

The Shearers' Strike

1891 - 1991



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A CELEBRATION

and the Faculty of Arts
University of Central Queensland

Edited by Rick Palmer



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BUSHMEN'S OFFICIAL PROCLAMATION

The following official proclamation was issued to the members of the Queensland Shearers' Union and the Queensland Labourers' Union:

Fellow unionists,

An unprovoked and unjustifiable attack has been made upon the above unions by the squatters' associations. It therefore becomes our duty to take such action as will best conserve our interests and frustrate the attempts of organised Capitalism to crush unionism and reduce wages in this district.

The terms which the capitalists are attempting to enforce are known to you all. The agreements, which apply to both shearers and shed hands, deny us the right to resist any insidious undermining of our unions, even though such undermining should take the form of the introduction of that "cheap and reliable" labour which so many squatters seem to prefer to their own flesh and blood. In other ways the squatter - whose treatment of the bushman first brought the bush unions into resistance - is made the sole arbiter of the working conditions of those whom Capitalism can force to sign away their rights as men. Even the Eight Hour Day is not conserved. Even the wages which have been so hardly earned may be forfeited without appeal to law under this unrighteous agreement, particularly at the option of the squatter. On top of this, it is demanded that shearers pay for combs and cutters broken in the squatters' "labour saving machinery" and that labourers submit to reductions on the scale of wages established for years past, the reductions in some items being as high as 33 per cent.

So sweeping and unreasonable are these attempted changes that some importance has been attached to a malicious statement which asserts that the squatters' associations submitted their proposals to the annual meetings of these unions. It has seemed absurd that such an attack should be made without even the appearance of consulting us beforehand. We have to inform you, therefore, that our unions have been insultingly ignored in this matter, that no official information concerning agreements or reductions has been received from the squatters and that the first heard of the affair was from advertisements in the newspapers and from the managers of sheds at which our members expected to start work in due course. It is very evident from the whole circumstances that the squatters' intention is to endeavour to wipe unionism out of existence and to make a bold bid for the unqualified mastership of the wage earners of the District. They evidently imagine that because our comrades, the maritime men, went down before the shipping companies that therefore the bush workers must go down before the squatting companies.

Fellow unionists! We call upon you all, individually and unitedly, to pull the unions through this fight let the cost be what it may. You all know what the squatter was and what he is and what we shall be if we let him get the whip hand over us. Here in the bush we have no voice in the making of the laws and no share in the Government, we are disfranchised and denied our rights as citizens, we have only our unions to which we can look for justice and if our unions go down we are totally enslaved.

WHAT'S A FORTUNE? A SHADOW

What's a fortune? A shadow
That flies as we seek it,
Or comes when we give up
The chase in despair;
The word changing oft-time
The moment we speak it-
Changing from slavery
To union, I declare.
(Rather rough versifying, that
last.)

So never give way
Though bad luck may be handy,
There is something in store
For each workman who tries;
Don't drown all your grief
In those pubs and those shanties,
But join our true union
And then you'll be wise.

Fellow unionists, the squatters expect the Queensland bush unions will fight hard but they do not know how hard. We call upon you to show them, not underestimating the difficulties that confront us or the power of organised Capitalism that backs the squatters, but relying with confidence upon the devotion of the bushmen of Queensland to their unions and to the Labour cause. For it is not ourselves alone we fight for - though we ourselves have much at stake. The Queensland bush is to be a battleground whereon is to be decided whether Capitalism can crush Australian unionism altogether into the dust. Remembering this we ask each one and all together to resolve come what may we will not be beaten, that when the battle is over our unions shall still live. We have a right to resolve this, for disfranchised though we are, we are the men whose labour mainly upholds Queensland. It is our toil that brings rich dividends to banks and fat incomes to squatters and profitable trade to great cities. Yet we have no votes by which we can secure laws to protect us even in our earnings and the squatting companies dream of dragooning us into submission with hordes of police-protected blacklegs when we refuse to work under any conditions which the profit-mongers who fleece us choose to draw up in some bank-parlour.

Fellow unionists, our cause is just as every man knows. We have found the verbal agreement works more smoothly and satisfactorily than any other. It was last year worked by the great majority of stations in Queensland without complaint or cause for complaint. The Darling Downs was satisfactorily worked under an agreement which we are willing to work under there for the ensuing year also. The wages of the QLU scale are not in excess of the last three years' rates. If the squatters had meant fairly they would have asked us to a conference to consider any points they wished to improve or any better conditions they desired to make, in exactly the same way we asked them to meet us when our unions were first formed. That they did not do so indicates to us that they did not want a conference but deliberately planned an attack on us. Nevertheless, we have requested the General Executive ALF to ask for an open conference from the Federated Employers' Union and we are prepared to show at such a conference, if it agreed to by the squatters, that these unions desire nothing but what is just and right.

Should a conference be held we still hope that the struggle may be averted, but should an unprovoked fight still be forced upon us we consider that those who force it should help pay for it, particularly as many of our bitterest enemies are sheltering themselves behind earlier sheds, expecting that the battle will be decided one way or another before it reaches them. The Central District Council has therefore unanimously resolved:

"That any employer or member of the Pastoralists' Association in the Colony of Queensland who does not before the first of March accept through this office the agreements of the Queensland Shearers' Union and the scale of wages of the Queensland Labourers' Union, shall pay for every week or portion of a week after that date an extra sixpence per hundred for shearing, wages of the QLU to be increased pro rata."

Those squatters who have bound themselves by bond to break down our scale of wages, our agreements and our organisation can thank nobody but themselves if they find it expensive to get work done by competent union hands, when the blacklegs they rely on do not come to time. If they

Our union is strong
And true to its members,
In case of oppression
It will no man despise;
It helps poor bush wand'ers
In getting fair wages
At droving and woolsheds
And stations likewise.

want conference, we still offer it to them, but if they want fight, we offer that also.

Fellow unionists! From time to time it may be again necessary to address you but for the present there is only this to add: If the worst comes to the worst we can always ride down to Brisbane and ask the Government that swamps in surplus labour to help Capitalism degrade wage-earners what it is going to do with 10 000 able-bodied bushmen unemployed because they hung out for a fair thing.

By order of the Central DC: WJ Bennett, W Fothergill, JR Riseley (Strike Committee), M Murphy, AJ Brown

Central DC Office, Barcaldine, February 1, 1891.

This proclamation was published in "The Worker" on 7 February 1891.



So roll up at once
To Taylor the Native*
You'll own you'll have hit
On a pleasant surprise.
He'll talk to you kindly
And issue you tickets
To protect you from slavery
Until slavery dies.

JR, Swagman, Tambo

* The "Native" was the bush
nickname for George Taylor, the
CD organiser, arrested at
Clermont by the capitalistic
Government.

Poem published in "The Worker",
18 April 1891.

THE 1891 SHEARERS' STRIKE LEADERS: RAILROADED?

*By Professor Geoffrey Bolton, Professor of Australian History at the University of Queensland. **

For a university professor such as myself it is a chastening thought that many of the most seminal works in Australian history have been written by scholars who lacked the protection of tenure at a university, with the concomitant advantages of a good library, secretarial assistance, and privileged access to whatever research funds might be available. One such historian, now unjustly neglected, was Brian Fitzpatrick, and to him we should turn for a version of the classic interpretation of the 1891 Shearers' Strike as it has been recorded in most texts. Fitzpatrick places the dispute in the context of a general economic recession in the early 1890s, during which employers found their profits dwindling and sought in turn to cut their workers' wages. Of 1891 he writes:

"The intercolonial pastoralists' organization, having broken the union resistance in the south-eastern colonies, turned north with the New Year...and non-union labour was shipped from the southern colonies to the Central district of Queensland, for the early shearing, only a few weeks after the New Year. Permanent artillerymen armed with field pieces and Gattling guns, mounted infantry of the Defence Force and newly-uniformed young men of the Volunteer Force, besides armed police, and non-union shearers armed and warranted as special constables, were sent to the Central districts. The unionists did their best to picket the stations against the free labour, but their efforts were usually of little avail, and, refusing to acknowledge 'freedom of contract' and accept work on the employers' enforced conditions, they massed in 21 camps, one of the chief of which, at Barcaldine, contained more than 1 000 men, some of them armed. In March, the National Australasian Convention at Sydney was unanimously adopting a draft of the federal union for the Australian colonies under the Crown, to be styled the Commonwealth of Australia. But the men at Barcaldine flew the blue flag, the flag of the revolted miners at Eureka in 1854, sang songs composed by Henry Lawson and EJ Brady, and remained on strike until June. But they, too, had in the end to accept 'freedom of contract' and defeat." (1)

Here we have the tradition in its essence. The conflict is precipitated by outside economic forces; the men resist, taking on themselves the radical nationalist tradition which for many Australians is the authentic expression of our identity. Like most Australian heroes - Ned Kelly, the Anzacs at Gallipoli - they go down in defeat, but their ideals live on and are resurrected in the Labour movement, and, more doubtfully, in the Australian Labor Party. This version was so much taken for granted, and seemed an acceptable part of our historical orthodoxy, that it was not until 1989 that a young historian, Stuart Svensen, thought it worth while writing a book devoted entirely to what he called "*The Shearers' War*" (2). We should not blame earlier historians too much for their failure to research closer into the events of 1891. Until the 1960s Queensland lagged deplorably behind the rest of Australia in its provision of archival resources for the preservation of the state's historical records. Unique files of important country newspapers, as I know from my own experience,

Extract from *The Morning Bulletin* (Rockhampton), 15 May 1891

THE SHEARING STRIKE

Boycotting a Race Meeting

"Information has been received that the free labourers for Cambridge Downs have reached their destination in safety. "The annual race meeting held at Hughenden yesterday was boycotted by the unionists, who, to the number of about 500, marched through the town while the races were in progress. "The large body of unionists, who left Barcaldine a day or two ago starting northwards, reached Aramac yesterday afternoon.

were piled up in converted stables behind Parliament House, untended and unsorted, at the risk of vermin, if not the chance of fire. Things have improved now, and it was only a matter of time before a historian turned to the shearers' strike; but Svensen when he researched and wrote this book was mostly unemployed, which, as he sardonically observes, meant that he was able to devote his energy to the project without having to worry about attending classes, preparing assignments, and studying for exams; all much in the Fitzpatrick tradition.

Svensen's account endorses the view of the shearers as working-class heroes struggling against the might of capitalism and the capitalist state, but he introduces some interesting new arguments. He doubts whether the graziers were much affected by falling prices, and sees the picture of the dispute as deliberately provoked by absentee owners intolerant of working-class assertiveness. Where some have accepted that the shearers constituted at least a potential challenge to government authority, Svensen represents them as behaving with admirable restraint against repeated provocation by the pastoralists and the Queensland Government. And when it comes to the trial of the 14 men charged with conspiracy at the Rockhampton sessions in May 1891 he spares no device to convince his reader of the one-sided nature of the proceedings. Mr Justice Harding is a grotesque martinet: "he lived the lifestyle of millionaire squatter in his Rosalie mansion, and he would not normally have been seen dead in a place like Rockhampton", but on the other hand "If he had not chosen the law as a career, Harding would probably have made a good living as a stand-up comic, although the unionist would find little in his circus-like antics to smile about" (3). It comes as no surprise at the end of the trial, when the jury failed to agree and spent two days and nights locked in the jury room "it became apparent to the members of the jury that they were in the grip of a mad man who was not going to let them go until they had given the answer he wanted" (4). And the sentences of imprisonment duly follow.

