gives him the personal advantage of a dissolution of marriage, as distinguished from a divorce a *mensa et thoro* that he comes into Court. This sequence of facts leads me far to the conclusion that there has been something like connivance on his part at the course of life which his wife has been leading, and why should he now, after so many years, make those persons who are the least offenders, against him or public morals pay the costs and damages. Moreover, if I allowed the petition to be amended by the introduction of co-respondents at this stage, the facts which come before the Court would disentitle the petitioner to a divorce, even though the specific adultery should be made out. Under these circumstances, I am bound to dismiss the petition of course it will be without costs, as the respondent has not appeared.

1869

ROE v. ROE.

Mr. *Piffard* asked for leave to bring a fresh suit.

PHEAR, J.—I do not think it is necessary. Failure upon the general form of charge will probably not prevent you from proceeding a specific one.

Before Mr. Justice Phear.

IN RE THE NABOR HABI TEA COMPANY.

Winding up—Petitioning Creditor's Costs.

1849
June 19.

THIS was a petition by a creditor of the Company that it should be wound up under the superintendence of the Court.

Mr. *Graham*, in presenting the petition, referred to section 161 of the Indian Companies' Act, 1866, and in re *The Bank of Gibraltar* and *Malta* (1). The *General Rolling Stock Company Limited* (2). As to the petitioning creditor's costs in re *Audley Hall Spinning Company* (3).

Mr. *Marindin* opposed the granting the petition on behalf of the Company.

PHEAR, J.—In an application of this kind by a creditor, the Court will always be in favour of making an order for winding up by the Court. The petitioning creditor is entitled to his costs as a first charge on the assets of the Company, subject to any prior liens on the estate.

Before Mr. Justice Phear.

S. M. DASIMANI DASI *v.* SRINATH GHOSE.

Additional Written Statement—Practice—Act VIII. of 1859, *s.* 122.

1869
June 20.

Mr. *Evans* applied, on behalf of the defendant, to be allowed to file an additional written statement.

Mr *Branson*, for the plaintiff, objected, 1stly, that under section 122 of Act VIII. no written statement could be received, unless called for by the

(1) 11 Jur., N. S., 916. (2) 34 Beav., 314. (3) 6 L. R. Eq., 245.

1869

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.