

question as to payment of the costs of the first trial of the issues raised on the second count, and of the costs of the rule for a new trial as affected by this application, be reserved for the consideration of the Court at the time of the disposal by the Court of the questions as to costs which are reserved by the rule for the new trial: the defendant also undertaking not to proceed in the meantime with the taxation of the costs granted by the said rule.

“JAMES PRENDERGAST.”

This application was heard by the Chief Justice and Mr. Justice Williams, and against the latter you have made no charge. Their judgments I put in Appendix B. I need hardly point out that you are in error in stating that the order was “by consent” generally. The only question that was dealt with by consent was one of costs—viz., that the question as to payment of the costs of the first trial of the issues raised in the Supreme Court, and of the costs of the rule for a new trial as affected by the application, be reserved, &c. Ordinarily, when a new trial is granted, the person against whom the rule was obtained pays the costs. In this case the Judge granting a new trial ordered the plaintiff so to do. This order therefore in holding over the paying of the costs was a direct benefit to your client. Had this order not been done so, the defendant could have taxed his costs under the rule absolute, and issued execution against your client. But, had it been otherwise, your client had the right of appeal against the decisions of the Chief Justice and Mr. Justice Williams, and he did not avail himself of that right. I am also advised that the judgment of the Chief Justice and Mr. Justice Williams could not have been successfully appealed against.

CHARGE 9.—Your proof adduced against Mr. Justice Richmond amounts to this: that Mr. Justice Richmond said one thing publicly in Court when Mr. Travers was present, and that Mr. Travers told you another thing out of Court. This is certainly most peculiar proof to show that a Judge “violated the truth from the Bench.” Mr. Travers has, however, informed the Government that his recollection is diametrically opposed to your own. The whole papers in the action *Hair v. Borough of Wanganui* have been obtained by the Government, and I find that the following are the facts:—

Mrs. Hair began an action on the 23rd March, 1877, against the Mayor, Corporation, &c., of Wanganui. The declaration, pleas, replication, affidavit, order, and injunction, are all in Appendix C.

Briefly stated, they show the following: Mrs. Hair was in lawful possession of land covered with water, known as Virginia Lake. The Corporation threatened to construct an aqueduct from Westmere Lake to her land, Virginia Lake; and she prayed for an injunction to prevent this being done. On an affidavit included in Appendix, she obtained an *ex parte* injunction, and you, on behalf of the Corporation, moved to set it aside, on the grounds which are stated in the Appendix.

And after argument a judgment was pronounced, refusing your motion. The judgment is in Appendix C. The only thing that might call for remark is that the Judge should not have ordered your clients to have paid costs on this unsuccessful motion.

Against this judgment your clients did not appeal, and I am advised that an appeal must have been unsuccessful. To show, however, that your clients knew they had no defence to the action, and that the injunction which was granted was properly granted, they afterwards consented to the injunction being made perpetual with costs. (See copy order in Appendix.) I may point out that the objection to the *ex parte* injunction raised by you as to impurity of the water was really of no importance, for, whether pure or impure, the plaintiff undoubtedly had a right to prevent her land being injured by the defendants unlawfully pouring water on it. As to the other point, of the land being taken under “The Municipal Corporations Waterworks Act, 1872,” the notice of Mr. Borlase (see paragraph 4 of the affidavit of Mrs. Hair, dated 19th June, 1878) disposed of that objection.

A perusal of the whole of the documents will, I believe, make you withdraw this charge, and regret that you should have made it.

CHARGE 10.—This charge specifies, I presume, what was unspecified in charge 6, as this case—*Schultz v. Wellington Corporation*—is mentioned in charge 6. The following rule *nisi* was obtained by the Wellington Corporation:—

“In the Supreme Court of New Zealand, Wellington District. Between the Mayor, Councilors, and Citizens of the City of Wellington, plaintiffs, and Charles William Schultze, defendant, on Friday, the twenty-eighth day of September, one thousand eight hundred and seventy-seven.

“On reading the writ and declaration in this action, the affidavit of service thereof filed herein on this twenty-eighth day of September, one thousand eight hundred and seventy-seven, and the several affidavits of William Hester and William Thomas Locke Travers, filed herein on the twenty-seventh day of September, one thousand eight hundred and seventy-seven, and on hearing Mr. Travers of counsel for the plaintiffs, it is ordered that the defendant do, at the first sitting in Banco of this Honorable Court which shall take place next after the next circuit sittings of this Court to be holden at Wellington, show cause why a provisional injunction should not issue restraining the defendant and James Richard Davies, of the City of Wellington, civil engineer, respectively, from proceeding under the several notices dated the eleventh day of July and the sixth day of September, one thousand eight hundred and seventy-seven, and under the appointment of the said James Richard Davies as arbitrator, dated the twenty-fifth day of September, one thousand eight hundred and seventy-seven, respectively, in the declaration in this action set forth pending the trial of this action.

“Firstly, on the grounds that the claim of the defendant was not made within the time prescribed by ‘The Wellington Waterworks Act, 1871,’ and, secondly, that the defendants in the year eighteen hundred and seventy-six, brought an action in this Court against the plaintiffs for damages alleged to have been sustained by him by reason of the alleged diversion, and that judgment in the said action passed against the defendant.

“By the Court.”

The points raised in this rule were well worthy of argument, and the Government cannot see that any objection could possibly have been made to the granting of the rule *nisi*. Your complaint is that the Judges did not inform you what the rule *nisi* meant. Surely that was no part of the Court’s