

PAPERS

RELATIVE TO THE

CONDUCT OF BUSINESS IN THE RESIDENT MAGISTRATE'S COURT

AT AUCKLAND.

(Return to an Order of the House of Representatives, No. 39-72, dated 3rd October, 1872.)

“That a copy of the Correspondence that has passed between the Government and Maurice Foley, of Auckland, in reference to decisions of the Resident Magistrate at Auckland, upon cases brought by Foley before the Resident Magistrate's Court:

“Also, all Correspondence between the Government and W. L. Rees, of Auckland, in reference to complaints made by him against the same officer,—be laid upon the Table.”

(Hon. Mr. Stafford.)

WELLINGTON.

—
1872.

PAPERS RELATIVE TO THE CONDUCT OF BUSINESS IN THE RESIDENT MAGISTRATE'S COURT AT AUCKLAND.

No. 1.

Mr. M. FOLEY to the Hon. the COLONIAL SECRETARY.

SIR,—Auckland, 26th August, 1872.

I have the honor to bring before you notice Mr. Beckham's conduct with regard to some cases in which I was concerned, and which form the subject of this complaint.

Mr. Beckham's decision on each of these occasions, and the remarks he made during the hearing of the cases, have tended greatly to injure my business by casting a doubt on my character, in consequence of which I have determined to make this complaint.

I have been nine years in the Colony of New Zealand, and have carried on the business of a grocer and a tea dealer for the last five years in the city of Auckland. In the course of my business as grocer, I was dealing with a merchant named W. J. Vance, and was supplying his family with groceries, and also two of their friends. They were in the habit of paying their accounts monthly or quarterly, as suitable. Mr. Vance's brother, Mr. Richard Vance, his brother-in-law Mr. Booker, and a friend, Mr. Evans, were residing in one house, and sent their housekeeper to my store for goods. Mr. Richard Vance also called and ordered a certain class of goods to be sent, which I agreed to do. The goods, as ordered, were sent to their place of residence, either by my servant or myself, but in most cases sent through their housekeeper, who was in the habit of calling at my store for them. On several occasions I sent in my accounts for the goods so supplied, and payment was promised. I saw Mr. Richard Vance, who requested me to make out their account in full and send it to them. I did so; and when Vance received it, he said, "It shall be settled on Wednesday." Another of the defendants, Evans, called about the account, and said, "We did not think we owed you so much," and produced a bill saying, "I received this from the housekeeper, and thought this was the amount we owed you," and that he would like to see the housekeeper before settling the account. A day or two afterwards I saw one of the defendants, Vance, who said his partners were not willing to settle the account, but that he was, and would pay his share or give £4, which I would not accept, as I required the whole, and told him that I considered him the responsible person, as he came to my shop and ordered the goods to be sent. Having waited some time with the expectation of receiving the amount of my account, I took out a summons in the Resident Magistrate's Court, Auckland, against Vance, Booker, and Evans. Before the case came on for hearing, the defendants offered to pay half the amount, which I declined to take.

The case came on for hearing before Thomas Beckham, Esquire, Resident Magistrate, on the 28th day of October, 1870, when I myself with my witnesses, together with two of the defendants, Vance and Evans, appeared. I with truth affirmed that the goods specified in my bill of particulars were supplied at the request of the defendants, and delivered either by myself, my servant, or to the housekeeper as before stated. The defendant's housekeeper also corroborated my statement, and also said that all the articles in the bill of particulars were supplied and consumed in the house of the defendants.

On the part of the defendants, two of them, Vance and Evans appeared, and swore that they were not indebted to me for any goods, as they had not required any from me, and produced a book purporting to show their dealings with another grocer, in which were entries for similar articles on the same date as specified in my bill of particulars, and it would have been impossible for them to have consumed the goods stated to have been supplied by both grocers on these dates, and that they always paid their tradesmen's accounts, and produced a book in proof of that statement. The defendant Booker did not appear in answer to the summons. I had an impression that the said Resident Magistrate, Thomas Beckham, Esquire, had from the commencement of the hearing imbibed a prejudice against me, and under these feelings, by the advice of my counsel, I consented to accept a nonsuit.

