

Duplicate

Despatch No. 38

Reporting the result of the trial of two of the Ballaarat rioters, at the Supreme Court

Toorac – near Melbourne 28th February 1855

The Right Honorable Sir George Grey Bart, K.C.B.

Sir,

I have already done myself the honor to report, in my Despatch No. 162. of the 20th day of December 1854, that the Military force engaged in the attack on the 'Eureka' Stockade on the Gold Field at Ballarat had made one hundred and twenty prisoners; out of this number only thirteen were committed for trial; the remainder being released, not on account of the charges being entirely disproved, but because the Magistrates were to limit the commitments to those against whom the proof of participation was of the clearest kind.

The prisoners already named were sent to Melbourne to take their trial; but for various causes, into which I need hardly enter, the trials were postponed until the 20th day of February when, at the request of the Counsel of the first three prisoners their trial was further postponed, in consequence of the alleged absence of material witnesses for the Defence of the first two, and the want of preparation on the part of the third to take his trial.

The case of the fourth, a person of colour, and an inhabitant of Boston in the United States, was then proceeded with.

I append for your information a copy of the report of the trial extracted from the 'Argus' newspaper, and a complete report of these trials – taken from a short hand writers notes, will be transmitted as soon as they can be prepared.

The Identity of the prisoner – his presence on two occasions when the insurgents were being armed and drilled, and his presence at and participation in, the occurrences at the Eureka Stockade on the morning of the 3rd December, were clearly proved.

Six witnesses spoke to his having been found inside the stockade – two to his having been seen discharging a gun at the Military – and two to his having been taken in custody, out of a tent inside the Stockade, which was used as a Guard Tent by the Insurgents, and from which many shots had been fired – many persons having been found dead and wounded in it, and several stand of arms having been discovered lying on the floor apparently recently discharged.

The proof of existence of a treasonable concert, was supported by evidence of the meeting on Bakery Hill on the 28th of November – the swearing in of volunteers under the Insurgents Flag on the 29th – and the drilling of armed bodies of men on that, and the subsequent days – the compulsory stopping, by the Insurgents in armed parties, of all mining operations by the well disposed, during those days – the collection of arms, ammunition, provisions, and stores without payment – the formation of weapons (pikes) – the construction of the stockade, and the resistance and attack (the firing having been commenced by the Insurgents without challenge or parley) on the troops, and constabulary, on the morning of the 3rd December.

No evidence was called for the defence – the prisoner's Counsel resting solely on the non-existence, as they alleged, of any treasonable intentions – and the Jury, after a brief

consultation of half an hour, returned a verdict of 'not guilty'.

The trial of the third prisoner, Irishman, who had been, at the time of the riots, employed as a Reporter of a Newspaper published at the Goldfields – 'The Ballaarat Times' – was the next.

The evidence for the prosecution in his early case, was substantially the same as that in the case of Joseph – except that there was no proof of his having been seen with arms when inside the stockade, or of having been armed when he was taken from the Guard Tent with Joseph – it was proved that he had been drilled on the previous days in the use of a pike.

No evidence was addressed for his defence – which was the same as that urged for Joseph – and a similar verdict of acquittal was, after a brief deliberation, also given in his case.

After these verdicts had been returned it was considered expedient to postpone the trial of the other prisoners until the next session, in order that in cases of such importance to the Country, the opinion of a Jury taken from another panel, might be obtained as to the guilt, or innocence, of the accused.

I have the honor to be Sir, Your most obedient humble servant.

Chas. Hotham