

Mr. Anderson's appeals and the civil and professional rights involved in them : third interim report.

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CIVIL RIGHTS DEFENCE COMMITTEE.

President: THE RIGHT HON. THE EARL OF STAMFORD.

Bodies represented on the Committee:

THE BRITISH AND WEST INDIAN ALLIANCE.
THE ROYAL COLLEGE OF SURGEONS OF ENGLAND
THE BRITISH MEDICAL ASSOCIATION.
THE LONDON AND COUNTIES MEDICAL PROTECTION SOCIETY.
THE WEST INDIAN UNION AND TRINIDAD AND DOMINICA BRANCHES
RESIDENTS IN ENGLAND HAVING INTERESTS IN THE WEST INDIES.

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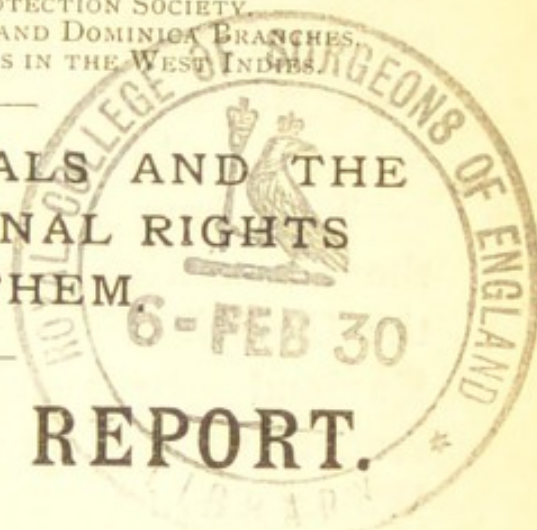
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(* *Vide Cuttings from 'Truth,' pp. 14-24).*



THIRD INTERIM REPORT.

THE Committee has much pleasure in reporting a period of great activity and success : its position has been strengthened, sympathy with the movement widened, and new and valuable support secured.

Two changes have occurred in the constitution of the Committee. A letter has been received from the Council of the Royal College of Surgeons of England expressing much sympathy with Mr. Anderson, and conveying the appointment of Mr. Walter Rivington a member of the Council to represent the Council on this Committee *vice* Mr. Tweedy resigned, owing to professional engagements. Mr. A. M. Lee having resigned as Treasurer owing to pressure of business engagements, Mr. L. J. Greenberg, a representative of the Alliance, has been appointed Treasurer in his stead.

The work done since the date of the Second Interim Report (July 8th, 1895) has included very numerous interviews and much correspondence with public bodies, with editors of many newspapers, London and provincial, and with individuals.

That done previously—the interviews of the President with Editors of the *Pall Mall Gazette*, the *St. James's Gazette*, and the *City Press*; the requests for interviews, even though not always successful; the dissemination of the literature of the Committee to Members of Parliament, the Bar, and City Guilds—has begun to bear fruit and to justify the heavy expenditure incurred in printing and distribution. The

hearty sympathy for Mr. Anderson, and the enthusiastic appreciation of his defence of professional rights evinced at the annual meeting of the British Medical Association at Exeter Hall, when over a thousand members were present, gracefully expressed both by the Council and the general body of the meeting, are being practically realised.

The separate but concurrent action of Dr. Ward Cousins, the President of Council of the Association; the valuable introductions given by him, by Mr. Butlin, the Treasurer of the Association, and by our Honorary Solicitor, Mr. H. Anderson, to Members of Parliament of whom they are constituents, supported by representations from this Committee through the President and seconded by direct personal applications of Mr. R. B. Anderson presenting these credentials, brought about the Conference at the House of Commons between Members of Parliament and a deputation of this Committee and of the British Medical Association, introduced by the President of the Committee, of which a *verbatim* report has been published; and secured, in the admirable and conclusive speech of Mr. Cohen, M.P. for East Islington, on that occasion, and in the expressions of sympathy and promises of support, of investigation and ventilation, given by Mr. Cohen and by Messrs. J. H. Dalziel, M.P., W. Jones, M.P., H. Lewis, M.P., and R. McKenna, M.P., a great accession of confidence and influence, for which the Committee desires to express its cordial thanks to all who aided or took part.

At a second conference between Mr. Cohen, M.P., and Mr. Dalziel, M.P., General Graham, and Mr. R.

B. Anderson, as to practical measures, it was decided that Mr. Cohen should be requested (and he very kindly consented) to ask the Secretary of State for the Colonies if he would cause the report of Sir W. Markby and Sir F. Pollock on the Trinidad Judicial Inquiry to be printed and circulated to Honourable Members.

This report was asked for by Lord Stamford and Mr. Pease, M.P., in 1893, and it was then promised it should be laid upon the table and placed in the library of both Houses, but it was suggested that the expense of printing and circulating it was unnecessary.

The same reply—a refusal to circulate it and a pledge that it should be made available — was on September 3rd obtained by Mr. Cohen from Mr. Chamberlain.

The report contains an unparalleled record of scandalous maladministration, of which the injuries to Mr. Anderson were but a fraction, and gives many particulars of the injuries done to him ; and now that it is accessible the attention of Members of Parliament and the Press to its pages is particularly invited in support of the work of the Committee.

The general silence of the Press and the Bar, broken by a few exceptions for which the Committee is most grateful, with the absence of prompt response, would lead to the fear that the great body of Englishmen are become dead to that love of freedom and of justice which has been considered their highest characteristic. The Committee is convinced that this is only because, owing to the habit of implicit con-

fidence in, and respect for, the Bench, its statements, though so well proved, appear incredible; and because our faith in our judicial administration is almost as dear to us as our freedom itself, and is in many minds identical.

The Committee gives a passage from an American journal of high respectability, which shows the shameful light in which the facts of Mr. Anderson's case appear to others than ourselves (p. 27).

For these reasons, in order that the facts and the necessity for reparation and amendment may be manifest, the Committee again gives a specific statement of a position so difficult to realise; whilst remarkable articles from *Truth*, many comments of other leading journals and of Members of Parliament, and the precise particulars of Mr. Anderson's motions and applications in the Court of Appeal, of all of which a careful perusal is invited, are appended.

Capitals and italics are by the Committee.

THE WRONGS DONE TO MR. ANDERSON

consist of illegal and malicious judgments and orders of the Supreme Court of Trinidad and Tobago against him; including malicious prosecution; malicious judgments for damages against him as a medical man* and as a landowner;† and malicious false imprisonment, and many other illegal acts and

* For retiring from the case on being rudely treated, and disallowing his just charges for services rendered.

† For lawfully recovering possession of his freehold land.

orders* to enforce the illegal judgments, particulars of which, with the findings of the Royal Commissioners, Sir William Markby and Sir Frederick Pollock, are given in the First Interim Report, and in greater detail, in the Blue Book on the subject asked for by Mr. Cohen (*vide* p. 4).

THE APPEALS TO THE PRIVY COUNCIL.

The illegal judgments and orders of the Supreme Court of Trinidad and Tobago against Mr. Anderson still remain in force and upon record ; in the terms of the verdict of a Middlesex Special Jury, a 'malicious overstraining' of the judicial power, a 'wilful perversion of justice ;' in contravention of the great charters of our liberties, of the chartered and statutory professional rights of medical men,† and of the civil rights of British subjects ; in the words of the Royal Commissioners, Sir William Markby and Sir F. Pollock, a 'judicial persecution ;' *still carried on and maintained against Mr. Anderson by the abused powers of the State, so long as those judgments are permitted to remain in force.* They can only be reversed by appeals to the Privy Council, and in earnestly inviting liberal contributions to the fund for these appeals, the Committee offers the opportunity to take part in rectifying a great wrong.

THE APPEAL TO THE HOUSE OF LORDS.

For such judgments, orders, and acts of a British

* Including excessive bail, and refusal of the writ of Habeas Corpus to compel payment of the damages.

† (a) *The right to be paid for services rendered.*

(b) *The right to retire from a case on being rudely treated.*

Court, Mr. Anderson brought his action in England against the Trinidad judges for damages ; and this action, by securing publicity, compelled official inquiry (refused for four years to all other petitions and demands), resulted in the removal from office of two judges, and saved a colony from unspeakable oppression and imminent ruin.

The Chief Justice having died, and the jury finding that Mr. Lumb had not been actuated by malicious motives, after a seven days' trial conducted in person, —Mr. Anderson gained against Mr. Cook the memorable verdict for 500*l.* damages above mentioned.

Of the fruits of this verdict he is deprived on the ground that under the circumstances no action lies against a judge.

By this judgment not only the right to redress BUT THE SECURITY AND PROTECTION OF THE RIGHT OF ACTION also are, as the Committee is advised, FORFEITED AND DESTROYED.

Whether the judgment of the Court of Appeal in *Anderson v. Gorrie* and others is sound or not, can be determined only by the House of Lords, on appeal from the Court of Appeal. It is, as the Committee has consistently represented, a question of the greatest gravity. In English law, the principle '*ubi jus ibi remedium*' prevails ; and, also, the *consequence*, 'where there is no *right of remedy* there is, in law, NO RIGHT, so that the continued refusal of remedy to Mr. Anderson is a solemn claim and declaration by the Judges in derogation, as the Committee is advised, of the civil and professional rights we are defending, that, as against the absolute and arbitrary will of the

Judge, exercised OUTSIDE HIS JURISDICTION, ILLEGALLY and MALICIOUSLY, no medical man, no English man, no British subject, *has any* 'RIGHT' *whatever*.

