

James Patience of Avoch

Once a Scotsman, always a Scotsman

A Family Story

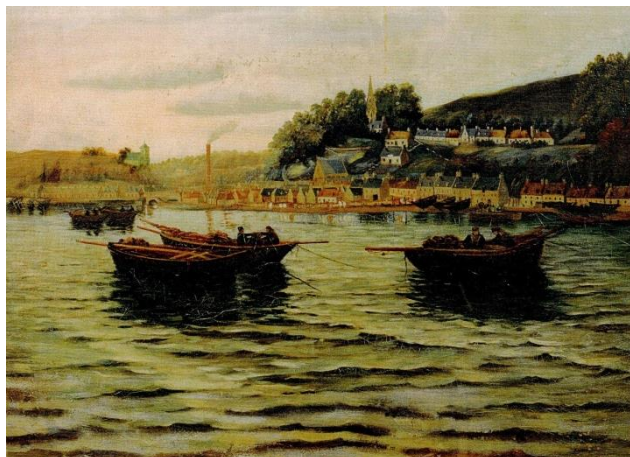
In 1974 the author's mother, Brightie McCallum recorded a conversation she had with her brother, Donald Patience¹ where he recounted how there had been a Colonel Patience from Avoch, Scotland in New Zealand as part of the British Army during the time of the Maori Land Wars. He returned to England and died without a will. Eventually the monies were released to Avoch and the *"coal bins were filled and new sails put on the fishing boats."*² This article on the life of James Patience is the researched description behind that oral family story. It's a story that starts and ends in Avoch but travels the world in between.

Overview

James Patience was born in the fishing village of Avoch, on the Black Isle, Ross-shire, 19 November 1791. He joined the British Army in 1810 as an ensign in the Royal York Rangers, rising to the rank of Colonel in the 65th Regiment of Foot (The 2nd Yorkshire, North Riding). James served with the army in the West Indies (towards the end of the Napoleonic Wars), in Canada and St Helena and after coming out to Hobart Town, Van Diemen's Land and Sydney, New South Wales on the *Java* in 1846, served in New Zealand in the Land Wars. He was the Police Magistrate at Russell (Kororareka) in the Bay of Islands, just after the Northern War there in 1846. In 1858 he returned to England on the *Westminster* and retired from the army with the sale of his commission in 1860. He became something of a recluse, living in boarding houses and dying intestate in London on 1 October 1882. A court case followed on whether he was a Scotsman or an Englishman as the law differed between the countries as to the distribution of his estate, a healthy £7,552 8s 1d.

Avoch

Avoch is a small fishing village overlooking the Inverness Firth on the Black Isle to the north of Inverness. Like many fishing villages along the north-east coast of Scotland it was a distinctive social community though less so today with population changes and global culture. Communities such as Avoch have been described as *"Scot-speaking 'plantations' in the Gailhealtachd since the 17th century, surrounded by Gaelic and separated from other Scots-speaking communities until recently."*³ With their own dialect and customs, Auchies were a tight community, deeply religious and superstitious and leading a semi-communal way of life to overcome the uncertainties and difficulties which a dependence on fishing entailed.⁴ The village was dominated by the surnames Patience, Jack, Macleman, Reid and Skinner with bye names used to differentiate families.



"Avoch from the Sea"
Avoch Heritage Association

As best as can be determined, James was the youngest of a family of eleven, born in Avoch 19 November 1791 to Alexander Patience 'Dutchman' and Janet Skinner, who had married in Avoch 7 May 1767. The family included John, 1771, Roderick and Donald, 1773, Alexander, 1775, George, 1777, Donald, 1780, Donald, 1782, Jannet, 1784, Katharine, 1789, Margaret 1790 and James.⁵

Unlike most Auchie young people in the 1800's who became fisher laddies and fisher lassies, later to be fishermen and the wives of fishermen (although not all may have wanted to be known as 'fishwives') James and his older brother John led completely different lives. John Patience was educated at King's College and the University of Aberdeen obtaining an M.A., 1791, was licensed by the Presbytery of Mull, 1796 and became the minister of the parish of Ardnamurchan, Mull, 1804.⁶ He subscribed to books such as *Ghaidhealach*, a collection of Gaelic poems and songs put together by Paruig Mac-an-tuairneir published in 1813 and "*An original collection of the poems of Ossian, Orrann, Ulin and other bards*" collected and edited by Hugh and John M'Callum, 1816.⁷ John Patience died unmarried in 1827 aged fifty six.⁸ Perhaps coming to Mull as the housekeeper for her brother John, Catherine married Donald Fletcher, a farmer from Peinalbanach near Tobermory, Mull and had six children, dying in Glasgow in 1854.⁹

The British Army

The earliest record for James in the army is the *London Gazette*, 5 April 1810, where James Patience, Gentleman, is to become an ensign in the Royal York Rangers.¹⁰ The uniform was green with red facings.¹¹ British military life was not an easy one, even though as an officer James would, as he rose in rank, have more privileges than an ordinary soldier. The British regular army was an authoritarian and hierarchical organisation with an inflexible discipline held in place by an unnecessarily brutal and inhuman system of military punishment – the lash and execution. As an infantry officer, James had to oversee a mechanical, monotonous and punishing training regime for the soldiers in locations such as the West Indies and India where death from disease or fighting was the order of the day.¹²

