

1881.
NEW ZEALAND

PETITION OF J. B. BEECHE, OF REEFTON.

(CORRESPONDENCE WITH THE MINISTER OF JUSTICE AND MR. DISTRICT JUDGE WESTON, AND EVIDENCE BEFORE THE PUBLIC PETITIONS COMMITTEE OF MR. T. S. WESTON, M.H.R.)

Laid on the Table with leave of the House, and ordered to be printed.

CORRESPONDENCE WITH MR. WESTON

The Hon. the MINISTER of JUSTICE to Mr. District Judge WESTON

(Telegram.)

Wellington, 14th September, 1880.

IN accordance with the decision of Parliament, Government contemplates abolishing certain Judgeships, and among them the one held by you, and providing for performance of your duties by making other arrangements than those now existing. I take the earliest opportunity of apprising you of this in order that you may have as much time as possible for considering your future plans. You will be good enough to send in your claim for compensation on account of loss of office on the ordinary form of voucher.

I have to convey to you the high sense entertained by the Government of the manner in which your duties have been performed, and that it is only the exigencies of the service which have rendered this step necessary. It is proposed to relieve you on the 31st proximo.

T. S. Weston, Esq., District Judge, Hokitika.

W ROLLESTON.

Mr. District Judge WESTON to the Hon. the MINISTER of JUSTICE.

(Telegram.)

Reefton, 28th October, 1880.

I AM engaged in a large amount of business here, and I do not see my way to finish by Saturday, the 31st. Moreover it is almost certain my judgments will be reserved to enable me to look up authorities at Hokitika. I have one case in which claim is made for £2,000, another for £1,000, a third for £200, and there are many other matters. About forty or fifty witnesses, professional and others, from a distance are in waiting, counsel from elsewhere have been specially retained; large mining interests and the value of mining stocks are at stake; and to delay would prove very serious to the several parties. What arrangements will you make under the circumstances, that is to say, if I am to be cruelly sacrificed on the 31st. If I am to receive my dismissal, justly or unjustly, as it may be, a month to me can make no difference; indeed the sooner I look for another field the better. At the same time, I desire to regard the interests of suitors standing before me, and do not wish to be compelled from want of time or opportunity to weigh lengthy evidence, to pronounce unsound judgments, and so involve the litigants in future costs.

The Hon. the Minister of Justice, Wellington.

THOS. S. WESTON.

The Hon. the MINISTER of JUSTICE to Mr. District Judge WESTON.

(Telegram.)

Wellington, 28th October, 1880.

GOVERNMENT regrets that you should have been unable to inform it previously of possible difficulties. It is too late now to alter its arrangements, your successor having been appointed. I hope that the embarrassment you speak of will not arise. In the absence of knowledge of particulars it would be impossible for me to indicate the course which you should pursue, the responsibility for which rests with you. I can only rely upon your taking such action as will prevent public inconvenience.

T. S. Weston, Esq., District Judge, Reefton.

W ROLLESTON.

Mr. District Judge WESTON to the Hon. the MINISTER of JUSTICE.

(Telegram.)

Reefton, 28th October, 1880.

KNOWING, as Government do, the dates of the sittings, I concluded they would provide against difficulties. It is impossible for the Court to judge of the length of sittings to a day until the opening of the Court; and, until last night, I had no idea that so many witnesses had been subpoenaed. Again, at the last moment, a criminal case arose which occupied me yesterday until late at night. I never could have thought you would have gazetted my successor without first communicating with me, inasmuch as in your first announcement to me you said Government proposed to relieve me on the 31st October. If you had consulted me, as I naturally thought you would do, I most certainly should have advised you how to act to save the possibility of inconvenience to the public, and I quite intended

to do so. I had not been in any way advised of a successor, and when he would assume office. I apprehend it is possible for Government to arrange matters, and I am quite prepared to do my share to prevent inconvenience, which I notified as soon as I clearly saw it would arise. If something be not done, of course cases unheard must stand over. The present case is not finished. It is possible, though not probable, there may be a settlement. If it be not, the case may have to be begun over again. I can only repeat my willingness to act in any way and in any capacity you think fit, even as a Deputy-Judge to save trouble. I should like to hear early in the morning, because I will adjourn cases without loss of time if provision be not made for me to complete them, as I tell you again I am quite prepared to do.

