

1883.
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VICTORIA.

DEPORTATION TO AUSTRALIA OF APPROVERS AT THE TRIALS
FOR CERTAIN MURDERS IN PHOENIX PARK, DUBLIN.

PRESENTED TO BOTH HOUSES OF PARLIAMENT BY HIS EXCELLENCY'S COMMAND.

By Authority:

JOHN FERRES, GOVERNMENT PRINTER, MELBOURNE.

PREMIER'S OFFICE,
Melbourne, 11th August, 1883.

MY LORD,

The events which have occurred during the last few days in connexion with the arrival here of certain approvers in the trials for the celebrated Phoenix Park murders, render it desirable that I should address to Your Excellency a few remarks on the subject.

I will premise that on the 23rd May last telegrams were published in our local newspapers stating that the Imperial Government were taking steps for the deportation to Australia of the men in question. This announcement caused much surprise, and a strong feeling of the injustice to this community of any such proceeding.

The Government of this colony immediately telegraphed to the Agent-General, instructing him, on behalf of this colony in particular and also of Australia generally, to protest against the rumoured intention of the Imperial Government.

Mr. Murray Smith reported to me, under date of 1st June, that he had duly waited upon Sir Robert Herbert, the Under-Secretary for the Colonies, and conveyed to him our protest; he also reported that, in reply to this, Sir Robert had assured him that he had no knowledge of any such intention on the part of the Government, and he undertook to communicate to Mr. Murray Smith anything which might transpire on the subject. Further, besides waiting upon Sir Robert, Mr. Murray Smith placed the matter in writing, formally addressing the Colonial Office by letter on the 5th June, and he received a letter in reply informing him that the protest of Victoria had been duly communicated to the Lord Lieutenant of Ireland.

Our apprehensions were naturally allayed, by this. Implicit confidence was placed in Sir Robert Herbert's statement—as an officer of the British Government—and no doubt was entertained either that the rumoured intentions had not been formed, or that if formed they certainly would not be carried out without confidential communication to the Agent-General. Indeed, to us it seemed most probable that the rumour had been floated as a *ruse* to cover the secret departure of the men in some other direction. But on the 30th ultimo considerable anxiety was caused by the publication of a telegram from Western Australia, announcing that the s.s. *Pathan* had arrived, and that there were on board “*some notable Irish characters.*” It was suspected that some of the approvers in question were covered by these vague terms.

I telegraphed to the South Australian Government asking them to make inquiries on the arrival of the steamer at Adelaide. In due course information was received from Adelaide, which rendered it all but certain that several of the men in question were on board—amongst them Kavanagh, Hanlon, and Smith—of course under assumed names.

This news created great excitement in this colony, and I was asked in Parliament what course this Government proposed to take with regard to these men, supposing them, or any of them, to be bound for Melbourne.

I replied that the Government had the matter under consideration, and on the following day, I stated in reply to a further question, that the first step to be taken would be to identify the men, and if the identification was complete the Government would take steps to prevent their landing on these shores. This announcement was received in the Legislative Assembly and in the country with so strong and unanimous a feeling of relief and satisfaction as has rarely been witnessed in these colonies.

On the arrival of the *Pathan* at Port Phillip Heads, several detective officers, acting under instructions, boarded her with a view to settling the question of identity, and before the steamer reached Hobson's Bay, Hanlon and Kavanagh had confessed their identity, and had also testified that a man on board under the name of Keirnan was really Joe Smith. Smith at first denied that he was the man, but afterwards privately admitted to the detectives that he was. Hanlon and Kavanagh were bound for Melbourne, and Smith for Sydney.

The Government were, of course, aware that the situation was a very delicate one, but fortunately events occurred which enabled us to surmount any theoretical difficulty which otherwise might possibly have hampered us. By a convenient though lamentable coincidence the tidings of the murder of Carey at Cape Colony reached us almost simultaneously with the arrival of the *Pathan*. Reading this in connexion with the recent events in Ireland, it was held by many to be indicative of a plot to track and murder those who had aided in bringing to justice the murderers of Lord Frederick Cavendish and Mr. Burke.

The approvers on board the *Pathan*, when they had been allowed time to realize their position, expressed in writing (copies enclosed herewith) a request that they might not be landed here; and from this point it became simply a matter of convenience, for them as well as for us, to provide for their transshipment elsewhere. We therefore entered into a contract with Captain Rowley, of the *Pathan*, to retain them on board his vessel during the remainder of his voyage to other Australian ports and Calcutta, and finally to convey them to England.

The *Pathan*, therefore, proceeded on her voyage to Sydney, but before arriving there the Commodore on the Australian Station received instructions by telegraph from the Imperial Government to board the *Pathan* on her arrival at the Sydney Heads, and transfer the informers to H.M.S. *Nelson*.

