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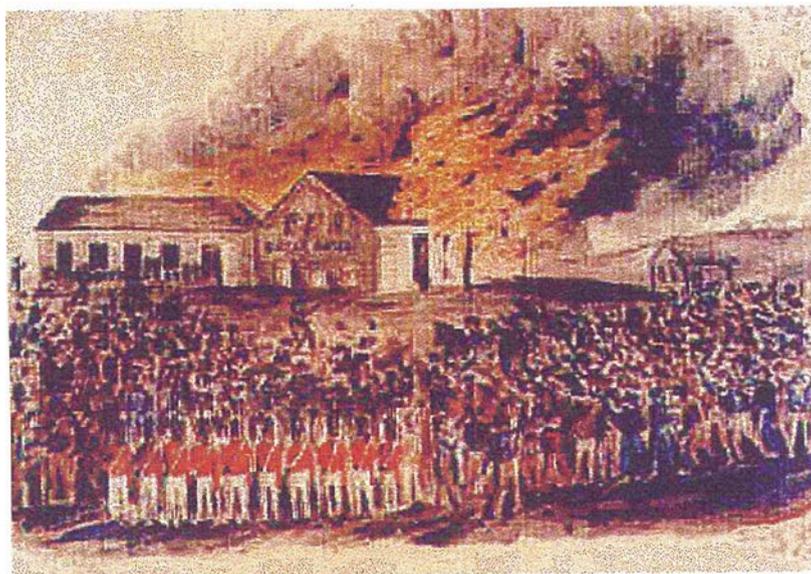
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THE EUREKA TRIALS

THE QUEEN v TIMOTHY HAYES,
JOHN JOSEPH AND ORS



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THURSDAY 22 FEBRUARY 1855

(The Supreme Court at Melbourne. Present counsel,
assorted prisoners and the public.

Enter the Chief Justice, Sir William a'Beckett.]

The Chief Justice: *Are the counsel for the prisoners here?*

Mr Ireland *Yes, Your Honour.*

The Chief Justice: *Do you desire the information to be read at full length,
as you have had a copy of it?*

Mr Ireland: *No, Your Honour.*

Associate: *Prisoners at the bar, the charge against you in the four
counts of the information to which you are now called to
plead is stated in the following terms:*

*That you did on the 3rd day of December 1854
(being at the time armed in a warlike manner
traitorously assemble together against our Lady
the Queen and that you did whilst so armed and
assembled together levy and make war against
our said Lady the Queen within Victoria and
attempted by force of arms to destroy the
Government constituted there and by law
established, and to dispose our Lady the Queen
from the kingly name and her Imperial Crown,
attempting at the same time to compel by force
the Queen to change her measures and counsel
and that you did express and evince such
treasonable intention by the four following overt
acts:*

- (i) that you erected a flag and solemnly swore
to defend each other;*

(ii) that being armed with weapons you carried out military drill and training;

(iii) that you collected arms and ammunition and erected fences and stockades;

(iv) that while armed and arrayed in a warlike manner, you fired upon and fought with, wounded and killed soldiers and other loyal subjects fighting on behalf of the Queen.

How say you, Timothy Hayes, are you guilty or not guilty?

Hayes: *Not guilty, Your Honour and ladies and gentlemen of Victoria, here present.*

Mr Ireland: *If Your Honour pleases, I apply for an adjournment on behalf of Mr Hayes as his witnesses are not yet available and brought to court.*

The Chief Justice: *Well that's not very convenient. Why haven't subpoenas been issued?*

Mr Attorney-General: *I am ready to proceed Your Honour but I need to know whether the defendants are going to ask to sever the indictment, in which case each case will have to be dealt with separately in any event.*

Mr Ireland: *I can't deal with that until the application for adjournment is heard.*

Mr Attorney-General: *That's most inconvenient Your Honour and I ask for my learned friend to respond to my request.*

Mr Ireland: *In that case, Your Honour, I understand that each of the accused will seek to sever.*

Mr Attorney-General: *Well in that case, Your Honour, given the application for adjournment by the prisoner Hayes, we will proceed with the second-named prisoner on the indictment, Charles Raphelo.*

Mr Ireland: *I have a similar application to make in respect of his case **if** Your Honour pleases.*

The Chief Justice: *Well this is really too bad. Can't we get on with it?*

- Mr Attorney-General: *In that case, Your Honour, assuming there are proper grounds made for the adjournment, we will proceed with the case of Manning.*
- Mr Chapman: *With regard to Manning, Your Honour, Mr Michie, who is to be his counsel, is unwell at home. He sent down his briefs to me merely to watch the cases of Manning without any expectation that it would be called on today. I must ask Your Honour to let it stand over till tomorrow.*
- The Chief Justice: *You must ask the Attorney-General.*
- Mr Chapman: *There are, I believe, two or three cases in which the witnesses are all present and waiting, **if** the learned Attorney-General will only be courteous to us.*
- Mr Attorney-General: *I have no objection, **if** Mr Michie is unwell, to the trial of Manning being postponed until after John Joseph is tried. He is the next in order and Mr Chapman appears for him. There can be no objection.*
- Mr Chapman: *I have no objection to that Your Honour.*
- The Chief Justice: *Very well, then we will proceed with the trial of Joseph.*
- [The prisoner Joseph was then placed in the dock and the jury were sworn. James Westwood was appointed Foreman. The information was read again and Joseph pleaded]**
- Joseph: *Not guilty!*
- Associate: *Gentlemen of the jury (here set out the normal charge to the jury).*
- The Chief Justice: *Mr Chapman: **if** you wish to make any application about the witnesses, you had better do so now.*
- Mr Chapman: *I should wish them to be out of court Your Honour.*
- Associate: *All witnesses to be called in this case or who expect to give evidence shall leave the court and remain out of hearing of the court until they are required to give their evidence.*
- Mr Attorney-General: *May it please Your Honour – Gentlemen of the jury, although you have heard the substance of this information*

read to you, I must take the liberty of stating to you briefly what the nature of it is, and very briefly, because I do not think it necessary to embarrass my statement to you with a single word of unnecessary verbiage.

The first count charges the prisoner, together with other persons, with having made war against the Queen, with the intent to subvert the authorities and the constitution. The second count charges him with having done the same with the intention of inducing the Queen to change her measures and counsels. The third count charges him, together with certain other persons, with compassing the same objects; and the fourth count is the same with a variation in the alleged intent. Both the third and the fourth count set out various overt acts, from which you are to deduce that this conspiracy really did exist.

Gentlemen, I need not tell you that this is a most important trial upon which you and I and every one in this court are now engaged; that the offence with which the prisoner is charged is a most heinous one, not only most heinous in point of degree, but an offence which affects every one of us; for although the words "Queen" and "Her Majesty" are used in this information, yet substantially, and so far as we, as a portion of the Queen's dominions, are to consider this case, I look upon it that the Queen represents the supreme authority in this country; and that when we speak of making war on the Queen, we are substantially to understand that the prisoner, with the other persons charged, attempted to make war, and did levy war upon the supreme authority in this country, with the intention to subvert all authority whatever; and so long as we are interested in the maintenance of law and order, so long must we feel the greatest and deepest importance in the result of a trial of this kind.

I may tell you briefly that to convict the prisoner under this information you must be satisfied that there was an insurrection, that that insurrection was accompanied with force, and that that insurrection was with a general and public object.

Adopting that which I have stated as the correct view of treason, let me now call your attention to the facts which I consider will be proved to your satisfaction by the evidence today. It appears that on the 20th of November last a

*meeting was held on the gold fields at Ballarat; that that meeting was summoned by placards fasted about desiring the miners to bring their licenses, as they might be required; that meeting was held, a chairman was elected, and a number of persons attended, some bringing licenses, or documents which appeared to be licenses. The most excited and inflammatory language was used by several at this meeting on the Wednesday, and some persons urged that it was no use attempting to get any redress for their grievances, that they must take up arms for themselves, **and** must drop all nationalities, for persons from all quarters of the earth were apparently collected together there, and after that those papers which we believe to be licenses were produced, and some were burnt and some torn.*

On the Sunday morning then, just at daybreak, a party of soldiers and of mounted and foot police, under the direction of Captain Thomas, of the 1sth Regiment, marched to this stockade just previous to the day breaking. They were accompanied by a magistrate, who intended to call upon the men assembled there to surrender. Gentlemen, before they got to the stockade, before they reached it, when they were within distance of the discharge of a weapon, there was one gun fired, apparently a signal to go, and within a very few moments after, and before any attack whatsoever was made or a single gun was discharged by the troops, either military or police, there was a very sharp well-directed volley fired from this stockade, and actually from the result of that volley one of the soldiers of the 12thh Regiment was killed before a single weapon had been discharged by any one of the military or police or those with them. After that the bugle was sounded to commence firing, and there was an attack made; shots were exchanged, numbers fell on both sides, and among those in the stockade the prisoner at the bar was seen distinctly. He was seen on the Thursday and Friday also being drilled, and in that stockade he was seen armed with a double-barrelled gun; he was seen by one man particularly firing that gun, and in the direction in which he fired a gallant officer, I regret to say, was wounded, from which wound he ultimately died.

The earnest student of English will note the peculiar spelling of *licence* which appears in this document, namely *license*. We have followed the original transcript

The soldiers were so impressed with the conviction that this man shot their officer, that a desperate rush was made at the stockade, and he was afterwards seen to go into a large tent in the stockade known as the guard tent; from that a number of shots were discharged, and at it a number of shots were fired. When the stockade was completely taken, and the soldiers had got possession of it, this man [indicates prisoner] was seen in the stockade by three or four men. I do not think it necessary to trouble you with the evidence of more than four; there are four who recognise him distinctly within this guard tent. Gentlemen, the Inspector of Police went up to this guard tent when the firing had ceased, and he called upon those inside to surrender or take the consequences; two voices called out, "We give ourselves up"; then the military or police went in and brought them out. Numbers were found dead, some wounded, and some alive, and among those alive and unwounded was the prisoner at the bar. When he was brought out he resisted violently; he was, however, secured and he is now before you. I am not to apprehend your verdict in any way. I know not whether I shall have an opportunity of addressing you again – that will depend on circumstances – but I leave this case in your hands, having the most perfect confidence that you will give it a patient hearing on both sides, and that you will hold the scales evenly between the public on the one hand and the prisoner on the other, and give a true verdict according to the evidence.

