

1873.

## NEW ZEALAND.

## CONDUCT OF W. B. WHITE, ESQ., R.M., MONGONUI.

*Return to an Order of the House of Representatives, dated 17th July, 1873,**“That there be laid upon the Table copies of all correspondence between W. Butler, Esq., H. H. Fenton, Esq., and all other persons, relative to the conduct of W. B. White, Esq., R.M., Mongonui.”—(Mr. Gillies.)*

## No. 1.

Mr. H. H. FENTON to the Hon. the COLONIAL SECRETARY.

SIR,—

Kaitia, 14th September, 1872.

I regret having to call your attention to the loose and improper manner in which Mr. White, R.M., of Mongonui, conducts himself. I request that an inquiry may be instituted, to ascertain whether the following charges are true:—

1. In a recent case in which I was interested, the evening before the hearing I found Mr. White and Mr. Kelly (Clerk of the Court) engaged drinking and playing cards with two traders named Yates, one of whom was plaintiff in the suit. The latter was led away, at the conclusion of the evening, in an intoxicated state.

2. Giving his own opinion to the sitting Justices immediately preceding the hearing of a case in which I was plaintiff. Mr. White was an interested party in the case, and also a witness, and was therefore incapacitated from sitting. And further, writing a letter to Mr. Kelly, the Clerk, intended for the inspection of the sitting Justices, before the conclusion of the case, and which letter was shown to one of the Justices, and perhaps both; the said letter bearing on the case. I have further to complain of both Messrs. White and Kelly advising defendant from the commencement of the suit until it terminated.

3. Being cognizant of a certain trader, in a purely Native district, trafficking with the Natives in the sale of spirits, neglecting to take any steps towards suppressing such traffic, but rather encouraging it by staying as a visitor for a day or two in the house of the said trader.

The above charges can be substantiated if only the Government will give me a fair opportunity. I bear no malice to Mr. White, but in the interest of the whole community, I feel it my duty to represent to Government, not only conduct inconsistent with the position of Resident Magistrate, but derogatory to the character of a private gentleman.

It has happened on occasions before, where charges have been brought against officials, that they have been disregarded by the Government, and this is so well known that the public prefer to bear petty tyranny, injustice, or what not, rather than take steps that are almost sure to terminate in placing them in a position worse than they held before. In conclusion, I beg to refer you to the papers in connection with Mr. White's resignation of his appointment in the Native Lands Court. A perusal, I think, must satisfy you that the time has arrived when this gentleman would best serve the public interest by retiring on his pension. Mr. McLeod has further details of the charges just enumerated.

The Hon. the Colonial Secretary.

I have, &amp;c.,

HAROLD H. FENTON.

## No. 2.

Mr. FOUNTAIN to Mr. H. H. FENTON.

(No. 712.)

Colonial Secretary's Office (Judicial Branch),

Wellington, 4th October, 1872.

SIR,—

I have the honor, by direction of Mr. Sewell, to acknowledge the receipt of your letter of the 14th ultimo, complaining against the conduct of Mr. White, the Resident Magistrate at Mongonui; and in reply, to inform you that a copy of your letter has been forwarded to that gentleman for any remarks he may have to make thereon.

I have, &amp;c.,

R. G. FOUNTAIN.

Harold H. Fenton, Esq.,  
Kaitia, Mongonui, Province of Auckland.

1—H. 37.

## No. 3.

Mr. FOUNTAIN to Mr. W. B. WHITE, R.M.

(No. 711.)

Colonial Secretary's Office (Judicial Branch),  
Wellington, 4th October, 1872.

SIR,—

I have the honor, by direction of Mr. Sewell, to enclose a copy of a letter received from Mr. H. H. Fenton, complaining of your conduct as a Magistrate, in order that you may have an opportunity afforded you for making such remarks thereon as you may think proper.

I have, &amp;c.

W. B. White, Esq., R.M., Mongonui.

R. G. FOUNTAIN.

## No. 4.

The RESIDENT MAGISTRATE, Mongonui, to the Hon. the Colonial Secretary.

SIR,—

Resident Magistrate's Office, Mongonui, 20th September, 1872.

I have the honor herewith to forward a complaint made by Mr. G. Kelly, Clerk to this Court, against Messrs. W. Butler and H. H. Fenton, Justices of the Peace, for conduct unbecoming their position. I am not able to say more than I regret the occurrence very much, as I was not present in Court, Mr. Fenton having very unjustifiably subpoenaed me as a witness, thereby preventing my presence on the Bench, though I was not called upon to give evidence: indeed I could not have given any material to the case.

I forwarded the charges to Messrs. Ball and Anderson, the Justices who sat in the case, for their remarks, for the information of the Government.

I have, &amp;c.,

The Hon. the Colonial Secretary, Wellington.

W. B. WHITE, R.M.

## Enclosure in No. 4.

Mr. G. KELLY to Mr. W. B. WHITE, R.M.

*Fenton v. Frear.*

SIR,—

Resident Magistrate's Office, Mongonui, 12th September, 1872.

