

1878.

NEW ZEALAND.

RECENT DISTURBANCE AT WAITARA

(REPORT FROM H. EYRE KENNY, ESQ., R.M., AND HONE PIHAMA, NATIVE ASSESSOR, ON THE).

Return to an Order of the House of Representatives, dated the 7th August, 1878.

Ordered, "That there be laid upon the Table all correspondence between the Government and any other person relative to the outrages reported to have been committed by a number of Waikato Natives at Waitara, almost immediately after Sir George Grey's visit to that place; the release of the ringleaders by order of a Magistrate after they had been arrested by the police; and any communication received from Rewi to the effect that the policeman who had arrested the ringleaders should be removed from Waitara, as his life would otherwise be in danger."—(*Hon. Mr. Fox.*)

Mr. H. E. KENNY and HONE PIHAMA to the Hon. the NATIVE MINISTER.

SIR,—

New Plymouth, 29th July, 1878.

In accordance with instructions from yourself, transmitted to us by Major Brown, Civil Commissioner, we have inquired into the circumstances attending the recent disturbance at Waitara. We have taken the evidence forwarded herewith, and, after mature deliberation, we have agreed on the following report:—

1. On Saturday, 13th July, 1878, a quarrel arose between a Mokau Native named Huia and a European named George Rundle. These men were drinking in the bar-room of the Waitara Hotel, kept by one Edward Perry, along with a number of Waikato and Mokau Natives, variously estimated at twelve, fifteen, and twenty. Huia was half-drunk, and Rundle more drunk still. The Native and the European wanted to fight, and, after several attempts to make them desist, the landlord (Perry) sent for the Waitara policeman, Constable Amos Tapp. On Tapp's arrival, Perry desired him to turn out the Waikato and Mokau Natives. At this time Huia and Rundle were quarrelling, and the other Natives were much excited, making a great noise shouting and howling, though not actually inciting Huia and Rundle to fight. When Constable Tapp came in, however, the Natives, seeing that he was a policeman, became quiet. Constable Tapp desired them all to go out. The Natives went outside quietly, with the exception of Huia and a man he called his brother, who persisted in remaining in the room, although the constable spoke to them three several times. Tapp then pushed them both out, without violence, and fastened the door (a folding one) by bolting it at the top and bottom. Immediately after some one was heard rushing at the door with great violence, trying to force it in. Constable Tapp went outside by another door, followed by Perry and a man named Nelson; the man Rundle had already gone out with the Natives. This was about eight p.m. When Tapp got outside, he saw several Natives standing on the steps of the folding-door, many more about, and Huia making violent attempts to force the door in by rushing at it and pushing with all his might. It was evident that the door would give way directly, and Tapp therefore tried to make a prisoner of Huia. Immediately the other Natives fell upon him. Tapp then called on Perry and Nelson to assist him in the Queen's name, but they also were already engaged on their own account, having been attacked at the same moment. All the Europeans were struck with more or less force, and Perry and Nelson were thrown to the ground several times. Rundle likewise was seen on the ground helpless, and the Natives beating him. Some one called out in English that the Natives were getting pieces of wood, and Tapp, considering that he and the other Europeans were in danger of their lives, placed his handcuffs over the knuckles of his right hand and struck out with the flat portion of them, hitting five or six men. When he had thus obtained a little room, he used the handcuffs in another way, holding one end in his hand and letting the other swing round his head. In this fashion he made a clear space round himself, and also obliged the Natives to draw off from the other Europeans. Constable Tapp declares that he only used the handcuffs in self-defence, because he thought that his life was in danger. If he had been furnished with a baton, he would not have required to use the handcuffs. As it was, he had nothing else to defend himself with. It is clear, from Dr. O'Carroll's evidence in regard to the injuries sustained by the Maoris, that Tapp did not strike with the handcuffs as hard as he could. The Natives having stopped fighting for a moment, Tapp arrested Huia, and put the handcuffs on him after a severe struggle, the other

Natives again interfering. He then, with the assistance of Perry and Nelson, took Huia to the lock-up. On the way to the lock-up a man named Clark came up and also assisted the constable. After lodging Huia in the lock-up, Tapp arrested the man who passed as Huia's brother, and another Maori, both of whom had been conspicuously active in the scuffle. The Natives continuing to appear very excited, and congregating in a menacing manner around the lock-up, the constable thought it expedient to report the matter to Mr. Bayley, a Justice of the Peace living at Waitara, and Mr. Bayley ordered him to release the three prisoners. This was accordingly done. The Natives dispersed, and there was no more trouble.

