Justice Cotton, who was a party to the judgment in that case, disclaimed any concurrence in the view on that point expressed by the late Master of the Rolls. The learned Lord Justice repeated this view in giving judgment, and Lords Justices Baggallay and Lindley concurred. The appeal against Mr. Justice Chitty was affirmed on the ground that there was sufficient evidence of a nuisance, and the opinion expressed as to the undertaking in damages was only *obiter dictum;* still it was an opinion of great weight, and, at all events, destroys the authority of the *dictum* of the late Master of the Rolls already cited. The case, it is to be observed, was not reported in the *Law Journal Reports*, and ought not to have been reported at all, as it contained a mere *obiter dictum* of one judge from which another judge dissented, while the third judge, Lord Justice Brett, was neutral.

In the case referred to Sir George Jessel gave the history of the undertaking as to damages. He said that it was the invention of Lord Justice Knight-Bruce, and was originally only inserted in *ex parte* injunctions. It would, we think, have been better if it had never been extended. The undertaking for damages inserted in an *ex parte* application may be of use to protect the Court from misrepresentation, but to insert it when the Court has had the opportunity of hearing both sides seems to us to be totally out of place and contrary to the general principles by which the judgments of Courts ought to be guided. The Court ought to have sufficient confidence in its own judgment to give that judgment unconditionally, and ought not to call upon one of the parties to guarantee that its decision is right. If this is to be done in the case of injunctions, there is no reason in principle why it should not be done in any kind of case, and why a successful plaintiff should not always undertake to pay damages to the unsuccessful defendant in case it should turn out that, after all, the successful party ought not to have been successful. It is difficult to see how the practice which has sprung up can be defended in principle. However, the practice exists, and upon an interlocutory injunction, whether obtained *ex parte* or otherwise, the plaintiff always undertakes "to abide by any order the Court may make as to damages in case the Court should thereafter be of opinion that the defendant shall have sustained any by reason of the order which the plaintiff ought to pay." The case supposed is that of an interlocutory injunction being granted *inter partes* by the judge, and afterwards the judge alters his mind or the Court of Appeal reverses him, so that it appears that the injunction ought never to have been granted. In that case can it be said that the Court ought not "to be of opinion that the defendant has sustained damages?" If the defendant has suffered loss from the injunction, which ought never to have been granted, it is clear that he has sustained damages, and the Court ought to estimate them. The basis of the undertaking is that the injunction is the act of the party, and the party which illegally inflicts loss on another ought to be made to pay damages.

These considerations appear to us to be unanswerable in favour of the opinion now expressed by the Court of Appeal. To limit the application of the undertaking to the cases suggested by the late Master of the Rolls would be to disregard the terms of the undertaking. Sir George Jessel supported his opinion by remarking that "it is the duty of the judge to decide according to law, and the plaintiff cannot be considered as undertaking to be answerable for his not doing so." This appears to us to be an irresistible reason why the undertaking as to damages should not appear in the order *inter partes*, or why its terms should be modified, but to be no reason why according to the present practice the ultimately unsuccessful party should have to pay damages to the successful for having been partially successful. In fact, the practice, having gone so far, ought to go further. Why should not an undertaking in damages be given in respect of a final injunction when there is an appeal? It may be that the facts are not so fully ascertained on the interlocutory application as at the trial, but this cannot be said of the law. If there is any real doubt about the law the judge ought not to make an order for an interlocutory injunction at all, and his knowledge of law at the interlocutory hearing is the same as his knowledge of law at the trial. While, therefore, we agree with the Court of Appeal in its interpretation of the undertak-