If Your Honour pleases, we propose to call our witnesses.

The Chief Justice: *Yes, you may proceed.*

**[Witness: Henry Goodenough. Examined by
Mr Attorney-General]**

Mr Attorney-General: *Call Goodenough*

[Henry Goodenough sworn]

Associate > *Mr Henry Goodenough you are now sworn.*

Mr Attorney-General: *Your name is Henry Goodenough?*

Goodenough: *Yes.*

J\,lr Attorney-General: *You are a trooper stationed at Ballarat?*

Goodenough: *Yes, I was stationed there.*

J\,lr Attorney-General: *In November last?*

Goodenough: *Yes.*

J\,lr Attorney-General: *Do you remember being present at a meeting held on Wednesday the 29th of November?*

Goodenough: *Yes.*

J\,lr Attorney-General: *That was at Bakery Hill, I believe?*

Goodenough: *Yes.*

J\,lr Attorney-General: *Were there placards calling that meeting?*

Goodenough: *There were.*

J\,lr Chapman: *Do you produce the placards?*

J\,lr Attorney-General: *No, not at present.
How many persons do you suppose were present at that meeting?*

Goodenough: *I should think about 1500 as near as I could guess.*

J\,lr Attorney-General: *Was there a chairman?*

Goodenough: *There was a platform erected*

J\,lr Attorney-General: *Did you hear any persons address the meeting?*

Goodenough: *I heard Mr Holyoake, Mr Kennedy, and Mr Hayes, and two or three others, address the meeting.*

J\,lr Attorney-General: *Can you tell the substance of what any of them said?*

Goodenough: *I can tell the substance of what Hayes said.*

J\,lr Attorney-General: *What was said?*

- Goodenough *He stated the interview which took place between the Lieutenant Governor and him concerning a petition they sent about Bentley's affair; he made a very short speech after he stated the interview which took place between the Governor and himself; he said it was no use to petition the Governor any longer, either the Governor or the Government it was no use to petition any longer, it was time to take the law in their own hands, and he for one would stand up for his rights and liberties. The meeting broke up then and volunteers were called for.*
- Mr Attorney-General: *What was said about volunteers?*
- Goodenough: *The volunteers were called for to take up arms in their defence.*
- Mr Chapman: *I object to all of this evidence so far because it does not connect the prisoner at the bar at all.*
- The Chief Justice: *I think the principle in **Frost's** case is quite clear and is sufficient to justify me in not stopping the evidence.*
- Mr Attorney-General: *Then volunteers were called for?*
- Goodenough: *Yes, to come forward and offer themselves to volunteer to stand up and fight for their rights and liberties. 200 came forward.*
- The Chief Justice: *Who said that?*
- Goodenough: *Another man, called Lawler.*
- Mr Attorney-General: *I will ask Your Honour to take that down, for I will afterwards shew that he was present when the prisoner was present. [To the witness] Had the meeting then dispersed?*
- Goodenough: *There were about 200 then left.*
- Mr Attorney-General: *How long did this meeting last?*
- Goodenough: *It commenced at two o'clock in the afternoon, and it was about five when it ended.*
- Mr Attorney-General: *Did you see a flag on that occasion?*
- Goodenough: *I did, on a long pole.*

- Mr Attorney-General: *Was that it? [A flag being exhibited to witness]*
- Goodenough: *It was a blue flag with a white cross. I could not say that was it.*
- Mr Attorney-General: *Did you see any other meeting at the Bakery Hill?*
- Goodenough: *This was the next day, the Thursday.*
- Mr Attorney-General: *How were they armed?*
- Goodenough: *Some had swords, and some had guns; they were all dressed the same. I saw Beattie there; and Vannick, and Raphelo, and Hayes were there at that time.*
- Mr Chapman: *I would merely mention to Your Honour that the same objections as I have already stated would apply to the whole of this evidence; it will apply up to the time of connecting the evidence with the prisoner.*
- The Chief Justice: *Yes.*
- Goodenough: *That meeting broke up and there was to be a meeting the next morning at four o'clock at the same place; that was publicly announced from the stump.*
- The Chief Justice: *Did you see anything done on the Thursday?*
- Goodenough: *Yes, drilling. I saw nothing more than drilling, offering themselves as volunteers, and they all knelt down in a ring and pledged themselves to stand up for their rights.*
- The Chief Justice: *When was this?*
- Goodenough: *On Thursday.*
- The Chief Justice: *Do you mean that all who were at the meeting knelt down?*
- Goodenough: *Those that did not kneel down had to withdraw.*
- Mr Attorney-General: *Were they directed to withdraw; what was said to them?*
- Goodenough: *Those that would not offer themselves as volunteers were to leave the meeting entirely.*
- The Chief Justice: *Who told them so?*

- Goodenough: *Lawler.*
- The Chief Justice: *Just tell us what Lawler said?*
- Goodenough: *Lawler said that those who did not join and offer themselves were to leave the meeting; he called them cowards. He said if they would not stand up and fight for their liberties they were cowards.*
- The Chief Justice: *How many went away then?*
- Goodenough: *200 or 300.*
- The Chief Justice: *How many remained.*
- Goodenough: *About 500.*
- The Chief Justice: *What did they do?*
- Goodenough: *They knelt down all in a ring all round*
- Mr Attorney-General: *Was anything saict?*
- Goodenough: *He knelt down too on the stump of the tree.*
- Mr Attorney-General: *Was this near the flag?*
- Goodenough: *This was near where the flag was flying, and he said they pledged themselves and swore to defend each other and fight for their rights and liberties.*
- Mr Aspinall: *This witness has said that he was sent away.*
- Mr Attorney-General: *No such thing.*
- Goodenough: *Lawler knelt down on the stump, and said, "We all swear to stand up and defend and fight for each other".*
- Mr Attorney-General: *Did you remain?*
- Goodenough: *I remained*
- Mr Attorney-General: *Was there a meeting on the Friday?*
- Goodenough: *Yes, the men were drilled*

- Mr Attorney-General: *Did you hear the man Lawler say anything during that drilling?*
- Goodenough: *All I heard him say was that for the future the drilling would be at the Eureka.*
- Mr Attorney-General: *Did he give any directions as to what they were to do **if** the soldiers attacked them?*
- Mr Chapman: *That is rather a leading question for my learned friend to put.*
- Mr Attorney-General: *What did he say then?*
- Goodenough: *He said **if** the soldiers attacked them they were to fight like men but first of all to mark the officers.*
- Mr Attorney-General: *What became of the flag after it was taken to the Eureka?*
- Goodenough: *After it was taken to the Eureka it was planted on a pole.*
- Mr Attorney-General: *Did you attend any meeting on the Saturday?*
- Goodenough: *I did not attend any meeting. I went up to the Eureka.*
- Mr Attorney-General: *What did you see there?*
- Goodenough: *I saw the stockade formed*
- Mr Attorney-General: *Was that the same place?*
- Goodenough: *Yes.*
- The Chief Justice: *What time on Saturday?*
- Goodenough: *Between eleven and twelve o'clock on Saturday night.*
- Mr Attorney-General: *What did you see then?*
- Goodenough: *I saw like a fence composed of slabs all round*
- The Chief Justice: *Is that what you call a stockade?*
- Goodenough: *That was what was called the stockade. I returned back again, and on Sunday morning I went up again.*

Mr Attorney-General: *Why did you not go into the stockade?*

Goodenough: *I did not like to.*

The Chief Justice: *Were there many people in the stockade?*

Goodenough: *A great many people. I could see people's heads and hear talking.*

Mr Attorney-General: *Were they armed?*

Goodenough: *I did not go near enough to see.*

Mr Attorney-General: *Did you see any that were posted outside the stockade?*

Goodenough: *There appeared to be men around; whether they were sentries or not I could not tell. I was not saluted by any one from the stockade.*

Mr Attorney-General: *Did you see the stockade the next morning until after the troops had been there?*

Goodenough: *No; it was afterwards.*

Mr Attorney-General: *I need not go into that.*

[Cross-examined by Mr Chapman]

MrChapman: *When was the first meeting?*

Goodenough: *On Wednesday.*

MrChapman: *That was on the 29th November?*

Goodenough: *Yes.*

Mr Chapman: *Was anything said about licenses?*

Goodenough: *There was something, but I could not recollect the words that were spoken.*

Mr Chapman: *What number of persons do you say were present there?*

Goodenough: *I should say about 1500.*

Mr Chapman: *Could you hear what was said?*

- Goodenough: *I could hear it, but I did not attend to all of it.*
- MrChapman: *How were you dressed at the time?*
- Goodenough: *I was dressed as a digger.*
- MrChapman: *By whose orders did you go there?*
- Goodenough: *By the orders of the sub-inspector.*
- MrChapman: *Who was he?*
- Goodenough: *Mr McCulloch*
- MrChapman: *Did he order you to strip off your uniform?*
- Goodenough: *He did*
- MrChapman: *And you went as a digger?*
- Goodenough: *I went as a digger.*
- MrChapman: *Do you swear you heard nothing about licenses then?*
- Goodenough: *I could not repeat the words; there was something spoken about licenses.*
- MrChapman: *What was it?* Goodenough:
I could not say.
- MrChapman: *What was its nature?*
- Goodenough: *I could not say what it was.*
- MrChapman: *The flag that was hoisted on this occasion was the flag produced in court?*
- Goodenough: *I could not say that; it was something like it; it was a blue flag with a white cross.*
- Mr Chapman: *Is it a common thing to hoist flags at the diggings?*
- Goodenough: *There is a flag flying at every store.*
- Mr Chapman: *Are there other flags besides those flying at the stores?*

