

Such was his unfortunate and nearly hopeless position ; but it was now to be rendered utterly hopeless by the "order by consent" of which I have complained above. That order was obtained thus : The defendant's solicitor, while I was in prison, issued a summons calling upon the plaintiff to show cause why the defendants should not have leave to strike out all their pleas, admit the truth of the plaintiff's declaration, and pay £10 into Court to satisfy the nominal damages which the Court by their judgment above mentioned declared the plaintiff was limited to. My clerk, Mr. Barratt, resisted the granting of this summons as being manifestly unjust, because if it were granted the plaintiff must either lose the second trial, or else discontinue his action altogether, and in either event he would have to pay the costs of the action. The Chief Justice reserved his decision, and on a subsequent day made an "order by consent," granting the application of the defendants. He made no other variation in the former rule for a new trial of the original issues, but left the costs of the former trial and proceedings still "to abide the event"—an event now no longer capable of an alternative.

After my release from gaol I applied to set aside this "consent" order on strong affidavits denying that the plaintiff, or any one on his behalf, had ever "consented" to it, and also on the ground of its manifest injustice.

The Chief Justice delivered a written judgment, refusing to set aside the order or vary it in any way. He admitted that such an order could not be made without my consenting on plaintiff's behalf ; but he upheld the order, and thus averred that such "consent" had been given. This averment, as well as the carefully-worded implication of consent contained in the Chief Justice's judgment, is untrue, and I can prove it to be so. I enclose, annexed to this letter, a slip from the *New Zealander*, 29th May, 1878, in which I publicly contradicted the Chief Justice's statement respecting my consent, and also stigmatized his order as fraudulent.

CHARGE 9.—That Mr. Justice Richmond "violated the truth from the Bench, for the purpose of sustaining an order which, but for that statement, could not have been sustained."

Mr. Justice Richmond granted to Mr. Travers privately, in Chambers, an injunction restraining the Corporation of Wanganui from carrying out certain waterworks, which, it was alleged, would render the waters of a certain lake foul and unfit for use.

I, on behalf of the Corporation, moved to set aside the order, upon evidence that showed conclusively that such statements were untrue. Thereupon Mr. Travers, on behalf of his client, filed fresh affidavits, setting forth new facts, and making an entirely new and different case from that made on the affidavits on which the *ex parte* injunction had been granted ; and he admitted in Court that the proposed works would not deteriorate the waters of the lake. The law laid down by the English Courts (and followed by the New Zealand Courts) is that, under such circumstances of concealment and misrepresentation, an *ex parte* injunction should be dissolved.

In answer to my argument for so dissolving the injunction, Judge Richmond (to uphold the injunction) declared from the Bench, in open Court, that the plaintiff had not been guilty of any concealment or misrepresentation, inasmuch as Mr. Travers had *verbally* stated these additional facts when he was originally applying for the *ex parte* injunction. Afterwards, I took occasion to speak to Mr. Travers on the subject, and he denied that he had made any such verbal statement to Mr. Justice Richmond when applying for his *ex parte* injunction.

Mr. Travers, when making that denial, evidently felt that the granting of an *ex parte* injunction to him privately, in a closed room, not on the sworn affidavits, but on his "verbal" statements, would be a proceeding so discreditable that he did not choose to be mixed up in it. An *ex parte* order for an injunction purports to be granted "on reading the affidavits," and the opposite party is entitled to conclude that the statements in the affidavits are the basis of the order, and that he must confine his reply to those statements. It is therefore not to be wondered at that Mr. Travers shrank from acknowledging such a transaction with the Judge.

CHARGE 10.—That the Court tied up a defendant till his opponent should get the benefit of a statute of limitations, and then, loosening his bonds, declared that they had never bound him.

This refers to the case of the Corporation of Wellington *v.* Schultz, in which Mr. Justice Richmond granted to Mr. Travers privately, and *ex parte*, an order *nisi* for a writ of injunction to restrain Mr. Schultz and an arbitrator named James Richard Davies (whom he, Mr. Schultz, had appointed under "The Lands Clauses Consolidation Act, 1863,") from proceeding to award the amount of compensation payable to Mr. Schultz for abstraction of water from his mill at Kaiwarra.

I will here remark, parenthetically, that the mere making of an award could itself do no harm to any one, and that the utmost interference that ought to have been contemplated by a Court should have been to restrain any action consequent on such award.

The order *nisi* for injunction, under the signature of Mr. Justice Richmond, was served by Mr. Travers on Mr. Schultz, and also on the arbitrator, who, in consequence, refused, so long as that order was pending, to summon the parties before him, or to proceed further with the arbitration. The order was framed in ambiguous terms, so that it might afterwards, in case it were made absolute, be construed as having amounted to a restraining order from the date of its service ; while, on the other hand, in case it should be discharged, it might be construed by the Court as having never at any time amounted to a restraining order. The difficulty in which this ambiguity placed Mr. Schultz was, that, if the arbitrator had, while the order was pending, proceeded to make his award, he would be liable to be attached for disobedience to the Court ; while, on the other hand, if he abstained from making any award, the three months limited by the Statute within which it must be made might elapse before the motion was argued.

Presuming, as I was bound to do, that the ambiguity in the wording of the order was unintentional on the part of Mr. Justice Richmond, I applied to him to clear up the ambiguity, and inform me whether the rule was or was not intended by him to tie up the hands of the arbitrator until it was argued. To this request I could obtain no answer whether or not we were at liberty to proceed while the order *nisi* was pending, and accordingly the arbitrator did not dare to proceed.

When at last the rule *nisi* came on for argument, the grounds which Mr. Justice Richmond had thought sufficient for granting an *ex parte* order were deemed by the same Judge so palpably unrea-