

tion in the ordinary form, in which no mention was made of a number of the documents which had been shewn to the plaintiff's solicitor on his former examination. Plaintiff then made an application to the Referee for an order that the defendants should make better production, contending that the documents now withheld would probably shew that the flour had been sold to Chisholm and not simply consigned to him for sale. This was an appeal from the Referee's order directing the defendants to file a better affidavit on production, and to deposit with the proper officer of the Court all documents in their custody or power relating to the matters in question in the issue, and particularly six classes of documents consisting of letters between Chisholm and the defendants, stock sheets showing what was in Chisholm's hands from time to time, an insurance policy, a balance sheet of defendant's business dated prior to the seizure, a memorandum as to stock, etc.

*Held*, 1. A further and better affidavit on production should only be ordered when the party has by his own admission or former statements on oath discredited the statement in his affidavit or given rise to a reasonable suspicion that he has in his possession or control other documents relating to the matters in question: *Wright v. Pitt*, L.R. 3 Ch. 809; *Lyell v. Kennedy*, 27 Ch. D., p. 20; *Moxley v. Canada Atlantic Ry. Co.*, 11 P.R. 39.

2. Where there is a mere surmise or suspicion that documents not referred to may be relevant, although that may justify an order for a further affidavit, it does not entitle the Court to order production of them: *Compagnie Financière v. Peruvian Guano Co.*, 11 Q.B.D., pp. 65 and 66; and, if, upon the further affidavit, the relevancy of the documents is clearly denied, the Court can go no further; it cannot disregard the oath of the party making the affidavit unless reasonably satisfied of its untruth: *Bray*, p. 181; *Lyell v. Kennedy*, 27 Ch. D., pp. 19, 21 and 22; *Mogul Co. v. McGregor*, 2 T.L.R. 752. The mere probability that documents if produced might be found to contain relevant matters will not warrant an order for further production.

Following these principles, and holding that there was nothing in the examination of Brodie or otherwise to shew positively that any of the documents mentioned in the order contained anything pertaining to the issue, in the face of the affidavit denying it, the order of the Referee was rescinded, except as to the policy of insurance which the defendants, while not admitting its relevancy, stated their willingness to produce.

Costs of the application to the Referee to be costs in the cause, and those of the appeal to be costs to defendants in the cause.

*Mulock*, K.C., for plaintiff. *Minty*, for defendants.