I very much regret to have to report the conduct of H. H. Fenton, J.P., and W. Butler, J.P., of this district, but I feel it to be my duty to do so. The conduct of these gentlemen towards the Bench, and towards me in particular, throughout the whole proceedings in the above case, which came before this Court on the 27th August last (in which Mr. Fenton was the informant), was most insolent and disgraceful. Thomas Ball, Esq., and A. Anderson, Esq., were presiding Justices. My complaints against Mr. Fenton are as follows:—

That he made a most pointed attack against me while conducting his case, by putting the following questions to the witnesses:—"Have you had any conversation with the Clerk of this Court about this dog since the commencement of proceedings—have you had any advice from him?" To another witness, "Have you had any conversation with the Clerk of this Court with reference to this matter? Have you received any advice from any functionary of this Court on this matter? Have you heard it discussed by any functionary of this Court? Have you heard it argued by the functionaries of this Court that there must be a nonsuit against me?" Also, further, putting such questions as to elicit the following answer:—"I have not had any money encouragement to defend this case; I have not been encouraged by Mr. Kelly, or any one else before me, to defend this case." Also, that he took every advantage of the leniency of the presiding Justices, having subpoenaed the Resident Magistrate, whom he did not call upon to give evidence, thereby depriving the Court of his knowledge in conducting the case; did all he could to mislead the Bench, and cause the case to be conducted in an informal and irregular manner, interfering with me in my duties as Clerk to the Court by interrupting me when called upon by the Justices for advice as to the proper mode of conducting the proceedings; and that he made use of the following improper language:—"I call upon the Bench for protection inside this Court; I can protect myself outside the Court." Also, that on a previous occasion he made use of his position as a Justice of the Peace to try and influence a vote in the late election of a member of the Provincial Council of Auckland.

My complaints against Mr. Butler, J.P., are, that during the proceedings in the above case he took his seat in the Court, telling the Justices that he declined to sit on the Bench as his son-in-law (Mr. Fenton) was the informant, but that he was determined to sit and watch the case, but would render them any assistance he could in the shape of advice, as he had had more experience in these matters than either of them; that instead of advising he did everything to mislead the Court; and that on the morning of the 30th August he came to this office, in company with Mr. Fenton, and tried to intimidate me to cause me to give up the depositions in the above case to the informant (who had appealed against the judgment) to copy, by telling me that I would have to pay the whole costs in this case awarded by the Supreme Court for having refused to do so. This occurred in the presence of Mr. C. M. Masters, Native School Teacher, Pukepoto.

I beg, Sir, to request that you will be good enough to forward these complaints to the Government, and urge that an inquiry may be held on the conduct of these gentlemen, which I have represented in the mildest form possible, and for further corroboration of these statements I beg to refer you to Thomas Ball, Esq., and A. Anderson, Esq., Justices of the Peace.

I have included my complaints against both these gentlemen in one letter, as they acted conjointly throughout the whole proceedings. Upon all occasions Mr. Fenton was accompanied by Mr. Butler

whenever he visited the Court in reference to the case, both before and after the judgment, and took a most prominent part in the whole proceedings.

I have, &c.,  
GEO. KELLY,  
Clerk to the Bench.

W. B. White, Esq., Resident Magistrate, Mongonui.

MESSRS. BALL AND ANDERSON,—

Having been precluded, by Mr. Fenton's action towards me, from taking my seat on the Bench in this case, I am unable to make any remark for the information of the Government; I have therefore thought it better to refer these complaints to you and Mr. Anderson, who heard the case, requesting you will be good enough to make any inquiries you may think fit.

14th September, 1872.

W. B. WHITE, R.M.

W. B. WHITE, Esq., R.M.,—

We the undersigned having conjointly considered the complaint of Mr. Kelly in reference to the conduct of Messrs. Butler and Fenton during the hearing of the case *Fenton v. Frear*, are prepared to corroborate the charges as substantially correct.

16th September, 1872.

THOS. BALL.  
ALEX. ANDERSON.

### No. 5.

Mr. FOUNTAIN to CAPTAIN BUTLER.

(No. 746.)

Colonial Secretary's Office (Judicial Branch),  
Wellington, 15th, October, 1872.

SIR,—

I have the honor, by direction of Mr. Hall, to enclose a copy of a letter of complaint, received from the Clerk of the Court at Mongonui, against yourself and Mr. H. H. Fenton as Justices of the Peace, with memoranda by the Resident Magistrate and Messrs. Ball and Anderson, in order that you may make such remarks thereon as you may think proper.

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

Captain Butler, Mongonui.

### No. 6.

Mr. FOUNTAIN to Mr. H. H. FENTON.

(No. 747).

Colonial Secretary's Office (Judicial Branch),  
Wellington, 15th October, 1872.

SIR,—

Adverting to my letter of the 4th inst., No. 712, relative to complaints made by you against the Resident Magistrate at Mongonui and his Clerk, I have the honor, by direction of Mr. Hall, to enclose a copy of a letter of complaint, received from the Clerk of the Court at Mongonui, against yourself and Captain Butler as Justices of the Peace, with memoranda by the Resident Magistrate and Messrs. Ball and Anderson, in order that you may make such remarks thereon as you may think proper.

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

H. H. Fenton, Esq., J.P., Mongonui.

### No. 7.

Mr. W. H. CLARKE to the Hon. the COLONIAL SECRETARY.

SIR,—

Mongonui, 1st October, 1872.

The extraordinary maladministration of justice in this district, and the annoyance and civil consequences to the settlers, I hope will be deemed a sufficient plea for my addressing you.

Some years ago the Resident Magistrate of Mongonui was found guilty, by an Auckland jury, of defamation of character on a settler whilst sitting on the Bench, and was punished accordingly. Afterwards there was an inquiry into his conduct whilst Acting Custom House Officer, out of which he escaped by uttering untruths. Then he became so obnoxious that the settlers memorialized the Government to remove him, which was refused—how much trouble would have been saved had their prayer been granted—since which there have been continual complaints, such as interference in politics—in one instance his taking the chair (though cautioned) when the members met their constituents; dancing at a public house with the policeman's wife; meddling in private affairs and slandering his neighbours; down to the present time, when a dispute arose about a dog (*Fenton v. Frear*), the prejudging of which is better described by an article from the Auckland press, which I have attached to this letter to prevent mistakes in transcribing, which has caused quarrels amongst the Justices of the Peace, and bringing the law into contempt. I am a settler of many years' standing, and have taken the liberty of calling your attention to this district—where there is, and has been, so much bad administration of Her Majesty's laws—hoping you in your wisdom will see the necessity of putting a stop to such a sad state of things as exists here. The system has worked so badly here, both in the administering the laws and the peace of the community, with the evils attending it, that it has caused a scandal, and made us a by-word amongst our neighbours.