The illustrations of this claim*—drawn from Lord Esher by Mr. Anderson's logical proposition to him whether to strike a man in the face would be a judicial act; Lord Esher's reply that it would and his doubt whether, for shooting a barrister in Court, he could be tried for murder—go no further than the decision itself, and it may be hoped, with the comments in *Truth*, render comment by the Committee superfluous.

THE REFUSAL OF THE COURT OF APPEAL TO HEAR MR. ANDERSON'S MOTIONS.

It was mentioned in the Second Interim Report that, at the time Lord Esher took part in pronouncing this 'momentous and alarming' judgment, there was an appeal pending in a similar action of Mr. Yeatman, a barrister, against Lord Esher; and it appears (*vide Times Report*, p. 44) that, however entirely unbiassed he may have been by such a position, Lord Esher did in fact, in deciding *Anderson v. Gorrie* and others, take part in making a precedent by which Mr. Yeatman's appeal, then depending, in the action against his Lordship, was decided in his Lordship's favour.

Mr. Yeatman in his action had to show not only that Lord Esher had slandered him, but, in the first place, that, if so, for words alleged to have been uttered

* That all acts of a judge on the Bench are judicial acts, for which no action will lie.

on the Bench, but in matters *coram non judice* his Lordship was amenable to an action for damages. Lord Esher's decision in *Anderson v. Gorrie* and others made the governing precedent that his Lordship was *not amenable to an action for such a cause*.

Since learning the facts, Mr. Anderson, with the full concurrence of the Committee, has taken steps to get the judgment set aside, of which particulars are given at p. 33 *et seq.*, including a personal application to the Court on October 24, 1895, to constitute a Court, and fix a day, in the absence of Lord Esher, to hear his motions.

His motions and his application have been refused, and it is under a grave sense of public duty and with great regret the Committee publishes, with the proceedings, such comments as its representatives, who were eye witnesses, have, by the facts, been necessitated to make (p. 42).

The Committee is advised, on clear and explicit grounds, and on authority for which it has the highest respect, that Mr. Anderson's appeal brought in May, 1894, against Lord Coleridge's decision, *has not yet, according to the law of England, been validly heard*; that Lord Esher being, at the time of the supposed hearing on August 7, 1894, a respondent in the appeal then pending in Mr. Yeatman's similar action, was, by reason of his interest, then unknown to Mr. Anderson, in the precedent to be created, which governed Mr. Yeatman's action against him, disqualified from adjudicating in *Anderson v. Gorrie* and others; that, owing to Lord Esher's disqualification the Court, in hearing Mr. Anderson's appeal, was not validly constituted, and that the judgment should

be set aside as 'voidable' (*vide* extract from *Times* Law Report, p. 44) showing how the precedent operated).

It is further advised that, when Mr. Anderson appeals to the House of Lords, the consequences must be that the House of Lords will certainly set aside as 'voidable' that which now purports to be the judgment of the Court of Appeal in *Anderson v. Gorrie* and others, on the precedent of the judgment of that House in *Dimes v. Grand Junction Canal Company*, setting aside, on the ground of interest, the judgment of Lord Chancellor Cottenham (3 H. L. Cas.; and *vide* Doctrine of Judicial Immunity issued by the Committee), and that, as there will then be *no judgment of the Court of Appeal remaining*, but only that of Lord Coleridge, from which an appeal does not lie direct to the House of Lords, the case will necessarily be remitted for the Court of Appeal to hear and determine *Mr. Anderson's appeal* OF MAY, 1894, illegally delayed for perhaps two years; and that, after such hearing by the Court of Appeal, an appeal to the House of Lords on the merits may still be necessary to decide the important constitutional issues involved in the case.

That two appeals should be necessary because the Court of Appeal lacks the power to declare void its own 'voidable' judgment is a proposition that would appear ludicrous if (in the language of Lord Justice Lindley in '*re Swire*,' 30 C. D. 246, *) it were

* *Lord Justice Lindley* (IN *re SWIRE* 30 C. D. 246): 'There is no such magic in passing and entering an order as to deprive the Court of JURISDICTION TO MAKE ITS OWN RECORDS TRUE. And if an order as passed and entered does not express the real order of the Court [query by C. R. D. C.:

not 'shocking;' yet such a proposition would seem to be the only plausible explanation of the action of the Court in refusing to hear Mr. Anderson's motions.

Beyond the parallel of '*re Swire*,' this very course of two appeals was, in *Dimes v. the Grand Junction Canal Company*, declared to be *unnecessary* only because an appeal lay, and was brought, direct to the House of Lords from the judgment of the Vice-Chancellor* simultaneously with that from the judgment of the Lord Chancellor; and, having set aside as 'voidable' the judgment of the Lord Chancellor *for interest*, the House of Lords proceeded at once to hear and determine the appeal on the merits from the decree of the Vice-Chancellor; but, as stated, that House has, the Committee is advised, no power to adjudicate on Lord Coleridge's judgment except after and upon a decision of the Court of Appeal.

The Committee is advised that not only in substance, but in form, Mr. Anderson's motions (*vide p. 33 et seq.*) to set aside the judgment of the Court and to hear his appeal were perfectly regular and in order; and the action of the Court of Appeal in refusing to hear them, in refusing absolutely even to place them in the paper, and in thereby refusing to hear and determine his appeal; in afterwards, by not drawing up its order, embarrassing him in his appeal to the House of Lords; and, finally, in dismissing his personal

'A' real order of the Court?], it would, as it appears to me, be SHOCKING to say that the aggrieved party cannot come here to have the record set right, but must go to the House of Lords by way of appeal.'

* At that time appeal lay direct from the Vice-Chancellor to the House of Lords, but now only through the Court of Appeal.

application, has cast such a light upon the position that none can overlook it, except wilfully.

It will be seen that the *Times*' report of the effect of the motion of July 25, 1895 (p. 33) was entirely erroneous; that it is not a 're-hearing' but a 'HEARING' Mr. Anderson desires.

The exclusion by the *Times* of Mr. Anderson's letter in explanation and correction, and the request of the Committee to *Truth*, amongst many other newspapers, to insert it, brought invaluable support from *Truth* on the basis of the great questions of public interest involved, and the claim to publicity in such a case.

Struggling against the extraordinary apathy of the nation, and the silence, with certain honourable exceptions, of the Press, with regard to a judgment that deprives us, in the presence of our judges, of every right of property, character, liberty, and life itself, nothing has more strengthened the confidence of, or afforded greater support to, the Committee than the outspoken and remarkable expressions and illustrations of *Truth*, and this is due also to the well-known fact that Mr. Labouchere and the editor of *Truth* never take up a case without competent advice and mature consideration, or unless prepared to carry it to an issue.

By the aid of the world-wide publicity being now attained; by such methods and such measures as led to the conference at the House of Commons; by further influential introductions to Members of Parliament and other public men; by bringing every available influence to bear on public bodies, medical

and lay, to take part in the work of the Committee ; by organizing subscriptions and the collection of funds ; by individual appeals to the wealthy, the philanthropic, and the patriotic to subscribe ; the Committee hopes to strengthen its position and its influence, to win general sympathy and support, and to bring its labours to a satisfactory completion ; and confidently appeals to its members, to its constituent bodies, to its friends in and outside the medical profession, to the Press, to all lovers of liberty and justice, to help in these measures ; in thoroughly testing the correctness of a decision which has been well characterised as 'MOMENTOUS' and 'ALARMING ;' in securing redress for grievous wrongs that reflect discredit on our administration ; and in defending, to the uttermost, the ancient rights and liberties of our country.

STAMFORD, PRESIDENT.

I.—COMMENTS OF THE BRITISH, COLONIAL, AND
AMERICAN PRESS.

Cuttings from 'Truth.'

(LORD ESHER AND THE COURT OF APPEAL IN ANDERSON
v. GORRIE AND OTHERS.)

AUGUST 15, 1895.

A NOVEL and interesting point has been raised in the action of Dr. Anderson against the Trinidad judges. It seems that when, in August, 1894, the Court of Appeal gave judgment against Dr. Anderson, holding that the 500*l.* damages awarded to him by the jury were not recoverable at law, there was then pending in the Court below an appeal in the very similar action of Yeatman *v.* Soden and others. In this action, brought by a barrister, LORD ESHER WAS ONE OF THE DEFENDANTS, and was sued for slander uttered on the bench. *Lord Esher delivered the judgment of the Court against Dr. Anderson, which laid down that judges cannot be sued for an abuse of their judicial powers or position.* Subsequently, on an appeal by Mr. Yeatman coming before the Court of Appeal, it was dismissed, *on the AUTHORITY OF THE PREVIOUS DECISION IN ANDERSON v. GORRIE.*

On these facts coming to the knowledge of Dr. Anderson, he gave notice of motion to set aside the judgment of the Court of Appeal in each case, *on the ground that Lord Esher, at the time he adjudicated, was interested in the case as one of the parties to the action of Yeatman v. Soden.* This notice of motion was struck out WITHOUT THE APPELLANT'S KNOWLEDGE last week, but an attempt is being made to reinstate it, and it is to be hoped that the attempt will be successful. Nobody would suggest or suppose—at any rate I should not—that the Master

of the Rolls would be consciously influenced in his judgment in the one case by the knowledge that he was himself a defendant in another of the same character ; but he might easily be influenced unconsciously, and it certainly seems a case in which, if only for the sake of appearances, he would have done better to stand aside. To leave it to the judges at all to decide how far judges are liable to be sued in respect of their judicial acts, implies a very large confidence in their judicial impartiality.

