

*Correspondence with the Judge Advocate, Court of Criminal Jurisdiction, New South
Wales*

(Copy)

Judge Advocates Office Sydney

23^d January 1817

Sir/

I have to acknowledge the receipt on the 28th Inst[ant] of your Letter, dated the 17th Ins[an]t, on the subject of "Philo Free's Letter, in the Sydney Gazette", and in reply, which would have been returned sooner, but on account of my absence from Sydney in attendance upon the Native Institution at Parramatta, I have to express rather surprize, that you should have thought fit to have considered me as the proper medium for any observations or answer you may feel disposed to make upon the conduct or communication of M^r Sec[retar]^y Campbell— and still more, to devolve upon me the duty of preferring any request you may be desirous of submitting to the Governor in that respect. The consideration due to them as well as myself, urges me however altogether to decline the office of making any such communication whatever upon the subject, which it seems to me could indeed only with propriety and due respect, be made directly by yourself. —

As in the personal interviews which have taken place between us on the present Subject, and even particularly in your last, when you delivered to me the Letter now before me, it was matter of particular care and frequent mention with you to express your total Ignorance of the law, and of all the necessary steps to be taken in relation to the Exigence of your purpose, I am obliged now with regret

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indeed, to conclude, that all the observations made in the remaining part of your Letter, and which are so completely of a legal nature and tenor, should in Justice be attributable not to yourself

The Rev^d Sam^l Marsden

&c &c &c [f]

but some adviser, who presuming himself qualified to Instruct you on the occasion, has led you unwarily to commit yourself in not observing that proper respect, which I would believe, you never would intentionally forget to pay to that office I have the honor of holding in this territory – for might I not leave it to your own candour and Judgment on reflection to resolve, whether considering my Station and your own in this Colony as well as the particular circumstance of the Subject in question, it could reasonably or becomingly be suggested in complaint, that due respect had not been had to your rank and situation, when in truth such considerations ought not in the first instance to have had any influence or weight in the previous necessary determination, how far the libellous Letter referred to have been directed against or to have designated any particular Individual, and in the result, an ability to trace being precluded all consideration of Character or Situation. The charge too, that the same Indulgence had not been granted you as usual to any British Subject, cannot justly or consistently surely be made, when the whole merit of the application and acquiescence depend, not upon the custom and rules of practice prevailing in the English Courts of Law, but entirely upon a

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distinct local Jurisdiction especially committed to and vested in a peculiar Authority – nor can I think that it would be esteemed respectful or proper in any Individual to adopt the Language of remonstrance and at length the presumed merit of “waving all objections” on a point, which is solely referable to and wholly determinable by the exercise of that discretion, which is entrusted by the Government to the Judge Advocate of this Territory. – [f]

I cannot therefore but derive satisfaction from the belief, that these unwarrantable suggestions have not originated with, nor on consideration will be approved by yourself, and I will content myself with merely expressing the hope that on future occasions you will only more cautiously adopt any advice which may be offered from the same quarter – the Person, I care not who he may be who has thus ignorantly or mischievously misled you, is below consideration and therefore of displeasure or reproof – total avoidance indeed is the best remedy, as only certain security from the influence of mischievous conceited officiousness.

With respect to the law stated as applicable to the Complaint in question. –

“The objects of the King’s own prosecutions filed

“Ex officio by his own Attorney General, are

“properly, it is laid down, such Enormous

“Misdemeanours, as peculiarly tend to disturb or

“endanger his Government, or to molest and

“affront him in the regular discharge of his

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“Royal Functions— for offences so high and

“dangerous, in the punishment or prevention

“of which a moments delay might be fatal—

“the law has given to the Crown the power of

“an immediate Prosecution, without waiting

“for any previous application to any other

“Tribunal”. Upon the force of this principle

it has been the Practice in England for his Majesty’s Attorney General, of his mere motion and consideration, and be it observed only when he determines the occasion fit and proper, to file criminal Information for Libels on the crown or Government— but in no solitary instance I will venture to affirm, in respect of a libel upon any [f] Individual, except the members of the Royal Family, or the highest Character in the State, or Government— much less as you have been induced to State, in cases “attended “with less aggravated circumstances, than that of which you complain” — On the relation of any private person under any circumstances, it rests wholly in the discretion of the Court, upon what Terms or Affidavits, it will be pleased to grant the criminal Information prayed for; although the Court has of late adopted as a general Rule, that the party applying shall first make affidavit that the charges contained in the supposed Libel are not only directed against the particular Individual, but that the same are false and unfounded in Fact.