The Royal York Rangers was formed in 1808 from drafts of the Royal African Corps and was known as a 'penal battalion' made up of condemned men, deserters and convicts given an opportunity to escape the gallows and redeem themselves by serving in the army. The title "Royal" is curious for a regiment composed of criminals. Being sent to the West Indies at this time has been described as a death sentence in itself due to the high death rate from disease (malaria and yellow fever), let alone from putting down slave revolts (e.g. the Maroons of Jamaica) or fighting the French.¹³ The Royal York Rangers had a muster of 1128 men in June 1817¹⁴

The West Indies at the time James was there was a varied social and cultural mix of English, Scots and French colonists running plantations and trading premises with most of the labour done by slaves. The outbreak of the Napoleonic Wars brought change such as in 1809 where it was ruled that slave testimony was admissible in a British military court in the West Indies. The colonists expected the army to defend their existing way of life whereas the army found that former slaves of black or brown ethnicity could be equally as good soldiers as Englishmen and with their greater adaption to the climatic and living conditions of the Indies, at a lower death rate from disease. It is presumed that James, with his strict Avoch upbringing and his brother John being a Minister of the Church, did not succumb as many officers did, to taking a mistress from the black and coloured women nor consort with prostitutes nor get drunk in the many taverns available.¹⁵

While the reputation of the Royal York Rangers may not have been the most illustrious, it did allow James an entry into the British Army which became his home for the next fifty years. To have become an officer in even this lowly regiment, James must have had a reasonable education and been recommended by someone of social standing. Perhaps he also served briefly in the county militia which was another pathway to join the army. The following table summarises James' career.

James Patience, British Army 1810-1860 ¹⁶

Date	Rank	Regiment	Comments
1810 5 April	Ensign	Royal York Rangers	Without purchase
1811 24 October	Lieutenant		Without purchase
1811-1819			West Indies
1819 19 November		Half-pay, Royal York Rangers	Royal York Rangers disbanded, Halifax, Nova Scotia, 24 June 1819
1819 June-October			America
1820 30 November	Lieutenant	61 st (South Gloucestershire) Regiment of Foot	From half-pay Royal York Rangers in exchange for another. 61 st based in Jamaica 1816-1822
1821 15 March	Lieutenant	Half-pay	Replaced by another for James, <i>"whose appointment has not taken place"</i>
1821 27 November	Lieutenant	20 th (East Devonshire) Regiment of Foot	Without purchase
1822 April & May		20 th	St Helena; Napoleon Bonaparte died there 5 May 1821
1822 July-1825 November		20 th	East Indies (Bombay & Cannanore, Kerala in southern India)
1827 13 November	Captain of Infantry	Half-pay, unattached	From the 20 th Foot
1832 21 September	Captain	65 th (The 2 nd Yorkshire North Riding) Regiment of Foot	From half-pay, unattached.
1835 January – 1838 January		65 th	West Indies
1838		65 th	America
1841 23 November	Brevet-Major	65 th	
1845 30 December	Major	65 th	Without purchase
1846 May- 1858 August			New Zealand
1851 11 November	Brevet-Lieutenant Colonel	65 th	
1854 28 November	Brevet-Colonel	65 th	
1858 29 October	Colonel	65 th	Dated from 28 November 1854
1858			Two years leave of absence
1860 11 May	Retires		Sale of Commission to Brevet-Major William Pym Young

James spent from February 1811 until May 1819 in the West Indies where the Royal York Rangers played their part in fighting the French and their allies in the latter part of the Napoleonic Wars. He missed the invasions by the British of Martinique in 1809 and Guadeloupe in 1810 but was there for the surrender of Martinique and the capture of Les Saintes and

Guadeloupe in 1815.¹⁷ Compared to Europe these were relatively minor campaigns with the British more concerned with military losses and the need for manpower to be maintained. They did demonstrate the ability of the navy and army to work together on successful amphibious operations using primarily local forces.¹⁸

In 1819 the Royal York Rangers sailed to Halifax, Nova Scotia and was disbanded. It seems that penal regiments were disbanded some distance from Britain but also with the 1812-15 War with the United States not long over, the British sought to settle former soldiers as a buffer to any future invasion. A small number settled there with land grants or joined the timber industry but most like James, continued their lives elsewhere.¹⁹

The end of the long Napoleonic Wars was not an easy time to remain a soldier, with so many men being discharged.²⁰ For some years James was on half pay, unattached to any regiment. James was appointed a lieutenant in the 61st South Gloucestershire Regiment of Foot in 1820 but this position was never taken up and after more time unattached on half pay, he moved to the 20th East Devonshire Regiment of Foot. With the 20th he was on St Helena in April/May 1822 before sailing to Bombay and a prolonged period in India through until November 1825. In India the 20th was stationed firstly on the island of Colaba at Bombay (Mumbai) before moving south to Cannanore, Kerala in 1824 and Poona in 1825, south east of Bombay.²¹ He remained with the 20th until 1827 when he decided to accept a promotion to "*Captain of Infantry (from the 20th Foot)*," although unattached to any regiment and back on half pay.²²

The 65th (The 2nd Yorkshire North Riding) Regiment of Foot and the move to the 'Australian' colonies

In September 1832 he became a captain in his final regiment, the 65th (The 2nd Yorkshire North Riding) Regiment of Foot.²³ He was again stationed in the West Indies from January 1835 until January 1838 followed by time in Canada before coming back to England and Ireland in August 1841.²⁴ By November 1841 he was a brevet major and in December 1845 a full major.²⁵

In Britain the regiment moved around on the railway system although they would march through towns such as Manchester or London from the stations to their barracks. At times the regiment could be split with companies in different locations while at other times it would be united in one barracks. By this time Major James Patience was in command of a company. In 1842 the Headquarters Division was housed in Manchester in two abandoned factories "*...situated in the worst and most disturbed part of the town, in the middle of smoke and filth and surrounded by a turbulent and starving population.*"²⁶ In late 1843 the regiment concentrated at Salford Barracks, near Manchester before embarking from Liverpool to Ireland.

