alleging that it was insolvent. The defence was that the statements were true. The defendant having obtained an order for the production of documents by the plaintiffs, they made and filed an affidavit of very great length, containing 307 sheets and 1,146 folios, for a copy of which the defendant had to pay £19 2s. Among other things the plaintiffs set out separately, by their dates and names of the writers and recipients, 4,216 letters from the secretary of the society to the agents of the different lodges, and also a very large number of receipts for sick allowances from the various lodges of the society, and also the return sheets of the expenses of the numerous lodges.

On the 24th January last, on the application of the defendant, Kay, J., ordered the affidavit to be taken off the file as being oppressive and irrelevant, and by its prolixity an abuse of the practice of the court, and ordered the plaintiffs to pay the costs occasioned by it, including the £19 2s. paid by the plaintiffs, and the costs of the application. From this order the plaintiffs appealed.

In the course of the argument it was stated that when a document is ordered to be taken off the file, the practice is not to return it to the party who has placed it there, but to destroy it by burning.

The following is a report of the argument and judgment in appeal:—

Hastings, Q.C., and *Colquhoun* for the appellants.—The only objection to this affidavit is its length; there is nothing scandalous in it. The court will not consider the relevancy of the documents scheduled in the affidavit on this motion. It is contrary to the practice of the court to take an affidavit off the file for prolixity, the penalty imposed being the disallowance of costs: In *Walker* v. *Poole*, 21 Ch. Div. 835, Kay, J., made an order similar to this, but that case is not binding on this court. If this affidavit is ordered to be taken off the file it will be destroyed and the plaintiffs will have to prepare a fresh one, which would cause delay and expense to both parties. [COTTON, L.J., referred to *Drake* v. *Symes*, 2 De G. F. & J. 81.]

Pearson, Q.C., and *Des Graz* for the defendant.—The court has an inherent jurisdiction to order any document which is vexatious or oppressive to be taken off the file. This is a gross abuse of the practice of the court, the object being to cause unnecessary costs to the defendant. The only way the defendant could recover the costs he has been put to was to make this motion: *Taylor* v. *Batten*, 4 Q. B. Div. 85; *Bewicke* v. *Graham*, 7 Q. B. Div. 4.

COTTON, L. J.—This is an appeal from an order of Kay, J. ordering an affidavit of documents filed by the plaintiffs to be taken off the file, and that the plaintiffs should pay the costs occasioned by it. The plaintiffs have appealed from this order and they have argued that the court ought not to order the affidavit to be taken off the file, and that such a course would be contrary to the practice of the court. They contend that, if a document is alleged to be irrelevant or improper, the right order is to refer it to the taxing master, and if it is found to be so, to make the party filing it pay the costs. It is further contended that this affidavit is not irrelevant or unnecessarily prolix. In my opinion the appellants' contention cannot be maintained. It is better not to give an opinion at the present time whether the documents referred to in the affidavit are relevant, but whether they are so or not, I am of opinion that they are set out at unnecessary and improper length. They ought to have been set out in bundles and schedules, and numbered in such a way that the defendant might have asked for those which he wanted to see, specifying them by their numbers. The conclusion I have come to is, that the affidavit is unnecessarily and oppressively long. The question is, however, what order ought to be made. We are of opinion that a different order to that made by Kay, J. would be better. This would not be at variance with the principle on which he acted. I agree that, although the rules contain no provision for taking a document off the files for prolixity, yet it is the duty of the court to see that its files are not made the instruments of oppression, and that without any provisions in the rules, the court has the power, and it is its duty, to order oppressive documents to be taken off the file, even though this should result in their being burned. But in the present case the defend-