

Otago, and I heard no more of him until, if I remember aright, he, relying upon the greater lapse of time and the character of his then recent employment, requested that his case should be brought under the notice of the Judges in conference. The Judges, I found, did not decline to entertain his application, and I presume it must have been after this intimation of opinion that I, as the organ of communication with Mr. Smythies, was brought into more frequent correspondence with him. Whether the Judges were likely to have bent their wills to mine on such a subject I may leave even to yourself to estimate from our individual characters respectively.

I have written the above explanations on matters in which explanation appeared to me not inconsistent with the position which the Judges take upon this question. They feel that it cannot be the right of any one Judge to assume the censorship over his fellow Judges, and to exercise that office through the medium of irony, insinuation, and contempt. They could not meet with and confer with the Judge who so treats them on terms of independence, and yet secretly harbour towards him a sense of wrong, and perhaps resentment. They therefore, having no legitimate public opportunity for remonstrance, resolved to offer that remonstrance through me in the letter which I wrote to Mr. Justice Ward. We have ever treated, and shall still treat, him with courtesy, and his opinion with respect; and so long as any Judge who differs from the opinions or disapproves the administrative acts of all or any of the Judges, thinking it his duty to guard himself against being supposed to agree with them, avails himself of the opportunity, when such opinions or acts come (incidentally even) before him judicially, temperately to express his differing from them, I, for one, should never think of resenting it. Every Judge has the most perfect independence in his office. But it cannot be right for any Judge so to deal with the rest of the Court as on the occasion complained of; and you must forgive me for adding that, so long as you continue to approve of that Judge's dealing with us, we cannot regard you as an impartial judge or mediator on the subject.

In regard to your own censure, and to certain allusions contained in your letter to myself, I will not debate them, because, so long as I continue to hold a judicial office, I cannot commit myself to either a public controversy or a private quarrel. All I would ask is this;—not that you spare Judges because they are Judges, or a friend whom you so regard, but that, when you attack a judicial officer through the columns of a newspaper, you would consider that the officer is helpless to defend himself. He cannot, like one of your political opponents, enter the lists of controversy, backed by his partisans in support, nor can he meet you, either by himself or his friends, on the floor of the Legislature: his character and his peace of mind lie much at the mercy of his censors. The press of New Zealand generally seem to appreciate our position in this respect, and for myself, conscious as I am that, in the difficult and manifold duties of my office, I must have made many, many mistakes which have been passed over, I have ever felt at once grateful and encouraged by the forbearance which I have received. I certainly am not conscious that either I or the Judges affected with me have deserved the imputations which you have cast upon us, or I should not ask your permission to remain still,

The Hon. William Fox.

Yours sincerely,

G. A. ARNEY.

P.S.—Be pleased to attribute the look of this letter to the fact that my time is engrossed by judicial work; so that I have been obliged to write *titubante calamo*, without the opportunity to make a fair copy.

### Enclosure 3 in No. 2.

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

MY DEAR SIR GEORGE ARNEY,—

Wellington, February, 1870.

I have to acknowledge your obliging letter of the 15th January, in reply to mine of the 10th December. Having already placed on record my opinions and remonstrances in reference to that part of your letter to Judge Ward which affects myself, I have no desire to trouble you with any further correspondence on the subject. Your reply does, I confess, seem to me rather to avoid (I will not say evade) than answer my remarks, and invites rejoinder on many points, from which, however, I abstain, except on one point on which it is essential there should be no misunderstanding.

You say, "that you neither threatened me, nor meant to threaten me." The expressions in your letter to Judge Ward, of which I complained as a threat, were these:—"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 suspended from practice. We should, without hesitation, have taken this course, feeling confident that it would have received the approval of the Privy Council. . . . After anxious deliberation we came to the conclusion that we should ill correct the scandal which your judgment may have occasioned, by proceeding against a high political functionary in the mode which we have pointed out." So far from this not being a threat, I can only regard it as the most offensive form in which a threat can be couched. It is of the same class as saying to a minister of religion, "Your cloth protects you;" or to an aged man, "I would punish you but for your grey hairs;" which may be called a threat enforced by contempt. So strongly did I feel it to be a threat of the most offensive sort, that had I stood toward your Court in any position from which I could have addressed you officially, I should at once have challenged you to waive the alleged impediment, put your threat into execution, and give me the opportunity of "having it out" with your Court before the Privy Council, to which you hypothetically invited me. And what seemed to me to increase the impropriety of the threat was, that you proposed to have inflicted upon me a punishment due only to the commission of criminal or professional malfeasance, and in no way applicable to, what at most existed in my case, a mere contempt of Court. As the Supreme Court could not be supposed to be ignorant of the law as decided by the Privy Council, "In *re* Wallace, 4 Moore, P.C., N.S., 140," I could only infer that, without any judicial inquiry, it had thought proper to decide that I had committed an offence of that higher order to which alone such severe penalties are attached: an offence which, if