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It is not however a question here, Sir, what may be the law in England, or the particular practice of the Courts there as to granting criminal Informations, that especial Jurisdiction here is by the Charter committed to the Judge Advocate, and he is not to be responsible for any determination, nor fitly to be subject to the observations of any person affected by it, for the decision he may think it his duty to make in the Exercise of the discretion confided in him,— With the Judge Advocate in this Territory, as with the Attorney General in England wholly rests this paramount determination. On your case I did indeed bestow much of consideration and attention however seriously or variously otherwise than Engaged— or however lightly at present seemingly had in acknowledgment or consideration— in the result I deemed it necessary to call upon you to make affidavit not of denial, but under the particular circumstances only, of your belief, and as you again and again suggested that you could without difficulty get [f] any number of persons to depose to the same Effect, of two or three Friends, the Letter and matter complained of as libellous in the Government Gazette was directed against and intended to designate yourself— how then am I to account for, or tolerate the Statement, so indecorously because so untruly alledged in your Letter, that I had expressed myself as “not considering myself warranted in my official capacity to prefer a public Indictment”, when over and over again I personally declared, as I professed in my Letter, that I should very readily exhibit at the next Court of Criminal Jurisdiction any proper charge you might have in desire to

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present— no difficulty whatever, as falsely suggested. I am satisfied, by your adviser, and incautiously adopted by yourself, was at any moment raised by me against your complaint being heard —

In England certain beneficial consequences result from a Criminal Information being filed Ex officio by the Attorney General, but in our Court there are no particular advantages from the Judge Advocate officially exhibiting the Information, without the intervention of the party — be then your charge preferred as suggested, which on my part has received nothing of disapprobation or impediment, and with respect to which I am still as I have constantly expressed myself to be, ready and willing to afford you any proper official assistance — but as I have to perform the duty — which devolves not, be it remembered upon the Attorney General in the English Courts, not only of Exhibiting, but of sitting in future Judgment upon the case, I can have no doubt, but that with me you will feel it [f] necessary to abstain from all further communication on its merits, so as to leave me to that unbiassed Judgment and Independence, which can alone, and I trust will enable me to discharge with conscientious fidelity an office of such high responsibility and obligation —

I have the Honor to be

Reverend Sir

Your very Obed^t Hble Serv^t

(Signed) J^{no} Wylde

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Judge - Adv^e N. S. W

To/

The Rev^d Sam^l Marsden

Principal Chaplain

&c &c &c

A true Copy

Samuel Marsden J.P. [f]

Parramatta January 28th 1817-

Sir,,

First_ It is extraordinary that Mr Judge Advocate Wylde should express surprise at being made the medium of Communi-cation, when he himself sent Copies of Mr Campbells Letters and also the Governors, and for what Purpose they were so sent accept to draw out some answer, it would be difficult to guess. Secondly. I do not know wherein I have shown a want of Respect to Mr Wylde; I feel justified in saying, that considering my Rank and Station in the Colony, (to use his own words) he has displayed a want of Regard to me, as a Clergy man, and Principal Chaplain in the Colony in which Respect, Mr Wylde who stands so much upon his own dignity ought to have been the last to have been deficient towards others. He seems indeed to have conjured up the Advisor he alludes to, in order under the

