

1914. September 4, 14. BRISTOWE, J.

*Husband and wife.—Alimony.—Nature of.—Not capable of compensation.*

Alimony is a personal allowance ordered by the Court in substitution for a husband's obligation to support his wife, and is applicable only for the specific purpose of maintenance, *Held*, therefore, that a liability for alimony cannot be compensated against a debt due for costs.

Application to commit for contempt for non-payment of alimony. The facts appear from the judgment.

*B. Auret*, for the applicant, moved.

*G. Stent*, for the respondent: Respondent is entitled to set-off the taxed costs, in respect of his successful exception to the claim in reconvention, against the liability for alimony.

*Auret*, in reply: There can be no *compensatio* against an order for alimony; see *Williams' Bankruptcy* (8th ed., p. 331).

*Cur. adv. vult.*

*Postea* (September 14).

BRISTOWE, J.: On the 4th June last an order was made for the payment by the plaintiff to the defendant of alimony *pendente lite* at the rate of £6 per month and £2 per week up to a total amount of £20 for the defendant's costs of defending the action.

On the 6th August an exception by the plaintiff to the defendant's claim in reconvention was upheld with costs to be paid by the defendant. These costs were taxed at £10 13s. 2d.

The next instalment of alimony and of the weekly sum of £2 which became payable after the last-mentioned order was not paid, on the ground that it was compensated by the debt due in respect of the costs, and the defendant thereupon made the present application for the committal of the plaintiff to prison in consequence of his failure to comply with the order of court.

It is not disputed that the principle of compensation applies as regards the weekly payment on account of costs; but it was argued that an allowance for alimony is a payment *sui generis* which is not capable of compensation.

The English authorities are quite clear that alimony is not a debt. "It is not," said CAVE, J. in *Linton v. Linton* (15 Q.B.D. 241), "property in the ordinary sense. A woman is not at liberty to alienate it. The amount of it may be altered from time to time according to the circumstances of the husband." "No action will lie for it," says another judge (VAUGHAN WILLIAMS, *In re Hawkins*, 1894, 1 Q.B. 25 at p. 27), "and the obligation is not one in respect of which a bankrupt can get his discharge or any relief in bankruptcy." See also *Kerr v. Kerr* (1897, 2 K.B. 439); *Watkins v. Watkins* (1896, P. 222), and *Paquine v. Snary* (1909, 1 K.B. 688).

According to the practice of this Court, see *Longman v. Longman* (1908, T.S. 1054); *Jacobs v. Jacobs* (1911, T.S. 766), and I think also of the courts of Cape Colony, *Slade v. Slade* (4 E.D.C. 248), the proper way to enforce an order for alimony is by motion to commit, the effect of which is that payment is not enforced where the respondent is not in a position to pay. I think also that this Court would have power at any time to vary the order by increasing or diminishing the allowance; and that our Courts have also taken the view that alimony is a personal allowance made by way of substitution for a husband's obligation to support his wife and applicable only for the specific purpose of maintenance. It seems to me therefore that although the South African courts have not had occasion to consider the nature and incidents of alimony so minutely as the English Courts have done, still the view taken by them is substantially the same. I come therefore to the conclusion that alimony is not a debt. It is merely a personal payment in lieu of maintenance allowed by the Court which the Court may at any time vary and which it may or may not enforce according as the circumstances do or do not justify an order for committal for disobedience of that order. I hold therefore that it is not capable of compensation.

The application therefore succeeds as regards the alimony though not as regards the costs, and an order for committal will be made not to take effect if the respondent pays the sum in question within a fortnight.

The respondent must also pay the costs.

Applicant's Attorney: *F. J. Finch Smith*; Respondent's Attorney: *L. D. Tottenham*.

[G. H.]