

1898.
NEW ZEALAND.

PUBLIC PETITIONS A TO L COMMITTEE.

REPORT ON THE PETITION, No. 192, OF WILLIAM C. FITZGERALD, TOGETHER WITH
MINUTES OF EVIDENCE.

Brought up on 28th September, and ordered to be printed.

REPORT.

No. 192.—Petition of WILLIAM C. FITZGERALD, of Wellington.

THE petitioner prays that the Government may reimburse him the moneys expended in defending an action in the Supreme Court brought against him as a Public Vaccinator.

I am directed to report that the Committee finds,—

1. That the petitioner has had to defend an unwarranted civil action in the Supreme Court, in which his ability as a Public Vaccinator was assailed, and that judgment was given for the petitioner with costs.

2. That from the evidence given before the Committee there was not a shadow of proof to show that the petitioner was incompetent, or wanting in ability to discharge the duties of a Public Vaccinator.

3. That in the civil action in the Supreme Court the plaintiff was a man without money and without good reputation, and the petitioner cannot obtain from him the costs awarded by the Supreme Court.

4. That, in the interests of the public generally, and of its public officials, the petitioner should be paid out of the public exchequer all moneys properly expended by him in defending the action in the Supreme Court.

5. That the Crown Solicitor should tax the costs and moneys out of pocket payable by the petitioner. And the Committee recommends that when so taxed the Government should pay the same.

27th September, 1898.

JOHN JOYCE, Chairman.

To the Honourable the Speaker and the Members of the House of Representatives in Parliament assembled.

THE humble PETITION of WILLIAM CROTHERS FITZGERALD, of Wellington, Public Vaccinator, sheweth:

1. Your petitioner was in the year 1884, after due examination by the proper certifying officer, appointed under "The Public Health Act, 1876," and the amendments thereof, to be a Public Vaccinator.

2. That as such Vaccinator your petitioner has from time to time vaccinated a great number of children, and has received from the Government of New Zealand a fee of 2s. 6d. for each child vaccinated.

3. That on the 4th day of October, 1897, your petitioner, in his official capacity of Public Vaccinator, duly vaccinated, with lymph supplied by the Government, Olive, the infant child of Walter and Lizzie Roberts.

4. That on the 11th day of October, 1897, the said child Olive was brought to your petitioner for the customary inspection, and your petitioner was then able to report satisfactorily upon the effect of the vaccination.

5. That in the month of January last your petitioner was informed that the child Olive had been taken to the Wellington Hospital, and that the doctor in charge had reported that she was suffering from vaccinal syphilis—that is to say, syphilis contracted during the operation of vaccination—and your petitioner received a letter from a solicitor claiming damages for negligence.

6. That your petitioner then employed three medical men, one of whom was Dr. Cleghorn, of Blenheim, one of the most skilful surgeons in New Zealand, to inspect the child Olive, her parents, sister, and surroundings, with a view of reporting to your petitioner as to her condition.

7. That the said medical men made a most careful and exhaustive examination and inquiry, and jointly reported to your petitioner that the said child Olive was not suffering from vaccinal syphilis.

8. That the said medical men consulted the doctor of the Hospital in reference to the child Olive, as they desired, for the purpose of forming their opinion, to know the dates of the appearance of certain alleged symptoms and the treatment the child had undergone. They were unable to obtain any reliable information, as the doctor of the Hospital had not taken any notes whatever, and knew nothing whatever of the child's parents or their surroundings.

9. The said medical men informed the doctor of the Hospital that, in their opinion, the child Olive was not suffering from vaccinal syphilis.

10. On receiving the report of the said medical men your petitioner, as in duty bound, informed the solicitor who was acting for the parents of the child Olive that he would resist any claim that might be made against him.

11. That in the month of March last your petitioner was served with a writ, issued out of the Supreme Court on behalf of the child Olive by Walter Roberts, her father and guardian *ad litem*, claiming a sum of £600 from your petitioner as damages for infecting her with syphilis in the operation of vaccination.

12. That the said Walter Roberts is a casual wharf-labourer, and was at the time the writ was issued, and still is, as your petitioner believes, without any means whatever other than his wages.

13. Your petitioner, suffering great mental worry from the strain placed upon him, and being advised that the result of the action even if favourable to your petitioner would be likely to cause a feeling of antagonism to vaccination, and knowing that he must necessarily be put to very heavy costs, was induced to pay to the said Walter Roberts the sum of £60. Although the said Walter Roberts accepted the said sum of £60 he proceeded with the said action, on the ground that he had no right to settle the action, he being only a guardian *ad litem*.

14. That shortly before the action arising on the said writ came on for trial the said Walter Roberts was removed from his office of guardian *ad litem* of the said child Olive, and his wife, Lizzie Roberts, was appointed in his stead.

15. That during the hearing of the said action the said Lizzie Roberts admitted that she was under the age of twenty-one years, and consequently could not be made in any way liable for costs.

16. That the trial of the said action lasted six days, and, although no evidence was offered on your petitioner's behalf, the jury before whom the action was tried gave an unanimous verdict in your petitioner's favour.

17. That on the day after the action was determined an order was made revoking the appointment of the said Lizzie Roberts as guardian *ad litem* as aforesaid.

18. That it transpired in the course of the action that the whole of the medical men in Wellington were opposed to any persons, not duly qualified medical men, being allowed to vaccinate, and that several of such medical men had a special objection to your petitioner holding the office of Public Vaccinator.

19. That your petitioner has been put to very heavy costs and charges in defending the said action both for legal expenses and medical witnesses, your petitioner being obliged to subpoena medical men from a distance, as the majority of the medical men in Wellington declined to assist him.

20. The following is a list of the costs and charges your petitioner has incurred:—

	£	s.	d.
Legal expenses	460	13	0
Medical experts, and witnesses, shorthand-writers, and sundries	274	14	11
	£735	7	11

21. That, as your petitioner is a public officer, and in vaccinating the child Olive was performing a public duty, your petitioner has been advised to address this petition to you.

Wherefore your petitioner prays that this honourable House will place such a sum upon the estimates as will defray the costs and charges which your petitioner has incurred as aforesaid. And your petitioner will, as in duty bound, ever pray.

WM. C. FITZGERALD.

Dated at Wellington, this 9th day of August, 1898.

