

no one will doubt that you have shown it in this case. No charge of projected misinterpretation of the law can fairly be inferred from his words. The allegation that he attempted to interfere with a then pending litigation is met by the simple fact that no litigation was pending at the date of his letter, viz., 2nd February, 1869. On the 11th January the judgment to which it refers was given; on the 13th January leave was given to Smythies to appeal, on terms. Those terms were never complied with, and the matter was, therefore, at an end, until the presenting of Smythies's petition to the Court of Appeal, many months afterwards; but the intention of Smythies to present this petition did not constitute a pending litigation.

It would be difficult to observe, with suitable gravity, on your threat of striking Mr. Fox off the rolls, or of suspending him from practice, and on your confidence that this course would receive the approval of the Privy Council, were it not for the regret that must be felt by every member of the Bar at hearing such a proposition seriously stated as law, not by "the junior of the whole Bench," but by the Chief Justice of the Colony, and concurred in by "the other permanent Judges." That you would arrogate to yourselves this power is very possible, but there can be no question that you would be sharply reproved for it, and your order in the matter at once discharged, by the Privy Council. A similar course was pursued some four years ago by the Supreme Court of Nova Scotia, towards a barrister who had written what was really a most insulting letter to the Chief Justice of that Colony, on the subject of a then pending litigation, and their order of suspension was forthwith discharged by the Privy Council. Lord Westbury, in delivering judgment, thus laid down the law:—"When the offence was not one which subjected the individual committing it to anything like general infamy, or an imputation of bad character, so as to render his remaining in the Court as a practitioner improper, we think it was not competent to the Court to inflict upon him a professional punishment for an act which was not done professionally." (N. S. Moore's P.C., vol. 4, p. 157.) Mr. Fox's letter was simply a protest (couched, I grant, in most brilliant and vigorous language, and in terms of the most cutting sarcasm,) against the insult which he, in common with the immense majority of the Bar of New Zealand, justly deemed to have been inflicted on the legal profession by Smythies' admission.

At the close of your letter you state that you "abstained from marking your personal disapprobation in the manner which, as private gentlemen, you might have chosen to adopt," apparently fearing that "the general business of the Court of Appeal might be impeded by the personal explanations unfortunately rendered necessary by what has occurred."

You and the whole of the other "permanent Judges" did not scruple to accept the hospitality of the Premier, while debating in secret conclave whether or not to strike him off the rolls! You met me daily on terms of courtesy during the month's session of the Court of Appeal, while in constant consultation over the letter to which I am now replying! What your notions of gentlemanlike conduct may be, therefore, it cannot be worth my while to inquire; but if there be any further "personal explanations" on this matter to which you deem yourself entitled, I shall be ready to afford them both to yourself and to "the other permanent Judges," collectively or *seriatim*, at any time and in any manner you may request.

Lastly, I have to remark, that though I trust during my tenure of office to bow with becoming deference to the opinions of "the permanent Judges," when given in due form, on purely legal points, yet, where the honor of the Bar is in question, I ask for no advice and I defer to no dictation. And when those to whom the guardianship of that honor has been entrusted by the Legislature have neglected their trust;—when, conscious of this, they have not ventured to utter one word in open Court in criticism or condemnation of the judgment that pointed out their fault, on its being laid before them as a decision against which leave was sought to appeal;—when they have flinched even from a face to face explanation in private, and have preferred, without either precedent or authority, to address an official letter embodying their injured feelings to a judge whose powers are co-ordinate with their own,—it can scarcely be expected that any deep reverence will be paid to so peculiar a communication.

I have, &c.,

His Honor the Chief Justice.

C. D. R. WARD.

### Sub-Enclosure 1 to Enclosure 2 in No. 1.

Conference, 27th October, 1865.

*Re SMYTHIES.*

*Resolved.*—The Judges assembled in conference are of opinion, after reading the petition and the documents annexed, (which have been furnished in consequence of a memorandum of the Chief Justice after last conference,) that the Judges at Dunedin, being satisfied with the examination of the petitioner, may admit him, notwithstanding his conviction in 1849, on motion that the admission shall be in open Court, and that there is no necessity for discussing the merits of the case in open Court unless opposition be offered.

True extract,

ROBERT STRANG,

Acting Registrar of the Court of Appeal.

### Sub-Enclosure 2 to Enclosure 2 in No. 1.

Chief Justice Sir G. A. ARNEY to H. SMYTHIES, Esq.

SIR,—

Supreme Court, Auckland, 27th July, 1864.

I have to apologize for delaying till now my further reply to your letter of the 24th April, 1864. The same, with original documents, is kept secure in the Registrar's iron safe, and shall be returned to you by any post by your desire.

Meanwhile, I suggest to you the course which appears to me proper for you to pursue. I think you should lay a connected statement of your case, with the documentary evidence attached, before the Judges assembled in conference. I think it will be better such statement should be verified by