

SESS. II.—1897.
NEW ZEALAND.

CHARGES AGAINST INSPECTOR JOHN EMERSON

(REPORT OF ROYAL COMMISSION ON).

Presented to the House of Representatives by Command of His Excellency.

IN the matter of "The Commissioners' Powers Act, 1867," and of a certain Royal Commission issued by His Excellency the Governor in Council on the 4th day of November, 1897, directed to Harry Eyre-Kenny, of Wellington, Stipendiary Magistrate, authorising and empowering the said Harry Eyre-Kenny to inquire into the truth or otherwise of certain charges in the said Commission specified preferred against John Emerson, Inspector of Police, and requiring the said Harry Eyre-Kenny to certify under his hand and seal his opinion touching the said charges.

To His Excellency the Right Honourable the Earl of RANFURLY, K.C.M.G., Governor in and over the Colony of New Zealand.

MAY IT PLEASE YOUR EXCELLENCY,—

In accordance with the provisions of the said Commission, I have the honour to respectfully furnish the following report:—

1. Owing to the length of time which elapsed between the 1st and 2nd of May last, the dates of the alleged offences imputed to Inspector Emerson, and the 4th of November, 1897, the date of the said Commission, very serious difficulty has been experienced by both sides in obtaining the evidence of their witnesses. The witnesses had become scattered all over the country, so that in order to avoid the expense of concentrating them in one place I was instructed to sit at Auckland, Gisborne, and Napier for the purposes of this inquiry. Jacob, the chief steward of the "Dingadee" (on which the alleged misconduct took place), had been transferred to the s.s. "Omapere," and it took some contrivance to enable me to intercept him at Gisborne, the "Omapere's" time-table being so uncertain owing to the number of small ports she has to visit along the coast, and to the vicissitudes of the weather. Again, Mrs. Boyd, the stewardess of the "Dingadee," left the Union Company's service on the 6th May last, and was supposed to have gone to Tasmania. Subsequently, however, she was discovered in Auckland, and her testimony obtained there. A passenger named McDonald, whose evidence was required, was with difficulty traced to Waimarama, some thirty miles from Hastings; his ordinary place of abode being Awanui, on the East Coast. These complications necessitated several adjournments. Furthermore, during my stay at Napier, a witness named Warnock was unexpectedly discovered in Auckland, so unquestionably important that I was compelled to revisit that city. I proceeded there at once in the "Waihora," arrived on Monday, the 6th December, 1897, sat the same day, and returned to the south by the "Mararoa," on Tuesday, the following day. I am now quite satisfied that all the available evidence has been obtained, and that the investigation has been as thorough as it was possible to make it.

2. *Charge No. 1.*—The first charge is as follows: "That on or about the 1st day of May, 1897, on board the steamship 'Dingadee,' he (Inspector Emerson) did play cards and drink until 2 o'clock of the morning of Sunday, the 2nd day of the same month, when he returned to his cabin much the worse for drink."

I consider that this charge is absolutely disproved. There is no evidence at all to support the allegation that when Emerson retired to his cabin on the morning of the 2nd of May he was "much the worse for drink," or indeed that he was even slightly intoxicated. The only evidence that Emerson played cards and drank until 2 a.m. on Sunday, the 2nd May, is the testimony of Mr. William Cooper, and that is inferential merely, for Mr. Cooper, who was lying in his cabin at the time, candidly admits that he saw nothing, but that he heard the voice of one of the men who went on playing at cards, as he alleges, well into Sunday morning, that this person was noisy and garrulous, and that he subsequently identified this person to be Inspector Emerson by his voice.

