

£908, but they did not find—for Judge Richmond excluded all evidence which would have enabled them to find—the amount of the debt as reduced by the slaughter sale of the goods seized, and by the collection of Peters' book-debts by Joseph and Co.

Thus it will be seen that neither of the two items of £908 and £514—treated by the Chief Justice as the sole factors in the verdict of the jury—are correct. Not only are they incorrect, but they were not the sole factors in the verdict. It was proved to a demonstration that the unlawful seizure and sale of Peters' stock-in-trade, accompanied as it was by the locking up of his shop and premises, entirely destroyed a thriving and daily-increasing business; and it was further proved that after emptying Peters' shop and premises, of which he had a five years' lease (and upon which the rent had been fully paid up beyond that date), the defendants, without any right or authority, delivered up the keys to the landlord, who re-let the premises, and removed and sold a workshop, built by Peters at a cost of £70 or £80. In short, it was proved beyond question that the man was reduced to a helpless condition, and stripped of everything, even of his working tools. In the face of such facts, I confess myself at a loss to understand how his Honor could treat the value of the goods as the sole basis of plaintiff's damages, nor how he can assert that the value of the goods seized was proved to be below the amount of the debt due at the time of the trial.

And now as to that part of the judgment referring to the alleged "consent" given by the plaintiff to the Judge's order, and to my imputations of fraud and misconduct in the drawing up of that order, which charges both the Judges pronounce to be entirely unsupported.

Referring to the "consent," the Chief Justice uses the following words:—"This portion of the order is not an order at all, but a reservation, by agreement of the parties, of particular questions to be dealt with thereafter by the Court. This course, I am disposed to think, needed the consent of both parties; *hence it was so minuted by me*, and being so minuted was drawn up, and properly so. It may be that the words by agreement of parties would more accurately have expressed what I intended by my minute. I think the words used are substantially the same. It is objected that the order is drawn up by consent, whereas no consent was given." Surely, the Chief Justice cannot think I would waste my time objecting to an order because it used the word "consent" instead of the words "agreement of parties." My contention was that there was neither "agreement" nor "consent," nor anything of the kind. Putting the above quotation into logical order, it seems to amount to neither more nor less than this:—"I (the Chief Justice) had no power to make such an order except 'by consent'—it was therefore right that I should minute a 'consent,' and having minuted a 'consent' the order drawn up on that minute must be right even though such consent was never given." The judgment avoids saying that any "consent" was ever given, but leaves the careless reader to assume that it was given. I ask any person who attentively reads the above quotation from the words of the Chief Justice, whether his Honor does not by them unreservedly admit that no such minute ought to have been drawn up unless he was satisfied that both parties were entirely agreeing to it, and, also, whether he does not admit by implication that there was no such agreement.

I will now proceed to show that the whole materials before the Court on the late motion to set aside the Chief Justice's order, showed irresistibly that no such consent was ever given.

The order was originally applied for by Mr. Travers while I was locked up in the gaol. I, in writing, directed my clerk, Mr. Barratt, to oppose Mr. Travers' application, and to inform the Judge that his instructions were to consent to nothing. After the argument on the motion, Mr. Barratt reported to me at the gaol that he had "consented to nothing." Subsequently Mr. Barratt, for the purposes of this present motion, swore an affidavit that he informed the Chief Justice that he could "consent to nothing," and that affidavit stands to this hour uncontradicted by the Judge or any one else. After Mr. Barratt had so informed the Judge that he could "consent to nothing," the Judge took time to consider what order he would make. When the Judge on a subsequent day pronounced his decision, he at the same time made a minute of his intended order, and of that minute my late partner, Mr. Henry Fitzherbert, made a copy from the Judge's dictation, and that copy contains the words "by consent of defendants." Whatever these words may mean it is plain they cannot mean the "consent of the plaintiff." This minute is set out verbatim in an affidavit sworn by Mr. Henry Fitzherbert, and nobody has denied, or could truthfully deny, his statement. Not one word in that minute goes to show that anything was done "by the agreement of both parties." Not only is this fact verified by the sworn statements of Mr. Barratt and Mr. Fitzherbert, but it is confirmed by the further statement of Mr. Barratt that when the order was served on us Mr. Barratt went straightway to Mr. H. H. Travers and complained of the words "by consent," and it is not disputed that Mr. H. H. Travers on that occasion admitted that the plaintiff had not "consented," but at the same time refused to take any step to alter the order. In addition to all this, Mr. H. H. Travers, in his affidavit (which the Chief Justice stated that he had read), also admits that there was "no consent" on the part of the plaintiff. Thus the Chief Justice had before him three sworn statements, all agreeing that there was "no consent," and yet he now, in his judgment, upholds his order, saying that his "minute was read out to the parties without objection." His minute is sworn to have mentioned "by consent of the defendants," but even if it did not, how could such omission justify the upholding of an order in which the consent is treated as the consent of both parties, when both parties agree that there was no consent?

Now, as to the imputation of fraud and misconduct, which both the Judges pronounce to be entirely unsupported, my argument was that the order was equally improper in the manner of drawing it up, and in the object for which it was so drawn up; and that it was drawn up in such way as to render it impossible for the plaintiff to advance without losing his damages for ever, or to retreat without being mulcted in very heavy costs. In my argument I characterised the proceeding as similar to the gambling trick—"Heads I win; tails you lose," and I showed that the introduction into the order of the words "by consent," would necessarily preclude Peters from alleging at any future time that he had not himself "consented" to such a state of things. I showed, I thought conclusively—and I would here point out that both the judgments give the go by to these arguments—that if Peters proceeded to a second trial, narrowed to one question as it was to be, he must infallibly fail,