

1877.

NEW ZEALAND.

PUBLIC PETITIONS COMMITTEE.

REPORT ON PETITION OF HONORIA McMANUS, TOGETHER WITH MINUTES OF EVIDENCE AND APPENDICES.

(Ordered to be printed 17th August, 1877.)

THE petitioner prays for inquiry into the circumstances of the illegal imprisonment of her son by certain Justices of the Peace, and that relief be afforded her.

I am directed to report that the Committee having made inquiry into petitioner's case, and invited the Justices of the Peace, who sat on the Bench when the petitioner's son was ordered to be imprisoned for one month, to offer any explanation to the Committee they thought desirable, are of opinion that the explanation offered by the Justices is unsatisfactory, and no justification of their action in illegally imprisoning petitioner's son for an offence unknown to the law. The Committee therefore recommend that the petitioner's case be referred to the Government, and the Justices called on to show cause why reparation should not be made by them to the petitioner and her son; and, in the event of their not making fair reparation, that they be called on to resign or be struck off the list of Magistrates.

T. KELLY,
Chairman.

17th August, 1877.

MINUTES OF EVIDENCE.

JULY 26TH, 1877.

HONORIA McMANUS examined.

1. *The Chairman.*] You are the petitioner in this case?—Yes. Before giving my evidence, I beg to thank the Committee for their kindness in giving me this opportunity of appearing before them. I feel that the law has been violated, and that I have been so grievously wronged that no other course was open to me than to appeal to their generosity. As a British subject, I consider that the law has been violated, and I therefore desire to bring the matter before the public in its proper light.

2. You state in the petition that your son was illegally imprisoned by the order of the Magistrates?—Yes.

3. How was that done? What was charged against him?—Absconding from his master was the charge. He was an apprentice to Mr. Roth. On the Queen's Birthday he and another apprentice went to the theatre. On returning home from the theatre their master refused to admit them.

4. When did they return home?—After 11 o'clock, as soon as the theatre was over.

5. What was the result?—The boys took a bed that night. Next morning, before breakfast, they went to their master's place and offered to work. Mr. Roth's boy refused to admit them. My son then went to Mr. Hesketh, and told him what had happened. Mr. Hesketh told my son to bring him his indenture and he would look over it, and to take lodgings in the meantime. My son called on Mr. Hesketh again, bringing his indenture with him. Mr. Hesketh told him that the indenture was perfectly legal, to go to his master's place again, and, if he did not receive him this time, to return to him (Hesketh) and he would enter an action. The boys went accordingly, and Roth said he would receive them; he asked them to come along with him, and they foolishly followed. He took them to the Police Office; they were taken into custody and locked up until next morning. When my son wished to explain that he did not intend to abscond he was silenced. Both boys were brought before the Court; my son was sentenced to a month's imprisonment with hard labour, and the other boy to twenty-four hours' imprisonment.

6. Who were the Magistrates?—Captain Daldy was Chairman; E. H. Isaacs and Charles O'Neill.

7. And what was the result?—My son was sent to prison for a month at hard labour.

8. Did he serve the term?—Yes. I went out to the gaol and called upon my son. He related the case to me as I have to you. I told him I knew it was contrary to law, and I made a vow to the Almighty that I would never rest until I brought them to justice. I went to Mr. Rees about it, and he said it was a most rascally thing. He told me that some Magistrate named Horne had lost heavily

through an illegal sentence, and that the Magistrates in this case would be liable to an action. I left him, and he told me to come back in the evening. I did so. When I saw Mr. Rees again he said he was sorry, that Captain Daldy was a friend of his, and he could not therefore go against him. After pleading very hard for Captain Daldy, I said, "Your friend is my son's foe, and as such I shall treat him."

9. Did you take any action in the Court?—Mr. Rees would not take action against the Justices, but did against the master.

10. Did you take any action against the Magistrates?—Not then; Mr. Rees declined to do so. I asked him to take action against the master for malicious prosecution. The cost of it, he said, would be £40. I gave Mr. Rees an order to draw my salary to commence this action. When I returned to Auckland, from the Thames, I found that he had drawn two months' pay, but no steps were taken in the case. It was too late to take action that session. I then went to Mr. Hesketh. He said that among professional men they did not like to interfere with each other, but that if Mr. Rees gave back the money he would take the case. I asked Mr. Rees to return the money. He said he would not; he had done a lot of work, and if I came to his office I would see a great deal of writing.

11. What action did you take in the District Court?—An action for false imprisonment. The Judge decided that, owing to the conviction not being quashed, he was prevented from giving damages.

