

(No. 50.)



1858.

T A S M A N I A.

M R. K I R W A N.

PRECIS OF COMPLAINTS, WITH DECISIONS OF HIS EXCELLENCY
SIR WILLIAM DENISON.

Laid upon the Table by Mr. Colonial Treasurer, and ordered by the House
to be printed, 15 October, 1858.



PRECIS of certain Complaints against J. W. KIRWAN, Esq., late Police Magistrate, and the Lieutenant-Governor SIR WILLIAM DENISON'S Decisions.

AUGUST, 1852.

MR. MILWARD complains of insult, annoyance, and loss.

He sent a Passholder servant with a letter for Mr. Kirwan, and one for the Rev. Mr. Freeman, but omitted to give the man a "pass."

Mr. Freeman thereupon sent the man to the Watch-house.

This happened on a Saturday, and, owing to the absence of the Assistant Police Magistrate on business, the man was detained till the following Thursday, when he was discharged to the service of the Crown.

On the Monday Mr. Milward came to Brown's River to see after his man; and having waited all day for the Assistant Police Magistrate, he left a letter for him, stating that it was his (Mr. Milward's) fault that the man had no pass, and leaving one for him, with the request that the Assistant Police Magistrate would discharge the man from custody, and if he thought it necessary, give the man the pass.

The Assistant Police Magistrate returned the letter, with the remark, "This request is a very improper one."

With the letter was a summons for Mr. Milward to appear at Brown's River the next morning.

Mr. Milward appeared; and while in attendance complains that he was treated in an insulting and ungentlemanly manner by Mr. Kirwan, detained needlessly long, and refused the payment of his expenses.

He further complains that Mr. Kirwan subsequently wrote to the Comptroller-General, recommending the withdrawal of all Mr. Milward's passholder servants.

The Lieutenant-Governor's Memorandum on this case is to the effect that, whatever blame might attach to Mr. Milward for neglecting to give his servant a pass, he considers the conduct of the Assistant Police Magistrate most unwarrantable, and warns him to act with proper temper and courtesy; concluding, "Let him be reprimanded for his conduct in this case, and distinctly informed that, if I ever have reason to believe that he prostitutes his authority to vindicate his private feelings with reference to any individuals, I shall strike his name at once out of the Commission of the Peace."

Mr. Kirwan addressed His Excellency, assuring him that he was not actuated by private feelings in the case, and begging His Excellency to relieve him from the censure contained in such an imputation.

The Lieutenant-Governor expresses his willingness to believe Mr. Kirwan, and to relieve him accordingly.

OCTOBER, 1853.

On the 5th October, the Surveyor-General submitted a Report from the Inspector of Timber Licences, that Messrs. Kirwan and Freeman had been cutting timber on Crown Land without Licence since the 12th July.

Mr. Kirwan was called upon to explain, and Mr. Laffer ordered to seize the timber.

Mr. Kirwan explained, that, having paid the Pre-emptive Fee which he was told would have a retrospective effect from the 1st June previously, and that having paid Licence Fees for cutting timber up to the 12th July, he had in fact paid more than he was called upon to pay.

From the mode in which this statement is made, Mr. Kirwan leaves it to be inferred that the Pre-emptive Fee had been paid long before the date of his explanation, whereas it was paid only on the 7th October (eight days previous to the date of his explanation) for twelve months from the 1st August 1853, and after he had been advised by the Collector of Internal Revenue to do so, in order to prevent the difficulties he was getting into on account of the land; so that, taking the most favourable view of the case, he had really been cutting timber without Licence from the 12th July to the 7th October, notwithstanding that he had had the Regulations explained to him on a previous occasion, and that he ought to have made himself acquainted with the Notification of the 25th May published in the *Gazette*.

In Mr. Kirwan's explanation he complains, upon information stated to have been given to him by a Clerk in the Survey Office, that he has been placed in an unfair position by the Surveyor-General's receiving payments privately from three gentlemen, and placing them in possession of their lands at once, whilst the same advantage was not conceded to him. After some hesitation, he gave up their names. The Surveyor-General denies the statement that he had received money privately from anybody; and Mr. P. G. Fraser, one of the three gentlemen referred to, confirms the Surveyor-General's denial as regards himself, by observing that Mr. Kirwan has stated what is false, and furnishes the several dates and other facts requisite to support his assertion.

The Governor's Memorandum in this case is as follows:—

“I have looked over these papers, and regret to find that Mr. Kirwan's conduct has been most reprehensible throughout the whole business.

