

1876.

NEW ZEALAND.

MR. SMYTHIES' CASE: AFFIDAVITS OF MESSRS. MACASSEY, HOWORTH, AND SMYTHIES,

(IN THE COURT OF APPEAL IN 1872. FURTHER PAPERS RELATING TO).

In the Supreme Court of New Zealand, Otago and Southland District.

In the matter of "The Law Practitioners Act Amendment Act, 1871;" and in the matter of HENRY SMYTHIES, at present of Naseby, in the Province of Otago, Gentleman; and in the matter of the Petition of the said HENRY SMYTHIES, under the said "Law Practitioners Act Amendment Act, 1871."

I, JAMES MACASSEY, of Dunedin, in the Province of Otago, New Zealand, a barrister and solicitor of the Supreme Court of New Zealand, make oath and say as follows:—

1. I have been on the rolls of this Honorable Court as a barrister and solicitor, and have practised as such in Dunedin aforesaid since the month of September, one thousand eight hundred and sixty-five.

2. I know the above-named Henry Smythies, and came frequently in contact with him during the period that he practised as a barrister and solicitor of the Supreme Court in Dunedin, from the early part of the year one thousand eight hundred and sixty-six down to the year one thousand eight hundred and sixty-nine.

3. It was upon an application made by myself that the said Henry Smythies was in the year one thousand eight hundred and sixty-nine suspended from practising as a barrister and solicitor.

4. After the said Henry Smythies was admitted to practice as a barrister and solicitor of the Supreme Court, he was in the year one thousand eight hundred and sixty-seven employed in his professional capacity to prosecute two complaints brought in the Resident Magistrate's Court, Dunedin aforesaid, by a licensed victualler named Clements, against two men named respectively Edmonson and Dodson. The claim made by the said Clements in each of such actions was, to the best of my recollection and belief, for the recovery of a sum of twenty-five pounds for damages for the alleged wrongful interference with a right, asserted by the said Clements, to the sole privilege of selling liquors and refreshments at the Silverstream Racecourse on the occasion of some races being held there in the year one thousand eight hundred and sixty-seven. The said Clements was nonsuited in the Resident Magistrate's Court, and from such decision appeals were brought to the Supreme Court at Dunedin aforesaid. The appeals were both dismissed with costs. Appeals were then brought to the Court of Appeal in the name of the said Clements, but no security for costs was given. The appeals were dismissed with costs; and the said Clements afterwards became bankrupt, without, as I have been informed and believe, having paid the costs of the appeals awarded by the Court of Appeal. Throughout the proceedings of the Resident Magistrate's Court, the Supreme Court, and the Court of Appeal, the said Henry Smythies appeared as solicitor and counsel. On the fourth day of May, one thousand eight hundred and sixty-eight, the said Clements appeared before the Supreme Court, Dunedin, to be examined in the matter of his bankruptcy, with a view to obtain his final order of discharge. Annexed hereto, and marked with the letters "A" and "B" respectively, are copies of the Judge's notes of the evidence taken, and of a letter of the said Henry Smythies to the said Clements, offering to purchase his interest in the appeal then pending before the Court of Appeal. The said letter (together with another letter from the said Henry Smythies to the said Clements) was ordered by the Judge to be impounded, and is now in the custody of the Registrar of the Supreme Court. There is also annexed hereto, and marked with the letter "C," an extract from the *Otago Daily Times* newspaper report of the proceedings in the Supreme Court on the fourth day of May, one thousand eight hundred and sixty-eight, and which extract I believe to be substantially correct. The said Clements was, on the evening of the said fourth day of May, thrown from his horse and killed while on his way home to the Taieri.

5. On or about the twenty-third day of September, one thousand eight hundred and sixty-eight, one Frank Alfred Orbell, for whom the said Henry Smythies acted as solicitor and counsel, recovered a verdict, in the Supreme Court at Dunedin, for a sum of one farthing, in an action brought against the late John Jones, of Dunedin aforesaid, Esquire, for malicious prosecution. A memorandum in error was lodged at the Supreme Court, on behalf of the said John Jones, Esquire, on the thirtieth day of September following; but, as such memorandum was open to a formal objection, it was deemed prudent to lodge a second memorandum in error, intituled in the Court of Appeal, and this was