They were followed all the way by a strong patrol.

"A patrol sent out from Blackall reported yesterday that about 100 unionists were approaching the town. It is believed these men are travelling towards Tambo, where several grazing farmers intend to start shearing shortly. The force at present in Blackall is only sufficient for the protection of the gaol, and accordingly a strong party of the Moreton Mounted Infantry has left Tambo for Blackall, and they will follow up the unionists just arrived there, wherever they may start for next.

"Of the Moreton Mounted Infantry recently stationed in Clermont, one half are now in the Tambo district, and the other half at Charleville."

Now although I am going to disagree with Svensen at a number of points, I don't wish to be seen as detracting from his achievement. He has researched thoroughly and enterprisingly where nobody has researched before, and he has produced a lively and well argued narrative which must be taken seriously by anyone who wishes to understand an important period not merely for Queensland, but for Australia. But if we turn to the work of another recent historian, again one working outside the university support system - Ruth Kerr, author of the recently-published history of the Queensland Graziers' Association - we find a radically different account of the strike, so that at times the reader would not imagine the same series of events were being described. Where Svensen plays down the accusations of arson and violence against the strikers - only five woolsheds burnt down, and of these only one certainly due to striker activity; the others may have gone up in flames in order to claim the insurance - Kerr takes seriously many of the stories reported to the authorities. The Clermont riot, to Svensen probably a manufactured incident, becomes for Kerr an "outrageous confrontation" resulting in "an ugly tension". Kerr recounts that "...near Cloncurry a Chinaman, Ah Sim, reported that a dozen men with packhorse rode up to the Chinese gardens one Saturday night and carried off three tons of vegetables for the unionists"; Svensen merely says "unionists allegedly raided a Chinese

vegetable garden near Cloncurry, but no arrests were made" (5). Sometimes, it is hard to believe that both historians are describing the same events; even though both worked through the relevant archives.

In one sense it does not matter whether the striking shearers were the rough, good-humoured bush democrats of Svensen's account or the destructive militants described by Kerr. The essential point is how seriously the government of the day regarded their activities. Griffith and McIlwraith, the two strong men of the ruling coalition, were not deterred from attending the National Australasian Convention in Sydney and, although Griffith kept regularly in contact with the situation by telegram, he evidently did not consider the risk of civil war serious enough to call him back from his task of nation-building for the future. But Horace Tozer, the Home Secretary and for several weeks Acting Premier, appears to have been greatly perturbed at the confrontation. Consequently, the written official records which have come down to posterity bear the stamp of Tozer's alarm, and thus give credence to the view that in the autumn of 1891 Queensland trembled on the brink of civil war. Now, although Tozer handled the administrative detail of deploying the police and military with tolerable competence, we might not wish to take his judgement too seriously. He was, after all, the man who some years later, speaking on a bill to regulate the supply of electricity in Queensland, could argue that electricity needed control like dynamite or gunpowder: "For really nobody knows yet the particular danger that may lurk in this new factor of our daily lives ... this electricity flows through the ground from one place to another and if uncontrolled will carry away the iron and water pipes" (6). Fearful of the unfamiliar, he was apt to exaggerate dangers. We should be careful of accepting Tozer as our main source for the Queensland Government's intentions.

Some indication of the government's intentions had been gauged from the fact it was Mr Justice Harding who sat on the bench at Rockhampton when the shearers came to trial in April and May 1891. Svensen asserts that "he had almost certainly been specially selected by the government for the task of obtaining convictions against the unionists" (7). But it did not lie with the government to determine the allocation of duties within the Queensland judiciary. That responsibility remained with the Chief Justice, the 63-year-old Sir Charles Lilley, and here something of a mystery arises. For the legal calendar for 1891 shows clearly that it was Lilley who was scheduled to go to Rockhampton for the April-May sittings in that year. Lilley at this stage of his career was going through a radical phase. As HJ Gibney writes: "In 1890 he became the hero of the socialist and republican movements by attacking politicians as a class, advocating an Australian republic and decrying the imperial connection. By cultivating the growing Labor Party he was invited in March 1891 to lay the foundation stone of the Brisbane Trades Hall." (8) Given these democratic sympathies, it is impossible to escape the thought that if the striking shearers had confronted Lilley on the bench, rather than Harding, the outcome might have been different.

Unfortunately, we do not know how or why Harding replaced Lilley. Diligent research by Helen Gregory, the historian of the Queensland Law Society, has failed to reveal any clue among the relevant archives. In the light of Lilley's subsequent history of defiance towards the Griffith-

FRIENDS WE CANNOT SEE

Christmas 1891

When at the closing of the year
once more the pleasing feast is
spread,

And round the wholesome
Christmas cheer the greeting
words again are said,

This is the thought some may
think: "Some are not here who
used to be."

This is the toast some may
drink: "The friends we cannot
see."

We, too, shall keep our
Christmas here, and "Brighter
days" our toast shall be.
The friends we pledged in wine
last year this Christmas we may
toast in tea.

Our tinware goblets we shall
fill at St Helena by the sea,
And drink the toast with right
good will: "The friends we
cannot see."

While friends are true and
hearts are stout what reason
have we to repine?
If friends within toast friends
without what matter whether
tea or wine?

So tell the boys the prisoners
say that these our toasts shall
be:

"The dawning of a brighter
day" and "Friends we cannot
see".

JA Stuart

Verse sent from the union
prisoners at St Helena to Mrs
Edg of the Railway Hotel,
Ilfracombe.

McIlwraith government it seems improbable that he was coerced. Griffith, the Premier and Attorney General, was still away in Sydney when the decision was taken. Nor is there any evidence to suggest that Lilley deliberately dodged Rockhampton for fear of tarnishing his reputation with the trade union movement. It may be relevant that 5 May 1891 was a Robe Day, an important ceremonial occasion when it was thought essential that the Chief Justice should be present at the Supreme Court in Brisbane, and it was unlikely that the sessions at Rockhampton would finish in time to enable him to return to Brisbane for it. But this explanation loses force when we find early in April Lilley heard submissions in chambers as to whether the shearers should be tried in Rockhampton or Brisbane (10). He could have chosen the venue to suit himself. Even if he felt that by deciding on Rockhampton he precluded himself from sitting at the actual trials, he need not have sent Harding. An alternative was available in Mr Justice Patrick Real, son of an impoverished Irish immigrant widow, and not without working-class sympathies. Lilley's role is altogether enigmatic. Perhaps the simplest explanation is that an industrial dispute with implications for master-and-servant relationships could be defined as a commercial case, and Harding was unquestionably the most authoritative member of the bench in commercial law. It is an unresolved point which it would be useful to clear up.

Mr Justice George Rogers Harding was the product of a Somerset vicarage, polished by education at Magdalene College, Cambridge and Lincoln's Inn. As a young man he had published a well regarded treatise on ecclesiastical law, and was building a reputation as an equity lawyer. Fate intended him to be a busy bookish practitioner in an English cathedral city, dining out with the local gentry and making learned little jokes; but he fell in love and married at the age of 23 and the demands of a growing family (they eventually numbered 15 in all, of whom 12 survived to maturity) drove him to emigrate to Queensland in 1866. He was never quite at home there. He built a fine residence at which he entertained juvenile royalty; he amassed a magnificent library of 4 000 books, eventually to form the nucleus of the Queensland State Library; he surrounded himself with everything that could insulate him from the raw colonial environment around him. Appointed to the bench in 1879, he tried to dominate this alien scene by an incessant pepper of judicial irascibility. As Mr Justice McPherson has written: "The slight perceived to have been inflicted by the Executive in omitting the judiciary from the arrangements for the reception of Royalty in 1881; the unhealthy smell in the Supreme Court Building; its draughtiness; the impertinence of colonial youth; the shortcomings of solicitors' clerks; even the form of the title to an application - all of these, and much more, were capable of arising the ire of Harding J and of enlivening the dreary day of the court roundsman" (10). This scholarly fusspot was the last judge in the world who could be expected to have any measure of sympathetic insight into the outlook of the nomad tribe of bush workers. In assessing his conduct of the Rockhampton trials it is relevant to remember that he was 11 years younger than Lilley and desperately keen to succeed him as Chief Justice. Accordingly, it was of great importance to him to be perceived as conducting the Rockhampton conspiracy cases with exemplary firmness and discretion.

In fact, of course, Harding's outbursts from the bench on this occasion have won him a minor reputation as Australian equivalent of Judge Jeffreys or Robert Macqueen, Lord Braxfield, that 18th Century Scottish judge "notorious for the roughness and ferocity of his treatment of political prisoners". And it is noteworthy that Harding suffered, like Jeffreys, from a urological complaint which was eventually to kill him and which must have been the cause of great discomfort during his occupancy of the Bench; for this reason he was nicknamed "the frequent Judge". It makes dramatic reading to consider Harding's intervention when hearing evidence of the Clermont riot: "Do the police want to see a man's throat cut before they do anything? How do they act in this country? They seem to have no system. It's funny, very funny indeed!" (11). But it is possible that Harding's bark was a little worse than his bite. As he himself observed, he did not impose the maximum sentence on any of the 12 defendants convicted on one or more of the conspiracy charges. All the same, it has been held against him that he colluded in the use of the archaic statute of 1825 as an instrument for putting the shearers' leaders behind bars. William Kidston of Rockhampton wrote a rousing verse defying the laws of George IV and urging the ballot as the workers' remedy; and from that day forward historians have derided the use of an Act of Parliament of George IV, already repealed in Britain itself, in order to secure a conviction against the leaders of the strike (12).

But this statute of 1825 - 6 Geo IV C 129, s 3 (13) - was not the charge on which the strikers were convicted. Harding was well aware of the delicacy of using an obsolete United Kingdom law which had not been invoked in the colonies for many years. Historians may have been misled because in an early exchange with Edwyn Lilley, counsel for the defendants, Harding rejected the argument that 6 Geo IV had been superseded entirely by *Queensland Trade Union Act 1886*. Certainly, Harding ruled trade combinations were legitimised by the Act of 1886, but it did not repeal the provisions of the earlier act against the use of force or intimidation. There cannot have been anything in this reference to 6 Geo IV which struck the contemporary legal profession as remarkable or unusual, as no report of the Rockhampton trials is made in the "*Queensland Law Journal Reports*" of 1891 or 1892. Two trials, however, are reported as arising out of the disputes in the pastoral industry in 1891, both of which shed interesting and at times unexpected light on the Rockhampton conspiracy cases.

The first of these, *Bilby v Martin and Others* (14), arose out of a fracas at Terrick Station, near Blackall, on the morning of 9 September 1891. A shearer named Frederick Bilby was taking round the hat for contributions to the defence of two pastoral workers, McKenzie and Riley, who were shortly to stand trial at Rockhampton on a charge of attempting to sabotage the railway bridge over Ebor Creek, near Clermont, at the height of the confrontation in March. (As it turned out they were tried by Mr Justice Real, who acquitted both men). When some non-union men refused their six shillings and tenpence, Bilby used such threatening and insulting language that he was arrested and convicted under 6 Geo IV by two local Justices of the Peace. But they imposed twice the maximum fine allowed by the Act of 1825, with imprisonment in default. Bilby appealed to a Full Court comprising Lilley, Harding and Real. Remarkably, a junior cabinet minister, AJ Thynne, acted as solicitor on behalf of the appellant. Griffith, as Attorney General, and TJ Byrnes, Solicitor General, also

Extract from *The Morning Bulletin* (Rockhampton), 28 April 1891

"The crowd were very demonstrative, but carefully kept outside the line of bayonets which the escorts now always carry at the charge. The crowd cheered the prisoner, but most of them vigorously hooted the troops. Language was used which appears to be getting more brutal and obscene every day."

