

18. That I replied to said letter on the twenty-seventh day of December, one thousand eight hundred and sixty six, and in my reply I wrote :—"I deny that I have received 'anything in the shape of spoil from Mr. Howarth' * * * When an ox requires all the corn to himself the sooner he is disposed of the better. I must decline giving you any more money."

19. That although I then believed and still believe that I am not indebted in any money whatever to the said Henry Smythies, I nevertheless for peace sake on the seventh day of February, one thousand eight hundred and sixty-seven, offered to pay him one hundred and fifty pounds in discharge of his claims upon me, but he then claimed two hundred and fifty pounds, and on that occasion made a proposal in writing to Mr. Ure, in a letter of which the following is a copy :—

"DEAR SIR,—

"Ratray Street, 7th February, 1867.

"You have asked me to propose terms upon which I am willing to settle with Captain Russell. They are these :—

"I withdraw the matter of Cameron and charge these against the estate.

"There is a small balance owing to Mr. Harvey in the action against Morison, Law, and Co. Captain Russell will settle that better than I can, and therefore I take that out of the settlement. Mr. Harvey has received eighteen pounds.

"For the remainder I will accept :

"Cash	...	...	...	...	...	£50	0	0
"Mr. Howarth's first bill	...	...	...	...	...	150	0	0
"Your bill	...	...	...	...	...	50	0	0

"Mr. Howarth's bill to be further secured by an authority to continue the action Russell v. Strode, if the bill be dishonoured.

"I am, dear Sir,

"A. R. Ure, Esq."

"HENRY SMYTHIES.

20. That the said demand of two hundred and fifty pounds was largely in excess of what the said Smythies afterwards was allowed on taxation of his costs; and I say that, on the taxation, the taxing officer refused to enter into any question of negligence or retainer, and that several items for work done contrary to my orders were allowed against me, although I protested against their allowance on that ground.

21. That a part of the said Henry Smythies claims against me are for work done in the case of Russell v. Strode after the said Smythies had notice of my intention to settle.

22. That a very considerable portion of the said costs was for work done on account of my claims against the trustees of the estate of Miller and Company, and others, to recover the Mavara Run, and which claims the said Smythies proposed to buy from me in a letter to me dated the seventeenth day of October, one thousand eight hundred and sixty-six, in which he writes to me as follows :—"If you have no confidence in me, you can, of course, engage some other solicitor; and if you have no confidence in your case, tell me what you will take for your interest in the station and sheep as it now stands. I think you had better do nothing to commit yourself at the meeting of creditors, which, I understand, will take place to-day.—I am, very faithfully yours, HENRY SMYTHIES."

23. That another very considerable portion of said costs are for an action brought against Howarth, Barton, and Howarth, and others, and seeking a discovery of the contents of two deeds alleged to be in their possession, and to recover damages against them—five thousand pounds.

24. That while the said Henry Smythies was still prosecuting the said action, he had in his actual possession full copies of the said two deeds, which I was informed by him and believe he had, on the twenty-third day of June, one thousand eight hundred and sixty-six, taken from the Supreme Court, where said copies had been left with the Deputy-Registrar as exhibits to an affidavit sworn, on the twenty-second day of June, one thousand eight hundred and sixty-six, by George Elliott Barton and John Honibourne Sanders.

25. That I advised him at once to return said deeds to the Court, as we had already seen the deeds, and had taken extracts from them, and they were of no use to us; but he said that he would keep them and make copies of them, and if traced to his possession he would say they had been by accident mixed up with his papers. And I say that the said Henry Waddington Smythies soon afterwards made a copy of one of the said deeds, which is in the handwriting of the said Henry Waddington Smythies, and is now in my possession and exhibited to me when swearing this affidavit, and is marked A.

26. That, after the said Smythies had obtained the said copy deeds as aforesaid, and when he was well aware of their contents, he falsely denied to Mr. Justice Chapman, on a motion in the said last-mentioned cause, that he had seen them; and the question of Mr. Justice Chapman, and the answer of the said Smythies, are both correctly reported in the *Daily Times* newspaper of the twenty-eighth day of September, one thousand eight hundred and sixty-six, as follows :—

"Mr. Justice Chapman: Has the money for the bills been paid?"

"Mr. Smythies: We cannot tell—we have no copy of the deed; this is a bill of discovery."

"Mr. Justice Richmond: It is not a bill of discovery—you could have inspected the deed. You are entitled to that, and it is your own fault if you have not inspected it before filing your declaration."

27. That a considerable portion of the costs in the said action for discovery of the contents of said deeds were incurred subsequently to the possession by the said Smythies of said copies, and I remonstrated with said Smythies against his carrying on the said action after he had full knowledge of said deeds, but he induced me to believe that said action involved other rights, and that I would recover heavy damages against the said Howarth, Barton, and Howarth; but I now believe the said Smythies carried it on solely to harass and oppress the defendants, and to make costs against me; and he, in fact, afterwards discontinued said action, which never came to a trial.

28. That, in the voluminous costs furnished to me by the said Henry Smythies, amounting to over eight hundred and twenty-seven pounds, he nowhere charges me for the making of the copy deed in the handwriting of his son, the exhibit above referred to, nor does he mention the fact that same was ever made; and the name of the said Smythies is omitted in the indorsement of the said exhibit