

appears. If that be the limit, then I would with all respect and deference contend that your Honour's rule would unduly limit the right of the prisoner and the privilege of his counsel; and in that case I submit that it is within the right, and even the duty, of the Council of a Law Society, with all due respect, to represent to the Bench that the privilege of free advocacy is unduly endangered.

I do not interpret your Honour's reference to the rights of "a Law Society or other body" as necessarily denying the right to communicate with a Judge on the subject of his comments on the conduct of the member of the Bar to the extent, in the manner, and with the object which I have endeavoured to indicate. But if your Honour's observations do involve a denial of the existence of such a right, I must with all respect insist that a duly constituted representative body of the profession has that right, and that it would fail in its duty if it did not seek to maintain it.

The Hon. Mr. Justice Edwards, Supreme Court, Wellington.

I have, &c.,

F. H. D. BELL.

DEAR MR. ATTORNEY-GENERAL,—

Judge's Chambers, Wellington, 9th May, 1918.

In reply to your letter of the 8th current, I have to say that I am sorry if my letter of the 6th was obscure. I did not mean that I understood that I was called upon by you to answer anything, but that I did understand that I was indirectly called upon by the Auckland District Law Society to supply "a statement of the facts." The only guide which I had to the meaning of this was the following sentence in the letter of the 20th March from the Auckland District Law Society to yourself: "It may be, of course, that Mr. Justice Edwards will say that he has been incorrectly reported." To that, treating the case as one of first impression and not as a precedent, I replied.

I have submitted your last letter to the other Judges for their consideration.

The Judges agree that while it is true "that a Judge's comments on the conduct of an advocate (other than conduct constituting rude or offensive behaviour) must depend on the facts," the question as to whether or not an advocate is justified in imputing the guilt of a crime charged against his client to another person against whom there is no evidence which could directly or indirectly implicate that person in the crime, must depend upon *the facts given in evidence at the trial, and upon those facts alone*. To hold otherwise would be to hold that counsel who wilfully offends must always escape reprobation.

This being the case, the Judges are unable to understand what facts can be suggested in the present case which would not infringe the rule stated by Baron Cleasby in *Duke of Buccleugh v. Metropolitan Board of Works*, quoted in my last letter. To that rule the Judges feel bound in the public interest to adhere.

The Judges do not question the right of an advocate, *where the facts warrant it*, to attribute the crime with which his client stands charged to another person, or to point out that another person or persons is under suspicion, or that another person or persons may equally as well as the prisoner have committed the crime. But to justify such observations there must in every instance be facts proved before the jury, or obvious from the nature of the case, to justify such observations.

The Judges, not unmindful of the saying of La Rochefoucauld, "Il s'en faut bien que l'innocence trouve autant de protection que le crime," do say that no advocate can ever be justified in directly imputing the crime with which his client stands charged to another person unless there is evidence before the jury which reasonably justifies that imputation.

The Judges do not agree that the Council of any District Law Society necessarily represents the Bar, even within the district where the solicitors are subject to its jurisdiction; no such Council can pretend to represent the Bar of the Dominion. The objections to such a body arrogating to itself the right to, in effect, adjudicate upon a complaint made by one of its members against a Judge, and to that end to call upon a Judge to give evidence—for that is what the claim amounts to—are too obvious to require discussion.

Such questions as those raised by your letter certainly do not come within the purview of the Law Practitioners Act or the functions of any District Law Society; and no claim such as that made by the Auckland District Law Society has ever hitherto been made or even suggested.

The Judges consider that if any body, save Parliament, is to be recognized by them as having the right to communicate with them upon such matters, it should be the Council of the New Zealand Law Society, which may be considered to be representative of the legal profession in the Dominion. But the Judges are of opinion that in that case the Council of the New Zealand Law Society should themselves undertake the duty of so far investigating any question which may be submitted to them as to satisfy themselves that there is reasonable ground for further investigation before approaching any Judge in the matter.

Subject to these qualifications, the Judges see no objection to receiving any communication which the Council of the New Zealand Law Society, either directly or through the Attorney-General, may think it proper to address to any one of their number.

You will understand that this letter has been submitted to and that it expresses the views of all the Judges of the First Division.

Strictly speaking, the correspondence upon this matter should have been with His Honour the Chief Justice as the head of the Judiciary, but the Judges think that as it began with me it may be so continued.

I have, &c.,

W. B. EDWARDS.