the tything to contribute to the repair of the highways within the parish; also that the parish of Swindon never contributed to the repair of the highways within the tything, and whatever repairs were done to the highways in the tything were done by the inhabitants of the tything: either of these facts by itself would not be sufficient, but taken together they shew exemption of the inhabitants of the tything from liability to repair the highways within the parish, and a good consideration for that exemption.

On the other point I agree with my Lord Chief Justice, for the reason that there cannot be two days of the same number in a calendar month.

Blackburn J. It is not disputed that there may be a district smaller than a parish, which, in consideration of the liability by immemorial usage to repair its own highways, is exempt from liability to contribute to the repair of the highways in the parish. Here, though the district is a very small one, the three things mentioned by my brother Wightman taken together form a case on which a jury might find that the tything of Walcot was legally exempt from liability to repair the highways in the parish.

As to the second point. It has been well settled that the calendar month required by the statute begins at midnight of the day on which the notice was given; [186] and generally it ends at midnight of the day with the corresponding number of the next ensuing month in the calendar. In the present case, therefore, I think that the plaintiff had a right to commence his action on the 29th of May; for this would give the defendant one clear calendar month's notice. It is said that we ought to consider whether the month in which the notice expires is longer or shorter, and that in the present case one day ought to be added, because May has thirty-one days; and so if the first day were in February three days must be added. But that would be very inconvenient, and would lead to many mistakes. And in the case of bills of exchange the time is computed without regard to whether the month is long or short. When the notice is given on the 29th of January in an ordinary year, the calendar month expires before you reach the 29th of the next month; I should say the calendar month would run out on the last day of February. The same principle holds, when the notice is given on the last day of a month which has thirty-one days, and that month is followed by one which has only thirty days; but those cases are exceptions.

Rule discharged.

1921. I. [illegible]

[187] IN THE MATTER OF A SUIT OF ROBERT FORSTER *against* MARY OWEN FORSTER AND BERRIDGE. Thursday, June 11th, 1863.—Divorce Court. Foreign marriage. Suit for dissolution of marriage. Costs against adulterer. Prohibition. 20 & 21 Vict. c. 85, ss. 27, 34.—1. Quære, whether the Court for Divorce and Matrimonial Causes, under stat. 20 & 21 Vict. c. 85, s. 27, has jurisdiction to entertain a petition for the dissolution of a marriage between British subjects when the marriage was contracted in a foreign country, as in India.—2. Quære, whether prohibition lies to that Court?—3. On a petition to that Court for the dissolution of marriage, the Court, if the adultery is proved, has power to order all the costs of the proceedings to be paid by the co-respondent, although it does not decree dissolution of the marriage.—4. On the 21st March, 1862, the petitioner filed a petition, in the Court for Divorce and Matrimonial Causes, for dissolution of the marriage between him and his wife, celebrated in the East Indies, according to the rites of the Church of England, on the ground of her adultery with the co-respondent, and claiming damages against the co-respondent: to which the respondent and co-respondent respectively entered an absolute appearance; but afterwards applied to the Judge Ordinary to be allowed to appear under protest, on the ground that the Court had no jurisdiction, by reason of the petitioner and respondent never having been domiciled within its jurisdiction; which application was refused. On the trial of the issues in December, 1862, the jury found that the adultery was proved, and assessed the damages to be paid by the co-respondent at 5000*l.*; and thereupon the Judge Ordinary pronounced a decree nisi for the dissolution of the marriage, and ordered him to pay all the costs of and incident to the petition. Upon application by the co-respondent for prohibition to the Judge Ordinary: Held, that the co-respon-

dent was only aggrieved by the order for payment of the costs, which, if wrong, was ground for appeal, and therefore prohibition ought not to issue.

[See *Mayor of London* v. *Cox*, 1867, L. R. 2 H. L. 280; *R.* v. *Twiss*, 1869, L. R. 4 Q. B. 413; *R.* v. *Surrey JJ.*, 1870, L. R. 5 Q. B. 472; *Worthington* v. *Jeffries*, 1875, L. R. 10 C. P. 383; *Chambers* v. *Green*, 1875, L. R. 20 Eq. 555.]

