

fidential," and I submit that it is the bounden duty of any man, whether he is a member of Parliament or whether he is not, if he receives a communication which is marked "Private and confidential" either to treat it as private and confidential or to destroy it, or return it to the person who wrote it—otherwise the business of the world could never be carried on. We all have to write letters which we mark "Private and confidential," and if the contents of those letters were to be disclosed broadcast, no man would be safe in writing any letter at all. I submit as a matter of law that I had a right to write to any member of Parliament on this subject, because I conceived that the judgment of the Election Court was erroneous in point of law. Unfortunately, there is no appeal from the judgment of an Election Court. It is very often—as in this case—a most important judgment, but the judgment of the Election Court is final. I conceived, as an elector and also as one who had been honestly concerned in the matter of the petition, that it was desirable, in the interests of the purity of elections, that the Judges' notes and the judgment should be referred to the Privy Council, and that the Privy Council should be asked whether that judgment was good in law or bad in law. Having that object in mind, without any animus or ill feeling whatever against Mr. McCallum—because there is nothing of that kind so far as I am concerned—I wrote to Mr. Veitch as a member of Parliament. I sent him a copy of my letter to my clients, and I marked my letter "Private and confidential," and I stated in the letter, "In addition to the report, suggestions are made as to the methods to be adopted to have the judgment reviewed by the Privy Council, in the interests of the purity of elections. The whole subject will be brought before Parliament next session." I say that I had a right, as an elector, to write to a member of Parliament to state what I contemplated doing, and I submit there was no publication. I submit that a confidential position was then set up between myself and Mr. Veitch, and I will cite an authority which I think is in point on that subject. I quote from Odgers on Libel. This is the fourth edition, published in 1905. At pages 244 and 245 the learned author says, "Merely labelling a letter 'Private and confidential,' or merely stating 'I speak in confidence,' will not make a communication confidential in the legal sense of that term, if there is in fact no relationship between the parties which the law deems confidential." In this case I submit that Mr. Veitch does not represent the district of Wanganui only in Parliament: all honourable members represent the whole Dominion, and any elector has a right to communicate with a member of Parliament in any matter affecting the body politic. I did that, and I say there was a confidential relationship between Mr. Veitch and myself, and therefore the letter was privileged, and it was not published in the ordinary sense of publication.

*The Chairman:* Was it for the public good?

*Mr. Sinclair:* I submit it was for the public good.

*The Chairman:* Then, why should there be a confidential relationship between you and Mr. Veitch?

*Mr. Sinclair:* Because we had a common interest—as I take it all members of Parliament have—in ensuring the purity of elections.

*The Chairman:* Why put Mr. Veitch in the position of a confidential person?

*Mr. Sinclair:* Because it was his duty as a member of Parliament to entertain any proposition that an elector put forward which would conduce to the purity of election. That is what Mr. Veitch and all members of Parliament are elected for, and—I say with respect—are paid for.

*The Chairman:* Why did you not treat all members the same?

*Mr. Sinclair:* For this reason: Mr. McCallum belonged to what was known as the Liberal party, and I took it that the public good would be more likely to be achieved by obtaining the support of those who were not on the same side in politics as Mr. McCallum.

*The Chairman:* Doing it in the secret way you did?

*Mr. Sinclair:* I do not consider that it was secret, because I intended to follow it up—and I intend still to follow it up—by a petition to the House asking the House to pass a special Act referring the Judges' notes and the judgment to the Privy Council. It is the privilege of every British subject to petition Parliament so long as the petition is respectfully worded. I submit that in approaching any member of Parliament and laying the facts before him so that he would be able to consider the petition when it came before the House I was within my rights. This also is what Odgers says as to a question of privilege in a case of this kind (page 264): "Where the defendant has an interest in the subject-matter of the communication, and the person to whom the communication is made has a corresponding interest or duty in connection with the matter, every communication made in such circumstances is privileged by reason of the occasion. In the same case the Master of the Rolls said, 'The occasion had arisen if the communication was of such a nature that it could be fairly said that those who made it had an interest in making such a communication, and those to whom it was made had a corresponding interest in having it made to them. When those two things coexist, the occasion is a privileged one, and the question whether it was or was not misused is an entirely different one.' Such common interest is generally a pecuniary one—as that of two customers of the same bank, two directors of the same company, two creditors of the same debtor. But it may also be professional, as in the case of two officers in the same corps or members in the same school, anxious to preserve the dignity and reputation of the body to which they both belong. In short, it may be an interest arising from the joint exercise of any legal right or privilege, or from the joint performance of any duty imposed or recognized by the law."

*The Chairman:* Are you not confusing what are regarded as privileges of Parliament with what are regarded as pleas of privilege, or defence of privilege, before a legal tribunal?

*Mr. Sinclair:* I do not think I am confusing them, because if I can show that in a Court of law it would not be held to be a libel, I apprehend that the High Court of Parliament will follow the same ruling.