“He has cut timber without a Licence upon the Government land, well knowing that he was not entitled to do so. When applied to for an explanation of the circumstances which induced him to act in this manner, he gave a false coloring to the transaction, by endeavouring to prove that the Government had, in point of fact, received more than was its due; and he tried to excuse himself by making most erroneous statements as to the conduct of the Surveyor-General with regard to other Lessees of Crown Lands.

“Mr. Kirwan will therefore be informed that I am extremely dissatisfied with his conduct; and he will further be warned, that as this is not the first, or even the second occasion on which I have been compelled to find fault with his conduct, I shall not be disposed to pass so lightly over any future cases of complaint against him.

W. DENISON.

November, 1853.”

APRIL, 1854.

Mr. Harris was appointed on the 28th April, 1852, as District Constable and Coxswain at Ferguson's Point, with a boat and crew for the apprehension of Absconders, &c. He was paid from Convict Funds.

By an arrangement between the Comptroller-General and the Chief Police Magistrate, Harris was placed under the orders of the Chief Police Magistrate; and whilst his chief duties were in connection with the Convict service, he was expected to aid the Public and Police service whenever required so to do from Head Quarters.

This arrangement was acted upon by the Assistant Police Magistrate and Mr. Harris.

In December 1853, some difference arose between these Officers; and subsequently Mr. Harris complained that his services, and those of his boat and crew, were diverted from their legitimate duty, not in aid of the Public or Police, but to private purposes.

The Chief Police Magistrate endeavours to prevent a recurrence of such circumstances; but subsequently Mr. Kirwan permits an information to be preferred against Mr. Harris, before himself, for "disobedience of orders" as a "Constable," and fines him 1s.

Mr. Harris prays that the fine may be remitted, and his position as regards the A. P. M. more distinctly defined.

The Lieut.-Governor's Memorandum is as follows:—

"The Fine to be at once remitted, and Mr. Kirwan to be severely reprimanded for disobedience of orders, and to be warned that his tenure of office will depend entirely upon his future conduct.

Should any instance of misconduct be brought before me on the part of Mr. Kirwan, I shall be compelled, however unwillingly, to dispense with his services.

W. D.

May, 1854."

MAY, 1854.

Mr. Balfe prefers certain charges against Mr. Kirwan:—

- 1st. In exercising the power he is possessed of in persecuting all persons he may have his personal feelings excited against.
- 2nd. He does not carry out the sentences passed by the Bench when composed of unpaid Magistrates, nor even inform them of his reasons for not doing so.
- 3rd. He erases and alters the recorded sentences passed upon prisoners.
- 4th. He purposely and grossly misrepresents to the Authorities the facts of cases he is called upon to explain, when he cannot satisfy enquiry by a plain statement of facts.
- 5th. That he orders Prisoners of the Crown, at the request of their Masters, out of the District, records the sentences, and hires them out at Brown's River into other portions of the same District out of which they have been ordered by himself and other Justices of the Peace.
- 6th. That he employs the Police under his control in carrying out his vindictive feelings against individuals, and gives them such instructions as are wholly inconsistent with personal liberty in the District.
- 7th. That he does not carry out the written orders of his superiors when doing so might exhibit him in the light of being compelled to do an act of justice to an individual he might dislike.
- 8th. That in cases where his decisions as a Magistrate are of importance to persons he dislikes, he does not hesitate to make the most illegal and absurd interpretation of the Law to the prejudice of those he dislikes.

The Governor directs the investigation of these charges by the Chief Police Magistrate and the Accountant of Stores.

The Board furnish a very full Report, and the Governor at the close of his Minute thereon says:—

"Upon considering all the circumstances connected, not only with the matters which are the subject of the present Report, but with the whole of Mr. Kirwan's career as a Magistrate, I cannot conceal from myself that he has exhibited such evidence of ignorance of his duty, of carelessness in the mode of executing that duty, of want of proper temper and discretion, as would justify me in dispensing with his services altogether. I am willing, however, to take into consideration the character of the District over which he is

placed, and the favourable opinion expressed of him by several respectable inhabitants of the District, and to content myself on the present occasion with reprimanding Mr. Kirwan most severely for the careless mode in which he has conducted the business of his office, for the want of temper and discretion exhibited, and for the arbitrary mode in which he has exercised the powers vested in him, warning him, at the same time, that this is the last occasion on which I shall extend any indulgence to him, and that should I be called upon to find fault with him again, his services will be at once dispensed with.

W. DENISON.

24 June."

JUNE, 1854.

Michael Jordan, a servant withdrawn by Mr. Kirwan, from his master's service, was ordered to be returned to the Government.

Mr. Kirwan permitted him to reside in the house of a man with whom Mr. Kirwan was lodging, instead of forwarding him to Town.

The Lieutenant-Governor called for a Report.

