

Supreme Court Library, Wellington, 8th July, 1918.

Re Correspondence between the Hon. Mr. Justice Edwards and Yourself (Singer's Complaint).

SIR,—

I have the honour, by direction of the Council of the New Zealand Law Society, to send you a copy of the resolution passed in relation to this subject at a meeting held on 5th July.

At such meeting a general desire was expressed that the above-mentioned correspondence and a copy of the Society's resolutions should be sent by you to the English Bar Council.

I have, &c.,

F. HARRISON,

Secretary, N.Z. Law Society.

The Hon. the Attorney-General, Wellington

RESOLUTION OF THE COUNCIL OF THE NEW ZEALAND LAW SOCIETY IN THE MATTER OF THE
CORRESPONDENCE BETWEEN THE HON. MR. JUSTICE EDWARDS AND THE ATTORNEY-GENERAL
RELATING TO MR. SINGER'S COMPLAINT.

(5th July, 1918.)

THE Council resolves :

1. That counsel has the same privilege as his client of asserting and defending the client's rights, and of protecting his liberty or life by the free and unfettered statement of every fact and the use of every argument and observation that can legitimately, according to the principles and practice of the law, conduce to this end, and that any attempt to restrict this privilege should be jealously watched.

2. That it is inadvisable to lay down what a barrister defending a client on a charge of crime may legitimately do in the course of his defence, but he is not entitled to attribute to another person the crime with which his client is charged wantonly or recklessly, nor unless the facts or circumstances given in evidence, or rational inferences drawn from them, raise at the least a not unreasonable suspicion that the crime may have been committed by the person to whom the guilt is so imputed.

Such a line of defence ought to be taken only after careful consideration whether under the particular circumstances of the case it may be legitimately adopted and is proper and necessary for the prisoner's defence.

3. That where a practitioner complains that he has been unjustly censured by a Judge he should bring the matter before the Law Society of the district in which the complainant usually practises, and that such District Law Society should investigate the complaint and, if it thinks fit, report thereon to this society. This society, if in its opinion the facts warrant it in so doing, may then, either directly or through the Attorney-General, bring the matter before the Judge for any statement or remarks he may desire to make thereon; and after due consideration of the complaint and of the Judge's statement and remarks it may deal with the complaint as it thinks proper.

4. That the above procedure is applicable to Mr. Singer's complaint; and that the Auckland District Law Society has not in that case so far provided sufficient material to enable the Council to come to a conclusion upon the matter.

Attorney-General's Office,

Wellington, 9th July, 1918.

SIR,

I have the honour to acknowledge the receipt of your letter of the 8th instant covering copy of the resolutions passed by the Council of the New Zealand Law Society on the questions raised by the recent correspondence between myself and the Hon. Mr. Justice Edwards.

As a member of the profession I accept the resolutions as authoritative directions from the Council to which is entrusted the determination of rules of professional conduct, subject only to the condition that such rules may not contravene any principle established by decision of the Courts or determination of the Bench.

But I respectfully submit to the Council that in the second resolution the expression "unless the facts or circumstances given in evidence, or rational inferences drawn from them, raise at the least a not unreasonable suspicion" may be interpreted as limiting the scope of *cross-examination* of the witnesses for the Crown. It was indeed the use of a similar expression in one of the Judge's letters which led to my doubt whether the rule as laid down by the Judges might not exclude a line of cross-examination which in my experience had not been considered to exceed the limit of professional duty. If a counsel is instructed by the prisoner that certain circumstances exist which might, if elicited, entitle the counsel to at least suggest the guilt of another, then it appears to me that it would be the duty of the counsel, by cross-examination of the witnesses for the Crown, to endeavour to elicit those circumstances, and the apparent effect of suggestion of the guilt of another would be created by the questions so put. If "the facts or circumstances given in evidence" referred to in the second resolution of the Council means "facts or circumstances given in evidence for the Crown or elicited in cross-examination for the prisoner," and if the prisoner's counsel is free to cross-examine though his effort to elicit such facts and circumstances fail, then I should respectfully agree with every part of the Council's resolution.

The Council will observe that there are two separate and distinct points at which the question of professional duty arises: first in the cross-examination of witnesses for the Crown, and secondly in the address to the jury; and it is at the first point of time, when no facts are in evidence to support the suggestion of guilt of another, that the more serious question of professional duty seems to me to arise and to be not sufficiently dealt with in the Council's resolution. The second paragraph of the second resolution is properly applicable to both the point of time of cross-examination and the point