

1880.
NEW ZEALAND.

H. R. RUSSELL V. GRINDELL AND DIDSBURY

(CORRESPONDENCE RELATIVE TO UNPAID WITNESSES' EXPENSES IN THE CASE OF).

Presented to both Houses of the General Assembly by Command of His Excellency.

No. 1.

Mr. ORMOND to the Hon. the COLONIAL SECRETARY.

SIR,—

Wellington, 10th December, 1879.

The enclosed letter, from a settler of the name of Dean, resident at Te Aute, Hawke's Bay, relates to a claim he and others have for expenses as witnesses in the *Waka Maori* case. Mr. Dean alleges that no allowance was made him and the other witnesses he refers to, although he and they have applied for the same. They petitioned the House for redress, and the Native Affairs Committee reported against their claim, but, as far as I can learn, without having made any inquiry into the case.

I have no personal knowledge of the case, but, if it be correct that these people were summoned as witnesses, I conclude they should receive some allowance for their expenses. Will you be good enough to have the case inquired into, with a view to giving such redress as the circumstances deserve?

I have, &c.,

The Hon. the Colonial Secretary.

J. D. ORMOND.

Enclosure in No. 1.

Mr. DEAN to Mr. ORMOND.

SIR,—

Te Aute, 27th November, 1879.

Having sent a petition to you to present to Parliament, and having heard nothing from you as yet, I take the liberty of writing to you concerning it. It was a petition to recover our expenses in the case *Russell v. Waka Maori*. I am informed that all expenses have been paid over to Dr. Buller, and, I think, it is very unjust that we have not been paid long before this. As it is over two years since, it put me, for one, to a great deal of expense; as I was obliged to keep my team idle for eighteen days, and I myself staying in Napier and paying hotel expenses. I am quite £30 out of pocket by it, and I think we ought to get some redress. Hoping that you will give me, and all of us, your aid to recover our expenses,

I have, &c.,

J. D. Ormond, Esq.

EDWIN DEAN.

TO THE HONOURABLE THE MEMBERS OF THE HOUSE OF REPRESENTATIVES.

GENTLEMEN,—

We, the undersigned, beg to petition that you will kindly entertain our claims for compensation for loss of time and expenses incurred in attending to give evidence in the case of H. R. Russell v. Grindell and another for libel, taken at Napier, July, 1877; and, as we have applied to Mr. Grindell, the Hon. J. Sheehan, and Dr. Buller, without being able to obtain any redress, should esteem it a great favour if your honourable Assembly would kindly direct that the case may be inquired into, and our claim satisfied.

And your petitioners will ever pray.

EDWIN DEAN.

WM. A. CANNON,

(on behalf of wife, Hokemata Hauraki Kautewhata.)

NGAUEKI NGUHA.

KA WHENA.

HABATA.

NATIVE AFFAIRS COMMITTEE.—REPORT ON the PETITION of EDWIN DEAN and OTHERS.—No. 102, Session II.

PETITIONERS pray for compensation for time lost in giving evidence in the case of H. R. Russell v. Grindell for libel. They have applied to Mr. Grindell, Hon. Mr. Sheehan, and Dr. Buller, without success. They ask that their claim may be satisfied.

I am directed to report as follows: That the prayer of the petitioners, relative to law costs, cannot be recommended for favourable consideration.

23rd October, 1879.

E. HAMLIN,
Chairman.

No. 2.

The UNDER-SECRETARY to Dr. BULLER.

SIR,—

Colonial Secretary's Office, Wellington, 23rd December, 1879.

An application has been made by Mr. Edwin Dean, of Te Aute, through Mr. Ormond, M.H.R., for the payment of expenses of himself and others as witnesses in the *Waka Maori* case, H. R. Russell v. Grindell; and I am directed by the Colonial Secretary to say that he would feel much obliged for any information it is in your power to give on the subject.

Dr. Buller, C.M.G., Wellington.

I have, &c.,
G. S. COOPER.

No. 3.

Dr. BULLER to Mr. G. S. COOPER.

SIR,—

Hunter Street, Wellington, 29th December, 1879.