Such are the facts as we have collected them from the evidence. We have constructed a connected narrative from the statements made by the different witnesses, reconciling them to the best of our ability where they conflict. The evidence of Huia is obviously unworthy of credence. He had a strong motive to conceal the truth. He was not sober at the time in question. He was contradicted in almost every important particular by all the other witnesses; and Te Wetere himself said, before the Court of Inquiry, that Huia was not speaking the truth—that he was telling a different story from the one he had told him. John Wilkinson's statement, too, should be received with great caution. He can only be believed where he is uncontradicted by other testimony. He is a man of bad character. Some two years ago a Native at Urenui was convicted of larceny mainly on his evidence as the prosecutor. Suspicion being aroused, and inquiry being made, it became evident that he, Wilkinson, had perjured himself, and a prosecution was commenced against him. He was, however, permitted by the late Government to compromise it by paying £50 to the Native who had undergone his sentence of imprisonment.

Wilkinson (who was present at the affray before the publichouse door) is intimately acquainted with the Native character and customs. He speaks the Native language with remarkable fluency, and there is every reason to believe, we think, that if he had exerted himself as he ought to have done, and spoken to the Natives properly, the disturbance would not have gone as far as it did.

2. There are, it would seem, two points on which we ought to report—(1.) As to the nature of the affray itself, and the conduct of the Natives; (2.) As to the conduct of the policeman, and the use he made of the handcuffs as a weapon.

As to the first point, we are of opinion that the dimensions and nature of this disturbance have been very much exaggerated by newspaper paragraphs and telegrams. The Natives did not attempt to burn or pull down the hotel or lock-up; blood did not flow freely; and there were not thirty Natives engaged. It was, in effect, a very ordinary drunken row, and there is absolutely nothing to show premeditated malice or contempt for the law on the part of the Natives before the affray, or ill-feeling on their part afterwards; and it is evident that they could not have meant much mischief during the fight itself, otherwise the Europeans, who were outnumbered at least four to one, would have sustained severe injuries, instead of the trifling hurts they actually received. At the same time, without bearing any particular ill-will towards any person, the Natives were surprised and annoyed at the use the constable made of his handcuffs. "Were those things to beat a man with?" they said. We therefore think that this inquiry will have done good, by reassuring and calming their minds, and showing them that a constable cannot even seem to exceed his legal powers, or to exercise them in an illegal way, without provoking a searching inquiry into his conduct. We recommend that no steps should be taken against the Natives for obstructing and assaulting the constable, but as far as they are concerned the matter should be allowed to drop.

And in regard to the second point, the conduct of the policeman and the use he made of his handcuffs, we think that he acted throughout within the strict limits of his duty, but we regret that he did not exercise a little more forbearance, by endeavouring to induce the Natives to disperse peaceably, and take Huia with them, when that individual was trying to force the door in. Yet there is this excuse for the constable, that he did not understand the Native language, and that he could perhaps scarcely have made himself understood. As we have before remarked, if Wilkinson had exerted himself at this stage of the affair, no trouble would probably have ensued.

As to the use of the handcuffs, it seems to us, looking at the matter in cold blood, and after the event, that there was no necessity for their use as a weapon, because the lives of the policeman and the two other Europeans were never really in peril. Considering, however, the darkness, the overwhelming disproportion in numbers, Constable Tapp's ignorance of the Native language, their manners and customs, the shout in English that the Maoris were arming themselves with pieces of wood, the roughness and tumult of the struggle, and the fact that he had no baton or other means of defence, we respectfully submit that the constable may reasonably have had a *bond fide* belief at the time that he was in imminent danger, and that he was justified in using the handcuffs in self-defence. On these grounds we consider that the policeman was warranted, under the circumstances, in so using the handcuffs, and we are of opinion that it is proved that he acted on the whole with courage, coolness, moderation, and discretion, in a somewhat trying situation, and that his conduct is not deserving of censure. But we would respectfully point out the necessity that exists for the issue of batons to the civil police, so that a constable may always have in his hand an instrument adequate to his defence under all ordinary circumstances, and at the same time one not likely to take life, in order that there may be no excuse in the future for the use of such dangerous and improper weapons as handcuffs wielded

in the manner described by Constable Tapp. And we would further venture to recommend that constables speaking the Native language and acquainted with Native habits (and there are many such men in the police force) should, as far as possible, be located in out-districts like Waitara, where the police are liable to be brought much in contact with persons of the Native race.

3. We may add, before concluding, that we took the precaution of ordering the witnesses on both sides out of Court, so as to insure their independent testimony, and that we conducted the inquiry as a private investigation with closed doors, the only spectators permitted to be present being the Sub-Inspector of Police and Te Wetere, and three chiefs from Mokau. The Native Department was represented (in the absence of Major Brown) by Mr. Parris, late Civil Commissioner, whilst Mr. Hughes, solicitor, watched the case on behalf of Constable Tapp.

We have, &c.,

H. EYRE KENNY, R.M.

HONE PIHAMA.

The Hon. the Native Minister.

The above report was signed by Hone Pihama in my presence after the same had been interpreted to him by me. He seemed fully to understand it and to concur in it.

E. W. STOCKMAN,
Licensed Interpreter.

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