

1873.

## NEW ZEALAND.

## COMPLAINTS AGAINST MR. THOMAS BECKHAM,

(REPORT OF COMMISSION OF INQUIRY INTO, AND OTHER PAPERS).

*Presented to both Houses of the General Assembly by command of His Excellency.*

## No. 1.

Mr. W. S. REID to the Hon. the MINISTER of JUSTICE.

SIR,—

Wellington, 13th March, 1873.

I have the honor to transmit herewith the Report of the Commissioners appointed by His Excellency the Governor to inquire into the truth of the allegations contained in a Petition presented to the House of Representatives by Mr. J. B. Russell, respecting the course of conduct pursued towards him by Mr. Beckham, the Resident Magistrate at Auckland.

I have, &amp;c.,

WALTER S. REID.

The Hon. the Minister of Justice, Wellington.

## Enclosure in No. 1.

To His Excellency Sir GEORGE FERGUSON BOWEN, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same, &c., &c., &c.

MAY IT PLEASE YOUR EXCELLENCY,—

We, the Commissioners appointed to inquire into and report upon the truth of the allegations contained in the Petition of John Benjamin Russell, a Barrister and Solicitor of the Supreme Court, presented to the House of Representatives on the 26th day of July last, complaining of the conduct pursued towards him by Thomas Beckham, Esquire, Resident Magistrate at Auckland, having proceeded to make the inquiry entrusted us, and having taken evidence thereon, after careful deliberation, have agreed to the following Report:—

Before proceeding to state our opinion touching the subject matter of the inquiry, it will be convenient to state here the course of procedure adopted by us.

Under the terms of the Commission addressed to us, it was provided that Mr. Russell should prefer charges in writing, specifying as nearly as might be the time and place at which the matters therein alleged happened; that copies of such charges should be delivered to Mr. Beckham; and that no way of Appendix.

inquiry should be had until the expiration of two days after the delivery to him of such copies. These requirements having been complied with, the inquiry was commenced at Auckland on the 4th February, and terminated on the 18th day of the same month. The length of the inquiry was increased, owing to the voluminous nature of the evidence brought forward, it being impossible to admit only evidence of a strictly legal nature.

The charges preferred by Mr. Russell, together with all the evidence taken, are hereto attached by

The allegations of the Petition, upon which evidence was chiefly offered, are those contained in the 2nd, 3rd, 4th, 5th, 8th, and 10th paragraphs; and upon these, and the charges framed in support thereof, we are of opinion as follows:—

1. Respecting the allegation contained in the 2nd paragraph of the Petition, we think that the evidence adduced is insufficient to show that Mr. Beckham has pursued a course of conduct towards Mr. Russell which is unjust and oppressive, as alleged.

2. With regard to the allegations contained in the 3rd, 4th, and 5th paragraphs, it would appear that the charges founded thereon have reference to a particular case, a summary of the facts of which will best explain its nature. In August, 1871, Mr. Russell appeared as counsel on behalf of a person named Matzen, charged with a breach of the Harbour Regulations at Auckland. The case was heard before two Justices of the Peace, and not before Mr. Beckham, and on the hearing Mr. Russell raised certain legal objections, one of which was disposed of in his favour, and the case was adjourned pending

the settlement of the other. A few days after this a similar case was heard before Mr. Beckham, and prior to the hearing Mr. Beckham commented on the course adopted by Mr. Russell in Matzen's case, and in the course of his remarks he appears to have used expressions to the effect attributed to him in the fourth allegation of the Petition. The case referred to will be found in the Appendix, under the title "*Burgess v. McLean*."

We think it has been proved, by the evidence adduced, that in the case referred to, Mr. Beckham did make use of expressions towards Mr. Russell to the effect mentioned in the 4th paragraph of the Petition; and we further think, if these charges had been true, they would entail upon Mr. Russell the liabilities mentioned in the 3rd paragraph of his Petition.

Upon this portion of the complaint we think that Mr. Beckham was wholly unwarranted in making the comments he did. Mr. Russell appears to have acted only in the proper discharge of his duty as counsel; and even had he acted otherwise, the case was one with which Mr. Beckham had nothing whatever to do, as it was heard before two other Justices of the Peace. It is to be regretted that Mr. Beckham did not tender to Mr. Russell a complete apology when requested to do so, and we think that he ought to have done so forthwith. Instead of apologizing, Mr. Beckham, eight months afterwards, in a letter to the Colonial Secretary, which appears among the papers presented to Parliament, reiterated the expression complained of.

3. As to the eighth allegation, we think it has not been proved that Mr. Russell's practice has seriously suffered, as alleged.