- Goodenough: *I do not know that there are others except stores or shops.*
- MrChapman: *Are there none flying at diggers' tents?*
- Goodenough: *None that ever I saw.*
- MrChapman: *Before these disturbances broke out was it usual for flags to fly at stores?*
- Goodenough: *Always.*
- MrChapman: *The auctioneers have flags, have they not?*
- Goodenough: *They have.*
- MrChapman: *It is not a very wonderful thing to see a flag flying at the diggings?*
- Goodenough: *No.*
- MrChapman: *How many have you seen there occasionally?*
- Goodenough: *200.*
- MrChapman: *Then the only flag with mischief in it is a flag with a star in the middle?*
- Goodenough: *There was no store where that flag was flying.*
- Mr Chapman: *When those volunteers came forward to stand up for their rights and liberties, what did you understand by rights and liberties?*
- Goodenough: *I understand to do away with the license fee; I took it as that.*
- Mr Chapman: *Is it a very common thing for a man to possess firearms at the diggings?*
- Goodenough: *It is not very uncommon, most people have firearms of some sort.*
- MrChapman: *What has become of Lawler, do you know?*
- Goodenough: *I do not know what has become of him.*

- Mr Chapman: *You did nor catch him?*
- Goodenough: *No; I should like to do so.*
- MrChapman: *Was Lawler himself armed?*
- Goodenough: *He was, with three firearms.*
- Mr Chapman: *Did Lawler speak for 10 minutes more than once?*
- Goodenough: *Yes, two or three times.*
- MrChapman: *On the whole, was he speaking for half an hour?*
- Goodenough: *I should think he was.*
- Mr Chapman: *Cannot you tell us something else that he said?*
- Goodenough: *No; that is alii can recollect.*
- Mr Chapman: *When these men knelt down, and professed to stand up for their rights and liberties, how far were you from them?*
- Goodenough: *I was with them.*
- MrChapman: *Mixing with them?*
- Goodenough: *Mixing with them.*
- MrChapman: *How is it you heard nothing else; the sentences you have told us would not take two minutes to utter?*
- Goodenough: *The greatest part of this time he was calling for volunteers.*
- Mr Chapman: *You have already told us that at different times he was speaking for half an hour; I ask you how you can recollect those things which would not occupy two minutes, and can tell us nothing else?*
- Goodenough: *He was on one subject from the first time he commenced.*
- Mr Chapman: *Do you mean to say that he kept repeating over and over and over again for half and hour those expressions?*
- Goodenough: *He did several times.*

- Mr Chapman: *Are you prepared to swear that he did not say anything else/*
- Goodenough: *I cannot swear that.*
- Mr Chapman: *You did not hear anything else?*
- Goodenough: *I did not hear every word that was spoken.*
- MrChapman: *You say Lawler announced another meeting at four o'clock on Friday morning; you were present at that meeting?*
- Goodenough: *Yes, I was.*
- Mr Chapman: *You say only 100 persons were assembled there?*
- Goodenough: *About 100 persons.*
- MrChapman: *What dress were you in then?*
- Goodenough: *In the same dress.*
- Mr Chapman: *As a digger?*
- Goodenough: *As a digger.*
- MrChapman: *What was the occasion of their dispersing on that morning?*
- Goodenough: *The soldiers and the police came up, and they all ran away.*
- Mr Chapman: *That was before daybreak?*
- Goodenough: *Yes, just a peep of day.*
- MrChapman: *Did you run with them*
- Goodenough: *I did run among them.*
- Mr Chapman: *As **if** you were one of them?*
- Goodenough: *Yes.*
- Mr Chapman: *And in fact all along you pretended to be a digger?*
- Goodenough: *I did.*
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MrChapman: *Had you any arms in your hand?*

Goodenough: *No.*

MrChapman: *Did you talk with some of the persons present?*

Goodenough: *With some of them.* MrChapman:

What did you say to them? Goodenough: *We were talking
of the political affairs.*

MrChapman: *Tell us what you said; give us your notion of political
affairs?*

Goodenough: *Concerning the meeting and the diggers.*

MrChapman: *What did you say?*

Goodenough: *There were several of us together, and one asked one's
opinion, and another another's; one was for petitioning the
Governor, and another was for taking up arms.*

MrChapman: *What were you for on that occasion?*

Goodenough: *I was for petitioning.*

MrChapman: *Did you say you would stick up for the rights and liberties
of the subject?*

Goodenough: *I did*

MrChapman: *In fact, by your whole demeanour, you intended to make
them believe that you were one of them?*

Goodenough: *They might have believed that I was a digger; I do not
know whether they did or not.*

Mr Chapman: *In fact you went there to these meetings as a spy?*

Goodenough: *If you care to call it so.*

[Andrew Peters. Examined by Mr Solicitor-General]

Mr Solicitor-General: *Call Andrew Peters.*

[Andrew Peters sworn]

- Associate: *Mr Andrew Peters you are now sworn.*
- Mr Solicitor-General: *You are a trooper stationed at Ballarat?*
- Peters: *I was.*
- Mr Solicitor-General: *In December last?*
- Peters: *Yes.*
- Mr Solicitor-General: *Do you recollect on the 29th November last being at Bakery Hill?*
- Peters: *I was.*
- Mr Solicitor-General: *What did you see there?*
- Peters: *I did not see this man there; there was a meeting held there then.*
- Mr Solicitor-General: *Did you see any flag flying?*
- Peters: *Yes, a blue flag with a white cross.*
- Mr Solicitor-General: *Did you hear any speeches made?*
- Peters: *I heard a man of the name of Hayes speak.*
- Mr Solicitor-General: *Did you hear any other speeches?*
- Peters: *No; I came when the meeting was very nearly over. I heard Hayes say it was no use sending any more deputations to the Governor, and the only thing was to organize themselves, and protect themselves against the common enemy.*
- Mr Solicitor-General: *That was what Hayes said?*
- Peters: *That was what Hayes said.*
- Mr Solicitor-General: *Who was the last speaker at the meeting?*
- Peters: *I believe Hayes was the last.*
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- Mr Solicitor-General: *What was the last thing said at that meeting?*
- Peters: *That I cannot recollect.*
- Mr Solicitor-General: *Were you at any meeting on the 3dh?*
- Peters: *I was there when they were drilling.*
- Mr Solicitor-General: *Do you see the prisoner?*
- Peters: *Yes.*
- Mr Solicitor-General: *Do you recollect seeing him on any occasion?*
- Peters: *Yes, I saw him among the men drilling on Bakery Hill.*
- Mr Solicitor-General: *Was it near Bakery Hill or on Bakery Hill?*
- Peters: *On Bakery Hill.*
- Mr Solicitor-General: *About how many were in the party of which he was one?*
- Peters: *I cannot say exactly; about forty or fifty.*
- Mr Solicitor-General: *Had they any arms?*
- Peters: *They were drilled with arms.*
- Mr Solicitor-General: *What kind of arms?*
- Peters: *That I cannot say; to my belief it was a gun he had in his hand; I could not swear.*
- Mr Solicitor-General: *Did you observe the person who was drilling him?*
- Peters: *No, but he was in the same company where Raphelo was, but he was not drilling him at the time I saw him.*
- Mr Solicitor-General: *Did you see the prisoner drilled.*
- Peters: *Yes.*
- Mr Solicitor-General: *That was on Friday?*
- Peters: *That was on Friday I think.*

Mr Solicitor-General: *How long were you looking at him?*

Peters: *I did not look at him but I know him again; his features are rather remarkable, you can easily know him.*

[Cross-examined by Mr Chapman]

Mr Chapman: *Had you ever known this man before?*

Peters: *No.*

Mr Chapman: *Are there many black men on the diggings?*

Peters: *There are some.*

MrChapman: *Are you quite positive this was the man you saw?*

Peters: *I am.*

Mr Chapman: *How far were you from him at the time?*

Peters: *About ten or fifteen yards.*

MrChapman: *How were you dressed at the time*

Peters: *In private clothes.*

MrChapman: *Like a digger?*

Peters: *No, not exactly like a digger, like a storekeeper.*

Mr Chapman: *Who directed you to strip off your uniform?*

Peters: *My superi_or officer.*

Mr Chapman: *Who was the officer?*

Peters: *The officer was Captain Evans.*

Mr Chapman: *Did he direct you what sort of clothes to put on?*

Peters: *No, he told me to put on private clothes. He did not order me himself, but a non-commissioned officer by his orderlies.*

- Mr Chapman: *Did you see Goodenough there?*
- Peters: *No.*
- Mr Chapman: *How many black men were present there; did you see any other besides the prisoner?*
- Peters: *No, that was the only one I saw; there was only one in the same company where this man was, and that was him.*
- Mr Chapman: *Will you describe in what position he was?*
- Peters: *He was in a line between a lot of other men.*
- Mr Chapman: *And you had never known him before?*
- Peters: *No.*
- Mr Chapman: *Are you quite certain that this was the man?*
- Peters: *I am quite certain; I identified him directly, when I saw him in the camp I knew him directly.*
- Mr Chapman: *Did you ever see this man in any other position there?*
- Peters: *No.*
- Mr Chapman: *Never but on that occasion?*
- Peters: *No.*
- Mr Chapman: *Did you report what you have now stated to your officers at the time?*
- Peters: *Yes, I did*
- Mr Chapman: *To whom did you report it, to the sergeant on duty, or what is the name of the person you reported it to?*
- Peters: *I do not recollect whom I reported it to, because he was down several times, half a dozen times we went backwards and forwards.*
- Mr Chapman: *By whose direction did you go backwards and forwards?*
- Peters: *By our officers.*

MrChapman: *Had you any direction as to the time you remained there?*

Peters: *No.*

MrChapman: *How many remained there in plain clothes?*

Peters: *I believe there were several told off to go down in plain clothes.*

MrChapman: *Do you know how any others of them were dressed?*

Peters: *No.*

MrChapman: *Did you see them in plain clothes in the camp?*

Peters: *Yes, I did.*

MrChapman: *How were the others dressed?*

Peters: *In private clothes.*

MrChapman: *What do you call private clothes?*

Peters: *Coat and trousers On.*

MrChapman: *The last witness told us that he went to imitate a digger, and you say you were dressed like a storekeeper; how were the others dressed?*

Peters: *In private clothes.*

MrChapman: *What sort of clothes?*

Peters: *That I can't say.*

MrChapman: *Were there any others dressed like diggers?*

Peters: *I do not know.*

[Re-examined by Mr Solicitor-General]

Mr Solicitor-General: *Did you get any particular directions as to what dress you should wear?*

Peters: *No; private clothes, and not to go too respectable.*

Mr Solicitor-General: *Did you know that Goodenough was there as well as yourself?*

Peters: *I heard he was ordered out; I did not see him.*

Mr Solicitor-General: *How many did you know to be sent in this way?*

Peters: *Three or four.*

[The witness withdrew.