12. Then I suppose you were nonsuited?—I got a shilling; and the Judge said there was no absconding, and that the lads had been left on the streets through the wickedness of their master.

13. Did you obtain costs?—Yes, £10 3s. 6d.

14. Did you take any further action in the matter?—Mr. Macdonald, on my behalf, entered an action against the Justices, and served them with a writ.

15. What was the result of that? Did it go to trial?—Owing to Mr. Rees not having quashed the conviction, Mr. Macdonald could not go on with the case. This should have been done within six months. That precluded me from going any further with the action against the Justices.

16. What do you wish the Committee to do?—Exactly what they may deem fit. I feel very much on account of my son having been placed among felons, and my having to go there to see him. Mr. Rees neglected to take action to have the conviction quashed in order to save his client; and I have to pay £40 or £50. Mr. Rees was my betrayer more than adviser. He did not advise me rightly what to do.

17. *Mr. Seaton.*] Do you know if anything has been done by the Government?—I never heard of anything being done.

Hon. Mr. Bowen: I may say the Government took the opinion of the Law Officers. There was no doubt the conviction was bad, and the Magistrates were so informed.

18. *Hon. Mr. McLean.*] Did Mr. Rees give you notice in time in order to quash the conviction?—No, it was too late to go on with it. The District Judge told me that if the conviction had been quashed, he would have given judgment in my favour. Mr. Rees took my money from me to do it, and never did it. On the 24th May the lads were locked out by their master, and on the 31st I gave Mr. Rees the money to take action, and the case was not decided until November.

19. Instead of coming to the Committee, do you not know you have recourse against Mr. Rees if he does anything out of the way?—I have gone from one to the other; and if the House can tell me what steps to take I shall be only too happy to take them. I saw Mr. Macdonald and Mr. Hesketh, and asked if it was possible to telegraph to the Judge, who was away just then at the South, so as to be within the time for bringing the action. He said the Judge must be present, and the matter be brought before him then.

20. *Mr. Shrimski.*] You come here, I understand, to complain against the Justices?—Yes; my boy was not arrested according to law. He was brought up in Court after being locked up without a warrant having been seen; and he suffered a month's imprisonment at hard labour under what they call the law of liberty. Under slavery he could not have suffered more.

JULY 27TH, 1877.

HONORIA McMANUS recalled.

21. *Mr. Sutton.*] Did you not say that you paid Mr. Rees for professional fees something like £40?—No, I said the case had cost me £40.

22. *Mr. Burns.*] Was your son ever brought before the Police Court on any other occasion but this?—Yes; he wished to get his indenture cancelled. There was another case: By the terms of the indenture my son was to receive no salary during the first year, but, after entering Roth's service, he was offered a shilling a week to work an hour overtime. He worked the daily hour overtime for the year, but at the commencement of the second year, when he was to get 5s. per week, he refused to work overtime because he was going to a night-school. The master changed the indenture—forged it—to insert another hour's work. This was an interlineation, there being no room in the body of the indenture. After that, Roth told the boy to take a piece of timber somewhere up Queen Street, on a barrow; he said he would carry it on his shoulder, and did so. For this the master summoned him; the case was dismissed, and the Bench gave Roth a great caution, and advised the lad. For this and ill-treatment the boy tried to get the indenture cancelled, but the Magistrate would not cancel the indenture unless I was there to request it. I could not be present; had I been, the indenture would have been cancelled then.

23. *Mr. Dignan.*] You say Mr. Macdonald informed you that the conviction of your son was not recorded in the Court at Auckland?—Yes; the record was in Captain Daldy's possession; and he (Mr. Macdonald) had some trouble to get it, days afterwards.

MR. CHARLES O'NEILL, J.P., C.E., examined.

24. *The Chairman.*] It appears from the evidence, Mr. O'Neill, that you were one of the presiding Justices in this case?—Yes, I was one of the Justices.

25. Would you like to make any statement to the Committee with respect to the reason why you convicted the boy on that occasion?—The case was brought before the Court by Mr. Roth in the usual

way. Roth gave some evidence. He showed that he tried to make the boy obey him and do his work, but he would not do it. The character given, as far as work was concerned at least, was not the best. Captain Daldy, being the senior and one of the oldest Justices in the colony, presided, and gave judgment. I agreed in the judgment that was given, because from the Act that was placed before us the Justices had clearly the power to give him a month. It may have been an error so far as the law was concerned, but it was perfectly clear in our minds that the Justices had power to give the judgment they did.

26. This man Roth applied for a warrant, did he? From what Justice did he obtain a warrant?—I do not know. I knew nothing of the case until I went on the Bench.

