

and Kerwan's Reports, page 878, it appears that in the Exchequer Chamber judgment was given for the Crown on the first count.

HENRY HOWORTH.

Sworn at Wellington, in the Colony of New Zealand this
fourteenth day of May, one thousand eight hundred and
seventy-two. Before me,

A. DE B. BRANDON,
A Solicitor of the Supreme Court of New Zealand.

In the Supreme Court of New Zealand.

In the matter of "The Law Practitioners Act Amendment Act, 1871;" and in the matter of
HENRY SMYTHIES, one of the Barristers and Solicitors of this Honorable Court.

I, HENRY SMYTHIES, the above-named petitioner, make oath, and, in reply to the affidavit sworn by James Macassey and filed herein, say,—

1. As to the allegations in clause 4. That Clements, therein named, was the lessee of a booth at the Tradesmen's Races, and the actions were brought to recover damages from the defendants for severally intruding upon the course and selling liquor, in opposition to the lessee, without the leave of the Stewards; that I was requested by the Stewards to take up the case, not only for the protection of their lessee, but also to try the right of stewards of races to grant a monopoly of the right to sell liquor at races for the benefit of the race fund; that upon the decision of the Resident Magistrate being given against the plaintiff, he instructed me to appeal to the Supreme Court, and to the best of my recollection two of the Stewards joined in the bond; that upon the appeal being dismissed, the said Clements instructed me to take the case to the Court of Appeal, and I, knowing that a similar practice of letting booths had been universally adopted upon every racecourse since races were introduced, believed that such an act was not illegal, and therefore advised Clements to proceed; that after notice of appeal was given I heard that Clements wished to withdraw from the case, and I thereupon wrote the letter mentioned in the said clause. Clements thereupon came to my office, and, in the presence of my clerk, Harry Waddington Smythies, told me that he had no idea of withdrawing from the case, and instructed me to proceed, and, to the best of my memory and belief, paid me some money on account of costs. No assignment was made. Had Clements withdrawn I should have consulted the Stewards and acted upon their instructions. I did not mention this in the letter, because the Stewards did not wish to appear in the matter, nor to give any encouragement to Clements to withdraw. I was told by the Registrar that the letter written by me to Clements was not ordered to be impounded, but to be handed to him as Official Assignee. No proceedings were ever taken against me in the matter.

2. As to the allegations in clauses 5, 6, and 7. Recognizances not having been entered into, the plaintiff was entitled to execution, and a *ca. sa.* was sued out, because it was believed that the Sheriff would not sell under a *fi. fa.*, and had I not done so I might have rendered myself liable to negligence. Upon payment of the amount of the levy to the Sheriff the money became the property of the plaintiff and subject to a lien for my costs, of which I gave the Sheriff notice; and the money ought to have been paid over by him, leaving the defendant to the consequence of his own neglect, and to look to the plaintiff upon the reversal of the judgment. I believe that I am still entitled to the said money.

3. As to the allegations in clause 9. I do not recollect all the circumstances of this case; but I know that the said deed contained no release, and I therefore proceeded upon a judgment then long outstanding, the said Russell having then lately come into considerable property, the result of proceedings taken by me upon his behalf. It appeared to me, upon the construction of the Bankrupt Act, that, under the circumstances, leave to issue execution was not necessary. I sued the Sheriff because I believed, and still believe, that he acted partially in the matter, and under indemnity from Russell.

4. As to the allegations in clause 9. Under the instructions of the said Russell I brought an action against George Elliott Barton for malicious prosecution, and recovered five hundred pounds damages. Before execution could be taken out Mr. Barton left the colony. Henry Howorth, Mr. Barton's partner, negotiated with Russell behind my back and paid to him the amount of the damages, and took a release for the costs. I had previously served Mr. Howorth with notice of lien. Upon my applying to Russell for my costs he became insolent and swore that he had no assets, and I have never received from him one shilling on account thereof. Upon the return of the said George Elliott Barton to the colony, after the said matter had been so settled as aforesaid, I took the proceedings mentioned to try my right upon the lien of which I had given notice. The said Alfred William Smith acted under indemnity, and, I think, did not appear. Mr. Barton and Mr. Howorth were made parties to the rule. Upon discharging the rule, the Court refused to allow Mr. Howorth his costs, for the reason that had I applied sooner the rule would probably have been made absolute against him.

5. I know nothing about the matter mentioned in clause 11.

6. When Mr. Macassey commenced to prosecute me I was anxious to ascertain the cause, and, among other things, I looked up all the cases in which I had been concerned against him, and found them to be thirteen; and, to the best of my memory and belief, that in eleven of them I was successful, one I lost, and one was then unsettled, but was afterwards compromised by his clients paying to my client £500.

7. In reply to the affidavit sworn by Bryan Cecil Haggitt and filed herein, I say that the solicitors of Dunedin know that James Macassey takes a great personal interest in this prosecution; and I verily believe that most of them are afraid to act in opposition to him in the matter. That some of the solicitors have expressed themselves as friendly disposed towards me, but compelled to appear hostile for the fear aforesaid. That one of the principal solicitors in Dunedin sent me a message, previous to my coming up to the Court of Appeal, to the effect that he had been compelled to sign a petition against me, but that I might draw upon him for any funds that I might require for the purpose of prosecuting my case. That with regard to the inhabitants of Otago, other than solicitors, to the best of my knowledge and belief they are nearly unanimous in favour of my being restored to practice; and upon one occasion upwards of seven hundred, and upon another eight hundred and fifty,