In July 1845 The 65th received orders to move to Chatham in Kent and so began the slow process of moving the regiment to the 'Australian' colonies with the expectation of furnishing convict guards for Van Diemen's Land.²⁷ In August the regiment received its new colours with a visit by its colonel, General Grosvenor and the colours being presented by his wife. The General and his wife dined with the officers at the regimental mess and the old colours were delivered by Majors Gold and Patience to Mrs Grosvenor.²⁸

James was in command of those of the 65th at Sheerness and on the visit of the Earl of Ellenborough, First Lord of the Admiralty, was among those specially invited to dine with his Lordship and colleagues on board the Admiralty yacht, the *Black Eagle*.²⁹

On 18 May 1846 the headquarters of the regiment embarked on the *Java* at Gravesend and sailed for Hobart Town. On board were 576 rank and file, 19 drummers, 16 corporals, 13 sergeants and 14 officers. Due to a measles outbreak only single men were on board, no women or children and with command devolving to Major James Patience.³⁰ Other members of the regiment had already sailed as convict guards on ships to Hobart Town and Norfolk Island.³¹ With only one stop for water at Tenerife in the Canary Islands, on the 8 June the *Java* eventually sailed into the Derwent Estuary on 5 October, casting anchor in Hobart Town the following morning.³² One sergeant and six privates died on the drawn out voyage.³³



The *Java* as a coal hulk in Gibraltar harbour c.1939

Connecting with the convict ship, *John Calvin*, which had deposited its load of convicts on Norfolk Island, further members of the 65th joined the *Java* on its voyage to Sydney. There James and the now 625 rank and file, 8 women, four boys, three girls and 18 officers joined yet further members of the 65th from their respective convict ships which they had been guarding.³⁴

After taking on provisions the *Java* left Sydney for New Zealand on 6 November 1846 with 734 rank and file, 22 women, 24 children and 27 officers. The *Java* was towed by steam tug outside the heads to assist her passage and to avoid further embroilment in a legal case taken in the Vice Admiralty Court against the captain (Captain Parker R.N.) by a young Londoner, George Walker. Walker had been on the *Java* from London claiming he was engaged as a butcher but had been dis-rated by the captain and forced to do ordinary seaman's work. He deserted the ship, employed a Sydney lawyer to retrieve his wages of five pounds, resulting in the *Java* (under charter to the Lords of Admiralty and with 900 troops and crew on board) being put under arrest and her voyage delayed. The ships owners and the captain paid the young man and his lawyer the sixteen pounds wages and legal fees sought in order to allow the captain and ship to sail on Her Majesty's business.³⁵

New Zealand

The *Java* sailed first to the Bay of Islands where two companies of men were embarked to relieve the men of the 58th regiment at Te Wahapu, down the coast from Russell (Kororareka). James continued on with the main body to Auckland. There the bands of both the 58th and 65th alternately played to sound the exchange of regiments as the 65th took up their positions in the Auckland barracks and the 58th boarded the *Java* for return to New South Wales and England. A ball was arranged with the Governor and his wife at Wood's Royal Hotel, with dancing continuing until a short time before the *Java's* departure.³⁶

Within a short time, James had been declared a Justice of the Peace in the Government Gazette and rumours were already being reported that he was to be the new Resident Magistrate at Russell (or as it had been previously known, Kororareka, its Maori name).³⁷ Russell is at the heart of the Bay of Islands, sited on a peninsula jutting into the bay. It was the rest and recreation village for the whaling fleets with such a notorious reputation for grog and prostitution that in part led to the British Crown negotiating the Treaty of Waitangi in 1840 with the Maori iwi (tribes) of New Zealand in order to maintain law and order. The treaty had been signed at Waitangi, across the water from Russell in February 1840 and New Zealand came under the control of the British, ultimately as a separate crown colony.

James arrived in New Zealand in November 1846 following the first major uprising by Maori dissatisfied with the implementation of the treaty and its interpretation by the crown in the form of the governor and the settler government. The uprising in 1845 was led by Hone Heke and

Kawiti, two Northland chiefs. Known as the Northern War it led to the British army, despite its superior numbers and firepower, losing over forty dead and seventy wounded at Ohaeawai in a classic frontal attack on well defended positions. It was Tamiti Waka Nene and his kupapa (so called 'friendly natives') forces choosing to support the Crown for a variety of reasons who formed a superior force against Heke and Kawiti. After a further battle at Ruapekapeka and the withdrawal of Heke and Kawiti, peace was negotiated by Waka Nene and the Governor, George Grey.³⁸

Much of Russell had been burned to the ground at the outset of the Northern War and its trading function considerably harmed. Most Europeans had departed and trade with the whaling ships and surrounding community severely disrupted. On 9 January 1847 James, along with the Governor, Mrs Grey, Lieutenant-Colonel Gold and eighty rank and file of the 65th set sail on the *Driver* from Auckland for Russell.³⁹