27. Did it come out in Court that a warrant had been issued?—I cannot recollect.

28. Was the boy allowed to speak when he was brought up?—Yes; he was asked if he had any questions to ask. I think he asked some.

29. Was he defended by any counsel?—I do not think so.

30. Did any person appear on behalf of Roth?—I think a solicitor appeared. I think Mr. Joy was there, but I am not positive on the point. I know it was shown clearly the boy was an apprentice, because the indenture was produced in Court.

31. Under what Act was he convicted?—Really I cannot say just now. It appeared at the time perfectly clear. It has been since that time I have heard that there was no law for it.

32. Where the Justices influenced in coming to its decision by the counsel of Mr. Roth, and the law he laid down on the occasion?—I cannot say that; the Justices decided only by what appeared to be the law.

33. Was any opportunity offered to the boy to get counsel?—He was asked if he had any questions to ask. He did not ask to have any counsel. I think he had been in the police office before for the same thing.

34. Did it appear to the Justices that because he absented himself one night, therefore he was entitled to be punished by a month's imprisonment?—It appeared at that time that that was the only sentence they could pass in terms of the Act.

35. Could not you have dismissed the case?—Any case might be dismissed for insufficient evidence; but, as far as I can recollect, that seemed the only term given in the Act. What that Act was, I could not now say.

36. There were two boys concerned?—Yes, they were tried at the same time for the same offence.

37. One got twenty-four hours and the other a month at hard labour? Why was such a distinction made?—I think it was the first time the other boy had ever been up, but I do not know whether he was one of the apprentices.

38. And the reason that McManus received a month's imprisonment, you think, was because he had committed an offence of a similar kind before?—I believe that was the case—once or twice.

39. Did it come out on the occasion of this inquiry that the boy was absent against his will—the master would not let him come in?—I cannot say.

40. Did the boy say so in Court?—I cannot recollect.

41. It appears from the evidence taken that the boy wished to speak, and the Chairman told him to be silent, and would not allow him?—That was not the case.

42. *Mr. Dignan.*] Did you receive the usual summons from the Clerk for your attendance in Court that day?—I believe the Clerk of the Court asked me to attend that day. It has often happened in the Auckland Court that they could not get Justices easily.

43. *Mr. Swanson.*] Would you tell me whether it was in consequence of the boy having been up there frequently for the same crime or other crimes that he got a month, and the other boy twenty-four hours?—He had been up before for the same thing, I understand.

44. Are you quite sure he had ever been up before for that or any other thing?—That was stated in Court.

45. Was it given in evidence by the police that he had been up before?—It was brought out in Court.

46. At least once?—At least once.

47. Was it for the same thing, or for another offence?—It was mixed up with Roth about the same thing.

48. Will you be kind enough to tell us where we will find any law declaring that he did commit an offence at all?—I do not think there can be any doubt but that there is a law with regard to apprentices.

49. Where can we find it?—I am not a lawyer, and cannot tell exactly the laws of the country; but I see in a paper that in London lately an apprentice got ten days' imprisonment for disobeying orders.

50. You say the law was quite clear, and you could not do anything else. Would you be kind enough to tell us what law?—I really cannot point out the law.

51. Supposing you were to come here to-morrow, could you then tell us?—I might. I would ask a lawyer about it, who would be able to tell me what the apprentice laws were. A Justice of the Peace is not a lawyer, or supposed to know all the laws. He is supposed to do his duty to the best of his knowledge and ability.

52. Do I understand you to contend there is such a law, and that you did justice in the matter?—I understood there was a law.

53. Did you receive notice from the Government that there was no such law, and that the conviction was bad?—Yes, that the conviction was illegal.

54. Did you believe the Government when they told you that you had done a wrong thing?—Of course, when lawyers said we were wrong I suppose we were.

55. Have you or any of the other Justices taken any steps to make restitution for having put him in prison for a month?—It is not a wilfully wrongful act; it may be an error.

56. For the great error you committed, have you taken any steps to try and remedy it, to make restitution to the boy for the grievous wrong you did to him in error?—I have taken no steps to remedy it. It was only an error of judgment.

57. Do you think that you or somebody else ought to take steps to remedy it?—Any Justice of the Peace may make an error of judgment. Mr. Burns committed an error in signing papers when he was not a Justice of the Peace at all; and, I understand, had to get an Act of Parliament to put it right.

