

CORRESPONDENCE RELATIVE TO A JUDGMENT DELIVERED BY MR. JUSTICE  
WARD IN THE CASE “REGINÆ V. STRODE AND FRASER.”

No. 1.

Copy of a Letter from Mr. Justice WARD to the Hon. the PREMIER.

SIR,—

Supreme Court, Dunedin, 22nd March, 1870.

I have the honor herewith to forward a correspondence which has taken place between His Honor the Chief Justice and myself. I do so on the ground that I am advised that in censuring, by an official letter, a Puisne Judge for acts done or words spoken by him in discharge of the duties of his office, the Chief Justice has exceeded the authority vested in him by the Legislature, and has sought to infringe and to restrict that of another Judge.

I have, &c.,

C. D. R. WARD,  
Acting Puisne Judge.

The Hon. W. Fox, Premier.

Enclosure 1 in No. 1.

Chief Justice Sir G. A. ARNEY to Mr. Justice WARD.

SIR,—

Wellington, 15th November, 1869.

Various circumstances and considerations, on which it is needless at the present moment to enlarge, have led me to defer addressing you upon the subject of this letter until the present time. The matter, however, is one which, in my opinion, and in the opinion of the other permanent Judges of the Court now present in the Colony, cannot be suffered to pass without notice on our part. You will readily understand that I advert to the remarks made by you in delivering judgment at Dunedin on the application of Mr. Smythies to quash the conviction obtained against him under “The Law Practitioners Act Amendment Act, 1866.” In the observations which I shall have to make, I shall assume the substantial accuracy of the report of the case contained in the New Zealand *Sun* newspaper of the 12th of January last.

The first ground taken by Mr. Smythies on his own behalf was as follows:—“The 3rd section of the Law Practitioners Act Amendment Act is absurd.” You must permit me to say that no lawyer could, for one moment, deem such a proposition worthy of notice. No arguable point was raised by it. I am satisfied that as to this, your opinion must coincide with my own. Yet, in giving judgment, you made this utterly untenable point the ostensible subject of a discussion, plainly intended to demonstrate the impropriety of admitting Mr. Smythies as a solicitor of the Court. It is on the concluding sentences of this portion of your judgment, apparently a written one, that I feel bound to comment. These sentences are reported as follows:—

“Next we come to the application of Mr. Smythies for admission. In this he admitted his conviction of forgery, and this admission is, of course, the strongest point in his favour. After a considerable delay, it was agreed by all the Judges that he should be admitted; and admitted he was, accordingly, by Mr. Justice Chapman, no mention whatever being made, at the time, of his previous conviction. No members of the legal profession appear to have opposed this admission, but this may probably be accounted for by the fact that those who were aware of the circumstances connected with the application, knew also that those circumstances were fully within the knowledge of the Judges when the case came before them for decision. Of that decision, however strongly I dissent from it, I wish to speak with all possible respect; but it is much to be regretted that the utmost publicity should not have been given by the Judges to their reasons, which I presume were most admirable, for adopting a course apparently so completely at variance with both the letter and the spirit of English law. Of their powers in the matter there can be no question; but there can be as little question, from the action afterwards taken by the Legislature, that it was intended that those powers should be exercised according to the spirit of English precedents. The result of this assent of the Judges here to the application in this case was, that of all the realms ruled by the law of England, New Zealand became the solitary spot where, by a solemn decision of the Judges, the roll of solicitors, the Bar, and consequently the Judicial Bench, were opened as a *locus penitentiae* to the forgers and felons of Great Britain.

“The third section of the Law Practitioners Act Amendment Act supplies the comment of the Legislature on this decision, and I fail to see the injustice or absurdity thereof, as contended for (by) the appellant.”

I think I am not judging you unfairly when I say that, under colour of discussing an absurd objection, which required no answer, you sought occasion to pen these sentences. I now wish to point out to you, speaking for myself and my brother Judges now in New Zealand, on what grounds we deem your expressions highly censurable.

In the first place, we are well satisfied that, whenever the case of Mr. Smythies is examined with candour, and with adequate legal knowledge and accuracy, it will be recognized as presenting exceptional features, tending greatly to extenuate the guilt of his act. All the circumstances of the prosecution, and the light measure of the punishment ultimately inflicted, show that the offence was not regarded by the authorities in England as an ordinary case of forgery. This stamps as rhetorical