To use Mr. Cooper's own words, "I recognised afterwards that Inspector Emerson was the garrulous person I referred to by his voice, only by inference, and in the same way I recognised he was the person who was playing cards. I did not get out of my berth to look. I did not see Emerson drinking at all." At the time, therefore, of the alleged misbehaviour Emerson was unknown to Mr. Cooper either by sight or by voice, so that he (Mr. Cooper) is unable to swear positively that Emerson was the garrulous, noisy man who drank and played at cards till 2 a.m. on Sunday morning. On the other hand, Captain Adams, of the "Dingadee," states that it is not likely that there could have been card-playing on the occasion in question till Sunday morning. "It would not be allowed," he says. "Cards would not be allowed to be played after midnight on Saturday." Emerson swears that at 11 p.m. on the Saturday the chief steward came in and stopped the game at cards which was then going on, and his evidence is corroborated by the chief steward (Jacob), who further states that he is very strict about the 11 p.m. limit for card-playing, because some steward in the company's employ had got into trouble for exceeding it. The chief steward also deposes that Emerson was not at all the worse for drink on the evening of the 1st of May.

3. *Charges Nos. 2 and 3.*—These charges can be taken together. They are: "That on Sunday evening, the 2nd May, 1897, he (Inspector Emerson) did at Gisborne, where he had landed to inspect the station and men, return to the steamship 'Dingadee' in a state of intoxication, and was guilty of disgusting conduct in spitting about the floor of the cabin, and using the wash-hand basin as an urinal, being so much under the influence of liquor as to be unable to remove his boots or get into his bunk without assistance, and lay on the floor until those occupying the same cabin came to his aid. That at the same time and place he used abusive and threatening language to one of his fellow-passengers when remonstrated with for his disgusting conduct in the cabin."

This part of the case presents great difficulties—these charges resting entirely upon the evidence of Mr. William Cooper, corroborated to a certain extent by Mr. Andrew Warnock. Mr. Adam Henderson, who was called for the prosecution, was unable to speak to the events of the night of the 2nd of May, because, although he occupied the same cabin with Emerson and Cooper, he was tired out, and slept soundly. On the other hand, the evidence of several persons, whose testimony will presently be noticed in detail, is absolutely inconsistent with the allegation made by Mr. Cooper. Moreover, there are serious discrepancies between the story as told by Mr. Cooper and by Mr. Warnock. In addition to this, there is the evidence of three persons—Main, Bockett, and Urquhart—as to the general character of Emerson for sobriety, to which, however, for various reasons, I do not attach much weight. Finally, Inspector Emerson, upon oath, absolutely denies these charges.

Mr. Cooper's evidence was given in a lucid and unexaggerated manner. I have not the smallest doubt that he fully believed all that he was saying. Mr. Cooper is a barrister of the Supreme Court of New Zealand. He was for five or six years Municipal Magistrate at Samoa, and when he resigned that office he received an address, signed by all classes of the European community, recognising the admirable manner in which he had performed the duties of his office. The statements, and especially the sworn statements, of such a man must be taken seriously.

But it is my duty to draw attention to the circumstance that Mr. Cooper suffers from an affliction which renders him an unreliable observer of occurrences, even when they are taking place in his immediate vicinity. Mr. Cooper is unfortunately so short-sighted as to be almost purblind. Mr. Cooper was also suffering from sea-sickness. Nor can I dismiss from my memory the circumstance that charge No. 1 preferred by Mr. Cooper has completely broken down. Mr. Warnock, who was called for the prosecution, was certainly an unwilling witness. This was so obvious that, after a time and the exercise of some patience, I treated him as a hostile witness to the persons calling him, and allowed him to be examined by questions more or less leading. Mr. Warnock, however, could not be induced to furnish a full, clear, and unequivocal narrative of what he saw and heard in that cabin on the evening of the 2nd of May. Mr. Warnock stated that Emerson twice, he believed, used the wash-hand basin as a urinal during the night, but he could not or would not state any adequate reasons for his belief. Then he says, "The Inspector did not act as a sober man ought to do, when he came into the cabin"; but here, again, he is unable to say what it was that the Inspector did or did not do which showed that he was then intoxicated. Mr. Warnock states that Emerson fell on the floor of the cabin whilst endeavouring to clamber into his bunk. But it was proved that there was no ladder in the cabin, and that there was a slight roll on, and a sober person might easily meet with such an accident, and, if a heavy man, be so shaken as to be unable to move for a minute or two; and Warnock, who assisted Emerson to get into his bunk, deposes that he had no smell of liquor upon him: it follows, therefore, that Mr. Warnock had no just reason for supposing that the Inspector was drunk, other than the circumstance that he believes (also on grounds which he fails satisfactorily to explain) that the Inspector twice made a urinal of the wash-hand basin—an act which, of course, no man in his sober senses would commit. Mr. Warnock, as I have mentioned, contradicts Mr. Cooper on several vital points: *e.g.*, Mr. Cooper positively swears that a steward conducted Inspector Emerson into the cabin occupied by Mr. Cooper, Mr. Warnock, and Mr. Henderson; that the Inspector was then in a helpless state of intoxication, and that the steward was assisting him in the way in which a drunken person would be assisted, the steward walking with Emerson arm-in-arm and conducting him into the cabin. Yet Mr. Warnock, who, in answer to a question from me, said he (Warnock) was wide awake at the time, declares that Emerson came into the cabin alone, and that there was no steward with him. Again, Mr. Cooper swears that there was "a light" in the cabin on each occasion when Emerson committed the nuisance in the wash-hand basin; but Warnock swears that there were no lights in the cabin on either occasion—that on the first occasion there was some light from the saloon, whilst on the second occasion there was no light in the cabin from any source. The chief steward, Jacob, swears that he was the steward who took Emerson to his cabin on the evening of the 2nd May—a room different from the room Emerson occupied the night