In this Term, May 26th, Coleridge obtained a rule calling upon the Judge Ordinary of Her Majesty's Court for Divorce and Matrimonial Causes to shew cause why a writ of prohibition should not issue to prohibit him from making absolute the decree nisi for dissolving the marriage between the petitioner, Robert Foster, and the respondent, Mary Owen Forster, and from proceeding further in that suit against either or any of the parties thereto.

The rule was granted on the application of the co-**[188]**-respondent, whose affidavit stated that, on the 21st March, 1862, the petitioner filed his petition in the Court for Divorce and Matrimonial Causes, in which he described himself as of Chertsey, in the county of Surrey, and a major in Her Majesty's Indian army, and alleged that he was, on the 20th June, 1839, married to the respondent, Mary Ann Forster, at Bareilly, in the East Indies, and that after his marriage, he lived and cohabitated with his wife at several places in the East Indies, as well as at several places in England; and that she left him in January, 1854, at Chunar, in the East Indies and proceeded to England and remained there; and that he left India in November, 1861, for the sole purpose of presenting his petition to the Court for Divorce and Matrimonial Causes: that by the petition he prayed that Court to decree that his marriage with the respondent might be dissolved on the ground of adultery with the co-respondent; that it did not appear by the petition what was the domicile of origin of the petitioner or the respondent, or where they were domiciled at the time of their marriage, or what was their bonâ fide domicile at the time of the committal of the acts of adultery by the respondent set forth in the petition, or what was their domicile at the time of filing the petition: that the co-respondent was served with the petition on the 25th March, 1862, and at that time had no information on the subject of the domicile of the petitioner or respondent and no knowledge of the materiality of that fact: that after an absolute appearance had been entered on his behalf, and on behalf of the respondent respectively by their solicitors, it came to the knowledge of his solicitor that the petitioner and respondent had been born in the East Indies; that the **[189]** father and mother of the petitioner and respondent were born, resided and died domiciled in the East Indies; that the petitioner and respondent had retained their domicile there from the time of their birth up to the time of their marriage, and that the petitioner had ever since his marriage retained his domicile there: that on the 10th April, 1862, a summons was taken out by the solicitor for the co-respondent before the Judge Ordinary, to amend his appearance, by making it an appearance under protest to enable him to contest the jurisdiction of the Court to entertain the suit by reason of the petitioner and the respondent never having been domiciled within the jurisdiction of the Court; and about the same time the solicitor for the respondent took out a similar summons; that, on the 29th April, the Judge Ordinary refused to amend their appearances: that on the 2nd May, 1862, a plea to the jurisdiction of the Court was filed by the respondent, but, on the 20th May, by order of the Court, was taken off the files: and on the 26th May, an act on petition, in order to raise the question of the jurisdiction of the Court, was filed on behalf of the respondent, but, on the 3rd June, by order of the Court, was taken off the files: that, on the 2nd May, the co-respondent filed an answer to the petition to prevent judgment going against him by default; that the respondent also pleaded to the suit; that in November the co-respondent obtained leave to amend his answer: that, on the trial of the issues raised in the suit in December, 1862, the jury found that the adultery was proved, and assessed the damages to be paid by him in the suit at 5000*l.*; and thereupon the Judge Ordinary pronounced a decree nisi for the dissolution of the marriage, and condemned the co-respondent to **[190]** pay all the costs of and incident to the petition: that, in April, 1863, W. G. intervened in the suit, under the provisions of stat. 23 & 24 Vict. c. 144, s. 7, in order that the question of jurisdiction might ultimately be adjudicated upon, and in May shewed cause by counsel against the decree nisi being made absolute; and the Court decided that the question of jurisdiction could not be raised by W. G. in the character of intervener.