MINUTES OF EVIDENCE.

TUESDAY, 13TH SEPTEMBER, 1898. (Mr. JOYCE, Chairman.)

The Chairman : Have you seen the petition, Dr. Ewart?

Dr. Ewart : No, I have not.

The Chairman : Then please read the petition.

Mr. Izard : I had on the last morning referred to the number of vaccinations which Mr. Fitzgerald performed, and I have Mr. D. T. Stuart's summary of the position. [Document put in, marked "A."] The child in question was vaccinated on the 4th October, and went to Mr. Fitzgerald for inspection on the 11th October. The doctors' examination of the child on behalf of Mr. Fitzgerald—

The Chairman : What are their names?

Mr. Izard : Drs. Cleghorn, Faulke, and Fyffe; and the examination took place on the 17th February. On the 24th February, and before the writ in the action was issued, Mr. Fitzgerald wrote to the Colonial Secretary. I do not think we have that letter before us.

The Chairman : No.

Mr. Izard : What we have was the reply of the department to Mr. Fitzgerald, dated the 24th February, 1898. [Letter read, marked "B."] On this date, although the writ was not actually issued, an application was before the Court for the appointment of a guardian *ad litem*. So that at that time what Mr. Fitzgerald had done was this: He had received a letter from the solicitor who was acting for the parents of the child, and, with a view of ascertaining if there was anything in the charge, he did what any prudent man would have done—he got medical men to inspect the child, its parents, and surroundings, with the object of advising upon the course he should take. The three medical men called in having reported to him that the case was not syphilis, I take it he was doing his duty in defending the charge. The trial took place on the 27th July, and lasted until the 3rd August. That was really six sitting-days, there being the Saturday and Sunday intervening. Then, sir, we did something more than that: we had all the other children examined who were vaccinated or inspected by Mr. Fitzgerald on the 4th October, the day on which this child, Olive, was vaccinated, and I have the report of the doctors who examined them, and they state that they found these children in perfect health; the parents in every case stating that the children had enjoyed good health both before and after vaccination. The mothers also expressed their satisfaction with the vaccination.

The Chairman : What number?

Mr. Izard : There were thirteen vaccinated or inspected on the same day.

The Chairman : And from the same tube?

Mr. Fitzgerald : From the same set of tubes which I had obtained from the Government distributor. [Certificate put in.]

Mr. Izard : Then, sir, to come back to the position of the parents. I detailed that to you on the last occasion.

The Chairman : You had better recapitulate it.

Mr. Izard : The position was this, sir. The father is engaged as a lumper on the wharf, and he was appointed next friend to the infant, and he commenced the action. The action was carried on for a considerable time in his name as next friend. Then there came the incident of the £60 to which I referred last time. After that the mother was appointed the guardian *ad litem*, and it transpired at the trial that the mother herself was an infant, so the father was again reinstated as guardian of the child. It is apparent and perfectly plain that the father had no means whatever, and the mother, being an infant, cannot have any available assets to meet the costs. There is another fact that has to be taken into consideration: the mother admitted that she had lived an immoral life. She admitted that she had a child born before she was married, and that she lived with her husband before marriage; and from the evidence given at the trial the house was proved to be as low as a house could be. I might state that there was a child taken from the house to the Hospital, and she was suffering from abortion, peritonitis, and syphilis. Was that so, Dr. Ewart?

Dr. Ewart : Yes.

Mr. Izard : She was brought out of this very house—

The Chairman : When the child was there?

Mr. Izard : Yes. But there is no evidence to show that the woman was in the house during the vaccination period. But I am only calling the Committee's attention to the class of people that Mr. Fitzgerald, as a Public Vaccinator, had to contend with. I do not wish to go further into anything than is absolutely necessary.

The Chairman : But you are quite prepared to go into anything that is suggested? You do not want to keep anything back?

Mr. Izard : No, sir. I should now, I think, go back to the month of October. The child was vaccinated on the 4th, and went back for inspection on the 11th. The mother herself brought another child after the 11th to be vaccinated, but made no complaint as to the child in question. The child Olive was subsequently sent to the Hospital, and was treated as an out-patient. I understand that Dr. Martin also saw the child at some period, but I do not think he saw it until well up to January. Then our doctors saw it, and we decided to contest the action, having previously asked the Government to defend the action on the ground that Mr. Fitzgerald was a Public Vaccinator. I think that is all I need say at the present time.

Dr. EWART examined.

1. *The Chairman.*] You are in charge of the Hospital?—Yes.
2. You have been there, how many years?—I think, about eight or nine.
3. And had you any experience in charge of hospitals before you took up your present position?—Yes; I had been connected with hospitals for the last eighteen years.
4. And then you are Public Vaccinator, are you not?—Yes.
5. How long?—Well, I was in the Old Country.
6. How long in Wellington?—Ever since I came to Wellington.
7. Did you get vaccine from the department, the same as Mr. Fitzgerald?—Yes.
8. Then, you have no choice, I suppose; you simply apply for lymph and you are supplied?—Yes.
9. This child was under your care, was it not?—Yes, for three months.
10. Well, assuming that Mr. Fitzgerald applied to the department for vaccine in the way in which you applied, could he have done anything more than he did in the way of applying for vaccine?—No.
11. Supposing the parent of a child took to him his baby to be vaccinated, it would be his duty to vaccinate it?—Yes.
12. Supposing he vaccinated it from the vaccine received from the Government, he was simply doing what you are doing?—Yes.
13. Well, from the evidence which we have, that is just what he has done. Can you suggest that he has done anything else?—All I can say is, that the child was suffering from syphilis. It caught it in the vaccine wound.
14. How?—I do not know how it got it. All I know is that it had syphilis.
15. *Mr. Crowther.*] I would like to ask the doctor if he had any occasion to doubt the purity of the vaccine supplied by the Government?—No; it has been most satisfactory.
16. And can you assign any reason why it failed in this case?—I do not think the vaccine did fail.
17. *The Chairman.*] Is it from impurity of blood?—The infection came from outside sources. If calf-lymph was used, then it was not the lymph at all. It must have come from a person with active syphilis. That is an active or syphilitic sore. It may have been conveyed from a child that was previously vaccinated, or, if there were syphilitic people in the house with syphilitic sores, then it is quite possible it got it from that. There was a period of at least a fortnight when the poison might have been introduced.
18. Now, supposing this woman who died in the hospital—Minnie Dobson—had been living with the child in the same condition that she was in in the hospital, and at the same time as the child was vaccinated, could she have infected the child?—The chances are that she would have conveyed the infection.
19. I suppose the poison would remain with her clothing?—Yes. The poison of syphilis may get into the clothing of a person and may remain there for some length of time, and then infect the person who wears it.
20. *Mr. Crowther.*] And more especially sleeping in the same bed?—Yes; that is most dangerous. But this woman I speak of was not in an active state of syphilis at the time the child was ill, but there may have been others.
21. *The Chairman.*] Or the poison might have been deposited at some previous time?—It must have been deposited within the period of vaccination, or within a fortnight or three weeks afterwards.
22. *Mr. Crowther.*] Then, in order to find out that, we would need to inquire as to the time that this infected woman was resident in the house?—It could not have been from the woman that died in the hospital. She was in the hospital and died there about five weeks ago, and she could not have been ill longer than three or four months.
- Mr. Izard:* I did not put it with a view of suggesting that she caught it from this woman. I only put it to show the class of women who were and who may have been in the house. It certainly could not be considered a respectable house where abortions were performed.
23. *Mr. McKenzie.*] Do you carry on a private practice in Wellington besides the Hospital?—No; but I have consultations with other practitioners.
24. *The Chairman.*] You get fees for vaccinating?—Yes, but I say I do practically nothing. I would sooner do without it, for the matter of that.
25. And then, what salary do you get as doctor of the Hospital?—£700.
26. *Mr. McKenzie.*] I see that the petitioner says that Dr. Cleghorn and other medical men give it as their opinion that this child was not suffering from syphilis?—As a matter of fact, when they saw me, they said it must have been syphilis.