I should add that I have been specially asked to make these facts public by the Civil Rights Defence Committee, which is supporting Dr. Anderson in prosecuting his appeal, on the ground that a letter from Dr. Anderson explaining the facts, and making a correction in the *Times*' report of the last proceedings in the Court of Appeal, has been refused publication in that journal. The Civil Rights Defence Committee forward me a copy of Dr. Anderson's letter to the Editor of the *Times*. It is a plain statement of facts, couched in inoffensive terms, and why the *Times* should have refused to make public this and everything deserving of publicity in a case WHICH IS UNDOUBTEDLY OF THE GREATEST CONSTITUTIONAL IMPORTANCE, I am at a loss to understand. Certainly, if the action of my contemporary was inspired by tenderness for the susceptibilities of the Master of the Rolls, Lord Esher himself would probably be the last person to approve of it.

AUGUST 22, 1895.

SINCE my reference last week to the latest and most singular development of the case of *Anderson v. Gorrie*, the Civil Rights Committee have sent me a copy of the following endorsement on Dr. Anderson's last notice of motion, officially communicated to him from the Court of Appeal :—

‘ By Order of the Court this Motion is not to be placed in the paper.
‘ A. L. S.’

Dr. Anderson gives notice of motion to set aside the judgment of the Court of Appeal against him, on the ground that at the time of the judgment LORD ESHER WAS PERSONALLY INTERESTED IN THE DECISION, for the very strong and sufficient reason that I described in last week's *Truth*. His motion is struck out on an

ex parte application from the other side WITHOUT ANY NOTICE TO DR. ANDERSON; that is to say, the Court of Appeal *will not even allow him to appear to state the very important point he desires to raise.* On learning that his motion has been struck out in this way, he enters a new notice of motion, and this the Court of Appeal WILL NOT ALLOW TO BE PLACED IN THE PAPER AT ALL.

Nor is this all. On receiving notice that his motion cannot be put down again, Dr. Anderson applies in due form for a copy of the order of the Court dismissing his motion in the first instance, this being required for the purpose of appeal to the House of Lords. He is informed that the Court *had not made an order, but had merely 'given a direction,'* and that ON THIS NO ORDER WOULD BE DRAWN UP. This may be a mode of defeating a troublesome litigant which commends itself to the Master of the Rolls and the distinguished judge whose initials are 'A. L. S.,' but to a humble layman it is a good deal more suggestive of the tactics of Dodson and Fogg.

It has to be remembered, first, that Dr. Anderson, although guilty of the high crime of appearing in person, has an influential Association behind him, has been professionally advised, AND HAS BEEN SCRUPULOUSLY REGULAR AND RESPECTFUL TO THE COURT IN ALL HIS PROCEEDINGS; secondly, THAT HE IS FIGHTING A QUESTION OF THE UTMOST CONSTITUTIONAL IMPORTANCE, namely, THE RIGHT OF THE SUBJECT TO REDRESS AGAINST A MALICIOUS WRONG DONE TO HIM BY A JUDGE ON THE BENCH—a wrong so substantial that a London jury have awarded him 500*l.* damages in respect of it; thirdly, that the case is now further complicated by the fact that *the decision which the Master of the Rolls gave in this case is the basis of a further decision, disposing of a similar action against the Master of the Rolls himself,* WHICH ACTION WAS PENDING AT THE TIME WHEN THE MASTER OF THE ROLLS GAVE HIS DECISION IN ANDERSON'S CASE. Under such circumstances it might have been supposed that the Court of Appeal would, if anything, have strained a point to enable Mr. Anderson to state his case on the merits, and to avoid even the appearance of denying him a fair hearing. *What they actually have done is THE PRECISE OPPOSITE.*

AUGUST 29, 1895.

WITH reference to the case of Dr. Anderson against the Trinidad judges, I have received from Lord Stamford, as President of the Civil Rights Committee, a copy of certain resolutions which have been submitted by the Committee to the present Ministry, and also a request to make known that a subscription list for the prosecution of the appeals now pending to the House of Lords and the Privy Council is open at the Chancery Lane Branch of the Union Bank of London. I am very glad to do this, and I hope that the Committee will be successful in raising the very modest sum necessary for the purpose, for the question involved IS OF THE UTMOST CONSTITUTIONAL IMPORTANCE, AND CONCERNS EVERY SUBJECT IN EVERY PART OF THE EMPIRE.

SEPTEMBER 5, 1895.

THE eminent lawyer who occasionally gives me advice gratis under the modest pseudonym of '17. 3s. 6d.' is, I am sorry to say, pouring cold water on the appeal to the House of Lords in Dr. Anderson's case. He writes :--

'The only possible chance of doing any real good in that direction lies in the Legislature. The law is, rightly or wrongly, as clear as a pikestaff, and the principle is one which all law students suck in at their first series of lectures—that no action will lie against any judge for any act done in his capacity of judge.' *

This letter is partly written under a misapprehension, or in forgetfulness of the fact that Dr. Anderson is bringing two appeals, one to the House of Lords against the judgment of the late Chief Justice ; the other to the Privy Council to set aside the malicious and injurious orders of the Trinidad judges which formed the subject of his action for damages against the judges. As far as Dr. Anderson's personal interest goes, the Privy Council appeal is quite as important as the other, and after what has passed, little doubt can be felt that it will be successful. Separate funds have been opened for the two appeals, and subscribers can send their contributions to either, so that it is

* See reply of C. R. D. C. at page 19.

to be hoped they will not be deterred by the weighty expression of opinion above quoted.

With regard to the liability of the judges to an action for damages, I take it that Dr. Anderson, and the committee which is assisting him, have had advice in the opposite sense to that given by my learned friend, and it is not an unknown thing for counsel's opinions to vary directly. It has also to be remembered that this case IS A MOST EXTREME ONE, *it having been made clear by an official investigation* THAT DR. ANDERSON WAS THE VICTIM OF 'JUDICIAL PERSECUTION,' *in which the elementary principles of justice were violated* IN ORDER TO SERVE THE PURPOSES OF THE JUDGE OR JUDGES CONCERNED ; while a Middlesex jury has found in Dr. Anderson's favour that Mr. Cook, the only defendant now left in the suit, 'OPPRESSIVELY AND WITH MALICE OVERSTRAINED HIS JUDICIAL POWERS TO THE PREJUDICE OF THE PLAINTIFF AND THE WILFUL PERVERSION OF JUSTICE.' Unless any previous case can be cited which is exactly on all fours with this, I should say that Dr. Anderson and all interested in his case *are justified in taking the opinion of the House of Lords before accepting it as unimpeachable law that no legal remedy exists for such a malicious abuse of judicial authority.* Personally, I should think it not unlikely that in the end judge-made law will be found to secure complete immunity to such offenders as Mr. Cook ; and that it will be necessary to get the law *as made by judges* UNMADE BY PARLIAMENT. This eventuality has not been overlooked by the Civil Rights Committee, and with that view Lord Stamford and other members of the Defence Committee had an interview with various M.P.'s at the House of Commons last week.

[Cutting from a separate page.]

A legal acquaintance of mine draws a striking picture of the Court of Appeal as at present constituted for Common Law business. Virtually, he says, *it consists of the Master of the Rolls, WHOSE PERSONALITY OVERSHADOWS EVERY OTHER AT THE BENCH AND THE BAR.* As regards Lord Esher's colleagues on the Bench, one is described as habitually, if not ostentatiously, submissive to the President of the Court, and another 'chiefly uses his powerful intellect in finding plausible reasons for agreeing with his chief.' Lord Esher himself was never a good

listener, and as he has grown older the process of conducting an argument before him has degenerated more and more into a cross-examination of counsel by the Bench. His lordship possesses such an acute mind, and is at heart (though not always on the surface) so good-natured, that there is a universal reluctance to speed his departure. Still, at the age of eighty-one a man's character is generally fully developed. There seems, therefore, little hope that as Lord Esher gets on in years the faults at present noticed in the Court of Appeal will be less conspicuous.

SEPTEMBER 12, 1895.

IN reply to the remarks of my learned friend, '1*l.* 3*s.* 6*d.*,' upon Dr. Anderson's case, I have received a communication from the Civil Rights Defence Committee, which I have forwarded to that gentleman.* What it says is very much what I expected.

* The following is the letter referred to :—

CIVIL RIGHTS DEFENCE COMMITTEE.

5 MITRE COURT, TEMPLE, LONDON, E.C.

September 8th, 1895.

To 'One pound three shillings and sixpence.'

