

No. 2.

Copy of a Letter from the Hon. W. Fox, to the Hon. the COLONIAL SECRETARY.

SIR,—

Wellington, 6th April, 1870.

Being aware that Mr. Justice Ward has forwarded to you a correspondence between himself and His Honor Chief Justice Arney, in which the latter has made some very serious allegations affecting myself, and the former has offered some comments in reply, I conceive it my duty to myself not to allow the case, so far as it affects myself, to rest upon a correspondence with third parties. I have myself corresponded with Sir George Arney on the subject, and I now do myself the honor to enclose a copy of my correspondence with him, in order that it may be placed on record in the same manner as that between Sir George Arney and Judge Ward, so that, in case of any official notice being at any time taken of the subject, I may have the advantage of stating my own case.

I have, &c.,

WILLIAM FOX.

The Hon. the Colonial Secretary (Law Branch).

Enclosure 1 in No. 2.

The Hon. W. Fox to Chief Justice Sir G. A. ARNEY.

MY DEAR SIR GEORGE ARNEY,—

Wellington, 10th December, 1869.

The course which you have adopted in reference to myself in connection with the Smythies case, places me, and I think your Court also, in a false position.

In friendly private intercourse between you and myself, on the 21st of October last, you intimated to me that it would probably become the official duty of yourself and several of the Judges of the Court of Appeal to animadvert upon certain proceedings with which my name had been connected. What those proceedings were you did not hint. I waited patiently till the termination of the session of the Court, when, not having heard of any animadversions which concerned me, I requested you in a private note to inform me what you had alluded to. In reply, you told me that you had sent a letter to His Honor Mr. Justice Ward, on behalf of yourself and the other Supreme Court Judges, and that, "if he should think fit to communicate it to me," I would be informed as fully as I could be by any letter from yourself. On my applying to Judge Ward, he obligingly, and as a private favour, permitted me to read your letter to him. It was with unfeigned astonishment that I found ten foolscap pages of it occupied with unsparing criticism of my conduct and opinions, and the most serious personal threats directed against myself. All this was placed on record in an official document addressed to your brother Judge, and signed by you as Chief Justice.

I will not, my dear Sir George, undertake to instruct the Chief Justice of the Supreme Court and Court of Appeal in the courtesies of private life; but I have a right to complain that such an attack should have been made upon me, behind my back, in an official letter, addressed to a third person, which, in the ordinary course of events, I might never have seen or heard of, and that I should not even have been supplied with a copy. Of the very serious charges and threats thus levied against me I know nothing at this moment but from the private courtesy of Mr. Justice Ward, and I cannot but feel that a very great wrong has been done to me. Your censure and threats are placed on official record, while I have no standing ground from which I can repel the attack, except that of addressing you as a private person in a private letter. In doing so, however, allow me to state that you are at perfect liberty to make any use of this letter that you please, and that I shall consider myself in the same position.

But I have much worse to complain of than mere private discourtesy or the breach of official etiquette. You have condemned me, and decided on the sentence due to my alleged offence, without my having any opportunity of defending myself. We are told that, in the days of heathen mythology, the Judge of a certain "Court below" used to follow this order of proceeding: *Castigat que, audit que dolos, subijet que fateri*. But you surely do not seek for precedents in that Court. In these upper regions, and in these latter days, it is usual for every tribunal which pretends to impartiality, particularly when it is a party interested, to hear first and decide after. It is a thing that I have never heard of before, that the Judges of an English Court of Law should make up their minds upon the merits of a case behind the back of the accused party, without affording him an opportunity of being heard; without the issue of any legal process; without any technical proofs; without trial of any sort; and then proceed to place on official record, in a document beyond his reach except through private courtesy of a third party, the sentence which they considered appropriate to his offence, but which from motives of policy they thought proper to keep suspended over his head.

These, however, are preliminary matters. The principal point on which I wish to remark in your letter is the threat held out in the following words:—"We might have called upon the writer to show cause why he should not, in default of a full and public apology, be struck off the rolls of the Court, or at least be suspended from practice. We should, without hesitation, have taken this course, had not we been withheld by considerations of a public interest."

I will consider this threat, first as to its manner, and secondly as to its matter.

1. I never myself threaten unless I intend to carry my threat into execution. I never threaten a man with what I *would* do did not some motive of policy prevent me. If I threaten a man at all, I do it openly to his face, and not behind his back in a letter addressed to a third party which he may never see at all, and can only see by sufferance. In all these particulars your practice appears to differ from mine. Which is the most manly course, and the most consistent with self-respect, I need not stop to inquire.

2. As regards the matter of the threat, you seem to me entirely to over-estimate the power of your Court. I do not perceive exactly how the case could have been brought before it as regards my alleged action, and several preliminary technical difficulties must be apparent to yourself. But suppose these overcome, and that you were *rectus in curiâ* in the matter, you would call upon me to "make a full and