I have, &c.,  
WILLIAM HENRY CLARKE.

To the Hon. the Colonial Secretary, Wellington.

## Enclosure in No. 7.

## MANGONUI—PROGRESS OF THE SETTLEMENT.

I READ in the *Weekly News* the account of a "Trip to the North." I fully agree with the description given of Ahipara, and the salubrity of its climate; but with regard to the Forty-Mile Road leading to it from Mangonui, I believe nothing in New Zealand can surpass it for impassability for coaches, or wheels of any sort, or in the bad management and ignorance of the Highway Board, notwithstanding the assistance of a professional man, the pay to whom is, in my opinion, a sheer loss. Mangonui township is evidently improving: there is to be another hotel, a wharf is to be erected at the cost of the Government (which is much needed), another storekeeper to commence business, and a new store is being built, which, when completed, will be an ornament to the township and a credit to the builder. There has been some little excitement here during the week relative to the ownership of a dog, which came before the Magistrate's Court for a hearing, and which lasted three days. A decision was given in favour of defendant. The claimant lectured the Bench, animadverted on the conduct of the Resident Magistrate (who was absent), insulted the witnesses and his neighbours, and descended to abuse the Maoris. The Bench showed great, in fact too much, forbearance. Previous to its hearing, the Resident Magistrate addressed the Court as follows:—"He was subpoenaed, but should not sit, though he thought he had a right to. He had not issued a warrant, as promised, because he had reason to believe—in fact, he felt assured—the plaintiff was not the owner. He (the plaintiff) had given up the right of ownership to the dog in question." Would it not have been better to have said this subsequently? Four of the six Justices were unable to sit, because of being interested parties. After the trial the plaintiff said to defendant, "This dispute will not affect your license next year." Whether spoken ironically I can't say. It was taken as such by him and others. This case affords an additional proof that the present system of the administration of justice is bad, when Justices of the Peace are interested and acquainted with cases coming before them beforehand. A periodical Court should be held, presided over by a barrister or one versed in law, who could not hear out-door talk or be prejudiced, and which would be far better for country districts. The Mangonui people have memorialized the Government repeatedly, but in vain.

## No. 8.

Mr. FOUNTAIN to Mr. W. H. CLARKE.

Colonial Secretary's Office (Judicial Branch),  
Wellington, 28th October, 1872.(No. 772.)  
SIR,—

I have the honor, by direction of Mr. Hall, to acknowledge the receipt of your letter of the 1st instant, relative to the alleged mal-administration of justice at Mongonui; and in reply, to inform you that the attention of the Government having already been drawn to the matter, inquiries are being made.

I have, &amp;c.,

R. G. FOUNTAIN,  
(for the Assistant Law Officer).

W. H. Clarke, Esq., Mongonui.

## No. 9.

Mr. H. H. FENTON to the Hon. the COLONIAL SECRETARY.

SIR,—

Mongonui, 5th November, 1872.

I have the honor to acknowledge the receipt of a letter from the Assistant Law Officer, in reply to mine asking for an inquiry into the conduct of our Resident Magistrate, Mr. W. B. White. I am told, in reply, that a copy of my letter has been forwarded to Mr. White for his remarks thereon. I fear it will be found that those remarks will ill represent the true state of the case. I am a respectable settler and on the Commission of the Peace, in which character I think I have always done my duty. The charges I laid against Mr. White were not made until long consideration had been given to the serious position in which I was placing myself. Indeed, at the present moment I would gladly see the matter in other hands. For some years the irregularities of the gentleman complained of have been patent to the public, and repeated representations have been made to the Government, but hitherto without bringing about any practical result. I have myself staved off this unpleasant duty as long as possible, although feeling all along that I was hardly justified in so doing. The charges I have made I am fully prepared to prove. Other charges of quite as grave a character will be brought forward at the inquiry; but as they will involve the evidence of other persons, I have not thought proper to specifically refer to them. The Clerk has thought proper to bring charges against me. I am not aware whether they have been forwarded by the Resident Magistrate, but in case they have not I now enclose the original letter containing them. As I am not guilty of the matters there imputed to me, I think they afford an additional reason for my demanding an inquiry. In conclusion, I beg to assure you that the time has now arrived when the Government should interfere and put a stop to irregularities that are a scandal to the district.

I have, &amp;c.,

HAROLD H. FENTON.

The Hon. the Colonial Secretary.

## Enclosure in No. 9.

Mr. G. KELLY to Mr. H. H. FENTON.

*Fenton v. Frear.*

SIR,—

Resident Magistrate's Office, Mongonui, 23rd September, 1872.

I have written to the Resident Magistrate making complaints against you, and requesting

that he will forward my letter to the Government, and urge that an inquiry may be held on your conduct towards the Bench, and towards me in particular, in the above case, and also for having abused your position as Justice of the Peace, by trying to influence a vote in the late election of a member of the Provincial Council of Auckland.

I have, &c.,  
GEO. KELLY,  
Clerk to the Court.

H. H. Fenton, Esq., Mongonui.

### No. 10.

Mr. FOUNTAIN to Mr. H. H. FENTON.

(No. 888.)

SIR,— Office of the Minister of Justice, Wellington, 2nd December, 1872.

I have the honor, by direction of the Minister of Justice, to acknowledge the receipt of your letter of the 5th ultimo, with further reference to your complaint against the Resident Magistrate at Mongonui; and in reply, to inform you that the same is under consideration.

I have, &c.,  
R. G. FOUNTAIN,  
Acting Under Secretary.

H. H. Fenton, Esq., Mongonui.

### No. 11.

Mr. W. BUTLER, J.P., to the Hon. the COLONIAL SECRETARY.

