

pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter unless he shall satisfy the Court or a Judge that such document relates only to his own title, he being a defendant to a cause or matter, or that he had some other cause or excuse which the Court or Judge shall deem sufficient for not complying with such notice, in which case the Court or Judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge shall think fit.

Although the Rules thus provide a specific penalty for failure to produce a document after notice, no penalty is actually laid down for failure to disclose a document in the affidavit of documents. But such an omission, apart from being perjury, would, of course, form the subject of cross-examination and comment, and if it resulted in surprise or hardship might very well be a ground for refusing a successful party costs.

The form of this notice is provided for in Rule 16 of the same Order, which is as follows :—

Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 9 in Appendix B, with such variations as circumstances may require (*vide post*, App. No. 2, p. 171).

And Rule 17 provides that :—

The party to whom such notice is given shall within two days from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit within four days from the receipt of such notice, deliver to the party giving the same a notice stating a time within three days from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce and on what ground. Such notice shall be in the Form No. 10, Appendix B, with such variations as circumstances may require (*vide post*, App. No. 3, p. 172).