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 LAL NARAIN
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added to that section by Act VI of 1892 must be read with the addition to s. 540 made by Act VII of 1888.

As for the cases referred to by the District Judge, that officer has apparently overlooked the fact that they relate to orders with regard to appeals, and not with regard to original suits or proceedings. The learned pleader for the appellants in this case has called our attention to the reasoning of the Judge who decided the case of *Mansab Ali v. Nihal Chand* (1). According to that learned Judge an order dismissing a suit for default is to be regarded in exactly the same light as an order dismissing an appeal for default. But this case seems to have been decided according to the law as prevalent before the addition made to s. 540 by the amending Act VII of 1888, or at all events without reference to the clause so added. For this reason, this case cannot, in our opinion, be relied on.

On these grounds we decree this appeal and remand the case to the lower Appellate Court in order that it may be disposed of on the merits.

The costs will abide the result.

B. D. B.

Appeal allowed and case remanded.

MATRIMONIAL JURISDICTION.

Before Mr. Justice Harington.

OUTHWAITE v. OUTHWAITE AND DIAZ.

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 Dec. 13.

Costs—Suit for dissolution of marriage—Costs between party and party—Costs between Attorney and client—Liability of Co-respondent—Damages—Divorce Act (IV of 1869), s. 45—Civil Procedure Code (Act XIV of 1882), s. 220—Practice.

Where a husband obtained an order for dissolution of marriage and costs but no damages were asked for by the petitioner against the co-respondent, it was ordered that the costs granted should include costs as between attorney and client.

THE husband petitioned for dissolution of marriage by reason

(1) (1893) I. L. R., 15 All., 359.

of his wife's adultery with the co-respondent. Costs, but no damages, were asked for against the co-respondent.

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The respondent entered an appearance, but did not file an answer or defend the suit. The co-respondent, however, neither entered an appearance nor defended the suit.

The Court gave a decree *nisi* with costs against the co-respondent.

Mr. *Knight* for the petitioner asked for costs as between attorney and client. On principle the petitioner is entitled to an indemnity from the co-respondent. In this case no damages are claimed, but under the English practice the party and party costs are given. Where damages are recovered the usual order is that the amount of the difference between the party and party and client and party costs be given to the petitioner out of the damages before they are settled or dealt with according to the order of the Court. Brown's Divorce Practice, 5th Edition, p. 202 deals with the disposition of damages. [HARRINGTON, J.—Have I jurisdiction to make the order you ask for?] Clearly. S. 45 of the Indian Divorce Act provides that the Code of Civil Procedure shall regulate the procedure. Chapter XVIII of the Code of Civil Procedure deals with the question of costs. S. 220 could hardly in terms be wider. It gives the Court power to award costs in any manner it thinks fit. Moreover though the principle of taxation in the Ecclesiastical Courts, which regulates the taxation in matrimonial suits here, was as between party and party, yet that term had a far different construction put upon it from that which obtained in the Common Law Courts.

HARRINGTON, J.—I will make the order.

Attorneys for the petitioner : Messrs. *Leslie & Hinds*.

C. E. G.