The chairman gave his casting vote for the Ayes, and the amendment was carried on the motion that £550 be granted for incidental expenses.

Mr. O'SHANASSY moved the omission of the item.

After a short discussion the item was omitted.

On the motion that the Chairman report progress,

Mr. MOLLISON trusted that greater diligence would be used in future in considering the estimates, for after all the time used they had advanced very little.

The House then resumed.

The Chairman reported progress, and asked leave to sit again on Tuesday (agreed to).

RETURNS.

The COLONIAL SECRETARY laid upon the table of the House a return in reply to a motion of his own, relative to the expense of public works.

ELECTIVE FRANCHISE ACT.

The COLONIAL SECRETARY also laid upon the table of the House a copy of the despatch relating to the Elective Franchise Act.

Mr. O'SHANASSY suggested that it be read.

The despatch was then read, amidst the most profound attention.

It will be found in full elsewhere.

The Council adjourned at twenty-five minutes past six o'clock, to three o'clock on Tuesday.

SUPREME COURT.

CRIMINAL SESSIONS.

Thursday, 22nd February, 1855.

THE STATE TRIALS.

At the re-assembling of the Court, at a quarter to three o'clock, *John Joseph* was again placed at the bar, and the indictment was about being read over, when

The Attorney-General rose and suggested that that matter need not then be gone into *in extenso*.

Mr. Chapman (Counsel for the accused) expressed his willingness to hear only the material parts of the indictment, and accordingly the Prothonotary complied with the wishes of the counsel.

Mr. Westwood having been chosen foreman of the jury,

The Attorney-General rose to address the jury, but was interrupted by his Honor, who hinted that that was the proper time for an objection to be taken on the part of the prisoner's counsel to the presence of witnesses.

The objection was accordingly taken, and the witnesses withdrew.