SIR,— Mongonui, 8th November, 1872.

I have the honor to acknowledge the receipt of your letter of the 15th ultimo, and in reply to state that I deny the statements made by Mr. Kelly, and respectfully request the Government to accede to his request by granting an inquiry, and to have evidence taken on oath. I am also prepared, if an inquiry does not take place, to forward to the Government a full explanation of my conduct in the transaction referred to by the Clerk of the Court.

In reference to Messrs. Ball and Anderson's memorandum, I beg to state that neither of them were in the settlement when Mr. Kelly says I tried to intimidate him.

I have, &c.,  
WM. BUTLER.

The Hon. the Colonial Secretary, Wellington.

### No. 12.

Mr. FOUNTAIN to Mr. W. BUTLER, J.P.

(No. 891.)

Office of the Minister of Justice,  
Wellington, 2nd December, 1872.

SIR,— I have the honor, by direction of the Minister of Justice, to acknowledge the receipt of your letter of the 8th ultimo, relative to the complaints made against you by the Clerk of the Court at Mongonui; and in reply, to inform you that the same is under consideration.

I have, &c.,  
R. G. FOUNTAIN,  
Acting Under Secretary.

W. Butler, Esq., J.P., Mongonui.

### No. 13.

The RESIDENT MAGISTRATE, Mongonui, to the Hon. the COLONIAL SECRETARY.

SIR,— Resident Magistrate's Office, Mongonui, 8th November, 1872.

With reference to your letter, 4th October, No. 711, covering charges made against me by Mr. H. H. Fenton, I have the honor to state that I will not reply to the insinuations made against me as a private gentleman, further than to say that I have been thirty years in this Colony, nearly eight and twenty in the service, and I am pretty well known, and for the twenty-five years I have been in this district I have been treated with respect and confidence. Mr. H. H. Fenton's opinion does not affect me much. I cannot permit Mr. H. H. Fenton to take credit to himself for disinterested motives in making these charges, for they are principally conjectural, and made purely from malice. Mr. Fenton is one of those ill-tempered, selfish, dogmatic persons who do not act from disinterested motives; besides, as he says himself, he has not a friend in the place. For the last three years I have differed entirely from Mr. H. H. Fenton's views in cases in which he was personally interested, and he has circulated opinions and statements prejudicial to me, but which I did not consider it worth my while to take notice of. This feeling has been greatly embittered by an action brought by Mr. H. H. Fenton to recover a dog, and the whole community thrown into excitement, not only by the conduct of Mr. H. H. Fenton, but by Captain Butler, who, having lately resumed his occupation of shopkeeping, has imparted a sort of trading opposition in the case, in which he took an active part.

With regard to the concluding remarks, I am not aware that any correspondence has taken place, as I did not resign my appointment of Judge of the Native Lands Court; but, being in Auckland, Mr. Judge Fenton told me he had recommended that my services should be dispensed with, there being one Judge in the North wholly available, which I was not, and he had to reduce the expenses; also informing me other Judges would have to go. I saw the Hon. Mr. McLean immediately, who very kindly said he had waited to see me before making any change, proposing that I should take the office of Crown Agent instead, which I did, and so it has remained since.

With regard to my retiring, I am very sorry to say that I fear I shall shortly have to communicate with the Government on this subject. My health is most seriously affected, having taken a severe cold on the lungs through swimming a flooded river when on my way to Whangape to pay for the Kaitaia Block. I have never been well since. I have nearly lost the sight of one eye, and I have for some time been contemplating this step, and should most probably have written before this on the subject, had it not been for the desire expressed by Mr. H. H. Fenton that he would get me out of office, and his brother was going to assist him. I do not mention this because I believe that Mr. Judge Fenton would attempt this, but merely that it was a threat used by Mr. H. H. Fenton.

I will now reply to the charges.

1st. I really cannot see why, because Mr. H. H. Fenton was defendant and Mr. E. Yates plaintiff in a case to come off, that I should be debarred from the pleasure of a game of whist with either or both, or take a glass of anything I chose to drink; but, unfortunately, Mr. H. H. Fenton has made, by inference, altogether a different statement to the fact, which is this: Mr. Fenton said he would meet me on the road (we were on speaking terms then), which he did beyond Kaitaia. We rode some miles together to Ahipara. We dined together. Before dark Messrs. Yates called on me: they remained to spend the evening. A rubber was proposed, an amusement I often indulge in when I meet with those who play, though I never gamble. Our party consisted of two Yates, Mr. Kelly, Mr. H. H. Fenton, Mr. Le Touzel, and myself. The two latter either declined to play or were cut out. Mr. H. H. Fenton did not find us playing and drinking. He never left me from the time I dismounted until he left me after his case was decided. As for the drinking, I presume each called for what he wanted, and paid for it, except Mr. Fenton, who drank with Mr. Yates, and at that gentleman's expense, I suppose, as it was at Mr. Yates's invitation. The latter part of the statement, that "the plaintiff in the case to come off was led away in an intoxicated state," is an entire untruth, nor was there the slightest foundation for such a statement.

2nd charge. I did not give an opinion on the case, as stated. I gave a simple statement of the proceedings up to that time. I was not an interested party in the case. I was to have had a puppy for the service of my dog, but immediately a dispute arose as to the ownership of the bitch, I gave up my claim. Indeed it was well known that I had no selfish motive in the claim, for I should not have exercised it except to oblige a friend. I had no occasion for such a dog. I was subpoenaed as a witness, not because of any information I could give in the case, because it was well known that I knew nothing about it, but simply to put me off the Bench; and this was proved, because I was never called as a witness, and the sitting J.P.s remarked strongly upon Mr. Fenton's conduct in depriving the Bench of my knowledge and experience in the conduct of cases in Court.