4. No evidence was offered in support of the tenth allegation, to the effect that no alteration had taken place in Mr. Beckham's demeanour towards Mr. Russell up to the time of the presentation of the Petition; and inasmuch as specific charges were made by Mr. Russell, it became unnecessary to enter upon this ground of complaint.

5. In conclusion, we have to observe that while the evidence does not bear out the charge of unjust and oppressive conduct towards Mr. Russell, it seems clear that a feeling of irritation has existed between the parties, and that this feeling has manifested itself on both sides on several occasions. In so far as respects Mr. Beckham, the case of *Burgess v. McLean* is the only instance where it appears that Mr. Beckham's conduct towards Mr. Russell calls for official censure.

It is only right to add that Mr. Russell testifies that, at present, Mr. Beckham's conduct towards him is free from all ground of complaint.

Having, therefore, in accordance with the terms of our Commission, given our opinion on the evidence taken before us in this inquiry, we now beg respectfully to submit this our Report to your Excellency.

Dated, and sealed with our seals, this 7th day of March, 1873.

(L. S.) JOSHUA STRANGE WILLIAMS.  
(L. S.) WALTER S. REID.

## No. 2.

### MINUTE for the CABINET.

I CONCUR with the Commissioners in their Report. Mr. Beckham's remarks on the occasion of the case *Burgess v. McLean* are quite unjustifiable. It is also proved that his manner to Mr. Russell was, until recently, uncourteous and overbearing; so much so, as to lead the public to believe Mr. Beckham had a prejudice against him. In matters with which Mr. Russell was concerned, there seems to have been on the part of Mr. Beckham an absence of that patient attention and control of temper which ought invariably to be exhibited by a Judge. While Mr. Beckham's conduct scarcely amounted to oppression, it was to some degree unjust, and it is to be regretted that no apology has been tendered. I recommend that Mr. Beckham be called upon to express his regret to Mr. Russell for his unwarrantable remarks on the occasion referred to; and if the Cabinet concur with this Minute, the expression of the opinion of the Government should be sent to Mr. Beckham, and with this the proceedings may be determined. Mr. Beckham should also be informed that other complaints, of a similar nature, have been made to the Government, which render it highly desirable that he should avoid anything in his manner which might be deemed arbitrary or uncourteous to any counsel or party.

JOHN BATHGATE.

Approved in Cabinet, 17th March, 1873.—J. BATHGATE.

## No. 3.

### Mr. T. BECKHAM to the Hon. J. BATHGATE.

SIR,—

District Court, Auckland, 17th April, 1873.

I have the honor to acknowledge the receipt of your letter of the 18th ult., No. 189, enclosing a copy of the Report of the Commissioners appointed to inquire into the truth of the allegations contained in a Petition presented to the House of Representatives by Mr. J. B. Russell, and also of your own Minute thereon approved by Ministers in Cabinet.

It has given me sincere satisfaction to find that, of the various allegations contained in Mr. J. B. Russell's Petition, and the numerous specific charges he preferred against me, but one has been substantiated.

That the Commissioners report that "the evidence adduced before them was insufficient to show that I have pursued a course of conduct towards Mr. J. B. Russell which was unjust and oppressive, as alleged by him in his Petition."

That it "has not been proved that Mr. J. B. Russell's practice has seriously suffered."

That "no evidence was offered in support of his tenth allegation, that no alteration has taken place in my demeanour towards him."

That "Mr. J. B. Russell has himself testified that at present my conduct towards him is free from all ground of complaint."

And that "the case of *Burgess v. McLean* is the only instance in which it appears to the Commissioners that my conduct towards Mr. J. B. Russell calls for official censure."

With respect to the case of *Burgess v. McLean*, I learn with pain and regret that the Commissioners report that in their opinion my comments on Mr. J. B. Russell's conduct were unwarrantable, and that in that opinion both yourself and the Cabinet concur.

I had already, immediately on the opening of their Commission, addressed a letter to the Commissioners, which I requested might be publicly read and recorded on the minutes of their proceedings, in which I stated that "if, under a mistaken duty, or in a moment of unguarded warmth, I had given to the petitioner just ground of complaint, it would always be to me a subject of unfeigned regret."

With respect to your own Minute, in which I am called upon to express my regret to Mr. J. B. Russell for my unwarrantable remarks, I have now to report that on the 10th inst. the Clerk of the Court, by my instructions, caused a letter to be delivered into the hands of Mr. J. B. Russell, informing him that I was desirous to make him an apology in open Court on any day which might suit his convenience (copy annexed), to which no reply has been received.