The Attorney-General then again rose and said that although the jury had been made aware of the charge from the indictment that had been read, yet he would briefly state what it was. He would, however, do so briefly, and without unnecessary verbiage. The first count charged the prisoner with having, in his own person, made war against the Queen, with intent to subvert the authorities; and the second count was a similar charge, to injure the Queen and to force her to change her counsellors. The third was a charge of having attempted to compass and deprive the Queen of her dignity in this colony; and the fourth count was only a version of the third. And there were certain acts which were termed overt, and which amounted to conspiracies and compassings. He would direct the particular attention of the jury to the second and third counts, for to them alone would it be necessary to adjust as they contained the main charge of having attempted to induce the Queen to change her counsellors—to make war on the Queen; those constructive being preceded by certain overt acts. It would not be requisite to tell the jury, that that was an exceedingly important question in which they were then engaged, for the offence with which the prisoner was charged was one of the most heinous in its nature, and was an offence which affected most materially the whole community. Although the Queen her Majesty was set forth in the indictment, the community was to consider that the Queen was merely to be taken in the light of a representation of the supreme authority in this country, and that when she was spoken of, a meaning was conveyed that the prisoner stood charged with having attempted to make war and war on the supreme authority, and intended to subvert order, law, and authority altogether. And as all parties were interested in the maintenance of order, so would they be interested in the result of that trial. The offence was a high treason, for it would be shown that the insurrection was accompanied and preceded by overt acts which had a public object. An outbreak or insurrection for a private object did not amount to treason, or anything like treason. It must be an insurrection accompanied by force; not merely the outbreak of a moment, but planned and organised by previous concert and conspiracies, and having a general object. The trial could not be long protracted, for if such conspiracies were allowed to continue, and men be allowed to organise conspiracies of that kind, there would be no saying how many wrong-headed men, acting with zeal—but misguided zeal—might be led on to the commission of the most dreadful crimes and outrages. When ordinary men had a desire to gain some political end, and redress a grievance, it was only necessary to secure popular support, and to seek to make an impression on the public mind. There was a wide distinction between that and the crime of treason, by an organisation in a preconcerted place, and a conspiracy and compassing in ranging together to gain a public object by violence. Design. There might be a sudden burst of popular excitement, and a desire to gain an object by legitimate means, but not an armed insurrection with a treasonable design. But he would then revert to the evidence which he intended to adduce in the jury with respect to that particular case. On the 29th November, a meeting was held at the gold-fields of Ballaarat, summoned by placards, in which the miners were invited to bring their licenses. The meeting was held, the chairman was elected, and numbers of persons attended, bringing licenses, or papers appearing to be licenses. Very excitable language was used at that meeting, and some persons said that it was no longer of any use attempting to get a redress of grievances, and that they must take up arms. The meeting was not, numerically, a large one; but it must be recollected that the language used was addressed principally to the diggers. At the conclusion of the harangue, the licenses were burnt, and some were torn up. On the following day, at the same place, men were again assembled, and a flag-post was erected, on which a flag was placed, subsequently, large numbers of men were armed, and all appeared to be marshalled under officers—exhibited all the appearances which soldiers would exhibit. Under that flag, after certain harangues from certain people, all those who were disposed to volunteer to fight "for their rights and liberties," as they termed it, were invited to go forward and kneel down, and swear to defend each other. The Jury would know what construction to put upon that. The men were afterwards sworn together. A certain number were told off, and sent to rescue a certain prisoner from custody. On the Thursday evening they met afterwards in the bush, for the purpose that again they met early on Friday morning, between four and five o'clock. But on an alarm being given that the military and police were coming up, they dispersed quickly, with an understanding that they were to meet again between ten and eleven o'clock. They met in accordance with those directions at eleven o'clock, and whilst there, one of the men who took an active part came up with a band of armed men, who appeared to be foreigners, and used military terms in giving them orders. He had a kind of sword in his hand, and pointed exultingly to his band, intimating that that was his contribution. He addressed them afterwards and said, substantially, that those who were not armed "must provide themselves with a few inches of steel, and that will be sufficient to pierce the tyrant's heart." The meeting was addressed afterwards by another person (evidently accustomed to that kind of meeting), who gave instructions how to act, and told them not to be afraid of the soldiers, for they were with them, but to mind and take aim at the officers. The same thing was repeated on Saturday, except that a number were taken away from this assemblage place at Bakery Hill, in the direction of a place where a stockade was to be erected. That stockade consisted of slabs supported by clay. The whole of the morning, or at least the greater part of it, was consumed in completing this work. It was shown and demonstrated by a plan, that the stockade was composed of about three-quarters of a parallelogram, leaving one end completely open, and included a number of tents. A number of men remained connected therewith, but others had retired for fear of countenancing such dangerous proceedings; but the principals that did remain continued to be drilled, and the most active measures were taken to complete the conspiracy, for squadrons were made up of men similarly armed. One squadron had pistols, others guns and rifles, and others had pikes. The men were practised in the use of arms and drilled to receive cavalry, and make the best in order of attack and defence under so short a notice. And in order to lose no opportunity that presented itself for increasing their efficiency, they impressed an old soldier, who had been at Waterloo, and he lived in the tent, not deeming it safe to leave it under those circumstances. The jury would see what kind of drilling it was for, and what it was intended, when they recollected the prior proceedings and the declarations that had been made. Pickets were placed around the stockade, and no one was allowed to come within its precincts. On the Sunday morning it was thought necessary to put a stop to these unlawful and dangerous proceedings, as order might be destroyed by the armed populace. On that morning, therefore, at daybreak, a party of soldiers and police, under the command of Captain Wise, of the 40th Regiment, marched against the stockade, accompanied by a magistrate, who intended to call on the conspirators to surrender. Before they reached it, but within the distance of discharegable weapons, a shot was fired suddenly, and afterwards a well-directed volley was poured on the troops from the stockade, and a soldier of the 12th Regiment was shot. After that, the attack was made by the soldiers, and the stockade was carried. Numbers were wounded on both sides, and when the stockade was taken the prisoner was seen distinctly. And he was seen armed also on the Thursday and the Friday, undergoing drill. In the stockade he had a double-barrelled gun, and was seen discharging it, immediately after which an officer was seen to fall. That officer died afterwards of his wounds. So impressed were the soldiers with the conviction that the prisoner had fired the shot that felled their officer that they rushed at the stockade, and he retreated into a tent within the stockade. He was seen within the stockade by four or five different parties. When apprehended there and then, he resisted violently, but remained in custody, and was then before the jury. There could be no reasonable doubt that he could be justly charged with the crime of high treason, for he had fired on the Queen's troops without waiting to ask for what they had gone to the stockade. And he had also sworn the oath, and been drilled unlawfully. These were facts that would be proved distinctly, as a number of witnesses were there at the time. What would have been ultimately done by the conspirators cannot be divined, but as their object was a general and a public one, there could be no doubt that their designs were dangerous. He (the Attorney-General) would have no opportunity of again addressing the jury, but he would leave the case in their hands with perfect confidence that they would give a patient hearing to both sides, and that they would balance the scales equally between the public and the prisoner, and give a verdict accordingly.