Mr. Izard: Oh, no.

Dr. Ewart: But, as a matter of fact, the child has got it now.

Mr. FITZGERALD examined.

27. *Mr. Izard.*] Mr. Fitzgerald, you are a Public Vaccinator, carrying on business in Wellington?—Yes.
28. You were so appointed, in what year?—1884.
29. You were examined, were you not, by Dr. Johnson?—Yes. He was appointed by the Government as certifying officer under the Public Health Act.
30. *The Chairman.*] He was competent to examine?—Yes.
31. And he held that position, how long? We want to show that he is a competent man.
- Mr. Izard:* From the passing of "The Public Health Act, 1876."
32. *Mr. Izard.*] On the 4th October, Mr. Fitzgerald, you vaccinated the child Olive Roberts?—Yes.

33. And that child was brought back to you for inspection, was it not?—Yes.
34. And how were you able to report upon it?—Satisfactorily.
35. When did you see the child again?—I never saw it.
36. Not until the trial?—No.
37. You received a letter, did you not, from Mr. Young, to the effect that the child was suffering from a loathsome disease and threatening you with proceedings?—Yes, and demanding £600 for the mother and her child.
38. You then, Mr. Fitzgerald, summoned, or rather employed, Drs. Cleghorn, Faulke, and Fyffe to make an exhaustive examination of the child for the purpose of ascertaining whether there was anything in the charge that was levied against you?—Yes.
39. And this is the report which you received?—Yes. [Report read to the Committee by Mr. Izard, "D."]
40. You made application, did you not, for further examination of the child, and you were refused?—Yes.
41. *The Chairman.*] Who refused?—The solicitor for the child.
42. That is Mr. Young?—Yes.
43. That child is living now?—Yes.
44. *Mr. Izard.*] After this you wrote a letter to the Colonial Secretary, dated the 24th February, asking the Government to assist you?—Yes.
45. On the 4th October you vaccinated or inspected certain other children?—Yes.
46. *The Chairman.*] Thirteen?—Yes.
47. *Mr. Izard.*] And you subsequently, on the 27th June, 1898, employed Drs. Rawson and Faulke to examine these children, and this is their report?—Yes. [Report read, "C."]
48. The lymph which you used on the 4th October, where did you receive that from?—From Dr. Wilford, of Patea, distributor for the Government.
49. Then it was Government calf-lymph with which you vaccinated this child?—Yes.
50. After vaccination, is it your usual practice to give any instructions to the parents?—I always tell them what to do—to keep the arm carefully shielded from dust or outside impurities until the sores are perfectly well.
51. During the process of vaccination do you use the proper antiseptics for vaccinating one child after another?—Yes.
52. Then this child was brought to you after a period of seven days: that is the period within which they are compulsorily bound to return to you?—Yes.
53. And you examined the arm then?—Yes.
54. And what was the condition of the arm?—It was perfectly normal, and taking very nicely. I filled in my certificate to the Registrar as a successful vaccination.
55. Did you see the mother of this child shortly after that?—The mother returned with a second child for vaccination.
56. Did she make any complaint to you about the child Olive?—No.
57. How long after the complete vaccination of the first child?—Without the book, I should say a fortnight after—about.
58. *The Chairman.*] And you vaccinated that child?—Yes.
59. And the mother returned after a period of seven days with it?—Yes.
- 59A. And she made no reference to the first child?—No.
- Mr. Crowther:* One was thirteen months and the other four months old.
60. *The Chairman.*] Did she say why she was so long in bringing the child to you for vaccination?—No.
61. In the first vaccination she was eight months over the time?—As far as I can remember, she stated that she did not believe in vaccination.
- Mr. Crowther:* She was reluctant.
62. *The Chairman.*] There was no complaint about the vaccination of the second child?—No.
63. When did it die?—About two months ago.
64. How long after vaccination?—About eight months.
65. And during these eight months there has been no complaint about the vaccination of the second child?—No.
66. And did you use the same class of vaccine for the second child as you did for the first?—Yes.
67. Obtained from the same source, the same doctor, and the same district?—Yes.
68. *Mr. Izard.*] Then, Mr. Fitzgerald, just before the trial there was £60 paid to Roberts?—Yes.
69. I think that you had better explain to the Committee yourself the circumstances under which that payment came to be made. You know, do you not, Mr. Fitzgerald, a person of the name of Lambert?—Yes.
70. He is the representative of some mercantile association?—Yes.
71. You have known him for some time?—Yes.
72. Have you had any business dealings with him?—Yes.
73. He came to you and said something about Roberts: what was it?—He came to me and said, "There is a man down in my office from whom I am asked to collect some rent and a doctor's bill. He is absolutely penniless, and he owes a doctor's bill for a child that died lately, and there is little use my sending him to gaol, as he has not a shilling. Some doctors said he has a good case against you." He (Mr. Lambert) said, "You vaccinated my children for six or seven years, and I and my wife have been delighted with the way in which it was done. Now, if this thing gets into the newspapers it will damn your business. Had not you better give him something? He would square it for £60." I (Mr. Fitzgerald) told him to go —. Four days later he was in my room again. He (Mr. Lambert) said, "Are not you going to give Mr. Roberts something? He is sick an

