

27th November 1854

Short hand writers' notes at the interview between His Excellency Sir C.Hotham and a Deputation from the Gold Miners at Ballaarat, relative to the release of three men imprisoned for having been concerned in the burning of the Eureka Hotel." "A 2

Victoria

Government Offices, Melbourne

Monday 27th November 1854

Present

His Excellency the Lieutenant-Governor

The Honorable the Colonial Secretary

The Honorable the Attorney General

Mr. Black, Mr. Humphreys, and Mr. Kennedy were introduced to His Excellency as a deputation from the gold miners of Ballaarat.

Mr. Black : We are here, your Excellency, at the request of the diggers of Ballaarat. We are requested to demand the release of Fletcher, McIntyre and Westaby, who are now in gaol under sentence for having been concerned in the burning of the Eureka Hotel. We should have been here on Saturday but were unable to be so. We have hastened down to seek an interview with your Excellency in order to avert serious consequences. We have also been requested to submit to your Excellency for your Excellency's perusal certain representations which have been agreed upon by the diggers of Ballaarat.

A paper was handed to His Excellency by Mr. Black. His Excellency (addressing Mr. Black) : You have made use of one word which I think it my duty at once to allude to—that is the word “demand”. You “demand”, you say, the release of men who have been convicted for burning the Eureka Hotel. Was not that what you said ?

Mr. Black: That is the message which we have been requested to deliver to your Excellency. The word “demand” we were requested to use on behalf of the diggers of Ballaarat to your Excellency. They, from frequent disappointments, or from former disappointments, object to the use of the word “petition” now. It is not that there is any wish to hold out threats to your Excellency. The people, when we left, were much excited at the imprisonment " of the men I have named, and under the general excitement the word demand we were requested to use; not, as

I have said that we wish to hold out to your Excellency any threat at all, but their petitions, they consider, have been disregarded on former occasions, and they feel themselves deeply aggrieved-

deeply aggrieved- and under those circumstances they have, in their collective capacity, used that word.

I have been careful to enquire, and I have understood (I may have been misinformed) that that form of expression is strictly constitutional. The diggers of Ballaarat feel very deeply that the men who are now in prison should not be there. They say that they are all equally guilty of the burning of the hotel, and they contend that they were justified in so doing, considering that the magistrates had failed to dispense justice; and their reason for taking this summary course of procedure was this, that had they waited to appeal to your Excellency or to a higher tribunal it would have afforded ample opportunity for the guilty parties to escape-I have heard that reason assigned-the people saying that the authorities at Ballaarat were not disposed to punish those guilty men-

His Excellency: You must be aware, Mr. Black and gentlemen, that the very instant the Government here received information of the acquittal of Bentley and his associates, another trial was ordered. That very instant instructions were sent to apprehend Bentley and orders were issued to try him again-the most active measures were taken. A government does not adopt the principle that it is on every single occasion to identify itself with the verdict of its own officials. The Government is judge of all, and it judged in that case that it was not a correct verdict, and ordered immediately that another trial should take place.

Mr. Black: I may perhaps be permitted to state that the fact was made known by Mr. Johnston that he had forwarded a copy of the depositions to the Attorney General, and that the result was that immediate orders were given by the Attorney General and approved of by your Excellency, that there should be a rehearing, and that the parties should be re-arrested; and when that was announced to the meeting it elicited a great cheer from the meeting. Therefore it will be seen that 1 they were not ignorant of that fact. I

H;E. the Lieutenant Governor: Coming back to what you said first, you are absolutely taking the law 1 into your own hands. By the course you are now 1 adopting you are taking the law entirely into your 1 own hands. You are setting aside the most important principle of the British constitution. You and I and everybody else here are amenable to trial by jury, from that there is no appeal, and the jury, rightly or wrongly, as everyone may think for himself, have decided it as they have. I cannot depart from the verdict of the jury. There was a patient and careful hearing at the trial. The jury have decided it, and that decision we are all bound to respect. Were I to depart from it I should inflict the greatest blow that could possibly be inflicted upon the welfare of this colony.

Mr. Humphreys: I may remind your Excellency that in perfect consistence with your functions as Lieutenant Governor you might by an act of grace pardon these men without setting aside the verdict of the jury. We do not ask your Excellency to do that, but we ask your" "Excellency by an act of grace to pardon these men. That would have the effect of quieting a very excited state of feeling which now exists.

H.E. the Lieutenant Governor: The Americans adopted a truly constitutional course in a case where they thought themselves aggrieved. They signed a petition and presented that petition in due form through their consular representative. The consular representative said: I give no opinion to you officially whether I consider the sentence was correct or not. I have my own private opinion on that matter, but the Americans, as a body who have always respected the law, ask this; and will you grant it ? That I consider to be a truly constitutional course of proceeding. I gave him no answer. I read the papers and opinions connected with the case, and eventually, in virtue of the authority vested in me, I directed that Carey should be released. Have the Ballaarat diggers taken the same course ? No, and

I must take my stand on the word "demand". I am sorry for it, but that is the position you place me in.