Henry Goodenough, being then called, deposed that he was a trooper, and was stationed at Ballaarat in November. Remembered being present at a meeting held on the 29th at Bakery Hill. There were placards calling that meeting. There were about 1500 persons, as near as he could guess. There was a platform erected. Heard Holly oak, Kennedy, Hayes, and others address the meeting. Could tell the substance of what Hayes said. He said he could tell the result of the interview with the Governor about Bentley's affair. He made but a very short speech afterwards. He continued to say that it was of no use to petition the Governor any longer, and it was necessary to take the law into their own hands, he for one would stand up for his rights and liberties. The meeting broke up then. Volunteers were called for, to take up arms in their defence.

Mr. Chapman inquired if the prisoner at the bar could have been identified with those proceedings. Although there might have been treasonable intentions, his office could not have commenced at that stage. Unless it could be proved that he was cognizant, the evidence would be supererogatory.

His Honor, after an observation had been made by the Attorney-General, who cited the case of Frost, said there must be a beginning somewhere, and therefore he would not be warranted in stopping the evidence.

Witness continued his evidence: That was called out by a man named Lawler. There were about 500 who offered themselves. I saw a flag on that occasion. Cannot swear to the one now produced. The flag was hoisted against the platform. I saw no papers or licenses destroyed there. After the volunteers were enrolled the meeting broke up. The volunteers came forward and stood at muster. Some had firearms,—pistols. There was to be a meeting next day at the same place. I attended it. The flag was flying, but there was no platform then. The flag had the same appearance as before. On that Thursday I only saw that meeting. There was the man Lawler mounted on the stump of a tree. Hayes was there, armed with a double-barrelled gun, standing at the side. There were volunteers called for, and many offered, and drilling was gone on with that afternoon. There were commanders there, dressed the same as the others, but armed different. I saw Beattie and Raffaelo there. That meeting broke up, and it was announced from the stump that there would be another meeting next morning (Friday). I saw many kneel down and swear to defend their rights. Lawler said those who did not join they were to leave the meeting, and at the same time called them cowards. Two or three hundred went away, but five hundred remained, and knelt down in a ring, and Lawler knelt down also, and said "We all swear to stand and fight and defend each other. They then all rose, and were drilled. Their hats were off while kneeling down. Next day they were told to bring all their arms to see what could be mustered. I was there on Friday morning. There were eighty or one hundred collected; and when I got up I saw them moving away as the military were coming up. I attended another meeting at the same place. All the men were there whom I have named already. There were about one thousand present. Lawler drafted them out in different bodies. In each body there were eighty or one hundred. Some were over one hundred. They were drafted out for drill. Those who had pistols, or guns, or pikes, were kept distinct with themselves. The pike produced is like those I saw there. The flag was taken down. They were drilled and put through their facings. No one was admitted into these squads unless they were armed. After the drilling, Lawler announced they should march to the Eureka, and drill there. The flag was carried on a pole. About this time, Raffaelo marched in with a body of twenty-five armed men. The mob was cleared, and he marched his men in, and drew them up. They were foreigners, armed with swords or long knives. Raffaelo had something like a sword, and spoke to Lawler, who then announced he would have the drillings at the Eureka. I heard Raffaelo say, after Lawler spoke, "Gentlemen soldiers, those who cannot procure pistols, must arm themselves with a piece of steel, six inches long, attached to a pole, and that will pierce the tyrant's heart." They then drew up in files, with the flag at the head, and marched to the Eureka, where they drilled till two o'clock in the afternoon. Lawler stood up and adjourned the meeting till eight o'clock. He also said he would not announce any proceedings that would take place, as there might be spies from the Government. The meeting was erected afterwards at the same place, and the flag was placed on the pole. I remained at the meeting till half past ten o'clock. I did not attend a third time after. I saw Captain Evans on the Thursday. Lawler told them that if attacked by the soldiers they were to fight like men, and pick out the officers, for then the soldiers would not fire on them; but if they did not beat them, a retreat was to be made to Canadian Gully, where they could fight again. Subsequently Lawler called on volunteers to go and look for fire-arms. About fifty men came forward, and offered themselves. He directed them to procure them by going to shooting-galleries and stores and demand them on a promise that the Reform League would afterwards pay for them. If they were not given up by fair means, out measures were to be adopted. On Saturday I went up to on the Eureka, and saw a stockade erected, between eleven and twelve o'clock on the Saturday night. I saw a quantity of slabs fenced round. I returned back, and returned on Sunday. I did not go to the stockade on Saturday, as I saw many people inside.