tired of the whole thing. He is most anxious to get money to clear out, after leaving sufficient to pay his debts." I (Mr. Fitzgerald) said, "I will not give you anything at all. I have never paid any blackmail in my life." Mr. Lambert asked me if he might speak to my solicitor. I then wrote a note to Mr. Izard. The same evening Mr. Izard and I had a talk on the subject, and on consideration a sum of £60 was handed to Lambert to obtain a legal discontinuance of the action.

The Chairman : Read the legal discontinuance.

Mr. Fitzgerald : We have not got it.

Mr. Izard : What happened appears to be this : A document was drawn up between Walter Roberts and Olive Roberts, his daughter, wherein they purport to assign the cause of action to the Mercantile Association, the association of which Lambert was the representative. We have a letter from Mr. Lambert detailing the whole circumstances. Messrs. Skerrett and Wylie obtained a discontinuance, and they understood that Mr. Young, who was acting as solicitor for Roberts, was thoroughly satisfied. Roberts received this £60, and he laid it out for his own purposes. Then it was that Roberts was removed as guardian *ad litem*, and the infant mother appointed.

74. *The Chairman*.] Who prepared that agreement?—Messrs. Skerrett and Wylie.

Mr. Izard : Of course, there was a difficulty as to whether a guardian *ad litem* could discontinue. A guardian *ad litem* is an officer of the Court appointed for the purpose of carrying on a suit, and it is a moot question as to whether or not a guardian *ad litem* can, without the consent of the Court, execute a sufficient discontinuance, but Mr. Fitzgerald felt that if the Robertses were satisfied no one else would apply to continue the suit.

75. *The Chairman*.] Messrs. Skerrett and Wylie were acting for Roberts up to this time?—No; they were acting for Lambert.

76. Why did not they go to Young and pay him the money?

Mr. Izard : Mr. Fitzgerald understood that Mr. Lambert got a commission out of it.

77. *Mr. Crowther*.] Did this discontinuance go through the Court?

Mr. Izard : No, it was never filed.

78. *The Chairman*.] Why was his money paid over?

Mr. Izard : It was given to Mr. Lambert, who was purporting to act as Mr. Fitzgerald's friend.

78A. *Mr. Crowther*.] Did you say he paid this money after telling Mr. Lambert to go —?

Mr. Izard : Mr. Fitzgerald had been very much worried about it, and he had been discussing it with other people besides myself, and they had persuaded him to do it. My view was that it was a very dangerous thing to do; but if Mr. Fitzgerald was worried about it, if it would have the effect of stopping the publicity of this beastliness and save Mr. Fitzgerald the liability it was plain he must incur, then it was worth while to risk it.

78B. *The Chairman*.] The way in which Mr. Izard put it to you influenced you, Mr. Fitzgerald?—Yes.

79. *Mr. Izard*.] And you also had some conversation, had you not, with the Inspector of Vaccination, and he made a recommendation to you?—Yes; I received a letter from him, which I will read. [Extract read, "E."] He is the gentleman who examines my vouchers for vaccination-fees. I wrote to Skerrett and Wylie a few days ago, asking them if they would be good enough to complete the papers in my possession—to hand me the discontinuance. They said they had destroyed it.

Mr. Izard : Here is their bill of costs : "Attending Mr. Lambert," &c., totalling £2 2s. [Bill produced, and marked "F."]

Mr. Fitzgerald : I should like you to call Mr. Lambert.

80. *The Chairman*.] Very well, I will have him rung up. Mr. Fitzgerald, can you assign any reason for what you consider the persecution to which you have been put?—Well, sir, I will sum it up in this way : that people come to me and get their children vaccinated that do not go to the doctors. It suits me to sit in my room from 9.30 in the morning till 12, and to sit there for two or three hours in the afternoon. I am very fond of the work, and I like it, and that is where the jealousy comes in.

81. What of Dr. Ewart?—I do not think that Dr. Ewart is the person; I think that the one who has made all the mischief is another man.

82. How many vaccinators are there in Wellington outside the doctors?—Mr. Brittain and myself are the only two outside the medical circle.

[Mr. Izard then read the names of the Public Vaccinators, "G."]

83. *Mr. Crowther*.] That is about half a dozen altogether. Then, it is not Mr. Brittain, the chemist, who has done it?—No.

Mr. Izard : It was given in evidence that they had sat in solemn conclave—

The Chairman : The doctors?

Mr. Fitzgerald : Yes; Dr. Mackenzie's evidence states that they sat in solemn conclave to see how they could get rid of me.

The Chairman : Let us see that evidence. [The evidence of Dr. Mackenzie bearing upon this point read by Mr. Izard, and marked "H."]

84. *The Chairman*.] Now there is the statement of claim. Is there anything else?—I do not think there is.

85. Well, read us the statement of claim. [Mr. Izard then read the statement of claim, and also the statement of defence, marked "I" and "J."]

The Chairman : Then the verdict?

Mr. Izard : The verdict was for the defendant, and I may state that the foreman of the jury said that it was unanimous. The Judge certified for second counsel and for five extra days.

The Chairman : And the plaintiff, by her guardians, has not a shilling?

Mr. Izard : No, sir. No doubt the £60 went to assist the lawsuit, but that is a matter of inference. I must now refer to the expenses.

The Chairman : Yes ; we have not got that yet.

86. *Mr. Izard* : Mr. Fitzgerald, is this a correct statement of the moneys you have paid for professional assistance, for witnesses, and for moneys out of pocket ?—Yes ; you have the receipts and vouchers here.