The affidavit of the attorney for the petitioner, which was used on shewing cause against the rule, stated that, at the time of the filing of his petition in March, 1862, he was residing at Chertsey in the county of Surrey; that, at the time of the committing the adultery in the petition mentioned up to December, 1859, the respondent lived with her two sons and two daughters, being all the surviving children of the marriage, in a house in London, taken for a term of three years; that in reply to the plea of the respondent to the jurisdiction of the Court of Divorce the petitioner filed an affidavit, dated May 7th, 1862, in which it was stated that his father and mother were natural born subjects of this realm, that he had never regarded India otherwise than as the country in which his military duties were to be performed, and had on every occasion when the opportunity offered left India for the purpose of staying in this country, and intended whenever his term of duty expired to retire to this country and pass here the remainder of his days; that his marriage with the petitioner was celebrated according to the rites of the Church of England at Bareilly in the Archdeaconry of Calcutta; that he had cohabited with the petitioner during the years 1850 and 1851 in places in England, and his last child by her was born during such cohabitation on the 21st November, 1850; that his **[191]** four surviving children had been educated and brought up in this country, and two of him were then residing with him at Chertsey, and that the respondent and her two daughters by the petitioner were still resident in England.

Coleridge, on moving for the rule, relied on the ground that the Court for Divorce and Matrimonial Causes, to which, by stat. 20 & 21 Vict. c. 85, s. 6, the jurisdiction of the Ecclesiastical Courts was transferred with the additional power by sect. 27 to grant divorces a vinculo matrimonii, had no jurisdiction to entertain the suit, the marriage having been contracted in India: and cited *Ratcliff* v. *Ratcliff and Anderson* (1 Swab. & T. 467), *Yelverton* v. *Yelverton* (Id. 574, 586), *Simonin* v. *Mallac* (2 Id. 67), *Collett* v. *Collett* (3 Curt. 726, 728, 729, 730), *Tenducci's Case*, cited by Dr. Lushington in *Collett* v. *Collett* (3 Curt. 731, 732), *Deck* v. *Deck* (2 Swab. & T. 90), *Bond* v. *Bond* (2 Swab. & T. 93), *Brodie* v. *Brodie* (Id. 259, 263), Story's Conflict of Laws, ch. vii. [Blackburn J. *Yelverton* v. *Yelverton* (Id. 574, 586) proceeds on the express ground that the respondent was not domiciled in England at the time of the suit; but the cases cited there shew that when the adulterer is in England, though a foreigner, he would be within the jurisdiction of the Court. He also referred to *Dalrymple* v. *Dalrymple* (2 Hagg. Cons. Rep. 54).]

Lush (with him Mundell and H. F. Gibbons) shewed cause on behalf of the petitioner.—First. Prohibition cannot go to the Judge of the Court for Divorce **[192]** and Matrimonial Causes. That Court is constituted and derives its authority from stat. 20 & 21 Vict. c. 85, amended by stats. 21 & 22 Vict. c. 108, 22 & 23 Vict. c. 61, 23 & 24 Vict. c. 144, which last Act was made perpetual by 25 & 26 Vict. c. 81. It has a permanent Judge, called the Judge Ordinary of the Court, stat. 20 & 21 Vict. c. 85, s. 9; by the same statute, s. 8, and 22 & 23 Vict. c. 61, s. 1, the Lord Chancellor and all the Judges of the Superior Courts of Common Law at Westminster are Judges of the Court; and by stat. 20 & 21 Vict. c. 85, s. 56, in the case of a petition for the dissolution of a marrage there is an appeal to the House of Lords. [He also referred to stat. 23 & 24 Vict. c. 144, s. 3.] If a prohibition lies to that Court a single Judge of this Court, sitting in the Bail Court, might grant it after sentence, and might also grant it to the Court of Appeal. [Blackburn J. It is not the dignity of the individual Judge which prevents prohibition from going.] The Court in question has a general and exclusive jurisdiction in matters and causes matrimonial, which is to be "exercised in the name of Her Majesty in a Court of record to be called 'The Court for Divorce and Matrimonial Causes;'" stat. 20 & 21 Vict. c. 85, s. 6. Its jurisdiction is much larger than that of the Ecclesiastical Courts, which had only a spiritual jurisdiction, and have been always treated as inferior Courts. In *Ex parte Cowan* (3 B. & A. 123) a prohibition was moved for to the Lord Chancellor sitting in bankruptcy, and Abbott C.J., delivering the judgment of the Court, which disposed of the objections to the jurisdiction of the Lord Chancellor in the particular instance, expressly abstained from giving any opinion on the **[193]** question whether the Court had authority to grant prohibition to the Lord Chancellor sitting in bankruptcy. [Blackburn J. In Com. Dig. Prohibition (A 1) it is stated, "A prohibition lies to the Duchy Courts, and Courts of a County Palatine, if they hold plea of lands out of the duchy." Crompton J. And farther on it is added, "To the Court of Exchequer, if it grants an

