

State Trials

L55/958

Date 19 Jany.

Regs. 1855

J. W. Webb Govt. Short hand writer forwards copies of the proceedings in the Sup. Court on the 16th. Instead in the matter of the Queen. V. Hayes & others.

For perusal

Private Lee

5.4.55

This is not to be printed, so say Private Secretary JW

21/4/55 L55/958

55/7

Legislative Council Chambers

January 19th 1853

Sir,

I have the honor to forward herewith for the information of His Excellency the Lieutenant Governor a Copy of the Proceedings in the Supreme Court of this Colony on the 16th instant in the matter of The Queen v. Timothy Hayes and others informed against for High Treason.

The Honorable

The Colonial Secretary

I have the honor to be

Sir

Your most obedient servant

George H Webb

XXX The Queen

versus

Timothy Hayes

Charles Raphelo

John Manning

John Joseph

Jean Vennick

James Beattie

Henry Reed

Michael Tuohy

James Campbell

William Molloy

Jacob Sorenson

Thomas Dignum

And

John Phelan

Copy from Mr. Webb's shorthand notes of the Proceedings on the Trial of this Information, in the Supreme Court of the Colony of Victoria before, His Honor Sir William A'Beckett, Chief Justice.

Tuesday 16th January 1855

The prisoners were placed at the Bar and answered to their names

The Chief Justice: Are the prisoners all present?

Mr. Grant: I appear as Attorney for several several of the Prisoners, your Honor.

The Chief Justice: I shall hear you when I have said a few words which I think it's my duty to say. Timothy Hayes, Charles Raphelo, John Manning, John Joseph, Jean Vennick, James Beattie, Henry Reed, Michael Tuohy, James Campbell, William Molloy, Jacob Sorenson, Thomas Dignum and John Phelan, the Attorney General has just exhibited against you

On Information for High Treason; and it is my duty now to ask you if you desire any legal assistance. You are entitled each of you to have two Counsel, and one Attorney, assigned you, and you may name them if you please. Timothy Hayes have you any Counsel you wish to have assigned you?

Mr. Grant: I appear as Attorney for Mr. Hayes, and others your Honor.

The Chief Justice: I do not doubt it, but I must know from the Prisoners whether they they recognise you – Whom do you appear for?

Mr. Grant: I appear for Timothy Hayes, Charles Raphelo, James Beattie, James Beattie, James Campbell, John Manning, and William Molloy.

Mr. Gatty Jones: I appear for Henry Reed your Honor.

Mr. Grant:I beg your Honor's pardon, there are two more, John Joseph and John Phelan, that appear I appear for.

The Chief Justice: Timothy Hayes, Charles Raphelo, James Campbell, John Manning, William Molloy, John Joseph, and John Phelan, do you desire that Mr. Grant should appear as Attorney for you.

Prisoner Timothy Hayes:Yes

The Chief Justice:Then Mr. Grant, at their desire you will act as their Attorney – that is for eight of them – What Counsel do you wish assigned?

Mr. Grant:For Timothy Hayes, Mr. Ireland and Mr. Dunne; for John Joseph Mr. Chapman and Mr. Aspinall; for for Charles Raphelo, Mr. Ireland and Mr. Dunne; for James Beattie Mr. Ireland and Mr. Dawson and Mr. Dunne; for John Manning Mr. Michie and Mr. Dunne; for William Molloy, Mr. Ireland and Mr. Dawson; and for John Phelan Mr. Ireland and Mr. Dunne.

The Chief Justice:Timothy Hayes, Charles Raphelo and John Phelan I understand that you are desirous of having assigned as Counsel Mr. Ireland and Mr. Dunne. If that be so I will desire that those two gentleman be assigned as your Counsel. If you make no answer I shall suppose you concur.[No answer]. John Joseph you are desirous of having assigned as your Counsel Mr. Chapman and Mr. Aspinall [No answer].James Beattie the Counsel you select I understand are Mr. Ireland and Mr. Dawson. James Campbell, Mr. Dawson and and Mr. Dunne; John Manning, Mr. Michie and Mr. Dunne; and William Molloy, Mr. Ireland and Mr. Dawson [No answer]. Be it so then. Who appears for Henry Reed?

Mr. Gatty Jones:I appear for Reed your Honor.

The Chief Justice:What Counsel?

Mr. Jones:Mr. Michie and Mr. Cope

The Chief Justice: Henry Reed are these the gentleman you desire ? [No answer].

Who appears for Michael Tuohey?

Mr. Hogan:I appear for Tuohey your Honor

The Chief Justice:Do you appear for any [other] prisoners?

Mr. Hogan:No your Honor.

The Chief Justice:What Counsel?

Mr. Hogan:Mr. Ireland and Mr. Dunne

The Chief Justice:Michael Tuohey, you hear what your Attorney says?

Prisoner Michael Tuohey:Yes your Honor.

The Chief Justice:Who appears for Thomas Dignum?

Mr. Hamilton Stephen:I appear for Dignum your Honor. The The Chief Justice:Do you appear for any other prisoner?

Mr. H. Stephens:Yes your Honor for Jacob Sorenson

The Chief Justice:Which Counsel?

Mr. H. Stephens:Mr. Ireland

The Chief Justice:Mr. Ireland alone for both?

Mr. H. Stephens:Yes your Honor

The Chief Justice:You desire only one Counsel?

Mr. H. Stephens:Yes your Honor

Mr. McFarlane:I am Attorney for Jean Vennick in the List – I appear for him

The Chief Justice:What Counsel do you desire?

Mr. McFarlane:Mr. Michie

The Chief Justice:Mr. Michie alone?

