

For the purpose of supporting his contention that the letter was not written with intent to insult, and to show that he had in fact written to the Colonial Secretary complaining of alleged conduct of mine, and had in fact asked for an inquiry, Mr. Barton at the adjourned hearing produced a number of affidavits, among others one by himself.

Several of these affidavits profess to detail an occurrence at the sitting of this Court on Tuesday, the 3rd instant. I shall not refer to that occurrence, except by stating that on that occasion I—whether with or without cause, and whether in a becoming or unbecoming manner, it is not my intention here to discuss—addressed observations to Mr. Barton relative to the fact that, in consequence of his absence from Court, the Court had been kept waiting for him for some time, and that he had not offered to the Court an excuse.

I say I do not discuss here the question of my conduct on that occasion, for as Mr. Barton has called in question the propriety of and motives which actuated my conduct on that and other occasions, it is not seemly that I should say one word which might appear that I was here defending myself against his complaint. That this is the proper position for a Judge of the Supreme Court to assume on such an occasion, I have already more than once pointed out during this proceeding. Mr. Justice Blackburn, in the case already referred to, makes observations pertinent to the same subject:—

“There have been vituperation and attacks made concerning what the Lord Chief Justice is supposed to have said or done. It is not right that a Judge, or a person occupying the position of Lord Chief Justice, when personal attacks are made upon him, should come forward and meet and explain them; and that is well known to those who make the attack, and certainly that knowledge does, in my mind, render the conduct of those who attack a Judge in that way, to use the mildest term, neither just nor decorous. We say nothing whatever consequently about the imputations.”

The letter written by Mr. Barton to myself is the only matter now before the Court. Until he himself proved that he had written a letter to the Colonial Secretary in his official character as a Minister of the Crown, though marked on the outside as private, this Court was not aware that such a letter had been written; the terms of that letter nor its contents are in proof before the Court, and I may say that the Colonial Secretary has not seen fit to make any communication to me of the contents of that letter, or of any kind with reference to it.

The letter addressed to myself states that Mr. Barton had complained of my treatment of him that morning, meaning the occasion when the Court was delayed, and ever since he (Mr. Barton) had appeared before me in Wellington. It will be observed that the nature of the treatment is not here specified; but it is clear that the language implies treatment by me, as a Judge, of him as barrister or solicitor. But the letter goes on to state that he, the writer, was not aware of any misconduct on his part to justify “such hostility as yours.”

From this paragraph appears the nature of the treatment complained of—hostile treatment by the Judge to the barrister or solicitor on an occasion named, and habitually during a period.

I know not what more damaging statement as to the administration of justice in the Supreme Court could be made than this—a charge that justice is administered in that Court with habitual hostility to the practitioner. If such charge be well founded, not only the interests of the practitioner but those of his clients must be habitually sacrificed to the enmity which the Judge entertains and is actuated by. Surely not the Judge's personal dignity alone, but the dignity of the Court is here involved. Surely this is a scandalous reflection on the administration of justice in the Court.

Mr. Barton contends that this letter was no more than fair intimation that he had made a complaint against the Judge personally. He assures me that no insult was intended to me personally as Judge or at all, or to the Court, and that his sole object was to inform me of the fact that he had a complaint against me personally, and had asked for an inquiry.

I say that no one could have doubted that if Mr. Barton had in Court uttered to me, when listening as Judge, the words he has written and caused to be delivered, that a gross insult was offered and intended; and it seems to me no less clear that to convey the words by letter makes no difference. I say that, in my opinion, even if Mr. Barton's letter went not beyond a bare intimation of a complaint having been made to the proper tribunal, such a letter to a Judge relative to his conduct as Judge in the administration of the law was, under the circumstances, not only insulting and offensive to the Judge, but scandalous of the Court and the administration of justice therein, and a great contempt of Court. I say that, to my mind, under no circumstances can a person be justified in writing to a Judge of the Supreme Court and informing him that he has complained of his conduct. Let him make his complaint, and it will reach the Judge, if it ought to do so, in due course of time. But this letter is not confined to such an intimation, and the complaint is not stated to have been made, and was not in fact made, to the proper quarter; and, as now appears from Mr. Barton's affidavit, the inquiry asked for was of an illegal and unconstitutional character.

With reference to Mr. Barton's statement in his letter as to his own conduct, I desire to interpolate here that up to the time of the receipt of the letter I was not aware of any misconduct of Mr. Barton's in any matter in which he had appeared before. I desire to say this from the fear that an inference unfavourable to Mr. Barton may be drawn from his own letter.

The conclusion at which I have arrived at is, that, after deliberate and earnest consideration of the arguments addressed to me, I have been unable to form any other opinion than that the letter was offensive, disrespectful, insulting, and a contempt of Court, and that the fact, as asserted by Mr. Barton, that he did not actually intend to be insulting or offensive, does not nevertheless prevent it from so being.

I regret also to be obliged to say that the manner in which Mr. Barton conducted the proceedings when showing cause has, to my mind, very much aggravated his original offence.

Nevertheless, I feel greatly impressed with the fact that Mr. Barton repeatedly assured the Court that if the letter was insulting he did not intend it, and that if the Court was, notwithstanding his arguments, of opinion that it was insulting, he was ready to submit himself to the Court. I therefore accept Mr. Barton's assurance that he intended no disrespect to the Court, or to myself as Judge of the Court.

The rule is therefore discharged.