attachment for a proceeding in B. R. Dub. [*Earle* v. *Paine*] Salk. 550. D. [*Coats* v. *Sir Henry Warner*] 1 Roll. 252."] The proceedings in the Courts of a County Palatine were in the name of the Counts Palatine, and the indictments concluded "against the peace of the Earl, his sword and dignity."

Secondly. A Court constituted by statute has power to construe the statute which gives it jurisdiction; *In re Bowen* (21 L. J. Q. B. 10; 15 Jur. 1196). The Judge Ordinary, when he refused to amend the appearance, and when he directed the plea to the jurisdiction to be taken off the files, must have considered the question of jurisdiction arising upon stat. 23 & 24 Vict. c. 144. And either the respondent or co-respondent might have appealed from each of those decisions.

Thirdly. This application is too late, being more than three months after the decree nisi, which would have been made absolute on a motion of course; stat. 23 & 24 Vict. c. 144, s. 7: and prohibition will not go after sentence, unless it appears on the face of the libel that the Court had no jurisdiction, *Full* v. *Hutchins* (Cowp. 422, 424); or that there was an excess of jurisdiction in the act of trial; *Gould* v. *Gapper* (5 East, 345, 363-4). [Coleridge, contrà.—By stat. 23 & 24 Vict. c. 144, s. 7, "at any time during **[194]** the progress of the cause or before the decree is made absolute any person may give information to Her Majesty's proctor of any matter material to the due decision of the case," &c. He cited *In re The Dean of York* (2 Q. B. 1), plac. 6. Cockburn C.J. The provision cited shews that the decree nisi does not become a final sentence until after the expiration of three months; but the delay after three months might be accounted for, therefore the present case is not brought within those in which this Court would not interfere after final sentence.]

Fourthly. Prohibition is only demandable of right by a party aggrieved: it is matter of discretion whether the Court will grant it upon the suggestion of a stranger; *The case of The Parish of Aston* v. *Castle Birmidge Chappel* (Hob. 66), *Serjeant Morton's Case* (1 Sid. 65). [Wightman J. In *Tarrant* v. *Mawr* (1 Str. 576) there being cross suits by two wives in the Spiritual Court, the two husbands entered into an agreement to stay proceedings on both sides, and upon one of the wives going on prohibition was refused to her husband.] Stat. 20 & 21 Vict. c. 85, s. 28, requires that the adulterer shall be made co-respondent in a petition for the dissolution of marriage; under sect. 33, the Judge Ordinary had jurisdiction to entertain the petition against the co-respondent for damages: and under sect. 34 he has power to order the co-respondent "to pay the whole or any part of the costs of the proceedings." The right of action for criminal conversation against the adulterer is taken away by sect. 59; and there is no other Court in which the co-respondent could be sued. Assuming the dissolution of the marriage to be beyond the jurisdiction of the Judge Ordinary, the co-respondent is a stranger **[195]** as to that, seeing he has no interest in that question. The dissolution of the marriage and the decree for damages against the co-respondent are independent of each other, though connected in the same suit. (He was then stopped.)

Dr. Deane appeared on behalf of the Judge Ordinary, but did not argue.

Coleridge, Mellish, Dr. Tristram and E. C. Willoughby, contrà. First. The Court for Divorce and Matrimonial Causes has no jurisdiction over an Indian marriage.

