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S. M. DASI-MANI DASI v. SRINATH GHOSE.

Court; in this case the defendant had applied to the Court; 2ndly, that the additional written statement sought to be admitted was inconsistent with the original written statement, and, therefore, was not such an additional written statement as the Court would be justified in calling for.

Mr. *Evans*, for plaintiff, was not called upon in reply.

PHEAR, J.—Said that in such cases, the Court would make a great difference between the case of an application by the plaintiff, and that of an application by the defendant. The plaintiff would not be allowed to file an additional written statement in such a case as the present; but although the filing of such an additional written statement, as that now sought to be filed by the defendant, would rightly be the subject of strong comment by the plaintiff at the hearing, still the Court would grant the application of the defendant, upon the condition that the defendant pay the costs of this application, and of filing the additional written statement, and that he furnish the plaintiff with a copy of the additional written statement, free of charge.

Before Mr. Justice Phear.

KASUELAL DAY *v.* C. E. TREMEARNE.

1869
June 24.

Written Statement—Irrelevancy.

Mr. *Marindin*, on behalf of the plaintiff, made an application that the written statement of the defendant should be taken off the file in accordance with section 124 of Act VIII. of 1859, on the ground that it contained matters malicious, argumentative, and irrelevant, or that the defendant should be ordered to expunge such matter from his written statement on the grounds above stated. The suit was brought to recover money received by the defendant for the use of the plaintiff. The written statements had been filed on the 12th of June, and the case had been placed on the remanet board.

Mr. Marindin, in support of the application, referred to the case of the *Nawab Nazim of Bengal* v. *Rajah Prosono Narain Deb* (1), May 7th 1864, referred to in *Smallwood* v. *Perry* (2).

Mr. *Branson* opposed the application. This is not a case contemplated by the 124th section of the Act. It is virtually deciding the case now, to decide whether or not the facts relied upon by the defendants disclose a defence.

PHEAR, J.—I have no doubt that I can entertain Mr. Marindin's application. I think the proper course under the Act as so much of the written statement is irrelevant, will be to order it to be taken off the file. It seems to me that the matters alleged in paragraphs 2 to 8 of the written statement, are not only

(1) Unreported. (2) 1 Cor, 39.

irrelevant, but the defendant ought not to have suggested them. I think written statements ought to set out the *bona fide* nature of the defence and nothing else. Parties must be held to the true meaning of the Act, and I have no hesitation in saying that the matter in question is not only irrelevant but mischievous. With regard to the indebtedness, I think it is irrelevant, unless you state it was unknown to you before.

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The written statement must be taken off the file with leave to file a fresh one in a week. The defendant to pay the costs of this application.

Before Mr. Justice Phear.

1869
June 28.

GORDON *v.* GORDON AND DE SARAN.

Wife living with co-respondent—Alimony—Costs.

THIS was a suit by the husband for a divorce, on the ground of his wife's adultery.

Mr *Jackson* had obtained a rule *nisi*, calling on the petitioner to show cause why alimony, *pendente lite*, should not be allowed to the respondent; and he now moved to make it absolute.

Mr. *Graham* showed cause. The respondent is living with the co-respondent; and in cases where this is so at the time of the application, the Court should not grant alimony for the wife needs no support. The husband has a small income, and he has children, and has to keep up a policy of insurance, so the alimony, if any, should be small. *Hill* v. *Hill* (1). See also *Holt* v. *Holt & Davis* (2).

Mr. *Jackson*, in support of the rule.—The fact that the respondent is living with the co-respondent will not prevent the Court from giving alimony. *Madan* v. *Madan & de Thoren* (3). And this even though she has committed adultery. *D'Oyley* v. *D'Oyley & Baldie* (4). No deduction can be made on the ground that the husband has to keep up a policy of insurance. *Harris* v. *Harris* (5). The principle seems to be that the smaller the income, the larger the proportion allowed for alimony. *Cooke* v. *Cooke* (6).

PHEAR, J.—I think that, if the wife is living apart from her husband under such circumstances that she does not pledge her husband's credit, the Court ought not to grant alimony. But I will grant time to the wife to answer the allegations as to the facts alleged in the affidavit of the petitioner. The question will be, whether, at the time of presenting the petition, the wife was so living. If the application should be granted, I should adhere to the rule as to alimony and costs laid down in *Kelly* v. *Kelly & Saunders*.

If this application were for the wife's costs only, I should grant it at once.

(1) 33 L. J., P. & M., 10.
(2) 1 L. R., P. & D., 610.
(3) 37 L. J., Pro. & Mat., 10.
(4) 29 L. J., Pro. & Mat., 165.
(5) 1 Hagg., 351.
(6) 2 Phill., 40.