before; that he (Jacob) pointed out Emerson's berth; that he did not walk arm-in-arm with Emerson into the cabin; that he gave Emerson no assistance whatever; and that he is quite sure that Emerson was not drunk.

Sergeant Black, the police sergeant at Gisborne, who appears to be an intelligent and trustworthy non-commissioned officer, gives a most minute account of the Inspector's movements when he was at Gisborne on the 2nd May, and he accompanied the Inspector in the steam-launch "Snark" when he went on board the "Dingadee." The Inspector went down the gangway to the "Snark" in front of the sergeant, who had therefore an excellent opportunity for observation, and these are the sergeant's own words: "In my opinion he was not drunk, nor did he appear to have taken too much. He certainly was not drunk. He walked as well as I did and conversed as well. I went on board the "Snark" with him and out to the "Dingadee." We sat on the hatchway side by side and talked on police matters. It was his first visit, and he had a good deal to say about official business. I saw him go up the gangway. All the assistance he got was the same as other passengers are treated when there is a roll on. There was a considerable roll on."

Captain Neal, of the "Snark," remembers taking Inspector Emerson off to the "Dingadee" on the night of the 2nd May. Captain Neal saw him come on board the "Snark" without assistance, and he swears that "he (the Inspector) boarded the 'Dingadee' without any more than the usual assistance given to passengers when there is a 'range' on, which we gave him." Captain Neal says, further, that he would not have taken off a man who was really drunk. Captain Neal, it is true, adds that he took no particular notice; but it is in evidence that there was only one other passenger for the "Dingadee" that night, so that, if there had been any marked peculiarity in Emerson's manner or behaviour, the captain could scarcely have failed to observe it.

Francis Knowles, the deck hand of the "Snark," gave similar evidence, and he says, "It would not have been possible for a man really drunk to have walked up the stage that night without special assistance. There was a nasty southerly joggle in the bay."

Now, it may perhaps be said that the sergeant of police would be biassed by a feeling of loyalty to his superior officer, and that the Union Company's employes would be naturally averse to saying anything derogatory to a passenger. I respectfully submit that this argument may be carried too far. It must bear little weight unless we attribute absolute perjury to Sergeant Black, Captain Neal, Francis Knowles, and the chief steward, Jacob; for there can be no mistake or question of lapse of memory in the positive and circumstantial statements these witnesses have made.

There is, however, another witness for the defence, of unimpeachable character, and against whom certainly no bias can be urged; for this gentleman is a priest of the Catholic Church, and Inspector Emerson is a Protestant. I allude to Father Ahern. The reverend gentleman deposes that he met Inspector Emerson at the Turanganui Hotel, Gisborne, and had a few minutes' conversation with the Inspector immediately before he embarked in the "Snark," and Father Ahern swears, "As far as I can judge he was sober." In this connection it is only fair to mention that Father Ahern was lodging at the Turanganui Hotel because the priest's house was not then available.

