

" 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."

Extract from the Attorney-General's letter of the 9th July, 1918, to the New Zealand Law Society.

"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. 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 the 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 of time of the address to the jury, and it may be equally the duty of the counsel not to enter upon such cross-examination without carefully considering the circumstances, as it is his duty to abstain from raising a similar question in his address to the jury if he has failed in his cross-examination to elicit the anticipated evidence."

26th February, 1919.

SIR,—

Attorney-General's Office, Wellington, 17th July, 1919.

Referring to the correspondence between the Hon. Mr. Justice Edwards and myself, following on a complaint made by Mr. R. A. Singer, I have now the honour to forward copies of a letter I wrote on the 17th December last to the Secretary of the General Council of the Bar in England, and of his reply, dated the 6th May, 1919, forwarding copies of a report of the Professional Conduct Committee dealing with the subject.

It is possible that I shall lay the whole of the correspondence before Parliament during the coming session.

I have, &c.,

F. H. D. BELL, Attorney-General.

The Secretary, New Zealand Law Society, Wellington.

DEAR SIR,—

Attorney-General's Office, Wellington, N.Z., 24th July, 1919.

I am directed by the Hon. Sir Francis Bell, Attorney-General, to acknowledge and thank you for your letter of the 6th May forwarding two copies of a Report of the Professional Conduct Committee regarding certain correspondence which took place between himself, the Hon. Mr. Justice Edwards, and the Council of the New Zealand Law Society on the subject of the rights and privileges of Council.

Yours faithfully,

J. W. BLACK, Private Secretary.

Harold Hardy, Esq., Secretary, General Council of the Bar,
5 Stone Buildings, Lincoln's Inn, London W.C. 2.

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