

1913. June 26; July 1. WARD, J.

*Principal and Agent.—Power of attorney to sue.—Power to execute not thereby granted.*

A power of attorney to sue a spouse for divorce with costs and generally for affecting that purpose to do or cause to be done whatsoever shall be required, does not empower proceedings for civil imprisonment in respect of the costs arising out of the suit.

To proceed to execution special power is necessary.

Summons for civil imprisonment of respondent in respect of costs arising out of divorce proceedings, in which applicant was plaintiff and respondent defendant.

Plaintiff was in England, and the power under which her attorney was now acting was the power under which the divorce proceedings were instituted. This was simply a power to institute proceedings for divorce against her husband with costs, and "generally for effecting the purposes aforesaid, to do or cause to be done whatsoever shall be requisite."

*L. Blackwell* for the applicant.

Respondent appeared in person and objected, *inter alia*, that applicant had not authorised the present proceedings.

*Cur. adv. vult.*

*Postea* (July 1st).

WARD, J.: The point for decision is whether the power of attorney (which his Lordship read) in this case is sufficient to empower the institution of proceedings for civil imprisonment in respect of the costs arising out of the action for divorce.

I have not been able in the time at my disposal to find any South African decisions bearing on the point. But according to our authorities on the Roman-Dutch law it would appear that a solicitor's power was revoked by the decision of the case, and that without special authority he could not proceed to execution of the judgment. See Kotze's *Van Leeuwen*, vol. 2, p. 380 (4, 4, 7, 9). Peckius *Van Besetten*, Ch. 3, secs. 4, 10 is to the same effect; and so also is Perezius, *ad Codicem*, 2, 13, 19 and 20.

The respondent's contention therefore is sound, and the summons must be dismissed with costs.

Applicant's Attorney: *Lewis Levy*.

[Reported by *G. Hartog*, Esq., Advocate.]