The letter complained of was of a purely private character, and I cannot respect either Mr. Fenton or Captain Butler for the manner in which they obtained a knowledge of such a letter having been written. It certainly was not done in a way that gentlemen would approve; but however, it will be seen by Mr. Ball's remarks that it had not the bearing inferred.

With regard to advice, I can most truly say the only person I advised was Mr. H. H. Fenton: that he was suing the wrong person. I had no conversation with the defendant relative to the bitch, and neither directly or indirectly did I give my advice to defendant, or any other person, from first to last. So particular have I been in this matter, that I do not think there is a person in the district who knows less about this dog case. I have not read the depositions or replied to Mr. Anderson's note, because I would not know or say anything about the case. I felt most indignant at being subpoenaed as a witness and not called upon. I did not even issue the summonses, both Messrs. Butler and Fenton showed so much feeling in the case; and I am assured positively by Mr. Kelly that he gave no advice either.

3rd charge. This is an absurd charge. If it refers to Mr. McMath, at Whangape, this place is out of my district. What I have or have not done to discourage spirit drinking amongst the Natives is, I think, better known to the Government than to Mr. H. H. Fenton. It is sufficient to state that this is the most sober district in the Colony, and I take some credit that it is so. Mr. McMath is no longer the holder of a wholesale license; and on the occasion of my visit to Whangape with the money for the Kaitaia Block, a visit which I shall have cause to remember during life, I received from Mr. McMath the most kind and considerate attention. I was very ill, and I do not know what I should have done had it not been for this gentleman's attention. It is proper for me also to inform the Government that the Natives complained bitterly of Mr. McMath, because he had ceased to sell them spirits. I am quite sure they got none from him whilst I was there.

I have, &c.,

W. B. WHITE,  
Resident Magistrate.

The Hon. the Colonial Secretary, Wellington.

### Enclosure 1 in No. 13.

Mr. H. H. FENTON to Mr. W. B. WHITE, R.M.

SIR,—

Mongonui, 11th September, 1872.

I have written to the Government, demanding an inquiry into your conduct as Resident Magistrate of the district. The charges, condensed into a few words, are as follows:—

No. 1. You and Mr. Kelly playing cards and drinking with the two Yates the night previous to trying a case in which one of them was plaintiff.

No. 2. Volunteering an opinion and advising Justices on a suit in which you were interested and a witness, and also prompting defendant.

No. 3. Your failing to take steps towards suppressing spirit drinking amongst the Natives.

I thought it but fair that you should at once be acquainted with the steps I am taking, and therefore this note.

W. B. White, Esq.

I have, &c.,

HAROLD H. FENTON.

## Enclosure 2 in No. 13.

QUESTIONS submitted to Mr. BALL, J.P.

1. Did I give any opinion on the case before the Court?—I did not understand you to give any opinion on the case.
2. Did I or not state the case for the information of the Bench simply, and without comment of my own up to the period of its hearing?—Your statement referred chiefly to preliminary proceedings, and in no way tended to prejudice the case.
3. Did I or not state as my reason for retiring from the Bench that I had been summoned as a witness, although I was not aware that I had any knowledge of the case?—You did.
4. Did not Captain Butler (though not on the Bench) attempt to draw me into an argument as to whether I was not wrong in refusing to grant a warrant in this case?—I remember Captain Butler calling in question your right to refuse a warrant.
5. Was it proved in any part of the proceedings that I was an interested party in the case?—Not unless the promise of a puppy for the use of your dog can be so construed.
6. Was I called upon as a witness?—You were not called as a witness, and were relieved from attendance after first day's hearing.
7. Was it not proved, on the oath of defendant, that neither Mr. Kelly nor myself (or any functionary of the Court), from first to last, gave any advice in the case?—Defendant's deposition was to that effect.
8. Did Mr. Kelly show you a private note of mine to him, written on 28th August?—He did.
9. Had that note any reference to any *point* then before the Court: did it in any way influence your decision?—It had no reference to any "point" before the Court, and could in no way influence the verdict.

THOS. BALL.

P.S.—The note being purely of a private nature, and written after I had been discharged by the Court from further attendance—Mr. H. H. Fenton having closed his case—I do not think I am really called upon to answer such charges; but I am desirous to show the Government the real truth of the case, which Mr. H. H. Fenton, to serve his own purposes, has endeavoured to obscure.

W. B. WHITE.

## Enclosure 3 in No. 13.

Mr. T. BALL to Mr. W. B. WHITE, R.M.

MY DEAR SIR,—

Omaiti, 26th October, 1872.

The answers to the questions referred to me are framed strictly according to facts and evidence. With regard to any communication with me on the case, either before or after the hearing, I cannot understand that administrators of justice are required to be deaf and dumb in cases of popular interest. Yet I am in a position to state that you did not convey to me any information or opinion affecting the issue of the case in the slightest degree; and the insinuation that any member of the Bench could be so influenced is equally insulting to such J.P. as to the party charged with making the attempt, and, in fact, in the present case has issued in personal alienation.

W. B. White, Esq., R.M.

I am, &c.,  
THOS. BALL.

## Enclosure 4 in No. 13.

Mr. H. ANDERSON to Mr. W. B. WHITE, R.M.

DEAR SIR,—

Mongonui, 29th August, 1872.

We have finished the case of *Fenton v. Frear*, as far as we are concerned, by deciding in favour of Frear. I will not say anything to prejudice your mind, but both Mr. Ball and myself thought it a great hardship to be deprived of your assistance on the Bench, as the case involved a great many nice points, which required us to look for the practice of Courts. I think you will concur with us when you read over the evidence in the Court. Will you be kind enough to write to me and give me your opinion of the case, and the course of procedure that is required now if it goes to a higher Court.

W. B. White, Esq., R.M.

Yours, &c.,  
H. ANDERSON.

