

HON. MR. JUSTICE MIDDLETON.

APRIL 2ND, 1914.

DOWNEY v. BURNEY.

6 O. W. N. 174.

Injunction—Motion to Commit — Technical Breach—Discretion of Court—Offending Party to Pay Costs.

MIDDLETON, J., refused to commit a party for a technical breach of an injunction order but ordered him to pay the costs of the application.

Motion by plaintiff to commit defendant for disobedience of an injunction order of the Court.

J. M. Langstaff, for motion.

N. Somerville, contra.

HON. MR. JUSTICE MIDDLETON:—I am not at all satisfied that the defendant did not intend to be guilty of some breach of the injunction. Technically he has undoubtedly been guilty of a breach. On the other hand it appears to me that there is a disposition on the part of the plaintiff to make too much of a comparatively small matter, and I am disposed to give the defendant in one way the benefit of the doubt; intimating at the same time that nothing can justify even a technical violation of an order of the Court, more particularly when that order is based upon a consent.

I do not think I should go so far as to award imprisonment on the present occasion, and the ends of justice will, I think, be amply satisfied if I direct the defendant to pay the costs of the motion. He will, however, understand that he must live up to the letter as well as the spirit of the injunction order, or take the consequences.

Another Judge may not be as lenient.