Mr. Kirwan pleaded ignorance of the fact that the man was there,—that he was an out-door servant, and did not directly or indirectly attend upon Mr. Kirwan.

This case appears to have been connected, so far as the withdrawal of the man Jordan from his master's service, with the cases upon which the Board reported to the Governor, mentioned in the last complaint.

The Governor's Memorandum upon this case is:—

" Mr. Kirwan's conduct has been most improper: and had this case occurred posterior to the Report of the Board, I should at once have carried out my expressed intention, and dispensed with his services.

" Mr. Kirwan has betrayed gross ignorance of his duty; and I am not disposed to attach much credit to his statement, that he was ignorant of the fact that the man whom he must have seen almost daily had not been sent out of the District. Let him be informed, that his duty is to see that the orders he receives are obeyed, and that if I hear of a similar instance to the present one occurring again, his services will be dispensed with; and the Chief Police Magistrate will bear in mind to report to me monthly the state of the Police records of the District, in order that I may see whether Mr. Kirwan is yet to continue as a Magistrate, of which I have grave doubts.

W. DENISON.

July 1, 1854."

AUGUST, 1854.

Mr. Balfe complains of Mr. Kirwan's conduct on a certain occasion when a Mr. Chick was being tried at the Police Court.

Mr. Kirwan, for alleged improper conduct on the part of Mr. Balfe, committed him to Hobart Town Gaol for twenty-four hours for contempt of Court.

Mr. Balfe seeks from His Excellency the protection of the Executive.

Mr. Kirwan makes a counter-statement impugning Mr. Balfe's story, and accusing him of conduct necessitating the course he, Mr. Kirwan, pursued.

The Lieutenant-Governor's Memorandum is, "I have read the whole of the papers in this case, and my opinion is that the circumstances are equally discreditable to both parties."

After condemning the conduct of Mr. Balfe, His Excellency goes on to say—

“Mr. Kirwan must be informed, that in my opinion he has shown such a want of temper and discretion as manifestly unfits him for performing the duties of a Police Magistrate; but that as I understand legal proceedings are about to be taken against him, I postpone, for the present, any such action in his case as might be supposed to have any influence on the decision of the Court.

W. D.

5 September, 1854.”

AUGUST, 1854.

A Ticket-of-Leave man complains that the District Constable refused him a Pass to leave the District.

The District Constable states the Assistant Police Magistrate gave the instruction at the instance of the man's master.

The Lieutenant-Governor's Memorandum on the case:—“Let Mr. Kirwan be reminded of the substance of my Minute of the 24th June, 1854, in which he was directed to be severely reprimanded, and was told that that was the last occasion on which I should extend any indulgence to him.

Let him now be informed, that it is my intention to bring his conduct under the notice of the Executive Council, with a view to his dismissal from office for general inefficiency and misconduct.

W. D.

21 September, 1854.”

OCTOBER, 1854.

Mr. Kirwan, on account of the frequent differences between Mr. Balfe and himself, begs that His Excellency will remove him to some other District.

The Lieutenant-Governor writes the following Minute on this application:—

“I have already moved Mr. Kirwan from Bothwell to the Huon, and have given him every possible advice and assistance; but the truth is, that Mr. Kirwan is utterly unfit to act as a Magistrate,—his arbitrary disposition, his want of temper and discretion, unfit him altogether for the due performance of his duties. I should be glad to do anything in my power to relieve him from the disagreeable position into which he has brought himself by his own folly, but I cannot remove him to any other District.

W. D.

9 October, 1854.”

DECEMBER, 1854.

Mr. Balfe, having arranged all his differences with Mr. Kirwan, begs to withdraw all charges he, Mr. Balfe, has laid against him before the Executive.

The Lieutenant-Governor's Minute upon this letter is:—

“I postponed the consideration of Mr. Kirwan's conduct in the Executive until the question at issue between Mr. Balfe and himself had been decided in the Supreme Court; my reasons for doing so being, the statement made by Mr. Kirwan that an undue prejudice might be created in the minds of the Jury were it known that his

conduct had been brought under the notice of the Government. As, however, the case has, it appears, been compromised, there is no reason for further delay. Looking, however, to the fact that the person who has had most reason to complain of Mr. Kirwan's conduct has expressed a wish that nothing which has passed between himself and Mr. Kirwan should prejudice the latter, I have no wish to signalise my departure from the Colony by meting out to Mr. Kirwan the full amount of punishment which his folly deserves. The Chief Police Magistrate will, therefore, reprimand Mr. Kirwan, and will warn him that, although circumstances have induced me to deal most leniently with him on the present occasion, his past conduct will not be forgotten, and that any future instances of abuse of power or misconduct will ensure his dismissal.

W. DENISON.

December 21, 1854."