58. In error you have done this boy a grievous wrong, and I believe you would find it out if you were a month in prison. You have been informed by the Government that it is so; what steps did you take to endeavour to remedy it?—I do not know what steps I could have taken. I am certainly very sorry that there should have been any error, and no one could be more sorry, or no one would more readily try to rectify an error, if possible.

59. Do you think this House ought to have some steps taken to put this matter right, if the Magistrates cannot be compelled to do it themselves? How would you like a month's stone-cracking?—I do not suppose I should like it. Would you like it?

60. Do you think there ought to be a remedy for a wrong of that sort, granted that it was done in error?—If the Justices had done the slightest wrong thing wilfully, then let them be punished.

61. Justices are going and committing enormous wrongs ignorantly or stupidly, and are the people to put up with it? You sent this boy to prison illegally, unrighteously. What ought you to do to put this thing right?—I cannot put it right. This thing was done.

62. Supposing you gave him £200 or so?—Money does not always put things right.

63. Did you see Mrs. McManus, and apologize?—I saw her, and told her I was sorry for her and the boy, and if the Justices acted illegally I would try and get him out.

64. *Mr. Toke.*] You gave a reason for the unequal punishment inflicted on the two boys. Have you any idea as to what was the adjudication of the Court about that on the previous occasion?—I have not.

65. The case might have been dismissed before?—I do not know the details of it just now. I was very sorry for the case; no doubt of that.

66. Then you do not really know why one boy got a month and the other twenty-four hours?—The one boy had been there before.

67. You do not know whether that case was dismissed?—The thing was clear at the time. It cannot be expected that I should recollect all details about it.

68. *Mr. Shrimski.*] Is Captain Daldy Resident Magistrate, or Justice of the Peace like yourself?—A Justice of the Peace.

Mr. Burns: I wish to state that Mr. O'Neill is in error in what he stated about me. I signed documents, but there was no Act of Parliament to put it right.

69. *Mrs. McManus.*] Why was there no defence taken for the apprentices when the master was defended by counsel?—I do not know.

70. Why did one boy get the unequal sentence of twenty-four hours', and the other one month's hard labour for the same offence?—Because the one boy had never been brought up before.

71. When I told you that your sentence was illegal, and that I would accept the immediate release of the boy as reparation for the wrong you had done him, and that you promised to do all in your power at once, why did I hear no more about it; and why was he allowed to associate for a month with felons, when you had no power to send him there, but did so in open violation of the law?—After you spoke to me, I have no doubt I made inquiry, and found that we could not move in the matter. I saw Roth, and did all I could to get the indenture cancelled.

72. *The Chairman* (to Mrs. McManus).] You applied to Mr. O'Neill?—Yes.

73. And you want to know what steps he took to get the boy released?—Yes.

Mr. O'Neill: I think we advised a petition to be got up.

74. *Mrs. McManus.*] Why was a policeman allowed to arrest him, without being able to help himself, not being permitted to speak for himself?—That was not the case.

75. *The Chairman.*] Then you did issue the warrant?—I only saw the boy when he came into Court. I knew nothing about the case until I sat on the Bench.

76. Why was the policeman allowed to arrest the boy without a warrant? Why was he brought up there without being able to help himself or being permitted to speak for himself?—I have answered that already.

77. Do you know whether a warrant was ever issued?—No; I merely sat on the Bench.

78. Did it appear he was apprehended by warrant?—I do not recollect that the question was raised at all.

79. You took it for granted that there had been a warrant?—Yes; I merely sat on the Bench as a judge. I had nothing to do with the preliminaries.

80. Did you ever hear that the conviction was not recorded, and that when search was made the record of the conviction was found in Captain Daldy's possession?—No; I have not heard that before.

81. *Mr. Dignan* (to Mrs. McManus).] Do you mean to say that the committal was not recorded—that is, in the Court?—No; Mr. Macdonald told me when he wanted it he could not get the record of the committal. Captain Daldy had it in his possession.

82. *Mrs. McManus* (to Mr. O'Neill).] Are you aware that Mr. Isaacs, one of the Magistrates, accounted for the disparity in the sentences by saying he had had a conversation with the boy's master before the commencement of the case in which he (the master) said the boy was an exceedingly bad boy?—No.

Mr. W. L. REES, M.H.R., examined.