## No. 14.

Mr. FOUNTAIN to the RESIDENT MAGISTRATE, Mongonui.

(No. 871.)

Office of the Minister of Justice,

SIR,—

Wellington, 29th November, 1872.

I have the honor, by direction of the Minister of Justice, to acknowledge the receipt of your letter of the 8th instant, relative to certain charges brought against you by Mr. H. H. Fenton, and to inform you that, so far as any specific charges have been made, your replies thereto have been satisfactory to the Government.

I am, however, to point out to you that it is advisable, on the score of prudence, to avoid playing at whist and drinking with intending litigants.

I have, &amp;c.,

The Resident Magistrate, Mongonui.

R. G. FOUNTAIN,

Acting Under Secretary.

## No. 15.

Mr. H. H. FENTON to the Hon. the COLONIAL SECRETARY,

SIR,—

Mongonui, 14th November, 1872.

I have the honor to acknowledge receipt of your letter containing copy of Mr. Kelly's letter complaining of my conduct. The charge of intimidation is absolutely false. The other charges are frivolous. Mr. Kelly refers to my conduct as insolent and disgraceful. Such language is unwarrantable, and I therefore again demand an inquiry, such inquiry to embrace the other matters referred to in reference to Mr. White.

I again beg to state that irregularities in connection with the officers of the Magistrate's Court are so glaring, and have been for years on the increase, that no other course remains, as far as I can see, but a thorough investigation. I feel assured that a searching inquiry will show forth a state of things that the Government will be little prepared for.

The Hon. the Colonial Secretary, Wellington.

I have, &amp;c.,

HAROLD H. FENTON.

## No. 16.

Mr. FOUNTAIN to Mr. H. H. FENTON.

(No. 887.)

Office of the Minister of Justice,

SIR,—

Wellington, 2nd December, 1872.

I have the honor, by direction of the Minister of Justice, to acknowledge the receipt of your letter of the 14th ultimo, with further reference to your complaint against the Clerk of the Court at Mongonui; and in reply, to inform you that the same is under consideration.

I have, &amp;c.,

R. G. FOUNTAIN,

H. H. Fenton, Esq., Mongonui.

Acting Under Secretary.

## No. 17.

Mr. FOUNTAIN to the RESIDENT MAGISTRATE, Mongonui.

(No. 886.)

Office of the Minister of Justice,

SIR,—

Wellington, 2nd December, 1872.

With further reference to your letter of the 8th ultimo, in which you intimate your intention of shortly retiring from the public service on the pension to which you may be entitled, I have the honor, by direction of the Minister of Justice, to request you to be good enough to state the probable date at which you will communicate with the Government on this subject.

I have, &amp;c.,

R. G. FOUNTAIN,

The Resident Magistrate, Mongonui.

Acting Under Secretary.

## No. 18.

The RESIDENT MAGISTRATE, Mongonui, to the Hon. the MINISTER of JUSTICE.

SIR,—

Resident Magistrate's Office, Mongonui, 14th December, 1872.

In reply to your letter No. 886, 2nd December, 1872, with reference to the probable date of my retiring from the public service, I have the honor to state that, if possible, I should like to be released about April next, when I shall have completed twenty-eight years' service; and by that time I shall have attended to duties connected with the Native Lands Court sitting next January in Mongonui and Waitangi, which a stranger would have difficulty in doing.

I have, &amp;c.,

W. B. WHITE,

The Hon. the Minister of Justice, Wellington.

Resident Magistrate.

## No. 19.

The RESIDENT MAGISTRATE, Mongonui, to the Hon. the MINISTER of JUSTICE.

SIR,—

Resident Magistrate's Office, Mongonui, 14th December, 1872.

I have the honor to acknowledge your letter No. 871, 29th November, 1872, informing me that my replies to Mr. Fenton's charges against me have been satisfactory to the Government.

With regard to the latter part of the letter, I think it due to myself to state that I am not in the habit of forgetting that I am a gentleman. The terms in which Mr. Fenton made his charge purposely offensive implied much, and I should be sorry the Government should suppose I had for one moment forgotten my private and public position. I might perhaps have explained this more clearly: besides Messrs. Yates and Fenton had been friends for years, the latter frequently partaking of the hospitality of the former. The litigation was of a simple character, and involved some three pounds.

I have, &amp;c.,

W. B. WHITE,

The Hon. the Minister of Justice, Wellington.

Resident Magistrate.



## No. 20.

Mr. H. H. FENTON to the Hon. the MINISTER OF JUSTICE.

SIR,—

Mongonui, 6th April, 1873.