DEAR SIR,—My Committee welcomes your opinion, quoted in *Truth* of this week. Our greatest difficulty is to obtain discussion of the principles of law, since, whilst all admit the reality of the wrongs done to Mr. Anderson, almost all have the impression you so well express; few observe the distinction between acts within the jurisdiction of the judge, *which we admit ARE JUDICIAL ACTS and ARE PROTECTED*, and acts *WHOLLY WITHOUT JURISDICTION which 'we are advised and believe' never were, ARE NOT, and OUGHT NOT TO BE, PROTECTED*; and those, who like yourself, consider the Court of Appeal correct, *do not care to defend such a condition of the law nor like to appear to uphold PALPABLE INJUSTICE*. I understand that whilst you consider the decision of the Court of Appeal is according to law you also consider the law should be amended. *But before legislation can take place must not the law be FINALLY ASCERTAINED BY THE HIGHEST TRIBUNAL? Before satisfactory legislation can if necessary be accomplished MUST NOT THE PEOPLE BE INTERESTED AND INFORMED, and AROUSED TO A SENSE OF THE IMPORTANCE OF THE QUESTION AND ITS INFLUENCE ON THEIR RIGHTS AND LIBERTIES?* Such questions: *whether British subjects, their property, their character, and even their lives, are, or should be, BY LAW, so far as individual right of remedy is concerned, AT THE ABSOLUTE DISPOSAL OF JUDGES, are of the highest public interest*; and if you will, IN ANY NEWSPAPER, ON ANY PLATFORM, OR AT ANY DEBATING SOCIETY, SUPPORT YOUR OPINION, we shall be happy, with the help of our advisers, to advance what we can to show that this IS NOT, and NEVER HAS BEEN, THE LAW OF ENGLAND.

By way of first reply to your arguments will you permit me to remark that Eyre, Cockburn, Denman, and, more recently, Cave and Charles,

The doctrine of judicial immunity, as laid down by the Court of Appeal in this instance, is by no means the legal axiom which my correspondent asserted, and the best proof of this is that when an application was made to dismiss Dr. Anderson's case, on the ground that the statement of claim disclosed no cause of action, *the Divisional Court refused to do so. Two eminent judges—Justices Cave and Charles—then absolutely declined to hold that no action lies for wrongful acts done by a judge maliciously and in excess of his jurisdiction*, and they told the learned counsel, who was expounding on behalf of the defendant the views of my friend '1l. 3s. 6d.,' *that though he had been arguing for half an hour, he was as far from having convinced them as he was when he started. When it is added that there are strong dicta of Lord Denman and Chief Justice Cockburn in support of the decision of the Divisional Court,*† I think there can be no question that Dr. Anderson is amply justified in soliciting the opinion of the House of Lords on the point.

Let me put a case. Suppose that a 'strong judge,' such as—well, never mind whom—orders a barrister, against whom he has long nourished a grudge, to leave the court. The barrister not obeying, his lordship throws an inkpot at him from the bench, spoiling his wig, perhaps knocking out one of his teeth, and otherwise substantially damaging him. Is this *damnum absque injuriâ*? I question whether, before Anderson's case, there is any decision which goes so far as to say that it is. Anderson's case seems to me to go to that length. The House of Lords is now to be asked whether this is good law. If it is, there is ample room for a better.

appear to have *played truant* with regard to that *first series of lectures* you mention.*

I shall be happy, should you desire it to furnish you with the literature of the Committee; and I am sure you will accept my letter in the friendly spirit in which it is intended.

I am, Dear Sir,

Yours faithfully,

For the Secretarial Committee,
G. F. I. GRAHAM,
Major-General.

[* Note by C. R. D. C.—This refers to dicta and decisions of these judges directly contrary to the 'dictum' of 1l. 3s. 6d. (*vide* page 45).
NO ANSWER HAS BEEN RECEIVED TO THIS INVITATION.

Italics and capitals are now inserted.]

† See page 45.

SEPTEMBER 26, 1895.

KILLING NO MURDER.

THE other day, discussing Dr. Anderson's case with a legal correspondent who contended that the law confers absolute immunity for acts done by the judges on the bench, no matter how injurious and malicious, or how foreign to their jurisdiction as ordinarily understood, I suggested the case of a judge ordering a barrister to leave the court, and following up the order by throwing an inkpot at him from the bench, thereby inflicting serious damage. I put this illustration in a humorous spirit, regarding it, in my innocence, as a *reductio ad absurdum* of the doctrine of absolute judicial immunity. But it seems that what to a layman is an extravagant absurdity may be regarded by high judicial authority as a sober and accurate statement of the law. I find that in the argument of Dr. Anderson's case before the Court of Appeal, the Bench adopted a view of the law which carries it quite as far as my illustration, and the Master of the Rolls himself seriously advanced an illustration identical with mine in principle, and going a very long way beyond it in practice if it ever should be put into practice. Here is an authentic report of what passed, supplied by Dr. Anderson, who argued his case in person :—

‘I submitted to the Master of the Rolls, who was presiding, “Then, if your Lordship were to order a policeman in court to bring up to you on the bench a man from the body of the court, and your Lordship were then to strike the man in the face, would the striking be a judicial act?” And his lordship replied that it would be a judicial act. . . . On August 7th, reverting to the point your petitioner had submitted as to whether striking a man in the face would be a judicial act, Lord Esher said : “If I were to order a barrister in court to sit down, and he did not, and I shot at him and killed him, I much doubt if proceedings for murder would lie against me.”’

So that my judge with his inkpot was a mild-mannered and peaceable citizen beside the truculent representative of the law whom the Master of the Rolls conjures up, and whom he is prepared to take under his protection. At this rate, we may yet live to see some of the stirring scenes that have enlivened the tedium of the courts in the Far West re-enacted in the Strand. We may have a strong judge keeping order in court

with a six-shooter, or stepping down from the bench to fight out a round or two with a plaintiff in person, prior to giving judgment against him. We may see a President of the Divorce Division insisting on embracing an attractive petitioner (or respondent), and asserting his right to a fatherly kiss on the bench. Every judge (if we are to believe the Master of the Rolls) has a constitutional right to these little relaxations, and how much further his rights may go, heaven only knows. Mind you, he needn't be on the bench. A judge can perform 'judicial acts' in chambers, and if he may lawfully hit a man in the eye, or put a bullet into him in open court, what may he not do *in camerâ*? In the Vacation, 'judicial acts' have been performed on emergency in strange and out-of-the-way places; a Chancery judge is even reported to have granted an injunction in a bathing-machine. Of course, the doctrine of judicial immunity extends to all these out-of-the-way places; a judge must carry with him his constitutional exemption from the law of the land wherever he carries his judicial capacity, and if any fellow-bather, beholding the unusual spectacle of a Puisne judge delivering judgment from his bathing-machine, had ventured to smile at the function, his lordship would have had a perfect right to seize him and hold him under water till he expired—just as Lord Esher has a right to shoot any barrister who does not leave the Court at his bidding. In short, a judge, having his judicial capacity on him, may murder, steal, assault, bear false witness, or otherwise misconduct himself as he pleases. If our judges do not avail themselves of these rights, it is merely because their taste does not lie that way. There is no legal reason why they shouldn't.

The reader will please not suppose that I am suggesting absurdities this time. I never was more serious in my life. NOR ARE THESE SPECULATIONS AS TO WHAT A JUDGE MAY OR MAY NOT DO MERE EFFORTS OF IMAGINATION. *Dr. Anderson's case stands on record as a living example that in one instance a judge has MALICIOUSLY ABUSED AND EXCEEDED HIS JUDICIAL POWERS in order to fine, imprison, and ruin one against whom he has a spite; and the judgment of Lord Esher and his colleagues, setting aside a verdict against this judge for 500l., establishes that these things may be done with impunity, BECAUSE A JUDGE WHILE OSTENSIBLY DISCHARG-*

ING HIS OFFICIAL FUNCTIONS IS ABOVE THE LAW. Reading Lord Esher's dictum with this judgment, what is the conclusion? That if Judge Cook had been so disposed, he might have shot Dr. Anderson while he was about it, and been none the worse for it. IF HE HAD ONLY KNOWN THE LAW AS WELL AS LORD ESHER, PERHAPS HE WOULD HAVE SHOT THE DOCTOR. In that way he might have avoided a long and expensive litigation, and a good deal of indirect unpleasantness. *This is certainly not a matter to joke about.* ON THE CONTRARY, IT SEEMS TO ME ONE OF THE MOST MOMENTOUS AND ALARMING LEGAL DECISIONS EVER PRONOUNCED. One comic element there is in the case, and one only. That is, that it should be left to judges to decide, out of their inner consciousness, the legal limits of their own rights and powers. Judge-made law has always seemed to me a queer, antiquated anomaly in a country where the people claim the sole right of legislating for themselves. But never before has the anomaly received such an illustration as in the spectacle of a judge solemnly laying it down, as part of the *lex non scripta* of the land, *that he and his colleagues have the right to kill other members of the community* WITHOUT BEING ARRAIGNED FOR MURDER.

OCTOBER 31, 1895.

I see that the Court of Appeal summarily disposed last Friday of Dr. Anderson's application to have his case reheard. After what has previously happened, this is not surprising; but I confess I find it surprising that the Judges should have said—as they are reported to have done—that 'they had never heard such nonsense talked before.' This 'nonsense' seems to have been the contention that the Master of the Rolls was an interested party in the judgment he gave. What are the facts? That at the time of hearing Dr. Anderson's appeal Lord Esher was defendant in an action of precisely the same nature as Dr. Anderson's action against Mr. Cook, and that the judgment which Lord Esher delivered in Anderson's case was afterwards used as authority for disposing of the action against his Lordship. No one who knows his Lordship would suspect him of

an intention to manufacture an authority for use in his own case ; but to say that his judgment may not be an unbiassed one under such circumstances, is only to say that he is subject to the ordinary infirmities of humanity. To his colleagues Lord Esher may appear a being of supernatural attributes, but those who assert that his Lordship is only human ought not to be told that they are talking nonsense.