The Hon. the Minister of Justice, Wellington.

THOS. S. WESTON.

The Hon. the MINISTER of JUSTICE to Mr. District Judge WESTON.

(Telegram.)

Wellington, 29th October, 1880.

I AM sorry there should have been any misapprehension on your part. In my telegram of the 20th September last I said the decision of the Government was final, and I relied on your making arrangements accordingly. With the information now before me I cannot indicate what should be the manner in which the particular cases should be dealt with, and I rely upon the assurance that you give me of your doing your best to prevent public inconvenience, as I am advised it would not now be competent to deal with the matter by making the appointment of a Deputy-Judge.

T. S. Weston, Esq., District Judge, Reefton.

W ROLLESTON.

APPENDIX.

Petition of J. B. Beeche, of Reefton.

To the Honorable the House of Representatives of the General Assembly of New Zealand in Parliament assembled.

THE humble petition of John Blennerhassett Beeche, of Reefton, in the County of Inangahua, in the Colony of New Zealand, sheweth:—

That on the 14th day of October, 1880, commenced an action against a mining company called "The Welcome Gold-Mining Company (Limited)," in the District Court of Westland, at Reefton, under its original jurisdiction, under "The Mines Act, 1877," in which action your petitioner sought to recover the sum of £900, as damages for loss sustained by the unlawful interference by the said company with a certain gold-mining claim, situated in the County of Inangahua, belonging to your petitioner.

That the said action was set down for trial at the next sitting of the District Court held at Reefton on the 27th day of October last.

That, owing to the number of cases on the cause-list for the said sittings, your petitioner's case was not called upon till the afternoon of Friday, the 29th day of October last.

That your petitioner's case had just been opened by his counsel, and the examination of his first witness was being proceeded with, when Mr. Weston, the learned Judge who presided at the trial, told the counsel engaged in the cause that he had just been informed by the Minister of Justice that his commission as Judge would expire on the following day, and asked them if there was any probability of bringing the trial to an end before such expiration.

That, considering the number of witnesses to be examined, the number of facts in dispute, and the importance and complicated nature of the case, the counsel on both sides informed the Judge that, in justice to their respective clients, they felt compelled to say that the case could not possibly be finished during the following day, and that the learned Judge concurred in this opinion.

That the learned Judge, with a view to prevent the great loss which both parties would sustain by a compulsory adjournment of the case, such adjournment rendering it necessary to proceed with the case *de novo* before his successor, telegraphed to the Minister of Justice, stating the above facts, and requested him to appoint him as Deputy-Judge, so that the case might then and there be finally decided.

That this request was not granted.

That the said Judge, seeing the impossibility of finally deciding the case during the sitting, was compelled to adjourn the hearing of the case to the next sittings of the District Court, to be held at Reefton on the 2nd day of December, 1880.

That a number of short cases were then proceeded with till the sittings terminated.

That your petitioner found it necessary to retain counsel from Greymouth, a distance of fifty miles from Reefton, as the only counsel resident in Reefton had been retained by the defendant in the said action, and that he had to pay a fee of £35 for such counsel's services.

That your petitioner's costs, as shown by the subjoined statement, amounted to £66 18s., for witnesses' expenses, counsel's fee, &c. :—

	£	s.	d.	
James McNeill, miner, Boatman's Creek, mileage 10s., three days' attendance	..	2	0	0
Peter Ewing, miner, Boatman's Creek, mileage 10s., three days' attendance		2	0	0
Peter O'Neill, miner, Boatman's Creek, mileage 10s., three days' attendance		2	0	0
James Wilson, miner, Boatman's Creek, mileage 10s., three days' attendance	...	2	0	0
George Farelly, miner, Boatman's Creek, mileage 10s., three days' attendance		2	0	0
John Love, miner, Boatman's Creek, mileage 10s., three days' attendance	...	2	0	0
Matthew Byrne, miner, Boatman's Creek, mileage 10s., three days' attendance	...	2	0	0
P Walsh, miner, Cannibal Gorge, mileage 50s., three days' attendance	...	4	0	0
William Faler, Reefton, three days' attendance	...	1	10	0