Witness Patrick Lynott. Examined by Attorney-General]

Mr Attorney-General: *Call Patrick Lynott.*

[Patrick Lynott sworn]

Associate: *Mr Patrick Lynott you are now sworn.*

Mr Attorney-General: *You are, I believe, in the 4th Regiment?*

Lynott: *Yes.*

Mr Attorney-General: *At the end of November last where were you stationed?*

Lynott: *At Ballarat.*

Mr Attorney-General: *Did you go out on the morning of Sunday, the 3rd December?*

Lynott: *I did.*

Mr Attorney-General: *About what hour?*

Lynott: *Between three and four o'clock.*

Mr Attorney-General: *How many went out?*

Lynott: *I think between the 12^h and the 40^h we amounted to 164.*

Mr Attorney-General: *When you got to the Eureka what did you see or hear?*

Lynott: *First we heard a gun discharged from the Black Hill, in the rear of the Eureka stockade.*

Mr Attorney-General: *One single gun?*

- Lynott: *Yes, a rifle; about two minutes afterwards there was another gun discharged; after the second gun had been discharged there was a horn or bugle sounded in the stockade; we then looked towards the stockade and we saw a great number of men inside run to arms and place themselves in the rear of the fence.*
- Mr Attorney-General: *Can you say whether they had arms or not?*
- Lynott: *Yes, we could see the arms distinctly in their hands. The troops then advanced to the Eureka stockade, and there was a volley fired on the troops.*
- Mr Attorney-General: *Immediately after the volley was fired what did you do?*
- Lynott: *The troops advanced and fired We were ordered to fix bayonets and double up to the stockade and take possession of it, which we did*
- The Chief Justice: *Then you fixed bayonets and took the stockade?*
- Lynott: *Yes.*
- The Chief Justice: *How long did this occupy?*
- Lynott: *It might be about fifteen minutes from the first shots that were fired till we took possessions of the stockade.*
- The Chief Justice: *Did they go out of the stockade?*
- Lynott: *Some were taken prisoners, and some made their escape.*
- Mr Attorney-General: *When you got to the stockade did you go inside?*
- Lynott: *Yes.*
- Mr Attorney-General: *Did you see anybody inside that you can recognise?*
- Lynott: *Yes; I saw the prisoner.*
- The Chief Justice: *Was he taken prisoner?*
- Lynott: *Yes; he was inside the stockq.de.*
- Mr Attorney-General: *When you first saw him what did you do?*

- Lynott: *He had a double-barrelled gun, and he raised it and fired immediately; he was in the attitude of presenting it; he discharged it, and in the direction in which he fired I saw Captain Wise lying wounded.*
- Mr Chapman: *I would submit to Your Honour that this is merely matter of aggravation, because in a melee of this sort, where, as the witness has described, firing was taking place pretty sharply on either side, it would be utterly impossible to ascertain from which particular bullet Captain Wise unfortunately fell. I submit that it is not evidence in the matter; it is utterly impossible for any witness to know that.*
- Mr Attorney-General: *The witness states it as a fact, Your Honour, it is for the jury to say whether they think it worth attending to or not. [To the witness] What became of the prisoner then?*
- Lynott: *After discharging his piece, I lost sight of him for three or four minutes. I saw him afterwards standing beside a tent in the stockade with a pike in his hand.*
- [Cross-examined by Mr Chapman]**
- Mr Chapman: *You say there were 164 men told out to advance to the stockade?*
- Lynott: *About that number.*
- Mr Chapman: *Was that from your corps?*
- Lynott: *Both ours and the Jih.*
- Mr Chapman: *Was there any force of troopers joined you?*
- Lynott: *There was a party of troopers and foot police marched from the camp with us to the stockade.*
- Mr Chapman: *Did they advance against the stockade?*
- Lynott: *Yes, they did.*
- Mr Chapman: *What then?*
- Lynott: *They marched in the rear of the soldiers.*
- Mr Chapman: *There were 164 altogether?*

- Lynott: *Yes of soldiers.*
- MrChapman: *Including the 12'h?*
- Lynott: *Yes, and the 40'h.*
- MrChapman: *Was Captain Wise of the 12'h or 40'h?*
- Lynott: *Of the 40th.*
- MrChapman: *Was he of your company?*
- Lynott: *No, he commanded part of the 40'h.*
- MrChapman: *How many wounds had he?*
- Lynott: *Two, I believe.*
- MrChapman: *You are aware that this is a very serious charge against the prisoner, putting his life in risk, and I am quite sure you would not give testimony as to identity unless you felt certain of it; had you ever seen the prisoner before that occasion?*
- Lynott: *Never before that occasion.*
- MrChapman: *You were not acquainted with this person?*
- Lynott: *No.*
- MrChapman: *Were there any other black men about the camp there?*
- Lynott: *There were a good many black men.*
- MrChapman: *Are you quite certain that this was the one you saw there?*
- Lynott: *I am positive, I assisted to escort him out of the stockade.*
- MrChapman: *The troops of course were there dressed in their normal dress?*
- Lynott: *No; they allowed us to go there in as easy a uniform as we could on that morning; they did not require us to have stocks on.*
- MrChapman: *Still, you were all alike?*

Lynott: *Yes, we had our jackets on.*

MrChapman: *You did not look like spies, I should think?*

Lynott: *I should say not.*

**[The witness withdrew.
Witness John Donnelly. Examined by Mr
Solicitor-General]**

Mr Solicitor-General: *Call John Donnelly.*

[John Donnelly sworn]

Associate: *Mr John Donnelly you are now sworn.*

Mr Solicitor-General: *You are a private in the 4th?*

Donnelly: *Yes.*

Mr Solicitor-General: *You were in the party which attacked the stockade on the morning of 3rd December?*

Donnelly: *Yes.*

Mr Solicitor-General: *Do you recognise the prisoner?*

Donnelly: *Yes.*

Mr Solicitor-General: *Did you see him on that occasion?*

Donnelly: *Yes, I saw him in the stockade with a double-barrelled piece in his hand*

Mr Solicitor-General: *How far off were you?*

Donnelly: *About fifty yards.*

Mr Solicitor-General: *What did you see him do?*

Donnelly: *I did not see him do anything, any more than I saw him with a double-barrelled piece in his hand.*

Mr Solicitor-General: *Did you see anyone else besides?*

Donnelly: *Yes.*

Mr Solicitor-General: *Whom?*

Donelly: *Another prisoner. I cannot tell his name, but I could identify him if I saw him here.*

Mr Solicitor-General: *Are you sure this is the man?*

Donelly: *Yes.*

[Cross-examined by Mr Chapman]

MrChapman: *You say you were fifty yards off?*

Donelly: *Yes.*

MrChapman: *What time in the morning was this?*

Donelly: *About four o'clock, as near as I could guess.*

MrChapman: *Was it broad daylight or break of day?*

Donelly: *I could not say it was broad daylight.*

MrChapman: *Was there light enough for you to see fifty yards off?*

Donelly: *Yes, at the time I went into the stockade there was.*

MrChapman: *But at the time you saw this man?*

Donelly: *Yes, I could see him fifty yards off*

MrChapman: *Were you all fighting at the time?*

Donelly: *We were.*

MrChapman: *Had you ever seen this man before?* Donelly:

No, not to my recollection, I had not.

MrChapman: *You never saw him before about the diggings?*

Donelly: *Not to my recollection.*

MrChapman: *Do you mean to say that at that time, in the confusion of fighting, you could recognise one black man from another at fifty yards distance?*

- Donelly: *Yes, I think I could.*
- MrChapman: *Recollect this is a serious question, affecting the life of a fellow-creature, though of a different colour to yourself
Are you prepared to swear this is the man?*
- Donelly: *Jam.*
- MrChapman: *What company to you belong to?*
- Donelly: *The light company.*
- MrChapman: *Was Captain Wise of that company?*
- Donelly: *No.*
- MrChapman: *You knew Captain Wise, I suppose?*
- Donelly: *Yes.*
- MrChapman: *He was a popular officer in the corps, was he not?*
- Donelly: *He was.*
- MrChapman: *Much beloved?*
- Donelly: *Yes.*
- MrChapman: *And of course his death is much regretted?*
- Donelly: *Yes. I did not belong to his company.*
- MrChapman: *He was respected by the whole corps, was he not?*
- Donelly: *He was.*

[The witness withdrew.

The Chief Justice: *We will adjourn for the day.*

FRIDAY 23 FEBRUARY 1855

Narrator: The court resumed at 9.00 am on the following day.