**UNITED WE STAND -
DIVIDED WE FALL**

To every bush worker
I say, now hold your own!
For the squatter's trying every
means
To break our unions down.
Keep true to one another;
Stand firm, now, one and all.
United we are sure to win
Divided we will fall.
In days gone by we made
mistakes
In rashness and in haste.
Although we were defeated then
We were never disgraced.
Though traitors may betray us
And sneaks may cringe and
crawl,
Unite and we're victorious -
Divide and we will fall.

appeared in court to advise on the case. It was as if the government and the judiciary were anxious to define carefully the circumstances in which 6 Geo IV could still be validly applied. The three judges found unanimously that the Act was still valid in Queensland. It formed part of a large body of English law specifically introduced into New South Wales in 1828 and thus passed on to Queensland when separation took place in 1859. However, they agreed that Bilby's fine should be reduced. While judgement was being delivered the question of 6 Geo IV came under discussion, and the following dialogue took place:

Harding: All the sentences under this Act have expired a long time ago, and there cannot be any person suffering under it now.

Lilley: The Rockhampton men were not sentenced under that Act, but under common law.

Harding: There was a great parade at first of this sort of thing, and I looked at George IV, but I did not use it in any shape or form. I always carefully avoid anything which may possibly burn my fingers. (15)

What can this mean? Harding must have been well aware that as he spoke the 12 shearers convicted at Rockhampton in May 1891 were still serving their time at St Helena. If unionists were convicted elsewhere under 6 Geo IV - and I know of no such case before Bilby, though there may have been some - they would have served their sentences well before the appeal against Bilby's case. The plain sense of Lilley's remark and Harding's rejoinder must be that the 12 men imprisoned at the Rockhampton trial were sentenced under common law as it then stood. Contrary to a century of popular myth, 6 George IV had nothing to do with the case.

It is not even clear that Harding was inveterately hostile to pastoral workers. In another case to come before the Appeal Court and to be recorded in the Law Journal Reports (16) Harding concurred with Lilley and Real in agreeing that the Master and Servant Acts allowed shearers dissatisfied with their rations to walk off the job without penalty for breach of contract. This not only overturned a ruling by a local magistrate, and of course went against the interests of the graziers, but it also contradicted the advice of Griffith and Byrnes, who had once more attended the case on behalf of the government. This hardly supports the picture of a judiciary hand in glove with the government of the day. But it does show Griffith's ministry as anxious to define the extent of the powers available to them, and perhaps adds one more explanation to Griffith's determination to provide Queensland with a properly articulated criminal code. It also reminds us that no Queensland government had been obliged to grapple with the problems of law and order arising from popular protest since the Brisbane riots of 1866, 25 years previously; and even they resulted in nothing more serious than a charge of assault. And this brings us back to our original question: was the Queensland government really fearful that the shearers' strike might turn into a civil war?

To answer this question we must step back a little to take a broader perspective. We must ask how it came about that seasoned politicians such as Tozer, and to a lesser extent Griffith, came to believe that the inland was potentially uncontrollable, and that the bush workers, once aroused and organized, might constitute a force with power to overthrow the established government of Queensland. Some of the answers lie

within the history of Queensland itself. In 1891 it was barely 30 years since the great pastoral thrust across Central and Northern Queensland had wrested possession of the land from its Aboriginal occupants, and as Henry Reynolds has reminded us this dispossession was a protracted and bloody business. Consequently, it was common for stockmen and shearers to possess firearms. Archibald Meston, for instance, described the Cooktown-Laura region in 1884 as a frontier where "nearly all white men went armed...with Terry rifles, shotguns, pistols or revolvers ... the revolver being the favourite" (17). Against this it may be argued that the Australian frontier, unlike the American, did not develop much of a tradition of gunplay among white men. Where the American West, at least in mythology, placed emphasis on the qualities of the marshal and the sheriff, Australian communities were apt to petition for the provision of a police station. But law and order often seemed to rest on frail foundations outside the cities. Older people could remember that in 1854 miners not a 100 miles from Melbourne had banded together at Eureka to proclaim a "Republic of Victoria". Nearer to home, the law in Queensland was considerably affronted in 1873, when a jury at Roma refused in the face of abundant evidence to convict Harry Redford of cattle-duffing. And it was barely a decade since the defiance of the Kelly gang had held the forces of law and order at bay in North-Eastern Victoria for more than two years. Historians are still arguing whether the Kelly saga represents more than the flash courage of a band of petty criminals, or something more substantial; a second, Irish-inspired attempt to create a Republic of Victoria. It hardly matters. By 1891 the Kelly gang were already the stuff of legend, symbolising the capacity of independent colonial boys to live free in the bush rather than surrender to the forces of conformity whose home was in the cities.

Certain aspects of the Kelly story deserve our special attention. When the gang made its last stand at Glenrowan in June 1880 the authorities responded by sending a special train crammed with policemen to bring the outlaws under control. With good generalship, Ned Kelly gave orders that the line should be torn up, so that the engine would be derailed. Both Ned Kelly and his opponents saw the railway as the critical factor which would determine the success or failure of his bold raid on Glenrowan. Ned's downfall, however, came about because the train was not derailed. A lame schoolmaster named Curnow, whom the Kelly gang had mocked for his deformity, managed to leave the Glenrowan Hotel and attract the engine-driver's attention so that the train pulled to a halt in time. It was the man of education, the representative of civilised values in a bush settlement, who was responsible for thwarting a formidable uprising. The last stand of the Kellys could thus be seen as a confrontation between the values of the bush workers, those makers of what Russel Ward has called "the Australian legend", and the representatives of those urban bourgeois values of order, education and thrift to whom the outback traditions of sticking with your mates and dying game were less important than building a society which rewarded individual effort and formal learning. These issues fought out at Glenrowan in 1880 were very similar to the disputes dividing Central Queensland in 1891, and the divide between Ned Kelly and the judge, Sir Redmond Barry, who sentenced him to death was scarcely greater than the gulf between the 12 men in the dock at Rockhampton and Mr Justice Harding.

There's some of the employers
Who with our cause take part,
While others, as their actions
prove,
Are tyrants in their heart;
Their creed to crush the workers
And drive us to the wall.
Unite and we are bound to win -
Divide and we will fall.

Although we are but sons of toil,
And not the favoured few,
We now will show what willing
hands

And honest hearts can do.
Although we work with shear
and pick,
With shovel and with mall,
Unite, my friends, and we will
win -
Divide and we will fall.

They talk about free labour,
And say they can get men,
But try that little game
Their talk is idle bombast;
So let them shout and brawl.
Stand firm, true and united,
No danger that we fall.

OM, Barcaldine.

Poem published in *"The Worker"*,
7 February 1891.

It was not only in Australia that strife existed between the law-makers in the city and the frontiersmen. Canada was the scene of similar confrontations. When the Dominion of Canada came into being in 1867 the problem at once arose of incorporating the inhabitants of the lands west of Ontario, a vast tract ruled somewhat loosely by the Hudson Bay Company. It was easy enough to negotiate a deal by which the company surrendered its political rights to the Canadian government - very readily, as administration was costly and unrewarding - but it was a harder matter to deal with the metis, a semi-nomadic people of mixed Indian and French-Canadian origin, who for many years had led virtually independent lives as fur-trappers and subsistence farmers, and who had no wish to experience the taxation and restrictions which went with efficient government. They found a charismatic leader in young Louis Riel, a persuasive orator inspired by a fiery but imprecise sense of religion. During 1869 and 1870 Riel led a resistance movement - some dignified it with the name rebellion - which was only settled when French and English culture and religion were given equal status in the newly formed province of Manitoba. Riel went into exile, and for some years led a wandering life in the United States. But in 1885 he returned to stir up the remnant of the metis living in what later became the provinces of Saskatchewan and Alberta. This time he was less successful. The Canadian government was able to bring troops and Mounties quickly to the scene. The movement was suppressed and Riel was taken and hanged. It was possible for the Canadian government to move decisively because the Canadian Pacific Railway was on the verge of completion, and could be used to transport armed forces over long distances. Indeed the crisis rescued the Canadian government from an embarrassing position, since it had been obliged to extend much greater financial backing to the railway than had been intended, and could deflect criticism by pointing out the value of the Canadian Pacific in maintaining law and order on the disturbed frontier (18). As with Ned Kelly, so with Louis Riel. The picturesque outlaw representing the frontier qualities could be brought to heel by a government possessing the advantage of the railway.

Examples could be multiplied. The American Civil War of 1861-65 is probably the first conflict decided by the control of the railways. The superior mobility of the German railway system was held to be a decisive factor in the Franco-Prussian War of 1870. Within the small distances of Europe, however, it was not always advantageous to move forces by rail. The Germans calculated that to move an army corps 112 kilometres (70 miles) would take eight days by rail and only five by road. But over the long distances of the more recently settled continents - North and South America, South Africa, Siberia, Australia - the railway was a great strength to a central government. Thus in central Asia between 1884 and 1888 the Russians consolidated their hold on the recalcitrant tribes of Turkestan by building the Transcaspian railway from Krasnovodsk to within 150 kilometres of Herat (19). In South Africa the independent Afrikaners of the Transvaal and Orange Free State deliberately delayed the introduction of railways for fear they would become more vulnerable to British pressure from the Cape Colony. It was not until 1892 that a railway was completed from Capetown to Johannesburg, and the Afrikaners' fear soon proved justified. It was largely due to command of the railways that the British were able to beat the Afrikaners on their ground in the Anglo-Boer War of 1899-1902. Railways were the key to control.

The suppression of the shearers' strike in 1891 can be seen as another example of the power of the railway. If the strike had taken place six years earlier, in 1885, it would have been impossible for the employers to mobilise non-union labour to fill the shearers' places and it would have been equally impossible for the government to bring police, troops and volunteers to centres such as Clermont and Barcaldine. It may be objected that it would have been equally difficult for the union to organise, but their organisers moved around the country on horseback, foot or bicycle; "Mulga" George Taylor, for instance, rode 60 kilometres from Clermont to Logan Downs in seven and a half hours on a moonlit night in January 1891 in order to encourage the shearers to join the strike (20). As the Afrikaners were to prove with their guerilla tactics on the veldt 10 years later, it was difficult even with the aid of railways for a regular armed force to get the better of bushmen operating in their own country. It would have been impossible without railways. Queensland was late coming to its railway age, and during Sir Thomas McIlwraith's first term of office between 1879 and 1883 delays had occurred while the Colony debated his ambitious scheme for a transcontinental railway on land-grant principles stretching to the Gulf of Carpentaria. Once this scheme was abandoned, the Griffith government proceeded briskly with the construction of major lines during the 1880s. The line from Brisbane to the Darling Downs was extended as far as Charleville. Rockhampton was connected to Barcaldine (hence the importance of the Barcaldine shearers' camp), with an extension planned to Longreach, and branch lines reaching from Emerald south to Springsure and north to Clermont. The Townsville-Charters Towers line had inched out to Hughenden.