83. *The Chairman.*] In the matter of this petition there were some statements made by the petitioner yesterday with respect to yourself. You have read the evidence, and I believe would like to make a statement to the Committee?—Yes. I have read that evidence. A portion of it is correct,

and a portion of it is not correct. I did advise Mrs. McManus as to the steps she might and should take in reference to the imprisonment of her son. I told her there were two parties against whom she might proceed. First, there was Roth, the boy's master, who had undoubtedly acted wrongly; and the other party consisted of the Justices who had tried the case, and who, in my opinion, had also acted wrongly. But I told her, when she came to me, that in relation to the Justices—one of whom, Captain Daldy, was my client, and moreover my personal friend—though I did not consider their action right, still I must decline to act against them; and that if she wished to proceed against them she must go to some other solicitor. I see she states that in her evidence. [Read extracts.] She then asked me if she could bring a case against Roth. I said she could, and told her that there were two courses open to her—one to take action against him in the Supreme Court and recover damages against him for malicious prosecution. I notice that she states in her evidence that I said the cost would be £40. I have no distinct recollection of having said that, but I daresay I did tell her so. I also told her she might proceed against him in the District Court, as the arrest had been illegal, but added that I did not think she would get substantial damages, though the Court would say the arrest was illegal. She said she did not desire any damages; that her main object was to clear her boy's reputation. He had been imprisoned unjustly, and her object was not monetary damages, but that her son's name should be cleared of the stigma cast upon it by his having been imprisoned. I said, "Very well; we will bring an action in the District Court for false imprisonment." I may state to the Committee that an action for malicious prosecution could not be brought in the District Court. It would have been necessary to go into the Supreme Court if such action had been brought. This would have cost perhaps, as she states I said, £40, while an action in the District Court would cost £10 or £12. The action was brought, with what result you know. As to costs, Mrs. McManus, as she states, did give me authority to draw her salary, and I drew £13. I then issued the writ, and proceedings were taken. I may state that, in the meantime, I understood she had gone to Mr. Macdonald, solicitor, of the Thames; in fact, I know she had, because I received a notification from Mr. Macdonald to that effect. But, as for me, I never undertook to quash the conviction, or to take any proceedings so far as the Magistrates were concerned, for I told her more than once that if she liked she could take the whole matter to some other solicitor. I proceeded simply against the policeman and Roth. I found that the policeman was not liable, as the six months had passed, and I had to pay his costs. The case against Roth was heard before Judge Fenton, and he decided that the arrest had been illegal, because when the boy was arrested neither Roth nor the policeman had any warrant in their possession; but, he said, if substantial damages were sought, the Justices could be sued in the Supreme Court. I think I told Mr. Fenton that I had so advised Mrs. McManus, but refused to conduct the case against them myself—not because I was not convinced of the illegality of their conduct, but because one of them was my client. After the trial, she came to me at my office and settled with me; but not a word was said as to her being dissatisfied. She never accused me then of having in any way mismanaged her case, nor did she say anything about bringing an action in the Supreme Court. At this time it was not too late to do it. She did speak to me about getting the boy's indenture cancelled; I said, "Very well, we will see about that." I think I instituted proceedings in the Police Court, but Mr. Joy, who was acting for Roth, came to me, and we made an arrangement whereby the indentures were cancelled without the costs of a Police Court case. The arrangement was carried out, and the boy was taken away from his master altogether. Up to that time I had not the least idea that Mrs. McManus accused me of want of care. I was going to refer to the question of costs just now: now here is the very bill I sent in. I do not know whether there are any professional gentlemen present; if so, I commend them to the perusal of it. As Mrs. McManus says, I did receive £13 from her, and £9 or £10 in costs from the other side—in all, at any rate, £22. I paid £2, the constable's costs; I had given Mrs. McManus £1, about £2 for costs of Court, and I returned her £5 at the time of the settlement. You may see, on looking at this bill of costs, that the charges are very light—in fact, nearly three times the amount would have been charged under ordinary circumstances. By the account you will see that there was on the whole a balance of 11s. 10d. due to Mrs. McManus, but that I returned her £5. I did this because I considered she had been badly treated—both she and her son. However, I did all she instructed me to do. The whole of the circumstances of the case were brought out, and the boy's indentures were cancelled. I do not know whether the latter service was charged for at all.

Mrs. McManus : Oh, yes; it is all there.