Associate: *The Queen against John Joseph part-heard*

The Chief Justice: *Yes, call your next witness, Mr Attorney.*

Witness Gilbert Amos. Examined by Mr Attorney-General]

Mr Attorney-General: *Call Gilbert Amos.*

[Gilbert Amos sworn]

Associate: *Mr Gilbert Amos you are now sworn.*

Mr Attorney-General: *In November last you were the Commissioner stationed at the Eureka Camp?*

Amos: *I was.*

Mr Attorney-General: *What-distance is that from the camp at Ballarat?*

Amos: *About two miles and a quarter.*

Mr Attorney-General: *Do you know the place described as "the stockade"?*

Amos: *Yes.*

Mr Attorney-General: *How far is the Eureka Camp from the stockade?*

Amos: *About five or six hundred yards.*

Mr Attorney-General: *And how far is Bakery Hill from the Camp at Ballarat?*

Amos: *About three-quarters of a mile.*

Mr Attorney-General: *Will you look at that map and say whether it describes it correctly? [the plan being handed to the witness]*

Amos: *As near as I am able to judge, I think it is a very fair description of the country, and the position of the stockade. Bakery Hill, I see, is not marked here.*

Mr Attorney-General: *Will you mark with a pencil Bakery Hill and the Eureka Camp? [the witness did so] You were at the stockade on the Sunday morning?*

Amos: *I was.*

- Mr Chapman: *I would submit Your Honour if the plan is to be used in evidence stricter proof of its accuracy should be used.*
- The Chief Justice: *If such accuracy as that should become material, I shall tell the jury there is no such proof of such accuracy, but if it is only a general view to give a general idea that is required, I think for that purpose it is sufficient; it is not the map itself only that is in evidence, but it is so far as it corresponds with this gentleman's recollection.*
- Mr Attorney-General: *It saves the time of the witness repeating over and over again a description of the country. [to the witness] Do you recollect the Wednesday, Thursday, Friday, and Saturday previous to Sunday, the 3rd of December?*
- Amos: *Yes.*
- The Chief Justice: *Does that plan give an accurate idea of the mode in which the stockade was formed?*
- Amos: *It was very much stronger than that, but it was of that description, with the exception that I see no carts represented here; there were carts to support the balustrade.*
- Mr Attorney-General: *Did you continue at your camp on the Saturday?*
- Amos: *I went to the main camp on the Saturday morning and returned to my own camp again about half-past one, and continued there till three or four o'clock, when I was taken prisoner.*
- The Chief Justice: *Where were you when you were taken prisoner?*
- Amos: *I was at the Eureka Government Camp.*
- Mr Attorney-General: *How many men came?*
- Amos: *About 100 men were distant 200 yards, all armed, and they formed into line; I counted the men exactly, there were 103; there were three officers and 100 men.*
- The Chief Justice: *How were you taken prisoner? You say 103 men formed in front of the Camp?*
- Amos: *Yes.*

- The Chief Justice: *What did they do?*
- Amos: *One man of the name of Ross, mounted on my own horse, which he had previously stolen from a stable in my own camp an hour before, came and said that he had received orders to take me prisoner. He was accompanied by about twenty men.*
- Mr Chapman: *I would really ask whether Your Honour is of opinion that these transactions relative to the capture of the Commissioner, which appear to be separate altogether from the rest, are evidence against this prisoner under the present indictment?*
- Mr Attorney-General: *I am to prove that Ross, who took Mr Amos, was shot dead in the stockade, and that he was in the stockade with the prisoner on the very morning of the attack; that this was in the immediate vicinity of the stockade; that they went to the stockade and remained there, and that the prisoner was found in the same identical stockade in company with Ross, who died.*
- Mr Chapman: *The witness has already said that this man stole a horse; that may be evidence to connect this man with a charge of horsestealing.*
- The Chief Justice: *I am quite aware of your objection. I am taking it for granted that your objection overrides the whole so far as it does not apparently connect the prisoner.*
- Mr Chapman: *So far as it relates to transactions apparently disconnected with the transaction with which he is supposed to be connected.*
- Amos: *I said to Captain Ross, "Where do you want me to go?". He replied "To our camp over there", pointing to the camp with the blue flag hoisted in the centre of it.*
- The Chief Justice: *Who answered you?*
- Amos: *Captain Ross, so called, Your Honour. Ross was a digger of that name, called captain, from being commander of a detachment.*
- The Chief Justice: *What was his reply?*
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- Amos: *His reply was, "I want you to go to our camp" pointing at the same time to the stockade, with a blue flag hoisted in the centre of it – a blue flag with a white cross, Your Honour. I informed him I would go.*
- Mr Attorney-General: *Did you go?*
- Amos: *I did go. I was not armed and had nothing near me, and it was impossible for me, being forced in that way, to resist, and I went. I, at the same time, warned him of the consequences of what he was doing; in my capacity of a magistrate I considered it my duty to do so. HalfWay there, however, the detachment was met and told by someone who appeared to be in authority that they didn't wish to have any prisoners. I was then effectively released.*
- Mr Attorney-General: *Do you know what became of Captain Ross as he was called?*
- Amos: *He died two days afterwards, from the effects of a gunshot wound received in the stockade on the Sunday morning.*
- The Chief Justice: *Did you see him die?*
- Amos: *I did not see him. It was reported so by those who went to investigate the affair. I saw him buried afterwards.*
- Mr Attorney-General: *During the Thursday, Friday, and Saturday, were the miners occupied in their usual avocations of digging, or were all operations suspended?*
- Amos: *All operations were suspended by those armed parties. Numerous complaints were made by peaceable persons that they were not permitted to work; and several diggers and storekeepers complained.*
- Mr Chapman: *Do not say what you heard.*
- Mr Attorney-General: *Will you describe just the way in which you approached the stockade itself on the Sunday morning and what occurred generally?*
- Amos: *We left at about three o'clock.*
- Mr Chapman: *Left where?*

Amos: *The Ballarat Camp. I forget the exact number of soldiers and police that accompanied us. We led away from the camp, in the direction of the Black Hill. Then we struck across to the stockade in such a manner that it was perfectly impossible for us to be seen until we came within about 500 yards. It was imagined perfectly impossible, but it turned out contrary to our expectations, for there were sentries and pickets all round the diggings, and no sooner had we left the camp in perfect darkness than a signal was fired from the first eminence and repeated from the Black Hill and the stockade.*

Mr Attorney-General: *What was the signal?*

Amos: *One gun fired off I have no doubt a pre-concerted signal. When we got to the stockade we perceived the effect of this signal, because we were received with a volley almost before we got into firing distance.*

Mr Attorney-General: *Was this volley fired at the troops?*

Amos: *I was not with the party that was fired at; I was round the other side.*

Mr Attorney-General: *Was this volley fired before there was any firing on the part of the troops?*

Amos: *It was. The intention of the civil authorities was to read the Riot Act, but before any pacific measures could be taken we were met with a volley from the diggers.*

Mr Attorney-General: *You went with the intention of reading the Riot Act?*

Amos: *Yes; the Police Magistrate, Mr Hackett, accompanied us for the express purpose of reading the Riot Act, but we were received with this volley before we got there.*

[Cross-examined by Mr Chapman]

MrChapman: *You say you are Commissioner of Eureka Government Camp- Commissioner of what?*

Amos: *I was Commissioner of Crown Lands, appointed specially to act on the Gold Fields.*

MrChapman: *Were you at the time connected with the police?*

- Amos: *Not at all more than having a general supervision of my district.*
- MrChapman: *When you accompanied the troops to the stockade were you armed?*
- Amos: *I was armed.*
- MrChapman: *Were you a volunteer?*
- Amos: *I was not a volunteer.*
- MrChapman: *Then in what capacity did you go there?*
- Amos: *I went there as a magistrate, and also as Commissioner of the district.*
- MrChapman: *There was a search for licenses on that Thursday, was there not?*
- Amos: *There was so.*
- MrChapman: *Was that search continued on the following day?*
- Amos: *It was not to my knowledge.*
- MrChapman: *When did that search commence?*
- Amos: *It commenced on the Thursday.*
- MrChapman: *Was that the 3dh ofNovember?*
- Amos: *Yes.*
- MrChapman: *How was that search conducted?*
- Amos: *I was not on the ground, therefore I cannot answer.*
- MrChapman: *Have you ever seen searches for licenses conducted?*
- Amos: *I have.*
- MrChapman: *By whom are they conducted?*
- Amos: *Generally by the Commissioner of the district.*

- Mr Chapman: *That is by the Commissioner of the Gold Fields?*
- Amos: *The Commissioner of the Gold Fields.*
- Mr Chapman: *How is he accompanied?*
- Amos: *Generally when there is no apprehension of any riot or disturbance he is accompanied by as many men as may be sufficient to ask the number of diggers in his district for their licenses.*
- Mr Chapman: *Do you know in what manner the search for licenses was conducted on this Thursday?*
- Amos: *I do. I saw them leave the camp, for I was in the camp at the time, and they were received with stones by the diggers and I believe a larger force was sent down to back up the smaller force.*
- MrChapman: *Did you see what force left for the purpose of searching for the licenses?*
- Amos: *I believe it might have been twelve; I am not certain; it was no large force.*
- MrChapman: *What were they, mounted troopers?*
- Amos: *Some were mounted, some not.*
- MrChapman: *Were there more than six?*
- Amos: *There were more than six, but not twenty.*
- MrChapman: *How were the troopers on that occasion armed?*
- Amos: *As usual, I believe; nothing struck me particularly about their arms.*
- MrChapman: *What are their usual arms?*
- Amos: *Their usual arms is a sabre. The mounted men generally carry a sabre when they carry despatches, or anything on duty.*
- Mr Chapman: *And firearms?*
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- Amos: *The carbine is also carried.*
- Mr Chapman: *Have they holster pistols?*
- Amos: *I believe they have; I am not a police officer, I cannot say.*
- Mr Chapman: *Still the holster pistols can be seen?*
- Amos: *You can see the holsters, but it is very difficult to see through the leather of the holster whether there is a pistol.*
- MrChapman: *Where there is a holster, it is usual to suppose that men on duty would have pistols in them?*
- Amos: *It is very common not; more often they have pocket pistols.*
- MrChapman: *Previously to the Thursday had there been any disturbance?*
- Amos: *On the Wednesday there had been firing off of arms and burning licenses, shewing an evident intention on their part to resist the Government licenses tax.*
- Mr Chapman: *Was that indisposition to shew licenses evinced on the Wednesday?*
- Mr Attorney-General: *They shewed them on the Wednesday, because they burnt them.*
- Mr Chapman: *Did you see licenses on the Wednesday?*
- Amos: *I saw the smoke from the fire of the licenses that were burnt.*
- Mr Chapman: *Is there anything particular in the smoke of a licenses?*
- Amos: *I do not know that there is anything particular in the smoke of one; in the smoke of a good many there probably may be. The facts of the case are, that a placard was posted up all over the digging, saying "Diggers, bring your licenses with you".*
- Mr Chapman: *In consequence of that it was that the licenses hunt on Thursday took place?*

