

brought by the said Henry Smythies against the said Isaac Newton Watt, in the Resident Magistrate's Court, Dunedin, and the said Henry Smythies was nonsuited.

10. On the first day of April, one thousand eight hundred and sixty-eight, the said Henry Smythies issued, out of the Supreme Court at Dunedin, a writ of *capias ad satisfaciendum* in an action of Russell against Barton, requiring the then Sheriff of Otago to take and keep the defendant in the action until he should have satisfied a sum of one hundred and forty-six pounds eight shillings and threepence, alleged to be due for costs. The said writ was delivered to Alfred William Smith, Esquire, the then Sheriff, for execution. On the said first day of April, one thousand eight hundred and sixty-eight, the said Alfred William Smith was served by the plaintiff, in the action of Russell against Barton, with a notice in writing, of which the following is a true copy:—

“In the Supreme Court of New Zealand, Otago and Southland District. No. 2833.

“Between JAMES URE RUSSELL, Plaintiff; and GEORGE ELLIOTT BARTON, Defendant.

“To A. W. Smith, Esq., Sheriff of Otago.

“SIR,—

“I request and authorize you not to execute the writ of *ca. sa.* issued in the action and lodged with you this day, as I have long since settled this action and have no claim on the defendant; and this last-mentioned writ of *ca. sa.* has been issued without instructions from me, and without my knowledge or consent.

“Dated this 1st day of April, 1868.

“JAMES U. RUSSELL.

“Signed in my presence—Henry Howorth, Solicitor, Dunedin.”

That the said Alfred William Smith, acting under my advice, declined to detain the defendant; and a rule was afterwards obtained by the said Henry Smythies, on his own behalf, calling upon the said Alfred William Smith to show cause why he should not pay to the said Henry Smythies the amount indorsed on the writ of execution. And in one of the affidavits upon which the said Henry Smythies moved for and obtained his rule *nisi*, he set forth a copy of an agreement for the compromise of the judgment debt and costs in the said action of Russell against Barton, and which agreement bore date the fifth day of December, one thousand eight hundred and sixty-six. The said rule so obtained by the said Henry Smythies as aforesaid against the said Alfred William Smith was discharged with costs.

11. In another case in which the said Henry Smythies was solicitor upon the record for one of the parties, a document, purporting to be a copy of an order made by his Honor Mr. Justice Chapman in Chambers, was served at my office by a clerk of the said Henry Smythies. Acting under the belief that the original order had been duly signed, my hands were tied for a period of between two or three weeks during the Judge's absence in Southland; but on his return I discovered that the original order had never been signed, although the copy served upon me had “H. S. Chapman (l.s.)” written upon it. I am unable to remember at the moment the name of the case in which the occurrence in this paragraph mentioned took place, but I have a clear remembrance of the facts as I brought them under the notice of the Judge in Chambers immediately after his return from Southland.

12. The facts deposed to in this affidavit I am enabled to state from personal knowledge, as I was engaged in all of the cases referred to either as solicitor or counsel.

13. I do not wish it to be inferred that I have stated every circumstance connected with the transactions hereinbefore referred to; but, if further explanation is desired, I beg respectfully to refer to the papers and proceedings in the various matters and causes before mentioned.

14. I am willing to attend for examination before their Honors the Judges who are to inquire into the truth of the allegations contained in the petition of the said Henry Smythies; but as the Provincial Council of Otago (of which I am a member) is now in session, I venture to leave the subject-matter of my attendance to the discretion of their Honors.

JAS. MACASSEY.

Sworn at Dunedin, in the Province of Otago, this eighth day of May,
one thousand eight hundred and seventy-two.

HENRY HOWORTH,
A Solicitor of the Supreme Court of New Zealand.

A.

[Extract from the Note Book of Mr. Justice Chapman, 4th May, 1868.]

Re WILLIAM CLEMENTS, a Bankrupt; WILLIAM CLEMENTS examined by Mr. WARD.

I CARRIED on business as an hotelkeeper for six months, from August to February. I started with borrowed money. There was no furniture with the house. I gave eighty pounds odd for it. I borrowed the money of Pritchard. I borrowed two hundred and fifty pounds and sixty-six pounds. I gave him a bill of sale. I was not then engaged in litigation. I made a composition with my creditors, five shillings in the pound. About one month before I took the public-house, I was engaged in illicit distillation. I brought an action about a booth. I paid the costs in the Magistrate's Court and this Court. Mr. Smythies took it to the Court of Appeal. I assigned the right of action to him. He appealed at his own cost. I saw in the paper that he had carried it to Wellington. He said, “Oh, we are sure to win it.” In consequence of that, I was thrown into gaol. Crop and stock were carried away by the flood. I had two cows; they were included in the bill of sale. The debt to Campbell was an old debt. I borrowed it without security, to go to Hokitika. I owed him one hundred and twelve pounds; he says so. My claim against him is fourteen or fifteen pounds.

This is the exhibit marked with the letter “A,” referred to in the annexed affidavit of James Macassey, sworn before me at Dunedin, this 8th day of May, 1872.

HENRY HOWORTH,
A Solicitor of the Supreme Court of New Zealand.