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# Amarendra Nath Chatterjee Vs Kally Kissen Tagore

## Suit No. 90 of 1896

**Court:** Calcutta High Court

**Date of Decision:** June 5, 1897

**Final Decision:** Dismissed

## Judgement

Sale, J.
This is an application to compel the Defendant to file a further affidavit of documents. The ground upon which the application is

based is that the affidavit already filed by the Defendant does not disclose documents relative to issues arising in this case, which are in his

possession, or which, there is good ground for believing, are in his possession. The only occasion when a party can be compelled to file a further

affidavit of documents under the CPC is when the original affidavit filed by the party is insufficient, i.e., insufficient in its terms and fails to comply

with the requirements of the Code. It is not alleged the affidavit already filed by the Defendant is defective in that issue. It is said, however, that

subsequent correspondence between the parties shows there is ground for thinking the original affidavit contains statements which are not true in

fact. If that be so, the proper course as indicated by the CPC is, for the party alleging that his opponent has documents in his possession which he

has failed to disclose in his affidavit of documents, to apply on affidavit stating what the documents are which ought to have been disclosed in the

affidavit of documents, but are not, that the documents are relevant to the matters in issue in the suit, and that they are in the possession of the other

party and to ask that these documents be produced for inspection. I have had occasion more than once to point out that this is the proper course

to be taken, and I desire to refer again to the case of Nittoomoye Dassi v. Subal Chunder Law I. L. R. 23 Cal, 117, in which this question was

considered. It may be said that if the party who seeks inspection makes an application of the nature indicated by sec. 134 of the CPC that he may

be met by the affidavit of the other party denying that he has these documents in his possession. That is a risk which the party seeking inspection

must take. It is impossible at this preliminary state of the suit for the Court to institute enquiries as to what the true state of things may be as regards

the possession of documents of which inspection is sought. But an effective remedy can always be applied when the proper time arrives, because if

at the hearing on cross-examination or otherwise the party admits he has failed to disclose or refused inspection of relevant documents which are in

his possession, the proper course to be adopted is to direct immediate inspection to be given of such documents for the purpose to adjourn the

hearing at the cost of the person who has succeeded in evading giving full discovery of his documents and to punish him in that way. That is a

course which I have already had occasion to adopt. But the CPC precludes me from taking the course which Mr. Muter asks me to take, viz., to

compel his opponent to put in a further affidavit of documents on the ground that the former affidavit contains untrue statements.

2. Other objections are taken to the application which go to the root of the suit. It is said the claim in suit is barred by limitation and further that the

plaint discloses no cause of action. In order to determine these points the course I might have felt bound to adopt is that prescribed in section 135

of the Civil Procedure Code, viz., to postpone the application, set the case down for settlement of issues, because I quite accede to the argument

of the Advocate-General, viz., that before a party can obtain discovery, he must shew he has good cause of action and that the documents are

relevant to the case. But it is not necessary to adopt this course because I am of opinion I might not for the reason stated make the order asked

for. The application must be dismissed with costs.