- Amos: *A licenses hunt takes place generally once or twice as week.*
- :Nfr Chapman: *Is there any rule as to applying for licenses on any particular day?*
- Amos: *There is no rule.*
- :Nfr Chapman: *How often are they applied for?*
- Amos: *As often as they are wanted. When the old ones expire.*
- :Nfr Chapman: *How often does a search take place; how often is a digger asked for his license?*
- Amos: *Depends upon the size of the district. Sometimes once a week.*
- :Nfr Chapman: *I am speaking of Ballarat?*
- Amos: *Ballarat comprises three different districts.*
- :Nfr Chapman: *Have you anything to do with the search for licenses?*
- Amos: *In my own district.*
- :Nfr Chapman: *Which is that?*
- Amos: *Eureka.*
- :Nfr Chapman: *How often do you search for licenses?*
- Amos: *Sometimes once in a week, and sometimes twice.*
- :Nfr Chapman: *Do you ever search for licenses more than once a day?*
- Amos: *Not unless in a large district.*
- :Nfr Chapman: *Do you know any instance in which a man may be asked twice in a day for his licenses?*
- Amos: *It is possible that a man may be asked for his license by one Commissioner and then subsequently be asked by another. The men sometimes move themselves from one part of the district to another.*
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Mr Attorney-General: *I do not object to this line of examination, Your Honour; I leave it in Your Honour's hands; but it appears to me that it is merely a loss of time. I cannot see myself how it affects the case in any way whatever. I do not want to stop the learned counsel in any course he wishes to pursue.*

The Chief Justice: *How does this bear upon the issue, Mr Chapman?*

Mr Chapman: *Simply, Your Honour, that the whole matter arose out of what was commonly called license hunting. That was the beginning of it. The beginning was a meeting for the purpose of considering the expediency of the license system, as, I contend, a lawful meeting, and then a large number of troopers are sent out to hunt for licenses, and upon this a state of discontent arises, which, as in many other cases of discontent, eventually breaks out into a riot and disturbance. My learned friend has given evidence of circumstances that occurred before the prisoner at the bar was connected with these transactions at all, and I claim the right of going a little further back. In fact, I am not going one atom further back than the case of my learned friend. I shew first of all that this commences with a lawful meeting.*

The Chief Justice: *I will not interfere with you, Mr Chapman. You can take the evidence and make your argument afterwards.*

[The witness withdrew.

Witness Thomas Allen. Examined by Mr Solicitor-General]

Mr Solicitor-General: *Call Thomas Allen.*

[Thomas Allen sworn]

Associate: *Mr Thomas Allen you are now sworn.*

Mr Solicitor-General: *What is your Christian name?*

Allen: *Yes, that is the prisoner.*

Mr Solicitor-General: *What is your name?*

Allen: *No; I have no pension at all; you see I am rather deaf*

Mr Solicitor-General: *Have you a store at Eureka?*

Allen: *I kept the Waterloo Coffee House and Store on the Eureka.*

Mr Solicitor-General: *As you are deaf will you state what you know of these transactions in your own way?*

Allen: *I returned from Melbourne with a dray-load of goods on the Saturday before the shooting commenced on the Sunday morning on the Eureka; I left my dray twelve miles behind; I was just in time to hear them give the word, "Fall in for drill"; I saw them fall in for drill; I saw them go through several evolutions in a military manner, but not exactly in a military manner, but like what you may call an "awkward squad".*

Mr Solicitor-General: *You are a soldier yourself?*

Allen: *I was one; I was at the battle of Waterloo and many other engagements; I know what military evolutions are. I was asked to drill the men. One comes up to me and says "Now, old Waterloo" (that's what they called me) he says "You must come and join us". I said "No, I won't". They then made me a prisoner in my own tent and had sentries placed over me.*

Mr Solicitor-General: *Where was your tent?*

Allen: *My tent was the second tent stockaded round, and second next to the butcher's shop. Ail my property was destroyed to the amount of about £200. Everything I had was destroyed.*

Mr Solicitor-General: *How was your property destroyed?*

Allen: *I believe :it was set fire to by the police, with all the other tents in the stockade.*

[Cross-examined by Mr Chapman]

Mr Chapman: *Where was your store?*

Allen: *Just inside the stockade. Mine was the second store.*

Mr Chapman: *Then the stockade was constructed round stores that were there before?*

Allen: *My tent had been there for many months and the stockade was thrown round it on the Saturday afternoon.*

Mr Chapman: *Do you know this man? [pointing to the prisoner]*

Allen: *I do not; I never saw him to my knowledge.*

Mr Attorney-General: *May it please Your Honour, that is the case on behalf of the Crown.*

[Mr Chapman then made some objections which, in due course, led to His Honour framing a point which might be referred by way of *point reserved* to the Full Court in due course. The court adjourned for half an hour whereupon Mr Chapman addressed the jury]

May it please Your Honour- Gentlemen of the Jury -It now becomes my duty, and a very anxious one, I assure you it is, to address you upon the case which has been submitted to you by the law officers of the Crown, in order to charge the prisoner at the bar with the highest offence known to the law, namely High Treason.

Gentlemen, I agree entirely with the character given of the offence by my learned friend the Attorney-General; there is, in fact, no offence known to the law of so grave and serious a character as that with which the prisoner is now charged; and it is not merely on account of its technical nature, as tending to weaken the Queen's authority- an authority, I believe, ..with which a very large majority of her subjects are perfectly content – it is not, I say, because of the intent to affect her authority that the offence is a grave one, but it is in account of the awful consequences that may arise to a large portion of her subjects from the event of an insurrection of any extent happening in any part of her dominions. Gentlemen, you are well aware that in this case a large number of Her Majesty's subjects have lost their lives, and I believe that number to amount to much more than has been usually stated in the accounts that have been published through the public prints. The loss of the troops has been considerable, and unfortunately, as has been alluded to in this case, an officer of very high character, a gentleman of very great merit, has lost his life, in consequence of the disturbances which took place.

Gentlemen, I am quite sure that, as a general duty, you are perfectly impressed with the necessity of confining your consideration simply to the evidence which is adduced before you – that you know to be the duty of a jury as a general rule – I merely, therefore, mention this to keep the fact before your minds, because at the time at which this transaction took place, from the latter end of November up to a late period of December, the newspapers of this Colony were filled with various accounts, more or less inaccurate in their nature -no doubt to some extent accurate, but mixed up with matters of fact, some of which may have been proved to you today, and a great number of aggravating circumstances, none of which have

been brought before you today. I do not mean to say, gentlemen, that it is possible for any person who has read those accounts wholly to banish them from their recollection; but it is quite possible, by exercising a little self-control over the operations of one's own mind, to take care that we are not biased by them in coming to a conclusion. To do this is a duty from which neither the gentlemen of the jury, the counsel engaged in the case, nor even the learned Judge upon the bench, are exempt – I mean that duty of calmly considering the whole case upon the evidence which is presented to the jury, and upon nothing else. I have full confidence, gentlemen, that you will strictly and carefully exclude from your minds every impression that may have been established there previously to your entering that box, and that you will, so far as the case of the prisoner is concerned, entirely confine yourselves to the evidence which has been adduced before you.

Gentlemen, these transactions are of a very peculiar nature; they come before you upon an indictment containing four distinct charges. I am not going to trouble you, gentlemen, with the technical terms of this indictment, but I must remind you of the charges against the prisoner in the four different counts. The two first counts charge an actual levying of war; the two last counts do not charge an actual levying of war, but they charge that the prisoner compassed, imagined, and intended to levy war. Then besides the principal charge, there is a purpose named in those counts.

In the first count the purpose named is to deprive Her Majesty of her royal title and authority over this Colony; and in the second count the purpose charged is to induce or compel Her Majesty to change her measures. Those two purposes are repeated in the other two counts.

Now I apprehend, gentlemen, that these intentions are none of them proved I shall not dwell upon that for the present, but I shall go to the preliminary circumstances of levying war, and compassing to levy war, as against the prisoner at the bar. There was a great deal of evidence given by Goodenough in the first instance as to the general character of the meetings of the three days from Thursday to the Saturday evening. Goodenough described the manner in which the meetings took place on the Bakery Hill, but he did not speak to having seen the prisoner there. One of the important facts relied upon, gentlemen, was that a flag was hoisted. In fact the flag was intended to be a star and a representation of the Southern Cross. You have also general evidence about flags. It is the practice all over these Colonies, I don't care where, for auctioneers, shopkeepers, tradesmen and merchants, to hoist flags at their stores; and it is a practice, as we have heard from the witnesses, which prevails to a far greater extent at the diggings, and especially at Ballarat, than in the larger towns; and I say, gentlemen, no inference can be drawn from the mere hoisting of a flag as to the intention of the parties. It might be that these men hoisted this flag to shew that they would use every lawful means in their power to get rid of licenses, and that flag having been used for the purpose of an anti-transportation flag, has since been used as an anti-flag; that is the inference I draw.