87. They total together, do they not, to £770 0s. 3d. ?—Yes.

The Chairman : £735 7s. 11d. is the amount stated in the petition ?

Mr. Izard : This is an amended statement that has been carefully made out.

The Chairman : Then, you will supply us with a copy. [Put in, marked "K."]

Mr. Izard : Mr. Fitzgerald wishes me to state that Dr. Faulke, who was one of the examining doctors on our behalf, and who was a Public Vaccinator in England for four consecutive years, obtained the Government bonus for the vaccination of the largest number in each year.

Mr. Fitzgerald : They give a bonus to the one who performs the most vaccinations in any one year, and Dr. Faulke was the successful vaccinator to receive that bonus for four years.

Mr. Izard : I do not know whether you would like to hear Dr. Faulke.

The Chairman : Oh, no.

Mr. LAMBERT examined.

88. *The Chairman* : What is your name ?—George Lambert.

89. What are you ?—An insurance agent.

90. What company ?—I represent the National Fire and Marine Insurance Company.

91. Do you carry on any other business ?—Yes, I act as general commission agent and rent-collector.

91A. Do you act in any other company outside an insurance company—any association ?—No, sir.

92. How long have you been in Wellington ?—Over twenty years.

93. And in business twenty years ?—I have only been in business for myself two years and a half.

94. And before that ?—I was with the Australian Mutual Provident Society for twenty years.

95. You know Mr. Fitzgerald ?—Yes, for a number of years.

96. And you know that man Roberts whom the action is about ?—I did not know him until quite recently.

97. And you paid a visit to Mr. Fitzgerald's shop one day, suggesting that he should compromise some case ?—That was Mr. Roberts's suggestion to me.

98. Perhaps you might detail it ?—In my capacity as attorney for Dr. Campbell I sent this man an account for professional attendance. He came to me and said he was in great difficulties and unable to pay the amount at the present time, and he was commencing a lawsuit against Mr. Fitzgerald, and after that was settled he was going to pay all his debts. I was interested to know what it might be against Mr. Fitzgerald, and he told me it was a vaccination case. Well, he told me a lot of rigmarole, and I told him I did not believe it. I considered that it was simply preposterous. However, I told him I thought he might approach Mr. Fitzgerald privately instead of rushing into the hands of the law, and he deemed that proposition practicable, and said, "Well, really I think the same myself. I do not get much benefit out of it, and if I could just get enough to pay my expenses I would be glad to conclude the case." I must admit that, being a friend of Mr. Fitzgerald's, I thought it would be a good way of getting out of the difficulty. Mr. Fitzgerald promptly refused to entertain the idea for a moment. He said it was a case of blackmail. I took the liberty of arguing it from a business point of view, and said I thought it was better to pay it, if it was blackmail, than risk an action ; that if he did win it would cost him more money ; and Mr. Fitzgerald said he would wash his hands of it. I told Roberts afterwards that Mr. Fitzgerald would have nothing to do with it, and Roberts called on me again and asked if something could be done, as he was really sick of it, and I told him that I had been again, and I had seen Mr. Fitzgerald ; that he had still been opposed to me about this, but that he had told me that I could consult his solicitor, and if he was agreeable, then he would decide. Then I saw Mr. Izard, and I put the case in such a pleasing light that Mr. Izard said if the plaintiff was willing, and the business was properly done, he (Mr. Izard) would concur.

99. *The Chairman* : After leaving Mr. Izard where did you go ?—I went back to my office. This fellow called on me again, and I said, "If you are still willing to accept this money we can get it settled."

100. Was any sum mentioned then ?—Yes, £60. He had totted up the list of bills, which came close on £60, but I would not like to speak accurately ; but I should say that they included one item of £12, which included his solicitor's (Mr. Young's) charges, and he said the case would be settled. Then I said, "Before I can do anything with you you must go to your solicitor ; you must discontinue the action."

101. What solicitors acted for you ?—Messrs. Skerrett and Wylie.

102. You are a representative of the Mercantile Association ?—Yes.

103. But I asked you if you carried on business in anything else, and you said "No" ?—Well, I did not understand your question.

104. What is the operation of the Mercantile Association ?—It is a general commission agency.

105. When did you go to Skerrett and Wylie ?—After I had seen Mr. Izard.

106. But why did you go to see Messrs. Skerrett and Wylie ?—To prepare the necessary document.

107. But why did not you go to Mr. Young, the plaintiff's solicitor : did not you see him at all ?—No, sir.

108. But why not ?—It never occurred to me to go to him. I might explain that Skerrett and Wylie are the solicitors to the Mercantile Association. They do all our collecting and summoning.

109. Why did not you let Mr. Izard prepare the papers: why did you go to Skerrett and Wylie?—Well, I did not think Mr. Izard should do that, as I have a regular charge with Skerrett and Wylie. The £60 was to cover everything. And, to tell you the truth, I would as lief let Mr. Izard prepare the document, or Mr. Young.

110. Well, then, did the £2 2s. paid to Skerrett and Wylie come out of the £60?—It is not paid. Well, to tell you the truth, I was so ashamed to let a scoundrel take down a friend of mine that I have undertaken to pay it. This scoundrel himself walked into my solicitor's office and proffered his thanksgiving in a most servile manner.

111. Was the discontinuance signed that day?—No, sir; the discontinuance was signed in my office on the Saturday, in the presence of witnesses, and Roberts thanked me most profusely for what I had done. On the following Monday he called on me again to go round to Skerrett and Wylie's, and thanked me before Mr. Wylie for what I had done for them. [Put in, "M."]

112. Then, the discontinuance was in your hands on the Saturday?—Yes.

113. *Mr. Crowther.*] Was the discontinuance witnessed?—Yes, by a young man named Cording, who wrote a note testifying to this effect.

Mr. Izard: This is what Mr. Cording says in his letter [letter read, "L"].

114. *The Chairman.*] Well, then, you handed the papers over to Skerrett and Wylie on the Monday?—I would not be sure.

115. Well, you handed them over?—Yes, I handed them back.

116. Why did they fail to discontinue?—I do not know.

117. I suppose they had not any money?—Well, they were in the habit of doing anything I told them to do.

118. *Mr. Crowther.*] How long were the papers in your possession?—Only on the same Saturday that they were signed. Well, you see, I thought I was dealing with honourable men, and I took no notice of these events, and I went and told Mr. Fitzgerald that the thing was done to our entire satisfaction.