Kororareka, Bay of Islands, John Kinder, 1858
Auckland Art Gallery

Resident Magistrate, Russell, Bay of Islands

James and his garrison from the 65th were based at Te Wahapu or “*the Wahapu*” as James referred to it in his correspondence, a headland a few miles to the south, rather than Russell. The reasons for this were revealed some years later when debate was still occurring on why the troops were not stationed at Russell. “*When Major Patience went hence to take command of the troops at the Bay, and also to become Resident Magistrate, he was asked his opinion as to the desirability of removing the troops to Kororareka. He gave it and it has been confirmed by every succeeding Commandant, viz.- That the detachment ought not to be quartered at Kororareka without regular barracks, as the men would be continually drunk and when in that state might be induced to desert in whaleships (of which ... there have been several instances of late, which induced the present [1856] Commandant to refuse passes to Kororareka and to prohibit whaleboats from landing at Wahapu) or probably take liberties with natives, causing a quarrel, bloodshed might follow and new rebellion ensue.*”⁴⁰

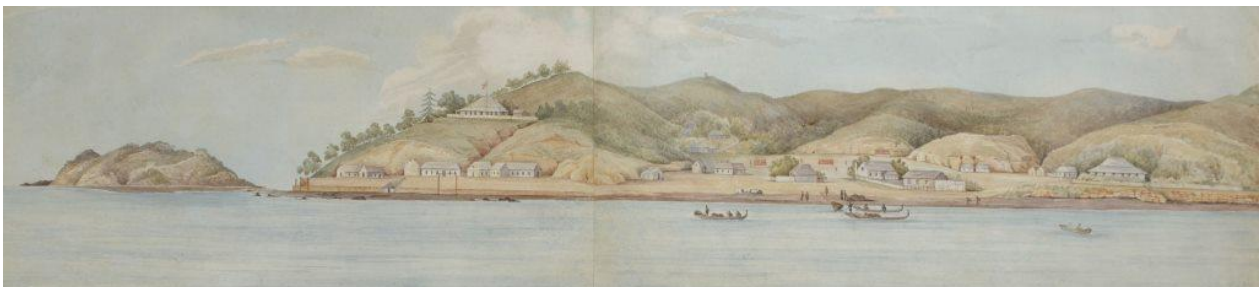
His Excellency, the Governor and Mrs. Grey along with the commander of the 65th Lieutenant Colonel Gold, left the Bay of Islands on 18 January 1847 on H.M. Steamer *Driver*.⁴¹ Perhaps while in the Bay of Islands and overseeing the placement of James Patience as Resident Magistrate, Lieutenant Governor George Grey recalled his instructions from Lord Stanley on his appointment in June 1845 and imparted their spirit to James. The instructions included that “*You*

will honourably and scrupulously fulfil the conditions of the Treaty of Waitangi” and *“Subject to these rules, you will of course require from these people an implicit subjection to the Law and you will of necessity enforce that submission by the use of all the powers, civil and Military, at your command ...”*⁴² As the appointee of the Governor, James was now to assist in implementing these instructions in the Bay of Islands in the aftermath of the Northern War.

James Patience replaced James Reddy Clendon who had been the Police Magistrate at Russell. James Clendon (1800-1872 born Kent, England, died Rawene, Hokianga, New Zealand) was an experienced settler and trader who had come to New Zealand in the 1830's as a ship's captain, trading spars and purchasing land from the Maori at Okiato Point and Manawaroa (in the Bay of Islands both some distance from Russell). As a te reo speaker he had been involved with the translation of drafts of the Treaty of Waitangi into Maori and acted as the United States Consul 1838-41. He was made a justice of the peace in 1840 and the Police Magistrate at Russell in 1845 but this ceased when James was appointed in December 1846.⁴³

Grey considered due to recent reports on the Bay of Islands, *“... no time should be lost in combining the Chief Military and civil authority in the same hands”* and *“...that it was proper that the Resident Magistrate should if possible be an officer not in any way directly or indirectly connected with the Bay of Islands District.”*⁴⁴ James Clendon was still well regarded by Grey with his salary continuing until 31 March 1847 and to be offered other positions in the Bay of Islands should they arise.⁴⁵

James quickly moved into his role of Resident Magistrate, being careful to play the bureaucratic game of watching his back by seeking directions from the Governor or from the Colonial Secretary in Auckland but equally showing no hesitation in making detailed recommendations on matters. He did appear to get off side with the Colonial Secretary or his staff in Auckland with his requisitions for forms, paper, the New Zealand Ordinances and the Almanack for the Year 1847. The cost of James' requisitions was estimated at over £25 whereas the cost of stationary for the Police Magistrate at Russell for 1846 had been £3 9s 6d. The books were struck off and the paper and forms considerably reduced.⁴⁶



Whahapu Bay, Bay of Islands, 1844 John Williams

Auckland Art Gallery

In March 1847 a complaint had been laid with the governor about the restriction of whalers mooring at *“the Wahapu.”* James provided the governor with what he described as a *“rough sketch”* of a few regulations for whalers and other ships visiting the Bay of Islands. James proposed that all ships entering the Bay be boarded by the harbour master at *“Tarpecca [Tapeka] Point”*, no ship to discharge cargo other than at Kororareka, any ship wishing to use the Wahapu had to inform the harbour master at Russell, no whale ships were to anchor further up the Bay than the Wahapu and the landing of spirits, tobacco, powder, shot or warlike stores was to be prohibited.⁴⁷

