

**Bateman Vs. Bateman and Nicachi**

**Bateman Vs. Bateman and Nicachi**

**SooperKanoon Citation :** [sooperkanoon.com/863967](http://sooperkanoon.com/863967)

**Court :** Kolkata

**Decided On :** Mar-13-1914

**Reported in :** (1914)ILR41Cal963

**Judge :** Chitty, J.

**Appellant :** Bateman

**Respondent :** Bateman and Nicachi

**Judgement :**

**Chitty, J.**

1. In this case the petitioner, M.E. Bateman, prays for a dissolution of his marriage with the respondent, G.E. Bateman, on the ground of her adultery with the co-respondent, A.S. Nicachi. The present application is presented by the respondent asking that the petitioner may be required to give security for a sum to meet her costs of suit. The parties are domiciled in this country, and it is conceded that the petitioner's income is Rs. 450 a month, and that he is at present making his wife an allowance of Rs. 75 a month. It is not suggested that she has any separate property or means of her own. The application is resisted by the petitioner, and his counsel relies on the case of Proby v. Proby (1879) I.L.R. 5 Calc. 357. In that case it was held that such an order should be made under special circumstances only; but I do not read that judgment as altogether debarring this Court from the exercise of the discretion which it must undoubtedly exercise in deciding

applications of this nature. The principle in *Proby v. Proby* (1879) I.L.R. 5 Calc. 357 was followed, though not without some hesitation and reservation, by Pigot J. in *Young v. Young* (1886) I.L.R. 23 Calc. 916n and by Ameer Ali J. without comment in *Thomas v. Thomas* (1896) I.L.R. 23 Calc. 913. It was distinguished by Trevelyan J. in *Thomson v. Thomson* (1887) I.L.R. 14 Calc. 580 and was accepted by Pugh J. in the case of *Watling v. Watling* (1910) April 22 (unreported) but that was a petition by the wife against the husband, in which somewhat, different considerations might arise. The case of *Jahans v. Jahans* (1902) 6 C.W.N. 414 is no authority for either contention, as the learned Judge expressed no opinion on the point. It is noteworthy that by the passing of the Married Women's Property Act, 1882, the reason underlying the decision in *Proby v. Proby* (1879) I.L.R. 5 Calc. 357 has been removed. Notwithstanding the passing of that Act, the rule still obtains in England that, generally speaking, the husband will be required to provide for the wife's costs. This was pointed out by Farran, J., in *Mayhew v. Mayhew* (1894) I.L.R. 19 Bom. 293. From enquiries I find that security has been ordered in a very large number of cases in this Court notwithstanding the ruling in *Proby v. Proby* (1879) I.L.R. 5 Calc. 357. Indeed it would appear that such orders are still rather the rule than the exception. It is true that in many of such cases there may have been no contest. This appears to me to be eminently a case in which such an order should be passed. To withhold it might be equivalent to shutting out the wife's defence altogether. I accordingly order that within a fortnight from this date the petitioner do furnish security to the satisfaction of the Registrar for a sum of Rs. 400 to meet the costs of the respondent. The petitioner must pay the respondent's costs of this application.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**