Some months ago I had the honor of addressing you on the subject of an inquiry into certain charges made by me against Mr. White, the Resident Magistrate of Mongonui. In your reply you were good enough to state that the matter was under the consideration of the Government. I again call your attention to the grave character of those charges, particularly the one wherein I accuse the Resident Magistrate with attempting, by means of a letter, to influence a Bench of Magistrates in their decision in the case of *Fenton v. Frear*. In order that you should better understand the connection between this letter and the foregoing charge, it is necessary to enter into a few details. The defendant, by some means or other immaterial to the charge, came into possession of a valuable setter bitch, my property. I applied to defendant for possession, and he refused. I then sought the assistance of the Resident Magistrate, by swearing an information in the usual course. The Magistrate despatched the bailiff to defendant, but, strange to say, with no instructions beyond the inquiry whether the bitch was in his (the defendant's) possession. The defendant told the bailiff that if he demanded the bitch he would give her up. The bailiff replied that he had no instructions to demand possession. I again applied to the Magistrate, and he absolutely refused to interfere. I then commenced an action of *detinue*. About this time it came to my knowledge that Mr. White had lent his setter dog to defendant for the purpose of getting my bitch in pup, Mr. White receiving as payment the first choice of a puppy out of the litter. This circumstance, together with an evident disinclination to assist me in recovering possession of my bitch, led me to apply to the only two available Justices (Messrs. Anderson and Ball) to try the case. The trial lasted three days, and it was during the morning of the third day, while the clerk was taking down the evidence, that the letter in question arrived. It was laid by the bailiff on the clerk's desk. It remained there some time, the latter being too much engaged to read it. Captain Butler sat close by, and observed that the superscription was in Mr. White's handwriting. This, coupled with the fact that the Resident Magistrate had previously taken an active and partial part in the case, led Captain Butler to suspect that this letter had something to do with the matter in hand: the sequel will show that it had. On adjourning for lunch, it was observed that the clerk read the letter—a very long one,—and at the first opportunity retired outside with Mr. Ball. Captain Butler had occasion, about this time, to retire for a certain purpose: when he came at the back of the buildings he found Mr. Ball and the clerk busy perusing the contents of the letter before mentioned. Nothing further transpired at the time, but when the case was over, and the decision given against the plaintiff, Captain Butler asked Mr. Ball if he had received a letter from Mr. White that in any way bore upon the case just decided. Mr. Ball—by a subterfuge—replied that he had not. On being further questioned whether he had seen a letter from Mr. White, he replied that he had, and further confessed that it contained matter bearing on the case. No further questions were asked. Captain Butler immediately afterwards came to me, and acquainted me with the whole circumstance; and I then wrote three notices, one each to Messrs. Ball, White, and Kelly, requesting them to note down the contents of that letter while their memory served them. The notice also contained a request that the one out of the above-named three who held possession of the letter should be careful to neither lose nor destroy it, as it might be required at some future time. Nothing further transpired touching this matter until Mr. White volunteered to Captain Butler a statement to this effect, namely, “that the letter contained advice to the Justices to adjourn the case for further evidence.” It must be borne in mind that the letter itself was not produced. Had it been, it would at any rate have shown an honest intention on the part of Mr. White that we should know the whole of the contents. I have well considered the transaction in all its bearings, and one only conclusion seems open,—that a highly improper act has been done: so serious, indeed, that I cannot conceive of the Government overlooking it. It must be further considered that the Magistrate to whom this letter was read is a person, on his own confession, totally ignorant of law. He told Captain Butler and myself that he had never opened a law book, nor did he intend doing so. He is a person of nervous disposition, and little or no education to rectify deficiencies of mind. I need hardly point out to the Government how eagerly such a person would seize on the advice of the Resident Magistrate, a gentleman of twenty-five years' practice: how ready to remove responsibility on to the shoulders of one who ought at the least to be more capable of judging in such a case than he whose pursuits have not taken him beyond compounding drugs in a chemist's shop. I have before stated that Mr. White was an interested party, and a witness, and I should wish that the Government keep this in sight. Not only had the Justices Mr. White's moral support, but also the support of every individual who had invested their guinea in a puppy. In a small community like ours, six people constitute a public feeling. Such was the number of investors, and backed by Mr. White, every effort was used to deprive me of my dog. One of the Justices (Mr. Anderson), an inferior person even to Mr. Ball, was drinking, the night previous to the trial and the subsequent nights, with persons interested in the case. The case was most fully, and probably unfairly, stated to him before hearing it. However, I have no intention of involving other parties until the inquiry takes place, when I trust that the Government will give me every opportunity of sifting the matter thoroughly.

I beg most emphatically to state that I am not bringing this matter before the Government on personal grounds, nor am I influenced in any way by unworthy motives. I feel now, and have felt for several years, that that portion of the public inimical to Mr. White has been, and is, at the mercy of that gentleman, and I deeply regret to state that that mercy has not always been tempered with justice. I have myself hitherto resolved not to interfere in public matters or with public people: this has been a rule through life; but I did not, in making such a rule, anticipate a state of things as above described. I feel now that I should be a coward if I shrank from what, to me, is so evidently a duty. There are other charges mentioned in my former letter, but it is not necessary to revert to them here. I would humbly suggest that the Government write to Mr. White for the original letter written by Mr. White, at Oruru, to Mr. Kelly, Clerk of the Court at Mongonui. If this is produced, the Government will be in a position to judge for themselves as to one charge. If it is not produced, that in

itself will be a suspicious circumstance, and it then remains for the Government to obtain the notes that I requested by notice Messrs. Ball, White, and Kelly to take a few hours after the letter had been shown to Mr. Ball.

Mr. White has given out that he intends to resign. I shall be glad to settle the matter in this way, my only object being to get rid of an officer who no longer retains the confidence of the public, nor reflects credit on the Government employing him.

The Government is aware that Mr. Kelly, the Clerk of the Court, has made a charge against me of disgraceful conduct, and this charge has to some extent been confirmed by the Justices. In reference to this matter, as I stated in my former letter in replying to the charge, my wish is that there should be a full investigation. I am still of that determination, and now reiterate my desire that my character shall be cleared of an aspersion that I shall prove was unwarrantable.

The Government granting an inquiry into the conduct of an old and valuable servant like Mr. Beckham, encourages me to hope that a proper supervision over the conduct of officers not immediately under their eye will form a part of their future policy. Former Governments have taken the opposite extreme, treating well-grounded complaints with contempt and even rudeness. The inevitable result has been too plainly seen. The officers complained of have become greater tyrants, marking out those who have attempted to thwart them for their especial disfavour, which brings about the further result that the people make up their minds to allow things to take their own course or it will fare worse for them.

With Mr. White I have always endeavoured to be on friendly terms,—not intimate, for his habits precluded that; and now that differences have arisen, I shall be prepared to show the Government that public grounds alone have prompted me to take these steps.

The Hon. the Minister of Justice.

I have, &c.,  
HAROLD H. FENTON.

