

H. C. OF A.
1911.
—
LANG
v.
JAMES
MORRISON &
CO. LTD.
—

Appeal allowed. Judgment appealed from reversed so far as it is adverse to the appellant. Judgment for the defendant Lang with costs, including costs of discovery. Omit order to deliver up the bonds. Respondents to pay the costs of the appeal.

Solicitors, for the appellant, *Lamrock, Brown & Hall.*

Solicitors, for the respondents, *Braham & Pirani.*

B. L.

[HIGH COURT OF AUSTRALIA.]

HOLLINGSWORTH APPELLANT;
PLAINTIFF,

AND

HEWITT RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF
NEW SOUTH WALES.

H. C. OF A. *Defamation—Defamation (Amendment) Act 1909 (N.S.W.) (No. 22), sec. 11*—*
1911. *Order against newspaper proprietor to supply name of writer of defamatory*
— *article.*

SYDNEY,
Aug. 17.

A plaintiff is not entitled as of course to be supplied by the proprietor of a newspaper with the name and address of the writer of an article under sec. 11

Griffith C.J.,
Barton and
O'Connor JJ.

*Sec. 11 of the *Defamation (Amendment) Act 1909*, is a follows :—

“The proprietor of any newspaper may upon the written request of any person who has commenced an action in respect of any defamatory article, letter, report, or writing in any newspaper supply to such person affected thereby the name and address of the

person who supplied such article, letter, report, or writing to such newspaper, and in default of compliance with such request any person affected thereby may apply to a Judge of the Supreme Court who may if he sees fit, after hearing such proprietor, direct that such name and address be so supplied.”

of the *Defamation (Amendment) Act 1909*. It is a question for the discretion of the Judge in such case whether an order should be made under this section. H. C. OF A.
1911.

Decision of *Ferguson J.* : *Hollingsworth v. Hewitt*, 28 W.N., 53, affirmed.

HOLLINGS-
WORTH
v.
HEWITT.
—

APPLICATION by the plaintiff for special leave to appeal from the decision of the Full Court (1) or, in the alternative, from the decision of *Ferguson J.* (2), refusing an application by the plaintiff for an order, under sec. 11 of the *Defamation (Amendment) Act 1909* (No. 22), (1), directing the defendant, the proprietor of the *Northern Star* newspaper, to supply the plaintiff with the name and address of the person who supplied a letter published in the said paper signed "Bimby."

The letter stated, in effect, that the plaintiff, who was the Mayor of Mullumbimby, at an open-air electioneering meeting in that town, had led an organized opposition from the back of the crowd to prevent each speaker being heard, and that it was "regrettable that the Mayor, in the desire to assist the labour candidate, should forget the dignity due to his office, and descend to objectionable tactics so rife in the metropolis."

The plaintiff had brought an action of libel against the defendant in respect of this publication.

The plaintiff's affidavit stated that application had been made to the defendant, and to his solicitors, for the name of the person who supplied the article, but that no reply had been received. The plaintiff also denied the allegations in the letter complained of.

The application was heard in Chambers before Acting-Justice *Ferguson* who held that under sec. 11 the plaintiff was not entitled to the order as of right, but must show that without the information asked for he would be at some disadvantage in the conduct of the action.

The plaintiff appealed to the Supreme Court from this decision, and that Court held that there was no appeal from the decision of the Judge under sec. 11.

Sheridan, for the appellant. The plaintiff is entitled to the order as of right. It may be that the article was written by the

(1) 28 W.N., 95.

(2) 28 W.N., 53.

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defendant himself. It is not necessary that the plaintiff should show in his affidavit how he will be prejudiced in the conduct of the action if the name of the writer of the article is not supplied. It will obviously be an advantage to the plaintiff in every case to know the identity of the person who has libelled him. This may be evidence of malice.

[He also contended that the Supreme Court were wrong in holding that no appeal would lie from the decision of a Judge under sec. 11, but it is unnecessary to refer to the arguments on this point.]

GRIFFITH C.J. The learned Judges of the Supreme Court have held that an appeal did not lie from the decision of *Ferguson J.* That raises a question of considerable interest and importance which, however, it is not necessary to determine, as, in my opinion, the plaintiff's application to the learned Judge was rightly refused. A plaintiff is not entitled as of course to be supplied by the proprietor of a newspaper with the name and address of the writer of an article under sec. 11 of the *Defamation (Amendment) Act*. Some positive reason must be adduced in support of the application; and it is then a matter for the discretion of the Judge whether the order should be made. I agree that in this case, as no special circumstances were proved or alleged, the application was rightly refused.

BARTON J., and O'CONNOR J., concurred.

Application refused.

Solicitor, for appellant, *P. Street* (Murwillumbah), by *Vil-leneuve Smith & Dawes*.

C. E. W.