

1877.

NEW ZEALAND.

SIR WILLIAM TYRONE POWER'S APPOINTMENT AS AGENT-GENERAL.

(CORRESPONDENCE RELATING TO).

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

No. 1.

The AGENT-GENERAL to the Hon. the COLONIAL SECRETARY.

(No. 869.)

SIR,—

15th November, 1876.

I have the honor to inform you that when perusing the debate on the office of Agent-General, on the 5th of September last, reported in No. 23 of the New Zealand Parliamentary Debates, I was much astonished to perceive the language attributed to the Hon. Frederick Whitaker, in reference to my appointment to the office of Agent-General, and the action of Sir Penrose Julyan and Mr. Sargeant in exercising on that occasion the powers vested in them by the Act of the Colonial Parliament, 39 Vict., No. XCVI. Considering the eminent position which Mr. Whitaker holds in the Government, I thought it my duty, without delay, to submit these statements to the gentlemen exercising the powers of the Governor under that Act, and to offer at the same time to vacate the office if they considered it would be advantageous to make the arrangement for the service of the Government indicated by Mr. Whitaker. I enclose a copy of my letter, and of their reply, which is, it seems to me, as to all the circumstances of the case so conclusive that I have only to request that you will, in justice to me and to those gentlemen, give to this correspondence the same publicity as the language attributed to Mr. Whitaker has obtained.

I have, &c.,

W. TYRONE POWER,
Agent-General.

The Hon. the Colonial Secretary, Wellington.

Enclosure 1 in No. 1.

Sir W. TYRONE POWER to the CROWN AGENTS.

GENTLEMEN,—

8th November, 1876.

I have the honor to request your attention to the following passage in a speech delivered by the Hon. Frederick Whitaker, Postmaster-General of New Zealand, in the House of Representatives of the colony, on the 5th of September, in the course of a debate concerning the office of Agent-General. I transcribe it from the official report of the Parliamentary Debates:—

“With regard to the Crown Agents, I will ask what did they do on the death of Dr. Featherston? There was a Mr. Kennaway in the office who was competent to carry on the agency without their interference; but instead of allowing him to do so, they appointed a friend of their own to the office, and we have to pay.

“*Mr. Murray.*—I submit that there is no proof that that gentleman is a personal friend of the Crown Agents.

“*Mr. Whitaker.*—I did not say a personal friend, I said ‘friend,’ and it is not fair on the part of the honorable gentleman to introduce words that I did not use. It is bad enough to be brought to task for what you do say without being brought to task for what you do not say.”*

2. You will readily understand my feeling somewhat surprised and concerned that such language should be used by any member of the Legislature of New Zealand respecting my appointment to the office which I have the honor to hold. Had such terms been employed by an independent member, I might, I think, have expected that I, and I may add you too, would have been defended by the Government. This language was, however, used by a gentleman who at the time held the office of Her

* New Zealand Parliamentary Debates, No. 23, September 15, 1876, pp 75-76.—Wellington: By authority, G. Didsbury, Government Printer.

Majesty's Attorney-General, in reference to an appointment whose conditions had been defined by a Statute of so late a date as 1875, and by a Minister of the Crown, to whom all his colleagues yield precedence, speaking on behalf of a Government whose official language addressed to me in their despatches has been of a very different character. These circumstances, I think you will agree with me, justify me in drawing your attention to Mr. Whitaker's words, and asking you whether, so far as you are concerned, they correctly represent the facts.

3. I pass the insinuation conveyed in the words "a friend of their own," since Mr Whitaker expresses indignation that the words "personal friend" should have been imputed to him, though in truth between the one form of expression and the other I can see no remarkable distinction. But your friendship is a privilege which I could feel no possible disposition to disclaim. I am much more concerned by the imputation which is conveyed in the sentence that "there was a Mr Kennaway in the office, who was competent to carry on the agency without their (*i.e.* your) interference, but instead of allowing him to do so they appointed," &c., &c. Such a statement made by the principal Law Officer of the Crown, in his place in Parliament, has, I need not say, a very serious significance. It is wholly inconsistent, if I was correctly informed and may trust my memory, with the state of the facts and the state of the law when I was appointed Agent-General for New Zealand—accepting, as you well know, not without hesitation and at some personal inconvenience the temporary tenure of the office.

4. I have now to ask you whether, as a matter of fact and law, Mr Kennaway was legally competent to carry on the office in the event of the death of the Agent-General without your interference; and whether you might have allowed him to do so, as Mr Whitaker has alleged, but for your disposition to appoint me to the office. I have to ask you whether, as I believed at the time, and believe, the duty of appointment was not imposed upon you by statute and by consequent special instructions from the Government, instead of being assumed by you as Mr Whitaker's words imply; and whether, as I understood from you, your attention was not called by the late Agent-General, personally some time before his death, and by his letter of resignation addressed to you on the eve of his death, to the necessity that had arisen for the due exercise of your powers under the Act.