Cross-examined: The first meeting was held on the Wednesday, 29th November. There were about 1500 people there. I only gave a rough guess. There was a platform then erected, consisting of a few boards. There was something about licenses spoken of, but I did not hear the words. I was dressed as a digger, and went there by order of Mr. Culloch, subinspector. There was something said about the licenses, but I cannot remember the words. Lawler called for volunteers to look for firearms. I don't recollect what he said about licenses. He spoke for ten minutes. It was not near enough to hear him say more than I have sworn to. The flag hoisted was something like the one produced. There are flags flying at different stores. It was always usual. I have seen two hundred flags flying there. There was no store similar to those produced in Court, and also a forge.

Cross-examined: I first saw the drilling the day before we attacked the stockade. It was at the foot of Bakery Hill, about five hundred yards from the Camp. The prisoner was not armed when he was taken in the guard tent, but arms were piled around. I did not see the prisoner searched. He was given in charge to me about 4 o'clock. I do not know when the stockade was erected. I was on the gold field about ten months. Cannot say whether the stockade was erected a week before the attack. I cannot say whether the slabs outside were erected before the stockade or after. The stockade was on the Eureka, about three-quarters of a mile from the Eureka camp, where I was stationed.

The court soon after adjourned to the following day.

Friday, 23rd February, 1855.

THE STATE TRIALS.

The court resumed its sittings at ten o'clock.

The Attorney-General and Solicitor-General prosecuted for the Crown.

The trial of *John Josephs* was then proceeded with, Mr. Chapman and Mr. Aspinall appearing for the accused.

Patrick O'Keefe sworn: I am a private in the 40th. I was of the party who went out on the morning of the 3rd of December. I went inside the stockade. I saw the prisoner inside. I was a few yards from him when I saw him discharge one barrel of a double-barrelled gun. I saw a shot fired from it, and saw some of our men fall. Then we fired a volley afterwards. We did not fire till then. I saw Capt. Wise fall. We fought as well as we could till we took the stockade. There were shots fired out of the tents after we got into the stockade. I knew there were bullets, for I heard them whistle. I saw the prisoner that day in the stockade, and I ordered two soldiers to take and put him along with the other prisoners. I recollect Captain Thomas saying, "Come on, 40th," and the men rushed at the stockade and took it.

