
(1869) 06 CAL CK 0057

Calcutta High Court

Case No: None

Kelly

APPELLANT

Vs

Kelly and Saunders

RESPONDENT

Date of Decision: June 15, 1869

Judgement

Phear, J.

I made the order in this case for the assessment of the probable amount of the wife's costs and payment of the amount into Court, and directed that the wife's proctor should have a lien for his costs on the amount so paid into Court, on the authority of Sir Cresswell Cresswell's decision in Sopwith v. Sopwith 6 Jur. N.S. 404, where oddly enough that learned Judge had to make an explanation for a second time, just as I am obliged to make it now for the second time. And in Evans v. Evans and Robinson 28 L.T. Pro. & Mat. 136 (138), the Full Court held that, notwithstanding the dissolution of the marriage had been decreed with costs against the co-respondent, the wife's proctor could have recourse to the sum paid into Court. Finally in the case of Allen v. Allen and D'Arcy 2 S. & T. 107. The rule is laid down by the Court, by which the Registrar is to estimate the costs, and by that rule the wife will get the costs of issues actually framed, even though she fails as to them. There is, therefore, no need for Mr. Hyde's application. If the wife's proctor, at any stage of the proceeding, wants his costs paid out of Court he can make a simple application for them. He knows the costs are safe in Court. I think this application, which is much more extensive than the Court can grant, should be dismissed. The costs of this application will be disallowed. Mr. Hyde afterwards applied for an order that the costs of the respondent should be taxed on scale No. 2, as between attorney and client; and that the amount, when so taxed, be paid out to her proctor. Phear, J., granted the application.