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.

1869
KASUBLAL DAY v. C. E. TREMEARNE.

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.

1869
July 1.

Before Mr. Justice Phear

IN RE KHETTSEY DAS, AN INSOLVENT.

Attachment—Power of Court strictly confined to the Insolvent Act.

ONE Dipchand, a gomasta of the insolvent, claimed to retain against and Insolvent property of the insolvent. An order was obtained that Dipchand should make over the property to the Official Assignee; and the failing to do so, an order for attachment was made absolute against Dipchand for disobedience of the order of the Court. Shortly before the rule was made absolute, Dipchand and one Sambakram obtained a decree against one Rajnarayan, for rupees 1,882.

The present application, on behalf of the Official Assignee was that one-half of the amount so recovered by Dipchand and Sambakram, and lying still unpaid to them in the hands of Rajnarayan, should be attached and brought into Court.

Mr *Ingram* argued, that though there is nothing in the Insolvent Act empowering the Court to grant the application, yet the Court has a general equitable power to make such an order, particularly against one who was in contempt.

PHEAR, J.—I think the Commissioner has no powers, excepting those conferred by the Act. The application must, therefore, be refused.

Before Mr. Justice Macpherson.

1869
March.

ORIENTAL BANK *v.* MANIMADHAB SEN.

Insolvent—Application for Discharge—Bad Faith—Act VIII. of 1859, s. 284.

THE defendant, an insolvent, was brought up on a writ of habeas corpus for the purpose of obtaining his discharge, on the ground that his committal was invalid. In the order bringing him before the Court, a rule *nisi* was contained calling on the Bank to show cause why the defendant should not be discharged under section 281 of Act VIII. of 1859.

Mr. *Marindin* for the Bank.—Section 281 does not apply to insolvents *Kisorimohan Chatterjee* v. *Kanilal Dutt* (1). In re *Surpersad* (2). Moreover this debt was created in bad faith.

Mr. *Jackson*, for the defendant—In *Jaducharan Johanis* v. *Gungadmul Paul* (3), *Phear, J.*, reconsidered former decisions by him, and hascome round to your lordship's view.

MACPHERSON, J.—I am clear that the bad faith must be in respect of the application.

(1) I. J., N. S., 247. (2) 2 Id., 91. (3) Unreported.