5. I have moreover to ask you whether, in any despatches you may have received from the Government on the subject anterior to my appointment, or in any communications you may have had with Dr. Featherston, the name of Mr. Kennaway was mentioned, in the way in which Mr. Whitaker alludes to him, as Dr. Featherston's proper successor in the ordinary course of affairs. You will remember, I am sure, that when first invited to accept the office I was careful to inquire from you whether there was any gentleman in the department, or connected with the colony, who might be supposed to have an official right, or even a fair claim, to succeed Dr. Featherston. I should be very sorry to have interfered in any way with the assumption of higher functions in the department by an officer of Mr. Kennaway's zeal, ability, and long service. I do not say so on this occasion for the first time. When the Government first heard of Dr. Featherston's illness, a despatch was addressed to him by Sir Julius Vogel, granting him a lengthened leave of absence, and directing that Mr. Kennaway should act for him during his absence. Owing to Dr. Featherston's lamented death, this letter reached my hands nearly two months after I had accepted office. In writing to Sir Julius Vogel by the following mail, I took occasion to intimate to him in the following terms my disposition on the subject:—"I perceive in the despatch relative to Dr. Featherston's illness that Mr. Kennaway was appointed to conduct the duties during Dr. Featherston's expected absence. I do not know whether a similar arrangement might have been contemplated in case of Dr. Featherston's death, but if so, I should be very sorry to stand in Mr. Kennaway's light, as he is undoubtedly a very competent, trustworthy officer, and from his experience, his position, and from the apparent intention of the Government, in case of Dr. Featherston's temporary absence, he would appear to have a claim, which I should not be sorry to see recognized."

6. I have only to add, in conclusion, that if on a review of all the circumstances of the case you think it desirable that I should vacate the office, and that Mr. Kennaway would be "competent," to use Mr. Whitaker's words, "to carry it on," until an Agent-General duly appointed by the Governor in Council shall have arrived, I shall be at once prepared to take whatever steps may be necessary to that effect.

Sir Penrose Julyan, K.C.M.G.
W. C. Sargeaunt, Esq., C.M.G.

I have, &c.,
W. TYRONE POWER,
Agent-General.

Enclosure 2 in No. 1.

The CROWN AGENTS to Sir W. TYRONE POWER.

SIR,—

Downing Street, London, 14th November, 1876.

We have the honor to acknowledge the receipt of your letter of the 18th instant, calling our attention to a debate which had taken place in the House of Representatives of New Zealand concerning the office of Agent-General, and incidentally referring to ourselves in a manner calculated most justly to raise your apprehensions as to whether we had not, by misrepresentations, placed you in a false position by appointing you to an office which we had no right to dispose of.

We are much pained to think that, after yielding to our repeated solicitations to accept *pro tem.* the position of Agent-General for New Zealand, you should be exposed to the annoyance, however temporary, which the language attributed to the Hon. Frederick Whitaker is calculated to produce. We can only assure you that there is not the slightest foundation for what that gentleman is reported to have said; and considering the very high official positions held by him at the time—the strongly marked features of the case—and the opportunities (amounting almost to necessities before entering upon such a debate) which he had of becoming acquainted with it in all its bearings—we can come to no other conclusion than that his speech must have been incorrectly reported.

The circumstances which have led us to this conclusion are the following:—

1. As Attorney-General, and Chief Law Adviser of the Government, we are bound to believe that Mr. Whitaker must have been aware that we exercised the power of appointment, not as a piece of unwarranted "interference," but by virtue of an order of the Governor in Council, issued under the authority of "The Public Revenues Act, 1875;" and knowing that, as he must have known, it is impossible for us to conceive that he would publicly assail the conduct of two absent individuals who had simply performed an onerous duty by strictly complying with the law from which they derived the power.

2. As a leading Minister of the Government it is as difficult to conceive that Mr. Whitaker could have been ignorant of the fact that one of his colleagues in the Ministry (Hon Dr. Pollen, then Premier), when acknowledging the receipt of our letter reporting your appointment, only a fortnight before the speech was made, expressed himself in the following terms:—"It is my pleasing duty to inform you that the Government entirely approve of the steps you have taken in this important matter, and to convey to you their thanks."