I reject altogether the evidence of Emerson's witness, Donald McDonald. This person swore that he was one of the four inmates of Cooper's cabin on the night in question. It is practically demonstrated that McDonald's evidence in this respect is untrue. Whether McDonald was wilfully perjured himself, or whether his recollection has become impaired by lapse of time, it is difficult to say; but it is somewhat surprising to find Inspector Emerson swearing that McDonald was one of the four inmates of this cabin on the night of the 2nd May.

Mrs. Boyd, the stewardess, another witness for the defence, deals in generalities only. Her evidence is almost valueless. What there is of it is in favour of the Inspector.

I have not yet dealt specifically with the accusations against Emerson of spitting about the floor of the cabin and using abusive and threatening language to his fellow-passengers when remonstrated with for his disgusting conduct in the cabin. The evidence in support of this part of the case for the prosecution is in my opinion inconclusive. If the major charge of drunkenness and committing a nuisance in the wash-hand basin is maintained, these comparatively minor offences are substantiated also; but if the drunkenness and the nuisance are not proved, then the evidence for the prosecution on the minor charges, taken by itself, is certainly insufficient.

As to the spitting: It is proved conclusively that Emerson was troubled at the time by a violent explosive cough from bronchial catarrh supervening on influenza. It is not, I think, proved that Emerson intentionally spat on the floor of the cabin, though he may have been careless or have done so accidentally.

As to the bad language: Emerson's explanation is as follows: "The only conversation I had was this: Mr. Cooper said, 'Look here, old man, if you don't stop that coughing and spitting and let us have some sleep I'll send for the steward and have you turned out of the cabin.' I said, 'You're an unfeeling brute; you deserve to be kicked.' I believe I said I would 'kick his arse.' No other conversation during that night took place." Henderson, being asleep, heard nothing that was said; whilst Warnock, who at page 122 of the evidence gives a somewhat different version of what Cooper said to that given by Cooper himself, did not hear Henderson's reply.

Upon the whole of the evidence I think the Inspector should be acquitted upon the second and third charges. In inquiries of this description—where the accused has so much at stake and is on trial for his official life—it is as necessary as in criminal cases to adhere to those general principles of jurisprudence which experience has shown to be essential to the administration of justice. The most important of these canons by far is that the burden of proof is always thrown upon the accuser. It is for him to prove his indictment beyond any reasonable doubt. It is not sufficient if he raises a case of grave suspicion. This is a "commonplace," but one that cannot be too much insisted on, however great the temptation to disregard it. "The just thing must be done in the just way." Now, it cannot be said that there is no occasion for doubt here. The evidence before

me is conflicting and perplexing in the extreme. The important discrepancies between the evidence of Cooper and Warnock, the principal witnesses for the prosecution, cannot safely be disregarded. Cooper's evidence, strong as it is, is corroborated by Warnock alone, and by him "only partially"; so that the case against Emerson depends upon the almost unsupported testimony of one witness. On the other hand, unless Captain Neal, Francis Knowles, Chief Steward Jacobs, Sergeant Black, and Father Ahern have all wilfully and deliberately perjured themselves, it is impossible that Mr. Cooper's narrative can be correct. I do not for a moment suggest—I do not believe it possible—that Mr. Cooper has sworn what he knows to be untrue; but it is not improbable that defective eyesight, aggravated by the debility induced by sea-sickness, so impaired his powers of observation as to lead Mr. Cooper to wrong conclusions. Be this as it may, having regard to the positive evidence adduced for the defence, I must find that charges 2 and 3 are not proven.

4. In my opinion, therefore, none of the charges against Inspector Emerson set out in the Commission are substantiated.

I make no order as to costs.

5. I respectfully submit this report and the evidence taken by me to your Excellency, and I have the honour to return my Commission herewith.

Certified under my hand and seal, this 13th day of December, 1897.

(SEAL.)

H. EYRE-KENNY, S.M.,
Royal Commissioner, Wellington.

Approximate Cost of Paper.—Preparation, not given; printing (1,250 copies), £2 5s.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1897.

Price 3d.]