These railways made the crucial difference in enabling the Queensland government to get the better of the striking shearers. However, it was the first time that a government had felt the need to utilise the railways for such a purpose. Even with this advantage the politicians could not be sure of their capacity to contain a mass movement among bush workers. This accounts for the trepidation, and for the readiness of ministers such as Tozer to lend credence to every rumour of sedition, arson and destruction. As it happens, the shearers were not bent on civil war; if they had been, the struggle would have been far longer drawn out and far more bloody. But like Ned Kelly, like Louis Riel, like the Afrikaners they would have been beaten in the end, because it was the government who controlled the railways.

Henry Lawson, who was much read and quoted by the strikers, commemorated their resistance in a stirring verse:

*So we must fly a rebel flag
As others did before us,
And we must sing a rebel song
And join in rebel chorus.
We'll make the tyrants feel the sting
O' those that they would throttle;
They needn't say the fault is ours
If blood should stain the wattle. (21)*

But this was mostly bluff. Many of their leaders in later life experienced no trouble in conforming to respectability. William Hamilton ended up as the President of the Queensland Legislative Council. "Mulga" George

Extract from *The Morning Bulletin* (Rockhampton), 8 May 1891

"BARCALTINE, May 7

"The twenty special constables from Brisbane, who arrived here yesterday, camped in tents on the Police Reserve last night, and appeared this morning in their new uniforms, similar to those of the mounted infantry, but wearing hunting boots with bright red tops. All their equipment was new including carbines, revolvers, cartridge-belts, saddles, bridles, and blankets. It is stated that each man's equipment cost fifteen pounds, the expense of which is borne by the pastoralists."

Taylor became Speaker of the Western Australian Legislative Assembly in the full dignity of wig and gown, having left the Labor Party over conscription; Julian Stuart also became a Western Australian parliamentarian, but after a brief career was obliged to quit because of alleged misappropriation of funds while manager and editor of the "*Westralian Worker*". Henry Lawson himself, as is well known, sank into the alcoholic shadows. Long years earlier, however, he had written another verse which summed up admirably the meaning of the events which led up to the Rockhampton trials of May 1891:

*But golden days are vanished
And altered in the scene;
The diggings are deserted,
The camping grounds are green.
The flaunting flag of progress
Is in the West unfurled;
The mighty Bush with iron rails
Is tethered to the world. (22)*

* Professor Bolton has occupied the chair of Australian History at the University of Queensland since 1989. From 1973-89 he had been the Professor of History at Murdoch University and from 1982-85 Professor and Head of the Australian Studies Centre at the University of London. He was the General Editor of the "*Oxford History of Australia*".

Copy of a telegram sent on 5 March 1891 by Hugh Blackwell, secretary of the Queensland Labourers' Union to WH Ewan and found by police in the Barcaldine Strike Committee office:
"Use compulsion. Force men out."



Notes

1. B Fitzpatrick, *"The British Empire in Australia; An Economic History 1834-1939"*, (2nd ed) (Carlton 1949) p 225.
2. S Svensen, *"The Shearers' War"*, (St Lucia 1989).
3. Svensen, p 103.
4. Svensen, p 180.
5. Svensen, pp 99 and 141; R Kerr, *"Freedom of Contract; A History of the United Graziers' Association of Queensland"* (Brisbane 1991) pp 22 and 24.
6. *"Queensland Parliamentary Debates"*, vol LXXVI, p 1708.
7. Svensen, p 103.
8. *"Australian Dictionary of Biography"*, vol 4 (Carlton 1974) p 87.
9. QSA CRT7/N50.
10. *"Australian Dictionary of Biography"*, vol 4 (Carlton 1972) p 341.
11. *"Rockhampton Morning Bulletin"*, 10 May 1891; Svensen, p 173.
12. Among them: I D McNaghtan in G Greenwood, *"Australia"* (Sydney 1955) p 167; B Fitzpatrick, *"A Short History of the Australian Labor Movement"* (Melbourne 1968) pp 130-34.
13. For its origins: Sir W Holdsworth, *"History of the English Law"*, vol xiii, (London 1952) pp 346-51.
14. *"Queensland Law Journal Reports"*, vol IV (1890-92) pp 137-45.
15. *ibid*, p 138.
16. *ibid*, pp 145-51.
17. W Thorpe, *"Archibald Meston and Aboriginal Legislation"*, *"Historical Studies"*, vol 21, p 57; quoting *"Sydney Morning Herald"*, 11 March 1922.
18. D G Creighton, *"John A Macdonald; The Old Chieftain"*, (Toronto 1955).
19. *"New Cambridge History of Modern Europe"*, vol XI (Cambridge 1962) pp 211-13.
20. Svensen, p 77.
21. H Lawson, *"Collected Verse"*, (ed. C Roderick), vol 1, 1885-1900 (Sydney 1967) pp 123-4.
22. *ibid*, p 57.

Extract from a letter dated 15 March 1891 from William Fothergill to George Taylor, organiser, CDC, and found in his possession by police:

"An iron bar placed across the railway lines very nearly caused an accident. I was speaking to a fireman, and according to him, the drivers are in terror."

OPENING OF THE CROWN'S CASE

*By Virgil Power, who with Frederick Dickson, appeared for the Crown. **

The interests of the wage-earning classes in the Western Districts have been during the last two or three years watched over by various Committees. First, the Shearers Union which was formed with head quarters at Blackall. Secondly, by the Queensland Labourers Union which was formed at Barcaldine, the members of which were first confined to the class of labourers known as 'rouseabouts' namely workers other than shearers about a shed during shearing time. Subsequently, ordinary station hands joined this union and eventually labourers of all description. Thirdly, the Carriers' Union.

In the year 1889 these unions federated with the Australian Labour Federation of Brisbane and a District Council was opened consisting of the secretaries of the three unions which managed the general affairs of the federation adjudicating upon all questions brought before it relating to disagreements, strikes etc and under instructions from the General Council in Brisbane ordered these unions to go out on the occasion of the Maritime Strike. Last year the Carriers' Union seceded from the Australian Labour Federation and the Barcoo District Council was dissolved and replaced by a Central District Council composed of members of the Shearers' and Labourers' Unions and having its head quarters at Barcaldine.

In the month of December 1890 the prisoner Bennett was the President of this Council. The prisoner Hamilton was one of its trustees. At the same time the prisoners Forrester and Taylor were elected as organisers on behalf of the Council. Early in January of the present year up to the date of his arrest the prisoner Blackwell was Secretary of the Queensland Labourers Union, which had its head quarters at Barcaldine.

The relations between the labouring classes generally and the employees of labour in the Western Districts have been somewhat strained for the last year or two. Towards the end of the year 1890 the pastoralists throughout this Colony adopted certain agreements to be signed by the shearers and rouseabouts employed at the shearing season. The present troubles appear to have commenced about 5 January in the present year upon which date there were at Logan Downs near Clermont about 40 shearers and 25 labourers who had congregated there for the purpose of shearing. The property is the property of G Fairbairn and sons.

On the morning of 5 January Mr Frederick Fairbairn called these shearers and labourers together and in company with his brother Mr Charles Fairbairn asked each of these as had put their names down for the shearing season to sign the agreements. A copy of these agreements had been in the possession of the men for inspection and perusal for a couple of days. At this time there were at Logan Downs a mob of about 120 men in excess of the number mentioned before. When called upon to sign the agreements the prisoner Taylor who was present stepped forward and said in effect, "These men belong to our union and cannot sign the agreement because we have decided that its members shall sign no agreement other than that proposed by us". He also said that the pastoralists had purposely kept back from publishing their agreement

*Extract from The Morning
Bulletin (Rockhampton), 20 May
1891*

"BARCALDINE, May 19.

"Some Chinese who own a market garden on the Alice River, four miles from Barcaldine, reported to the police this morning that during last night some 20 or 30 men wrecked their garden, destroying a quantity of vegetables and carrying away several bags of potatoes and all the pumpkins in the yard. The Police Magistrate with Inspector Ahern immediately started out with some constables and two black trackers and were joined on

the road by a detachment of mounted infantry. Proceeding to the garden they found it as described by the Chinese. The black trackers had no difficulty in following the tracks, which led to a small union camp recently formed on the Alice River. Here they found 13 men, who indignantly denied having had anything to do with the robbing of the Chinese. Searching about the police discovered some sheeps' heads and vegetables boiling in billies and between the camp and the river Inspector Ahern discovered tracks which led to where sand had recently been disturbed. Upon digging down into the sand, the police found several bags of potatoes and a quantity of pumpkins and cabbage. A signal was made for the mounted infantry, who were

until the Shearers' Annual Meeting held in December had taken place to prevent the shearers having the opportunity of discussing the agreement in a body. He was told this was incorrect and that the agreement had only just been received at the station. Taylor then on behalf of the men said they refused to sign the agreement.

Most of the shearers then went away to their camp and within two or three days formed a large camp on Wolfgang Creek four miles outside Clermont. Some of these men were in camp there at lately as last week. After waiting some few weeks or so and finding that the local labourers were determined not to sign the agreement the pastoralists had no resource but to introduce labourers from other colonies. This they did and on 11 February they brought up to Clermont a number of labourers to shear on Wolfgang, Logan Downs and other stations.

On 10 February a small party of the labourers were brought to Clermont in the train. Mr Frederick Fairbairn was at the Clermont Railway Station and there saw the prisoner Fry jostling and molesting the free labourers. On the morning of 11 February a great crowd of unionists rushed the train on the arrival of the large party of labourers from Melbourne. The prisoner Prince was exceedingly prominent in using threats to and intimidating these free labourers. Among other things he said the unionists might save their money instead of spending it in the bars of public houses they must buy balls and firearms. There was a large crowd of these unionists at the railway station at this time. Teams were in waiting to take the free labourers out to Logan Downs. Some persons from amongst the crowd took the lynch-pins out of the wheels of the drays during the night. The free labourers were with some difficulty escorted to the drays and a large mob followed hooting and deriding them.

The Central District Council at Barcaldine towards the end of January formed itself into a sub-committee known as the Strike Committee composed of the prisoners, Bennett, Fothergill, J Brown, a man named Riseley (for whose arrest a warrant is still in existence) and a man named Murphy (who was discharged by the Bench of Magistrates at Barcaldine). The Strike Committee issued a proclamation under date 1 February 1891, which proclamation will be put in evidence. About the beginning of February large numbers of shearers and bushmen commenced to collect at Barcaldine.

On 15 February there was a large meeting of those unionists at which about 200 were present. The meeting was opened by the prisoner Ryan. The prisoner Blackwell also spoke as did the prisoner Stuart. The prisoner Blackwell said, "You know the early sheds. It is easy to delay shearing. There may be no sheds. Whatever you do, see that wool shorn by non-unionists nor blacklegs reaches market". The prisoner Stuart also spoke and amongst other things he said, "When you are out shooting kangaroos you may take a carrier's horse for a kangaroo. Don't go empty handed to Peak Downs. Don't open your mouths too much about what you are going to do." The prisoner Brown spoke calling for volunteers to go to Peak Downs and several at the meeting volunteered to go.

