

ant has got a copy of the affidavit in question, and if it is taken off the file and destroyed the plaintiffs will have to prepare another, and the defendant will have to wait while they do so. While, therefore, I quite affirm the principle on which the learned judge acted, I think it will be better to order the plaintiffs to pay to the defendant the amount of the cost, 19*l.* 2*s.* less 2*l.*, which would have been the cost of an affidavit of proper length. The plaintiffs must pay the costs which they have been ordered to pay in the court below, and the costs of this appeal. And at no further stage of the action will the plaintiffs be allowed any costs of this affidavit. There is another point to which I wish to allude. By order LXV., r. 11, the court has power to call upon a solicitor to show cause why costs which have been improperly incurred should not be disallowed, and to order the solicitor to pay to his client any costs which may have been improperly incurred if he has been ordered to pay them to the opposite party. At present the court will make no such order in this case. This will be a matter between the plaintiffs and their own solicitor.

BOWEN, L. J.—I am of the same opinion. I think the order as modified in the way mentioned by Cotton, L. J., will meet the purposes of justice in this case without throwing doubt upon the larger jurisdiction of the court to take off its files documents which have been placed there for purposes, not of justice, but of injustice. It is not denied that the court has such jurisdiction, though it may not have been the practice of the court, since the Judicature Act, to take documents off the file merely for prolixity. Yet it is a power which could be exercised if necessary. Every court must have the power to protect its own records from being abused. I prefer not to define what constitutes oppression or vexation. It is better to determine in each case whether the circumstances are such as to come within a perfectly intelligible expression.

FRY, L. J.—I am of the same opinion. I am not inclined to express any opinion whether the documents set out in the affidavit are relevant or not. But assuming that they are, it is perfectly plain to my mind that

they might have been set out in a way which could not have been oppressive. There is a prolixity in this affidavit of which no account can be given, except a desire to cause vexation and costs to the defendant. I agree with the proposed order.

THE "MIGNONETTE" CASE.

At the Exeter Assizes, November 3, Baron Huddleston, in charging the grand jury, referred at length to the charge against Dudley and Stephens, captain and mate of the *Mignonette*, of murdering the boy Parker when at sea in an open boat. After detailing the circumstances of the case, the learned judge said:—

It seems clear that the taking away of the boy's life was carefully considered, and amounted to a case of deliberate homicide. I must tell you what I consider to be the law as applicable to this case. It is a matter that has undergone considerable discussion, and it has been said that it comes within a class of cases where the killing of another is excusable on the ground of necessity. I can find no authority for that proposition in the recognized treatises on the criminal law, and I know of no such law as the law of England. Baron Puffendorf, in his 'Law of Nature and Nations,' mentions a case (Bk. II. ch. 6, p. 205, third edition, by Kennet, A. D. 1717) where seven Englishmen, tossed in the main ocean without meat or drink, killed one of their number on whom the lot fell, and who had, as he says, the courage not to be dissatisfied, assuaging in some measure with his body their intolerable and almost famished condition, whom, when they at last came to shore, the judges absolved of the crime of murder. Although he says the men were English sailors, he does not say where the case was tried, nor of what nation were the judges. Ziegler upon Grotius, giving this relation, is of opinion that 'the men were all guilty of a great sin for conspiring against the life of one of the company, and (if it should happen) every one against his own.' I can find no reliable report of this case, and, for reasons which I shall refer to presently, I cannot consider it an authority binding on me. There is an American case, *The United States v. Holmes*, March, 1842, which is re-