

sixty-nine, issued out of and under the seal of this honorable Court in the words and figures following:—

“Victoria, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To Alfred Rowland Chetham Strode, Esquire, a Resident Magistrate of the Colony of New Zealand for the District of Dunedin, and one of the Resident Magistrates of and for the Resident Magistrate’s Court held in Dunedin aforesaid, and Frank Alfred Orbell, of Puketapu, in the province aforesaid, farmer.—Whereas we have been informed, and given to understand, that the said Frank Alfred Orbell hath entered his plaint and recovered judgment thereon on the eleventh day of November last past against Alfred Augustus Catamore, of Dunedin, in the said province, Deputy Sheriff of the district of the province aforesaid, in the said Resident Magistrate’s Court, for the sum of ninety-five pounds seventeen shillings and sevenpence farthing, together with costs, for that the said Alfred Augustus Catamore had, as such Deputy Sheriff as aforesaid, received for the use of the said Frank Alfred Orbell from one John Jones in an action brought against him by the said Frank Alfred Orbell, in the said Supreme Court, the said sum of ninety-five pounds seventeen shillings and sevenpence farthing, under a writ of *capias ad satisfaciendum* issued out of the said Court, upon a judgment obtained in the said action by the said Frank Alfred Orbell against the said John Jones: And whereas we have been informed and given to understand, and it has been made to appear unto us, that the said Resident Magistrate’s Court had no jurisdiction to pronounce or enforce the said judgment so given as aforesaid in the said Resident Magistrate’s Court on the said eleventh day of November last past, for that, before the said judgment had been so given as aforesaid, the judgment obtained in the said Supreme Court by the said Frank Alfred Orbell against the said John Jones was reversed in due form of law by the Court of Appeal of New Zealand on the ninth day of November aforesaid, and the said judgment and the said writ of *capias ad satisfaciendum* thereupon were reversed, set aside, avoided, and made of no effect in law: Now, therefore, we do prohibit you the said Alfred Rowland Chetham Strode, and you the said Frank Alfred Orbell, from further proceeding in the said summons or plaint in the said Court, or upon the judgment obtained therein. Herein fail not at your peril.

“Witness his Honor Charles Dualey Robert Ward, Esquire, Judge of Our Supreme Court of New Zealand, at Dunedin aforesaid, this eighth day of March, A.D. 1869.”

That the said rule of the fifth day of March, one thousand eight hundred and sixty-nine, and the said writ of prohibition of the eighth day of March, one thousand eight hundred and sixty-nine, still remain in full force.

REPLICATION.—June 30th, 1870.

To the second plea the plaintiff says,—

1. That he denies all the material allegations therein contained.

2. And for a further replication to the said plea, the plaintiff says,—

That the rule of the twenty-fourth day of February, therein mentioned, was made after the execution by the said Frank Alfred Orbell of the deed in the declaration mentioned, and after the said Frank Alfred Orbell had parted with all his interest in the said judgment, and after the same had been assigned to the plaintiff, and after notice of the said deed had been given to the Clerk of the Resident Magistrate’s Court.

That the plaintiff had no notice of the said rule, and was not called upon to, nor did, show cause against the same, nor was he heard in answer thereto.

DEMURRER.

THE fifth day of July, in the year of our Lord one thousand eight hundred and seventy.

The defendant, by James Macassey, his solicitor, says, for a demurrer to the plaintiff’s second replication to the defendant’s second plea, that the said second replication is bad in substance.

The matters of law intended to be argued in support of this demurrer are,—

1. That the plaintiff cannot set up the alleged assignment against the adjudication and decision of this Court, declaring that the judgment assigned to the plaintiff was in a proceeding without and beyond the jurisdiction of the Resident Magistrate’s Court at Dunedin.

2. That the said replication does not aver that the defendant had any notice of the said assignment before the making of the rule for the said writ of prohibition, and before the issuing of the said writ.

NOTICE OF OBJECTIONS TO PLEA.

TAKE notice, that upon the arguments of the defendant’s demurrer herein, I shall object to the sufficiency in substance of the defendant’s second plea, upon the grounds following:—

1. The writ of prohibition contradicts itself, inasmuch as it shows a jurisdiction in the Resident Magistrate’s Court, and the reason assigned for non-jurisdiction is not sufficient to take it away.

2. The writ of prohibition is no answer to the declaration.

3. This action is not a proceeding upon the judgment within the meaning of the writ.

4. The writ is imperfect, for not including all persons having power to issue execution upon the judgment.

5. It is not alleged that the judgment of the Supreme Court was reversed before the defendant had levied.

6. It is not alleged that the steps required by the forty-first section of the Court of Appeal Act to supersede the execution were taken before the defendant had levied.

7. It is not alleged that the security required by the forty-second section of the said Act has ever been given.

HENRY SMYTHIES,
Plaintiff in Person.

18th July, 1870.

To the above-named defendant, and to James Macassey, Esq., his solicitor.