On the following day, 16 and 17 February a large number of mounted unionists were seen going to the office of the Central District Council and after remaining there for a short time they rode off in the direction of Jericho, which is on the main road to Peak Downs. After this footmen and horsemen commenced to arrive with frequency at Barcaldine. The

footmen camped there and the horsemen went away in the direction of Jericho.

The disturbances in the district around Clermont assumed so much importance that on 20 February it was found necessary to call out the military and the Rockhampton Mounted Infantry were on that day sent to Clermont. They were followed by the Moreton Mounted Infantry and a portion of the permanent force who arrived at Clermont early on the morning of 24 February. On 22 February there was a meeting of 850 unionists at Barcaldine when the prisoner Brown proposed a vote of censure on the Government for bringing the police and military and Gattling guns to Clermont. By this time another large camp of unionists had been formed at Sandy Creek about four miles from Clermont in another direction. Defendant Stuart was the chairman of this camp. This was chiefly occupied by horsemen from the Far West. During this month a third camp of which the defendant Griffin was chairman was formed close to the Capella Railway Station about 10 miles from Gordon Downs Station, where shearing was in progress by free labourers.

On 28 February there was a torchlight procession at Barcaldine when about 1000 people paraded through the streets carrying effigies of Sir Samuel Walker Griffith and Mr F R Murphy, MLA. These effigies they subjected to a mock trial and by order of the prisoner Smith-Barry were condemned to be burnt. About this time a disturbance arose in the neighbourhood of Blackall. A party of unionists visited Northampton Downs Station and threatened to pull out all the men there who did not belong to the unions. On the night of 2 March what is known as the Clermont riot took place and on 8 March there was a meeting at Barcaldine at which the prisoner Ryan spoke. He declared that the whole of Queensland would be declared non-union from 16 March and called for mounted volunteers to carry the decision into effect. Riseley who was a member of the Strike Committee also addressed the meeting saying, "We want all of you to form one camp as we don't know when we may want you. If we have the men, we will get the arms". About this time it became the practice to drill the men in the union camp at Barcaldine, the men being armed with sticks to represent rifles.

Six men, Riseley and the prisoners, Brown, Ryan, Bennett, Blackwell and Fothergill, who acted as secretary at this time, managed strike matters at Barcaldine. They held meetings constantly in the office of the Central District Council, which is almost opposite the Police Barracks at Barcaldine. The camp at Barcaldine now began to increase in numbers and by the middle of March it comprised about 600 men. These persons used to visit the Railway Station on the arrival of the passenger trains. One or other of the prisoners, Fothergill, Ryan, Blackwell and Bennett, were frequently to be seen on the platform on these occasions. The crowd used to get on to the carriages to look for free labourers whom they termed "scabs". They used to rush the carriages and take the swags of passengers from the free labourers if there happened to be any. They succeeded in inducing a very large proportion - if not the whole - of the free labourers who came up at this time to abandon the object they had in view and to join the union and go into the union camp. The police being found to be entirely inadequate for the maintenance of order at Barcaldine, it became necessary about 12 March to send a detachment of military there which was subsequently increased from time to time.

behind the police and they came up and surrounded the camp. The men were then requested to take off their boots and those were compared with the footprints between the camp and the garden, with which they corresponded. Some of the cabbage heads were compared with the stalks from which they were cut and fitted exactly. The men saw it was useless to brazen it out and submitted laughingly to arrest. They were then brought into the lock-up, but there was no demonstration from the crowd in town. Among the party was one or two free labourers, who came from Rodney Downs and joined the union."

On 19 March a party of free labourers who had been shearing at Rainworth and Arcturus Downs Stations in the Springsure district were removed from these stations to shear at Peak Downs and elsewhere in the Clermont district. The shearers coming from Rainworth to Springsure were met about three miles from the town by a crowd of about 150 mounted unionists headed by the prisoner Taylor. Taylor acknowledged that this party had arms which they had however left in camp. This crowd materially molested and obstructed the passage of the free labourers to the railway station. The free labourers were taken from Springsure to a point on the Clermont Railway about three miles from Capella where they were detrained and whence they were conveyed by wagons to Peak Downs Station distant 11 miles. When they had proceeded about a mile from the railway, they were overtaken by a very large body of mounted unionists - from 70 to 80 at the very least - who charged down upon them causing considerable intimidation among the free labourers. The unionists were exceedingly violent and used threats and had to be kept away from the wagons at the point of the bayonet. In fact, they were only induced to cease their intimidation when they saw the police were prepared to proceed to extremities. The prisoner Prince was among this mob.

During the month of March disturbances similar to those in the Clermont and Barcaldine districts commenced to occur in the Maranoa district where the prisoners, Murphy, Forrester and Brown, were employed as organisers. The shearers at the Noondoo shed were violently assaulted and some of them were induced to leave their employment.

About the same time bush fires became of suspicious frequency throughout the country both around Clermont and Barcaldine and throughout the Maranoa district. Maneroo woolshed on the Thompson River was burnt to the ground. A large party of unionists visited Torne Station about 40 miles from Blackall endeavouring to induce the men there to come out and leave their employment and a few minutes after they had left the station the woolshed was discovered to be on fire and was totally destroyed.

These disturbances tendered to recall to mind the speech made by defendant Blackwell at Barcaldine on 15 February. On 16 March an order was promulgated that all labourers were to cease work on the 23rd of that month and mounted parties of men were sent throughout the Western and South-Western Districts of the Colony to see that this order was generally known and conformed to.

At about the same time - the middle of March - a lad named Page about 13 years of age was engaged in Rockhampton on behalf of Mr Rogers, manager of Westlands Station near Aramac, to go and work on that station. The boy went up in the train to Barcaldine accompanying a boy two or three years older than himself who was engaged to go to the same employment. On arrival at Barcaldine, they were met as usual by an enormous body of men who rushed the carriage and seized Page's swag out of his hand as he stepped out of the train. Seizing the older boy, they led him away to the office of the Strike Committee. The boy Page followed to see what became of his companion and of his own swag and on reaching the office of the Strike Committee the older boy after some persuasion and intimidation consented to join the union and was at once led away to the union camp. Some of the men who were there took the swag belonging to Page and the boy naturally enough not knowing where

Extract from a letter dated 12 March 1891 from William Fothergill, Secretary, FWJB, to George Taylor, organiser, CDC, and found in his possession by police:

"The back country men will do their duty. Have patience for that.

"A few little bush fires have occurred and Maneroo shed has been struck with lightning. Thirteen scabs have been arrested on Maneroo and are being conveyed to camp."

to go followed his swag and went down to the union camp. On arriving there he was shown a tent which he was told he and his companion were to sleep in and he remained there for some time. Page asserts that he told the men at the camp that he was engaged to go and work at Westlands Station and that he wished to go there, but as the unionists had his swag and would not let him take it away and he was without money he had perforce to remain in the camp. The matter got into the papers and Riseley obtained the boy employment with a merchant of Barcaldine in whose employ he is now.

On 24 March 15 men were arrested at the camp at Capella charged with rioting at Peak Downs Station on 19 March. Among these was the prisoner Griffin who had taken a very active part in the riot at Peak Downs. On the same day the prisoners Taylor and Stuart were arrested at the Clermont Railway Station. A number of papers were found upon the prisoner Taylor and in consequence of the disclosures made therein it was decided to arrest the whole of the Strike Committee at Barcaldine, which was done. The only member of the committee not arrested was Riseley who could not be found and has not yet been taken into custody. On examining the papers seized in the office of the Central District Council at Barcaldine correspondence was found implicating the prisoners, Murphy, Forrester and Brown as prominent agents for the Strike Committee in the southern part of the Colony. These men were consequently arrested and in their possessions were found documents which leave no doubt as to the object of their work which was to coerce free labourers from following their ordinary avocations and to resort to the most stringent measures to carry out their purpose.

Evidence was found through the medium of telegrams showing that the prisoner Forrester admitted having been present and a prominent agent of the Strike Committee at Noondoo Station where the free labourers were much maltreated. Similar charges can be sustained against the prisoners, Murphy and Brown. Evidence will be forthcoming to show that the prisoner Hamilton occupied the position of organiser in the Clermont district after the arrest of Taylor as successor to Taylor and prior to Taylor's arrest namely on 19 March he sent a telegram warning his fellow unionists at a distance that the free labourers from Rainworth and Arcturus Downs Stations in the Springsure district had been landed at Ebor Creek, the place they were detained, and winding-up with the words, "men following" showing he was cognisant and a party to the action of the men subsequently rioted at Peak Downs Station.

Voluminous correspondence has been found in the handwriting of the prisoners, Blackwell, Fothergill, Taylor, Prince, Griffin and Bennett, all of which tends to show that the writers were parties to a scheme of considerable magnitude for the coercion of the free labourers. Although the documentary evidence against the prisoner Ryan is slight, it will be apparent that he took an active part in all the councils of the Strike Committee and that he wrote letters on behalf of and in the name of the prisoner Fothergill. Acts of intimidation will be proved against the prisoner Fry as having taken place early in the month of February at the Capella Railway Station where he was seen to pull the free labourers out of the train by force. Correspondence of an intimidating character was found upon the person of the prisoner Smith-Barry addressed to the

Extract from a letter dated 5 March 1891 written by Hugh Blackwell, secretary of the Queensland Labourers' Union, to JR Malan and found by police in the Barcaldine Strike Committee office:

"Further developments may be expected shortly, and that of an aggressive character, as most of the men are ready for anything, any devilment, and are grumbling at their inactivity; and are itching to find work of some sort to do, providing the employers do not find it for them."

prisoner Blackwell showing he also was prepared in common with the other prisoners to proceed to any lengths to carry out the scheme of the conspiracy.

* Virgil Power was appointed a Supreme Court Judge on 20 December 1895 and became the first Central Judge based in Rockhampton. The original copy of the Crown's opening address, during which the case against the accused is outlined, is held in the Queensland State Archives.

Extract from a letter dated 9 January 1891 by S Byrne to Hugh Blackwell, secretary of the Queensland Labourers' Union, and found by police in the Barcaldine Strike Committee office:

"When I was in Winton, it was sickening and disheartening to hear members advocating 'murder, robbery and incendiarism'."



THE TRIALS OF THE SHEARERS

*A commentary upon the trial, "The Queen v George Taylor and Others" by Justice Alan Demack, Central Judge **

For the past 13 years I have sat regularly in the courtroom of the Supreme Courthouse, Rockhampton. Naturally enough, I have been interested in trials that have taken place in this courtroom over the 104 years since it was first used. One of the most celebrated of these was presided over by George Rogers Harding, the fifth judge appointed to the Supreme Court of Queensland. The accused were 14 men alleged to be leaders of the 1891 shearers' strike. The information alleged conspiracy. The trial began on 1 May 1891 and the jury returned its verdict on 20 May 1891.

The centenary of this trial has provided the stimulus to examine the archival material available to me and to read something about the law of conspiracy as it was understood in 1891. Many others have written about this trial, but there is a place for a judicial perspective, and that is the reason for this paper.

The Background

In 1890 a Central District Council, composed of members of the Queensland Shearers' Union and the Queensland Labourers' Union, was formed. Its headquarters were at Barcaldine and its president was William James Bennett. William Hamilton was one of the trustees. Alexander Forrester and George Taylor were elected as organisers. Hugh Octavius Blackwell was the secretary of the QLU.