Cross-examined: We were about 300 yards from the stockade when the shots were fired. It was after the volley that I saw several of our men down. I cannot swear Captain Wise fell at the first volley. When he fell, we were advancing to the stockade. I first saw the prisoner hunted out from a tent. From the first firing, till we got possession of the stockade, about ten minutes elapsed. I saw no one firing that I should know again.

Charles Jefferies Carter, examined: I am a sub-inspector of police, was stationed at Ballaarat on the 3rd of December. I remember that day. Was at the camp. Saw a number of men coming down towards the camp on the previous day. They came and performed sundry military evolutions within musket range and retired. Should think there were two or three hundred. Could not see if they were armed. Saw a number of men on Bakery-hill also. Could not see if they were drilling. They had a flag hoisted on Bakery-hill on Thursday and Friday, the 30th November and 1st December. I was in charge of the police on Sunday morning, 3rd December. I was in the stockade after it was taken. The firing had not ceased when I entered. I saw shots fired. I was in the guard tent. When I went in they said "For God's sake, stay; we back under," or words of that kind. I gave orders to the police to take two men into custody who were inside. The prisoner was one of them; I am certain when I entered there were seventeen lying dead and wounded. The only ones unwounded were the prisoner and another named Manning. The stockade was built of slabs forming a parallelogram, and enclosing a large space. I could not say if the whole ground were enclosed. In the tents were weapons similar to those produced in Court, and also a forge.

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Patrick Synatt, called and examined: I am a private in the 40th regiment. In November, I was stationed at Ballaarat. I went out on Sunday morning, 3rd December. We amounted to about 304. We proceeded towards the Eureka. It was not a straight course from the Camp. The first thing I heard was a gun fired in the direction of the Black Hill, at the rear of the Eureka stockade. In two minutes afterwards there was another gun discharged. A horn or bugle was sounded in the stockade. Saw many men running to arms, and placing themselves behind the stockade. The troops then advanced, and a volley was fired at them from the stockade. We were about 200 yards from it. Immediately after the volley was fired, I saw a man of the 12th wounded on the ground, and I know he died on the following Tuesday. Our troops advanced and fired, and I could see a great many men running away from the stockade. The volley from the stockade was fired before our bugle sounded. Day was just breaking. We then fired on the stockade, and got an order to fix bayonets and advance on the stockade and take it, which we accordingly did. The men in the stockade had replied to our fire. We took the stockade in about fifteen minutes after the first shot. In the stockade I saw the prisoner, whom I saw firing, and saw Captain Wise fall instantly.

Mr. Chapman submitted that an individual bullet could not be sworn to.

His Honor said, that the direction in which the gun was pointed was an important point.

Evidence continued: I afterwards saw the prisoner standing at a tent within the stockade, with a pike in his hand. I saw also, Manning, Fenwick, and Raphelo. The latter was running after a young man named Gore, a private of the 40th, with a pike in his hand. I saw no part of the fence unenclosed.

Cross-examined: There were 164 of us told off for the camp; the police marched in the rear of the soldiers. Capt. Wise was of the 40th. He had two wounds. I never saw the prisoner before that occasion. There were a great many black men in the stockade. The prisoner was armed with a double-barrelled gun. A shot was fired in rear of the stockade at a considerable distance. The stockade was fenced in by slabs of wood, with a trench around. Musketry would not penetrate it, although it was not a very strong fence. It was about three feet from the ground, and the soldiers jumped over it. The troops were dressed lightly.

Sergeant Hagerty was next called: I am a sergeant in the 40th Regiment. I recollect being at the attack on the stockade. I saw a shot fired from it, and saw some of our men fall. Then we fired a volley afterwards. We did not fire till then. I saw Capt. Wise fall. We fought as well as we could till we took the stockade. There were shots fired out of the tents after we got into the stockade. I knew there were bullets, for I heard them whistle. I saw the prisoner that day in the stockade, and I ordered two soldiers to take and put him along with the other prisoners. I recollect Captain Thomas saying, "Come on, 40th," and the men rushed at the stockade and took it.