On the 2nd day of December following, having obtained a fresh summons against the three defendants, the case again came on before the Court, Booker again not appearing, and Thomas Beckham again presided. Previous to the cause coming on for hearing, an offer was made by defendants' solicitor to pay half the amount sued for, which offer was declined. Proof was produced to the Court that the goods were supplied by the defendant's order. This was also proved by four or five witnesses, friends of the defendants.

In cross-examination, defendant Vance admitted having my bills in his possession for a considerable time, and admitted the debt, saying that they were agreeable to pay the account. He also produced receipts which proved that the entries in the books he kept were all false, and that his statements in his previous defence were false.

In cross-examination, defendant Vance stated that he went to my shop, but did not know whether he ordered the goods or not. He acknowledged promising to settle the account at different times.

The said Thomas Beckham, Esq., as such Resident Magistrate, evidently showed, on the second hearing, a strong leaning towards the defendants, and was again particularly disposed to disbelieve, not only my evidence, but also that of the witnesses called in my favour, and eventually gave a verdict for the defendants as the account had not been paid before. My counsel remonstrated with Mr. Beckham, stating that accounts had been furnished and payments promised, and, no payment having been made, I was compelled to summon; to which Mr. Beckham made no reply. This decision caused much

surprise even to the counsel for the defendants, as well as other counsel who were in Court, and which they expressed to me at the rising of the Court. I was at a loss of about £25 expenses out of pocket, beside the debt. I requested my counsel to appeal, as he stated the decision was wrong, but he declined to do so. I had the opinion of other counsel, who informed me that it was very likely he did not want to offend Mr. Beckham.

I had been supplying William Porter, of Auckland, with groceries for a period of three years; and a sum of £15 18s. 8d. having become due to me, I declined to give him any further credit, and, being unable to obtain payment, I was obliged to summon him for the amount. The case came on for hearing in the Resident Magistrate's Court before the said Thomas Beckham, Esq., on the 26th day of May, 1871; and previous to giving my evidence, Mr. Beckham addressed me, and warned me to be very careful, saying, "You brought a case here before," and shook his head, seemingly implying that my evidence in the former case was false. I then swore to the correctness of the bill of particulars filed in the case, and produced my account book wherein the articles furnished were entered, with the dates on which they were obtained, and this evidence was also confirmed by another witness on my behalf.

The only evidence offered on behalf of the defendants was their own, which merely consisted of their swearing that they did not owe me anything—that the claim was unfounded and falsely made, and added that they paid their accounts every Saturday, but could not produce any receipts for any money paid me during the time they had dealt with me; and previous to this they had confessed to several parties in town that they were in my debt. Mr. Beckham, as Resident Magistrate, took time to consider his decision, and in a week or thereabouts gave judgment against me, each party to pay their own costs.

This case cost me about £10 in expenses, and since the above date Porter's family have told several persons in town that I had been endeavouring to obtain money for goods which I had never supplied—all this being caused by Mr. Beckham's decision and remarks.

I consulted a solicitor about prosecuting Porter for perjury, and he informed me that it was quite evident that Mr. Beckham had some animosity and ill feeling against me, as appeared by the manner he had decided the cases I brought before him, and said that if Mr. Beckham was presiding Magistrate when the charge came on, he might again decide the case against me by dismissing the charge. The manner in which Mr. Beckham gave judgment in the cases, and especially the remarks he addressed to me previous to hearing Porter's case, tended greatly to injure my business, and I submit that Mr. Beckham had no right to decide the case in favour of Vance and Co. after their own evidence was given admitting the debt; Mr. Beckham, by his decision, implying that I had sworn falsely.

I may state that it is quite useless for me to summon any person for debts due to me before Mr. Beckham, and am consequently without remedy against parties indebted to me.

