

CORRESPONDENCE

RELATIVE TO

MR. J. S. MACFARLANE'S RESIGNATION OF HIS APPOINTMENT

AS A JUSTICE OF THE PEACE.

(Return to an Order of the House of Representatives, dated 4th October, 1871.

“That all Correspondence relative to the resignation of his appointment, by Mr. J. S. Macfarlane,
as a Justice of the Peace, be laid upon the Table.”

(Mr. Kelly.)

WELLINGTON.

—
1871.

CORRESPONDENCE RELATIVE TO MR. J. S. MACFARLANE'S RESIGNATION OF HIS APPOINTMENT AS A JUSTICE OF THE PEACE.

No. 1.

Mr. MACFARLANE to the Hon. W. GISBORNE.

SIR,—

To avoid the possibility of being a party to the unfair administration of justice in the Courts here, I beg you will have my name struck out of the list of Magistrates.

Auckland, 11th July, 1871.

I am, &c.,

J. S. MACFARLANE.

The Hon. the Colonial Secretary, Wellington.

No. 2.

The Hon. W. GISBORNE to Mr. MACFARLANE.

SIR,—

Colonial Secretary's Office (Judicial Branch),
Wellington, 22nd July, 1871.

I have the honor to acknowledge the receipt of your letter of the 11th instant, tendering your resignation of the Commission of the Peace.

The Government trust that on reconsideration you will not feel yourself compelled to resign the Commission of the Peace, and they trust that you will withdraw your resignation.

I have, &c.,

W. GISBORNE.

J. S. Macfarlane, Esq., J.P., Auckland.

No. 3.

Mr. MACFARLANE to the Hon. W. GISBORNE.

SIR,—

Auckland, 10th August, 1871.

I have the honor to acknowledge the receipt of your letter No. 922, desiring me to reconsider the resignation of the Commission I hold as a Justice of the Peace. In reply, I beg to tender to the Government my thanks for the courtesy evinced in your letter, and to express my regret at not being able to alter my resolution to resign. I feel that I ought not to remain in a position which experience has shown me can so easily be assailed by action in the Supreme Court, as shown in the readiness with which a rule for a criminal prosecution was granted against myself for libel, for the part I took in exposing the disgraceful proceedings against the master of the schooner "Onward," which proceedings, as I foretold, ended in nothing, beyond extorting from Stewart over one hundred pounds. The manner in which the Justices, Williams and Von Sturmer, were dragged before the Supreme Court and mulct in large sums of money for having broken the law while doing their duty honestly and justly, though not quite strictly in legal form, is an additional warning to me.

The Whangapoua Mill case, which has been for years before the Supreme Court, is another illustration, in even a worse form, of what I dread, namely, the disastrous consequences that result from the Courts allowing greater consideration to points of law, legal quibbles, or the interests of lawyers, than to the verdict of the jury. In this case, the action of the Chief Justice and the Counsel for the plaintiff, including the Crown Prosecutor, was to me utterly incomprehensible, and must have been equally so to the jury, as may soon be shown to the Legislature, in a pamphlet now published, and copy herewith annexed. Craig's property at Whangapoua was worth considerably over ten thousand pounds, and had been made so by the hard work of many years and the investment of money, yet the result of the ruling of the Chief Justice in the cause, coupled with what has since taken place in the Court, virtually deprives Craig of even possession of his property, and allows other parties to keep possession of the same. Law may have been administered to Craig, but most certainly justice has not. The costs and expenses already paid by him exceed three thousand pounds, yet all that enormous sum has not had the effect of getting the case put before the jury in an intelligible form and in such a shape as they could give a verdict on the case on its merits.

While it is the practice of the Supreme Court to set aside the equitable judgments of Magistrates on trifling legal points, or lock up twelve gentlemen for not agreeing to a verdict in numerous stupid issues, framed, to my mind, apparently, to mystify and assist useless expensive litigation, or while in three cases out of four the verdict of the jury is rendered of none effect by any means whatsoever, or while an officer of the Supreme Court can pass through the Insolvent Court, paying nothing in the pound upon thousands of pounds, and at that very period the weekly returns of Mount Eden Gaol, as published in the daily papers, disclose to the world the "imprisonment of even a woman for debt," I feel sure that I am acting correctly in refusing to be a party to the administration or maladministration of justice.

Should, however, it be my good fortune to outlive this lamentable state of matters, I may possibly do myself the honor to solicit the Government to restore my name to the Commission of the Peace.

I have, &c.,

J. S. MACFARLANE.

The Hon. the Colonial Secretary, Wellington.

APPENDIX.

WE the undersigned do hereby state as follows:—

That we served as Special Jurors on the trial in the case of Mohi Mangakahia *versus* Thomas Craig, heard before His Honor the Chief Justice in the Supreme Court at Auckland, in June, 1871.

That the trial lasted nine days, and that at the end of the trial we fully understood the merits of the whole case.

That our verdict was unanimously for the defendant, except as to certain issues, with regard to which the Chief Justice expressly directed us in law to find the plaintiff, with three shillings damages.

That in our opinion the action was a most unrighteous and vexatious one, and instead of Mohi being entitled to damages for the pretended wrongs complained of by him, we consider Craig to have been in the whole matter the injured party, and if it had been in our power in that action, we should certainly have awarded substantial damages to Craig as against Mohi and his accomplice, C. A. Harris, jun., for the grievous wrongs which he has sustained at their hands.

That, in spite of the denials, on oath, of Mohi and Harris, we are perfectly satisfied that, to all intents and purposes, these two are one, and have throughout worked in concert, at least as against Craig.

That we give it as our deliberate opinion and conviction that the two thousand logs, more or less, cut down and squared by Craig at Opitonui, and now lying there or at Harris' mill, are in all honesty and good conscience the absolute property of Thomas Craig, and that Mohi and Harris have not the shadow of an equity on which to ground a claim to such logs.

That being satisfied, therefore, that the law has in this case been made the instrument of spoliation and oppression, which shocks every sentiment of natural justice, we should be highly gratified if the Legislature would devise and carry into effect a measure calculated to repair such an intolerable wrong.

JAMES FARMER, *Foreman*.
CHARLES STITCHBURY,
F. R. CLAUDE,
BARTON IRELAND,
ALLAN O'NEIL,
W. R. LOGAN,

JAMES WALLACE,
R. J. TAYLOR,
J. C. MORRIN,
GEORGE RUST,
A. BARNES,
C. H. OTWAY.

No. 4.

Mr. FOUNTAIN to Mr. MACFARLANE.

Colonial Secretary's Office (Judicial Branch),
Wellington, 5th September, 1871.

SIR,—

I have the honor, by direction of Mr. Gisborne, to inform you that the resignation, tendered by you in your letter of the 10th ultimo, of your appointment as a Justice of the Peace, has been accepted.

J. S. Macfarlane, Esq, Auckland.

I have, &c.,
R. G. FOUNTAIN
(for the Assistant Law Officer).