

keeping, so that no such case as that of Mr. Smythies is ever likely to occur again. But I submit that under these circumstances it is hardly fair to talk of the acquiescence of the Bar. The opinion of the Dunedin Bar is really shown by the petitions from all its leading members, presented to the General Assembly during the last session, deprecating the repeal of the law which that body had found it necessary to pass to remedy the evil of your admission of Mr. Smythies, by practically overruling what your Court had done, and preventing your doing it again.

In conclusion: as a member of the same bar as yourself, and, I hope I may still say, as a personal friend, will you allow me to suggest that you should ask Judge Ward's permission to withdraw the letter which you have written to him. As far as I am concerned, I would willingly give my consent to your doing so. It would have been better if it had never been written. You have no precedent for addressing a brother Judge in such a manner. When Chief Justice Cockburn and Judge Blackburn (*Magna componere parvis*) had a far more serious personal difference, they "had it out" in open Court, before bar, suitors, and the public. It is sure to provoke a correspondence which can only end in the results which you so much deprecate, and which you profess to have sought to avoid by not dealing with the case openly in Court. It does not in the least improve your position. Even if Judge Ward or myself had been guilty of indiscretion, or undue severity, in criticising the acts of your Court, the case rests on so unsound a foundation that no exposure of our fault can cover yours. The "*teterrima causa belli*," the fact that you had admitted a person who was known by you to have been convicted of forgery and to have undergone a year's imprisonment in Newgate, to the privileges of the Bar of New Zealand, cannot be got over. The action of the Legislature and the decision of the Court of Appeal, which, under your presidency, felt itself practically obliged to support Judge Ward's ruling, while secretly it resented his rebuke, leaves the matter in a position in which, I submit, it would be wise for the Court to leave it. If this opportunity be lost, and the necessity of replying to your letter is left upon Judge Ward, I fear there will be an end to "the maintenance among the Judges of those free and friendly relations," which you state to be essential to the efficacy of your Court. If I can be instrumental in obviating such an unhappy result by the exercise of friendly offices between yourself and Judge Ward, it will give me great pleasure to do so.

I have only to add that I shall be obliged by your permitting the "other Judges" who concurred with you, to see the contents of this letter.

Chief Justice Sir G. A. Arney.

I have, &c.,
WILLIAM FOX.

Enclosure 2 in No. 2.

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

MY DEAR SIR,—

Auckland, 15th January, 1870.

When your letter dated the 10th ultimo reached my hands, I was engaged in the business of an unusually heavy "civil sittings" (just finished), and I have been unable to give further attention to your letter than by making copies, and thus communicating the contents to the Judges whom you desired me to inform thereon. Perhaps, even now, I ought to await the answers of those Judges before I presume to answer your letter; but, as there are portions of it which especially concern myself, and other portions which indicate that you consider yourself wronged by my letter to His Honor Mr. Justice Ward, I will not longer delay the offering to you such answer, and, where necessary, explanation, as appear to me due to yourself.

And first, I thank you for the expression of your willingness still to hold me in your friendship. Whatever mistakes I may have made, or may, during the short residue of my judicial career, still make, I hope that I shall not forfeit your friendship.

I wish, indeed, that you had allowed your kindly nature to exert its influence over your criticism, and temper its severity. I think it might reasonably have been supposed that the Judges who concurred in the admission of Mr. Smythies might not have acted from such motives, that they would, unless over-awed and restrained by some manifestation of public opinion, give effect to those motives by a wilful misinterpretation of the law. Whatever personal sympathies or private interest you may impute to myself, I think that Mr. Justice Johnston, for instance, whose views of the qualifications and disqualifications of candidates for the legal profession, as expressed in another case, have been repeatedly quoted, might, by a fair critic, have been deemed likely to act from some principle, and upon some view of the facts, which he and the other Judges in consultation with him considered obligatory. But the summary jurisdiction typified by the Court of classic legend to which you allude, has, in your sweeping condemnation, been applied by yourself to the Judges, not by them to yourself; and I cannot but think that if a little of that spirit of inquiry into both sides, which you so eloquently express, had been shown towards us, some at least of the censure, and much of the comment personal to myself, would have been spared.

You complain of discourtesy on my part in this, that, but for the private courtesy of Judge Ward, you would have been left in ignorance of the remarks which the Judges, in their letter through me, had made upon your own letter. I hope I may, without disrespect, say that this is not a correct view of my communications with yourself. Had it indeed been so, I think the Judges and I, in writing to Judge Ward on their behalf, would have been justified. Your strictures upon us connected themselves with, and were based upon, the extra-judicial remarks of the Judge whom we addressed; your letter adopted, commended, those remarks, and challenged the Judges to resent them in the way which it dictated in such sort, that the writer of that letter, if called upon to answer for its harshest imputations, might have appealed to the terms of the judgment to palliate, if not to justify, those imputations. But you may remember that you first wrote to me for explanation of my note of the 21st October on the morning of my leaving Wellington. I could only reply to you in a hurried manner, being engaged with the Registrar, at "Chambers," in winding up the business of the Court of Appeal, up to the moment when I was summoned to hasten on board the steamboat. Knowing that Mr. Justice Ward was a guest at your house, it was I who first expressed my willingness that he should, if he thought