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December last. I know Bakery Hill perfectly. There was a large meeting held the 29th of November. I saw bodies of armed men moving about like soldiers being drilled. I went to the stockade with the party on Sunday morning as a magistrate. I went to call on them to disperse. The rioters fired a volley at us as we came to them. No shots were fired by the police or military previous to the shots being fired from the stockade. I believe one soldier was wounded in the first volley.

Cross-examined: The police went out for the express purpose of serving the preamble to the Thursday previous. After the troops had taken the stockade there were a few shots fired—apparently stray shots proceeding from both parties.

George Webster: I was lately in the service of the Government. I attended a public meeting on Wednesday, at which Hayes, one of the prisoners charged, presided. Afterwards several licenses were burnt and destroyed. A resolution was passed at that meeting, that no more licenses should be taken out. Armed parties from the disaffected drove the peaceable diggers away, and would not let them work. Digging was suspended. If any digger went to his hole he was driven away.

The witness here detailed the attack on the stockade much the same as the other witnesses had done, saying there were so many men killed and wounded at the attack, that the attacking party wavered a little. Poor Captain Wise then led the way over the stockade, and was shot down.

Cross-examined: It took about ten minutes to collect the prisoners together. I think 125 prisoners were taken, many as they were running away from the stockade, and some few from tents outside.

One Allen was called, and examined by the Solicitor-General as follows:—

"What is your christian name?"

Answer.—Yes, that is the prisoner.

The Solicitor-General: What is your name?

Answer: No, I have no pension at all. (Laughter.) The witness here explained he was very deaf. He told his story in his own way, saying he was a Waterloo man; that the insurgents were an awkward squad, and he told them how to prepare to receive cavalry. Some one who seemed to be giving the night orders put a pike in his hand, and said he must join. He said he would not handle such a —— ugly weapon. They said he must join. Witness asked what their pay would give. They said, nothing. He thought £50 was little enough for an old Waterloo man. They then took him into custody, and marched him off with three pikes to his back, and put sentries over him. The police afterwards kindly burnt his tent down, and he saved all but the iron. His store had been on the ground for some months before.

The prisoner *Raphaelo* was here put in the dock, and two or three mounted police who had been in charge of him proceeded to take up the man they spoke of as Raphaelo, whom they had seen in the stockade the same time as Joseph, the prisoner on trial.

Raphaelo was then remanded again. This was the case for the Crown as against Josephs.

Mr. Chapman rose and made objections as to the indictment. In the first count it set forth the prisoner, among others, made war against the Queen and her authority, but made out no overt act, which was necessary. He was aware there was a decision of Mr. Justice Foster contradicting the necessity for this; but it had never received judicial sanction before a full court. This decision went to show that no overt act need be proved, but the learned counsel maintained that an overt act ought to be shown substantiated by at least two witnesses.

The Chief Justice thought this was rather a ground of demurrer. Mr. Chapman said there was danger in demurring, as it would be tantamount to admitting the truth of the indictment and its facts. He also objected to the 3rd and 4th counts; the information was framed on the 36th year of King George III., chapter 7, which was temporary, but afterwards made permanent, by the 57th Geo. III., chapter 6. These acts, had, however, been repealed by the 11th and 12th of Victoria, chapter 12. The Attorney-General had taken the former acts as applicable to this colony, which, in point of fact, they were not; as the last-named act had repealed the two former ones, not only in England, but all over the world—in all places of her Majesty's dominions; and the learned gentleman's argument proceeded to show the counts in the indictment were not framed according to the latter act.

The Attorney-General contended he was preamble to the latter act on which he relied. It could never for one moment be supposed that an act by implication would take away the punishment for all high treason, outside the United Kingdom. The levying of war, or the compassing for war, were ominous in the whole matter against the prisoner. In fact, it had been inferred alone that licenses were burnt, therefore, up to Wednesday, the meetings were perfectly legal. What took place next? If the magistrates had done their duty firmly, were left under the former acts, as the terms of the latter were strictly confined to the United Kingdom.

The Attorney-General said the exception named by Mr. Chapman had never been taken in Frost's or other State trials.