Having thus narrated the events, I would now explain to Your Excellency, for the information of the Imperial Government, the views by which we were guided in our action.

In the first place, the popular feeling was so exasperated, at the idea of men who had been guilty accomplices in the Phoenix Park atrocities, settling down in our midst that the Government felt that they had no alternative but to forbid their landing. This feeling was no doubt heightened by what really bore the semblance of a breach of faith on the part of the Home Government. Our protest had been accepted with every indication that it would at least receive respectful consideration. We were told that we should be kept *au courant* of proceedings in the matter. We were informed that our protest had been duly forwarded to the Government of Ireland; yet the next thing that we hear of is the arrival of the men in Australia.

It seems incontestable that there was here all the appearance of a breach of faith. I cannot for a moment bring myself to think such a thing possible on the part of the Imperial Government towards us, and I therefore willingly credit the proceeding to some blunder (however reprehensible such a blunder must be deemed). But the

main feeling—that which formed the motive of our action, and which I do not wish to palliate or apologise for—was undoubtedly the sentiment that we in Australia resent, and in self-respect we must continue to resent, the very notion that our communities are a fit place of deposit for the refuse of other populations. If the men in question had been merely informers, it would have been different, but they were *approvers*; they had borne their part in compassing atrocious murders.

I trust I need hardly say that our feeling is most loyally with Her Majesty's Government in the difficulties connected with Irish questions, indeed, so much so, that when the news of the dreadful murders in Phoenix Park arrived, both our Houses of Parliament immediately adjourned as a token of sympathy; but a still stronger feeling that we have is, that we must preserve our own communities from the contagion of external crime. Since the days when the colonies resisted the transportation of convicts to Australia that feeling has continued to exist, and I am sure that the Earl of Derby will not only deem that it is one which from its strength must be respected, but that it is a worthy sentiment in itself. We had duly informed the Imperial Government of our objection to receive these wretched men; they were sent to us in spite of our protest; and we only acted up to the level of the sentiment of the country in determining that they should not land here.

But with reference to the instructions telegraphed to the Commodore to afford the men a refuge on his ship, I shall be glad if Your Excellency will convey to the Right Honorable the Secretary of State for the Colonies the thanks of the Government and people of Victoria for the prompt and gracious manner in which the Imperial Government responded to the wishes of the people of these colonies. Their timely action has given intense satisfaction and relief to the public mind; and we desire to assure Her Majesty's Government that, while the people of Victoria have an insuperable objection to these colonies being made a receptacle for criminals, they always have been and continue to be desirous of rendering every aid to the Imperial authorities in all matters in which such assistance may be of value.

I have the honour to be,

My Lord,

Your Excellency's most obedient Servant,

(Signed)

JAMES SERVICE,

PREMIER.

His Excellency,

The Most Honorable the Marquis of Normanby, G.C.M.G.,

&c.,

&c.,

&c.

ENCLOSURE No. 1.

Deceptive Mackey,

SIR,

On Board s.s. *Pathan*, 5 August, 1883.

In consequence of the feeling existing in Melbourne against the Crown Witness in the recent Phoenix Park Murders, I have no desire to land here. I therefore wish you to entreat on my behalf to the Government for the purpose of having me sent quietly from here to the Port of Callcutta, or back to England. I have been a Crown Witness in the case, and was fowored out here at the express desire of the Home Government. I was in the Park when the murders were committed. Deceptive Simmins, of Dublin, obtained my ticket for Malbirne, and handed me bank draft for 50 pounds. The same arrangements were made with Kavanagh. He was my companion in Kilmainham Jail.

JOSEPH HANLON.

P.S.—Mr. Mollans, the Chief of the detectives to me to take a assumed name.

ENCLOSURE No. 2.

On Board s.s. *Pathan*, 5 August, 1883.

I, MICHAEL KAVANAGH, have no desire to land here in Melbourne in consequence of the feeling existing in the public mind against the Crown witnesses in the recent Phoenix Park Murders, I therefore wish that, for my own protection, I may be secretly forwarded with Joseph Hanlon to Calcutta. I was sent out here by Detective Simmons, of Dublin, with the sanction of the English Government. My passage ticket was obtained by Mr. Simmons in the name of Peter Murphy, and he handed me a draft for £96. Mr. Bolton, the Crown Solicitor, of Dublin, told me there would be no fear of me in any of the colonies, and that is why I consented to come.

MICHAEL KAVANAGH.

Witness—PATRICK MACKEY.

ENCLOSURE No. 3.