*And so what ⁱif they burned their licenses. As the law stood, supposing they did burn their licenses (and the evidence is very insufficient on that point), the fact would simply be that not having licenses to produce, they would be compelled by law to take them out again. But where is the evidence that they did burn their licenses on that day? Nowhere at all; no man saw a single license put into the fire; one of the witnesses says he did not see the licenses burnt, but he saw smoke, and I asked him **if** there was anything peculiar in the smoke that led him to infer that it was the smoke of licenses, and he was foolish enough to say "Yes, he thought there was".*

I say, therefore, that up to Wednesday night it was a perfectly lawful meeting. What took place next? If the authorities had done their duty carefully, firmly and discreetly, I have not the slightest doubt that the whole of the proceedings might have stopped after that. But what was the conduct of the authorities? Why in the midst of this they instituted a "digger hunt" or "license hunt"; that is, they sent out a number of troopers; one of the witnesses says there may have been twelve, and he could not say but there might have been twenty; they sent out from twelve to twenty armed troopers seeking for these licenses, demanding them, and I believe making arrests as they pleased.

[The Chief Justice intervenes]

The Chief Justice: *There is no evidence of the troopers having made arrests.*

MrChapman: *At all events, gentlemen, there was what is generally called a license hunt or digger hunt.*

The Chief Justice: *I do not know what a "license hunt" means; the evidence is simply that these parties went out, according to their practice, for the purpose of searching for licenses.*

[Mr Chapman continues]

Well then, gentlemen, it appears that a number of troopers, about twenty, went out for the purpose of collecting :licenses, and there was more irritation and exasperation produced by this indiscreet conduct.

*What does Goodenough say? Why he says that Lawler, from the stump, told them to join as volunteers for the purpose of drilling; he tells you also that they did drill in five different squads, some of them armed differently, and then he tells you of that address of Lawler's to them to the effect that they were to resist **if** attacked by the troops. Then, gentlemen, I must remind you of the demeanour of this witness, and of the tenor of the whole of his evidence. I think he gives a sufficient description of himself to induce you to exercise great caution in receiving his testimony. He tells you that he was disguised as a digger; Peters, the next witness, was disguised as a storekeeper; and other persons were disguised in other ways: Goodenough was disguised as a digger, Peters as a storekeeper, and for what purpose? For the*

purpose of acting as spies upon these men. I asked Goodenough if Lawler had spoken for half an hour? He said yes he had. Goodenough had ears for nothing except those few expressions of Lawler which are now intended to convict the prisoner at the bar, who was not there at the time, of high treason. This imitation digger, who went there for the express purpose, and was instructed, no doubt, to see what was going on, and we have evidence that he did report to his officer when he got back; this imitation digger goes for the purpose of hearing everything he could, and reporting the same to his officer, and you have it in evidence that he reports with extreme distinctness a few treasonable or seditious words uttered by Lawler; but he has no eyes nor ears for anything else.

The conduct of every one of the witnesses was precisely similar; they heard nothing but what they knew would be against the prisoner; everything they heard against the prisoner their ears were open to; but when there was a single sound uttered in favour of the prisoner their ears were shut like the safety-valve of a steam-engine; and whenever there was any circumstance that seemed to tell for the prisoner, they were ready with some explanation that would make it seem to tell against him.

Now, gentlemen, look at the man at the bar; do you suppose that that man, present as he may possibly have been, was present for the purpose of deposing Her Majesty from her rank and authority and station and kingly title in this Colony; do you suppose that such an intention ever entered into his mind; do you suppose that there was any intention in his mind to induce Her Majesty generally to change her measures? No, he never thought of such a thing.

Gentlemen, I ask you therefore once more, upon the whole of this testimony, whether you will deliberately upon your oaths as twelve reasonable men come to the conclusion that that man's intention was to upset the Queen's authority to this Colony, or to induce her to change her measures; because unless you can come to that conclusion, however culpable that man's conduct may have been, it certainly does not amount to high treason.

I think it proper to mention to Your Honour that I have no witnesses to call.

[Mr Aspinall addresses the jury]

May it please Your Honour- Gentlemen of the Jury- In this case, in which, from the importance of the charge of high treason, two counsel are allowed, I feel it my duty in a few words to follow my learned friend, and to add what little I have to say to what he has so ably said. The beginning and the end of his speech most naturally are that he points to the man in the dock, and he asks you whether you, on the part of the British Crown, would be particularly liable to alarm from any attempts of that individual to subvert the Constitution to which you are so much attached; whether you can suppose for a moment that he could ever conceive such a dream. Why, gentlemen, I believe myself that the ridiculousness of it must be patent to the law officers of the Crown as it is to you; and I must say that for my part I feel for

the position of my learned friend the Attorney General in conducting this prosecution. The prisoner has been set up here as a sort of political "Uncle Tom" and you must look upon him, I suppose, either as a stupid Negro, a down-south man who had no conception of treason in his head, or being actuated by the eloquence of Lawler on the top of this stump and actually prepared to defend himself and that he had some idea that although a Negro in any English possession he was entitled to his liberties.

*But, gentlemen, you must not be put off the scent; and you must not be tempted to do a cruel thing by those insinuations which have been thrown out that this man is supposed to be here charged with high treason, but that that is a mere technicality, and that you are, in fact, trying him for the murder of Captain Wise. Why gentlemen, **if** he were on his trial for the murder of Captain Wise, you know there is no possible evidence against him; and I consider it a most extraordinary, and not a very creditable thing, that when he is being here tried upon one charge, you are tempted to look upon him, not as a dangerous traitor, but as a person whom you may as well hang because he shot Captain Wise.*

The majority of the men that came into court had nothing to say about this black man. So far as I can see he is never heard of till Friday, when it appears, according to the evidence of one of those spies, he was drilling. He was drilling according to Mr Spy Peters, in this company with Raphelo.

You might think it rather remarkable that his license was still in his pocket at the very moment he was taken prisoner so that evidently he had not burnt it.

*Nothing is proved against this person but that he was in the stockade, and his statement shews why he was there; and admitting even that there was a black man there, I cannot go quite so far as my learned friend in assenting to the capacity of the witnesses to identify him. I would no more know one black man from another. Than anyone, except its mother would know one baby from another, or anybody except a squatter would know one sheep from another; there are plenty of black men on the Gold Fields, and it is almost impossible for anybody but a slaveholder to know a Negro from his fellow.:Therefore it is a question whether you would be persuaded, from the fact that an officer has died, that this person was intending to depose Her Majesty, or to alter the laws of this Colony. **If**you suppose he was, then perhaps the best thing will be to let it go forth that there as a solemn array of Judge and jury and the law officers of the Crown to try this person on the supposition that it was his intention to destroy the Constitution of this Colony; and for that purpose he was levying war- and for that purpose leading on all the Irishmen, Scotchmen, foreigners, and others, to the number you have heard spoken of; **if**you do so, I think you will live to regret it.*

[Attorney-General in reply]

May it please Your Honour — Gentlemen of the Jury — Long as this case has occupied your attention; and much as may be the inconvenience to which you have been subjected, it appears to me that your duty now is, comparatively speaking, a very light one, not light in pronouncing the verdict which I have no doubt you will pronounce, but light in that it is very easily performed I am not to dictate to you, but it seems to me that the evidence is all one way, and you will say whether you agree with me or not. I wish, gentlemen, to reply briefly to the arguments of the learned counsel who have addressed you on behalf of the prisoner.

Evidence of the flag was merely brought before you to show that certain persons assembled under that flag day by day and that when they transferred their meeting they transferred their flag; they swore under that flag to assist each other, and were all acting in concert and with one common object; so far and no farther do I wish you to attach importance to that flag.

Now, gentlemen, one word about burning those licenses. No doubt you will attach due importance to the speech of the last learned counsel who has addressed you. I am not about to follow that gentleman through all the details of his address, but the learned gentleman who preceded him suggested that there was no illegality in burning licenses.

Gentlemen, if you believe that placard, and believe that that meeting was called in consequence of that placard, and if you imagine that the miners attended with the object of burning their licenses in order to shew resistance to a lawful tax; it was an unlawful and seditious meeting, and no violence was necessary to render it either unlawful or seditious. I could not avoid introducing that to you; it was necessary.

It is said that if the magistrates on those Gold Fields had exercised a wise discretion, and had arrested the ringleaders on the Thursday morning, there would have been an end of it. But, gentlemen, ringleaders in what? I would ask you, gentlemen of the jury, in what were those men the ringleaders? And does not that very statement admit that the men were assembled together for some common object, and that there was a conspiracy?

*Much is said about a display of authority, and that it was absolutely necessary that the party on the Sunday morning should have displayed their authority. But gentlemen, I would ask what opportunity had they for displaying that authority? I think you can entertain no doubt whatever that they came with the intention of not spilling one drop of blood; that they came accompanied by two magistrates to read the **Riot** Act, and call upon the persons then assembled to disperse; but, gentlemen, before that Act could have been produced, before a single word could have been uttered by either of those gentlemen they were met by a volley from the stockade, and that is called defending themselves.*

Gentlemen, I am quite aware, for it is a hackneyed topic, that no man who is in any way an approver or a spy escapes (and very legitimately so I am free to confess) comments at the hands of the learned counsel who defends the prisoner; but, gentlemen, I merely brought before you Goodenough's testimony, and Peters' testimony to launch this case - to shew that there was, as a learned counsel himself called it, a rebellion or a conspiracy or an insurrection. He seems to be satisfied of that fact. I do not hesitate to tell you, gentlemen, that the mere circumstance of this man being present in the stockade would have been nothing, without I had proved these previous facts.