Whitehall Review, May 25, 1895.

‘ We trust that there will be a liberal response to this appeal’ (for funds), ‘ not only in the interest of Dr. Anderson himself, who has been the victim of gross injustice on the part of certain colonial judges, but also in the interests of the liberty of the subject, WHICH IS A MATTER OF VITAL IMPORTANCE TO EVERY MEMBER OF THE COMMUNITY.’

Daily Chronicle, August 22, 1895.

‘ It is clear that in the immediate question, Dr. Anderson had reason to complain, since not only Sir William Markby and Sir Frederick Pollock, who went as Commissioners, but also the Queen’s Bench jury, have found that the judges grossly wronged him. His position is simplicity itself. “ If I was wronged,” he says, “ and if I am not to recover against the judge himself, because he wields the authority of the Crown, then the Crown must do me right some other way.” This is a pleasant conundrum for the new Colonial Secretary.’

British Medical Journal, August 24, 1895.

‘ It is hardly necessary to remind our readers of the gravity of the matters which constitute Dr. Anderson’s complaint. Shortly stated, his position amounts to this, that the judgment by which Lord Coleridge deprived him of the fruits of his verdict, on the ground that no action lies against a judge, even where it is found that “ he has oppressively, and with malice, overstrained his judicial powers to the prejudice of the plaintiff

and the wilful perversion of justice," involves the conclusion that Dr. Anderson's *professional* and general civil rights have been violated by the authority of the Crown, administered improperly by the colonial judge. . . . The whole matter is one of great consequence, not merely to the profession, but to the public at large, and we do not doubt that Lord Stamford's energetic Committee will be enabled in due course to bring it to a successful issue.'

The Lancet, August 31, 1895.

'For some time past the columns of the *Lancet* have contained references to the remarkable hardships which have been illegally, but in the name of the law, inflicted on a member of our profession, Mr. R. B. Anderson, of the island of Tobago, in the West Indies. . . . Mr. Anderson's courage is admirable; but it is impossible to avoid pitying him. His thriving practice has been broken up, judgments unjustly given against him in Tobago are still in force, and prevent him from returning to the island, whilst his means are consumed in the unequal struggle against an impassive officialism, which admits the justice of his cause and the reality of his hardships, but fails to provide redress.'

The Lancet, November 2, 1895.

'Mr. Anderson, we understand, will now take the case to the House of Lords, providing he is not deterred by the consequent expenses. But, surely, Englishmen, who in times past have fought some noble battles for their rights in cases almost as hopeless as this appears to be, will not withhold the sinews of war for a cause which concerns themselves as much as it does Mr. Anderson. The justness of his cause has been recognised by law, but because his oppressor is one who had the right to administer the law, Mr. Anderson is compelled to go without redress.'

'The Civil Rights Defence Committee, whose address is 5 Mitre Court, Temple, have charge of the case, and we wish them God-speed in their efforts.'

The Medical Press and Circular, September 11, 1895.

THE CIVIL RIGHTS DEFENCE COMMITTEE AND MR.
ANDERSON.

‘THE grave questions raised by the abominable treatment of Mr. Anderson at the hands of the judicial authorities are being persistently followed up by the very influential Committee which has been formed for the purpose of obtaining redress, or, failing redress, legislation having for its object to prevent the possibility of a repetition of such scandals. A plaintiff who, in defence of his rights, seeks to fix the responsibility upon the shoulders of the delinquent judicial officers, is under the disadvantage of having to plead his cause before the very men *whose interest it is to checkmate him*. Every step in the proceedings points to a determination on the part of the judges to repel any claim for damages in respect of even the abusive exercise of judicial functions, and though preparations are being made to carry the matter to the bitter end, it is doubtful whether means will be found to enforce Mr. Anderson’s claims. We are glad to see that a deputation has been cordially received at the House of Commons by Messrs. Cohen, Dalziel, Jones, Lewis, and McKenna, and we trust that a matter of such PRIMORDIAL IMPORTANCE TO MEMBERS OF THE MEDICAL PROFESSION and to British subjects generally will meet with adequate moral and financial support.’

The South American Journal quoting *Jamaica Colonial Standard* on Anderson *v.* Gorrie and others.

‘According to the recent finding of the English Bench—according to the theory or principle proclaimed by this MONSTROUS DECISION—a judge is to be regarded as an arbitrary, irresponsible autocrat, exempt, by virtue of his office, from all responsibility for his judicial acts, however detrimental those acts may be to the property, liberty, and character of those who come within his obnoxious jurisdiction. We are very much mistaken if the English people, realising the grave character and consequences of this decision, do not make effective constitutional protest against the perpetuation of a

principle at variance, not only with the great charters of English liberty, but with the very elements of common equity and natural justice. . . . If the Court of Appeal is correct in its interpretation of British law bearing on the exercise of the judicial function, the HABEAS CORPUS ACT IS NOT WORTH THE PAPER ON WHICH IT IS WRITTEN, and MAGNA CHARTA IS A DEAD LETTER.'

The Medical Record (New York), September 28, 1895.

The Judicial Persecution of Dr. Anderson.

'The case of Mr. R. B. Anderson excites considerable interest and deserves all sympathy. He is undoubtedly the victim of a MONSTROUS INJUSTICE. His wrongs were so manifest in Tobago that he was sent by public subscription to England to appeal to English Courts against the partiality and malice of the local judges. In the Queen's Bench the facts proved could not but excite astonishment. A Royal Commission was issued to inquire into the administration of justice in Tobago. The result was that one of the judges was removed from office, the other was interdicted pending the trial of the charges against him, but he has in the meantime died. The Jury found a verdict amounting to malice in the exercise of their functions by the Judges* and awarded damages; but the Judge entered judgment in their favour, on the ground that no action lies against a judge for an act done in his judicial capacity, and this ruling has been confirmed by the Court of Appeal. It is therefore clear that Dr. Anderson is the victim of a persecution which disgraces the judicial bench, and for which the law provides no redress. The boast of lawyers that "every wrong has a remedy at law" is therefore shown to be a fiction, AND THE IMMACULATE PURITY OF ENGLISH JUDGES MUST BE HELD WITH RESERVE until the Bench find some method of upholding the right, punishing any offending member, and compensating the victim of such persecution. Dr. Anderson has maintained his honour against all the difficulties thrown in his

* Note by C. R. D. C.—The verdict was against one of the surviving judges only.

way by judicial persecutions ; but at what a cost !—practically ruin ! THE PROSECUTING JUDICIAL CRIMINALS OUGHT TO BE MADE TO COMPENSATE HIM AND TO RETIRE FOR A SEASON TO THE SECLUSION OF ONE OF HER MAJESTY'S PRISONS. *Such an example would do much to restore confidence in British justice and the impartiality of the English Bench.* If no way can be found of making such an example, Parliament should interfere. No doubt the Ministry would be willing to promote an act of simple justice if the Bench would unanimously recommend some such method of UPHOLDING ITS HONOUR.'

Antigua Standard, October 5, 1895.

'To us, who are naturally prone to submit implicitly to the fiat of a Judge, the temerity and tenacity of Dr. Anderson appear almost superhuman ; and they are only explained by the righteousness of his cause and its relation to interests so large as to inspire confidence that success will in the end crown his efforts so strenuously put forth. For the purposes of the case now so ably espoused by Lord Stamford, Major-General Graham, Bishop Mitchinson, Dr. Ward Cousins (the President of the British Medical Association), Mr. A. M. Lee, and others (some of whom are now enlisting themselves cheerfully on the side of right and justice), we must altogether ignore the outrages to which Dr. Anderson *as an individual* has been subjected, except for the purpose of illustrating what, according to the present state of the law, may happen at any time and in any part of Her Majesty's dominions. Did the questions involved not affect the interests not only of colonists, but of the whole British people, we doubt very much whether Dr. Anderson's efforts would have availed to keep alive for one day after the decision of the late Lord Coleridge a thought of him or of his case. On the contrary, however, as expressed by Major-General Graham in a recent letter to the editor of the *Pall Mall Gazette*, the grievous wrongs complained of were "PART OF THE JUDICIAL DEVASTATION OF A BRITISH PROVINCE, *which are still maintained* IN FLAGRANT VIOLATION OF THE GREAT CHARTERS OF ENGLISH LIBERTY," and constitute

a public danger which calls for the sympathy and co-operation of Englishmen, WHEREVER DOMICILED.

The Pall Mall Gazette, November 1, 1895,
referring to a recent case, has the following trenchant remarks :—

‘Parents still believe they have some rights, and that they have an interest in the good name of the family. But they must be careful not to transgress the law in trying to do good to an individual.’

Note by C. R. D. C.—Substituting *Judges* for *Parents* and ‘harm’ for ‘good,’ is not the principle as essential?

II.—OPINIONS AND EXPRESSIONS OF SYMPATHY OF MEMBERS OF PARLIAMENT AND OTHER GENTLEMEN.

(a) *At the Conference at the House of Commons.*

MR. B. L. COHEN, M.P. : And although of course it would be folly to conceal that Dr. Anderson's action is—I will not say primarily, but incidentally—for the purpose of obtaining redress for his wrong, I consider he is doing A PUBLIC AND NATIONAL SERVICE *in vindicating the rights of a British subject against persecution by whomsoever levelled.* (Hear, hear.) Now, I have not the smallest shred of title to speak in any way in a legal capacity, but still I know sufficient law to know that a judge is—and I will add, ought to be—protected, and to occupy a position of impregnable immunity for any action which he commits in his judicial capacity ; but, is that to be interpreted, FOR THE FIRST TIME, as a protection, as an immunity for actions which, however else they can be described, cannot be called—it is a perversion to call them—in any sense of the word 'judicial?' (Hear, hear, and cheers.)

