

1883  
 BAKHAL  
 CHURN  
 MUNDUL  
 v.  
 WATSON &  
 Co.

whatever the rights of the latter may have been under the patent they must long ago have become extinguished by lapse of time. (See s. 28 of the Limitation Act of 1877.)  
 The appeal is therefore dismissed with costs.

*Appeal dismissed.*

## ORIGINAL CIVIL.

*Before Mr. Justice Pigot.*

1883  
 June.

MOHENDRO NAUTH DAWN v. ISHUN CHUNDER DAWN.

*Inspection of documents—Practice—Affidavit of Documents—Insufficiency of affidavit—Alteration by letter of terms of notice already served—Civil Procedure Code (Act XIV of 1882), s. s. 131 and 133.*

Before the Court will make an order under s. 133 of the Code of Civil Procedure the preliminary steps mentioned in s. 131 must be taken by the party applying for the order.

THE plaintiff had filed a suit against the defendant on 1st December 1882, praying for dissolution of partnership, and for an account of the sale of a right to a certain patent medicine. The defendant put in an appearance, and the plaintiff, on the 10th December, obtained the usual order for the inspection of the defendant's documents. In pursuance of this order the defendant filed a verified list of documents with the usual affidavit on the 5th January 1883. The plaintiff objected to the sufficiency of the affidavit of documents filed by the defendant, and one Poorno Chunder Dawn, an uncle of the plaintiff who was employed as a general assistant in the firm, made an affidavit stating that certain books of account had been kept by the firm, and that these were to his personal knowledge now in possession of the defendant, and had been last seen by him on the 22nd September 1882 when he had been refused further admittance to the shop by the defendant; he further stated that certain of the account books produced by the defendant imperfectly showed the sales of certain articles of the partnership, and that without the production of the books of account, which he alleged to be in the defendant's possession, and which were unproduced, the account could not be fully proceeded with; that the plaintiff's attorney had written to the defendant's attorney as to the production of these

books, and had threatened if they were not produced to take out a summons to consider the sufficiency of the affidavit of the defendant.

The defendant failed to produce these books, and on the above affidavit of the plaintiff's uncle, the Court granted a summons calling upon the defendant to appear on the hearing of an application on the part of the plaintiff for an order to consider the sufficiency of the affidavit of the defendants filed on the 5th January 1883 as to the possession of documents pursuant to the order dated 19th December 1882.

The hearing of the motion was postponed from time to time and on the 21st May 1882 the plaintiff's attorney wrote the following letter to the defendant's attorney:—

“The summons herein was intended to be for production under s. 132 of the Civil Procedure Code, but in accordance with the Registrar's opinion as to the proper form of summons the present summons was issued. But I am advised that the application should have been under ss. 130 to 133 of the Code, and I propose to ask the Court to treat it as such, and if you are willing that the motion should be so treated my client is prepared, and hereby offers to pay any costs you may have incurred in consequence of the present form of the summons not sufficiently indicating that the motion is intended to be under ss. 130 to 133.”

In answer to this letter the defendant's attorney returned the following answer: “Referring to your letter of date I cannot consent to your treating the application in any other way than that the notice contains. If you wish you can allow the present application to be refused with costs, and then make such fresh application as you may be advised.”

The matter came on for hearing on the 11th June.

Mr. *Phillips* in support of the summons.

Mr. *Bonnerjee* contra.

PIGOT, J.—This application must be refused. The reason why I dismiss it is a short one: the matter comes before me on summons for a better affidavit, and it is sought to alter the application into one under ss. 131, 132 and 133. I think that would

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involve a power of making an order under s. 133 more extensive than the Court has. Without expressing an opinion as to what order the Court would make in a case under s. 133; in a case appropriate to it, I do not think that the Court would make any order under that section unless the preliminary steps had been taken by the party such as are set out in s. 131; and I think that no notice purporting to be a notice under s. 131 having been given, save the letter of the 21st May, and there having been no omission to give notice of the time for inspection and no objection to give inspection having been made, I am disqualified from acting under s. 133. I dismiss the application on the simple ground that I am not clothed with authority to act under s. 133.

*Application refused.*

Attorney for the plaintiff: Baboo *W. L. Bose.*

Attorney for the defendant: Baboo *G. C. Chunder.*

*Before Mr. Justice Pigot.*

PEACOCK AND OTHERS v. BYJNATH AND OTHERS.

*Practice—Consolidation of suits on application of plaintiffs.*

1888  
 August 12.

Consolidation of suits on application of plaintiffs allowed.

THIS was an application made on behalf of the plaintiffs on notice to the defendants for the consolidation of two suits pending in the High Court, and for an order that the evidence in the one suit be received as evidence in the other.

The notice of motion served on the defendants was as follows:—

“Take notice that an application will be made on behalf of the plaintiffs in the suit of *Peacock v. Byjnath* for an order that this suit may be consolidated and heard along with suit No. 557 of 1882 which is now pending in this Honorable Court between the same parties, and that the evidence to be taken in the said suit may be read and filed as evidence in this suit, and that the time for the return of the commission in the said suit No. 557 of 1882 may be extended for three months, and that the plaintiffs and the defendants Byjnath may be at liberty to adduce such further evidence under the said commission as they may deem necessary for the purposes of this suit.”