On 5 January 1891 at Logan Downs, near Clermont, Taylor told two of the owners that the shearers and labourers (rouseabouts) then present would not shear or work upon the terms the owners offered. The owners refused to hire them except on those terms. Most of the men left and formed a camp on Wolfgang Creek, near Clermont.

Towards the end of January 1891 the Central District Council formed a Strike Committee, whose members included William Fothergill and Alfred John Brown. On 10 February Issac Fry was among a group of unionists when a train carrying "free labourers" arrived at Clermont. On 11 February 1891, a train bringing labourers from Melbourne arrived at the Clermont Railway Station. They were met by a number of unionists including Robert Prince.

On 15 February 1891, a meeting of unionists was held at Barcaldine. It was opened by Thomas Joseph Ryan. Julian Alexander Salmon Stuart was one of the speakers. About that time a camp was established at Capella with Patrick Francis Griffin as chairman. On 28 February in Barcaldine an effigy of the Premier was burned on the order of Henry Charles Smith-Barry. In March disturbances spread to the Maranoa District where Edward Harnett Murphy was the secretary of the branch of the QLU.

The Charge

This brief outline introduces the 14 men who were later arrested and charged. The charges alleged a series of conspiracies, an example of which reads:

"And the said Virgil Power further informed the said Court that the said

Extract from a letter dated 14 February 1891 from Hugh Blackwell, secretary of the Queensland Labourers' Union, to F Byrne and found by police in the Barcaldine Strike Committee office:

"I think with a number of others, that if a little more devil was put in our actions the better it would be for us in the end. We have tried passive resistance and it appears to have failed. Let us try the other now and 'Have a fair go'."

George Taylor, William Fothergill, Hugh Octavius Blackwell, Thomas Joseph Ryan, William James Bennett, Alfred John Brown, Issac Fry, Robert Prince, William Hamilton, Julian Alexander Salmon Stuart, Patrick Francis Griffin, Henry Charles Smith-Barry, Edward Harnett Murphy and Alexander Forrester with divers other evil disposed persons on the day and year last aforesaid with force and arms at Barcaldine and divers other places in the said Colony did amongst themselves unlawfully conspire, combine, confederate and agree together by unlawfully using threats to divers persons whose names are to the said Virgil Power unknown to force and induce the said persons to belong to a certain association called 'The Queensland Labourers' Union' to the evil example of all others in the like case offending and against the peace of our Lady the Queen, her Crown and dignity."

Similarly worded charges alleged molesting, or intimidating to achieve the same result, or to induce men to join the Queensland Shearers' Union. Others alleged that the conduct was designed to make men depart from their hiring, or to force employers to alter the mode of conducting their business.

The Common Law Offence of Conspiracy

Scholars trace the English origins of the offence of conspiracy to the 13th Century. By the 17th Century, the offence involved two or more people agreeing to act together to commit any wrongful act. The one word that best describes the essence of the concept is "confederate", one of the words in the charge I have read.

Seeking an increase in wages became an unlawful act within the scope of the crime of conspiracy, because of a long held commitment to the ideal of having necessary items available to people at a stable price. This is expressed in a case in England in 1800 when one Waddington was charged with a series of offences arising from his manipulation of the price of hops at the Worcester market. It was argued on his behalf that an Act of 1772 had repealed the common law offence with which he was charged. Mr Justice Grose said, (1800) 1 East 142, at p 164:

"And in truth it must have occurred to any person considering the effect of the statute 12 Geo 3 how improbable if not impossible it was that the legislature of a great and populous kingdom, ever anxious to provide for the most necessitous objects in it, should have intended by this statute to have taken from the lower and middling classes of men that security against the unnecessary high price of provisions, which the common law intended to give them; and not only to open a door, but thrown out a temptation to rich men to speculate upon the price of the necessities of life at the risk of expense of the poor."

This same concern ran through the common law for centuries and is expressed in a proclamation made at the beginning of the sittings of the justices of the Eyre of Northamptonshire in 1329, "that no one must raise the prices of goods because so many people had come into the town for the eyre" (*Selden Society*, vol 97, p 9).

The English Parliament passed a law in 1550 making it an offence for butchers, brewers, bakers, poulterers, cooks, costermongers, or fruiterers to conspire that they shall not sell their victuals but at certain prices, and for the artificers, workmen and labourers to conspire that they shall make or

do their works but at a certain price (Hawkins, "*Pleas of the Crown*", vol 1, p 236).

By 1721, the common law concept of conspiracy had developed to the point where it was laid down that a conspiracy of any kind was illegal, although the matter of the conspiracy might have been lawful for the individual conspirators, (*R v Journeymen Taylors of Cambridge* (1721) 8 Mod 11; 88 ER 9). In that case the journeymen tailors of Cambridge had conspired to raise their wages.

With the dramatic social changes in England following the end of the Napoleonic Wars, Parliament set about to change the law. The most significant of these changes are found in the Act of 1825, 5 George IV, C 129. This Act permitted combinations of employers and employees, so that they could make agreements about prices and wages. However, it penalised violence, threats and intimidation. It did not abolish the common law offence of conspiracy.

Subsequent legislation in England and Queensland allowed the emergence of trade unions which could be registered. However, by the 1890s, both in England and Queensland the common law offence remained. Thus, the English criminal law text-book, "*Harris on Criminal Law*", in its 7th edition published in 1896 said at p 111:

"It is perfectly legal for workmen to protect their interests by meeting or combining together, or forming unions, in order to determine and stipulate with their employers the terms on which only they will consent to work for them. But this right to combine must not be allowed to interfere with the right of those workmen who desire to keep aloof from the combination, to dispose of their labour with perfect freedom as they think fit. Nor must it interfere with the right of masters to have contracts of service duly carried out. Infraction of such rights will bring the wrongdoers within the pale of the criminal law of conspiracy."

It has often been said that the 14 shearers were charged under an archaic law long repealed in England. What I have said shows that this is not so. Professor Bolton in his lecture referred to the decision of the Queensland Full Court, *Bilby v Hartley and Others* (1892) 4 QLJ 137, to demonstrate that the Act of 1825, 5 Geo IV, C 129, had nothing to do with the conspiracy trial. He is quite right. The report of that case shows that other shearers were charged and convicted under that Act, which the Full Court held was part of the law of Queensland. Lilley CJ said at p 144:

"A statute is not passed for a day; it is passed for all time until the legislature sees fit in its wisdom or in its folly, to repeal it, to modify it or to re-enact something else in its place. So long as it is in the Statute Book, if the circumstances to which it might apply or ought to apply arise, it is our duty, sitting as a Court here, to apply it."

The Crown Case

Included in the documents held in the State Archives is a handwritten document which may be in the hand of Virgil Power, who, with Frederick Dickson, appeared for the Crown. It sets out the matters the Crown sought to prove and it reads:

"Prove - strike of bush labourers in beginning of January 1891.

"Prove - formation of camps and that camps consisted of unionists.

Extract from a letter dated 25 February 1891 written by Hugh Blackwell, secretary of the Queensland Labourers' Union, to Bruce M'Callum and found by police in the Barcaldine Strike Committee office:

"The Government has issued instructions to disarm our men, martial law being declared, and when they start doing this the fun will commence all over Australia. New South Wales is ready and ripe for a revolution by all accounts. It is more than probable that things will hum here to a pretty tune."

Extract from a letter dated 10 March 1891 from Ned Murphy of the Maranoa Branch of the Queensland Labourers' Federation to George Taylor, organiser, CDC, and found in his possession by police:

"Then if you wanted to make a grand coup at any time you could send mounted messengers round and have all your forces concentrated at a given point (away from the railways if possible) and, force the running by a little more devil in the fight. "What chance would Police or Defence Force have against bushmen in their own element, the heart of the bush. They would have no trains there to cart them and their Gattling guns, cannon and Nordenfelts about; they would have their work cut out to shift themselves about."

"Prove - who were the officers of the Central District Council and the Strike Committee at Barcaldine and that the defendants occupied prominent positions in connection with the strike and the unionists in the camps.

"Prove - where possible that defendants were with mobs and that mobs who committed acts of intimidation were unionists.

"Prove - by correspondence between defendants an intention to induce or force free labourers to leave employment.

"Ditto - that defendants were acting in concert both by correspondence passing between them and by their being seen two or more together at meetings of unionists and meeting trains when so called 'scabs' were to arrive.

"Prove - that men under engagement to employer actually forced to go with unionists and prove employment.

"Prove - that boy Page under contract of hiring to Rogers of Westlands was taken to Union Camp and kept there for a fortnight.

"Prove - overt acts of intimidation on Springsure Road when free labourers under agreements were being removed from Rainworth to Peak Downs - Taylor being in charge of the unionists. Prove they were unionists.

"Prove - overt acts of intimidation on road to Peak Downs - Griffin being in charge of mob and prove mob were unionists (see telegram W Hamilton to G Taylor of 19 Mch) 'Scabs dropped Ebor 4 miles Clermont side Capella men following'.

"Prove - by correspondence and orally overt acts by defendants (especially Taylor) 'molesting' free labourers, 'intimidating' same, 'using threats' to same to force them to leave hired service or to prevent them from accepting work not being hired.

"Prove - by correspondence intention of causing loss to pastoralists by inducing railway employees not to carry blacklegs, by asking carriers not to carry wool.

"Prove - by Clermont riot and other acts of intimidation intention of the defendants to make pastoralists alter their mode of carrying on their business to wit not to employ any but union men ie 'to limit description of workmen'.

"Prove - by verbal evidence and correspondence attempts by intimidation, threats and molesting to force the free labourers to join the union."

The witnesses called by the Crown included several men called "free labourers" or "scabs" or "blacklegs" according to one's perspective. One of these was James Edward Murphy. He gave evidence of incidents that occurred on 19 March 1891 when a number of "free labourers" travelled by road from Rainworth Station to Springsure, by train to Ebor, and by road to Peak Downs Station. His deposition at the trial includes the following passage about the journey to Springsure:

"Taylor and others came up and intermixed with police and soldiers got talking to the men (FLs). They tried to persuade us. They said the agreements were no good - not worth the paper they were written on. They persuaded none of us. They called us 'scabs', 'blacklegs' and said that we would not have the railway always with us. They said, 'We will scalp you if we get you away.' Some called me by name and said, 'Join the union.' I told I would not. I came to shear and intended to shear. They told me I had better join - would not get a chance again. They turned around and said we would not finish the agreement or get any shearing and that we'd get it hot when we got out West. One man said this was the last chance we'd never get another I'd never get back to Victoria. I was never more so alarmed as at this time."

Edwyn Lilley represented the 14 accused men. His cross examination of JE Murphy revealed that Murphy had formerly been a member of the Amalgamated Shearers Union "down south".

Four of the charges on the information related to incidents on Boombah Station owned by William Ross Munro. These charges alleged that Richard Alexander Wildin, Alfred Farrow and Thomas Isles had been hired by Munro, and the purpose of the conspiracy was to cause the men to depart from the hiring. Wildin, Farrow and Isles gave evidence of incidents on Boombah Station, near St George on 28 March 1891. At that time there were about five "free labourers" in a hut near the shearing shed. About 56 horsemen rode up. The free labourers were urged to join the QSU, abused when they refused, removed from the hut with some violence and taken to a camp about four miles from St George. Next day they were allowed to go.

Other "scabs" also gave evidence of conduct by large numbers of unionists which was capable of being described as assaulting, molesting or intimidating.