119. Well, when you left Mr. Izard you took it up on behalf of the Mercantile Agency?—Yes.

120. What commission did you get out of the £60?—I got none.

121. *The Chairman.*] You got none?—No; I collected sundry accounts against him.

122. *Mr. Izard.*] You get a commission on the accounts?—Yes.

123. *Mr. Crowther.*] You collect doctors' accounts?—Yes. This fellow said to me, "There is £12 that I am going to give Mr. Young." I said, "Oh, I will save you the trouble of going up to Mr. Young."

124. *The Chairman.*] I cannot understand why you did not see Mr. Young?—This man had been to his solicitor, Mr. Young, and he told me that he had seen Mr. Young; and when I heard that Mr. Young had acquiesced in it, what more could I do?

215. *Mr. Fitzgerald.*] Will you tell the Committee what position Messrs. Skerrett and Wylie took in regard to myself in the following week? They appeared against me in the Supreme Court six days afterwards, did they not?—Well, I heard that Mr. Skerrett was acting with Mr. Young, and I asked Mr. Wylie, who is a solicitor to the Mercantile Association, "Is it true that Mr. Skerrett is a solicitor on the other side on such a case as this?" and Mr. Wylie said that when Mr. Skerrett took up the brief he knew nothing of what had transpired between himself and me. He gave me to understand, as an honourable man, that Mr. Skerrett was not aware that his firm had completed the negotiations and fixed them as it did.

126. *The Chairman.*] Was not Mr. Skerrett told before the trial commenced?—I never saw Mr. Skerrett, only Mr. Wylie.

127. Then, it was Mr. Wylie's duty to tell Mr. Skerrett; a partner is responsible for his partner's mistakes. Well, speaking of yourself, did you come out of the thing better than you expected?—Well, I tried to act better. Mr. Fitzgerald is an old friend of the family, and I must admit that I should never undertake such a thing again. This £60 was to cover everything, including legal expenses, so that Mr. Fitzgerald was to be put to no further expense in the matter.

The Chairman: That will do, Mr. Lambert.

EXHIBITS.

EXHIBIT A.

Wellington, 5th September, 1898.

Memorandum for Mr. W. C. Fitzgerald, Chemist.

I CERTIFY that I have examined your vaccination diaries from 29th September, 1884, to 3rd September, 1898, both days inclusive. The number of vaccinations shown therein as having been performed is three thousand one hundred and twenty (3,120). But in this period there is a gap from 25th November, 1887, to 23rd May, 1890, both days inclusive, about two years and a half, during which time you were, I understand, not in business, and for the most part of the period absent in England.

The total number of vaccinations shown from 8th October, 1897, to 26th July, 1898, inclusive, being 292 days, or 9·57 months, was nine hundred and eighty-seven (987), or an average per month of 103·24 vaccinations.

After 26th July, 1898, to 3rd September, 1898, latter day included, there were fourteen (14) vaccinations, being thirty-nine days, or an average per month of 10·91 vaccinations.

D. T. STUART, F.I.A., N.Z., Accountant.

EXHIBIT B.

SIR,—

No. 1, Willis Street, Wellington, 24th February, 1898.

I have the honour to lay before you the following case: The parents of a child some fourteen months old, which, as Public Vaccinator, I vaccinated last October, have commenced an action for damages against me, alleging that the child has developed syphilis through vaccination.

This child was inoculated with calf-lymph supplied to me by the Government.

I have, at considerable expense, had the parents and their children most carefully examined by Dr. Cleghorn, of Blenheim, Dr. Fyffe and Dr. Faulke, of Wellington. Their joint signed report is in my hands, and discloses the presence of syphilis in the mother as well as in her infant of four months old, but no diagnostic symptoms in the one claimed to be infected. This woman has been a common prostitute, and was delivered of her first child (deceased) in the Alexandra Home. Her own father is the reputed father of the child. The paternity of the second child (the one alleged to have vaccino-syphilis) is doubtful.

This is a most serious matter. The lymph used was supplied by the Government. I am a Government servant by virtue of my appointment. It is a most foul slander, not only against myself but against the department. I respectfully submit that the onus of defending rests with the Government, and I have the honour to appeal to you accordingly.

I have, &c.,

The Honourable the Colonial Secretary.

W. C. FITZGERALD.

EXHIBIT C.

WE, the undersigned, have examined all the children in the accompanying list. We found them all in perfect health, with a complete absence of all signs of syphilis, hereditary or acquired. Those in charge, in every case, stated that the children had enjoyed excellent health both before and since vaccination. Every mark was a normal vaccinal cicatrix.

In nearly every case the mother voluntarily expressed her satisfaction with the vaccination, and in no case was there any complaint.

ERNEST RAWSON, M.R.C.S.E., &c.

HERBERT FAULKE, F.R.C.S.Ed.

Wellington, 27th June, 1898.

Alfred G. Bowater, Annie Crawford, Lavin Andrew, Robert W. Carpenter, Edith Spencer, W. C. Spencer, Hester Petherick, N. C. Dwyer, A. E. Shackelton, C. Bradley, S. Bradley, — Mudgway, Annie Jane Fisher.

EXHIBIT D.

WE, the undersigned duly qualified medical men, beg to state that we have carefully examined the child — Roberts, her sister, — Roberts, the mother, Mrs. Roberts, and the father, — Roberts. We find that at the present time, with regard to the child, — Roberts, said to be infected with syphilis, that there are no symptoms which show that the child has been infected with that disease. There is no induration about the scar of the vaccination-mark; there is no rash, and no signs of mucous tubercles about the child. The child has an enlarged gland in the left axilla, where the vaccination-scar is; also in both posterior triangles of the neck enlarged glands are present. Glands of the same kind are present in both groins. No other signs of syphilis are present. In the second child, not said to be infected by syphilis, the same enlarged glands are present, and, in addition, a red desquamating rash round the anus. As regards the mother, her throat is very suspicious of previous syphilitic infection. It is scarred in two or three places as though she had suffered from specific ulceration. She denies herself ever having had the disease to her knowledge. We may point out that, before her marriage, on her own evidence she had an illegitimate child, which died. The father of the child said to be infected shows no signs of syphilis. The history of the disease is not exactly compatible with that of syphilis. The ordinary course of vaccino-syphilis is that a sore forms, heals, and then breaks down again. In this case the sore never healed, and the eruption was present whilst the sore was discharging. This is unusual. This set of symptoms is more compatible with septicæmia than with syphilis. However, Dr. Ewart informs us that the child had mucous plaques upon its tongue. If this be so, it is distinctive of syphilis, and it must be assumed that the child had the disease. But, even supposing that the child had contracted the disease and at the point of vaccination, it is not possible for any one to say that the poison necessarily was due to the vaccination. Taking into consideration the condition of the mother's throat, which points strongly to syphilitic infection, it is very possible that she may have secondarily infected the child. The saliva of a person who has suffered with syphilis is infective for a considerable period, and there is nothing to show that the child was not infected in this way. In addition to the above evidence, considering the condition of the other child, it is possible that the secondary infection may have come from it. We think it well that this child said to be infected should be seen from time to time, that its symptoms may be watched.

