

K.

Memorandum to Mr. Haselden.

Supreme Court, Christchurch, 24th June, 1887.

WITH reference to your memorandum No. 1,015, the amounts Mr. Austin received on the 27th June and 4th August, 1885, were paid under order of Court made on the 26th June, 1885, in the action of the Official Assignee of the property of G. W. Ell v. L. Harper and H. Hammer, No. 30, out of a sum paid into Court, under order of the 1st May, to the credit of the cause, and subject to the further order of the Court. The order fixed the amount of the party and party costs, and provided for the taxation of the solicitor's and client's costs, at which taxation Mr. Byrne, for Mr. Hammersley, appeared for Mr. Ell, and Mr. Ell was also present. You must not imply from the foregoing that, according to the form of your questions, the moneys paid into Court "belonged to Mr. Ell."

A. R. BLOXAM, Registrar.

L.

SIR,—

Supreme Court, Christchurch, 28th September, 1887.

I have the honour to acknowledge the receipt of your letter of the 26th instant. With reference to it I enclose for the Hon. the Minister's perusal Mr. Latter's copy of the statement of claim (my copy being in the Crown Solicitor's hands, the time for pleading expiring this day); also a copy of a letter received from Mr. Austin by Mr. Latter. From the statement it will appear that Mr. Ell has been engaged in litigation for a considerable time, and is at present an uncertificated bankrupt. Summonses have been taken out by Mr. Weston and Messrs. Harper and Co. for plaintiff to show cause why the suit should not be dismissed on the grounds that the action is frivolous and vexatious and an abuse of the process of the Court. Most of the allegations with reference to the orders of Court are incorrect. Of those referring to the conduct of the Official Assignee and myself, the statement of defence will admit some and deny others (those in paragraphs 33 and 35 are absolutely false), and plead that whatever was done by us was done in our judicial capacities, and submit to the decree of the Court. The reason for our request is that whatever has been done by us has been so done judicially, that no relief is prayed for against us individually, and that the merits of the case rest in the hands of the other defendants, as officially we are not interested in the matter. Mr. Latter concurs in this letter.

I have, &c.,

The Under-Secretary for Justice, Wellington.

A. R. BLOXAM, Registrar.

M.

SIR,—

Supreme Court, Christchurch, 10th November, 1877.

ELL v. HARPER AND OTHERS. No. 1,397.

With reference to your letter of the 5th October, 1887, J. 87/1,383, No. 1,488, I beg to enclose herewith (1) bill of costs of the Crown Solicitor, amounting to £10 10s., against myself as Registrar and Mr. E. C. Latter as Official Assignee in the above action; (2 and 3) newspaper reports of the proceedings before his Honour the Chief Justice and his Honour Mr. Justice Ward on the 8th and 19th October; (4) at the request of Mr. Latter, copy of affidavit filed in the matter; (5) copy of letter, Mr. Austin to Mr. Latter; (6) copies of orders dismissing the action against the Registrar, with costs, and staying all further proceedings against the Official Assignee, also with costs: and I respectfully ask, on behalf of the Official Assignee and for myself, that Her Majesty's Government will cause the said bill to be paid.

In support of the application I would point out that the plaintiff is a bankrupt, and that no costs can be recovered from him. The true proceedings connected with his bankruptcy are summarised in the judgment of his Honour Mr. Justice Richmond in the case of Ell v. Weston, Court of Appeal Reports, Part 7, July, 1887. With reference to the costs incurred, after consultation with the Crown Solicitor, I deemed that it would be more agreeable to Her Majesty's Government that I should, if it were possible, meet the case on its merits, which I could only do by filing a defence denying the allegations in the statement of claim, although the cases reported show that no action would lie against the Registrar; and his Honour Mr. Justice Ward stated that even if the action were called on he should dismiss it at once. I would also respectfully submit that it never has been contemplated that judicial officers should privately pay law-costs incurred in defending actions improperly brought against them. In the present case, moreover, no relief whatever is claimed against the Registrar or Assignee. The only apparent reason, therefore, for joining the Registrar was to further the prayer for accounts to be taken at Wellington; but such a course was unnecessary, as the particular accounts desired to be reopened by the plaintiff had been referred to the Judge under Rule 422, and no further action had been then taken by the plaintiff. Both Mr. Latter and myself will be happy to afford any further information that may be asked for; and Mr. Latter desires me to state that he concurs in this letter.

I have, &c.,

The Hon. the Minister of Justice, Wellington.

A. R. BLOXAM, Registrar.