Dr. Anderson : Thank you, Mr. Cohen, for that expression of opinion ; it will live in our history.

Mr. Cohen : . . . My knowledge of these circumstances arose from a careful perusal of what I am sure is a straightforward, unexaggerated statement of the case, and I rose from the perusal of that with the conviction that Dr. Anderson, in the action he has taken, is standing up not so much for the vindication of Dr. Anderson's rights, BUT FOR THE VINDICATION OF THE RIGHT OF A BRITISH SUBJECT . . . to protection against acts which would be described, and properly described, as OUTRAGEOUS were they brought to the light of public gaze and public criticism. . . . It is a subject which, it seems to me, DOES NOT INTEREST DR. ANDERSON ONE WHIT MORE THAN IT DOES ANY OTHER SUBJECT OF HER MAJESTY Dr. Anderson

may receive from me my assurance that whenever he is good enough to think I shall be of any service to him, it will be a privilege to me to be so. (Cheers.)

Mr. Dalziel, M.P.: . . . I would like to say now, as far as I am concerned, I should be happy to examine into all the aspects of the case. I understand there are certain gentlemen who have looked into it, and they think there has been an injustice, and, if there has been, I think the time will be well spent in looking at all the different points in connexion with it, and, if we think there is a good case, we will be happy and willing to do our best TO VENTILATE IT TO THE VERY BOTTOM. . . .

Mr. McKenna, M.P.: I find myself in the same position as Mr. Dalziel. I will, therefore, content myself with saying that I ENTIRELY ASSENT TO EVERYTHING THAT HAS FALLEN FROM HIS LIPS.

Mr. W. Jones, M.P.: I recollect, some few months ago, reading all the papers relating to this matter which were forwarded to me, and they certainly produced a deep impression on my own mind that a very grave injustice had been committed. That was the reason why I attended the meeting this afternoon. IF I CAN RENDER ANY REAL ASSISTANCE IN THE DIRECTION ALREADY INDICATED, I SHALL BE GLAD TO DO SO.

Mr. J. H. Lewis, M.P.: I SHOULD LIKE TO SAY THAT MY ATTITUDE WOULD BE MOST SYMPATHETIC IN THE CASE. . . .

Dr. Ward Cousins: I appear as the President of Council of the British Medical Association, an Association which, you are aware, numbers sixteen thousand members, scattered over the world. . . . I need hardly say that the questions ARE MOST IMPORTANT AS REGARDS THE SERVICES OF MEDICAL MEN; that they have a right to select how their services shall be administered, and also the right to retire under various conditions in which they think retirement is desirable. I am quite sure that the questions involved in Mr. Anderson's case DEEPLY AFFECT THE WHOLE MEDICAL PROFESSION AND ITS RIGHTS AND PRIVILEGES; but they go further still (hear, hear), they touch the civil rights of every British subject. . . . I feel that the position he has taken up in fighting this battle IS ONE FOR WHICH THE WHOLE MEDICAL PROFESSION MUST FEEL AN INCREASING SYMPATHY I hope that the few words that I have the honour to

say to-day, as representing the British Medical Association, will be of some comfort to him. (Cheers.)

(b) *Letter from Mr. Henry Kimber, M.P. for Wandsworth :*

‘ Civil Rights Defence.

‘ MY LORD,—I have read with great interest the enclosures in your favour of May 16, and, as a lawyer as well as a citizen, I think that the injustice pointed out in the *Anderson v. Gorrie* case is one which ought to find a remedy.

‘ Your Lordship’s obedient servant,
(Signed) ‘ HENRY KIMBER.

‘ The Rt. Hon. Lord Stamford, House of Lords, S.W.’

III.—MR. ANDERSON'S NOTICES OF MOTION IN THE COURT OF APPEAL.

(a) *Abstract of first Motion, dated July 25, 1895.*

That that which is or purports to be the judgment of the Court of Appeal of August 7, 1894, on appeal from the judgment of the late Lord Chief Justice Coleridge on the trial, be set aside or discharged as irregular, or as null and void, or as voidable; and that Plaintiff's appeal from the judgment of the late Lord Chief Justice be entered in the list for hearing, and *be heard and determined* as this Honourable Court may direct, on the grounds that the Court was not legally constituted, and did not give judgment on August 7, 1894, on Plaintiff's appeal by reason that Lord Esher, Master of the Rolls, who presided, was interested in what purported to be the decision then given, being a Defendant in a similar action then depending—*Yeatman v. Soden and others*—in which damages were claimed for alleged slanderous words spoken by him whilst sitting and acting as a Judge, of and concerning the Plaintiff Yeatman, but in a matter alleged to be *coram non judice*; which action had been stayed as frivolous and vexatious; *that an appeal from the orders staying the said action was then depending at the instance of the Plaintiff Yeatman*, being in effect a motion that the said action against Lord Esher should be permitted to proceed to trial; which circumstances disqualified Lord Esher from adjudicating on Plaintiff's appeal by reason of his interest in the decision to be given: *and that all leave or extensions of time, or other directions as may be necessary, be given.*

The *Times*, August 2, 1895 (Law Reports).

(Before the MASTER OF THE ROLLS, LORD JUSTICE KAY,
and LORD JUSTICE A. L. SMITH.)

ANDERSON *v.* GORRIE.

This was an *ex parte* application with regard to an appeal which was heard in this Court on August 7, 1894. The appel-

lant, Dr. Anderson, had served notice of motion to have the judgment then delivered set aside as being a nullity, and, in substance, to have the appeal reheard. That motion had been set down by the officer of the Court in the list as an original motion to come on for hearing next Monday.

Mr. Adam Walker (Mr. Harold Hodge with him) now applied for leave to serve short notice of motion on the appellant, that his notice of motion might be struck out as being an abuse of the process of the Court.

The Court ordered that the entry of the appellant's notice of motion should be struck out. Dr. Anderson wanted this Court to reconsider its own judgment. His proper course would be to make an application to the Court itself for that purpose.

(b) *Abstract of second Motion, dated August 8, 1895,
to be heard August 12, 1895.*

That the Order dated August 1, 1895, obtained by Defendant *ex parte* and without notice to Plaintiff, striking out the foregoing notice of motion, be discharged, and that the said notice of motion be restored to the list, on the ground that the said *ex parte* order was obtained by misrepresentation and concealment of the facts, and deprived Plaintiff of his right of access to the Court, and to be heard in support of his said motion; and (as aforesaid in first motion) that the Court was not legally constituted by reason of Lord Esher's disqualifying interest, and that it is contrary to law that he should take part in any matter in which the validity of his own judgment, his competency, and his interest are brought in question, and that the Plaintiff's notice of motion asked for all necessary leave, directions, or extension of time, and ought not to have been struck out in his absence and without notice of Defendant's application being served upon Plaintiff.

' 30 Montague Place, London, W.C., August 7th, 1895.

' THE RIGHT HON. THE LORD ESHER, M.R.

' MY LORD,—I enclose copy of notice of motion I have served on the Defendant, Mr. Cook, in my action against him,

and am about to file, and in case, as I suppose, the terms of my notice of motion of July 25th were misrepresented to the Court of Appeal on Thursday, 1st inst. (*vide Times*' report of 2nd inst.), a copy of that notice also, which you will observe is not in any sense for a re-hearing.

'It is my intention, should you propose to sit and take part when the present motion comes on for hearing, to take objection to your Lordship's competency to do so, and in order, if possible, to save the necessity of doing it in public, I think it due to you to inform you beforehand of my intention. In doing this I have not the least wish to be disrespectful, but act as I conceive in the pursuance of my right, and in a proper spirit of regard for decorum.

'In these proceedings you will, I am sure, perceive that, as regards your Lordship's part in them, I refer only and strictly to the question of legal competency.

'I have the honour to be, my Lord,

'Your Lordship's obedient servant,

(Signed) 'R. B. ANDERSON.'

'30 Montague Place, London, W.C., August 7th, 1895.

'THE RIGHT HON. THE LORD HALSBURY,
LORD HIGH CHANCELLOR.

'MY LORD,—I enclose for your Lordship's information copy of a letter addressed to the Right Hon. the Master of the Rolls and copies of enclosures therewith, and, in case his Lordship should still propose to sit and hear the motion therein referred to, I beg very respectfully to request your Lordship's intervention in protection of my constitutional rights, and of public interest and decorum.

'I have the honour to be, my Lord,

'Your Lordship's obedient servant,

(Signed) 'R. B. ANDERSON.'

'Royal Courts of Justice, Room 136, 9th August, 1895.

'ANDERSON v. GORRIE.

'SIR,—With regard to your notice of Motion for the 12th

inst. left by you yesterday, I send (on the other side) a copy of the notice I have to-day received from the appeal Judges.

'R. B. Anderson, Esq.'

'EDMOND W. HULL.'

'COPY INDORSEMENT ON NOTICE OF MOTION.

'By order of the Court this Motion is not to be placed in the paper.

'A. L. S.'

'August 9, 1895.'

'30 Montague Place, London, W.C., August 9, 1895.

'ANDERSON *v.* GORRIE AND OTHERS.