Mr. Kennedy: I should wish your Excellency to understand our position in coming here. We have taken part in the movement constitutionally, and we have gone on with meetings so far. The committee were fully aware of the spirit that was moving the diggers, and they put that term into our mouths which, I apprehend, has made an impression on your mind that it ought not to have done—that could be rescinded. The motive that brought us here to you was that many of us, considering the position that your Excellency is placed in, that you have not had time to develop yourself in order that the people might rightly understand your course of policy, and being placed in circumstances which the intelligent well know; on these grounds we, having the popular voice with us, determined that we would go down and solicit your Excellency, on the ground of justice to yourself, to allay the excitement of the people. We ask, as men that have to give an account for what we are doing—it is not the mere excitement of the moment; our desire is to act as men that can look back upon our conduct without a stain and without being ashamed. I apprehend that your Excellency (and I feel the force of it) has a right to call in question the word demand; but if you will allow us to go back with these men, we can go back to state what we have done as men, and we can claim peace, but otherwise I do not see my way through it. I would never have appeared here before your Excellency had it not been on these grounds, and I solemnly implore of you to consider the position in which you are placed, and if it were for no other reason than that of keeping back the spilling of blood which must be the case with infuriated men—let us have peace even if thought inconsistent with the dignity of the British Crown.

Mr. Black : I wish to say the feeling at Ballaarat is this, and I believe it is shared in generally by all the public, that instead of these men being in prison, the corrupt officials some of whom have been discharged should rather be suffering in their place. It is felt that this act was done under a deep sense of official wrong, and injustice, and oppression. It was done from a sense of the entire disregard of justice, as your Excellency must be conscious, and, under those circumstances, they feel that these men should not suffer. Indeed, the diggers at Ballaarat identify themselves universally with their acts, and I may say that they think they were justified in it, and that individuals should not suffer for it.

H.E. the Lieutenant Governor: Departing for a moment from the line of conversation that has been hitherto pursued, you have sent here a letter which I have read very hastily, but which seems to me really to be subversive of all government. Remember what a position you place the Government in. You will be aware that on a former occasion I said my answer was "I give no reply".

Mr. Humphreys: I had no opportunity of communicating that answer until these gentlemen came down.

H.E. the Lieutenant Governor: That was the answer I gave and in the meantime this letter comes. It is impossible for me to do what is asked of me, placed as I am in the position of the Queen's representative. You know also that a commission has been appointed composed of gentlemen almost all of whom are in opposition to the government, and almost all of whom are representative members of the Legislature, selected with very great care purposely to enquire into the state of the gold fields, and it will be for you to come forward and state fairly and frankly to them what you require.

Mr. Black : As to the board of enquiry, I believe there are members of the board who are very highly thought of by the digging community but I believe they would have been better satisfied with that

board had they been allowed to appoint or elect one half of that board. They have no objection to Mr. Fawkner, and probably other members of the board, but they feel that justice is not done them when these boards are appointed. They are a numerous body and they consider themselves an important body of men, and that has been acknowledged over and over again, and these steps being taken without consulting them at all is not what they think proper. They had great objections to the former board that visited Ballaarat seeing that it consisted of officials from town. H.E. the Lieutenant Governor: Really, the verdict of that board was such as could not give dissatisfaction.

Mr. Black: Yes I believe the dismissal of Mr. Dewes and the other officers did give satisfaction.

H.E. the Lieutenant Governor: That shows every wish on my part that they should have full justice.

Mr. Black: I believe the people of Ballaarat are sensible of the readiness of the Government to do what they can under the present circumstances.

H.E. the Lieutenant Governor: I can only conclude by saying this. You have placed me in a position which renders the release of these men impossible. I am sorry that you have extracted that much from me because you are aware of what I said on a former occasion and which was fairly reported in the papers ; but, as I have said before, it cannot be. As it has been observed, we have all of us to give an account to those above us, and it cannot be. I am sorry for it.

Tell the diggers from me, and tell them carefully, that this commission will enquire into everything and everybody, high and low, rich and poor, and you have only to come forward and state your grievances, and, in what relates to me, they shall be redressed. I can say no more; we are all in a false position altogether. I can say no more than that.

Mr. Black: I would take the liberty of pressing once more upon your Excellency that if you would let the matter be in abeyance we will present a memorial, and in the meantime, if your Excellency should see your way to, by an act of grace, pardoning these men -not setting aside the verdict of the jury but merely taking into your Excellency's consideration the suggestion offered by that jury who in fact morally acquitted the men though they felt legally bound by their oath to find them guilty of taking part in a certain act. The judgment of the country is decidedly in their favor, and fully harmonizes with the rider which the jury appended to their verdict, as shown by the effect which it took upon the court when delivered. The learned Attorney General will pardon me for alluding to it but he was present, and he heard the manifestation of feeling in the court, however improper it may have been, showing that the public fully approved of the rider of the jury.