Several graziers gave similar evidence, as did some police officers.

The evidence joining the 14 accused came mostly from notices, letters and telegrams sent or received by each of them except Issac Fry. These documents contained many statements which were capable of being construed as showing a commitment to the use of violence and intimidation to achieve an exclusive right in the union to gain higher wages. Possibly the most famous passage was found in exhibit 68, a letter from Blackwell to Forrester dated 22 February 1891:

"The first shot fired will maybe cause the Australian Revolution? Men are very determined here and anxious to work. What work I leave you to imagine."

The Trial Judge

Much has been written and said about the conduct of Mr Justice Harding during this trial. There is no point in trying to deal with every criticism. However, some things can fairly be mentioned.

George Rogers Harding was appointed a judge of the Supreme Court on 14 July 1879. His contemporaries recognised him as a very scholarly lawyer. He gave much of his time and effort to enlarging the collection of books in the Supreme Court Library both in Brisbane and in Bowen. The library in Bowen was subsequently moved to Townsville when the

Extract from *The Morning Bulletin* (Rockhampton), 30 April 1891

"BARCALDINE, 29 April.

"Intense excitement prevails in town this evening caused by the deliberate attempt to poison a private in the Gympie Infantry by administering a dose of strychnine contained in an apple. The man, whose name is Joseph O'Callaghan, a private in B Company, Gympie Infantry, was accosted in the street by a man, who asked for a match, with which he lighted his pipe. He then took from his pocket an apple, and gave it to O'Callaghan, who ate it. He was then joined by some of the Brisbane Volunteer Corps and they went to the Springsure Hotel, which the men were in the habit of frequenting

Northern Court moved to Townsville. He compiled and annotated collections of statutes concerning the practice of the Supreme Court. However, his behaviour on the bench was often eccentric, and almost an unintended caricature of the judicial office.

His treatment of the jury is an example of this. In the days of Elizabeth I, the English Parliament decreed that a jury must "be kept together without meat, drink, fire or candle, till they are agreed". It was believed that a little hunger helped sharpen the mental processes. Subsequently, candles were allowed.

These restrictions led to the practice in the 18th Century of attempting to conclude a criminal trial in one day. Alexander Pope wrote (*"Rape of the Lock"*, Canto III, lines 19-22):

*"Meanwhile declining from the noon of day,
The sun obliquely shorts his burning ray,
The hungry judges soon the sentence sign,
And wretches hang that jury men may dine."*

Later, the jury was allowed food and drink in cases of necessity, but in 1866 the lawfulness of this was doubted in the case of *Windsor v The Queen* (1866) LR 1 QB 288. The British Parliament then introduced a much needed reform in 1870, (*The Juries Act*, s 23), which was included in the 1884 amendment to the *Queensland Jury Act* in the following terms:

"Jurors, after having been sworn, may in the discretion of the court be allowed, at any time before giving their verdict, the use of fire when out of court and be allowed reasonable refreshment."

It is interesting to note that the Queensland section, unlike its British counterpart, did not oblige the jury to pay for the refreshments provided.

It is easy to see how the bookish Harding, immersed in legal tradition, would have regarded this innovation as a distraction to a jury, rather than a help. He expressed this in his own way.

There have been suggestions that somehow Mr Justice Harding was specially assigned to the Rockhampton Circuit in April 1891. Professor Bolton has examined some possibilities.

Until recently, the practice in the Supreme Court was to publish an annual Law Calendar. This specified the dates on which the various sittings were to commence and assigned judges to preside at the sittings. The Calendar for 1891 was published on 2 September 1890 (*"Queensland Government Gazette"*, Sept to Dec 1890, p 33). It appointed Lilley CJ as the presiding judge for the sittings of the Rockhampton Circuit commencing 22 April 1891. It also appointed Real J to preside at sittings in Toowoomba in February and in Ipswich and Roma in March. All of the circuit sittings assigned to Harding J fell in the second half of the year.

On 6 April 1891 the judges published a notice that Harding J would preside at the Rockhampton Circuit Court sittings appointed to commence on 22 April (*"Queensland Government Gazette"*, 1891 Jan-April, p 1344). Professor Bolton has referred to the various suggestions for this change. If it is assumed that by 6 April Edwyn Lilley had been briefed for the defence, the reason for the change could be that Lilley CJ did not wish to

for music and singing. Some drinks were ordered, but before they could be brought from the bar O'Callaghan complained of a dreadful pain in the abdomen and said, "It's that apple, the unionist chap gave me". Immediately after he was seized by convulsions and rolled on the floor in great agony. Two

preside in those circumstances. As Harding J had no circuit commitments in the first half of the year, he could reasonably be expected to preside in Rockhampton in April. Real J was due to sit in Rockhampton in September.

I should add that there is no basis for thinking that the outcome of the trial would have been any different if Lilley CJ or Real J had presided. Neither would have provided quite as much quotable copy for the press. However, in the course of the argument in *Bilby v Hartley* (1892) 4 QLJ 137 at p 139, Real J remarked that, if he had been threatened as the free labourers were in that case, he would have provided himself with a pistol.

When the trial is looked at from a judicial perspective, it involved the application of well established and clear legal principles to a large body of evidence which all tends one way. Mr Justice Harding's forthright expressions of his opinions to the jury were not out of keeping with judicial attitudes in the 19th Century. The verdict, which found all except Ryan and Fry guilty on all counts, was proper on the evidence.

The sentences had to take into account the widespread defiance which the prisoners had orchestrated. From St George to Hughenden and west to Winton represented a large part of the wool growing districts of Queensland and the disruption and cost to individuals and the community was considerable. The sentences of three years, together with a bond of 12 months seems to me to be proper, even though three years imprisonment is the maximum sentence which can now be imposed under s 543 of the Criminal Code. Section 543, even when read with s 543A, still proscribes the actions proved to have been committed by the accused.

* Justice Demack, who was called to the Queensland Bar in 1959, was appointed a District Court Judge in 1972. He held the position as a Senior Judge of Family Court for two years from 1976. He was appointed a Supreme Court Judge in 1978 and has been based as the Central Judge in Rockhampton for the last 14 years.



constables came in, and messengers were sent for surgeons. The poor fellow cried out, "I'm poisoned! I'm done for!" An emetic was administered and after a lapse of 20 minutes Dr Cumming arrived, followed by Staff-Surgeon Garde. They immediately detected symptoms of strychnine poisoning and injected nicotine and subsequently chloral."

AT THE CONSPIRACY TRIAL

Written in the courtroom by John Miller while Judge Harding summed up.*

In the courtroom at Rockhampton. A close, drowsy afternoon. A wearied listless audience being lulled into greater listlessness by the droning charge of the judge. For the great conspiracy trial is drawing to its close and tonight, apparently, the jury will retire and the prisoners will know their fate - or rather Society will know its fate, for it is evident on the face of it that the prisoners are not on trial at all. A paradox, this, is it not? Ah, well, life is full of paradoxes, as you would think if you were sitting here in the Rockhampton courtroom and began to ruminate over things as I have just begun to do.

It is typical of the law as it stands, this Rockhampton courtroom - a bare, harsh, unbeautiful place, without a single surrender to the emotional yearnings in us, with a brutal dividing line drawn between the rich and the poor, the possessors and the dispossessed. A box-like room with white-washed, wainscoted walls and rafted ceiling; at one end a sort of alcove formed by indented doorways in the corners and in this alcove a raised dais, enclosed, whereon sits the ermined judge, his judgement seat adorned by tall lamps reminding one of the ancient fanes wherein are embowered the Gautamas of Hindoo idol-worshippers. To the right the jury ranged in two rows, 12 ordinary looking men upon whom the judge looks down, yet who can bring to nought if it so please them all a judge's rulings and all the Government's power. In front of the holy of holies, the high judicial seat whereon is seated the fellow-worm whose whim can send you to prison, reader mine, or me either, if we dare to comment freely as is our inborn right, upon his judicial actions, is a species of humble pulpit wherein sits the judge-associate, busily engaged in handing up document after document to his chief, as they are called for; and right under this a big paper-covered wig-littered table, round which are seated the rival lawyers, the men who make whichever side wins and consequently are the most cheerful and unconcerned of the lot. Immediately to the left is the reporters' desk, a school-like affair sparsely occupied. In the far end is a gallery, fairly well filled with the "public", the space underneath partitioned in; right before it is a bare back extending right across the room, covering about a third of the floor and effectively separating the public gallery from the stage of action, sacred to jurors according to a notice on the glazed door but mostly occupied by a half dozen or so police. In the middle of the court-room is a screen, some seven feet high and 10 or 12 feet long with a railed-in gallery facing the judge's dais; here are the prisoners, guarded nominally by the white-bearded, gray-haired gaoler. Against the wall opposite the jurors is the space allotted to "magistrates"; here sit the squatters and their friends - Dives gloating over Lazarus and trying to think that this court-trial will put out a hell-fire. [In case I should ever be tried before Judge Harding I would like to assure him here that "hell-fire" is used purely allegorically and refers to the fate promised by a Teacher, who he professes to regard as divine, for those who enjoy this world's goods regardless of the misery of the poor.]

A piece of paper found in the possession of George Taylor, organiser, CDC, and found in his possession by police:

"We are advised of supposed movements of scabs, and understand they go either to Capella or Retro Siding, and have arranged about 60 men to Retro, and sent about 20 to Capella. Interview if possible, - (here some person's name had been carefully torn out) - on ordinary train 11.30. Capella scabs expected tomorrow or next day."

This is the courtroom and the bushmen are here on trial, the judge will say and the press and the lawyers and the squatters who smile cheerily as Judge Harding "rubs it in". But it seems to me, sitting here, that they are not on trial. It is Society which is being tried and the verdict of the jury will not matter whatever it is; Society is being tried here as a whole, prisoners, squatters and judge and jury and lawyers, tried here as it is being tried wherever the opposing elements of Society are brought face to face, wherever the upspringing of Humanity finds an advocate or meets a foe. And its judge is God - the eternal God which has no defining and no dimensions but which holds the stars in their place and makes water run down hill and brings to nought all that makes it unfit and in the long run makes Right, Might and Justice strong, the same God - call it Law or Nature or anything you like, what do names matter? - the same God that laid Rome low and shattered Greece, the home of art and slavery, and that judges our Society now, weighing it in the balance, as Olive Schreiner says, to know whether it be wanting. And it is "wanting", indeed it is, as you would think if you were here - and thought as I do. For Justice here is a farce and Patriotism a mockery. Here in this courtroom the class-fight is being fought out. Here squatter and labourer face one another, and the Government and the judge and the whole judicial system chum in with the squatter and one sees how hollow the Law is and how useless it is to think of working together, capitalist and labourer, for the settlement of our social troubles. It is boiling over here, class jealousy, class-hatred, class-prejudice, class-bitterness; and penned up in this boiling cauldron are the bushmen, officially said to be standing their trial, and they have not two friends sitting together except in the public gallery and there - well, there the squatters could not find two friends, only the public gallery does not count yet.