One symptom is absent from this case which is common in scars left by syphilis, and that is that such a scar is pigmented. There is no pigmentation in the vaccination-scar on this child.

GEORGE CLEGHORN.

HERBERT FAULKE.

WM. KINGTON FYFFE.

17th February, 1898.

EXHIBIT E.

MY DEAR MR. FITZGERALD,—

Wellington, 17th June, 1898.

I have been thinking a great deal about this case of alleged "unskilful treatment" with which you are threatened, but more especially since you told me that your solicitors had set the case down on the Court-list instead of the prosecuting counsel. I do not question the wisdom of

this course, for it shows that you are anxious to court inquiry, but I do not think you would be wise in pushing the case into Court for the sake of victory, &c. It would be victory dearly bought, not on account of costs of Court, for that would be trifling compared to “fees out of pocket” that you would lose through the “set-back” that vaccination would receive. There are so many people with “fears” and prejudice that they would be only too delighted to read the details that this case would bring out, and make use of them in endeavouring to shake the confidence of the public. And I am certain it would take a year or two to restore the public confidence in vaccination. I cannot possibly enter into the sentimental side, for as soon as sentiment is allowed to influence business wisdom takes flight. You get the name of a good practical business-man, and your success as a Public Vaccinator is due to the businesslike way in which you deal with it. And you must admit that you have succeeded in deriving a good income from this source; and, if your reputation is not interfered with, I think you may safely conclude, from the “takings” of the last twelve months, and the way that you know I am dealing with vaccination, that a regular source of income is assured to you. From a business point of view, therefore, it would be suicidal to push this case to an issue. The moral worth of a victory such as you hope to gain suffers a considerable discount when obtained at such a cost as I reckon you would suffer. That tetanus case did you more harm than you imagine; but I need say no more—it is your own business, and perhaps I am treading where I have no right. Kindly accept this letter in a friendly spirit. Yours truly,
F. W. MANSFIELD.

EXHIBIT F.

The MERCANTILE ASSOCIATION to SKERRETT and WYLIE, Solicitors, Wellington.

1898. Re Roberts. £ s. d.

June 11. Attending Mr. Lambert, receiving instructions; drawing assignment of cause of action; engrossing same; drawing and engrossing discontinuance; attending you therewith	} 2 2 0
" 13. Attending you, conferring, and advising; attending you and Mr. Roberts, conferring when he confirmed his action of signing assignment.	
" 14. Attending you, conferring, and advising.	
" 20. Attending Mr. Lambert, conferring, and advising as to letter from Mr. Cording; attending Mr. Izard, conferring.	
Examined.—SKERRETT and WYLIE, Wellington, 17th August, 1898.	

EXHIBIT G.

WELLINGTON VACCINATION DISTRICT.—PUBLIC VACCINATORS AND VACCINATION STATIONS.

Public Vaccinator.	Vaccination Station.	Time of Vaccination.
Dr. J. Ewart	The Hospital, Newtown ...	Every Tuesday and Friday, from 11 a.m. to noon.
Dr. W. B. Tripe	Dr. Tripe's surgery, Willis Street	Every Tuesday and Friday, from 2 p.m. to 3 p.m.
Dr. Teare	88, Cuba Street	Every Monday and Thursday, from 2 p.m. to 3 p.m.
Mr. H. Brittain, chemist ...	Te Aro Dispensary, Manners Street	Every Monday, Tuesday, Thursday, and Friday, from 11 a.m. to 3 p.m.
Mr. W. C. Fitzgerald, chemist	Central Pharmacy, Willis Street...	Daily, from 11 a.m. to 3 p.m.

EXHIBIT H.

EXTRACT from the Evidence of Dr. WALLACE MACKENZIE from the Shorthand-writer's Notes taken at the Trial.

1. Do you remember the meeting of the Medical Association held some little time ago to consider the question of vaccination?—I remember a meeting that was held some time ago to consider a report which Dr. Mason, of Otaki, read on the subject of vaccinators.
2. Was Fitzgerald's case mentioned then?—Fitzgerald was mentioned a good deal; I do not know whether his case was or not.
3. How long ago was this, Dr. Mackenzie?—I think it was in May of this year.
4. Who was it that had most to say about Fitzgerald?—I do not know that any one had more than another. I did not say anything about him myself, but most of the others did.
5. What did they say?—They were speaking of vaccination in general, and chemists' vaccination in particular.
6. And Mr. Fitzgerald in particular?—Yes.
7. Well, did you approve or disapprove of that part of the proceedings?—I approved of it.
8. And discussed about Mr. Fitzgerald?—Well, it is this way: I disapprove of anybody but doctors vaccinating. But I disapprove of attacking an individual who has got a right from the Government—has got authority to do the work. I would attack the Government.
9. What you objected to was the system?—Yes.
10. And you objected to medical men combining together to attack a servant of that system?—No, I did not object, but I did not want to be in it, and I went away before the meeting was over. I felt that Mr. Fitzgerald had as much right to vaccinate as anybody else in this country.

11. Did not you say that the profession had better wash their dirty linen before they attempted to wash other people's?—I do not wonder; I suspect I did.

In the Supreme Court of New Zealand, } No. 6306.
Wellington District.

STATEMENT OF CLAIM.

