L. R. 9 Mad. 12.

(7) (1896) I. L. R. 23 Calc. 506

(3) (1895) I. L. R. 19 Bom. 223.

(8) (1880) I. L. R. 5. Calc. 357.

(4) (1870) 5. B. L. R. 71.

(9) (1895) 64 L. J. P. C. 97.

(5) (1870) 5. B. L. R. App. 9.

(10) (1894) L. R. P. D. 134.

(11) (1860) I. S. and T. 484.

In s. 7 of the Divorce Act, the Court in granting relief will follow the English law, but here it is different, inasmuch as the parties are not governed by English law.

1902  
 GEORGE CO.  
 PULAS  
 v.  
 GEORGE CO.  
 PULAS.

**STEPHEN J.** In this case on the proceedings of divorce and petition for judicial separation the wife seeks to make her husband liable for her costs. The husband and wife in this case are Greeks, domiciled in Greece and married at Alexandria.

It is contended that this Court has no jurisdiction to act in the matter, since the English law applicable in such cases does not apply here.

I think, however, it is plain under s. 7 of the Divorce Act that this is a mistaken view. Under that section I am to act and give relief on principles and rules existing in England. The breadth of these terms seems to me to indicate that I have power to make such an order as is now sought for.

In considering the substantial question before me it has to be borne in mind that the question of whether the wife is or is not to have her costs depends upon the property which the wife may be supposed to have. If either under the Married Woman's Property Act in England, or under the Succession Act here, it appears that the woman retains her property in spite of her marriage, she will, following the ruling in *Proby v. Proby* (1), not be entitled to her costs.

In this case, however, her position in relation to her husband as regards her property is governed by the law of Greece, and I have before me no evidence as to what that law may be. Under these circumstances I do not think that *Proby v. Proby* (2) and all the cases decided in this Court on the same lines apply. I must consequently fall back on the general principle as stated in *Browne and Powles on Divorce* quoted in *Mayhew v. Mayhew* (3). "It is not considered just either that a wife should be left without the means of putting her case fairly before the Court, or that a practitioner should run the risk of losing the proper remuneration for his labours, if he takes up a case which he

(1) (1880) I. L. R. 5. Calc. 357.

(2) (1895) 9. L. R. 5 Calc. 357.

(3) (1880) I. L. R. 19 Bom. 295.

1902  
 GEORGE CO-  
 PULAS  
 v.  
 GEORGE CO-  
 PULAS.

honestly believes to be genuine, but which may after all turn out to be unfounded." This is part of the law of England, and I am therefore bound by it.

I think therefore that the wife is entitled to the relief which she claims.

Order made in the usual form for the Registrar to decide what costs the husband can pay and how they should be paid, and I direct the reference to be treated as an urgent reference. Costs of this application costs in the cause.

*Mr. Aetoom.* Does the order include costs already incurred?

**STEPHEN J.** Yes.

*Mr. Aetoom.* I ask that the order be not made to include former costs.

**STEPHEN J.** I cannot accede to that.

*Mr. Senha.* I ask for an order, as in *Kelly v. Kelly* (1), either to pay or to give security.

**STEPHEN J.** The proper order is to make the order in the ordinary form. Costs of this application costs in the cause.

Attorney for Petitioner. *Leslie and Hinds.*

Attorney for Respondent. *S. P. Simmons.*

D. G. M.

## APPELLATE CIVIL.

*Before Mr. Justice Ghose and Mr. Justice Brett.*

SURJA PERSHAD NARAIN SINGH

v.

REID.\*

*Mesne profits—Possession—Principle of assessing amount of mesne profits—Civil Procedure Code (Act XIV of 1882) s. 244—Second appeal—Determination of mesne profits.*

Where a decree-holder was in constructive possession by letting out the lands to tenants, before ouster by the judgment-debtor, the mesne profits should be

\* Appeal from Order No. 22 of 1901, against the order of Babu Bhagwati Charan Mitter, Subordinate Judge of Saran, dated the 21st of December 1900.

(1) (1869) 3 B. L. R. 71.

1902  
 Feb. 10, 11.