

J. H. Moss, K.C., for the plaintiff.

D. T. Symons, K.C., for the defendant.

MIDDLETON, J.:—The material in support of the motion is an affidavit by the plaintiff, who bases his belief that the defendant's edition of 1912 has been produced in violation of the terms of the injunction, upon the repetition in the 1912 edition of numerous misprints and errors said to exist in the 1911 edition. Fifty-four such errors or misprints are particularised.

At the time of the pronouncing of the judgment—the 4th January, 1912—the defendant had a 1912 edition well under way with his printers, Warwick Brothers and Rutter. This edition was in large measure derived from and based upon the 1911 edition. When the judgment was pronounced, and the defendant learned of his failure in the action and of the fact that all further use of the 1911 edition was prohibited, he determined to compile anew the material necessary for the publication of a new edition. The injunction in no way prevented this, so long as the compilation used in 1912 was based upon the result of original inquiry and work. He, accordingly, on the 5th January—the day after the pronouncing of the judgment—telegraphed to his correspondents in each of the Provinces, other than Ontario, to have prepared a complete new list of barristers, also Judges, court officials, etc., for the respective Provinces. He followed these telegrams by letters advising of the holding of the trial, which necessitated the preparation of new lists without reference to the plaintiff's book or the defendant's 1911 edition. This correspondence is produced. The original lists furnished by the different correspondents are also produced; and the majority of the errors or alleged errors said to be common to both editions, and upon which the plaintiff's charge is now based, are found to exist in the material so furnished.

I am satisfied, from the material produced, that the list published in 1912 is substantially based upon the new material so obtained.

Upon the argument this was practically conceded by the plaintiff's counsel; but he still urges that on close scrutiny enough remains to indicate that some improper use must have been made of the prohibited material. This necessitates a somewhat careful scrutiny of the 54 cases alleged. Fortunately these admit of some classification.

In the first place, items 1, 2, 3, 4, 28, and 40 relate to the misspelling of the names of towns. The defendant contends, and I think rightly contends, that this is not within the scope