James also confronted the complaint by a Mr C.B. Waitford *“that the Natives were discontented at the Whaleships not being permitted to make use of the anchorage at the Wahapu, so as to facilitate the sale of their pigs and other produce, it is a perfect farce. I have been here but a short time, still, I have seen no fewer than four whale ships at a time at anchor at the Wahapu. –*

fear much that the produce which the Natives would get rid of, by a more general intercourse with the Whalers, would be of a very questionable description; and would not lead to the improvement of their moral character.”⁴⁸

In April 1847 he requested permission for a Hokianga resident to give Tamati Waka Nene a double barrelled shot gun and in July set out the tender for the hire and furnishing of Nene's house in Russell.⁴⁹ In relation to an application for a publican's license at Manganui James made the point that with twenty-two whaling ships anchoring last season this publican had realised more money than many and could well afford to pay the regulated fee. Each month he submitted a list of cases dealt with and their outcomes. James was not just dealing with settlers or visiting seamen but also the local Maori population who also brought proceedings to his court. In one such case he found a Charles Ruff guilty of assaulting a Maori woman, Rebecca Reppa and sought approval to award her half the fine of two pounds.⁵⁰

In August 1847 when H.M. Sloop *Racehorse*, commanded by Captain Sotheby R.N. called at Russell, James was able to report that matters were quiet in the north. Later Captain Sotheby was informed of rumours of Hone Heke intending to rise against Tamati Waka Nene but these were not substantiated. The sloop did apprehend the English whaling barque, *Macquarie* of Hobart Town, it having been detected as “...selling arms to the natives.” The *Macquarie* tried to slip out of the harbour but was chased, a shot fired across its bows and the ship boarded and returned to Russell.⁵¹

On 23 and 24 August the master of the *Macquarie*, William Campbell, was tried before the resident magistrate, James Patience and justice of the peace, James Clendon. Campbell was found guilty of disposing of a musket to a Maori in exchange for a pig. He was fined £100 or three months imprisonment and the vessel declared forfeited to the Crown, along with further one hundred pound fines for leaving the port without papers of clearance and for threatening the harbour master. William Campbell was then taken as a prisoner to Auckland along with his vessel, as the property of the Crown.⁵² It was a clear message that there was to be no arms trade with Maori.

Captain Sotheby also reported to Grey, “*I am sorry to relate, the natives are in most places in a very destitute state; owing to the failure of potatoes and the late war, they are reduced to fern root.*”⁵³

On 25 September 1847 James wrote about a matter which symbolised the heart of relationships between Maori and the British Crown in the Bay of Islands – the flagstaff at Russell. Kawiti, the Maori chief who had sided with Hone Heke in the Northern War, informed James that he had been told by the Governor (when he was last in the Bay of Islands) that he desired him to have the flagstaff put up again. It had been felled four times between July 1844 and March 1845 by Hone Heke prior to the commencement of the Northern War.

James informed the Governor, through the Colonial Secretary, that Kawiti had cut down three spars for the purpose and was seeking “*sixty fathoms of strong rope and two double blocks*” to drag the spars out of the “*woods*” and to the beach at Russell. As such articles were not available at Russell James said he would write to the Governor. Kawiti also intimated that he had discussed the proposal with Hone Heke whose response was that Kawiti could do so if he thought it proper. James's letter was quietly filed – “*The Governor having lately visited the Bay of Islands and taken certain steps on the spot he considered advisable this letter may be placed on the record.*”⁵⁴

*I have the honor to be,
 Sir,
 Your Obedient
 humble Servant,
 J. Patience,
 Resd. Magistrate.
 Russell.*

*Records. 1847/1848
 Aug 24/8*

“I have the honor to be, Sir, Your Obedient humble Servant, J. Patience, Resident Magistrate, Russell”

1847/1843: 1 October 1847, New Zealand Archives

It has been suggested that Grey did not insist on the reestablishment of the flagstaff so as not to inflame tensions in the north, particularly with Hone Heke however there was also the desire to avoid further Crown humiliation. Despite James and his troopers the Crown was not in a position to ensure that if the flagstaff were toppled again, action would be taken against the offenders. Therefore it was preferable for both reasons to leave the flagstaff off Maiki Hill at Russell until such time as a more certain and peaceful environment prevailed.

James then left Russell for Wellington with Major Cyprian Bridge of the 58th Regiment taking over from 2 October 1847 as Resident Magistrate.⁵⁵ Bridge had been actively involved in the fighting throughout 1845/46.

Wellington and Whanganui

By 29 October 1847, James along with over two hundred troops from the 65th and “19 women and 21 children,” had arrived in Wellington on the *Thomas Lowry*.⁵⁶ James then spent the next few years based with the 65th in Wellington before moving to Whanganui and commanding the detachment there. In Wellington he was involved with disturbances with Maori in the Hutt and at Horokiwi but generally life was peaceful and his days would have revolved around training his troops and carrying out his peacetime military duties. Examples of these included acting as the president of a courts martial, being involved in a large scale drill exercise on ground near Mount Victoria and advertising for his lost or stolen, red terrier dog.⁵⁷ His address in June 1848 was Te Aro Flat, Wellington.

