

1875

MATUNGEE
CHURN
MITTER
v.
MOORRAY
MOHUN
GHOSE.

notice has been published at any time previous to the 15th of the month of Bysack, that shall be a sufficient warrant for the sale to proceed. Now, in the receipt which has been read to us in this case, the particular time of publication is not stated. The receipt is dated the 15th, and has the signatures of three substantial persons which is to be accepted only in case of inability to procure the receipt of the defaulter. It might very well be that the previous day or days had been spent in vain efforts to procure the signatures of the putnidar or his agent, and that the receipt was afterwards completed by the signatures of the munduls, obtained on the 15th of Bysack, and this might well have satisfied the Collector that the notice had been in fact published previous to the 15th. That being so, and no injury to the plaintiff being at all made out, it appears to me that the ground set up is wholly insufficient to induce this Court to set aside the sale. It may be added as it appears in this particular case that the sale, instead of taking place on the 1st of Joisto, did not take place until the 3rd, and therefore even if we assume that the publication had taken place on the 15th, still the defaulter had two days more than is prescribed by the Regulation. The appeal is dismissed with costs.

Appeal dismissed.

ORIGINAL CIVIL.

Before Mr. Justice Phear.

KENNELLY v. WYMAN.

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Feb. 14.

Practice—Inspection of Documents—Rules of High Court of 6th June 1874, 50, 52.

Where the defendant stated in an affidavit, that a schedule annexed thereto contained a list of all the documents in his possession or power relating to the suit, and a certain other document was not mentioned in the schedule, though referred to by the defendant in his written statement, held on the hearing of a summons to consider the sufficiency of the affidavit that the plaintiff could not cross-examine on the affidavit but could only show it was not an honest affidavit. The proper course was to apply for inspection of the particular document referred to in the written statement and omitted from the schedule, if inspection was needed.

THIS was a suit to recover arrears of salary and damages for

wrongful dismissal. On the admission of the plaintiff, the defendant was ordered to file a written statement, which he accordingly did. The plaintiff then obtained an order that the defendant should file an affidavit, stating whether he had any and what documents in his possession or power relating to the matters in question in the suit. The defendant thereupon filed an affidavit, and appended thereto a schedule, which he alleged contained a list of all the documents relating to the suit in his possession or power. In his written statement the defendant referred to various other documents which were not among those included in the schedule annexed to his affidavit. On the application of the plaintiff, a summons was issued by the Court to consider the sufficiency of the defendant's affidavit. The summons was supported by an affidavit filed by the plaintiff, in which the inconsistencies between the defendant's affidavit and schedule and his written statement were set forth; and it was argued that the defendant's affidavit was insufficient, inasmuch as even on the admissions in his written statement the defendant had not set out all the documents in his possession relating to the matters in suit.

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KENNELLY
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WYMAN.

Mr. *Macrae* for the plaintiff.

Mr. *Branson* for the defendant.

The Court intimates it has considered the matter, and refers to *Wright v. Pitt* (1), and states it is clear the applicant cannot cross-examine upon the affidavit but can only show that it is not an honest affidavit. The omitted document is sufficiently mentioned and described in the written statement of the defendant, and an application can be made on that ground for inspection, if inspection is needed. Summons dismissed. Costs to be costs in the cause. The report of *Noel v. Noel* (2) was held to justify no costs being given in *Wright v. Pitt* (1).

Attorney for the plaintiff: Mr. *Hechle*.

Attorney for the defendant: Messrs. *Orr* and *Harriss*.

(1) L. R., 3 Ch. App., 809.

(2) 9 Jur., N. S., 589; S. C., 1 De Gex J. & S., 468; and 32 L. J., Ch., 676.