James Greave, Reefton, three days' attendance	...	...	...	...	1	10	0
William Dunn, Reefton, three days' attendance	..	...	..	...	1	10	0
John Bates, Reefton, three days' attendance	..	...	...	...	1	10	0
Isaac Lewis, assayer, Reefton, three days' attendance	...	...	...	...	3	3	0
Edwin Butler, mining engineer, Reefton, three days' attendance	...	...	...	...	3	3	0
Patrick Brennan, Reefton.							
Henry Lucas.							
Sixteen subpoenas	1	12	0
Counsel's fee	35	0	0
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That, in consequence of the said adjournment, rendered necessary by the sudden and unforeseen retirement of the presiding Judge, your petitioner, without any fault on his part, sustained a direct pecuniary loss to the amount above mentioned.

That, in addition to this direct loss, your petitioner was unable, through the heavy expenses caused by the said adjournment, to procure the attendance of more than half of his witnesses at the adjourned hearing of the case; and that, owing to the absence of such witnesses, and the consequent failure in the proof of your petitioner's case, your petitioner succeeded in recovering £50 only, instead of the substantial damages to which he would have been entitled had he been able to insure the attendance of all his witnesses.

That this loss could not be averted, since the whole of the evidence would have to be repeated before the retiring Judge's successor.

That your petitioner at the adjourned hearing of the case was awarded £50 as damages, together with the costs of the adjourned hearing, but that nothing was allowed him for the costs of his first hearing, it having been ruled by the Judge that, as the adjournment was caused by his unexpected retirement, each party would have to bear his own costs.

That your petitioner, being a man of comparatively small means, sustained a great amount of hardship and inconvenience through the loss of the before-mentioned sum of £66 18s.

Wherefore your petitioner humbly prays that your honorable House will be pleased to grant to your petitioner the above-mentioned sum of £66 18s. as compensation for the loss sustained by him as aforesaid.

And your petitioner as in duty bound will ever pray, &c.

JOHN B. BEECHE.

Witness—James Lynch, Solicitor, Reefton.

Report on Petition of John B. Beeche, of Reefton.

THE petitioner states that in October, 1880, he commenced an action against a mining company at Reefton; that his case had just been opened when the Judge, Mr. Weston, stated his commission would expire on the following day; in consequence his case was adjourned, by which he sustained a loss of £66 18s., having retained counsel and procured witnesses from a long distance. He prays the House to grant him the above sum as compensation.

I am directed to report the Committee are of opinion that, though the petitioner's case appears to be one of some hardship, he has no claim for compensation against the colony

17th August, 1881.

Minutes of Evidence taken before the Public Petitions Committee in reference to Mr. Beeche's Petition

Mr. T. S. WESTON, M.H.R., examined.

1. *The Chairman.*] I understand that you were District Judge when the case referred to in this petition was to have been heard?—I was.

2. You have heard the petition read. Are the facts as narrated by the petitioner in his petition substantially correct?—Yes.

3. And was it your opinion, as Judge of the Court, that the case could not be finished on the day referred to?—Yes.

4. Will you explain what your position was exactly at the time?—I received a notification, as the papers in the House will show, of my dismissal from the office of District Judge; the Government stating that they proposed to relieve me on the 31st October, 1880. Of course I had to perform my duties up to the termination of my notice, that is to say, up to the end of October, and to travel my circuit up to that date. I started as usual from Hokitika in the early part of the month, taking Grey-mouth before Reefton. There were several cases for trial at Reefton, some of them being of considerable magnitude—one case involved a claim of £2,000. The case of the petitioner's involved a claim of, I think, £900; and there was another in which the plaintiff claimed, I believe, £1,000. There were also two or three bankruptcy cases, and sundry other matters of less importance. Of course the process in all these cases was issued in the usual way, and when I went up to Reefton about the 23rd of the month I found all these on the cause-list ready for me to try. In addition to these cases, at the last moment a criminal case arose, and with that I was occupied the whole of the first day of the session. The first civil case called on was the largest, in which, as I have said, £2,000 was claimed by the plaintiff. Upon the case being launched, I thought it would occupy me for the remainder of my term of office, but I suggested terms for a settlement, and which were eventually accepted. In due course Mr. Beeche's case was called on. He is the petitioner in this case. The case was opened on the 29th of the month. That was on a Friday, after counsel had fully stated the case. On Friday I saw that in all probability I should be unable to complete it by Saturday evening, no matter how late I sat, and I may say that I sat early and late at all times. I at once telegraphed to the Minister of Justice, point-