I have the honor to acknowledge the receipt of your letter of 23rd instant (No. 1718) on the subject of Mr. Dean's claim for his expenses as a witness in the case of H. R. Russell v. Publisher of the *Waka Maori*.

I am much obliged to the Hon. the Colonial Secretary for affording me an opportunity of stating what I know of the case, for I have always felt that the manner in which the witnesses for the Crown were treated by the late Government was by no means creditable to the country.

As you will remember, an action was brought by Mr. Russell against Messrs. Didsbury and Grindell for £10,000 damages for an alleged libel in the *Waka Maori*, and the Government of the day decided to defend the action and to justify the libel. I was retained by Sir Donald McLean to get up the case for the Crown, and, owing to the large number of Native witnesses resident at or near to Napier, an order was obtained from the Court to take the evidence by Commission, the venue having been changed from Napier to Wellington on the application of plaintiff's solicitors, Messrs. Izard and Bell. I attended at Napier for that purpose, and was engaged for some weeks, first in briefing the evidence, and afterwards in getting it taken before Mr. Commissioner Sainsbury; the witnesses, most of whom were Maoris, being detained in town during the whole of that time, on the express understanding that on the conclusion of the trial their expenses, according to a fixed scale, would be paid to them.

Mr. Grindell, who had been detached by the Native Office for the purpose of looking after the Natives and keeping them together till wanted, kept a record of the number of days each witness was in attendance, besides defraying actual travelling expenses, for which he received an imprest from the Native Department.

The whole of the voluminous evidence taken before the Commissioner (with the exception of two immaterial answers), although keenly contested at the trial, was held by the Court to be relevant to the issues, and was allowed to go to the jury.

It follows that the whole of the witnesses examined at Napier were necessary witnesses in the cause. As you are aware, the result of the trial was a verdict for the plaintiff, with £500 damages.

Simultaneously with this event there was a change of Government; Mr. Sheehan, who had been actively engaged in the case on behalf of the plaintiff, becoming Native Minister. It was understood, however, that, notwithstanding this change of Ministry, the House would be asked to vote a liberal sum, so as to enable the Government to meet all charges in connection with the case, whether incurred by plaintiff or defendants; and a sum of £6,000 or thereabouts was actually voted for that purpose.

I contested plaintiff's bill of costs as between party and party before the Taxing-master, and, if I remember aright, succeeded in getting it reduced by about £800. Notwithstanding this, as I was afterwards informed by one of the plaintiff's solicitors, the amount was paid in full, in addition to another bill of costs as between attorney and client. At the suggestion of the Solicitor-General my bill of costs was also referred to the Registrar, and was contested by the Assistant Law Officer (Mr. Stafford), whose instructions were to *tax strictly*. The account was considerably reduced, and was afterwards paid as taxed. My account did not include witnesses' expenses, except in one or two instances where they were leaving town and wanted an immediate settlement.

When Ministers asked the House for so large a vote, it was explained that the expenses of witnesses would amount to a considerable sum, and would have to be defrayed by the Government. Some months after the trial, Mr. Locke, R.M., wrote, informing me that the Natives who had attended on subpoena had never been paid their stipulated allowances, and on applying to Mr. Clarke, the Under-Secretary, I learnt to my astonishment that the whole vote of £6,000 had been expended.

Soon after this I had an application from Mr. Lee (Mr. Dean's solicitor), and replied at once stating that I had nothing further to do with the matter, and referring him to the Government.

From time to time afterwards the Natives wrote to me on the subject, complaining that they had been deceived by the officers of the Government and deprived of their expenses because they happened to be on the losing side. Learning from Mr. Clarke that there was no hope of getting anything from the late Government, I advised the Natives to bring their grievance before Parliament by way of petition. This has not yet been done; but on the occasion of a recent visit to Hawke's Bay, several

of the Crown witnesses came to me to complain again of their unfair treatment, alleging that all the witnesses for the plaintiff had been paid in full. I promised to take the matter up for them, and to urge their claim in the proper quarter. The amount in question is, so far as I can make out, from £150 to £200. I think the Hon. Mr. Hall will recognize that it is a matter affecting the good name of the Government, and ought to be set right without further delay.

