

1876.

NEW ZEALAND.

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

(USED IN THE COURT OF APPEAL IN 1872, IN CONNECTION WITH).

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

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

I, JAMES URE RUSSELL, of Dunedin, in the Province of Otago, Settler, the abovenamed Plaintiff, make oath and say:—

1. The following is a correct statement of the circumstances attending the settlement of this action with Mr. Henry Howarth.

2. Previous to the commencement of the negotiation for settlement, one John Sibbald, a member of the Provincial Council, met me in the street, and asked me how I was getting on with Howarth, and why I did not come to some settlement with him, and get out of the law; to which I replied, that I did not wish to go on with the proceedings I had taken, and would be glad to settle; thereupon the said Sibbald proposed that he should undertake the part of mediator between me and the said Henry Howarth as he was a mutual friend, and I accepted his said proposal.

3. Afterwards the said Sibbald informed me that he had seen Mr. Howarth, and that he was willing to meet me and treat with me for a settlement, and the said Sibbald told me that he had made an appointment for me to see Mr. Howarth.

4. In consequence of this proposal, I afterwards on or about the twenty-seventh day of November, one thousand eight hundred and sixty-six, called upon the said Howarth, and had with him a long conversation respecting the settlement of this action, and of all claims by me upon the firm of Howarth, Barton, and Howarth, and of all my other claims against him, and of him and the said Howarth, Barton, and Howarth against me, and also for a settlement of my action against the Sheriff, Mr. Strode, for a false return to the writ of execution issued in this action against the share of the Defendant, George Elliott Barton, in the partnership property of the said firm of Howarth, Barton, and Howarth.

5. That thereupon, on the same day, being, as I believe, the twenty-seventh day of November, one thousand eight hundred and sixty-six, after receiving the said proposition for settlement, I wrote a letter to the said Henry Smythies, informing him of said proposition, and directing him not to proceed further in the said actions, or incur any further expenses, as it was probable that I would be able to settle with the said Howarth, and the said letter was written by me in the shop of Messieurs Ure and Co., grocers, in Princes Street, Dunedin, and was given by Mr. Ure, in my presence, to a porter in the employment of the said Ure and Co., for delivery at the office of the said Henry Smythies, in Rattray Street, and I saw said porter leave the shop with the letter to deliver it.

6. That two days afterwards, that is to say, on the twenty-ninth day of November, one thousand eight hundred and sixty-six, I called at the office of the said Henry Smythies, and seeing Henry Waddington Smythies, his son, engaged in writing out a brief in the said action against the Sheriff, I remonstrated with him for so doing after my letter of the twenty-seventh aforesaid; and I then complained to the said Henry Smythies, and told him personally of the proposed settlement, and of the said letter, and he then endeavoured to dissuade me from making a settlement; and either on the same day, or very shortly afterwards, he took me to the Judge's Chambers at the Supreme Court, and there showed me reports of cases which he said were entirely in my favour, and said that he was certain of success; but I told him that I feared an adverse verdict, and was quite tired of litigation, and very desirous of settling if possible.

7. That during the negotiations with the said Henry Howarth, I showed to him all the bills of costs up to that time received by me from the said Henry Smythies, and which included the costs of this action and of all the proceedings against the firm of Howarth, Barton, and Howarth, together with an account current purporting to be a debtor and creditor statement between me and the said Smythies; and said account current and bills of costs purported to show that I owed the said Smythies four hundred and ninety-four pounds five shillings, and that Smythies had received from me three hundred and ninety pounds eight shillings, leaving a balance in favour of said Smythies of one hundred and three pounds seventeen shillings; and I say that said costs and account current were furnished