By May 1855 or perhaps earlier, James was based to the north of Wellington along the west coast at Whanganui. Here he continued to maintain the confidence of his troops and his superior officers and to build up a good rapport with the Whanganui community.⁵⁸ Whanganui had its sad moments with the passing of a young fellow officer, Captain Bazalgette but also appears relatively idyllic with James having “...a nice home, with ngaio trees around the house and two beautiful karaka trees, nearly opposite his door.”⁵⁹ He was apparently a great man on poultry and kept a fine stock. There were church parades on Sunday and James encouraged the troops to build a theatre.⁶⁰

On 19 August 1858 Colonel Patience sailed on the *Westminster* back to Gravesend, England on two years leave of absence along with other invalided members of the 65th. His leaving was noted in *The Wellington Independent* and that he had been on detachment in Whanganui for the last few years “... where he has won the good opinion of the inhabitants generally, who will

sincerely regret his departure."⁶¹ The *Westminster* also contained a valuable cargo of wool, skins, tallow and gold dust.

Retirement in the Boarding Houses of England

On his return to England James lived in various lodgings, private hotels and boarding houses in London, Margate, Ramsgate, Folkestone, Hastings and Harrogate along with other locations in England.⁶² He had remained a bachelor all his life and now growing old and deaf and of a retiring disposition he lived out his life relatively alone in his lodgings. He maintained an account with a firm of army agents and lived in "...an economical fashion spending about two pounds a week on his living and maintenance."⁶³

By May 1860 he had sold his commission to a fellow officer in the 65th, William Pym Young and retired from the army.⁶⁴ James appears never to have purchased a commission and took longer than average to achieve field rank but after fifty years in the army he was able to sell his commission as a basis for his retirement. At the time of the 1871 England census James was living at Albion House, on the West Cliff, Folkestone along with nine other boarders. James's occupation is described as "*interest on money*" of which he had plenty.⁶⁵ Albion House was described as a well-known boarding establishment run by the Misses Sankey which one commentator described as "*very comfortable and the terms a modest rate...situated in the best part of Folkestone and very well and quietly managed.*"⁶⁶ So while James lived alone and moved around the south of England, life was not necessarily unpleasant for a person living in that era.

Death and the Division of His Estate

On 1 October 1882 in a private hotel at 90 Charlotte Street, Fitzroy Square, London, James died just short of his 92nd birthday. His death was noted in *The Times* and the *United Service Gazette*⁶⁷

James died without leaving a will and so it was said later, without making any contact with his relations in Scotland or returning to Scotland since joining the British Army in 1810. He did have some contact details of his relations both in Scotland and in Victoria, Australia as his agent sent letters informing them of James' death. One relative in Victoria, John Patience, wrote to the Colonial Secretary in New Zealand naively informing him that James had £4,000 in New Zealand Government debentures and could he be good enough to inform him on the arrangements for their transfer to him.⁶⁸ The reply from the New Zealand Treasury was "...that debentures are payable to the bearer and no transfer is necessary, except for the present holder, whoever he may be, to hand over to the 'heir.'⁶⁹

On 6 February 1884 the administration of his estate, valued at £7,552 8s 1d was granted at the Principal Registry of the Probate Division of the High Court of Justice to James Patience of Henrietta, Avoch and Donald Patience of Dock, near Avoch, in the County of Ross in North Britain, fishermen, the nephews and two of the next of kin.⁷⁰ Then followed a struggle between the relatives as to whether a smaller or larger group would access the estate.

Decisions of the High Court of Justice, Chancery Division

On the 19 and 24 March 1885 a case was heard before Mr Justice Chitty in the Chancery Division of the High Court of Justice on the question of whether Colonel James Patience was at the date of his death domiciled in England or Scotland. As explained in *The Times*, this determination affected who would benefit from the distribution of the estate of over seven and half thousand pounds. Under the laws of Scotland distribution to great nephews and nieces where their parents were deceased was permitted whereas in England, beyond brothers' and sisters' children with respect to the shares their parents would have been eligible, no further distribution was permitted.⁷¹

Mr Justice Chitty found that the burden of showing that the intestate, James Patience had an English domicile rested with those who made that assertion. The judge found that mere residence did not constitute domicile and mere residence by itself, however long, was immaterial unless coupled with an intention of permanent residence. James had moved from lodging to

lodging which tended to show that his mind was unsettled and fluctuating as to any intention of permanent residence. Justice Chitty concluded *“but as the facts stand, I cannot say that those who contended for an English domicile have established their case and that this retired old soldier did intend to finally throw off his Scotch domicil and to make himself, or rather his succession, for that is the only point of any materiality, subject to the law of England.”*⁷²

The decision was widely reported, even back to New Zealand. Sometimes there were headlines such as *“An Eccentric Scotch Colonel”* or *“A Lonely Old Officer”* while others were more soberly reported under the *“Scotch Domicile Case”* banner.⁷³

The law journals also reported the case in some detail and explored the implications of its finding. Would it mean that those living in boarding houses would be prevented from claiming domicile? What of people who moved frequently in other forms of housing?⁷⁴

The *Irish Law Times*, with fitting eloquence concluded, *“When Colonel Patience returned from ‘wandering on a foreign strand’, where did he go? Not Scotland but to England. Perhaps in his person he has answered the poet’s question where there lives*

*‘A man with soul so dead,
Who never to himself hath said,
This is my own, my native land?’*

*He was to all events, dead to the attractions of Scotland, a land which is very far from being generally supposed to repel her sons. ...Mr Justice Chitty appears to be right in laying down that residence alone, even for twenty two years will not destroy the domicile of origin; but we venture to doubt whether he is right in deciding that a man who for fifty years has wandered the world and returns not to his native land but to another country, where he remains until his death, does not show an intention of abandoning his domicile of birth and taking a domicile of adoption.”*⁷⁵

The Dispersal of His Estate back to Avoch

On 31 July 1886 Justice Chitty made his final determination. Deciding the case under *“Scotch law,”* the estate was distributed to some one hundred and one people in sums ranging from £200 to £5. *“An enormous pedigree was produced in court.”*⁷⁶ The estate of £7,552 8s 1d is estimated as being worth between £742,000 and £857,000 depending on the method used and its assumptions.⁷⁷

Folk Memory from Avoch

The memory of the estate of James Patience arriving back in Avoch still flickers. Some money is thought to have gone to the Poor Fund, allowing coal to be obtained by the needy. The construction of Anna Villa is probably the most substantive and enduring effect of James’ money in Avoch.