Mr. Chapman thought that the point, although new, did not prevent his raising it. Lord Coke had said that a precedent could never be taken as parcel of the law, but only as a key to un ock it. It could never be taken to over-rule the act itself.

Mr. Aspinall followed on the same side, and contended that the Act 11th and 12th Victoria, chap. 12, sec. 3, applied directly to the case. It provided that prisoners were charged; as to any person committing it "within the United Kingdom or without," this colony, if not within the United Kingdom, was without, and hence that act must be taken before him.

The Chief Justice thought that such objections, would be taken by learned counsel at home; this however, did not invalidate Mr. Chapman's objection, which might be law and true also. He would not, at first objection, decide it ought to have been taken by way of demurrer; the third and fourth objections were more substantial—the words used were "within or without the United Kingdom." He thought the Judges of both the Queen's Bench and Exchequer had, at one time or other, given their minds to the construction of the word "without," which simply meant that if an accused party committed high treason without the realm of the United Kingdom he could be tried for the offence in it, and be punished at home. Taking it in this view, this objection would also fall to the ground. Mr. Chapman's objection was, that if a person was tried here for the offence, he would be tried in a colony to which he did not owe allegiance.

Mr. Chapman said he would bow to the authority of the court in the first objection, but he would like to see the second and third argued before the full court, as the objection was taken before a single judge. He was not conversant with the practice of criminal law here, as he was a stranger, but thought it might be argued before the full court, like before Sir Redmond Barry. He would respectfully ask to take the opinion of the court as to whether there was anything substantial in his objections.

The Attorney General said he would sooner the point was reserved at once, rather than his Honor would subject himself to a rehearing.

The point was then reserved as to the third and fourth counts, for discussion in Banco.

The court was reopened at two o'clock; and silence having been commanded,

Mr. Chapman rose to address the jury in behalf of the prisoner.