3. The defendant undertook to vaccinate the plaintiff on or about the 4th day of November, 1898 (*sic*), but so negligently and unskillfully treated the plaintiff that the plaintiff was infected with a loathsome disease, and her health and constitution have been greatly impaired thereby :

ROBERTS v. FITZGERALD.—STATEMENT OF DEFENCE.

3. The act of vaccinating the plaintiff was done by the defendant under and by virtue of "The Public Health Act, 1876," and not otherwise; and no notice in writing of the plaintiff's intention to commence this action, or of the supposed cause of action relied upon by the plaintiff, was given to the defendant before the said action was commenced, as required by the statutes on that behalf.

AMENDED STATEMENT of EXPENSES in VACCINATION CASE, Roberts v. Fitzgerald, in Supreme Court, from 27th July to .

	£	s.	d.		£	s.	d.
Fyffe, Dr.	5	5	0	Brought forward ...	678	5	5
Cleghorn, Dr.	25	0	0	Rawson (witness's subpoena-fee) ...	1	1	0
Jellicoe, E. G.	275	13	11	Faulke " ...	1	1	0
Izard, C. H.	159	2	0	Translation of French book on vac-			
Faulke, Dr.	2	12	6	ination ...	1	10	0
Needham ...	2	0	0	Further claims unpaid—			
Reuter's telegrams ...	12	13	0	Cleghorn, Dr. ...	50	0	0
Tong ...	5	5	0	Witness Bradley and wife ...	2	0	0
Typewriting and shorthand ...	36	16	10				
" ...	1	8	7				
Dunn ...	0	10	6				
Bassett ...	14	14	0	Items for which no vouchers appear—			
William (clerical assistance) ...	1	0	0	Trip to Blenheim (W. C. Fitz-			
Faulke, Dr.	19	8	0	gerald) ...	5	0	0
Petherick ...	1	0	0	Telegrams ...	0	5	6
Wyatt... ..	2	0	0	Rodgers, solicitor, Blenheim ...	1	1	0
Rawson, Dr.	8	0	0	Algar (witness) ...	0	5	0
Wilford, Dr.	11	1	0	Fee paid witness ...	1	0	0
Millington, Dr.	3	3	0	Telegrams ...	4	0	3
Young (clerical assistance) ...	1	1	0	Cabs, &c. ...	7	1	9
Stuart (auditor) ...	2	2	0	Postages ...	3	4	5
Certificate of death ...	0	2	6	Paid for private information ...	5	1	0
Osborne (witness) ...	0	15	0	Books delivered back to Sydney			
Chapple, Dr.	2	2	0	and Blenheim ...	0	15	11
Roberts ...	60	0	0	Stationery ...	1	0	0
Tringham ...	11	17	0	Algar (telegram and delivery) ...	0	11	0
Books ...	7	6	7	Second trip to Blenheim ...	4	15	0
Plan of room ...	3	3	0				
Fyffe, Dr. (witness's subpoena-fee)...	1	1	0				
Ewart, Dr. " ...	1	1	0				
Chapple " ...	1	1	0				
Carried forward ...	£678	5	5	Omitted, Skerrett and Wylie, un-			
				paid claim ...	2	2	0
				Final total ...	£770	0	3

EXHIBIT L.

DEAR SIR,—

Wellington, 20th June, 1898.

In reply to your inquiry, I have much pleasure in stating that on the Saturday morning when I was called in to witness the signature of a person named Roberts to certain deeds I distinctly remember you asking Roberts if he had told Mr. Young to withdraw his case in accordance with your instructions, when Roberts replied and assured you he had done so and that Mr. Young was quite agreeable. Mr. Roberts's actions were impressed on my mind from the fact that he called so very many times that morning, and the anxiety he showed to complete the transaction and get back to his work.

Yours, &c.,

Mr. G. Lambert, National Chambers, Grey Street, City.

PERCY CORDING.

EXHIBIT M.

THIS deed, made the eleventh day of June, one thousand eight hundred and ninety-eight, between WALTER ROBERTS, of the City of Wellington, labourer, and OLIVE ROBERTS, his daughter (hereinafter jointly and severally referred to as and included in the term "the assignors"), of the one part, and GEORGE LAMBERT, of the City of Wellington, carrying on business under the style or firm of "The Mercantile Association" (hereinafter referred to as "the association"), of the other part. Whereas the assignors have commenced an action in the Supreme Court of New Zealand at Wellington to recover the sum of six hundred pounds damages against WILLIAM CROTHERS FITZGERALD, of the City of Wellington, chemist, which action is numbered 6306 in the records of the said Supreme Court: And whereas the assignors have agreed with the association to assign the right of action (if any) which they or either of them have against the said William Crothers Fitzgerald in respect of the causes and matters mentioned in the statement of claim filed in the said action for the sum of sixty pounds: Now, this deed witnesseth that, in pursuance of the said agreement, and in consideration of the said sum of sixty pounds by the association paid to the assignors (the receipt whereof is hereby acknowledged), they, the assignors, do and each of them doth hereby assign, transfer, and set over unto the association and its assigns all and singular the right of action, and all claims and demands whatsoever of them, the assignors, or either of them, against the said William Crothers Fitzgerald by reason of the causes and matters mentioned in the said statement of claim; and the assignors do and each of them doth hereby nominate, constitute, and appoint the association and its assigns the true and lawful attorney of them and each of them for the purpose of entering a discontinuance or otherwise dealing with the said action, and to compromise any claim as aforesaid; and all and whatsoever the said association or its assigns shall do or cause to be done in the premisses the assignors and each of them do hereby agree to ratify and confirm; and the assignors and each of them do and doth hereby covenant for themselves and each of them, their and each of their executors, administrators, and assigns, with the association and its assigns that they will at all times hereafter, at the request and cost of the association, execute and do all such acts, deeds, matters, and things which may be reasonably required for the purpose of more effectually assigning the premisses hereinbefore expressed to be hereby assigned. In witness whereof, the parties hereto have executed these presents the day and year first before written.

WALTER ROBERTS.

(L.S.)

OLIVE ROBERTS (by her next friend, Walter Roberts).

(L.S.)

Signed, sealed, and delivered by the said Walter Roberts, and
by the said Olive Roberts, by her next friend, the said
Walter Roberts, in the presence of—

PERCY CORDING,
Clerk, Wellington.