

H. C. OF A. [GRIFFITH C.J. The costs they have been ordered to pay could
1917. not amount to more than about five pounds.]

~
DOWLING
v.
BLYTH.
—
PER CURIAM. Special leave to appeal will be refused.

Special leave to appeal refused.

Solicitors for the applicants, *Ritchie & Parker, Alfred Green & Co., Launceston, by Simmons, Wolfhagen, Simmons & Walch.*

B. L.

[HIGH COURT OF AUSTRALIA.]

WARD PLAINTIFF;

AND

C. W. McFARLANE & COMPANY DEFENDANTS.

H. C. OF A. *Practice—High Court—Discovery, Application for—Issue joined—Notice—Rules of*
1917. *the High Court 1911, Part I., Order XXIX., r. 8.*

~
MELBOURNE, An application for discovery of documents made after issue joined must,
March 6. in general, be made upon notice to the other party.

—
Griffith C.J.

—
IN CHAMBERS.

APPLICATION.

In an action brought in the High Court by Harold Seymour Kellam Ward against C. W. McFarlane & Co., an application was made on behalf of the plaintiff to *Griffith C.J.* in Chambers *ex parte*, and without affidavit, for an order for discovery of documents.

Lee, for the plaintiff, in support of the application.

[GRIFFITH C.J. What is the state of the cause? Are there pleadings, and has issue been joined?]

Yes, but it is not usual under the Victorian practice to give notice to the other side. [He cited *Crispe v. Appleton* (1); *Weigall v. Macpherson* (2); *Kepple v. Thornton* (3).]

H. C. OF A.

1917.

WARD

v.

C. W.

McFARLANE
& CO.

GRIFFITH C.J. An order for discovery of documents is not of course. The Court is required (Order XXIX., r. 8) both to exercise its discretion as to the documents of which discovery is to be made and to form an opinion upon the necessity of the discovery. I do not see my way to do either in the absence of the defendants. I do not think that the words "without any affidavit" in r. 8 mean that the application may be disposed of *ex parte*. Whether it may or not must depend on other considerations. The rule *Audi alteram partem* should be followed unless there are special reasons for disregarding it.

Summons to be taken out.

Solicitor for the plaintiff, *H. M. Lee*.

B. L.

(1) 6 A.L.T., 265.

(3) 7 A.L.T., 95.

(2) 6 A.L.T., 250.