3. Even supposing it possible that, in the heat of debate, the Attorney-General could have lost sight of the law and the facts, is it likely that his Ministerial colleagues, who had passed the Public Revenues Act of 1875—issued the Order of Council referred to—invited us to accept the responsibilities which devolved upon the Agents under these instruments—and, finally, approved of our Acts in the language we have quoted—would have allowed the statements which Mr. Whitaker is reported to have made, to go forth to the public unchallenged and uncorrected? We think not; and hence it is that we adopt the conclusion that *Hansard* is on this occasion in error, and that the fault must rest with the reporters; and we cannot allow ourselves to doubt that the Government will—if they have not already done so—see the justice of speedily and publicly endeavouring to efface the impressions which must have been created by the mistaken utterances with which so prominent a member of the Ministry has been credited.

With regard to the suggestion that Mr. Kennaway might have more properly become the *locum tenens* of the office, and to the innuendo which follows that suggestion, it can scarcely be necessary, after what we have already stated, to say much. It is, however, due to that gentleman to add that, in acting as we did, nothing could have been further from our intention than to disparage his merits, or to call in question his fitness to perform the duties of Agent-General.

Upon the resignation of Dr. Featherston, we placed the Public Revenues Act and the Order in Council, from which we derived our powers, in the hands of an eminent counsel, with a request that we might be informed as to the course we ought to adopt under the circumstances, and he advised that "we should temporarily appoint a proper person, and that we should each exercise our judgment impartially as to the fitness of the person appointed, and the propriety of the appointment."

We had not received any expression of opinion from the Government as to what they desired in the event of such a contingency happening, although in the covering letter transmitting the Public Revenues Act an intimation was given as to the manner in which we were expected to exercise other functions delegated to us under the same Act. Nor did the late Agent-General ever allude to any member of his staff in connection with such an appointment, or signify any wish or opinion beyond that contained in an observation which he made to one of us shortly before his decease, when, in a brief allusion to his office, he said that "*he believed that everything connected with it would be found in perfect order, and that it was a great satisfaction to him to know that its temporary administration would devolve upon ourselves.*" He was not then in a condition to pursue the matter further, and our conclusions were that while, with his accustomed sense of delicacy, he abstained from saying anything that could have the appearance of anticipating our action under the law, he thought the Crown Agents might administer the New Zealand Agency until the pleasure of the Government was made known; and this they would have done in deference to what they believed to be his wish, and without any cost to the Government, could they have done so legally, but they were informed that this could not be the case; and we then, in the spirit of counsel's advice already quoted (but not as Crown Agents), sought for a fit and proper person to fill the vacant office.

We had never been brought in contact in any way with Mr Kennaway, the Secretary to the Agency, who among the office staff had the first claim to consideration; and we had never heard anything as to his capacity and fitness, and did not, therefore, feel justified in offering the appointment to him. It then became a matter of most anxious consideration to us to determine who would be the most proper person to hold it.

We should certainly have given the preference to some one of established colonial reputation had nothing stood in the way of our doing so; and there were at least two distinguished ex-Ministers of New Zealand then in this country, either of whom would, we believe, have done honor to the office, and have fitly represented the colony in London; but we were deterred from inviting either of these gentlemen to accept the position from the fear that in a political point of view we might embarrass the Government. The only alternative that remained was to look for an outsider, and we considered ourselves particularly fortunate in having secured for the Government of New Zealand one so able and so fit in all respects to become their representative in this country as yourself.

In addition to an intimate and long acquaintance with your official career and well-known administrative capacity, we are proud to acknowledge your valued friendship; and we think the combination has enabled us to make a choice which the colony will have abundant reason to approve.

We have only to add that your recollection of what was said with regard to other claimants, before you would consent to accept the appointment, is quite correct; and we venture to hope that nothing will induce you to vacate the office until the Government shall have made permanent provision for it.

Sir William Tyrone Power, K.C.B.,
Agent-General for New Zealand.

We have, &c.,
P. G. JULYAN.
W. C. SARGEANT.

No. 2.

The Hon. Dr. POLLEN to Sir W. TYRONE POWER.

SIR,—

Colonial Secretary's Office, Wellington, 4th April, 1877.

I have the honor to acknowledge the receipt of your letter of the 15th of November last, enclosing the copy of a correspondence which had passed between yourself and Sir Penrose Julyan and Mr. Sargeant on the subject of certain expressions which the Hon. Frederick Whitaker is reported to have made use of in the House of Representatives on the subject of your appointment by the Crown Agents to the office of Agent-General for New Zealand.

If any expression uttered in Parliament by a member of the New Zealand Government should have been of such a nature as to cause annoyance to yourself, as the words attributed to the Hon. Mr. Whitaker would appear to have done to Sir Penrose Julyan and Mr. Sargeant, it would be a source of exceeding regret to myself and to the other members of this Government.

I now enclose a copy of a memorandum by Mr. Whitaker, in explanation of his remarks, which, I trust, will be satisfactory to you.

The correspondence shall, as you desire it, be printed and laid before Parliament at its next session.