Secondly. Under stat. 20 & 21 Vict. c. 85, s. 33, there are two distinct and independent courses which the petitioner, as a husband, might have taken. He might have limited his petition to a claim for damages against the adulterer, in which case there would have been no ground for a prohibition; but by making the adulterer co-respondent in a suit for the dissolution of the marriage, he has made him a party to a suit over which the Judge Ordinary has no jurisdiction. [Wightman J. If the Judge Ordinary thought he had no jurisdiction over the marriage he would make no decree for dissolving it, though he might decree the damages recovered against the adulterer: the two are in their nature separable. Cockburn C.J. In *Robinson* v. *Robinson and Lane* (1 Sw. & Tr. 363), which was a petition for dissolution of marriage, the petitioner's case depended on alleged confessions contained in a diary kept by the wife, and the full Court held that it was admissible against the wife though inadmissible against the co-respondent, on the ground that the respondent and co-respondent have a **[196]** distinct interest in the suit; and the co-respondent having been dismissed from the suit in pursuance of the power given in stat. 21 & 22 Vict. c. 108, s. 11, the suit went on against the wife.] That section, which empowers the Court to dismiss the co-respondent from the suit if there is not sufficient evidence against him, shews that the suit was considered indivisible. If the Judge Ordinary had no

jurisdiction over the marriage he had none to order the co-respondent to pay the costs of that part of the suit: they would not have been incurred if he had entertained the objection to his jurisdiction. [Wightman J. Might not the co-respondent have applied for a prohibition before these costs were incurred? At any rate this is not more than ground of appeal. Crompton J. Suppose the Judge Ordinary gave the petitioner the costs of an issue upon which he had not succeeded, that would not be matter for a prohibition.] The wife incurs costs in her defence which are properly the husband's, and they can only be ordered to be paid by the adulterer if the husband succeeds in the principal object of the suit, viz., a dissolution of the marriage. [Crompton J. That is contrary to the words of sect. 34. Suppose the marriage is not within the cognizance of the Judge Ordinary, still that section gives him jurisdiction to order the co-respondent to pay the whole costs of the proceedings: they are the penalty of his adultery.]

Finally, assuming that the co-respondent is a stranger, he may apply for prohibition. In *De Haber* v. *The Queen of Portugal* (17 Q. B. 171, 196), Lord Campbell, delivering the judgment of the Court, said, p. 214, "We find it laid down in books of the highest authority that, where the Court to which the prohibition is to go has no jurisdiction, a prohibition may **[197]** be granted upon the request of a stranger, as well as of the defendant himself; 2 Inst. 607, Com. Dig. Prohibition (E)." [Cockburn C.J. Whether the suit is divisible or not, the applicant would only have a right to get that part of it prohibited in which he is interested.] He has a right to apply for a prohibition of the whole if he has any interest in any part.

Lush resumed his argument.—*De Haber* v. *The Queen of Portugal* (17 Q. B. 171, 196) was a very peculiar case, in which the Lord Mayor's Court assumed jurisdiction over a person not within a jurisdiction. Further, in the present case the respondent and co-respondent having appeared absolutely, and pleaded, it is too late to apply for a prohibition; *Chichester* v. *The Marquis and Marchioness of Donegal* (Madd. & G. 375; reported in the Court below, 1 Add. 5), where Sir John Leach said, pp. 398, 399, "A party admitting a fact which gives jurisdiction to a Court, and appearing and submitting to that jurisdiction, upon general principles, and upon all analogies known to us, can never recede, or as it is called in the Scotch law, resile from those facts and withdraw that admission." In this Court when a party has appeared by attorney he cannot afterwards dispute the jurisdiction of the Court; though, if he appears in person, the Court allows him to withdraw. In the ecclesiastical Court, appearance is given by the party cited, or by a proctor authorized on his behalf; Coote's Practice of the Ecclesiastical Courts, p. 156: and in the present case the Judge Ordinary was right in refusing to allow the respondent and co-respondent to tack on a protest to their original appearance.

[198] Cockburn C.J.—We have considered the case and need not hear further argument. On this application to the Court for the exercise of its jurisdiction by way of prohibition, more than one question of difficulty arises. Whether the jurisdiction relating to marriage and the dissolution of marriage is to be exercised according to the law of the country to which the parties belonged at the time when the marriage was contracted, and according to the conditions under which they may be supposed to have entered into the marriage contract, or according to the law of the country where the tribunal is situate the intervention of which is prayed, is one of the most difficult questions that can arise upon the conflict between the laws of two countries. I am glad that we are not called upon to decide so intricate a question, So also, assuming that this case was beyond the jurisdiction of the Court for Divorce and Matrimonial Causes: whether that Court being, as I am strongly disposed to think it is, a Court of co-ordinate rank, although the subject-matter of its jurisdiction differs from that of the other superior Courts, is one to which a prohibition could properly issue from this Court, is a question upon which it is unnecessary to pronounce an opinion.