'SIR,—I beg to request that you will draw up the order of the Court of Appeal of Thursday, 1st inst., directing that my motion dated July 25, 1895, be struck out; and also that of to-day directing that my motion for the 12th is not to be placed in the paper.

'I will attend at one o'clock to-morrow, Saturday, 10th inst., to take up the orders and pay the fees for them. I require them for the purposes of my appeal to the House of Lords.

'I am, Sir, your obedient servant,

(Signed) 'R. B. ANDERSON.'

'To the Chief Clerk of the Court Order Department, Room No. 468, Royal Courts of Justice.'

On application on August 10, according to the terms of his letter, Mr. Anderson was informed by the Clerks of the Court Order Department that the Court had merely given a direction and not made an order, and that no order could be drawn up.

(c) *Proceedings of the Committee and of Mr. Anderson in a personal application to the Court of Appeal to constitute a Court, in the absence of Lord Esher, to hear Mr. Anderson's motions (a and b, p. 33, 34).*

'30 Montague Place, W.C., October 17th, 1895.

'TO THE RIGHT HONOURABLE THE PRESIDENT, AND TO THE MEMBERS OF THE CIVIL RIGHTS DEFENCE COMMITTEE.

'MY LORD AND GENTLEMEN,—In order to leave no method

untried to obtain a hearing of my appeal of May 1894, it is necessary that I should, at the earliest opportunity, make a personal application to the Court of Appeal to hear the motions I have filed, and which the Court has refused to hear ; or, in the terms of my first motion, for such leave to make such application, or such amendments, as may be necessary.

‘I am advised that in taking this step in the position in which I am placed I incur grave risk, both of indignity and of misrepresentation, and I feel it proper, before doing so, to place the matter before you.

‘I have the honour to be,

‘My Lord and Gentlemen,

‘Your obedient Servant.,

‘R. B. ANDERSON.’

C. R. D. C.

EXTRACT FROM MINUTES OF OCTOBER 21, 1895.

Mr. Anderson explained, in the terms of his letter to the President and Committee, that it is necessary for him to make a personal application in the Court of Appeal, but that he is advised that in doing so he will incur risk of misrepresentation and indignity, and that he is strongly advised not to do so, except he be as far as possible assured against these possible results.

After discussion it was resolved :—

‘That as it is necessary for Mr. Anderson to make personal applications to the Court of Appeal in respect of his appeal of May, 1894, and of his motions of July 25 and of August 6, 1895, to hear the same ; and for the hearing of the said several matters ; to which, as the Committee is advised, he is of right entitled ; and as it is not always possible to rely under such circumstances upon the reports in the public papers : it is most desirable that members of the Committee and their friends should be present ; and that the journals which have taken part in defence of the rights involved in Mr. Anderson’s applications be invited to send representatives.’

It was decided that as soon as the day and hour could be ascertained, invitations be sent with the above resolution to all members of the Committee and to those journals that have chiefly aided in the work of the Committee.

' 30 Montague Place, London, W.C., October 28th, 1895.

' MY LORD AND GENTLEMEN,—I beg to place before you an account of my application to the Court of Appeal ; and in doing so, I desire to express my sense of the moral support I derived from the attendance of those members who were able to respond to the invitation of the Committee to be present.

' Their presence enabled me to sustain a position of almost unimaginable difficulty ; and on their observation I can now rely to correct or to support my statements.

' The Bench, consisting of the Lord Chancellor, the Master of the Rolls, and Lords Justices Lopes and Kay, received my application with much anger, treated me throughout with constant invective, contumely, and ridicule ; repeatedly endeavoured to mislead me, misquoted my statements and propositions, and then threw upon propositions so attributed to me, the ridicule such propositions deserved.

' Lord Esher without the least justification impugned my veracity, and though I vindicated the truth of my statement and invited him to do so, he made no attempt to repair the injury done to me. When I observed later that my application was on a strictly legal ground, and that I desired to show all respect to his Lordship, Lord Esher, without the least provocation, told me he did not desire my respect.

' From such prejudicial indignity and misrepresentation I was compelled to strenuously defend myself, to throw them off, and to correct them ; and to beg their Lordships to spare me the necessity of doing so—to afford me opportunity, according to my application, to take my objection to Lord Esher's competency, as I might with so much more regard to appearances, and at so much less disadvantage to myself, on another day and in his Lordship's absence—but quite in vain.

' I also explained that, expecting that course would be followed, as well as from accidental difficulty in obtaining books, I was not perfectly prepared ; but this also was in vain.

' Not alone from this accidental difficulty, but also, I am compelled to say, by the constant interruptions and harsh comments of the Bench, I was placed at a great and unfair disadvantage in conducting my case.

' I trust that in this difficult position I did nothing that was

not strictly necessary and within my just right and duty in self-defence ; that I said nothing that could give just cause of anger to impartial minds, or so high a tribunal ; used no argument that was not intelligible ; and cited no authority that was not in point.

‘ Yet, in giving judgment against me, their Lordships persisted in mis-stating my applications and my arguments ; assumed to regard them as absurd ; and severely censured my demeanour.

‘ Their decision was in effect :

‘ (a) That Lord Esher *could* have no interest in the result of Mr. Yeatman’s action, because it was a “frivolous” action.

‘ (b) That assuming Lord Esher had an interest in Mr. Yeatman’s action which disqualified him from adjudicating my case, and that the judgment of the Court of Appeal in the case is an invalid judgment, still that Court cannot set it aside, but it can be set aside only on appeal to the House of Lords, as any other erroneous decision.

‘ It will be seen that each of these dicta begs the whole question to be decided.

“ Let it be granted,” say their Lordships, “ that Mr. Yeatman’s action is ‘frivolous,’ and Lord Esher has evidently no interest in the decision in *Anderson v. Gorrie* or in the precedent which he created.”

‘ But whether Mr. Yeatman’s action against Lord Esher was or was not “frivolous” was the question depending in the Divisional Court, when Lord Esher, in *Anderson v. Gorrie*, made a governing precedent in his own favour ; and, till he made it, the precedent in *Anderson v. Gorrie* was against him.

‘ It is not merely begging the question, but involves a direct contradiction in terms to say, as their Lordships say :

“ Assuming Lord Esher’s incompetency, and that the judgment he took part in is ‘voidable,’ and may be set aside on appeal to the House of Lords, let it be granted that, whilst it stands, it is a judgment, that is a ‘*determination*’ of the appeal in this Court, then until it is so set aside, it being a ‘*determination*,’ this Court has no power to set it aside, and no duty to hear and ‘*determine*’ it.”

'On appeal from a valid judgment of the Court of Appeal the House of Lords can deal with the merits and pronounce judgment on them, and the appeal is not remitted to the Court of Appeal or again dealt with in the Court of Appeal. Such a judgment of the Court of Appeal is a "determination" of the appeal in the Court of Appeal, *because* it is a decision and a termination *for ever*, so far as that Court is concerned.

'On appeal from a "*voidable*" judgment of the Court of Appeal, the House of Lords can only make void the voidable judgment, but cannot deal with the merits or pronounce judgment on them, and the case must be remitted to the Court of Appeal for a valid judgment to be pronounced.

'A "*voidable*" judgment of the Court of Appeal, therefore, is not a "determination" which means *decision and termination* of the appeal in the Court of Appeal, because the case has to be again brought back to, and dealt with by, the Court of Appeal.

'To say that it is a determination *till* the House of Lords makes it void, is to say that it is a "temporary" determination, which is contrary to the meaning of "determination," or that it both is, and is not, a "determination"—a mathematical impossibility.

'Under the 19th section of the Judicature Act (1873), the Court of Appeal has all powers necessary to enable it to hear and "determine" an appeal. It has, therefore, the power to set aside a "*voidable*" judgment; for until that is done, it cannot "hear and determine" the appeal.

'To say that it has not this power, but that in case of a voidable judgment litigants must go twice to the House of Lords—once to get the voidable judgment set aside, and again on the merits—is in direct contravention of the 19th section of the Judicature Act, 1873, and is not only absurd, but, in the language of Lindley, L.J., in *re Swire*, it is "shocking" (p. 10).

'Their Lordships vehemently denied, and censured me for saying that Lord Esher's interest in the decision on my case is comparable to, or on all fours with, the interest of Lord Chancellor Cottenham in *Dimes v. Grand Junction Canal Company*, by reason of which his judgment in that case was set aside.

'The House of Lords defined that interest (3 H. L. Cas.) to be "such an interest which would have disqualified a witness

under the old law." In a leading case under the old law (*Abrahams qui tam v. Bunn*, 4 Burrows' Reports) Lord Mansfield laid down* that if the evidence of a witness might establish, or prevent, a record (that is a verdict) which might affect him in another suit he would be disqualified by reason of interest from giving evidence. Substituting the words "judgment," "judge," and "precedent," for "evidence," "witness," and "verdict," the conditions are more than comparable, they are identical. Thus, "If the judgment of a judge might establish a precedent which would benefit him in another suit he would be" (under *Dimes v. Grand Junction Canal Company*) "disqualified from giving judgment."

'This principle was given effect to as lately as 1882 in *Regina v. Justices of Great Yarmouth*, which is included in the matter for our Third Interim Report (p. 47).

'I cited this case, and their Lordships referred to it, but declined to lend me the book that I might read it aloud.