There are several sums of money due to me by different parties who are not inclined to pay unless compelled, and which I should be able to recover could the cases be brought before a Magistrate sitting in the place of Mr. Beckham.

In consequence of the facts before stated, I respectfully request that the Government will cause an inquiry to be made into the subject of this complaint.

I have, &c.,

MAURICE FOLEY,
Grocer and Tea Dealer, Victoria Street, Auckland.

The following is a copy of an advertisement inserted by me in the *Daily Southern Cross* newspaper, dated 21st June, 1871:—

CHALLENGE.—I challenge any one to prove that I have in any way wilfully wronged any person out of a single shilling. Any one that can prove I have done so, I guarantee to pay to them five or ten times the amount of that which is proved I have wronged the person or persons of.

Auckland, 20th June, 1871.

MAURICE FOLEY,
Grocer, Victoria Street.

No. 2.

Mr. R. G. FOUNTAIN to Mr. M. FOLEY.

Colonial Secretary's Office (Judicial Branch),
Wellington, 12th September, 1872.

SIR,—

I am directed by Mr. Sewell to acknowledge the receipt of your letter of the 26th ultimo, complaining of decisions given by the Resident Magistrate at Auckland, in cases heard by him last year and the year before, in which you were interested; and in reply to inform you that the Government cannot take upon itself to review the decisions of Magistrates, and that, as you were in one case represented by counsel and in the other took legal advice, you should have availed yourself of your legal remedy at the time.

I have, &c.,

R. G. FOUNTAIN,
(for the Assistant Law Officer.)

Mr. M. Foley, Auckland.

No. 3.

Mr. W. L. REES to the Hon. the COLONIAL SECRETARY.

Auckland, 23rd September, 1872.

SIR,—

Some time since I wrote to you complaining of the conduct of Mr. Thomas Beckham, Resident Magistrate of this place. To that communication I received an answer that, as a rule, the Government did not enter into such complaints. I must now, however, again ask the Government to take some notice of the matter, and, if necessary, to depart from their usual custom of non-interference.

And I ask this more especially as the Government is the only tribunal to which I can appeal. Since the time when I formerly communicated with the Executive upon the subject, I have had most serious cause for complaint against Mr. Beckham.

In many instances in which I have been engaged as counsel he has given decisions glaringly wrong, especially in cases where there was no appeal, or where the matter was of so peculiar a nature that appeal would be practically useless. Among these cases, I would notice more particularly the cases of Fraser and Tinne *v.* Thorpe; an application made by me to settle the case on appeal of Moeller *v.* Casey and others; an application made by me to withdraw certain moneys lodged in Court in the case of Ogilvie *v.* Campbell; Spray's case for perjury; the proceedings of the last licensing meeting in Auckland; the decision under the Winding-up Act in the case of Bucholz *v.* The Golden Crown Extended Gold Mining Company, Registered. These, among others, are cases in which I was myself concerned, and I complain that in all of them Mr. Beckham gave wrong decisions, and behaved in a manner unbecoming a Magistrate or a Judge. Indeed at the Licensing Meeting he was guilty of conduct towards the other Justices and to the visitors in Court that would not be tolerated in any other Colony. He first made a statement which was not true as to a decision which he said the Bench had come to, and then, when contradicted by Mr. O'Rorke—now in Wellington—and then by other Justices, he rose and (while I was addressing the Bench) retired from the place he occupied as Chairman, and left the Court. I complain against Mr. Beckham that he attempts to injure me in my professional character, and I state that he has given unjust and unrighteous judgments against my clients, and I ask that the Government will see whether I make false or true accusations. In more ways than one, Mr. Beckham's conduct on the Bench is becoming matter for public scandal: in relation to me and my clients, I assert that it is wrong. I am prepared to substantiate my charges, and I trust that the Government will give me an opportunity so to do.

The Hon. the Colonial Secretary, Judicial Branch.

I have, &c.,
W. L. REES.