Mr. McFarlane:Yes, your Honor

The Chief Justice:I believe now then we have the wishes of all the Prisoners upon the subject of their Attorneys and Counsel. Now Prisoners if you desire to have a copy of the Indictments you are entitled to be furnished furnished with a copy as also with a list of the jury panel and a list of the witnesses with the names, addresses and professions of the Witnesses to be called against you.

Mr. Grant:May it please your Honor I apply for a copy of the indictments a copy of the Jury Panel and a list of the Witnesses, on the part of all those Prisoners for whom I appear.

The Chief Justice:Are you prepared to lease now?

Mr. Grant :No your Honor, not until I have a copy of the indictment.

Mr. Attorney General:I had anticipated this objection, and I wish to take the opinion of the Court upon it. I do not wish to press it, but I may state that a copy of the information in accordance with the Statute has been supplied to each of the Prisoners ten days previously to this, and also also a list of the witnesses and a list of the Jury Panel. I am quite aware that the Court was not then sitting and a doubt may arise whether the information should not have been filed and the Prisoner arraigned primarily to that copy being supplied the words of the Statute would certainly imply an application to the Court, but unassured as the spirit of the Statute list been complied with the Statute to call upon the Prisoners to plead.

The Chief Justice:The first question will be have you any proof of this delivery by our Witnesses?

Mr. Attorney General:Yes your Honor – In fact I may state that the Statute has been strictly complied with save that the Court was not willing at the time. I was quite aware that the objection might be taken. The Chief Justice:I may say that being aware that these Trials would come in I thought it was my duty to look into the practice, and law upon the subject. It did strike me at first that the substantial object of the statute would be complied with by the Prisoners in fact getting a copy of that which was the Indictment presented against them; but when I considered that there could in point of law be an Indictment, of which the Prisoners were legally bound to take notice, until it was presented formally in Court, it struck me that a copy of the indictment could not be capable of being delivered until the original had been presented in Court; because there could be no copy of that which was not legally in existence. There is no exact analogy here to the practice at home, because

there no indictment can exist until the Grand Jury have found a true Bill and therefore the prisoner cannot have a previous copy of the Indictment, but here the information being filed by the Crown Prosecutor it was possible for him to give a copy of that which he intended to present against them [Prisoners]. But I do not think that would be a legal representation, and I think they would have a right to disregard it and view it merely as a private communication and say "This is all very well, but we do not know whether any representation will be exhibited against us or not. It will be in the power of the Attorney general to alter it, and we will take no notice of it."

I can take no judicial notice of any representation but that which is now presented before me and I cannot go back to see whether a copy has been made of that which is now presented, the instrument being only now in" in existence. I think the Prisoners are entitled to that which they would have been entitled to had they been tried before a Court where the proceedings were initiated by a Grand Jury. The only analogy I could find to the practice here, was the Scotch Law, where no Grand Jury existed previously to a recent Statute and the Public Prosecutor was the person who presented the Indictment, but there were certain proceedings, the parties were entitled to fifteen days Citation, and there was an Act of Adjournal, and other proceedings in which we have no parallel here. At all events in a case of High treason I think I ought not to be nice in finding reasons where I see there are any privileges claim, and therefore I think they should stand in the same position as if they were tried in London before a Grand Jury. That being my opinion Prisoners, it is my duty to inform you that you are entitled to those documents which you claim, and that you are not bound to plead until ten days after you have received a copy of the Indictment and those ten days are to be exclusive of Sundays. If therefore you should receive it today a copy of the Indictment you will be liable to be called upon to plead, on, and not before, next Monday week that will be the 29th of January I do not know that I have anything else to say.

Mr. Grant:I claim that privilege on behalf of the eight Prisoners whom I appear for.

Mr. Jones:I claim it on behalf of Henry Reed

Mr. Attorney General:The intimation of your Honor's opinion on behalf of of are Prisoner is quite sufficient for all.

Mr. Grant:If your Honor pleases I have to make a further application that Counsel and myself may have free access at all reasonable hours to see the Prisoners, as was done in Frost's case.

The Chief Justice:Let access be had to them between seven in the morning and ten at night.

Mr. Grant:For Counsel and myself.

The Chief Justice:Exactly

Mr. Attorney General:Seven in the morning is an early hour to open the Gaol your Honor.

The Chief Justice:I understand there is an inconvenience about so early an opening and so late a closing of the gaol. I think I may alter the hours and still meet the (justice) of the case

Mr. Ireland:from nine in the morning till eight in the evening.

The Chief Justice:Yes.

Mr. Ireland:I appear for are of the Prisoner Vennick. It rests with the the prisoner whether he will avail himself of any of those objectives which have been stated, and that prisoner, Vennick, is not inclined to take advantage of those objections. He has his Witnesses in Town, and is prepared to take his Trial.

Mr. Attorney General:I will pursue the same cause with all.

The Chief Justice:The Attorney General has with my very great calmness and moderation stated that he anticipated that certain rights would be adjudged to them.

Mr. Ireland:This was not a mere technical objection because the Prisoners were entitled to have Counsel assigned to them at the same time as they were furnished with a copy of the Indictment, to that they might have the assistance of Counsel upon it.

[The The Chief Justice:You are fighting, Mr. Ireland against what nobody supports.

Mr. Ireland:I say it is not a technical difficulty. It would be a substantial wrong.

The Chief Justice:We need not discuss the matter now it being decided.

Mr. Ireland:There was an ex parte statement made and decided on. I say it is not a technical objection.

The Chief Justice:Very well. Let the Prisoners be removed.