Anna Villa, Avoch
Photograph Jane Patience

Postscript

Between May 1976 and January 1980, the author was the Planning Officer for Bay of Islands County Council, based in Kawakawa. The township of Russell was covered by special design provisions arising from the Russell Planning Study carried out after Norman Kirk, Prime Minister of New Zealand had sat on the end of the Russell wharf looking across towards Waitangi and mused over its beauty and history.

James Clendon Tau Henare (Jim Henry or Henare) was the Chairman of the Planning Committee, who after his retirement from the council would come and talk with the author in his office. If only we had realised then that our ancestors, James Clendon and James Patience were talking with each other as they worked together in Russell back in 1847.

Endnotes and References

- 1 Donald Patience, born Avoch, Ross-shire, Scotland, 19 January 1902, died Hastings, New Zealand, 22 October 1993. His mother was Jessie Patience and his father Donald Patience who died of tuberculosis 17 January 1903. Jessie and Donald eventually emigrated to New Zealand in 1908 where Jessie married Lawrence Gray and had four more children, including the youngest, Bridella (Brightie).
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- 4 Sutherland D.K, "*Fisherlore of Avoch*" n.d.; Anson P.F., "*Fishing Boats and Fisher Folk on the East Coast of Scotland*," J.M. Dent and Sons Ltd, London, 1930
- 5 Researched by Jane Patience, Avoch and Sandra Norton, Peebles. The bye name 'Dutchman' ties with a descendent in Avoch of the same bye name.
- 6 Scott H, "*Fasti Ecclesiae Scoticae*," Vol. IV, Synods of Argyll, Perth and Stirling, Oliver and Boyd, Edinburgh, 1923
- 7 List of subscribers in both volumes
- 8 Inventory of Reverend John Patience, 11 March 1830 Tobermory and 23 March 1830, Inveraray, Dunoon Sheriff Court
- 9 Ibid; *In re Patience: Patience v. Main*, Chancery Division, 1885, page 977; Currie J, "*Mull Family Names*," 1992
- 10 *London Gazette*, 7 April 1810
- 11 Chartrand R, "*British Forces in the West Indies 1793-1815*," Osprey Publishing, London 1996
- 12 Buckley R.N., "*The British Army in the West Indies: Society and the Military in a Revolutionary Age*" University Press of Florida, 1998; *The Times*, 30 October 1817, news item where three privates of the Royal York Rangers were shot for desertion.
- 13 Buckley R.N., "*The British Army in the West Indies: Society and the Military in a Revolutionary Age*" University Press of Florida, 1998
- 14 *The Times*, June 1817
- 15 Buckley R.N., "*The British Army in the West Indies: Society and the Military in a Revolutionary Age*" University Press of Florida, 1998
- 16 *London Gazette*; Raikes G.A. "*Roll of the Officers of the York and Lancaster Regiment, Formerly the 65th (2nd Yorkshire, North Riding) Regiment*," Richard Bentley & Son, London, 1885; Cannon R., "*Historical Records of the British Army, 20th or East Devonshire Regiment of Foot*," Parker, Furnivall & Parker, London 1848
- 17 Harts Army List, 1844