We dispose of this case on the narrower ground: that is to say, on the question relating to the exercise of jurisdiction by this Court.

The applicant, the co-respondent, is a stranger, being aggrieved, on his own shewing, only in so far as he has been decreed to pay all the costs of the suit, including those of the wife, in resisting the suit for the dissolution of the marriage. The suit was one which could be brought against him alone or as a co-respondent. If it **[199]** had been dismissed as against the wife, it might have been continued against him with a view to obtain damages for the wrong which the husband had sustained. The co-

respondent then is only aggrieved in respect of being ordered to pay the costs of that which is the legal ground of complaint,—in all other respects he is a stranger. I entirely concur in the proposition that, although the Court will listen to a person who is a stranger, and who interferes to point out that some other Court has exceeded its jurisdiction, whereby some wrong or grievance has been sustained, yet that is not ex debito justitiæ, but a matter upon which the Court may properly exercise its discretion; as distinguished from the case of a party aggrieved, who is entitled to relief ex debito justitiæ if he suffers from the usurpation of jurisdiction by another Court. In the present case, all that the applicant can allege is that he has been wrongfully ordered to pay these costs. That is matter for application to the Court itself by which the decision was given to reform or redress by its own decree; and if redress cannot be obtained there, then to the Court of Appeal. On this ground, I am of opinion that this rule ought to be discharged.

Wightman J. I agree with what the Lord Chief Justice has said on the narrower ground, viz., the insufficiency of interest in the applicant in the subject matter to entitle him to make this application.

With respect to the main ground of application for a prohibition I entertain great doubt, because by stat. 20 & 21 Vict. c. 85, the Judge Ordinary has abundant jurisdiction in the first instance to inquire into the matter. The enactment in sect. 27 is, "It [200] shall be lawful for any husband to present a petition to the said Court, praying that his marriage may be dissolved, on the ground that his wife has since the celebration thereof been guilty of adultery." Prima facie, therefore, the petitioner and respondent being British subjects and being lawfully married, although in a country which for this purpose must be taken to be a foreign country, the husband had a right to go to the Court and pray that the marriage should be dissolved. The objection then arises that the marriage is one which is not within the jurisdiction of the Court. That must depend upon questions of fact to be determined somewhere; and it seems to me that the Judge Ordinary has a general jurisdiction to inquire into and determine those that may be raised as to the place where, or the circumstances under which, the marriage took place; and supposing he came to a wrong decision, I think it would be a ground for appeal rather than for prohibition. It is not, however, necessary to determine that matter.

Crompton J. I feel great difficulty as to the question whether this marriage is within the Act of Parliament relating to divorce and matrimonial causes; and agree in deciding the case on the narrower ground.

The applicant having had costs awarded against him under stat. 20 & 21 Vict. c. 85, s. 34, and being an adulterer, has no locus standi to complain of the dissolution of the marriage; the only suggestion is, that he is aggrieved because he is ordered to pay costs. But they are independent of the dissolution of the marriage. Sect. 34 gives the Court discretion to order all the costs of the proceedings to be paid by the adul-[201]-terer,—whether those proceedings are successful or not as to the dissolution of the marriage. And, even if that were not so, and the Judge had made a wrong order respecting the costs, that is a question of practice, and not a matter upon which it would be proper for this Court to grant a prohibition. I am of opinion that we ought not, in the exercise of our discretion, to entertain this motion on the application of a stranger.