Mr. Rees : Well, perhaps so; but all the charges were moderate in the extreme. Then she casts great blame upon me, and says it was my fault because the conviction was not quashed. I may say I never was employed to do it, nor had I anything to do with that. As it was, I did more than I was instructed to do, because I was not instructed to get the boy's indentures cancelled; therefore I wish to disabuse the mind of the Committee of any wrong impression which the evidence of Mrs. McManus may have produced. I did the best I possibly could for Mrs. McManus, and, if my hands had been free, I do not hesitate to say I would have proceeded against the Justices. But I was bound to Captain Daldy as a client. At the same time I told Mrs. McManus that Justices, like any other men, were liable to make mistakes, and that I believed neither of them could have had any vindictive feeling either against her or against her boy, though they might have been misled by Roth or somebody else. Still I did not shield them from the consequence of their mistake, though I refused any responsibility in the matter myself. She was very bitter against them, and seemed thoroughly convinced that they had acted through malicious motives—an idea I attempted to rid her of by pointing out that they knew they were liable for anything of that sort, as two Justices in the province had already been cast in damages for acting improperly, and it was not likely they would knowingly lay themselves open to a similar penalty. I got a public expression of a judicial opinion that the boy had been wrongly convicted, and that was all I undertook to do. I did not put her out of the way of suing the Justices. I did nothing of the sort at all.

84. *Mr. Seaton*.] You say the constable had no warrant in his possession at the time the boy was arrested. Was it shown that he ever had a warrant even after the arrest?—I am not sure.

85. I was under the impression, from what you said, that there might have been a warrant at some time.—Yes; I think there was a warrant got out afterwards.

86. In what way would that have affected the case?—Well, there is a rather fine distinction in the law. It is this: If a person is arrested under the warrant of a Justice of the Peace, no one can proceed with an action for false imprisonment, because the warrant would be a sufficient answer. The action in such a case must be for malicious prosecution. But here there had been no warrant at the time of the arrest; therefore we could go into the District Court with an action for false imprisonment.

87. *Mr. Swanson.*] You did not like to sue Captain Daldy, though you thought he had done wrong.—No; I had been retained by Captain Daldy.

88. Had Captain Daldy retained you in this case?—No; he had given me a general retainer.

89. And what do you have to do for a general retainer?—A general retainer is this: If a solicitor receives a general retainer from a person, he cannot go against that person without first receiving permission, or a statement that his (the solicitor's) services are not required in that particular matter, from that person himself. He is generally retained; and if he did not ask such permission or statement before acting, he would be liable to be struck off the rolls of the Supreme Court.

90. Well my impression was—and I have had a little to do with the lawyers in my time—that if I generally retained a lawyer, and he was asked to appear against me, that he would have to come to me and say, "Do you wish to employ me in this case; if not, I am going to appear against you." Did you write to Captain Daldy?—No, I spoke to Captain Daldy. I told him the Magistrates were liable to be sued and cast in damages.

91. Did he then say, "Here are a couple of guineas; I retain you"?—No; he said if Mrs. McManus sues us I hold you to your retainer.

92. Did you tell Mrs. McManus you could not sue Daldy if he retained you?—I could not, because I was already retained.

93. In this particular case?—A general retainer covers all cases till a person refuses to employ you.

94. Did he retain you?—He was not bound to retain me specially. I told him I would not act for him or the other Justice. This was because I thought they had done wrong. But I gave another reason for it: that I had heard Mrs. McManus's story.

95. *Mrs. McManus.*] What did the Justices say when you told them their sentence was illegal, and that I would then accept the release of my son. Did you tell them to release my boy?—I never told them so; you must be under some mistake. They had no power to release him.

96. When I gave you the order for my salary to commence an action for malicious prosecution of Roth, why did you allow that session to pass without entering the case?—I never undertook to enter a case in the Supreme Court against Roth or anybody else for malicious prosecution.

97. I put my salary in your hands in May, and the action did not come on till November. What was the cause of the delay? What did I want to pay you all that time in advance for?—I never saw Mrs. McManus at all till June.

98. I saw you on the 1st June. Why did you allow six months to pass before commencing the action?—I see by this bill of costs that I did not advise you till some time in July. This item is correct: "Attending upon you; advising as to what steps to take against Roth, and long conversation, when I advised you that if you sued him in the Supreme Court for malicious prosecution you would probably recover substantial damages, but would probably never get anything; but that you could sue him in the District Court for false imprisonment, and the whole circumstances could there be brought out." It was the middle of September I see when you finally determined to go on, and it was the 17th July when I got the first money from Mr. Lusk.

99. You got my salary in June?—No; I think the first money I got from you was on 17th July."

100. I gave you the order in June, and it is not till the 11th November that judgment was given?—The case was postponed on one or two occasions. It was commenced as soon as practicable.

101. *Mr. Swanson.*] When did you get the order?—The first money I got was paid by cheque by Mr. Lusk on the 17th July. The action was commenced in September. There were two adjournments of the case.

102. Upon what does this adjournment take place? What is the reason of all the delays?—I cannot carry everything in my mind.

103. The woman's complaint against you is this, as far as a complaint against you goes, that you have mismanaged and delayed the matter?—This District Court action has nothing to do with the action against the Justices at all.

