afterwards discovered that the document which he had signed as his award differed from the original draft which he had written, by the omission of a direction that the defendant should pay the costs of the reference. On the 2nd of Dec., 1868, Mr. Udall sent to the plaintiff's solicitors a corrected copy of his award, with a letter explaining the omission, and stating his opinion that the former document under the circumstances was not his award. On the 3rd of December, 1868, the plaintiff's solicitors served a copy of the award of December 2nd, with a copy of Mr. Udall's letter, on the defendant's solicitors. On the 18th of March, 1869, an order was made by Vice-Chancellor James, *ex parte*, on the application of the plaintiff, that the award of December 2nd should be made an order of the Court. On the 16th of July, 1870, the plaintiff gave notice of motion to the defendant to enforce the performance of the award of December 2nd. The defendant then gave to the plaintiff a cross-notice of motion to discharge the order of the 18th of March, 1869, on the ground that the document of the 2nd of December, 1868, was not the true award of Mr. Udall, it having been made after he had made a previous award, and after communications between him and the plaintiff's solicitors, in the absence of the defendant and his solicitors.

These two motions were heard together by the Vice-Chancellor, and he made an order in the terms of the plaintiff's notice of motion, but refused the defendant's motion, giving no costs on either side.

The defendant appealed.

Fry, Q.C., and *J. W. Chitty*, for the appellant.—The first award was complete and intelligible, and the arbitrator had no power to alter it after he had signed it: *Henfree* v. *Bromley*, 6 East, 309; *Irvine* v. *Elnon*, 8 East, 54; *Ward* v. *Dean*, 3 B. & Ad. 234. The second award being a nullity there can be estoppel against the appellant because he did nothing to set it aside before the plaintiff attempted to enforce it. Another objection to the second award is, that communications took place between the arbitrator and the plaintiff's solicitor behind the back of the defendant: *Harvey* v. *Shelton*, 7 Beav. 455; *Mills* v. *The Bowyers' Company*, 3 K. & J. 67. Moreover, the arbitrator had no power to give costs as between solicitor and client: *Whitehead* v. *Firth*, 12 East, 165. They referred also to *Auriol* v. *Smith*, T. & R. 121, and the Common Law Procedure Act, 1854, s. 8.

Kay, Q.C., and *G. Williamson*, for the plaintiff, were called on only with regard to the power of an arbitrator to correct a mistake in his award when once made. They contended that *Henfree* v. *Bromley* was really in favour of the plaintiff, and that it was not qualified at all by *Irvine* v. *Elnon*. As to *Ward* v. *Dean*, it was quite a different case from the present. The arbitrator had set his hand to a document, and there was no other document to show that he had made a mistake; it was nothing but a question of his recollection. They also referred to *Vorley* v. *Cook*, 1 Giff. 230.

No reply was called for.

James, L. J., said that the Vice-Chancellor made an order in substance enforcing the second award, or the document so called, and refused an application by the defendant to have an order making the second award an order of court discharged, and he gave no costs on either side. There was no intention now of interfering with the order as to costs. His Lordship thought the contention of the defendant was a very idle and technical one, and he must have known from the very first, that if he insisted upon it, the error would be at once set right upon an application to the court. But, at the same time, it was very important to adhere to previous decisions, and his Lordship thought that the present case could not be distinguished from *Ward* v. *Dean* (*ubi sup.*), which was as clear a case as possible of a merely clerical error. But even at that time, when the court had no power to remedy a mistake, however trivial, in an award, they thought that it would not be safe to open the door to anything outside the written document, which, when once it had been signed ought to stand. This decision and others of the same kind must have been in the contemplation of the Legislature when it passed the Common Law Procedure Act. That statute provided the most ample means of setting right any mistake which might have been made by an arbitrator, and it was certainly better that any step taken to correct an accidental error in an award should be taken in the manner provided by the Act. The mistake which had been made in the present case was of the most palpable nature, and the matter must be referred back to Mr. Udall to reconsider and redetermine it in respect of the mistake which was certified by him to have been made in his original award of November 12th. Two other points were taken in the argument. One was that Mr. Udall had been improperly having interviews with one of the parties behind the back of the other. His Lordship quite agreed that it was very important to prevent an arbitrator from receiving evidence or hearing arguments in the absence of one of the parties. But the only communication which in the present case was made by the plaintiff to the arbitrator in the absence of the defendant, was the putting the question to him, "Did you not make a mistake in copying your award?" He admitted that he had done so, and his answer was at once communicated by letter to the defendant's solicitors. There was no pretence for saying that he had been induced by any such communication to alter his award, or that there had been any misconduct on his part. If the court thought that there had, of course they would not refer the matter back to him, but would refer it to some one else. The other argument was that the arbitrator had no power to give costs as between solicitor and client. But at any rate that would not make the award bad in form. All the costs of the suit, as well as the costs of the reference and the award, were referred to the decision of the arbitrator, and he thought it right, having regard to the fiduciary relation existing between the parties, to give the costs as between solicitor and client. It was enough to say that he had jurisdiction to do it, he being the person appointed to decide who should pay the costs of the suit. The order appealed from must be discharged, but with costs, and the matter must be referred back to the arbitrator as already mentioned.