

P E T I T I O N

OF

FREDERICK AND LEOPOLD YATES

RELATIVE TO

A CASE TRIED AT RAGLAN

ARISING OUT OF AN ALLEGED BREACH OF "THE ARMS IMPORTATION ORDINANCE."

(Presented 21st August 1860, and ordered to be printed.)

TO THE HONORABLE THE HOUSE OF REPRESENTATIVES OF NEW ZEALAND, IN PARLIAMENT ASSEMBLED.

The Humble Petition of FREDERICK YATES and LEOPOLD YATES, both of Kawhia, but now resident in Auckland, General Traders;

SH EWETH,—

That your petitioners in 1858 entered into partnership with Charles Davis and Louis Davis, both of Auckland, to carry on business at Kawhia, as General Traders, and commenced business there accordingly.

That on the twenty-fifth day of April last your petitioners were carrying on their said business at Kawhia aforesaid, and had in their possession certain guns which had been in their store for more than eight months, when certain Natives of the Ngatimaniapoto and Ngatibikairoa tribes, to the number of about thirty or forty, came to the store of your petitioners and purchased tobacco and other stores and afterwards offered to purchase guns. That your petitioners refused to sell them any, when the said Natives said if they would not sell the guns they would take them by force. That your petitioners then called upon Mr. H. N. Brewer, the Sub-Collector of Her Majesty's Customs resident at Kawhia, to use his influence as a Government Officer with the Natives to endeavour to prevent them taking the said guns. That in consequence Mr. Brewer at the suggestion of your petitioners called a half-caste girl who was in his service to act as interpreter between him and the Natives, and your petitioners and the said Mr. Brewer then tried to dissuade them from such an act of violence or at any rate to remain quiet until the arrival of Mr. Donald McLean at Kawhia, where he was daily expected. That the Natives refused, and said they neither cared for Mr. Brewer, Mr. McLean, or the Government; and that if Mr. McLean was there, they would place the guns before him and take them away from him, and forthwith proceeded to take the said guns and some shot, and on the following morning some of the Natives returned and took two pounds of powder being the whole quantity which your petitioners had in their store.

That your petitioners on the first day of May went to Raglan to see Mr. McLean, and informed him of what had taken place, and told him also (as was the fact) that the Natives had offered to pay your petitioners for the guns, &c., which they had taken, and asked his advice as to the receipt of payment for the said guns and as to how they should act, requesting him at the same time to come over to Kawhia; that he (Mr. McLean) refused to give any advice, and said that if he was to go to Kawhia it might make matters worse, and might compromise the Government.

That on the fourteenth day of May your petitioner Leopold Yates came to Auckland and saw the Honorable Mr. Richmond, and informed him of all the circumstances of your petitioners' case and asked his advice about taking payment from the Natives for the guns, to which he replied that a trader taking payment under the circumstances would lay himself open to suspicion, and he would advise that he did not take payment.

That your said petitioner Leopold Yates then returned to Kawhia, and on the twentieth of June your petitioners were served with a summons to appear before the Resident Magistrate's Court at Raglan on the fifth day of July then next ensuing, to answer a charge for having "been guilty of a breach of an Ordinance of the Lieutenant-Governor and Legislative Council of the Colony of New Zealand made and passed in the ninth year of the reign of Her Majesty Queen Victoria, intituled 'An Ordinance to empower the Governor of New Zealand to regulate the Importation and Sale of Arms, Gunpowder, and other Warlike Stores,' for that they or some or one of them had wilfully and knowingly sold and disposed of certain guns at Kawhia aforesaid on or about the twenty-fifth day of March last past" which information was as your petitioners verily believe laid at the instance of the Attorney-General.

That your petitioner Frederick Yates forthwith proceeded to Raglan for the purpose of appearing to the said summons and obtaining either an adjournment of the hearing to Auckland or a postponement to enable your petitioners to obtain legal assistance, and your petitioner Leopold Yates proceeded to Auckland for legal advice and to consult with their said partner the said Charles Davis.

That on the said fifth day of July Mr. James Armitage, a Solicitor of the Supreme Court of New Zealand, appeared on behalf of the Government on the said summons, and your petitioner Frederick Yates appeared and protested in writing against the case being heard in an inferior Court, and asked for a postponement of the case so as to enable your petitioners to obtain legal assistance in a case of such importance, and also on the ground that many of the Natives who were parties to the transaction were absent.

That the Resident Magistrate refused to consent to either of the said applications.

That your petitioner, the said Leopold Yates, did not appear upon the said summons, and was not called in the Court.

That the case was heard and determined, and the Resident Magistrate fined your petitioners five hundred pounds, and ordered them to pay upwards of Ninety pounds, for costs upon the ground that there had been collusion between your petitioners and the said Natives, and that the said guns had been taken with the consent of your said petitioners.

That upon the said judgment being delivered, your said petitioner Frederick Yates protested against the same, and stated his intention of appealing to the Supreme Court to have the same reversed and asked the said Resident Magistrate if it was necessary for him to give any formal notice. The

PETITION OF FREDERICK AND LEOPOLD YATES.

said Magistrate said he did not know, and applied to the said Mr. Armitage for information; who said no form was necessary, and subsequently made the same statement to your said petitioner Frederick Yates.

That your petitioner, the said Frederick Yates, immediately after the said judgment was given and on several subsequent occasions applied to the said Resident Magistrate, for copies of the depositions taken in the said case, who under the advice of the said Mr. Armitage refused to give them.

That your petitioners severally affirm most positively that there was no collusion between them or either of them and the said Natives, and that the said guns, powder, &c., were all taken against their consent, and that they have never received any payment for any part thereof.

That your petitioners consider that great wrong and injustice have been done to them by the said Resident Magistrate, and that his said judgment ought not to be enforced upon the following, amongst many other, grounds.

That by reason of the short time allowed to your petitioners from the service of the summons to the time of hearing, they were unable to prepare for their defence.

That the Resident Magistrate had no right to hear the charge in the absence of your petitioner Leopold Yates.

That the evidence given, although elicited by leading questions, is not sufficient to sustain the charge.

That your petitioners were charged with having sold and disposed of guns, and there was no evidence of any sale.

That much of the testimony given, was improperly admitted as evidence.

That all the Native witnesses were interested parties.

That the evidence of the half-caste girl who acted as interpreter to Mr. Brewer, was most important and was not taken.

Your petitioners further say that they have been put to very serious loss and cost, by reason of the circumstances above referred to.

Your petitioners therefore pray that your Honorable House will cause the facts of your petitioners' case to be enquired into, and will take such other steps therein as to your Honorable House may seem meet, and for the relief of your petitioners from the great hardship and injury inflicted upon them by the course pursued by His Excellency's Government.

And your petitioners will ever pray.

FREDERICK YATES.
LEOPOLD YATES,