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Appearance of dealing his Blows at a Shadow, he may inflict them with less discredit to himself, on me. _ Thirdly. If the Point is solely referable to the Judge Advocate which I can by no means admit; for it is in the Power of the Criminal Court when it meets, to order any Information to be filed; there required little to have been said, and less written upon the Subject. But Mr Wylde himself doubts his own Jurisdiction and called upon me to State, whether any Reason had ever been presented in this Colony for a Libel; and there is little doubt, that had it not been clear, that himself and those in the highest Station would not escape libellous Attacks if such a Proposition was held to be Law - (that a Libel could not be tried in the Colony) but that a total Stop would have been put to the Proceedings that I wished to institute in vindication of my Reputation. I would then Ask if Mr. W. was the sole Reason to whom this Point was referable, why he communicated with the Governor, or any other Person on the Subject._ Fourthly_ If the Advisor is beneath displeasure, or Regard, [f] why does he show the one, and attempt the other; and if the Observations display ignorance, why does he express Surprise at their legal Terms, where nothing more could have been expected from me, not professing legal Knowledge._ Fifthly._ We know very well that the Attorney General never files ex-officio Informations, except for attacks upon the State, upon public morals the members of the Royal Family, and the highest Characters in the State or Govern=ment_ I think he will allow that I fill as high a Station in the ecclesiastical department in this Colony, as he does in the Law and I should think

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it an Attack upon the religious Establishment to call the Principal Chaplain a Christian Mahomet; and most certainly Informations have been filed by the Attorney General in less aggravated Cases, making allowance for the Inferiority of Colonial Appointments._ I am well aware that it is in the descretion of the Court of Kings Bench upon what terms they will grant criminal Informations, and that the general Rule is, that the party applying should not only make affidavit, that they are directed against him, but that they are false and unfounded. I made my Application to Mr Wylde in Strict Conformity to that Rule; no Criminal Court being sitting at the time. Sixthly._ I deny that the especial Jurisdiction here, is committed Solely or at all to the Judge Advocate. It rests with the Court of Criminal Jurisdiction, But the Practice has gradually been introduced of applying to the Judge Advoc because he is directed to reduce the Charge into Writing and exhibit the Same, and he is in the respect the ministerial Officer of the Court, and answers to the Master of the Crown Office in the Kings Bench. _ No observations were made by me on Mr Wyldes conduct but he himself thought it right to State his Grounds of acting in a long Letter, which produced my Answer._ It does not rest Solely with the Attorney General, Mr Wylde must forget the Court of Kings Bench. [f] Affidavits of denial were tendered by me in the first Instance and if such Affidavits were unnecessary, and out of Course, their being offered, was no Reason why they should be required absolutely and exclusively_ Mr Wylde forgets that he said, any Individual would pause before he made one, which was an

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extraordinary Statement after I had made one already, and had stated that five hundred others were ready to do the same if necessary, and men of the first Rank and Respectability in the Colony, Seventhly. With regard to what Mr Wylde states, in indecorously and untruly alledged. This Statement is his own, and the words he quotes within inverted Commas, as copied from my Letter, were taken by me from his own. I did not think it necessary to make the Quotation in the Same manner, not conceiving he could possibly so soon forget his own Statement, and so far from being falsely stated or incautiously adopted, the very Statement is taken from his own Letter to which I refer. Eighthly I do not know why I am to be obliged to him for his mature Consideration of the Subject, that was in him a point of duty and for his own Reputation; with Regard to his Readiness to exhibit any proper Charge, that leaves Room for evasion and it is no where explicitly Said, that the Libel was a proper Subject for a Charge in that it would be exhibited. Ninthly. Mr Wylde here tenders that official Assistance, which in a long Letter he had declined to render officially and even stated his Grounds at Length. Tenthly. I have merely asked Mr Wylde to file himself or to allow me to file in his name an Information against the Printer of the Sydney Gazette for a Libel, which latter alternative was the only one to be adopted, except an Application to the Court when it met and which Mr Wylde in my opinion should at once have acceded to, unless he meant to prevent any Information of any Kind being filed without his previous Sanction, all the difficulties therefore originate with Mr Wylde. Mr Wylde

