

**Georgucopulas Vs. Georgucopulas**

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**SooperKanoon Citation :** [sooperkanoon.com/857743](http://sooperkanoon.com/857743)

**Court :** Kolkata

**Decided On :** Apr-29-1902

**Reported in :** (1902)ILR29Cal619

**Judge :** Stephen, J.

**Appellant :** Georgucopulas

**Respondent :** Georgucopulas

**Judgement :**

**Stephen, J.**

1. 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.
2. 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.
3. I think, however, it is plain under Section 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.

4. 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* (1880) I. L. R. 5 Calc. 857. not be entitled to her costs.

5. 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* (1895) 9 L. R. 5 Calc. 357. 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* (1880) I. L. R. 19 Bom. 295. '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 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.

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

7. 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.

8. Mr. Avetoom. Does the order include costs already incurred

**Stephen, J.**

9. Yes.

10. Mr. Avetoom. I ask that the order be not made to include former costs.

**Stephen, J.**

11. I cannot accede to that.

12. Mr. Sinha. I ask for an order, as in Kelly v. Kelly (1869) 3 B. L. R. 71., either to pay or to give security.

**Stephen, J.**

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

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