Although Mr. J. B. Russell has brought numerous charges against me, which he has failed to prove,—some of them the gravest which can be brought against a Judge,—this fact, you may be assured, will not be allowed to influence my demeanour towards him as a practitioner in my Court.

I am sorry to find, from your Minute, that other complaints against me, of a similar nature, have been made to the Government. I would gladly have been spared making the observation for myself, but, under the circumstances, I think it right to state for the information of the Government and Assembly that in the course of my lengthened official career I have disposed of upwards of 100,000 cases, civil and criminal; that in seven or eight cases only have my judgments been appealed against; that in those seven or eight, only four or five of my judgments have been reversed; and that during the thirty-three years in which I have been engaged in discharging the duties of an invidious and difficult office, only three or four complaints have been officially brought under my notice.

Considering that thousands of persons must have felt themselves aggrieved by my decisions, and that every practitioner in my Courts must have been repeatedly disappointed at my ruling, this is a retrospect, due allowance being made for human infirmity, which I cannot but think an old servant of the public may justly regard with pardonable pride.

In conclusion, I beg to request that you will do me the favour to cause a copy of this letter to be laid before the House of Representatives with the other papers relating to the case.

I have, &c.,

THOS. BECKHAM.

The Hon. the Minister of Justice, Wellington.

### Enclosure in No. 3.

Mr. W. F. LODGE to Mr. T. B. RUSSELL.

SIR,—

Resident Magistrate's Court, Auckland, 10th April, 1873.

Mr. Beckham has requested me to inform you that he is desirous of taking an early opportunity of making an apology to you in open Court (the Police Court, High Street), for certain remarks he made on your conduct in the case of *Burgess v. McLean*.

Mr. Beckham will preside in the Police Court on Saturday and Thursday next. If neither of those days will suit your convenience, probably you will state on what day you can make it convenient to be present.

I have, &c.,

WILLIAM F. LODGE,  
Clerk of the Court.

John B. Russell, Esq., Shortland Street.

### No. 4.

Mr. J. B. RUSSELL to the Hon. J. BATHGATE.

(Telegram.)

Auckland, 15th April, 1873.

CLERK of Resident Magistrate's Court, Auckland, has written, Mr. Beckham is desirous to apologize, and named seventeenth instant. Is this consequent upon inquiry and Report? Am I to have copy Report, and when?

John Bathgate, Esq., Minister of Justice, Wellington.

JOHN B. RUSSELL.

### No. 5.

Mr. R. G. FOUNTAIN to Mr. J. B. RUSSELL.

(Telegram.)

Government Buildings, 15th April, 1873.

HON. MINISTER OF JUSTICE presumes Mr. Beckham is satisfied that an apology is due to you. He thinks that you should frankly accept it, and thus terminate an unpleasant state of affairs. Report will be laid on table of the House.

John B. Russell, Esq., Auckland.

R. G. FOUNTAIN,  
Acting Under-Secretary.

## No. 6.

Mr. T. BECKHAM to the Hon. the MINISTER of JUSTICE.

SIR,—

District Court, Auckland, 26th April, 1873.

Adverting to that portion of my letter of the 17th instant, in which I informed you that the Clerk of my Court intimated to Mr. J. B. Russell that I was desirous to make him an apology in open Court on any day that might suit his convenience, but that no reply had been received,—I have now the honor to report that I received an answer to the Clerk's communication on the 22nd instant, a copy of which I beg to enclose (comment upon which is unnecessary), and to request you will do me the favour to cause a copy of it to be also laid before the House of Representatives with the other papers and letters connected with this case.

In conclusion, I beg to state that I this day, in open Court (Mr. Russell did not appear on Thursday), apologized to him, as directed in your Minute of the 17th March, 1873.

I enclose a copy of my apology.

The Hon. John Bathgate, Esq., Minister of Justice, Wellington.

I have, &c.,  
THOS. BECKHAM.

## Enclosure 1 in No. 6.

SIR,—

Auckland, April 22nd, 1873.

I beg to acknowledge receipt of a letter of 10th April from the Clerk of your Court, intimating a desire on your part to apologize for certain remarks made by you on my conduct in the case of *Burgess v. McLean*, in November, 1871. As there were other matters complained of by me to the Government than this one, I deem it but right, in justice to you, to say that not one of those matters would even have been mentioned or referred to but for the matter of *Burgess v. McLean*, and they were used solely as a means to compel attention to it, and not in themselves or any of them as substantial complaints.

I shall be in the Police Court on Thursday next, 24th instant, or any other day to suit your convenience, when I trust all the past may be buried.

Thomas Beckham, Esq., Resident Magistrate, Auckland.

I have, &c.,  
JOHN B. RUSSELL.