- 18 Rainbow M.S., *"The Final Campaigns of the West Indies 1808-1810,"* M.A. thesis in Military Studies, University of Chester, 2014
- 19 Johnson D.F., *"The Royal West India Rangers,"* St John Branch, New Brunswick Genealogic Society (includes commentary on the Royal York Rangers)
- 20 *The Times*, 28 October 1818, records that the Royal York Rangers were to be reduced by 1,000 men with an overall reduction in the cavalry, foot, guards and infantry of over 30,000 men.
- 21 Cannon R., *"Historical Records of the British Army, 20th or East Devonshire Regiment of Foot,"* Parker, Furnivall & Parker, London 1848
- 22 *London Gazette*, 13 November 1827 The *Gazette* notes almost incredulously that *"the under-mentioned Lieutenant actually serving upon full-pay ... has accepted promotion on half-pay ... to be Captain of Infantry"* This was to last nearly five years.
- 23 *Edinburgh Gazette*, 28 September 1832
- 24 Raikes G.A. *"Roll of the Officers of the York and Lancaster Regiment, Formerly the 65th (2nd Yorkshire, North Riding) Regiment,"* Richard Bentley & Son, London, 1885
- 25 *Ibid;* *London Gazette*, 30 December 1845
- 26 Broughton E.C., editor, *"Memoirs of the 65th Regiment, 1st Battalion, The York and Lancaster Regiment 1756-1913,"* W. Clowes & Sons, London, 1914
- 27 *The Times*, 30 July 1845
- 28 Broughton E.C., editor, *"Memoirs of the 65th Regiment, 1st Battalion, The York and Lancaster Regiment 1756-1913,"* W. Clowes & Sons, London, 1914, pages 41-2
- 29 *The Times*, 17 March 1846
- 30 *Ibid*, 16 May 1846
- 31 Broughton E.C., editor, *"Memoirs of the 65th Regiment, 1st Battalion, The York and Lancaster Regiment 1756-1913,"* W. Clowes & Sons, London, 1914, page 43
- 32 *Cornwall Chronicle*, 7 October 1846, Launceston, Van Diemen's Land
- 33 Broughton E.C., editor, *"Memoirs of the 65th Regiment, 1st Battalion, The York and Lancaster Regiment 1756-1913,"* W. Clowes & Sons, London, 1914, page 43
- 34 *Sydney Morning Herald*, 15 October 1846
- 35 *Ibid*, 9 November 1846
- 36 *New Zealander*, Auckland, 5 December 1846
- 37 *New Zealand Government Gazette*, 16 December 1846; *New Zealander*, Auckland, 19 December 1846
- 38 The Northern War <http://www.nzhistory.net.nz/war/northern-war>; Crosby R, *"Kupapa: The Bitter Legacy of Maori Alliances with the Crown,"* Penguin NZ, 2015
- 39 *New Zealander*, Auckland, 16 January 1846
- 40 *Ibid*, 16 July 1856
- 41 *Ibid*, 23 January 1847
- 42 Captain George Grey's Instructions as Lieutenant-Governor, 1845. Dispatch from the Secretary of State, Lord Stanley, dated 13 June 1845, giving Grey general instructions as to his duties as Lieutenant-Governor. In view of Hone Heke's resistance he is instructed to enforce order and to uphold the promises of the Treaty of Waitangi insofar as this was consistent with the welfare of the settlers. McIntyre W.D. and Gardner W.J. *"Speeches and Documents on New Zealand History,"* Oxford University Press, London, 1971

- 43 Lee J, *“Dictionary of New Zealand,”* Vol 1, 1990
- 44 1847/735; 1846/115 Note by George Grey to Andrew Sinclair 15 December 1846 Archives NZ, Wellington
- 45 Ibid
- 46 1847/392 24 February 1847; 1847/734 15 April 1847 Archives NZ, Wellington. Both these requisitions provoked a scribble of complaint on James’ letter about the costs and expense and the need to justify them.
- 47 1847/462 8 March 1847 Archives NZ, Wellington
- 48 Ibid
- 49 1847/747 20 April 1847 and 1847/1313 19 July 1847, Archives N.Z, Wellington.
- 50 1847/731 13 April 1847; 1847/746 20 April 1847; March, April, June, July 1847 Archives NZ, Wellington. The number of cases varied between five and thirty per month.
- 51 *New Zealander*, 4 October 1848. Copy of Despatch from Governor Grey to Earl Grey. Government House, Auckland, September 3 1847. This included a report from Captain Sotheby of his visit to the north on the sloop, *Racehorse*.
- 52 Ibid
- 53 Ibid
- 54 1847/1843: 1 October 1847, Archives New Zealand, Wellington
- 55 *New Zealand Government Gazette* 2 October 1847, page 117, *“Patience was about to proceed to Wellington in the course of his military duty”*
- 56 *New Zealand Spectator and Cook’s Strait Guardian*, 30 October 1847
- 57 Ibid, 16 May 1849; *Wellington Independent*, 12 June 1850; *New Zealand Spectator and Cook’s Strait Guardian*, 12 January 1850
- 58 *Wanganui Herald*, 6 May 1902, *“An Old Wanganui Celebrity”*; *Accounts and Papers of the House of Commons, 1860, Further Papers relative to the Affairs of New Zealand*, Letter from Brigade Office, Auckland to Colonel McCleverty, Wellington, 11 May 1855 referring to a proposed military detail to occupy Taranaki, the need for the troops to be commanded by an officer of know ability and local experience and recommending if it is not to Colonel McCleverty (for reasons of ill health), that Major Patience be moved from Wanganui to Wellington to take on this important duty;
- 59 *Wanganui Herald*, 8 September 1857 and 6 May 1902.
- 60 *Taranaki Herald*, 11 July 1857 and *Wanganui Herald*, 6 May 1902.
- 61 *Wellington Independent*, 18 August 1858
- 62 *In re Patience: Patience v. Main*, Chancery Division, 1885, page 976
- 63 Ibid, pages 980-81
- 64 *London Gazette*, 11 May 1860
- 65 England Census, 2 April 1871
- 66 *The Bazaar, The Exchange and Mart*, 5 June 1878, page 355

- 67 *In re Patience: Patience v. Main*, Chancery Division, 1885, page 980; *The Times*, 4 October 1882; The Index Society, *Index of Obituary Notices 1880-1882*, London, 1884
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- 71 *The Times*, 25 March 1885
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- 73 *Aberdeen Weekly Journal*, 20 March 1885; *Glasgow Herald*, 25 March 1885; *Otago Daily News*, Dunedin, N.Z.; *Waikato Times*, Hamilton, NZ; *Journal du Droit International Privé et de la Jurisprudence Comparée*, Paris, 1886
- 74 *The Solicitors' Journal*, 24 October 1885
- 75 *The Irish Law Times*, 5 December 1885
- 76 *Reynold's Newspaper*, London, 1 August 1886
- 77 Measuring Worth <https://measuringworth.com>

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