

COPY OF ENCLOSURE NO. (1) REFERRED TO IN FOREGOING LETTER OF 20TH MARCH.

187 Queen Street, Auckland, 23rd February, 1918.

To the President and Council of the Auckland District Law Society.

DEAR SIRS,—

On Monday, 4th February of this year, I appeared at the criminal sessions of the Supreme Court at Wanganui before His Honour Mr. Justice Edwards on behalf of one John Benjamin Clark, who was charged with committing arson in Stratford on the 12th January, 1918. The accused pleaded "Not guilty."

I enclose herewith a copy of the depositions taken in the Magistrate's Court, Stratford, upon which the accused was committed for trial.

The accused instructed me that he had not committed the offence, and that he was satisfied that the man ———*, the chief witness for the prosecution, was the guilty person. On considering the depositions and the information given to me by my client I came to the conclusion that the three important elements justifying suspicion against ———* were present—namely, knowledge, opportunity, and motive. It appears that ———* is the owner of the premises occupied by Clark at the time the fire took place, and also of the adjoining premises in which ———* himself was carrying on a drapery business, and that the back yard was common to the two premises; further, that the back door of the premises occupied by Clark contained a window which was broken, and that the door itself was insecurely held by an iron bar on the inside, which bar could be removed by a person passing his hand through the broken glass. It appeared also that ———*, on his own admission, was sleeping on his own premises on the night upon which the fire took place, the same happening just after 11 p.m., and that his so sleeping there was unusual; also that, on his own admission, a few minutes before the fire took place ———* went both to the front and back of the premises occupied by Clark; and the information was given to me by my client, and was confirmed by ———* when I cross-examined him, that ———* at the time the fire took place believed that his stock was insured for £1,000, and that it was only after the fire that ———* discovered that through a mistake of his manager his stock was only insured for £250. Further, it appeared that Clark had rented the premises occupied by him through an agent as subtenant to one Dixon, who was the immediate tenant of ———*, and that the lease from ———* to Dixon contained conditions that the premises were not to be sublet without ———* consent, and that they were not to be sublet to any person dealing in drapery. ———* admitted in cross-examination that he made complaints about and resented the subtenancy because there had been breaches of the above two conditions, Clark having on the premises occupied by him a large stock of drapery.

In accordance with my instructions I conducted the defence on the lines that Clark had not committed the alleged crime, but that some one else was guilty thereof, in all probability the guilty person being ———*. The jury convicted Clark, the Judge's summing up being a very strong one indeed for conviction. I pleaded for mitigation of penalty. His Honour said to me that I had accused an innocent man, and a man whom I myself knew to be innocent, of the crime of which Clark had been found guilty. Upon His Honour making the above remark I said as follows: "Your Honour must not say that. I could not know that ———* was innocent. I did not know that ———* was innocent."

I left Wanganui on Tuesday, the 5th February, and Clark came up for sentence on Friday, the 8th February, when of course I was not present in Wanganui. I append an extract from the *Wanganui Chronicle* of the 9th February, which contained some remarks of the presiding Judge with regard to my conduct of the defence: "I do not propose to punish you for the infamous course taken by your counsel in urging to the jury that the crime was committed not by you but by the tradesman who was partly ruined, because you entrusted that part of the scheme to another person, although, no doubt, you assisted to have that unfortunate man asked questions to fasten insults upon him. However, all the questions asked he answered satisfactorily. I repeat what I said before: the course taken in the defence of the prisoner was contrary to all traditions of the Bar, and in itself disgraceful."

These comments of Mr. Justice Edwards constitute, in my opinion, a menace to the rights of counsel, the safety of accused persons, and the liberties of the people. I bring the whole matter under your notice, believing that it is my duty to do so more in the interests of the community than of myself. I am confident that I discharged my duty to my client to the best of my ability, but that I never transgressed in the slightest the rules and principles of practice. I need only refer you to Mr. Gifford Marshall, the Crown Prosecutor of Wanganui, who was present throughout the trial, and who, I know, can bear out my statement.

So important is the matter, in my opinion, that I venture to suggest that it should be referred to the New Zealand Society for consideration, and for the taking of such action as may secure the Bar from attacks by the Bench, and to accused persons and the public generally the rights and liberties that are threatened.

Yours faithfully,

RICHARD A. SINGER.

* Name omitted in this print.