104. She gives you certain money to do certain work; it is a long time in being done. How was it there was all this terrible delay?—There is no terrible delay, nothing of the sort. I got £6 13s. 4d. on July 17th, and on August 25th £6 13s. 4d. more. So far as I remember, I told Mrs. McManus that it would take £10 to bring it into the District Court, and that I would not take it in until I got the money.

105. What happened?—On August 25th I got the balance of the money, making up the £10; on September 15th I find the summons was issued. You must know that in the District Court it takes nearly three weeks to get a case heard after a summons is issued. I find Mrs. McManus attended at the District Court to issue the summons.

106. What did you get the money for?—For the purpose of entering an action in one Court or another.

107. *Mrs. McManus.*] When I gave you the order for my salary to commence an action for malicious prosecution, why did you allow that session to pass without entering the case?—I state, first of all, that I got no money whatever until 17th July, and I got £6 13s. 4d. then; and secondly, that I received no final instructions to sue until a writ could be issued, until 15th September.

108. When you did enter the District Court case, seeking damages, why did you not apply to

quash the conviction, being so necessary to obtain damages sought, particularly when you promised me so often you were going to do it, and actually kept me waiting at the Supreme Courthouse while you said you were applying for it?—In the first place, I have only to say that I never kept you waiting at any Courthouse. In the second place, I beg to state distinctly that I told Mrs. McManus I would do nothing of the sort. Quashing the conviction had nothing whatever to do with costs or damages in the District Court.

109. When the case was entered, why did you postpone it from sitting to sitting until two months had elapsed, and the Justices were free by law?—I never postponed it, so far as I know, in the slightest degree. I am not conscious of having postponed the case in the slightest degree. Sometimes cases are postponed for the Judges or for witnesses when they are not obtainable. I used what speed I could in the case. This case against Roth had nothing to do with the action against the Justices.

110. Why did you not produce the characters from Mr. Brodie, of the Thames, and Mr. Bigelow, boatbuilder of Auckland, my son's late employers, which I gave you for that purpose?—On what occasion? When the case was at trial? I do not remember receiving any characters in the first place; and secondly, they had nothing whatever to do with the case. I took the case in for false imprisonment. I did not expect to get damages, nor did Mrs. McManus. She wanted the whole circumstances brought out, and they were brought out.

111. Why did you not compel Roth to produce the forged indenture?—Simply because that if there were a forged indenture, it had nothing to do with the case. I might as well have produced his certificate of baptism.

112. Why did you not object to a felon's evidence being taken against my son? And why did you absent yourself when you should have addressed the Bench on my son's behalf?—I have no knowledge of absenting myself when I ought to have been present. I may state that a practitioner may be away in the Supreme Court when a case is called in the District Court. I might have asked Mr. Joy to get a case which had been called adjourned until 3 o'clock. That is very likely to have happened.

113. Why did you charge me one guinea for telling me that Roth was liable for forgery and perjury, put me to the expense of bringing up my son and Mr. McLean from the Thames, paying their expenses in Auckland, and then throw up the case because I thought £5 too much for a Police Court case, after all you had taken to get me 1s.?—I do not recollect anything about it. I do not recollect anything about that.

114. *Mrs. McManus.*] That was at our last interview?—That may be. When Mrs. McManus spoke about prosecuting Roth, I said that to take up cases of this sort, although the man may be liable and has actually broken the law, a solicitor must see that everything is done professionally, and I declined to take it up simply as a matter of feeling. I was not bound to identify myself with the feeling that Mrs. McManus was wronged. I should like to say this in relation to the charge made against me, that to the best of my ability, both as a lawyer and a gentleman, I did what I could for Mrs. McManus, and fulfilled her instructions. As to the prosecution of Roth for perjury and forgery, there were some words at the last interview about this matter. Although, technically, the man might have been guilty, I was not bound to rush into the case and accuse citizens of forgery and perjury. She could have done it herself if she was desirous of doing so; but that has absolutely nothing to do with this case against the Justices. The first time she came to see me I told her the position I occupied in relation to Mr. O'Neill, Mr. Isaacs, and Captain Daldy, and I would not act. I told Captain Daldy that I would not act for him either; that I considered the Justices had done wrong, and they should give some apology, but I would not act in the case. As far as I am concerned, I tried to do my duty, and I am quite astonished at the charge which has been made against me.

APPENDICES.

APPENDIX A.

MEMORANDUM for the CHAIRMAN of the PETITIONS COMMITTEE.