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wrote to the Governor, he wrote to the Secretary Mr [f] Campbell, he seemed to doubt his own Jurisdiction, he refused officially to assist, and gave his Reasons at length, and he created Confusion and disension where every thing was simply and plain._ The Letter "Philo Free" of which I complained, has been published in the Sydney Gazette, the whole Colony knew that the writer meant me, by the words Christian Mahomet, as well as in many other Parts that Insinuations were levelled at me; all that I requested of Mr Wylde was, that he as Judge Advocate would direct me how this Subject might be brought in proper form before the Criminal Court. I did not want to know the Governors opinion or Mr Campbells._ Mr Wylde consulting them was an Act entirely of his own._ Eleventhly_ I have always left Mr Wylde to his own unbiassed Judgement, and I agree with him, that as he has to sit in future Judgement, it would be desirable that he should abstain from ex parte Communications_ Mr Wylde has had nothing from me but the depositions necessary to found the information upon, and which as all Crimes are proceeded against in this Colony by Information drawn and filed by the Judge Advocate he must see in ever Case it is an anomaly productive of Serious evil. The late Judge Advocate, who was a great and wise Man pointed this out in a Letter printed by order of the House of Commons, and it was one of the main reasons of his ceasing to preside as Chairman of the Weekly Bench_ an office which Mr Wylde voluntarily resumed, and by that means has placed himself under the necessity of constantly hearing ex parte Statements, in Cases in which he may have to sit in

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future Judgement. So long back as the Year 1810, the late Judge Advocate lamented that the necessities of the Colony obliged him to preside at the Benches of Magistrates, and deprecated this Severely, as he was convinced it was scarcely possible that a man could preserve his Judgement unbiassed. I have heard him repeatedly express his feelings upon this Subject, and at length he resolved under this Conviction to retire altogether from the Bench, which he did. I think before Mr Wylde had said so much upon this point, he should have maturely considered what he was doing every Day._

The above Observations made on Mr Judge Advocate Wylde's Letter was intended as an answer to it, but I have not deemed it necessary at present to transmit them.

Mr Wylde's Letter is dated Jan^y 23^d 1817. [f]

To the Court of Criminal Jurisdiction }

New South Wales }

Gregory Blaseland of the Home brush farm in the Said Territory Esquire being duly Sworn upon the Holy Evangelists maketh Oath and Saith That he this Deponent has seen and read in the public Newspaper called the Sydney Gazette of the date of the fourth day of January Instant, a certain Letter addressed "to the Editor of the Sydney Gazette" and Subscribed with the name or designation "Philo Free" a Settler at Bradley's Head,, and Dated the 4th day of January 1817. In which Letter or publication is contained among other things the following words_ that is to Say "The active exertions of him who is the worthy head of these Sectarian

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Visionaries or Missionaries (which ever you Please Mr Editor) in propagating the Gospel by such means, and transmission from time to time of Muskets and Cutlasses, will no doubt redounds much and highly to the Honor of the Christian Mahomet and of the Church so planted whilst the pecuniary advantage of the chosen few will not be altogether overlooked." Those who bolt the Pork and profits should in my opinion unbolt their Coffers and bear also the expenses of their Gospel Venders and Bacon Curers, and for myself I shall be well content to see them possessed equally of the exclusive honour of Evangelizing by Such means the New Zealanders, the Otaheitans, the Eimeoaans &c &c._ I do not wish to see man in every Garb or under any Mask or pretence whatsoever, arrogate to themselves such consequential Airs of importance for acts of public beneficence, which they have never exhibited in their private Lives, still less if possible in their public Characters towards the abject Natives of New South Wales - True it is that those people are not yet qualified or enabled to make other returns than those of humble gratitude and peaceful demeanour- and [f] These perhaps are not worthy of being recorded in the faithful pages of an Eclectic Review, with the exalted Needs of the Evangelizing heroes whose never dying fames are there trumpeted forth."

And this Deponent Saith that he has carefully and maturely read and Considered the Said Letter and every part thereof and verily Believes and has no Doubt, that the Rev.^d Sam.^l Marsden Principal Chaplain of this Colony is meant and intended to be described and alluded to in particular by the words. "Him who is the worthy

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head of these Sectarian Visionaries,, or Missionaries” also by the words Christian
Mahomet as well as by the entire of that part of the Said Letter herein before Set
forth._

N.B. This is a Copy of Gregory Blaseland Esquire Deposition and Similar to the
others that have been taken upon the same Subject before Mr Judge
Advocate Wylde. In January last._