ing out the inconvenience that these people would be put to if I retired from the Bench on Saturday evening. I offered to assist the Government in every way to prevent this inconvenience and the deadlock that would arise. I think the telegram will show that to be the case. I received a message in reply from Mr. Rolleston which reflected on me. It intimated that I should have seen all this, or, in other words, that I should have instructed the Clerk of the Court to stop the work of the office. This I could not do. I never interfered with the executive officer of the Court; and, besides, it would have been impossible to say how many of the cases would go to trial, and how long they would occupy me. Seeing the difficulty, as stated, I offered to assist the Government. Upon the receipt of this telegram I again wired, and suggested that, notwithstanding my peremptory dismissal was to take effect on the next day (Saturday), I was willing to act even as a deputy to my successor in order to save the petitioner the trouble, inconvenience, and expense he would otherwise suffer. Upon receiving a telegram refusing my offer, I thought I should at once stop the case. I felt it would be unfair for the plaintiff in the action to show his hand, and give the defendant the benefit of the knowledge he might thus obtain, with the probability that the case would be suddenly stopped, consequently I stopped the case. That cause having been disposed of in the manner stated, I managed to get through the remainder of the business by Saturday night. This case was therefore the only one in which the parties interested were affected by my dismissal from office. I did everything a man could possibly do to prevent inconvenience to the Government and the suitors. I would only have been too happy to accept the position of Deputy-Judge for a few days in order to prevent inconvenience to the public.

5. What cause was assigned by the Government for declining to accept your offer?—Speaking from memory, it was that Judge Broad had been appointed to relieve me. Arrangements had been made with Judge Broad to take up my station from the 31st of the month. As I pointed out to the Minister of Justice, in my telegram, I never received a single word from the Government announcing the appointment of my successor, nor as to when, how, and at what place he was to relieve me.

6. If your offer had been accepted, would there have been any legal difficulty likely to arise after your successor had been appointed?—I cannot say that there would have been any difficulty. I cannot say whether the Government thought, if they appointed me as Deputy-Judge, a legal point might arise affecting my notice of dismissal; but, as I volunteered, I do not think I could have taken advantage of it even had I been disposed to do so.

7. What loss do you consider that the petitioner has sustained in this matter. His counsel told me at the trial that there were a number of witnesses subpoenaed. I recollect that the damage out of which the action arose was said to have occurred at Boatman's, a place about fourteen miles by road from Reefton. Bringing the witnesses that distance meant considerable expense to the petitioner. He would also have to pay the costs of his counsel. If I am not mistaken, there were two counsel employed, one, at all events, being brought from Greymouth to conduct this case.

8. *Hon. Mr. Richardson.*] This case was adjourned by the Court, and each party had to pay his own costs; when the case came on again, and a decision was given in favour of one of the parties, why were the expenses of the previous adjournment not allowed to him. Is it not an ordinary rule of Court that the expenses of the winning side should be allowed?—Yes, under ordinary circumstances; but then that adjournment must take place in the ordinary course of the proceedings. This was a different matter altogether. The adjournment was brought about through the action of the Government in dismissing me at that particular time. If the Government had retained me even as a temporary Judge for a day or two the adjournment would not have become necessary.

9. Supposing you had tried the case again after such an adjournment as that which was caused by the Court, would not the winning party be entitled to his costs?—Yes, under ordinary circumstances.