I THINK it is due to the other Justices, Captain Daldy and Mr. Isaacs, that their evidence should be taken, and also that evidence be obtained from Mr. Cunningham, Clerk of Court at Auckland, and from Mr. Broham, Inspector of Police (now at Christchurch); for some of the questions you put to me yesterday, whilst giving my evidence (as one of the Justices referred to in petition), could only be answered fully by the officers of the Court. The evidence of Mr. Roth, the employer of the apprentice McManus, should also be taken; and, as I understand the petition and the evidence of the petitioner reflect seriously on the action of the Justices, I respectfully submit that, in common fairness to all parties, the Committee should not hesitate to obtain the fullest information possible. I have since yesterday ascertained that the Act under which the boy was convicted was "The Master and Apprentices Act, 1865," clause 17. The case and the power of the Justices appeared at the time perfectly clear.

Wellington, 28th July, 1877.

CHARLES O'NEILL.

APPENDIX B.

MR. T. KELLY to Captain DALDY.

(Telegram.)

Wellington, 27th July, 1877.

THE Public Petitions Committee have requested me to inform you that a petition of Mrs. McManus has been laid before them, which states that her son was illegally imprisoned for one month on the charge of absconding from his master, and she prays for redress. It appears that Messrs. Daldy, Isaacs, and O'Neill, Justices of the Peace, sat on the Bench on the occasion when the conviction was made. The Committee consider that the above Justices should have an opportunity of being examined, or of offering an explanation in writing, before the Committee comes to any decision on the matter.

I have therefore to request that you make such explanation to the Committee, in writing, with respect to your action on the occasion as you may think proper; or if you desire to be examined before the Committee, the Committee would give you such an opportunity, provided you appear within fourteen days from date, and at your own expense.

To Captain Daldy, J.P., Auckland.

THOMAS KELLY,
Chairman, Public Petitions Committee.

APPENDIX C.

Captain DALDY and Mr. ISAACS to Mr. T. KELLY.

(Telegram.)

RECEIVED telegram *re* McManus. Will examine documents and reply by letter. Auckland, 30th July, 1876.

Mr. T. Kelly.

W. C. DALDY.
E. ISAACS.

APPENDIX D.

Captain DALDY, J.P., and EDWARD ISAACS, J.P., to THOMAS KELLY, Esq., M.H.R., Wellington,
Chairman of the Public Petitions Committee.

SIR,—

Auckland, 9th August, 1877.

We hereby acknowledge receipt of your telegram of 27th July, *re* McManus's petition.

We have carefully examined into this matter, and beg to reply that in support of our judgment on that occasion we can refer you to the records of the Court in which we adjudicated, and which we believe are in the hands of the Government at Wellington; and also the corroboration of the Clerk of the Court as to his (McManus's) former appearances there, and moral aspect of the case.

As to the charge of having refused him an opportunity of defence, we have referred to Mr. Joy, solicitor for the complainant, who authorizes us to say every opportunity was given.

We absolutely deny having acted illegally or unjustly in any respect, in which we were supported by the opinion of the late Judge Beckham, and when proceedings were threatened we took the opinion of Mr. Whitaker (now Attorney-General), which opinion sustained our action; and that legal proceedings were abandoned without the slightest compromise on our part. Judge Fenton's decision was confined to the legality of the warrant, and his opinion by the fine of £1, and not in any way as to the action of the Magistrates.

We were not aware that the legality or otherwise of proceedings of Magistrates was decided by Committees of the House of Representatives, as done in this case last session, but believed such matters were left to the Judges or Law Officers of the Crown.

We have, &c.,

Thomas Kelly, Esq., M.H.R., Wellington.

WILLIAM C. DALDY, J.P.
EDWARD ISAACS, J.P.

By Authority: GEORGE DIDSBURY, Government Printer, Wellington.—1877.

Price 6d.]

The UNDER SECRETARY, Justice Department, to W. C. DALDY, Esq.

SIR,—

Department of Justice, Wellington, 3rd February, 1877.

I have the honor, by direction of the Hon. the Minister of Justice, to inform you that the Public Petitions Committee, in their report on the petition of E. McManus to the House of Representatives last session, directed the attention of the Government to the fact that two Justices of the Peace inflicted a penalty for an offence which does not appear to be known to the law. I am instructed to inform you that, on inquiry into the circumstances of the case, it appears to the Government that the boy McManus was illegally committed.

I have, &c.,

R. G. FOUNTAIN,
Under Secretary.

W. C. Daldy, Esq., J.P., Auckland.

By Authority: GEORGE DIDSBUXY, Government Printer, Wellington.—1877.