I shall be happy, if you require it, to go over the papers and to make out a nominal list of claimants, with the respective amounts due to them.

G. S. Cooper, Esq., Under Colonial Secretary.

I have, &c.,

W. L. BULLER.

No. 4.

The UNDER-SECRETARY to Dr. BULLER.

SIR,—

Colonial Secretary's Office, Wellington, 9th January, 1880.

I have the honor to acknowledge the receipt of your letter of the 29th ultimo, with reference to the non-payment to witnesses of their expenses in the case of *H. R. Russell v. Publishers of Waka Maori*.

In reply, I am directed to ask if you will have the kindness to furnish the Government with a statement of the sums due and unpaid to witnesses or any other claimants in the *Waka Maori* case.

If you have not the means of supplying the information yourself, perhaps you would kindly assist the Government by indicating how it can be obtained.

I have, &c.,

Dr. Buller, C.M.G., &c., Wellington.

G. S. COOPER.

Dr. BULLER to the UNDER-SECRETARY.

Re *Waka Maori*

SIR,—

Hunter Street, Wellington, 10th January, 1880.

I shall have much pleasure in complying with your request, by furnishing full information as to unpaid witnesses' expenses in the above case.

I shall have occasion to proceed to Hawke's Bay next week, and will then, with Mr. Grindell's assistance, complete the required list and forward it to you.

I have, &c.,

G. S. Cooper, Esq., Under-Secretary, Wellington.

W. L. BULLER.

No. 6.

Dr. BULLER to the UNDER-SECRETARY.

SIR,—

Hunter Street, Wellington, 11th May, 1880.

Referring to my letter of 29th December last, in reply to yours of 23rd December (No. 1718), on the subject of the witnesses' expenses in the *Waka Maori* case, and in compliance with the promise conveyed in my letter to you of 10th January last, I beg now to forward a list of the unpaid claims, duly certified to in each case and put in proper form for payment.

At the request of the claimants (for whom I am now acting), each claim is accompanied by an authority for payment to myself as their agent. I should be glad if possible to be able to draw the money in time to pay it over when I return to Hawke's Bay in about three weeks.

I may mention that the witnesses for the defence expressed much dissatisfaction that their allowance was fixed at 10s. per diem, whereas the Natives who were called for the plaintiff received £1 per diem. They deny that any agreement was come to with Mr. Grindell on the subject, but his memorandum to me of the 3rd February, of which I forward a copy, appears to make it pretty clear that the arrangement was so understood. The petty disbursements referred to in Mr. Grindell's memorandum, and amounting in all to £21 11s. 11d., were discharged by the Government at the time; and, as they consist chiefly of railway fares of witnesses to and from their homes, I do not think they are fairly chargeable against the daily allowance.

Mr. Dean's case, about which you wrote to me on the 23rd December, is somewhat different from the rest. An allowance of 10s. per diem would be a very poor compensation for his loss of time, to say nothing of the actual expenses incurred by him. He has stated his own case in a memorandum, a copy of which I have attached to his claim for £30 forwarded herewith.

I would remark also on the claim of Mr. Peter McGrath, that he received at the time, under the head of witnesses' expenses, the sum of £13 10s. He states that this was an allowance made to him by Mr. Grindell for his assistance in looking after the Natives during their detention in Napier, and that his claim should be for thirty-six days at 10s. per diem. I am unable, however, to certify for more than eight days, the further period, as well as I can fix it, during which Mr. McGrath was required to be in Napier when recalled as a witness for the defence.

I have, &c.,

G. S. Cooper, Esq., Under-Secretary, Wellington.

W. L. BULLER.

Enclosure 1 in No. 6.

MEMORANDUM by Mr. EDWIN DEAN.

Re *Waka Maori* Case.