At the same time I agree with my brother Wightman in thinking that the Court for Divorce and Matrimonial Causes is the proper Court to decide whether this marriage is within stat. 20 & 21 Vict. c. 85, s. 27. That Court is a high Court established by Act of Parliament, with jurisdiction over marriages in general, and their dissolution; and this marriage was brought before it on matters appearing to be expressly within its cognizance. Whether the marriage is one which falls within sect. 6, giving the Court jurisdiction, depends partly on law and partly on fact; and, looking at the scope of the Act of Parliament, I think that is one of the questions which that high Court is appointed to decide, subject only to an appeal to the still higher Court given by sect 56. This is not like the drawing away a case from the jurisdiction of another Court, for there is no other Court except the Court for Divorce and Matrimonial Causes which can decide the question. Such appears to me to be the law on this subject, though it is not necessary to decide it positively, and we have not heard a full argument upon it.

Blackburn J. It is not necessary to decide whether, if the Court for Divorce and

Matrimonial Causes exceeded its jurisdiction, we could issue a prohibition to it. I [202] incline to think that, if there were a clear excess of jurisdiction by that Court, we could do so, notwithstanding the high dignity of the persons who constitute it. But, on the other hand, the power of appeal to the House of Lords makes me doubt, because it is argued that if prohibition lies to the inferior it would lie also to the appellate Court.

The other question is as difficult a question as can be raised; viz., whether this marriage comes within stat. 20 & 21 Vict. c. 85, s. 27, which enacts, "It shall be lawful for any husband to present a petition to the said Court, praying that his marriage may be dissolved." Suppose the case of a foreign husband, domiciled abroad, praying that a foreign marriage may be dissolved, whether the Court for Divorce and Matrimonial Causes would have jurisdiction over that suit is a question of very great doubt, and which we have not to decide. Then is it a question which, when it arises before them, the Court for Divorce and Matrimonial Causes has jurisdiction to decide, subject to appeal to the House of Lords? At present the impression on my mind is, that I agree with my brothers Wightman and Crompton in thinking that it would not be an excess of jurisdiction in that Court to decide that question. The point, however, has not been fully argued because it is not necessary to decide it.

I now come to the ground upon which I agree with the Lord Chief Justice and my brothers Wightman and Crompton in thinking that this rule should be discharged. Prohibition is granted for two reasons, as is said in Com. Dig. Prohibition (C) (not by Chief Baron Comyns, but in a paragraph between brackets which has been introduced by one of his editors, and which I think is cor-[203]-rect): "In prohibition, are, 1st, contempt of the Crown, and, 2dly, a damage to the party." If we see a contempt of the Crown, that is a case in which we ought to interfere. A stranger has in general no right to require our interference; but if he shews that he is aggrieved and has sustained damage, then, ex debito justitiæ, as in any other suit, he has a right to our opinion upon the question. The distinction has not been very distinctly taken in any of the previous cases; but it seems to me to be well founded on common sense; and there can be no doubt that it is far better, as a matter of discretion, that this question should be disposed of by a Court of appeal than raised in this Court by prohibition. Then is the applicant, the co-respondent, in any sense a party aggrieved by an excess of jurisdiction, assuming the proceedings to dissolve the marriage to be such? He has no interest in the question whether the marriage is to stand or not. It was argued that he is not liable to damages in the present case, because he had been joined as co-respondent in the petition which claimed a dissolution of the marriage, and that if the marriage was not to be dissolved he was not liable to pay damages. I do not concur in that construction of sect. 33. I think that under sect. 29, although the Court on hearing any countercharge against the petitioner should conclude that the marriage ought not to be dissolved, the co-respondent who had been convicted of adultery would have no right to get free from damages on that ground. But whether that be the right of construction of the statute or not, the matter is within the jurisdiction of the Court for Divorce and Matrimonial Causes, and consequently not ground for prohibition. It is further said that the Court for Divorce and Matrimonial Causes has awarded [204] that the co-respondent should pay all the costs of the proceedings, and, consequently, has included the costs of that part of them which was incidental to the dissolution of the marriage and to the attempting to raise the question in that Court; and it is argued that if the Court had no right to dissolve the marriage, it had no right to order these costs. But sect. 34 enacts, "Wherever in any petition presented by a husband the alleged adulterer shall have been made a co-respondent, and the adultery shall have been established, it shall be lawful for the Court to order the adulterer to pay the whole or any part of the costs of the proceedings." This says in words, and must have been intended to have the meaning, that if, in the course of a petition, it appears that the co-respondent was the adulterer, then whether the petition for the dissolution of the marriage were granted, or whether for some reason it were dismissed, the Court should have the power to order all or part of the costs to be paid by him. As a rule of practice it may be discreet not to order the costs to be paid by the adulterer if the petition is dismissed; but the Court has jurisdiction to order them: and therefore on that narrow ground I think this rule ought to be discharged.

