

4. That, on the twenty-second day of February, one thousand eight hundred and seventy-eight, his Honor the Chief Justice delivered his judgment on the said summons, and minuted the same in the words set forth in the paper writing hereunto annexed and marked "A."

5. That, on Friday, the twenty-second day of February, one thousand eight hundred and seventy-eight, I drew up an order in accordance with the terms of the said minute and produced the same to and for the approval of his Honor the Chief Justice, and for his signature, and his Honor the Chief Justice thereupon, after making certain verbal alterations therein, signed the same, and I then caused a copy thereof to be delivered to the plaintiff's solicitor. And I say that I drew up the said order in good faith, and with no intention unduly to interfere with the rights of the defendants in this action.

6. That the said order so amended as aforesaid is hereunto annexed and marked "B."

7. That at the time his Honor gave his judgment on the said summons, I, as defendants' solicitor, consented that the 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 was reserved by the rule for the new trial.

8. That the plaintiff's solicitor fully understood that it was only the consent of the defendants' solicitor that was meant by the terms of the said order.

9. That the plaintiff's solicitor called upon me and requested me to amend the said order by inserting the words "of the defendants' solicitor;" after the word consent, in the said order; but I informed him that I could not myself alter the said order, but, if he applied to his Honor the Chief Justice to amend the said order by adding the above-mentioned words, I would attend and consent to the said alteration.

10. That no notice of any application to amend the said order was ever served upon me, nor, as I am informed, and verily believe, was any application made to his Honor the Chief Justice for that purpose.

HENRY H. TRAVERS.

Sworn at Wellington aforesaid, this ninth day of May, 1878.
before me,—

J. G. ALLAN,
A Solicitor of the Supreme Court of New Zealand.

"A."

I GRANT the application to withdraw the pleas to the second count, and to pay £10 into Court on the second count, and be pleaded, and to give with plea a notice in mitigation of damages.

The costs of this application, and the costs of an amendment, to be the plaintiff's costs in the cause in any event.

As to the payment of the costs of the first trial of the issues raised on the second count and the costs of the rule for a new trial, this question, by consent, to be reserved for the consideration of the Court at the time of the disposal by the Court of the question as to costs by the rule of the new trial; and if the Court should be of opinion that the payment of those costs ought properly to have been made a condition of the leave to withdraw pleas and pay money into Court, then the plaintiff to have those costs, even though the Court would not have given them under the question reserved by the rule, and notwithstanding that, as to the costs of the rule, they are ordered thereby to be paid to the defendant.

The defendant undertaking not to proceed on the taxation of the costs of the rule in the meantime, and until the Court shall otherwise order.

SUPREME COURT.—IN BANCO.

PETERS v. JOSEPH and ANOTHER.

Judgments herein of their Honors the Chief Justice and Mr. Justice Williams were delivered on 24th May, 1878.

The Chief Justice :—

In this case a rule *nisi* was on the 29th March last granted by Mr. Justice Richmond, on the application of Mr. Barton, on behalf of the plaintiff, calling the defendants to show cause why an order made by myself on the 22nd February last in chambers, on a summons taken out by the defendants, should not be rescinded.

The object of the summons was to obtain liberty to withdraw the pleas to the second count of the declaration, and to pay money into Court, and plead such payment to the second count.

The order made on this summons was as follows :—

"On hearing Mr. Travers for the parties, and on reading the summons herein, dated 13th February instant, I do order that the defendants do have leave to withdraw the pleas pleaded by them to the second count of the declaration in this action, and to pay into Court the sum of £10, and to plead such payment in satisfaction of the plaintiff's claim under the said second count, and that the defendants be at liberty to give notice in mitigation of damages under the said second count; and I do further order that the costs of and incidental to this order and the costs of the amendments be plaintiff's costs in the cause in any event; and I do also further order, by consent, that the question as to payment of the costs of the first trial of the issue 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 question as to the costs which are reserved by the rule for a new trial, the defendants also undertaking not to proceed in the meantime with the taxation of the costs granted by the said rule.