

function. It was a rule to show cause why an injunction should not issue, and there was no statement or order in the rule staying proceedings in the arbitration. Nor was it a rule in an action in which Davies was acting as arbitrator. The rule was obtained on the 28th September, 1877, and discharged on the 12th of November, 1877: no great delay therefore occurred in disposing of it, and the Government cannot see the slightest impropriety in anything the Judges did.

CHARGE 11.—This charge is not specific. As there is a reference to the cases of *Peters v. Joseph*, *Joseph v. Peters*, and *Poll v. Tonks*, I may as well state how far these cases were “tied up.” Your client Mr. Peters obtained a verdict in the case of *Peters v. Joseph*, but certain points were reserved at the trial, and a rule absolute in the following terms was made:—

“In the Supreme Court of New Zealand, Wellington District, between Carl Peters, plaintiff, and Joseph Joseph and Walter Isaac Nathan, defendants.

“On Tuesday, the eighteenth day of January, one thousand eight hundred and seventy-eight.

“UPON reading the rule *nisi* granted herein on the seventeenth day of November, one thousand eight hundred and seventy-seven, and on hearing Mr. Barton of counsel for the plaintiff, and Mr. Travers of counsel for the defendants, it is ordered that the verdict found for the plaintiff on the issues under the second count of the declaration be set aside, and that a new trial of the issues upon the said second count be had, and that the costs of and incident to the first trial of this action do abide the further order of this Court, and that the plaintiff do pay to the defendants the costs of and incident to this rule.

“By the Court.”

The judgment is in the Appendix B, and I am advised it was a proper judgment, and could not have been successfully appealed against.

Poll v. Tonks was tried on the 24th January, 1878, and a verdict of £270 given for your client. At this trial also certain points in favour of defendant were raised, and a rule *nisi* was obtained on the 2nd February, and discharged on the 14th March.

The Government cannot see anything improper in the Judge's conduct in either of these cases. Unless, indeed, you are prepared to contend that whenever one of the clients for whom you appear obtains a verdict from a jury, his opponent is not to be at liberty to raise any points of law, the Judges could not have acted otherwise than they did. If, as you say, the cross action, *Joseph v. Peters*, was improper or unfounded, your client could have defended it. The fact that judgment went against him shows that he was in the wrong. The charges you have made under this head, I must say, are not only unsupported by the documents filed in Court and by the judgments, but these show that you must have been labouring under a serious misapprehension when you made your complaint.

CHARGE 12.—This charge is specific, but the undoubted facts show that you must have overlooked them when you made it. Your motion was, “For a rule *nisi* to show cause why plaintiff should not be allowed to discontinue without costs to be paid by the plaintiff, and costs of the trial and of this motion be paid by defendant, and why defendant should not furnish to the plaintiff a duplicate of the agreement for the settlement of this action.”

The affidavits filed are in the Appendix D. Your complaint is that Mr. Justice Richmond did not set aside the verdict on the ground that one of the jurymen was interested. No doubt if one of the jurymen was interested that may have been good ground for a new trial, but you did not ask for such. You desired that the plaintiff should have leave to discontinue the action without paying costs, and you also asked that the agreement made should be carried out. The agreement could not therefore have been considered by you an improper one. If the agreement was valid, then the plaintiff could have sued the defendant for any breach. In reference, however, as to whether Mr. Charles Johnston was interested or not, it seems to the Government that the judgment of Mr. Justice Richmond disposed of such an objection when he said,—

“That in this case a very serious allegation had been made against a juror in the late case of *Leach v. Johnston*. After giving what consideration he could to the matter, he was of opinion that Mr. Charles John Johnston was not actually interested in the late action for trespass against Dr. Johnston. Nevertheless, the degree of connection he had with Dr. Johnston might have given cause for a new trial, and if a rule *nisi* for a new trial had been asked for he thought he would have granted it. However, no jury, in his opinion, could have given a verdict more favourable to the plaintiff, without having given what is called a perverse verdict. If the plaintiff had any right for a rule it was for a new trial on the ground that an interested party was upon the jury. As to the production of the alleged agreement, the plaintiff's right was plain; but he did not approve of the method in which the agreement was sought in the present case to be obtained—by rule *nisi*. The proper course would have been to have given notice of motion. Therefore, he would make no rule in this case.”—*New Zealander*, 8th August, 1878.

I have now dealt with the various charges you have made. I have placed in the Appendix the various documents referring to the cases, for more ready reference. After a careful and calm review, I am bound to say that I regret that you should have made the charges, and I feel assured that you will yet acknowledge that they were made either under some temporary irritation, or without due consideration.

There is one misapprehension under which you seem to labour, which I think it necessary to dispel. It is not the function of the Executive of the Colony to act as an appellate tribunal. If the Judges decide contrary to law, ample machinery has been provided to have their decisions reviewed. It cannot be right that men who may not have been trained as lawyers should sit in judgment on the decisions of the Supreme Court. It is only when clear evidence is produced of corruption or incapacity that the Executive is called upon to interfere. Were the Executive to interfere with Judges whenever a disappointed litigant invoked their aid, the due administration of justice would be impeded.

I have the honor to be

Sir,

Your obedient servant,
G. S. WHITMORE.

G. E. Barton, Esq., M.H.R.,