On the other points, which were not fully argued, I desire what I have said to be considered as dicta partly obiter.

Rule discharged, with costs.

[205] THE QUEEN *against* JAMES TAYLOR INGHAM, ESQUIRE, AND WILLIAMSON. Thursday, June 4th, 1863.—Metropolis Local Management Act, 18 & 19 Vict. c. 120, s. 18. Parish without the metropolis. Rate for paying debt incurred under The Metropolitan Sewers Act, 11 & 12 Vict. c. 112.—Part of the parish of A. was comprised in the F. and H. sewerage district, constituted by the Metropolitan Commissioners of Sewers under stat. 11 & 12 Vict. c. 112, whose powers expired upon the passing of The Metropolis Local Management Act, 18 & 19 Vict. c. 120. The whole of the parish is without the limits of the Metropolis, as defined by the latter statute. By sect. 181, all debts and liabilities of the sewerage districts under the Metropolitan Commissioners of Sewers are continued, and the sums required for payment thereof are to be raised by the Metropolitan Board of Works in those districts "in like manner as the expenses of such Board in the execution of this Act;" and in case any district is wholly or in part without the limits of the Metropolis, as defined by the Act, the Metropolitan Board are to issue precepts to the overseers of the parish in which any part without those limits is comprised, requiring payment of the necessary sums. At the expiration of stat. 11 & 12 Vict. 112, a sum was chargeable upon the rates authorized to be levied in the F. and H. sewerage district; and the Metropolitan Board of Works issued their precept to the overseers of A. to pay a specified sum, which they charged upon that part of the parish which had been included in that district "for defraying the expenses of the said Board in the execution of the said Act," and which they had assessed upon that part of the parish "for such purpose." The overseers having made default, a rate was made by H., a person appointed by the Metropolitan Board, "for levying on the said part of the said parish of A. the sum of &c., required by the Metropolitan Board of Works for the purposes of the said Act." Upon an application to a magistrate to issue his warrant to enforce payment of the rate: Held, that the rate was bad on the face of it, as being for a purpose for which the Metropolitan Board had no power to make it.

[S. C. 32 L. J. M. C. 214; 9 Jur. N. S. 1288; 11 W. R. 885.]

In Easter Term, Raymond obtained a rule calling upon James Taylor Ingham, Esq., one of the Police Magistrates of the Metropolis, and John Williamson, a ratepayer of the parish of Acton, in the county of Middlesex, to shew cause why the magistrate should not issue warrants to enforce payment by John Williamson of two rates made respectively on the 12th August, 1858, and the 21st March, 1861, by William Buxton Head, a person appointed by the Metropolitan Board of Works under The Metropolis Local Management Act, 18 & 19 **[206]** Vict. c. 120, to levy in part of the parish of Acton two several sums of 462l. 9s. 8d. and 297l. 19s. 9d., which were required by the Board for the purposes of that Act; and which the overseers of the poor of that parish were required by two precepts of the Board, respectively made on the 13th March, 1857, and the 15th January, 1858, and duly served on them, to pay, and which the overseers had made default in paying.

The Metropolitan Commissioners of Sewers, under the powers conferred upon them by stat. 11 & 12 Vict. c. 112, made an order dated the 29th March 1849, whereby they constituted a separate sewerage district called the Fulham and Hammersmith Sewerage District, which district comprised parts of the parishes of Fulham and Hammersmith, and also the parish of Chiswick, and parts of the parishes of Acton, Willesden and Ealing, and this district then became and continued to be, until the expiration of the powers of those Commissioners, one of the sewerage districts within the limits of the Metropolitan Commissioners of Sewers, and rates were from time to time made and levied by them upon the Fulham and Hammersmith district.

In 1855 upon the passing of The Metropolis Local Management Act, 18 & 19 Vict. c. 120, the powers of the Metropolitan Commissioners of Sewers expired.