

## APPENDIX B.—CHARGES 8 AND 11.

PETERS *v.* JOSEPH AND ANOTHER.—Charge 8.

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

WE, Henry Samuel Fitzherbert, in the City of Wellington, in the Colony of New Zealand, solicitor, and James Barratt, of the same place, law clerk, make oath and say as follows:—

And I, the said James Barratt, for myself say,—

1. The said Henry Samuel Fitzherbert is the solicitor in this cause for the above-named plaintiff, Carl Peters, and I am the managing clerk of the said Henry Samuel Fitzherbert, and have attended to the conduct and management of this cause.

2. On the fifteenth day of February last, I attended the summons herein (a copy of which is annexed hereto, and marked "A") before his Honor the Chief Justice in chambers. I then opposed the application on certain grounds, and I submitted, if any order were made, the whole question of all the costs of the action must be then dealt with by his Honor; and I stated that I had instructions to consent to nothing. His Honor adjourned the application for further consideration, and the adjournment was to no fixed day.

3. On the twenty-sixth day of February last, I was informed that his Honor was about to make an order on the said summons, and I at once attended at his Honor's chambers, where I found Mr. Fitzherbert in attendance, and his Honor made an order reviewing certain costs for the consideration of the Court, and stated, "I make it a condition, by consent of the defendants' solicitor, that the defendants shall not raise the point that these costs should be now applied for at the time of this application; and if the Court shall be of opinion that the payment of these costs ought properly to have been made a condition of the leave to withdraw pleas and to pay money into Court, then the plaintiff to have their costs, even though the Court would not have given them under the question reserved, and notwithstanding that, as to the costs of the rule, they are thereby ordered to be paid to the defendants." And Mr. H. H. Travers, the solicitor for the defendants, said, "I consent, and undertake not to raise the objection;" but nothing was said about any consent on the part of the plaintiff to any order, and no such consent was given in my presence."

4. On the twelfth day of March instant, a copy of an order (a copy of which is hereunto annexed and marked "B") was served at the said Henry Samuel Fitzherbert's office in the afternoon, and next morning I called upon the said Henry Hamersley Travers, and pointed out to him that the said order was wrongly drawn up, and the consent mentioned in it should have been restricted to the defendants' solicitor; and the said Henry Hamersley Travers admitted that there was no consent on the part of the plaintiff to the said order; and I then informed the said Henry Hamersley Travers that the said order and pleas delivered thereunder would not be recognized by the plaintiff, and that an application would be made to set the said order aside.

5. On the sixteenth day of March instant, between the hours of twelve and four o'clock in the afternoon, I served a notice of trial (a copy of which is hereunto annexed and marked "C") on a clerk of the said Henry Hamersley Travers, at his office, in the City of Wellington aforesaid, and on the twenty-eighth day of March instant I entered this action for trial at the next sittings of the Supreme Court at Wellington aforesaid, with the Registrar of the said Court at Wellington aforesaid.

And I, the said Henry Samuel Fitzherbert, for myself say,—

6. On the twenty-sixth day of February last, I attended before his Honor the Chief Justice in chambers, at the Supreme Court, Wellington, on the said summons referred to by the deponent, James Barratt, when his Honor the Chief Justice made an order on the said summons; and I now state that no consent was ever given by me to any order being made thereon, and I was never asked to give any consent to the said order.

H. S. FITZHERBERT.  
JAMES BARRATT.

Sworn by the above-named James Barratt and Henry Samuel Fitzherbert, at the City of Wellington, in the Colony of New Zealand, this twenty-eighth day of March, one thousand eight hundred and seventy-eight, before me,—

TH. HUTCHISON,

A Solicitor of the Supreme Court of New Zealand.

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

I, Henry Hamersley Travers, of the City of Wellington, solicitor, swear—

1. That I am solicitor for the defendants in this action.

2. That, on Wednesday, the thirteenth day of February, one thousand eight hundred and seventy-eight, I took out a summons in this cause, calling upon the plaintiff to show cause why the defendants should not be at liberty to withdraw the pleas pleaded to the second cause of action herein and pay money into Court in satisfaction of the plaintiff's claim under the second count, and to plead such payment, and to give evidence in mitigation of damages.

3. That, on the fifteenth day of February, one thousand eight hundred and seventy-eight, the said summons was heard before his Honor the Chief Justice, when he took time to consider his judgment.