

Appendices to No. 6.

APPENDIX A.—CHARGES 1 AND 2.

SUPREME COURT—IN BANCO.

FRIDAY, 13TH OCTOBER, 1876.
(Before His Honor the Chief Justice.)
Contempt of Court.

THERE was a sitting of the Supreme Court in Banco at 10 o'clock.

His Honor delivered judgment as follows in the case of Mr. Barton:—

On the fourth day of October instant, during the criminal sittings of this Court, I took notice in open Court that I had on the previous day received a letter.

I directed the Registrar to obtain evidence as to the person who had written and caused that letter to be delivered to me, and I stated that an order of the Court would be made for such person to attend before the Court to answer for his contempt.

On the seventh of the same month, at a sitting of the Supreme Court in Banco, Mr. Wilmer, the Deputy Registrar, produced an affidavit by himself, proving that the letter was in the handwriting of Mr. George Elliott Barton, a barrister and solicitor of this Court, practising in this judicial district, and also proving facts that satisfied me that Mr. Barton had caused that letter to be delivered to me.

The letter was as follows:—

“SIR,—

“Brandon Street, 3rd October, 1876.

“I have written to the proper authority, the Government, complaining of your treatment of me this morning, and ever since I first appeared before you in Wellington.

“I am not aware of any misconduct on my part justifying such hostility on yours.

“I think it right I should inform you that I have asked the Government for an inquiry,—

“Your obedient servant,

“His Honor the Chief Justice.”

GEORGE ELLIOTT BARTON.

I expressed my opinion that the writing and sending the letter was a contempt of Court, and ordered that Mr. Barton should personally attend the Court on Monday then next, to answer for contempt of Court by writing and causing to be delivered the letter in question, and then and there to show cause why he should not be punished and dealt with as the Court should think fit for such contempt. Personal service of the order was directed.

Accordingly on Monday last Mr. Barton appeared in compliance with the order, and showed cause. At that time no affidavits had been filed by him.

Mr. Barton addressed the Court at some length on that day, but before the conclusion of his argument the matter was at his instance adjourned to the following day, the object being that, as certain facts which he desired to rely upon were not in evidence before the Court, he should have the opportunity of obtaining such evidence.

As it appeared that Mr. Barton did not admit the offence, I expressed to him my strong desire that the matter should not be proceeded with before me alone, but should be postponed for a month, when all the Judges would be assembled here for the holding of the Court of Appeal, and I asked Mr. Barton if he could urge any reason why this course should not be taken. I felt that as the matter before me involved not only the question whether the letter was such an insult to me as Judge, but also what punishment should be allotted to the offender, there was (as observed by Mr. Justice Blackburn, in *Skipworth's case*, 9 L.R., Q.B. 238) “a risk that his (the Judge's) feelings might cause him to be vindictive, but there is a very much greater risk that, from his anxiety that his feeling should not lead him to give an excess of punishment, he would be too lenient, and consequently it is very desirable that the matter should be tried and adjudicated upon by persons who are influenced by no such feelings.”

Mr. Barton, however, objected to the postponement on the ground that he felt that while the matter was in suspense he could not be the accuser in a parliamentary inquiry. He meant thereby a parliamentary inquiry into alleged conduct of mine as a Judge of this Court.

I then stated that, if Mr. Barton claimed that I should at once dispose of the matter, I would do so. To that he replied in the affirmative, and I accordingly determined to proceed with the matter, though necessarily sitting alone.

Mr. Barton contended that the letter was not a contempt, because it was not written either with intent to libel, or to affect my judgment in any matter pending before me.

In *Skipworth's case*, 9 L.R. Q.B., p. 232, Mr. Justice Blackburn, in giving the judgment of the Court says, “The phrase ‘Contempt of Court’ often misleads persons not lawyers, and causes them to misapprehend its meaning, and to suppose that a proceeding for contempt of Court amounts to some process taken for the purpose of vindicating the personal dignity of the Judges, and protecting them from personal insults as individuals. Very often it happens that contempt is committed by a personal attack on a Judge, or an insult offered to him; but, as far as their dignity as individuals is concerned, it is of very subordinate importance compared with the vindication of the dignity of the Court itself; and there would be scarcely a case, I think, in which any Judge would consider that, as far as his personal dignity goes, it would be worth while to take any steps.” With these observations I concur.