### No. 21.

Mr. FOUNTAIN to Mr. H. H. FENTON.

Office of the Minister of Justice,  
Wellington, 14th May, 1873.

(No. 304.)  
SIR,—

I have the honor, by direction of the Hon. Mr. O'Rorke, in the absence of the Minister of Justice, to acknowledge the receipt of your letter of the 6th ultimo, with further reference to the complaints made by you against Mr. White, the Resident Magistrate at Mongonui, and his clerk. As you have intimated to the Government that you will proceed no further in the matter, so far as Mr. White is concerned, if the rumour that he is about to retire from the public service prove correct, I am to inform you that Mr. Williams, the Resident Magistrate at Waimate, has been instructed to assume magisterial duties at Mongonui, in order to allow Mr. White to retire on the pension to which he is entitled.

With regard to the complaint of the Clerk of the Court against yourself, I am to state that the matter has been referred to Mr. Williams to inquire into and report upon for the information of the Government.

I have, &c.,

H. H. Fenton, Esq., Mongonui.

R. G. FOUNTAIN,  
Acting Under Secretary.

### No. 22.

Mr. W. H. CLARKE, Mongonui, to the Hon. the COLONIAL SECRETARY.

SIR,—

Mongonui, 15th April, 1873.

I have the honor to acknowledge the receipt of your reply relative to the appointment of the future Resident Magistrate for this district. The scenes of quarrels and troubles that have taken place here at various times during twenty years, between Mr. White and almost all the settlers, and the vain attempts for his removal, would fill a volume. I will not trouble you by recapitulating them, but it renders us peculiarly sensitive as to who is to be his successor. Knowing that Mr. Puckey has solicited the Natives to sign a petition for his appointment, we cannot but express our opinion that, however fitted he might be to fill an office where the Maoris only are concerned, we feel assured he is totally unfit to preside in a Court and administer the English law he has never learnt. Fear, therefore, lest the evils under which we have suffered so much and so long might be repeated in the event of his appointment, is the plea for these remarks, and we respectfully solicit great caution in your selection of our future Resident Magistrate. A man is not allowed to act as a doctor or lawyer without learning the profession: how much more necessary is it for a Resident Magistrate to know the law he has to administer.

I hope it will not be deemed presumption in me to suggest, with all due courtesy and respect, that a Court held at the Bay of Islands, Mongonui, Hokianga, and Wangaroa, monthly, could transact all the business in this part of New Zealand. It would have the advantage of economy, and render the Magistrate free from the prejudices which too often exist when he is permanently fixed and his time frequently unoccupied, as has been the case here.

I hear the retiring pension to Mr. White will be £400 per annum (equal to that of an ex-Attorney-General in Auckland), which would be a sufficient full pay for a Magistrate in all this district alluded to. The office of Coroner could be filled by a medical man, and the various Justices of the Peace could do all that is necessary in the interval of the Courts. I have the honor of having some acquaintance with the Hon. Donald McLean, who, I believe, can corroborate these statements. I am writing the sentiments of a great majority of my neighbours.

The Hon. the Colonial Secretary, Wellington.

I have, &c.,  
WILLIAM HENRY CLARKE.

## No. 23.

Mr. W. BUTLER, J.P., Mongonui, to the Hon. the MINISTER of JUSTICE.

SIR,—

Mongonui, 21st April, 1873.

I have the honor to call your attention to your letter of December 2nd, 1872, acknowledging receipt of my letter of November 8th, relative to the charges made against me by the Clerk of the Resident Magistrate's Court at Mongonui, and informing me that the same was under the consideration of the Government. I have now the honor to request you to be good enough to inform me if you have come to any decision on the subject, and, if so, what the decision may be, as I am anxious either that the Clerk may prove his charges, or be proved to have made charges that he is unable to substantiate.

I have, &c.,

The Hon. the Minister of Justice, Wellington.

WM. BUTLER, J.P.

## No. 24.

Mr. FOUNTAIN to Mr. W. BUTLER.

(No. 305.)

Office of the Minister of Justice,

SIR,—

Wellington, 14th May, 1873.

I have the honor, by direction of the Hon. Mr. O'Rorke (in the absence of the Minister of Justice), to acknowledge the receipt of your letter of the 21st ultimo, with further reference to the complaint against you by the Clerk of the Court at Mongonui; and in reply, to inform you that the matter has been referred to Mr. Williams, Mr. White's successor, to inquire into and report upon for the information of the Government.

I have, &c.,

R. G. FOUNTAIN,

Acting Under Secretary.

W. Butler, Esq., J.P., Mongonui.

## No. 25.

The RESIDENT MAGISTRATE, Waimate, to the Hon. the MINISTER of JUSTICE.

SIR,—

Resident Magistrate's Office, Waimate, Bay of Islands, 20th June, 1873.

I have the honor to acknowledge the receipt of a series of letters and papers referring to certain occurrences which have lately transpired at Mongonui, to which I find a minute attached in reference to complaints against the Clerk of the Court, that I should inquire and report on the same.

Having always endeavoured to evince a ready compliance with any request made by the Government, I regret that in the present instance circumstances should cause any reluctance on my part to take action in the matter.

A perusal of the papers convinces me that nothing short of a thorough investigation will give satisfaction; and having been appointed Mr. White's successor, I would wish to enter this new sphere of duty unconnected in any way with these unpleasant occurrences. My official duties will often bring me into communication with the parties concerned, whom I desire to meet with unbiassed feelings. Under these circumstances I trust I may be allowed to decline making the inquiry, and to suggest that if an investigation be considered necessary, the Government will appoint some person unconnected with the district to conduct the same.

Pending the decision of the Government, I beg to return the papers forwarded to me, fearing any accident to them if retained in my possession.

I have, &c.,

The Hon. the Minister of Justice, Wellington.

EDW. M. WILLIAMS, R.M.

