

B.

DEAR SIR,—

Ratray Street, 5th August, 1867.

I am willing, if you are, to take an assignment of your right of action against Edmonson and Dodson in discharge of my claim against you, and to carry on these cases at my own expense. At least, let me know if you consent; and then, if I can go on with them, I will as I propose. Please write me.

Faithfully yours,

HENRY SMYTHIES.

Mr. W. Clements.

This is the exhibit marked with the letter "B," 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.

C.

SUPREME COURT—BANKRUPTCY SITTING.

His Honor Mr. Justice Chapman sat on Monday, to hear applications under the Bankruptcy Act.

Re *William Clements*.

This insolvent came up for examination and discharge. Mr. Barton appeared for him, and Mr. Ward for Mr. Edmonson, an opposing creditor. The insolvent said that he was carrying on business at Otakia, as hotelkeeper. He started two months after making a deed of arrangement. He borrowed money from one Pritchard, who held a bill of sale over everything he possessed. He had been compelled to make a deed of arrangement with his creditors through losses in an illicit distillation speculation he was connected with. He was engaged in an action against Mr. Edmonson. Mr. Smythies was his solicitor, and, when the case was lost on appeal here, Mr. Smythies took the case up to Wellington on his own responsibility. He did not want to go on with it, but Mr. Smythies wrote to him stating that he was willing to carry on the case at his own expense, and would take an assignment of the right of action in discharge of his claim. The letter was produced and read with a subsequent letter, in which Mr. Smythies offered to take ten pounds and a bill for costs. The insolvent went on to say that his crops were lost by the floods.

Mr. Barton applied for the insolvent's discharge, contending that Mr. Smythies' letter exonerated his client from responsibility. The letter was not an assignment, but was an agreement for an assignment upon which Mr. Smythies had acted.

After argument, the Judge granted the final order. He commented upon the evidence that had been adduced, and said that the transaction with reference to the appeal had a suspicious look, and required further investigation. He ordered the letters to be impounded.

This is the exhibit marked with the letter "C," 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.

D.

RESIDENT MAGISTRATE'S COURT.—WEDNESDAY, 4TH NOVEMBER.

(Before A. R. CHETHAM STRODE, Esq., R.M.)

Orbell v. Catamore.

THIS was a summons taken out by Mr. Frank Orbell against Mr. Catamore, as Deputy Sheriff, to recover the sum of £95 17s. 7d., received by him under an execution in the suit of *Orbell v. Jones*, tried at the last sitting of the Supreme Court. Mr. Smythies, in opening the case yesterday, explained that the plaintiff brought an action against Mr. John Jones, at the last session of the Supreme Court, and obtained judgment. The defendant, as Registrar, taxed the plaintiff's costs, and entered up judgment. He (Mr. Smythies), as solicitor for the plaintiff, gave notice to Mr. Macassey, the counsel for the defendant Jones, that the costs were taxed at £92, and requested a cheque for the amount. Mr. Macassey intimated his intention to appeal. Notice of error was given, but no bond, as required by the Act to make the notice of error a stay of execution, was given by the defendant. He (Mr. Smythies) again wrote to Mr. Macassey, and pointed out the error in the matter of the bond, and that, therefore, unless a cheque was given for the amount, execution would issue. Ultimately a *ca. sa.* was issued and lodged with the defendant as Deputy Sheriff, Mr. Jones was arrested, and he paid to the defendant the amount of the execution. The defendant admitted to his (Mr. Smythies') clerk that he had the money, but refused to pay it over, he having been indemnified by Mr. Jones. Mr. Smythies read from the Sheriff's Act of 1864, wherein he explained it was enacted that it was the duty of the Sheriff, as soon as he received the money, to pay it over to the plaintiff. The defendant had, in his opinion, assumed a position which he could not maintain. He now urged that he was not indebted; but how could he set up that defence when it was shown he had received the money under the execution? It might be contended by the other side that the Court of Appeal had decided that Mr. Jones was not liable for the costs, but there was no evidence of the judgment of the Court of Appeal, the certificate not having been sent down; but even presuming that to be the judgment, it did not affect the question before the Court, which was, whether the money, at the time of taking out the summons, did or did not belong to the plaintiff, and whether the defendant being indemnified was any defence to the action, or afforded a valid reason for the defendant refusing to pay over the money.—Mr. H. Smythies deposed that he was clerk to Mr. Smythies, the plaintiff's solicitor. Witness delivered a writ of *ca. sa.* to the defendant, and defendant told him that he had arrested Mr. Jones; that he paid him the amount of the execution, and intimated that it was £95. The plaintiff forwarded an order, and it was tendered to the defendant, who showed witness the money.—Mr. Macassey, after pointing out in what manner he considered the plaintiff had