## Enclosure 2 in No. 6.

Copy of APOLOGY made to Mr. J. B. RUSSELL in open Court this 26th day of April, 1873.

MR. RUSSELL, I wish to take advantage of your presence in Court to-day, to offer to you an apology for certain remarks which I some time since made in this Court, during the hearing of the case of *Burgess v. McLean*, in reference to your conduct in the case of *Burgess v. Matzen*. You are probably aware that the Commissioners appointed to inquire into and report upon the truth of the various allegations contained in your Petition to the House of Representatives, and the numerous specific charges you preferred against me, have now made their Report thereon. It has given me sincere satisfaction to find that the Commissioners' report that the "evidence adduced before them was insufficient to show that I have pursued a course of conduct towards you which was unjust and oppressive, as you alleged in your Petition."

That it has "not been proved that your practice has seriously suffered."

That "no evidence was offered in support of your tenth allegation, viz., that no alteration has taken place in my demeanour towards you."

That you yourself have testified that "at present my conduct towards you is free from all ground of complaint; and the Commissioners also find that the case of *Burgess v. McLean* is the only instance in which it has appeared to them that my conduct towards you calls for official censure."

I need hardly say it is with much pain and regret I learn that the Commissioners' report that in their opinion my comments on your "conduct in that case were unwarrantable, and that in that opinion the Government concur." Having now been authoritatively informed that I was unwarranted in making those remarks, I take the earliest opportunity to withdraw them, and to express to you, in the most public manner, my unfeigned regret that under a mistaken sense of duty I should, during the progress of the case of *Burgess and McLean*, have commented upon your conduct in the case of *Burgess v. Matzen*; and I now tender you this apology in the hope that it may be received by you in the spirit of frankness and unreserve with which it is made.

## No. 7.

The Hon. W. H. REYNOLDS to Mr. T. BECKHAM.

SIR,—

Office of the Minister of Justice, Wellington, 1st May, 1873.

I have the honor to acknowledge the receipt of your letter of the 17th ult., on the Report of the Commissioners appointed to inquire into the complaints made by Mr. J. B. Russell against you, and in reply, to inform you that a copy thereof will be placed on the table of the House of Representatives, as requested by you.

Thomas Beckham, Esq., District Judge, and  
Resident Magistrate, Auckland.

I have, &c.,  
WILLIAM H. REYNOLDS,  
(in the absence of the Minister of Justice).

## No. 8.

The Hon. W. H. REYNOLDS to Mr. T. BECKHAM.

SIR,—

Office of the Minister of Justice, Wellington, 7th May, 1873.

I have the honor to acknowledge the receipt of your letter of the 26th ult., in which you enclose a copy of one received from Mr. J. B. Russell, in answer to a letter sent to him by you offering to apologize, and request that a copy thereof may be laid on the table of the House of Representatives.

In reply, I have to inform you that your request will be complied with.

I have, &amp;c.,

The District Judge, Auckland.

WILLIAM H. REYNOLDS,  
(in the absence of the Minister of Justice).

## No. 9.

G. F. BOWEN, Governor.

To JOSHUA STRANGE WILLIAMS, Esquire, Registrar-General of Land, and to WALTER SCOTT REID, Esquire, Assistant Law Officer.

WHEREAS John Benjamin Russell, Esquire, a Barrister and Solicitor of the Supreme Court of the Colony of New Zealand, on or about the 26th day of July last past presented a Petition to the House of Representatives of the said Colony, wherein the said John Benjamin Russell, after alleging (among other things) that he was and had been for nine years last past a Barrister and Solicitor of the Supreme Court of the Colony of New Zealand, practising in Auckland: that at various times and periods during the said last nine years Thomas Beckham, Esquire, the Resident Magistrate and present District Court Judge for Auckland, had without any cause emanating from the said John Benjamin Russell pursued a course of conduct towards him which he conceived to be unjust and oppressive: that the said Thomas Beckham, when sitting as Resident Magistrate, had publicly accused the said John Benjamin Russell of conduct in his professional capacity which, if the accusations were true, would render him liable to be struck off the rolls of the Solicitors of the Supreme Court, and cause him to be expelled from the society of gentlemen: that at such times the said Thomas Beckham had accused the said John Benjamin Russell, as a professional man, of wilfully attempting to deceive the Justices on the Bench; had taxed him with gross ignorance of his profession; he has accused him of performing acts which in his own words "destroy all confidence, and beget distrust in the integrity of a profession where no distrust should exist;" he has accused him of attempting to pervert justice; he has on other occasions in open Court attacked him in a violent, offensive, and uncalled-for manner, and especially during the last year his demeanour towards him in the different Courts over which he presides has been rather of a violent personal opponent than that of an impartial Judge: that the practice of the said John Benjamin Russell, as a Solicitor and Barrister, had seriously suffered through the premises: the said John Benjamin Russell prayed that an inquiry might be instituted into the truth of the statements contained in his Petition, and that he should be protected by the said House of Representatives from the repetition of such conduct:

And whereas the said Petition was referred to the Public Petitions Committee of the said House of Representatives, to inquire into and report upon the allegations contained therein, and the said Committee did report to the effect that, having carefully considered the evidence offered on the subject, they considered that the said John Benjamin Russell had established a case for inquiry:

And whereas, upon the said report being made to the said House of Representatives, it was resolved "That this House agrees with the Report of the Public Petitions Committee on the Petition of Mr. John Benjamin Russell, of Auckland, and requests the Government to cause an inquiry to be made into the matter:"

And whereas, in compliance with the request of the said House of Representatives, it is expedient that an inquiry should be held in the manner hereinafter mentioned:

Now therefore I, Sir George Ferguson Bowen, the Governor of New Zealand, having confidence in your knowledge, ability, and integrity, do hereby, by and with the advice and consent of the Executive Council of New Zealand, appoint you, the said Joshua Strange Williams and Walter Scott Reid, to be Commissioners to inquire into the truth of all the allegations contained in the hereinbefore in part recited Petition of the said John Benjamin Russell, but so that every charge made by the said John Benjamin Russell against the said Thomas Beckham shall be made by him in writing, specifying as nearly as may be the day, time, and place on and at which the matters therein alleged occurred or happened; and that before any inquiry shall be held by you therein, that a copy or copies of each such charge shall be delivered to the said Thomas Beckham, and that no inquiry shall be had therein until the expiration of two days from the delivery of such copy or copies as aforesaid: And I do hereby, by and with the advice and consent aforesaid, require you, within three calendar months after the date of this Commission, or as much sooner as the same can conveniently be done (using all diligence), to certify to me under your hands and seals your proceedings and your opinion touching the premises: And with the like advice and consent I do hereby declare that this Commission shall continue in full force and virtue, and that you, the said Commissioners, shall and may from time to time proceed in the execution thereof, although the same be not continued from time to time by adjournment.

Given under the hand of His Excellency Sir George Ferguson Bowen, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Governor and Commander-in-Chief in and over Her Majesty's Colony of New Zealand and its Dependencies, and Vice-Admiral of the same; and issued under the Seal of the said Colony at Wellington, this twenty-first day of January, one thousand eight hundred and seventy-three.

G. M. WATERHOUSE,  
Presiding.

Approved in Council,  
FORSTER GOBING, Clerk of the Executive Council.  
2—H 30.

## No. 10.

Mr. J. B. RUSSELL to the Hon. the MINISTER of JUSTICE.

SIR,—

Shortland Street, Auckland, 15th July, 1873.

As the unpleasantness between Mr. Beckham and myself appears to have passed over, and his action towards me now being satisfactory, I beg to say that on receipt of your telegram, in which you refused to give me a copy of the Commissioners' Report, with a desire, as recommended in telegram, to meet Mr. Beckham and "assist to end the ill-feeling," I wrote Mr. Beckham, informing him that I would not have preferred the other charges as substantive, charges but for that of Mr. McLean, and to compel attention. On further consideration of all matters, and hearing of expressions of regret for the past being made by Mr. Beckham, on the 23rd April, and before the apology was made, I offered to accept in lieu of it, the following:—"We are authorized to state that the differences which hitherto existed between Mr. Beckham, R.M., and Mr. J. B. Russell, have been satisfactorily settled, explanations having been made which have cleared up the unpleasantness between them,"—to be announced in the newspapers, which Mr. Beckham declined, I was told, on the ground of duty, or something of that sort. I enclose letter which I sent with the memorandum, and which was returned to me.

I think I may now safely say I have done my part, in accordance with your telegram, "to terminate an unpleasant state of affairs."

The Hon. the Minister of Justice, Wellington.

I have, &amp;c.,

JOHN B. RUSSELL.

## Enclosure in No. 10.

Mr. J. B. RUSSELL to Mr. T. BECKHAM.

SIR,—

23rd April, 1873.

The letter of Mr. Lodge, of 22nd instant, is at hand, in which you again express your desire to apologize, and have fixed Thursday, 24th instant, as the day in your own Court.

As this letter in itself implies a retraction of your statements respecting myself in Burgess and McLean, I am satisfied with it as an apology, and beg to relieve you from any further expression.

Thomas Beckham, Esq.,

I have, &amp;c.,

JOHN B. RUSSELL.