My claim is for £30, which will be insufficient to cover my expenses and loss of time. I was in attendance in Napier for eighteen days; during that time my days were at a standstill, and my entire

business neglected. My railway fares alone amounted to between £2 and £3. On former occasions, when attending as a witness in the Resident Magistrate's Court, I have been allowed a guinea per diem. In the *Waka Maori* case I was assured throughout that I should be protected against loss, but nothing whatever has yet been paid. I believe I was actually out of pocket something like £40. I have made frequent applications to the Government for redress, but without any result. I explained my case to the Hon. Mr. Ormond last year, and he promised to bring the matter before Parliament, but the session was too far advanced. I employed Mr. Lee, of Napier, solicitor, to draw my petition, and to take other steps in the matter, thereby incurring legal expenses amounting probably to five guineas. I make no claim on the Government for this.

Te Aute, 3rd May, 1880.

EDWIN DEAN.

Enclosure 2 in No. 6.

MEMORANDUM by Mr. JAMES GRINDELL.

Re *H. R. Russell v. Grindell and another.*

THE arrangement which I was instructed to make with the Maori witnesses in the *Waka Maori* case was an allowance of 10s. per diem during the whole time they were in attendance, less actual disbursements made by me on their account for travelling expenses, a full statement of which was delivered by me to Dr. Buller, as defendants' solicitor, at the time.

Napier, 3rd February, 1880.

JAMES GRINDELL.

Enclosure 3 in No. 6.

SCHEDULE.

Edwin Dean, expenses as witness for defendants in case of <i>H. R. Russell v. Didsbury</i>				£	s.	d.
and Grindell	...	...	...	30	0	0
Hohepa Ringanoho, ditto, 18 days at 10s. per day	...	...	...	17	10	0
Hamiora Tupaea, ditto, 8 days at 10s. per day	...	...	...
Arihi te Nahu, ditto, 9 days at 10s. per day	...	...	...
Hemaima Ahuahu, ditto, 13 days at 10s. per day	...	...	...	12	10	0
Mangai Ahuahu, ditto, 12 days at 10s. per day	...	...	...
Hapuku te Nahu, ditto, 4 days at 10s. per day	...	...	...
Eraitā Nohopapa, ditto, 6 days at 10s. per day	...	...	...	3	0	0
Kereama Kaaho, ditto, 20 days at 10s. per day	...	...	...	10	0	0
Ngawiki, ditto, 5 days at 10s. per day	...	...	...	2	10	0
Hauraki, ditto, 20 days at 10s. per day	...	...	...	10	0	0
Atareta Wharekiore, ditto, 5 days at 10s. per day	...	...	...	2	10	0
Karauria Hawea, ditto, 5 days at 10s. per day	...	...	...	2	10	0
Kirita Iwipipi, ditto, 8 days at 10s. per day	...	...	...	4	0	0
Ihaka Tupurupuru, ditto, 8 days at 10s. per day	...	...	...	4	0	0
Hiraka Tuhua, ditto, 3 days at 10s. per day	...	...	...	1	10	0
Paurini te Witi, ditto, 21 days at 10s. per day	...	...	...	10	10	0
Pane te Urihe, ditto, 21 days at 10s. per day	...	...	...	10	10	0
Anatipa Waka, ditto, 23 days at 10s. per day	...	...	...	11	10	0
Keremeneta Taukere and others, ditto	...	...	...	22	0	0
H. P. McGrath and Hakaraia Toi, ditto	...	...	...	5	10	0
Te Whaka Rewharawha, ditto, 18 days at 10s. per day	...	...	...	9	0	0
Hokomata, ditto, 25 days at 10s. per day	...	...	...	12	10	0
Hori Niania, ditto, 21 days at 10s. per day	...	...	...	10	10	0
				£194	0	0

No. 7.

The UNDER-SECRETARY to DR. BULLER.

SIR,—

Colonial Secretary's Office, Wellington, 31st May, 1880.

I have the honor to acknowledge the receipt of your letter of the 11th instant, forwarding a list of the witnesses, in the *Waka Maori* case, whose expenses have not been paid, with the amount due to each.

In reply, I am directed, by the Colonial Secretary, to express to you his thanks for the trouble you have taken in the matter, and to inform you that an item shall be placed on the estimates to pay these expenses, and copies of the papers be laid before Parliament.

Dr. Buller, C.M.G., Wellington.

I have, &c.,
G. S. COOPER.