

N^o 47/2379

Rey^d of 18th Dec 1847

The Crown Prosecutor
Furnishes a

report upon certificates of a letter from
Mr. Seymour, Melbourne
Earl Grey dat^d 8th May 1847.
November 28th 1847

Sir

Referring to your Honor's minute of
this date, in which, your Honor calls on
me for any report, or information, which
I may be able to give your Honor, on the
points adverted to by Mr. Seymour, in
an extract from a letter dated the 8th of
May 1847, addressed by him to Earl Grey
Secretary of State for the Colonies, I do
myself the honor to comply with your
Honor's wishes. The first point,
adverted to by Mr. Seymour is, that,
though he as a Magistrate did not
hesitate to bring before the proper tribunals,
with strict impartiality, those, who,
unfortunately had been brought into
collision with the natives, while defending
their property, as also the more aggravated
cases of homicide, and murder, which
were perpetrated by the lawless, and
depraved, portion of the white population;

His Honor
The Superintendent

and, that, though, he Mr. Seiwright
by his zeal and activity in detecting the
murderous acts of the Squatter, and his
agents, had thereby incurred the enmity
of the Squatters, yet, that the proper authorities
declined to bring the implicated parties to
Trial. In reply to this assertion of Mr.
Seiwright I must say, in the outset, that
neither my memory or experience enables
me to concur, in the charge of supineness
made by Mr. Seiwright against the
authorities, either in this, or the Sydney,
District. As Public Prosecutor in this
District, for a period of more than eight
years, I do assert, that before, and since,
the institution of a Supreme Court in the
District of Port Phillip, no case of hostile
collision, properly brought before me,
ever failed to receive the utmost attention.
I regret to be obliged to say, Mr. Seiwright
is not correct, in saying, that it was owing
to the inertness of the measures taken by
the authorities, that public prosecutions were
not instituted. Public prosecutions
were defeated, not because, the authorities
were inert, but because, Mr. Seiwright,
uniformly, in the performance of his

duty as a Magistrate, took the examination^{of}
of the persons implicated, on oath, thereby
rendering, the depositions, taken by him,
illegal, and nugatory. I must add, that
though, the Attorney General at Sydney,
and I myself, as Public Prosecutor in this
District, frequently reprobated, such a
practice yet Mr. Siewright, preferred his
own way of taking depositions to that
recommended to him for adoption.

The only case, I recollect, in which the
depositions, were properly taken by Mr.
Siewright, was the case, of the Queen
against Bolder, ^{charged with} shooting an aboriginal
Native, ^{I think} tried, in April or May, 1842, by
Mr. Justice Millis, after the establishment
of a Supreme Court, in the District of
Port Phillip. I have uniformly known
the Authorities, both legal, and otherwise,
in this District, always take, the deepest
interest, in the Black population, and
evince, the utmost, and most humane
sympathies, in their regard. I am
perfectly satisfied that neither the
late Governor Sir George Gipps, or your
Honor, would permit the lives, of the
Aborigines of New South Wales, to be

taken away with impunity, or their rights, liberties, or privileges, to be invaded. Your Honor, is perfectly aware, that it was not, until the establishment, of a Supreme Court in this District, in March 1841, I was in a position, or had authority to bring to trial, persons charged, with capital offences.

The only tribunal, that up to March 1841, existed here, was a Court of Quarter Sessions, which, obviously, was incompetent to try, capital offences. Before the establishment, of a Supreme Court in this District, your Honor must also be aware, all capital cases were sent for Trial to Sydney, and consequently all the depositions, and examinations, were also sent to that quarter.