He said it became his duty, and a very anxious one it was he could assure them, to address them in the case which had been submitted to them by the law officers of the Crown, who had endeavored to prove that the prisoner was guilty of the charge of high treason. He agreed entirely with the character which had been given to that offence by his learned friend the Attorney-General. There was in fact no offence known in law of so grave and serious a character as that which the prisoner stood charged, not merely on account of its technical character, as tending to weaken the Queen's authority, with which the majority of her subjects were perfectly acquainted; it was not, in fact, that because the intent was to subvert authority that the offence was a grave one, but it was on account of the awful consequences that might arise to a large portion of the Queen's subjects from the effect of an insurrection of any extent happening in the country during its progress. It would be admitted, that in that very case a large number of her Majesty's subjects had lost their lives. He believed that in reality the number amounted to more than had been usually stated in the accounts published in the public papers. The loss of the troops had been considerable, for several had been wounded. And, unfortunately, (he could not help regarding it as else than unfortunate) an officer of very high character, a gentleman of very great merit, had lost his life in consequence of the disturbances that took place. It was, therefore, as he said before, not merely on account of the technical offence that high treason is deemed one of the highest crimes, but it is also because of the consequences, the distressing consequences, that may ensue to a large portion of her Majesty's subjects, as had ensued in that case. It would, therefore, become incumbent on all persons who have any responsibilities given them in cases of that description, to divest their minds of the circumstances which came to their minds out of doors. He felt quite sure that the jury was fully impressed with the necessity of attending simply to the evidence which had been brought before them. That, they were aware, was the duties of juries as a general rule; and he merely mentioned it in order to keep the matter before their mind, because at the time at which those transactions took place, from the latter end of November to the latter part of December, the newspapers were filled with various accounts, more or less exaggerated in their character—no doubt, some of them correct—but mixed up with matters of fact, some of which were proved that day to be surrounded with great number of aggravating circumstances, none of which had appeared until then. He did not mean to say that any one could wholly divest their minds of what they had priorly read and heard, but at the same time he did not expect that the evidence submitted then would be duly weighed and considered. A great responsibility rested on not only the jury but likewise on the judge himself, and therefore it was the more necessary that the evidence should be carefully weighed and nothing else. He had full confidence that, as regarded the case, the gentlemen of the jury would exclude from their minds every impression established there previous to their entering the box, and would, as far as the prisoner was concerned, attend only to the evidence which had been adduced that day. The transaction they saw was of a very peculiar nature. The prisoner was arraigned on four distinct charges. He would not trouble them with the technical terms of the indictment, but would merely remind them of the four different counts. The two first were charges for the actual levying of war, and the two last were not charges of the actual levying of war, but were charges of compassing and imagining to levy war by the prisoner; and besides the principal charges there was an act of overt purpose named in these counts. In the first the purpose was to deprive her Majesty of her royal title and authority in this colony; and in the second count to induce or compel her to change her measures; and therefore it would be seen there were two distinct charges: one for levying war, and one for compassing to levy war to deprive her Majesty of her royal title and to make her change her measures. Now he apprehended, and he hoped to show, that none of those intentions had been proved. He would not then dwell on that matter, but would advert to the preliminary circumstances of levying war, or of compassing to levy war. Now, what was the character of the evidence, as to compassing or levying war, against this prisoner at the bar? A great deal of evidence had been given by Goodenough, in the first instance, as to the general character of the meetings of the three days, from Thursday to Saturday evening. Goodenough had described the manner in which the meeting took place on Bakery Hill, but he did not speak as to having seen the prisoner there. One of the important points, however, was that a flag had been hoisted. Now, he would direct the attention of the jury to the character of that flag. Evidence had been adduced that was satisfactory on that point. One witness had said that it was a peculiar flag. Now, it so happened that he (Mr. Chapman) knew that flag. It was the very flag that was hoisted and produced when the Anti-transportation League paid a visit to the colony. And, if he mistook not, his learned friend the Attorney-General, greatly to his credit, was also an opponent of transportation to those colonies, and acted under that very banner. He could not positively affirm that it was the very identical piece of bunting displayed then, but it was a flag of the same character, for it was an emblem of the Southern Cross. Whether there was anything more particularly concerned with that flag on the occasion was not to be inferred then. He would, however, put that piece of physical evidence before the jury, although it could have, perhaps, but a lively recollection of the time to which he referred—the anti-transportation days. And if that fact be regarded as an evidence of intent to depose her Majesty, he could only say that his learned friend and himself, as anti-transportationists, ought to have been included in the indictment. Evidence had been given that the flying of flags was a practice all over those colonies on the part of auctioneers, storekeepers, tradesmen, and merchants, at their stores; but, although that had been proved to a great extent at Ballaarat. Even in town flags were to be seen hoisted over the stores of auctioneers and other parties. It would not be asserted in any large town in Europe, but in Australia it was a common practice, and more particularly with parties at the diggings, for one of the witnesses had said that 200 were hoisted there; and if inference was to be drawn from the hoisting of a flag, where there were 200 persons, it would be an act of unfairness, for every one has a right to hoist a flag, and each may have a special meaning attached to those flags, in fact, no meaning ought to be drawn from the simple act of a flag being hoisted on the occasion referred to. Those parties may have hoisted it for the same reasons as the anti-transportationists hoisted it,—as an indication of meeting for the discussion and the redress of grievances. He was not supporting the flag, and was then used as an anti-license flag. However, evidence had been put in that there was a meeting on the Wednesday. A placard had been produced to show the object of the meeting, but the difference was not appreciably justly based. It was a public meeting, called to consider the question of the expediency of licenses, and a determination was expressed to resist the law as regarded license-hunting from Thursday to Saturday evening. Goodenough had described the manner in which the meeting took place on Bakery Hill, but he did not speak as to having seen the prisoner there. One of the important points, however, was that a flag had been hoisted. Now, he would direct the attention of the jury to the character of that flag. Evidence had been adduced that was satisfactory on that point. One witness had said that it was a peculiar flag. Now, it so happened that he (Mr. Chapman) knew that flag. It was the very flag that was hoisted and produced when the Anti-transportation League paid a visit to the colony. 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