10. *Mr. Swanson.*] Who would have paid the cost in that case?—Each party would have had to pay his own costs. In the event of a new trial being ordered through mistake of the Court, I apprehend the Court would make each side pay its own costs. The Court should not injure either side. In this case it did not do so except in so far as it was compelled through the action of the Government.

11. Do you mean to say that, if a Judge makes a blunder in a case, the parties to the action should have to pay the cost of that blunder?—In the case of a blunder I think each party would have to pay his own costs.

12. Do you not think the Judge should pay the costs himself?—No.

13. *Mr. Andrews.*] In other cases where there may be delays of the sitting of the Court, and where there may be losses caused through the Court not sitting, what is the usual course pursued in regard to the payment of costs?—In my own Court delays did not often arise, because if it were possible to travel I did travel, sometimes even at considerable risk. When however a delay arose in that way each side bore its own costs.

14. *Captain Kenny.*] Supposing the Court were delayed by the act of God, or by some unforeseen accident, there would be no question of this sort, but when the delay is caused by the carelessness of the Judge or any of the officials of the Court, would not the Government be responsible?—You ask me an abstract question, and it would be most difficult to give an abstract answer. For instance, if a Judge took an improper course and gave a wrong decision the colony could not be made liable for it, but there are cases in regard to which I dare say the colony might be invited to bear the expenses; such a one as the case now before the Committee, perhaps, being one of that class.

15. Then there are cases in which the Government could be held properly responsible?—Yes; I think so.

16. *Hon. Mr. Dick.*] As a rule, if a Judge misdirects a jury or errs in his judgment, or for that matter a Magistrate either, do you consider that the Government should be held responsible for his errors or for those of an officer of the Court?—I do not think the colony should be held responsible for the misdirection of a Judge or for an incorrect decision by a Magistrate made in the ordinary way of business. Of course one can well understand that if an incompetent were retained on the Bench, that is to say, if a man with a corrupt mind or of intemperate habits were retained on the Bench, the colony might reasonably be asked to compensate the sufferer at the hands of this incompetent Judge

or Magistrate. The Government stand to the colony *in loco parentis*, and are bound to look to the interest of the colony in these matters.

17 *Captain Kenny.*] Do you not recognize that the Government is responsible for the judicious exercise of their prerogative in appointing officers to the law Courts, and not that the public should wait to find out that an officer is corrupt or incompetent?—That is a very wide question for me to answer. We know perfectly well that the Government is often deceived in its Judges and Magistrates. For instance, an excellent counsel will sometimes make a very indifferent Judge, whilst a very indifferent counsel will make an excellent Judge. We know that at Home there are many Judges whose decisions are frequently reversed, but I have never heard of a Government being asked to compensate a suitor for the action of a Judge. Under certain circumstances, as I have stated, the Government of any country might be reasonably called upon to compensate the losers by the Court's action.

18. *Hon. Mr. Dick.*] You suggest that you should be appointed Deputy-Judge for a time?—Yes; for two or three days.

19. Is there such an office held in the colony at present? Yes; Mr. Macdonald is District Judge and Resident Magistrate for the Auckland District, and I believe that Mr. Fenton, the Native Land Court Judge, was appointed as his deputy, so that during Mr. Macdonald's absence Mr. Fenton could supply his place.

20. Then there was nothing illegal in the appointment you sought?—Not so far as I could see. There certainly would have been no illegality in my appointment, and there could have been no quibble on my part because I volunteered my services as Deputy-Judge.

21. The telegram from Mr. Rolleston to yourself says, "As I am advised it would not now be competent to deal with the matter by making the appointment of a Deputy-Judge"?—Yes; I replied to that telegram. I pointed out in my message that, if the Minister of Justice had, during the month of October, notified to me the future arrangements of the Government, and the appointment of Mr. Broad to succeed me, I, as a matter of duty to the Government, and in honor to the people of the district, should have advised the Government as to the when and how Mr. Broad should relieve me. As I have already said, I have received no intimation of the appointment of a successor. If the Government had been frank with me, and had sought my co-operation, I should have been happy to accord it to them.