The next point, adverted to by Mr. Seivwright, is introduced, as an illustration of his charge against the authorities. In this illustrative case, Mr. Seivwright states, that, though, according to the deposition, of one of the parties, engaged, between thirty, and forty, men, exclusive of women and children, were shot dead, only one escaping of the whole tribe, yet, no further step was taken, than that of sending the depositions

to the Crown Prosecutor, who returned, as his decision, that the Blacks were the aggressors, I must observe here, that a remarkable discrepancy appears to me to exist, between the representation made by Mr Seiwright, to Earl Grey, in his letter of 8th May 1847, and his letter addressed to Mr. Robinson, bearing date the 25 March 1840. In the former, Mr Seiwright represents the number of aboriginal natives to have amounted to 30 or 40, and that they were all slain, except one; but in the latter, that is his letter, of date 25 March 1840, he represents the number to have amounted to 70 or 80, and out of that number only one escaped. I cannot conceive, how Mr Seiwright, can reconcile both these statements. Mr Seiwright does not particularise the collision ^{tion} he alludes to, but I should suppose, he alludes, to a hostile collision ^{tion}, which took place, on the river Warron, on the 9 or 10th March 1840, between a party of aboriginal natives, and the Messieurs White and party. The case made by the depositions, is shortly this,

Whyte

A flock of sheep, belonging to the Messieurs Whyte were stolen by the Blacks, on the 8th March 1840, while the Shepherds was engaged at dinner. The greater part of the flock, had escaped from the Blacks, but they still retained possession of one hundred and twenty seven. To recover this number, the Messieurs Whyte, and party, proceeded, in pursuit of the Blacks, and on the morning of the 9th or 10th of March 1840, they reached the Black encampment. As soon as the natives saw the Messieurs Whyte, and party, approach the encampment, they ran, some, to release the sheep, that had been secured in a brush enclosure, and others, to their spears, which they immediately hurled at the party in quest of the sheep, and in consequence of this aggression, a battle ensued, which, according to the depositions taken by W. Stewart, lasted two hours.

During the encounter, the depositions state, that some hundreds of spears were thrown, the natives, according to the estimate of one witness, amounted to about 40 or 50; and according

to that of another, to between 70 and 80, The opponents of the Blacks, were 7 or 8 in number. In this encounter, I regret to say, that about 20 to 30 natives lost their lives. According to the examinations, taken by Mr. Seiwright, which, I this moment have before me, the aborigines, were the first, to commence the battle.

Your Honor will therefore perceive, that, if the depositions, are to be relied on, the Messieurs Whyte and Hartz, were obliged to resort to their arms in self defence. One of Messieurs Whytes party, named Turner, whose examination was taken, ^{as usual, on oath,} by Mr. Seiwright, was badly wounded by a spear, which spear, (to use Turners own words) went in at the calf and came out at the front of the leg, and which, Turner adds, made him drop as if he had been shot. This person, also further states, in his examination, that there were no natives killed, that he saw, before he was wounded, nor did he hear a gun fired previous to his having been speared. In vindication of my opinion, as given in this case, I am

compelled to be thus minute, and
circumstantial. The examinations,
or depositions, are solely, and exclusively,
my guide, and, though, no one can
lament more than I do, that such an
encounter, between the Black, and White
population, should have taken place,
still it is my conviction, that, judging
from, and guided by, these examinations,
as taken by Mr. Sieuwright, the Messieurs
Whyte, and party, could not be put
upon their Trial, with the least hope
of a successful result, not only, because,
no case could be made by the Crown,
on the facts themselves, but also, because,
the examinations, had, that legal infirmity,
of having been taken, on oath, a peculiarity
that distinguished, all examinations taken
by Mr. Sieuwright, with the exception of
the case of the Queen against Bolden.

If Mr. Sieuwright was of opinion, that
the homicides alluded to, were inexcusable,
or not perpetrated in self defence, or,
unjustifiable, it is strange, he did
not commit, the offenders. Your
Honor, states also in your minute,
that Mr. Sieuwright, represented in his

letter to Earl Grey, that he had high testimonials, from the Law officers of the Crown. What testimonials, W. Siewright, may, or may not have, from the Law officers of the Crown, in Sydney, I know not; but I can say, thus much for myself, that W. Siewright has no testimonial from me.

Have the Honor to be
Sir
Your Honors
Most obedient Servant
James Cockle
Crown Prosecutor