Sir W. Tyrone Power, K.C.B., &c., London.

I have, &c.,

DANIEL POLLEN.

Enclosure in No. 2.

MEMORANDUM by Mr. WHITAKER.

I AM unable to say from recollection that the report of the New Zealand *Hansard* of the observations I made on the 5th September last on the subject of the Agent-General's office is inaccurate, but I do say that a meaning has been attached to the word "interference," assuming that I did use it, which I did not intend.

I never meant it to be inferred that Sir Penrose Julyan and Mr. Sargeant had exceeded their legal powers in appointing Sir William Power. I was quite aware that they were authorized by law to make the appointment, but I believed, and intended to say, that the power they possessed was not exercised to the best advantage for the colony. My objection was not to the legality of the "interference," but to the purpose for which it had been employed.

It appeared to me at the time of debate that the best course under the circumstances would have been for Sir Penrose Julyan and Mr. Sargeant to have permitted the business of the Agency Office to be temporarily carried on by the officials in the Agent-General's office till the Government in New Zealand could have been communicated with. If an immediate appointment had been necessary (I was not aware of such urgency), I considered that Mr. Kennaway would naturally have succeeded temporarily to the office on the death of Dr. Featherston. It is admitted that he was perfectly competent, and had, in fact, as I understood, for some time previously performed the duties in consequence of Dr. Featherston's illness. I did not see the necessity for the temporary introduction of a gentleman, a stranger to the duties, when a suitable one well acquainted with them was available on the spot.

Sir Penrose Julyan and Mr. Sargeant assume that I, as a member of the Government, was cognizant of all that had occurred on the subject of the appointment of an Agent-General under Dr. Pollen's and under Sir Julius Vogel's Governments; in this they are mistaken. Prior to the resignation of Sir Julius Vogel's Government, I had, on important questions, been in opposition, and I only became a member of the new Ministry on its formation by Major Atkinson on the 1st September. On the 5th of the same month the debate in question took place.

I am sorry to have caused Sir Penrose Julyan and Mr. Sargeant, as well as Sir William Power, so much trouble and annoyance. I hope my explanation that I did not for a moment intend to question the legality of what they did will be satisfactory to them, and I trust they will not feel that under the circumstances I exceeded legitimate criticism of the expediency of the course pursued.

Auckland, 5th February, 1877.

I have, &c.,

FRED. WHITAKER.

No. 3.

The CROWN AGENTS to the Hon. the COLONIAL SECRETARY.

SIR,—

Downing Street, London, 15th November, 1876.

We have the honor to inclose, for the information of your Government, copy of a correspondence which has passed between the Agent-General for New Zealand and ourselves, on the subject of certain expressions which the Hon. Frederick Whitaker is reported to have made use of in the House of Representatives on the 5th September last, from which it is made to appear that we had exceeded our powers in making the temporary appointment we did to that office, and that we were governed by very questionable motives in so doing.

To have been guilty of such an act would have constituted an offence on our part against your Government, and towards Sir William Power, which nothing could justify; and although we feel assured that we shall finally be exonerated by you from all such imputations as have been cast upon us, yet the occurrence is doubly painful to us from the fact that, in the meantime, it places Sir William Power before the public in a somewhat false position, which has been brought about by our having induced him, in the interests of the colony, to accept the appointment somewhat against his inclination.

We have only to express a hope that no time may be lost, if explanations have not already been made in the House, in giving to this correspondence the same publicity that the imputations against our conduct obtained.

We have, &c.,

P. G. JULYAN.

W. C. SARGEAUNT.

The Hon. the Colonial Secretary, New Zealand.

No. 4.

The Hon. the COLONIAL SECRETARY, Wellington, to the CROWN AGENTS, London.

GENTLEMEN,—

Colonial Secretary's Office, Wellington, 4th April, 1877.

I have the honor to acknowledge the receipt of your letter of the 15th November last, enclosing the copy of a correspondence which had passed between yourselves and Sir W. Tyrone Power on the subject of certain expressions which the Hon. Frederick Whitaker is reported to have made use of in the House of Representatives, on the 5th of September last, upon the subject of your appointment of Sir W. T. Power to the office of Agent-General for New Zealand.

I desire to express the exceeding regret of myself and the other members of the Government that any expressions uttered in Parliament by one of our colleagues should have been of such a nature as to be productive of annoyance to yourselves or Sir W. T. Power.

I now enclose the copy of a memorandum by Mr. Whitaker, in explanation of his remarks, which, I trust, will be satisfactory to you.

The correspondence shall, as you desire it, be printed and laid before Parliament at its next session.

Sir P. G. Julyan, K.C.M.G.
W. C. Sargeaunt, Esq.

I have, &c.,
DANIEL POLLEN.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1877.

Price 6d.]

