successfully preferred against the appellant; but it is unnecessary to decide that point or raise that question now. The 16th section of the Act of 1868 must, in my opinion, be looked upon as declaratory of the previously doubtful intent of the Legislature in the Act of 1866, and must be read as if incorporated in it from the first. Read thus, the Act creates an offence punishable upon conviction before any two Justices of the Peace, and clearly gives authority to any one to prosecute who shall choose to intervene, as the offence is not against an individual—as in cases cited on this point by the appellant—but the matter being one of public policy.—*Cole* v. *Colton* (27, *L.J.*, M.C. 125).

I now come to the fifth ground—The conviction is bad, for not negativing the pardon of the defendant. It was alleged by the appellant, that, forasmuch as the proviso declaring that the Act of 1866 should not apply to any person convicted as specified, who had received a free pardon, was contained in the same section that inflicted the penalty, it ought to be negatived by the conviction. In support of this contention, several cases were cited; but in each of those cases the exception was incorporated in the enacting clause, either by being originally introduced there, or by words of reference. The rule as laid down in Paley "On Convictions" (231), is as follows:—"All circumstances of exemption and modification, whether applying to the offence or the person, that are originally introduced into or incorporated by reference with the enacting clause, must be distinctly enumerated and negatived; but such matters of excuse as are given by other distinct clauses or provisos, need not be specifically set out or negatived. It is not necessary to notice the proviso merely because it is placed in the same section of the printed Act, unless it is also a part of the enacting sentence." To use the words of Lord Denman, in *Charter* v. *Greame* (13, Q.B. 226), "What are and what are not the same sections, depends upon the way in which Statutes are printed; what is in the same clause, depends on the frame of the sentence." Here, the prohibition is general, and the penalty is inflicted on breach; then follow two distinct provisos, the one now in question being the last. It is clearly not within the enacting clause; and, therefore, if the appellant desired the benefit of it, he should have pleaded it before the Justices of the Peace.

The sixth ground—The conviction is bad for giving costs to the informer—is at once disposed of by section 31 of "The Justices of the Peace Act, 1866," which empowers the Justices to award costs in all cases of summary conviction.

With respect to the seventh ground—The conviction is bad for awarding imprisonment—the case *Reg.* v. *Barton* (18, *L.J.*, M.C. 56), was cited, but is not in point. The 38th section of "The Justices of the Peace Act, 1866," specially provides that, where no direction in respect to imprisonment is contained in the Act inflicting the penalty, such imprisonment may be for any time not exceeding one month for every £5 of penalty and costs inclusive; which at once settles this contention.

The last ground—The same Magistrates did not hear and determine the case—is completely disposed of by Mr. Strode's affidavit. In the case cited for the appellant, *Reg.* v. *the Inhabitants of Darton*, the order appealed against was quashed, because it did not appear that the Justices who made it had even heard the evidence on which it was founded. Here, it appears from Mr. Strode's affidavit, firstly, that the information was read over to the appellant on the day when the case was heard, about half-past 11 a.m., when he was sitting alone on the Bench, and that the hearing was thereupon adjourned; secondly, that prior to the case being heard, on the same day, another Justice, Mr. Fraser, came on to the Bench; next, that when the case was called on, he (Mr. Strode) asked if the appellant wished to have the information read over again, and on his answering "No," required him to plead, and thereupon he pleaded; evidence was heard, and the decision given by Messrs. Strode and Fraser, who were the only two Justices of the Peace who took part in it. This is clearly a sufficient compliance with the requisition of section 20 of "The Justices of the Peace Act, 1866."

Forasmuch, therefore, as all the grounds alleged in support of the rule have proved insufficient, it will be discharged.

[Taken from the *New Zealand Sun* of 23rd January, 1869.]

In re SMYTHIES.

THE following judgment was delivered by Mr. Justice Ward when making absolute a rule *nisi*, obtained by Mr. Macassey to suspend Mr. Smythies from practicing as a Barrister of the Supreme Court:—

The Judge: Upon the 13th January a rule was obtained by Mr. Macassey, a barrister and solicitor of this Court, calling on Mr. Henry Smythies, also a barrister and solicitor, to show cause why he should not be suspended from further practicing in the above capacities, on the ground following, to wit—That he had been convicted of forgery before the passing of "The Law Practitioners Act Amendment Act, 1866," and had not at any time received a free pardon for the crime whereof he had been so convicted. In support of the application for this rule, an affidavit was filed by Mr. Macassey, appended to which, as exhibits, were a certified copy of the record of proceedings and conviction of the said Henry Smythies, at the Central Criminal Court, London, and also his conviction before the Resident Magistrate's Court at Dunedin, on the 1st December, 1868, for a breach of the third section of "The Law Practitioners Act Amendment Act, 1866." Mr. Macassey's affidavit also shows that, on the hearing of the last-mentioned case, Mr. Smythies stated in Court that he had petitioned Her Majesty for a pardon, but that such petition had not been granted. Under these circumstances, forasmuch as in the affidavit filed by Mr. Smythies he does not plead a pardon in bar of this application, it will be assumed by the Court that he has not received one. The copy record of conviction produced, sets forth the circumstances of Mr. Smythies' case as follows:—A suit of Miles *v.* Miles, wherein the plaintiffs were infants, was about to be commenced by Mr. Smythies in the Court of Chancery, but it being necessary to obtain a person to act as "next friend" to the infant plaintiffs, it was arranged between Mr. Smythies and the uncle of the said plaintiffs, one Richard Soden, that Mr. Soden should allow his name to be used in the suit, but should not be personally liable for any costs or expenses. No written authority was given by Mr. Soden, and the suit proceeded without it. After some time, one Thomas Kirk was substituted for Henry Smythies, as solicitor in the suit; and there-