

accordingly done on the second day of October following. On the sixth day of October (the said Frank Alfred Orbell's costs having been in the meanwhile taxed) recognizances of bail were entered into by the said John Jones, Latham Osborne Beal, manager of the Bank of New Zealand, and Robert Miller Robertson, of Dunedin aforesaid, merchant. As his Honor Mr. Justice Chapman had left for England, and Mr. Acting Justice Ward for Wellington, simultaneously on the fifth day of October, it was impossible that the recognizances should be formally acknowledged before a Judge of the Supreme Court. The recognizances were taken by the then Registrar and Deputy-Sheriff (Mr. Catamore) in open Court, and he assured me, this deponent, that no further proceedings should be permitted to take place without the authority of the Court or a Judge. On the ninth day of October a writ of *capias ad satisfaciendum* was issued from the office of the said Henry Smythies for the amount of the taxed costs in the action of Orbell *v.* Jones, and under such writ the said John Jones was arrested. He was afterwards discharged upon paying the amount of the execution debt, which the said Mr. Catamore agreed to hold under an indemnity from the said John Jones until the return of the Judge from Wellington. The judgment which had been entered up in the name of the said Frank Alfred Orbell in his said action against the said John Jones was reversed by the Court of Appeal in Wellington on the thirtieth day of October, one thousand eight hundred and sixty-eight. On the following day a telegram appeared in the *Otago Daily Times* announcing such reversal:—

“Wellington, October 30.

“In the case of Jones *v.* Orbell, judgment was given for Jones—the defendant in the Court below. It will be remembered that in an action brought by Orbell against Jones, at the Supreme Court in Dunedin, for malicious prosecution, one farthing damages was awarded him. By the judgment just delivered in the Court of Appeal, it is decided that no costs be allowed Orbell in the previous action.”

6. Notwithstanding this announcement, the said Henry Smythies persisted in prosecuting an action in the Resident Magistrate's Court, Dunedin, wherein the said Frank Alfred Orbell was plaintiff and the said Alfred Augustus Catamore was defendant, and in which the said Frank Alfred Orbell claimed to recover from the said Alfred Augustus Catamore, as such Deputy-Sheriff as aforesaid, the amount received by him in that capacity from the said John Jones. The plaint came on for hearing in the Resident Magistrate's Court, Dunedin, on the fourth day of November; and I appeared on behalf of the said Mr. Catamore, Mr. Smythies appearing for the said Frank Alfred Orbell. I protested against the cause being further prosecuted after the reversal of the judgment in Mr. Orbell's favour by the Court of Appeal; but the said Henry Smythies insisted upon his right to recover, as no formal certificate of the judgment of the Court of Appeal had been produced. The Magistrate took time to consider his decision, and on the eleventh day of November gave judgment for the plaintiff, on the ground that, in the absence of formal proof of the judgment of the Court of Appeal, he had no other alternative. I append, marked with the letter “D,” extracts from the *Otago Daily Times* newspaper of the fifth and twelfth days of November, one thousand eight hundred and sixty-eight, to the substantial truth of which I beg to vouch. The Supreme Court subsequently (to wit, on the fifth day of March, one thousand eight hundred and sixty-nine) made absolute, at very considerable expense to the said John Jones, a rule obtained by him, on behalf of the said Alfred Augustus Catamore, to restrain and prohibit all further proceedings on the decision of the said Resident Magistrate in the said action of Orbell *v.* Catamore.

7. On the thirteenth day of November, one thousand eight hundred and sixty-eight, and therefore about a fortnight after the said decision of the Court of Appeal had been made public in the *Otago Daily Times* newspaper, the said Henry Smythies took a formal assignment from the said Frank Orbell of the judgment, so as aforesaid recovered, in the Resident Magistrate's Court, Dunedin, on the eleventh day of November, one thousand eight hundred and sixty-eight, against the said Alfred Augustus Catamore. That although the said rule for a prohibition was made absolute on the fifth day of March, one thousand eight hundred and sixty-nine, the said Henry Smythies, in the month of June, one thousand eight hundred and seventy, brought an action in the Supreme Court at Dunedin, in his own name, as assignee of the judgment recovered against the said Alfred Augustus Catamore by the said Frank Alfred Orbell. The said action was defended by the executors of the late John Jones (who had died some time previously to its commencement), and judgment was given in favour of the said Alfred Augustus Catamore upon a demurrer, which terminated the suit. A copy of the pleadings in the said action accompanies this affidavit, and is marked with the letter “E.”

8. It is within my own knowledge that the proceedings taken, directly and indirectly, by the said Henry Smythies, to enforce the judgment originally entered up in the Supreme Court, in the action of Orbell against Jones, after such judgment had been reversed, and the reversal was publicly notified in Dunedin aforesaid, entailed upon the said John Jones and his representatives a cost of fully one hundred pounds, and down to the present time the costs of the action of Smythies against Catamore have never been asked for or paid.

9. On the ninth day of September, one thousand eight hundred and sixty-eight, one James Ure Russell made and filed, in the office of the Supreme Court at Dunedin aforesaid, a deed of arrangement for the benefit of his creditors, under the provisions of “The Bankruptcy Act, 1867.” The deed was, on the application of the said James Ure Russell, declared completely executed on the fourteenth day of September following, but the order of complete execution was not formally drawn up or issued until the tenth day of November, one thousand eight hundred and sixty-nine. The said Henry Smythies, without obtaining the leave of the Supreme Court enabling him to do so, issued a writ of *feri facias* against the said James Ure Russell on the eighth day of November, one thousand eight hundred and sixty-eight, upon a rule or order dated the twenty-first day of February, one thousand eight hundred and sixty-eight, for some costs provable under the deed, and delivered the writ to Isaac Newton Watt, Esquire, the Sheriff of Otago, for execution. The said Sheriff, having made a levy and seizure, under the said writ, upon the goods of the said James Ure Russell, was served with notice of the order declaring the deed completely executed; and the said Sheriff consequently withdrew from possession, and made a return, of which a copy, marked with the letter “F,” accompanies this affidavit. An action was afterwards (to wit, on the second day of June, one thousand eight hundred and seventy)