But the judge, you will say! Of course it is contempt of court to say that a judge is unfair and perhaps it is only just to say that in all probability Judge Harding does not mean to be unfair. Let us hope and trust he does not, for the sake of hoping that when such men do understand they will try and win us justice. But, anyway, the Crown does not need a prosecutor for Judge Harding fills that role. Word after word, sentence after sentence, clause after clause his charging is a plain piece of special pleading. Even the rough language of the bushmen, language common through all the bush and favoured by many members of parliament, not to mention the late Acting-Governor, was dragged in just this minute and enlarged on evidently to damage the bushmen's case. Twist after twist is given to sentences quoted from the evidence, whenever they can be made to strengthen the prosecution. Point after point is overlooked which would make for the defence. Judge Harding has evidently made up his mind to convict and the intention is emphasised by the one-sided charging that the Crown lawyers can hardly be gratified, for even lawyers feel human sometimes and have an exalted idea, strange to say, of what a judge should be. And Judge Harding, sitting there with trim beard and glittering eye-glass between the fane-like lamps, indulging in all the old forensic tricks for the impression of jurors, now abusing the cowardice of these men in front of him for not talking wildly in front of the Gattling guns, now denouncing bad language as though Treasurer M'Ilwraith couldn't take a hand with anybody, now halting suddenly to look through his glasses at the jury in a knowing manner, now treating some point of evidence as a hen picks a worm and worries it for its chicks, now dropping

into the conversational and employing the well-known wheedle of familiarity. I dare assert that anybody, I do not care who, simply hearing the actual charge without any surroundings would for an hour at a time set it down as a prosecution speech and a bitter one at that. Yet Judge Harding is said to be an honest man and to take pride in his uprightness as a judge. To understand his conduct you have to look around the court; then you will see the class division and the side on which Judge Harding stands.

In the prisoners' dock are the bushmen, rough looking men, roughly dressed, with broad, browned hands, with poses that lack the grace of Vere de Vere and of the squatter who lounges easily on his bench half a dozen paces away. They wear moleskin pants, mostly, and few wear vests; one or two who are better dressed, with all the town-bred attachments, are lost in the general effect. I saw them in a dark, windowless, ill-ventilated cell, two hours or so ago, wherein they were awaiting the re-opening of the court and they looked a pretty rough lot. And so would Judge Harding and his associate and young Lilley and Virgil Power and these aristocratic squatters, if they were dressed in nondescript garments and inducted into the same conditions. If you were to see these men out West, as I have seen them, camping under the starry sky and gathering in on horseback to the great bush meetings, free handed and free hearted, open as children and true as steel and simple in their habits as Arabs, you would not have said they were "rough-looking" then. You would have said that they fitted - but they don't fit here. It is all so cold and precise and proper here. The judge and the police, the lawyers and the squatters, are all so sleek and so prim; the walls are so white and the ceilings so carefully painted and the whole surroundings so utterly Philistine that the bushman has no more show here than has a butterfly in a sixpenny restaurant. So he looks rough and uncouth - and the squatter looks as though the building was made for him. The bushman doesn't fit here; but the squatter and the police and the judge do. Now, do you see the connection and how it is that Judge Harding can be grossly prejudiced without being wilfully or consciously unfair?

It is a class trial this, nothing but a class trial, there's no deceiving one's self about that if one desires to retain any faith in one's fellow-man at all. Either it is a class-trial or Justice is a mockery; either it is a class-trial or all this antagonistic officialism and squatterdom is utterly lost to all honour and all sense of shame. For these men on trial are honest men and straight and earnest, there is not one of them whom would not break bread with and shake hands with and hardly one would object to have one's daughter married. I am speaking, of course, of we working people, you know. And yet these men on trial are abused as if they were scoundrels, and as if their lives had been one long skein of wickedness. And so their lives have been in the class-eyes of squatters, judge and officials, in the opinion of all these well-dressed gentry who have five courses at dinner and know the difference between Hock and Moselle. They have disturbed the established order, they have not been content to let things remain as they are, they have attempted to shake down the curtain that separates the wine-press from the wine-bibbers. And so they are evil-minded in the eyes of all those who wax fat amidst the miseries of civilisation. And is this to be wondered at when the Galilean was held evil-minded, when those who were rich in Jewry devoted to death the gentlest Teacher that ever denounced unjust judge and selfish Dives?

Judge Harding is of those who wax fat, of those who fare sumptuously and are clothed in purple, of those who despise the man in moleskin and hold the agitator to be born of Hell. Who will he mix with when the trial is over? Who are his friends and his acquaintances? Whose thoughts does he share and whose prejudices does he take unto himself? Where shall a man find Judge Harding if he would seek him - among the squatters or among the workers, in the mansion of the rich or in the iron-roofed hut of the poor? And what will one hear Judge Harding say if one finds him - what but what the squatters say and the rich merchant and the wealthy manufacturer, that pestiferous unionists should be shot like dogs? He is one of them is Judge Harding, and not of us. He is of those against whom we struggle, of those who defend and maintain the industrial system which we would change. And he sits there, glowering at our comrades, as he glowers always at the whole Labour movements, believing it - really believing it, for such is his prejudice - to be altogether evil. And as he thinks so think these smug gentry here, these men of Mammon and their parasites, these men of law and men of land and men of scrip and blue-coated hirelings whose promotion depends upon their betrayal of their worker-mates. And it is they who try the prisoners at the bar, or think they do. And it is they who are on trial before God who is judge.

For my part, I would rather be prisoner at the bar than any one of them. Foolish some of these prisoners may have been; not one of them but has sought to aid his mates against the oppressor, not one of them but is being victimised now on general principles for having given that aid. They today, us to-morrow, you some other day; under some pretence or other those who love the people are doomed to suffer. And when our time comes, as theirs has come, may we be as they are, patient, courageous and fearless, ready for the worst that can be done to us, comforting ourselves with the sure and certain knowledge that we prepare the way for those who will triumph in the end. And surely when the People's Jubilee has come, when Labour shakes off its fetters, when Wrong and Misery and Poverty are rolled away like clouds before the wind, surely then all men will give a thought to the martyrs who have made redemption possible, surely here in Australia men will remember those who stood their trial for Labour's sake at Rockhampton in 1891.

* John Miller was one of the three pseudonyms used by William Lane, while he was the first editor of *"The Worker"*. He was largely responsible for the formation of the Australian Labour Federation in 1889 and wrote an ironically titled novel, *"The Working Man's Paradise"* (Brisbane, 1892), to raise funds for the families of the convicted Rockhampton prisoners. The defeats of the shearers and other strikers turned Lane down the Utopian by-road, which led him to create the settlements, New Australia and Cosme, in Paraguay.

SHEARING AGREEMENT

TO BE USED IN NEW SOUTH WALES, QUEENSLAND, AND THE NORTHERN
DISTRICTS OF SOUTH AUSTRALIA.

*Adopted by the Intercolonial Conferences held in Melbourne, 7th November; and in
Sydney, 22nd December, 1890.*

Agreement made this day of 18 between
hereinafter called the employer of the one part, and the undersigned of the other part. The terms of this
agreement are that the undersigned shearer hereby agrees to faithfully serve the employer by shearing with
all reasonable despatch all the sheep required of him by the employer or his agent during the present season
in a good and workmanlike manner and to the satisfaction of the employer or his agent, the total number
of sheep required to be shorn by the whole of the shearers employed during the shearing to be not less than
thousand nor more than thousand.

1. The price of shearing wethers, ewes, and lambs (including ram lambs under six months old)
to be at the rate of twenty shillings per hundred for all such sheep shorn; rams at the rate of forty shillings
per hundred for all rams shorn; money to be paid by cheque on a local bank, or exchange to be added.

2. The shearer shall be at the Station or run ready to commence shearing on
the day of 18 , and the employer agrees to be ready to commence shearing on
that date, and to keep the shearer fully supplied with sheep, unless prevented by weather or by some
unforeseen cause.

3. The employer shall, during the whole of the time the shearer is engaged shearing, provide
him with hut accommodation, cooking and table utensils, wood, and water free of charge.

4. The shearer shall not absent himself from work, but in case he leave before the completion
of shearing, owing to sickness, accident, or other such unavoidable cause, or by the permission of the
employer or his agent, he shall be paid in full for all sheep shorn by him, but shall be charged 15s per week
for his board and lodging, cook's remuneration included, such sum to be deducted from the amount due
to him and placed to the credit of the shearers' mess account.

5. If the shearer be discharged, as he may be, for breach of this Agreement, or of the Rules
endorsed hereon or attached hereto, he shall be paid for the number of sheep shorn by him up to the time
of such discharge, but he shall be charged 20s per week for his board and lodging, cook's remuneration
included, which amount shall be placed to the credit of the shearer's mess account.

6. Once a week, on a day to be named at commencement of shearing, on demand the employer
shall pay to the shearer any sum not exceeding 50 per centum of the amount due over and above one week's
earnings at the time of such demand, except in case of the shearer breaking this Agreement.

7. The employer and the shearer shall conform to the Rules endorsed hereon or attached
hereto, which Rules it is hereby agreed shall be taken and deemed to be and form part of this Agreement.

As Witness the hands of the parties the day and year first before written.

Signed by the EMPLOYER

in the presence of

Signed by the SHEARER

RULES

EMBODIED AS PART OF AGREEMENT.

1. The shearing shall be carried on under the direction and supervision of the employer or the person placed by him in charge of the shed.

2. Before commencing work the shearer shall draw lots for his pen, and shall abide by the result of such drawing, the person in charge of the shed having the right to make any alteration deemed advisable.

3. All the sheep must be taken carefully from the pen to the shearing board and be shorn closely and in a fair and workmanlike manner, and to the satisfaction of the person in charge of the shed, the belly wool to be taken off first and laid aside.

4. In opening the fleece at the neck and belly, both blades of the shears or the machine to be kept under the wool and close to the skin so as to avoid twice cutting, and the shearer shall not be allowed to run the shears or the machine through the fleece so as to break it down the centre or the back, and shall not stand on the fleece.

5. In case the said shearer turns out a sheep badly cut or insufficiently tarred, he shall at once sew and tar such cut or wound, in his pen, or otherwise dress or treat such sheep as directed by the person in charge of the shed.

6. The shearer shall not be allowed to kick or otherwise injure or illuse any sheep, and in case he seriously injure or illuse any sheep, or cut the teat of any ewe or pizzle of any wether or ram, he shall immediately report same to person in charge of the shed; and he shall pay to the employer the mess rate for the sheep so injured, and if the sheep be fit for food it shall go to the shearers' mess; the employer to have the right to refuse such payment and keep the sheep.

7. The shearer shall not be allowed to catch any sheep from his pen while it is being filled, but shall during such filling shear from any pen or pens that may be allotted to him by the person in charge of the shed. No sheep to be caught after the signal has been given to cease work by the person in charge of the shed.

8. The prices to be charged by the employer for rations and shearers' requisites shall not exceed cost prices, with 10 per cent and cost of carriage added.

9. Each shearer may have free run for two horses, but the employer accepts no responsibility for them.

10. No shearer shall bring, or cause to be brought, any intoxication liquor on to the station; no profane or obscene language or singing shall be allowed in the shed.

11. The employer shall provide at least one grindstone for every ten shearers employed.

12. Shearers shall provide their own cook, except where cooks work conjointly for shearers and the employer, in which case the cook shall be engaged by the employer, and the proportion of mess account and of cook's remuneration shall be matter of mutual agreement.

13. In all sheds where shearing machines are provided, shearers shall pay for cutters and combs a price not exceeding cost. In case of stoppages through breakage or otherwise, shearers shall, if required, go on shearing with the hand shears.