I do think that your Excellency can, in perfect accordance with the dignity of your official station, really discharge these men, and take from the mouths of men who are now rampant and loud in condemning the government, and everything belonging to it, their ground of complaint. It would at once silence them and restore peace at the diggings, and take away that excuse for a riot which everyone of us would take an opportunity of disclaiming.

H.E. the Lieutenant Governor: I have too good an opinion of the diggers of Ballaarat to believe that, though they do not approve of the verdict they will set themselves up against the law. If it is so it will be quite a new thing for Englishmen to attempt to overturn trial by jury. It would be a frightful state of things, and we must all take our stand when it comes to that.

Mr. Black: The impression of the people at Ballaarat is this, that the jury could not find any other verdict, and while the men might have been legally wrong they contend that they were morally right, and that there was every excuse for the jury doing what they did under the circumstances, and

it is on these special and peculiar grounds they wish them to be released-not that they wish to overturn trial by jury, far from that-but they blame the officials" "and they do not blame these men.

H.E. the Lieutenant Governor: We must conclude, if you will tell the diggers from me exactly what I have said, that I cannot do it; the position they have taken and the position I am in render it impossible. The men have received a mild sentence.

Mr. Black: Very, that is acknowledged.

H.E. the Lieutenant Governor: Consonant with the law it is the mildest sentence that could be given. We are now in that position that we cannot depart from the course which the jury have taken. I am placed in a false position by the act 'of the diggers themselves, and, if you have property at stake in the country, you ought to take that view also." "Mr. Black: We comprehend your Excellency, and will be faithful to represent what you say. Passing from that subject we would wish to know from your Excellency what the Government intend to do with regard to giving the diggers full and equal representation.

H.E. the Lieutenant Governor; You know that a despatch has gone home asking for the franchise. This event took place before my coming into the colony and therefore I cannot speak with confidence upon it. You know also that I have no power to deal with the question, and could not do so if I would. You know also, as I have said before, that if the diggers will elect a nominee I will at once put him in and shall only be too glad to do it. The Honorable the Colonial Secretary: As this took place before your Excellency's arrival in the colony, you will perhaps allow me to say that the despatch did go home, and the receipt of that despatch was acknowledged and a special bill for the purpose of enfranchizing the diggers was passed last session, and was reserved for the Queen's assent, and the receipt of that bill has also been acknowledged. That bill was wholly independent of the Constitution Bill.

H.E. the Lieutenant Governor; I understand the matter to stand thus-that a special bill was passed in order that if the Constitution Bill owing to unforeseen circumstances were delayed, the" "diggers at all events should have the power of electing their representatives.

Mr. Humphreys: One or more ?

H.E. the Lieutenant Governor: More.

The Hon. the Attorney General: The number was not fixed in any way. The object of the bill was to confer the elective franchise. The number of members was to be determined afterwards by the Legislative

Council.

H.E. the Lieutenant Governor: I feel the greatest anxiety that they should have the franchise and, as I have already said, if the diggers now elect a representative I shall only be too glad to put him in the Council.

Mr. Humphreys : The difficulty would be to get the different gold fields to agree to name one representative for the whole. Each gold field should have a right to send its own representatives.

Mr. Black: I am quite sure that only one -seat in the Council would not satisfy the diggers.

H.E. the Lieutenant Governor: I have not the means of doing more. You are asking me to do that which is impossible, and an impossibility cannot be got over, do all I can.

Mr. Black: The Constitution Bill requires a digger to take out a twelve month's license, or he cannot vote. Now from my experience of the gold fields I may say that very few, if any diggers do take out a yearly license; that is my impression-they object to having long licenses, none take them for longer than three months, and the bill requires that a digger should take out a twelve month's license before he can have a vote. I look upon that as a virtual disfranchisement of the diggers.

H.E. the Lieutenant Governor: Is there not a clause in the new Constitution Bill which allows the constitution to be amended from time to time ?

The Hon. the Attorney General: I do not know to which Mr. Black alludes, whether the separate bill to enfranchise the diggers or the Constitutional Bill.

Mr. Black: The Constitution Bill.

H.E. the Lieutenant Governor: Point out that it is an injustice and there is a power to amend it. You may depend upon it that no government would wish to govern in that way, or even if they did so, after the new constitution is in operation they would not have the power to do so. The diggers may be quite certain about that if the new constitution passes, and anew state of things exists here.

Mr. Humphreys : In all bills there is a power to amend them.