*Gentlemen, it is admitted that the prisoner was in the stockade; and indeed I think your good sense would have been trespassed on much **if** it had been questioned, for six persons swear distinctly to his identity, but it is denied that he was in arms. Then, gentlemen, why was he there.*

*Gentlemen, I leave you to answer. I am not to trifle with your time, and your discrimination, and your oaths, in supposing that you will arrive at the conclusion that that man was forced to be there on no evidence whatever, when he is admitted to be there, and I care not for the admission when he is proved to be there by the evidence; for I tell you incidentally that no counsel can admit anything against the prisoner. You are to find a verdict only on the evidence given by witnesses, and **if** it is proved to you by six men that they saw him there, and by four of them that he was armed, you cannot disbelieve it.*

*One learned counsel's defence seemed to consist in this - that he supposed the prisoner now before you, because he happened to be a man of colour, was a man utterly devoid of intellect, utterly without education, a man who really did not entertain one single idea in his head. Gentlemen, I know no such thing - you know no such thing. Nothing approaching to this is proved before you, and I can only say that **if** that prisoner be really so low in his position as he has been described by the learned counsel who has defended him, it shews to me and to you the mischiefs to which the crime of treason may extend — that, unfortunately, men without education and without reflection, are led into the commission of it by wiser or more crafty and more designing men.: And it shews very distinctly that **if** he really occupied that position he has to thank others for having placed him in it. It shews you very distinctly the danger of the crime of treason, and the importance of punishing those who are really found guilty of it.*

*Gentlemen, the other learned counsel rested his defence altogether upon what he was pleased to term "the indiscretion of the magistrates" in having instituted what he has denominated a "digger hunt". Now, what is that after all? It is a search over a certain district to ascertain whether the persons there hold licenses or not. Gentlemen, it may be inconvenient and may be **annoying** - every tax is annoying to us more or less — it is possible that the circumstances necessarily connected with the license tax may cause it to be more annoying than a mere payment of money, but I ask you, is there anything which you know, or which you could suppose to have*

happened on the Thursday, which suddenly changed these men from a lawful meeting into an armed mob?

Gentlemen, I am not discussing the question of the collection of that license fee on Thursday. Nothing is proved which could justify these men in the course they took, or alter their position and make that lawful on Friday which was not lawful before. If it was a lawful meeting on Wednesday, nothing occurred on Thursday to justify them in suddenly taking up arms and arming and drilling as has been described to you.

Gentlemen, what does that shew but how earnest they were, and how much their hearts were in the work. Then, gentlemen, they took Mr. Amos into custody. With what object did they assemble, erect this stockade, placed skifully just on the top of the hill, and the planks placed outside so strongly that they could with difficulty be removed, and supported by mounds of earth, and carts placed against them — the whole leaning out and offering every facility to fire over, and offering every obstacle to those who were endeavouring to come in. The learned Judge, I think, will tell you that there cannot be more clearly a levying of war.

Now, gentlemen, if you are satisfied that they met together, and that this man was in the stockade, and I think that you can entertain little doubt about it, you will say whether you are or are not satisfied of this- that there was an insurrection, that the insurrection was attended with force, and that that insurrection was for a general and for a public object.

Gentlemen, these are the observations which I feel it my duty to address to you.

Gentlemen, !leave this case fearlessly in your hands. I could have wished that these prisoners had been taken in the order in which their names stood on the information, and it was owing to no default of mine that that was not done. I was anxious to take them in that order, but the only person who was ready to take his trial, or who chose to do so, was the prisoner at the bar. It is immaterial whether he be man of colour or not, but be he who or what he may, you will consider the solemn oaths you have taken and: the evidence adduced before you, and discharge your duty faithfully and honestly to the public.

[The Chief Justice- Summing Up]

Gentleman of the Jury – It is nomy duty to address you upon this case, and I shall be compelled to do so at greater length than would otherwise have been necessary, in order that your minds may be disabused upon many erroneous principles which have been put forward by the counsel for the prisoner, with regard to the law of high treason, and the applicability of that law to the facts proved in evidence before you. So far as I can understand the defence, though it certainly was not very easy to collect what was its real nature, one of the grounds upon which it has been based is, that the prisoner and his companions in the stockade were

*merely acting in self-defence, and were therefore perfectly justifiable in firing upon the soldiers. Another ground of defence was, that the people acted under a great degree of exasperation, and were goaded on to such acts as they committed by a series of oppressions arising out of what has been called "license hunting" or "digger hunting". Now, of these alleged oppressions, there was not one tittle of evidence to justify the odious term of "digger hunting", which appears to have been nothing more than a very necessary proceeding, instituted by the Government for the purpose of collecting the license fee, and ascertaining who had and who had not licenses. There was nothing illegal, oppressive, or unconstitutional in this, and all that has been suggested to you by the learned counsel, as to the violent and irritating conduct of the troopers in their search for these licenses, rests merely on his own assertion; though I have no hesitation in telling you, that **if** all had been proved that he has stated on this head, it would still form no defence whatever to the crime with which the prisoner is now charged. Another assertion which has been made to enlist your sympathies on behalf of the prisoner is, that he has been very unjustly dealt with, in being dragged up here from Ballarat to be tried, that he has been dealt with in a way repugnant to the laws of Great Britain, and in a very different manner from the constitutional usage of 'that country. Gentlemen, the imputation is altogether unfounded; our Legislature and our Courts of Law follow closely in the track of those of the Mother Country, and we are sometimes even in advance of it, in regard to many of our laws, though certainly as regards the particular offence for which the prisoner is indicted the laws have not yet been assimilated. But the mode of administering justice in this Colony differs in no way from that pursued in Great Britain and in the present case no course has been pursued with regard to the prisoner that is not in strict accordance with English precedent. **I** regret gentlemen, that any topics should have been introduced which have rendered these observations necessary, for they really have nothing to do with the issue which you have to try, and were, in my opinion, exhibitions of neither good taste nor good law on the part of the counsel from whom they proceeded*

*Gentlemen, the question which you have to determine is, whether the prisoner at the bar is guilty of the offence with which he is charged. You will hear from me what that offence is, and judge for yourselves whether the evidence given is sufficient to bring it home to the prisoner. As to the language of the indictment, it is nothing more than the language which is prescribed by law, and **if** it be open on that account to the ridicule of the learned counsel it is to be cast upon the British law, of which he professes to be so great an admirer.*

*Gentlemen, a great deal has been also said upon the subject of the way in which "spies", as the policemen employed in private clothes on the Gold Fields have been termed; but as to this, **I** entirely coincide in the language of Mr Justice Gaselee, when he says, "A great deal has been said of the impropriety of sending out policemen in plain clothes. **I** own it does not strike me that there is any impropriety in it".*

It has been suggested to you by the learned counsel for the defence, that the object of this meeting was a lawful one, being merely to redress grievances, and to petition for that purpose, and that in fact those who attended were only pursuing a legitimate course. I think it very material for you to see if you can reconcile that view with the language used by those persons who appear to have been at the head of the meeting, such language as that "it was no use to petition", that "it was time to take the law into their own hands" and "stand up for their rights and liberties".

With reference, indeed, to the whole cross-examination of Mr Chapman to shew that the witnesses were mistaken as to the presence of the prisoner, the distinct and positive way in which they all unhesitatingly, and without the slightest doubt, swear that Joseph was the man whom they saw in the stockade, can, I think, leave no doubt on your minds as to his identity.

Putting all these circumstances together, can you say that the prisoner was in the midst of that affray in an innocent way? I have no hesitation in saying, that if he can shew that he was constrained by force to be there, and if he was taking no part in the movement, or that he was doing anything in the way of rendering any assistance to the Government in connection with the acts that were going on at that time, that it would be competent for him to shew that, and that would be ground for taking another view of the evidence; but if that were his intention, and if he really wishes now to hold himself out as being innocent, why did he not, when the attack was made, or at all events after that double-barrelled gun had been discharged, say, "I am here by restraint; I am taking no part in this movement". That, whether real or feigned, would have shewn some attempt to exculpate himself from the position in which he was; but there is no evidence of that kind; and although it lies with the Crown to shew the character of the acts, yet when they have proved that in the way that they have done here, it rests with the prisoner to shew that he was not there with the same object as the rest.

Gentlemen, these are all the observations I think it necessary to address to you. Having discharged my duty, I now leave you to discharge yours; and I am sure you will forgive me for reminding you, that whatever expectations may be formed by your fellow men as to the decision you are to arrive at, you will disregard these expectations, and think only of Him on whose Gospel you are sworn to give a true verdict, and whose holy aid you have invoked to assist you. It will be infinitely more important, both to your country and yourselves, that you should strive to arrive at such a conclusion as will justify you in the sight of Him and your own consciences, than at one which will enable you either to obtain the applause or avert the censure of any man, or set of men, in this court or out of it. As the prisoner at the bar is now awaiting your judgment, so you, and all of us here, shall one day be placed on our trial at the bar of our Creator; and if, we are told, that every thought and word of our lives in our ordinary avocations will then be taken into account, how much more serious duties as those on which you are now engaged. Impressed, as I am sure you will be, with a sense of this responsibility, and confident that you will not

be induced to shut your eyes to it, by any previous intimidation or flattery, I now leave you, gentlemen, to consider your verdict.

The Chief Justice: *Anything else gentlemen?*

Counsel: *No, Your Honour.*

The Chief Justice: *Well, Mr Foreman and Gentlemen of the Jury, would you please now retire and consider your verdict.*

[The jury returned in 30 minutes]

The Chief Justice: *I understand that the jury has a verdict, Gentlemen.*

Associate: *Mr Foreman, have the jury agreed on their verdict?*

Foreman Westwood: *Yes, we have Your Honour.*

Associate: *[As to the four counts on the indictment] do you find the prisoner at the bar, John Joseph, guilty or not guilty.*

Foreman Westwood: *Not guilty, Your Honour.*

[Uproar in court with much clapping and cheering]

Judge's Tipstaff:: *Order, order.*

The Chief Justice: *Stop that noise at once. You there [pointing at George Hartley and Jack Karczewski] stand up. [Chief Justice to George Hartley] What's your name?*

George Hartley: *George Hartley.*

The Chief Justice: [to Jack Karczewski] *And yours?*

Jack Karczewski: *Wojciech Jacek Karczewski.*

The Chief Justice: *[sotto voce] Another foreigner. You are both in contempt of court and sentenced to seven days imprisonment. Take them away.*

Yes, adjourn the court.

'J' ..

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