'Their Lordships did not attempt to explain to me why the interest of Lord Esher and of Lord Cottenham are not comparable, but censured me and ridiculed me for submitting that they are; which is like ridiculing the proposition that straight lines that are parallel to the same straight line are parallel to each other.

'On these grounds I venture to express every confidence in the eventual result on appeal to the House of Lords.

'On Saturday my application at the Court Order Office for the order to be drawn up was assented to; to-day it is refused, and I am *referred to the Master of the Rolls*.

'To have read and filed my affidavit and placed some authorities before the Court, far from being "*a waste of public time*," is a great advantage; but I have to state in direct terms that, although I was heard I was not fully heard; and that, by the action of the Court I was embarrassed and hampered in the conduct of the case, and deprived of a fair hearing.

'In making this representation, and in my view of the cir-

* Page 2255. The objection 'went generally to the credit, UNLESS the judgment in the prosecution where he was a witness COULD BE GIVEN IN EVIDENCE IN THE CAUSE WHERE HE WAS INTERESTED' (in which case it went to the competency).

cumstances, I am greatly strengthened by the general expressions of approval, not only of members of the Committee who were in Court, and who will, I feel sure, readily express to the Committee the opinions they so kindly expressed to me, but also by that of many other gentlemen who were present, and by the general disapprobation, by those who witnessed it, of the treatment I received.

‘ I have the honour to be

‘ My Lord and Gentlemen,

‘ Your obedient servant,

‘ R. B. ANDERSON.’

‘ To the Right Hon. the President
and to the Members of
the Civil Rights Defence Committee.’

‘ 5 Mitre Court, Temple, October 28th, 1895.

‘ TO THE RIGHT HONOURABLE THE PRESIDENT, AND TO
THE MEMBERS OF THE CIVIL RIGHTS DEFENCE
COMMITTEE.

‘ YOUR LORDSHIP AND GENTLEMEN,—On the invitation of the Committee, we were present at the Court of Appeal during Mr. R. B. Anderson’s application on Thursday, October 24th, 1895.

‘ We have read the report of Mr. Anderson.

‘ It is perfectly accurate in every respect as to the facts. It was with amazement that we observed the way he was treated by the Bench. Had we not seen it, we could not have believed that in these days an Englishman, merely standing up for his rights, and perfectly courteous and respectful in his demeanour, could have been treated with so great indignity, and almost all his important propositions have been so perverted and distorted, and then subjected to unmerited ridicule in a British Court of Justice of position so exalted.

‘ Mr. Anderson preserved his temper and presence of mind, but was obliged temperately to protest against interruptions and distortions of his propositions that rendered it almost impossible to deal suitably with them, and against comments that com-

pelled him, in self-defence, to answers such as he greatly deprecated being obliged to give.

‘ We have the honour to be,

‘ Your Lordship and Gentlemen,

‘ Your obedient Servants,

‘ G. F. I. GRAHAM, *Major-General*.

‘ L. J. GREENBERG.

‘ A. ROSS CLYNE.

‘ WALTER RIVINGTON.’

IV.—THE ACTION AGAINST LORD ESHER:

The appeal in which, against the order staying the action, was pending in the Divisional Court when Lord Esher assumed to take part in the appeal in *Anderson v. Gorrie* and others. It was afterwards removed to the Court of Appeal.

'Times' Law Report, November 9, 1895.

COURT OF APPEAL.

(*Before* LORDS JUSTICES LINDLEY and A. L. SMITH.)

YEATMAN *v.* SODEN, YOUNG, PARFITT, AND LORD ESHER.

These were appeals from two orders of Mr. Justice Grantham's and Mr. Justice Mathew's respectively, dismissing the action under Order 25, Rule 4, on the ground that the statement of claim disclosed no reasonable cause of action.

Lord Justice Lindley said that the action, so far as it related to Lord Esher, was for slander, consisting of some observations which fell from him on the bench. But no action would lie against a Judge of the Superior Courts for anything said by him on the bench. This had been decided by the Court of Appeal so recently, in the case of '*Anderson v. Gorrie*' (10 *The Times* L.R., 660), that his Lordship declined to discuss the case alleged against Lord Esher. . . . The action had been properly stopped. The appeal failed.

Lord Justice Smith gave judgment to the same effect.

DICTA OF GREAT JUDGES TO THE CONTRARY.

In *Thomas v. Churton*, 2 B. & S. 475, Lord Chief Justice Cockburn asked,—

‘IF THE JUDGE OF A COURT OF RECORD DOES THIS KIND OF MISCHIEF UNDER THE GUISE OF DUTY, IS HE NOT ACTION-ABLE?’

In the same case he observed,—

‘I am reluctant to decide, and will not do so until the question comes before me, that if a JUDGE ABUSES HIS JUDICIAL OFFICE by using slanderous words maliciously, and without reasonable and probable cause, HE IS NOT TO BE LIABLE TO AN ACTION.’

In *Kendillon v. Maltby*, 2 Car. & Mar., p. 409, Lord Denman says:—

‘I have no doubt in my mind that a magistrate, BE HE THE HIGHEST JUDGE IN THE LAND, is answerable in damages for slanderous language, *either not relevant to the case before him** or uttered after the cause is at an end; but for words uttered in the course of his duty no magistrate is answerable, either civilly or criminally, *unless* EITHER EXPRESS MALICE, OR THE ABSENCE OF REASONABLE AND PROBABLE CAUSE BE PROVED.’

In *Dawkins v. Paulet*, 9 B. & S. 768, Lord Chief Justice Cockburn says:—

‘I cannot believe that judges or juries would fail to discharge their duty fearlessly according to their oaths and consciences, or witnesses give evidence less truthfully from any fear of exposing themselves to actions at law. I am persuaded that the number of such actions would be infinitely small, and would be easily disposed of; while on the other hand I can easily conceive cases in which judicial opportunity might be so perverted and abused for the purpose of injustice, *as that, on sound principle, the authors of such wrongs OUGHT TO BE RESPONSIBLE TO THE PARTIES WRONGED.*’

In *Anderson v. Gorrie and Others*:—

On the hearing of a summons to stay this action as frivolous

* By C. R. D. C. : Mr. Yeatman alleged in his statement of claim that Lord Esher’s awards were uttered in matters not before the Judge—‘*Coram non judice.*’

and vexatious, the Divisional Court (Cave and Charles JJ.), in dismissing the summons, expressed itself so strongly that the statement of claim disclosed a good ground of action that the Defendants did not appeal (*vide* First Interim Report, page 26).

At the trial the late Lord Chief Justice Coleridge stated that one of the questions to be tried was whether the acts charged against the Defendant were in the widest sense of the term 'Judicial Acts;' and the verdict was against the defendant on the pleadings: that is, THAT THEY WERE NOT JUDICIAL ACTS.

V.—NEMO SIBI ESSE JUDEX; VEL SUIS JUS DICERE
DEBET (Codex, 3, 5, 1).

(No man ought to be a judge unto himself, or to *declare* the law in his own matters.)

Applications of this great principle.

(a) LORD ESHER AND THE MAYOR OF GREAT YARMOUTH.

REGINA *v.* JUSTICES OF GREAT YARMOUTH.

February 27, 1882. 8 Q.B.D. 525.

At a special session for appeals against a poor rate, the Chairman of the Magistrates (the Mayor of Great Yarmouth), *who was himself appellant in one of the cases for hearing*, took part in the decision of all the cases except his own. When his own case was called on, he left the Bench and went into the body of the Court and conducted the case himself. On a rule for a *certiorari* to bring up all the orders for the purpose of quashing them: held by Field and Bowen, JJ., that the Mayor, being a litigant IN A MATTER SIMILAR TO THE OTHER MATTERS BEFORE THE COURT, was disqualified from acting as a justice and that the orders were bad.

Field, J., said, p. 527: ‘Under these circumstances application is made to bring up these orders on the ground that they ought to be quashed, and with great reluctance we have come to the conclusion that we have no alternative but to make the rule absolute in respect of all the orders made on the two occasions. . . . It is not enough that the conclusion arrived at was right, and that it has been arrived at on right principles, for every person having a personal interest in any litigation, *or having a direct or indirect motive* for desiring a particular decision to be come to, SHOULD ABSTAIN FROM PUTTING HIMSELF INTO SUCH A POSITION *as that, unconsciously to himself*, A BIAS ADVERSE TO THE DUE ADMINISTRATION OF JUSTICE *might take possession of his mind*. . . . The reason for this is plain, *for it is impossible to measure the effect that such a bias may produce.*’

(b) LORD ESHER AND LORD CHANCELLOR COTTENHAM.
 DIMES v. THE GRAND JUNCTION CANAL COMPANY.

In the House of Lords, *Lord Campbell, C.J.*, said (3 H. L. Cas. 759):—‘It is of the *last importance* that the maxim that “no man is to be a judge in his own cause” should be HELD SACRED; and that is not to be confined to a cause in which he is a party, but *applies to a cause in which he has an interest*. . . . We have again and again set aside proceedings in inferior tribunals because an individual who had an interest in a cause took part in a decision; and it will have a most salutary effect on those tribunals when it is known that this high court of last resort, in a case in which the Lord Chancellor of England had an interest, considered that his decree was, on that account, *a decree not according to law*, AND SHOULD BE SET ASIDE. This will be a lesson to all inferior tribunals to take care not only that in their decrees they are not influenced by their personal interest, BUT, TO AVOID THE APPEARANCE OF LABOURING UNDER SUCH AN INFLUENCE.’