H.E. the Lieutenant Governor: To be sure there is.

Mr. Black: I believe the bill requires that before the new Constitution Bill can be amended there must be a majority of two-thirds.

The Hon. the Colonial Secretary: No, it was so proposed, and altered. A common majority can amend the bill.

H.E. the Lieutenant Governor: Let us sum up. In what position are the diggers with regard to the new constitution? Supposing they agree to elect one member. I will immediately put him into the Council. I cannot do more than that, but I will do that as speedily as they like. But supposing they cannot agree to that, and they could do nothing else but that, the new constitution is but a question of four or five months, and you may depend upon it as I repeat to you that whatever government you have in power will be compelled, by the nature of things, to put the digger in that position which in my judgment he ought to be in.

Mr. Black: A considerable number of the clauses of the Constitution Bill the diggers are dissatisfied with-the qualification of members, the qualification of voters, with all these matters they are dissatisfied. No digger can be elected to a seat in the Assembly unless he is worth one or two thousand pounds of freehold property. They object to this and say, and say justly, a digger fit to take his seat as a representative of their interests may not have £100 worth of freehold property.

The Hon. the Attorney General: It is singular, your Excellency, that those views were not more distinctly put forward when the bill was under discussion, but are now brought forward when the power does not exist, either in your Excellency or in the Legislative Council to alter it.

Mr. Black

In reply to that I have to say that the men of Bendigo sent down two gentlemen in whom they had confidence with a request that "they might be heard upon the Constitution Bill either through counsel or personally. Their request was not granted; it was refused. They held many meetings both before that bill was framed and after, contending for the right of the suffrage, and for other

important matters such as they now require; but I am compelled to say, in justice to them, now that their voice has been disregarded, they were not allowed to be heard upon that bill.

H.E the Lieuenant Governor; I cannot reply to that. You know when I arrived in the colony. I can give no answer to that.

The Hon. The Colonial Secretary: It is contrary to the rules of the House to allow people to come and make speeches at the Bar of the House. The diggers got the answer which every other class of man would have got under the circumstances, namely, that they might approach the House by petition but they could not be allowed to speak at the Bar of the House, and it was especially explained at the time that there was no discourtesy whatever meant towards the diggers.

Mr. Black (addressing the Colonial Secretary): Had they not, your Honor, petitioned before, and had their petitions been properly met?

The Hon. The Colonial Secretary: I am not aware what petitions you allude to.

Mr Black: From various gold fields petitions were forwarded relative to the franchise.

The Hon. The Colonial Secretary: Which the Legislative Council had not the power to give them.

Mr. Black: But they had the power to enfranchise them under that bill." "The Hon. The Colonial Secretary: Not without the sanction of the Imperial Parliament, and for that sanction the bill was sent home.

Mr. Black: I think you scarcely understand what I mean; it is this. The Legislative Council in framing that bill for the new constitution could have enfranchised

the diggers and could have given to them universal suffrage. Instead of having inserted a clause in the bill requiring the diggers to take out a twelve month's license, they could have inserted a clause giving them the franchise without that qualification. That is what I mean. That was not done, and because it was not done, that is why they feel an injustice has been done to them.

The Hon. the Colonial Secretary: The Legislature did not see any reason why the diggers should have universal suffrage more than any other class of the community. The bill provides that any person following a fixed avocation for twelve months shall be entitled to the franchise; a clerk for twelve months or a leaseholder for twelve months has it, and the same rule was extended to the diggings, and any man who chose to take out a license for a year, in order to give a guarantee to society that he is a bona fide digger and not a mere visitor from Van Diemen's Land or elsewhere, who ought not to interfere with the permanent legislation of the country-any man who will give us a guarantee that

he will remain in the country for one year is entitled to the suffrage, which is a more extended right than is given to any other class of the community. Mr. Humphreys: It is far from the diggers' wish to obtrude themselves on the community, but they feel, as a class, that they are excluded from the rightful privileges which ought to be awarded to good citizens, and are rather treated as "wandering vagabonds", which is an expression that has been used in the House, and has produced a very bad effect. I would remind your Excellency of the importance not only of having peace on the gold fields but of securing the confidence of the diggers in the Government. We are anxious that they should have full confidence in the Government, and also that the Government should deserve their confidence, and make our suggestions humbly as to the means by which it may be secured.

H.E. the Lieutenant Governor: With regard to the new constitution, whatever my desire may be, we can do nothing now until the bill comes out from home. I can do nothing. With regard to the gold fields, every description of enquiry concerning them I promise you-the fullest and fairest enquiry shall be had. I am quite certain of that. I can say no more. I have spoken to everyone of those gentlemen individually on the subject. I have been too short a time in the colony to have any lengthened personal acquaintance with them. We all met as strangers, but I have explained to them my views and have asked them that the enquiry should be as full and fair and complete.