I, MICHAEL KAVANAGH, on board the ship *Pathan*, now lying in Hobson's Bay, in the colony of Victoria, do solemnly and sincerely declare that the contents of the attached statement, marked A, bearing my signature, and dated this sixth day of August, A.D. 1883, are true and correct in every particular. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

MICHAEL KAVANAGH.

Declared before me, at Hobson's Bay, in the colony aforesaid, this sixth day of August, in the year of our Lord One thousand eight hundred and eighty-three.

C. LEONARD DOBBIN,
A Commissioner of the Supreme Court of the Colony of Victoria
for taking affidavits.

ENCLOSURE No. 3A.

I, JOSEPH HANLON, on board the ship *Pathan*, now lying in Hobson's Bay, in the colony of Victoria, do solemnly and sincerely declare that the contents of the attached statement, marked A, bearing my signature, and dated this sixth day of August, A.D. 1883, are true and correct in every particular. And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act of the Parliament of Victoria rendering persons making a false declaration punishable for wilful and corrupt perjury.

JOSEPH HANLON.

Declared before me, at Hobson's Bay, in the colony aforesaid, this sixth day of August, in the year of our Lord One thousand eight hundred and eighty-three.

C. LEONARD DOBBIN,
A Commissioner of the Supreme Court of the Colony of Victoria
for taking affidavits.

ENCLOSURE No. 3B.

Michael Kavanagh and Joseph Hanlon state:—We were Crown witnesses in the Phoenix Park murders, and were present with our ship-mate, Joseph Smith, when the offence was committed; after the trial we were placed in Kilmainham Gaol for protection until an opportunity arrived to get us away from Ireland.

Mr. Mallens, the chief of the detectives at Dublin, made arrangements for us to leave the country, and Detective Simmons escorted us to Dublin Castle, where we stayed two days. We expressed a wish to come to Melbourne, and the detective handed us the passage tickets per s.s. *Pathan*, and selected assumed names under which we were known on board, also gave us drafts on the English, Scottish, and Australian Chartered Bank, Melbourne, and escorted us on board.

Mr. Mallens said if we went to Melbourne we would have the protection of the Crown, and we sailed from London by the s.s. *Pathan* under these conditions. Mr. Bolton, the Crown Solicitor of Dublin, also said there would be no fear of us in any of the colonies, as the Government had provided for our safety. We did not know Smith was coming on the same steamer; would have objected had we known that he was to be a passenger. Another detective, whose name we don't know, arranged for his passage per s.s. *Pathan*, and escorted him on board.

MICHAEL KAVANAGH.
JOSEPH HANLON.

Dated on this sixth day of August, A.D. 1883, on board the ship *Pathan*, in Hobson's Bay, in the colony of Victoria.

Signed in my presence, the contents having been first read to the said Michael Kavanagh and Joseph Hanlon.

C. LEONARD DOBBIN,
A Commissioner, &c.

This is the statement marked A referred to in the attached statutory declarations of Michael Kavanagh and Joseph Hanlon, and dated this sixth day of August, A.D. 1883.

C. LEONARD DOBBIN,
A Commissioner of the Supreme Court of the Colony
of Victoria for taking affidavits.

Hobson's Bay, Melbourne, 6th August, 1883,

MEMORANDUM FOR HIS EXCELLENCY THE GOVERNOR.

No. 347.

Mr. Kerferd presents his duty to His Excellency, and begs herewith to send a copy of an Act of the Parliament of Victoria, intituled an Act to Prevent the Influx of Criminals into Victoria, dated 16th November, 1854.

Acts enclosed
herewith—
18Vict.No.3;
19Vict.No.3;
22 Vict. No.
68.

The only reported decision by the Supreme Court of Victoria on this Act is that of the case of Ryall *v.* Keneally, which is reported in Wyatt, Webb, and A'Beckett's Reports, vol. 6, page 193.

It was decided in that case that a convict receiving a free pardon was still within the provisions of the Act.

(Signed)

GEO. B. KERFERD,

10th August, 1883.

ATTORNEY-GENERAL.

No. III.

An Act to continue for a limited period an Act intituled "*An Act to prevent the influx of Criminals into Victoria.*" [Assented to 5th February, 1856.]

WHEREAS it is expedient to continue for a limited period an Act of the Lieutenant Governor and Preamble. Legislative Council of Victoria passed in the eighteenth year of the reign of Her present Majesty Queen Victoria intituled "*An Act to prevent the influx of Criminals into Victoria*" and which said Act would expire at the end of this present session of the Legislative Council of Victoria: Be it therefore enacted by His Excellency the Governor of Victoria by and with the advice and consent of the Legislative Council thereof as follows—

I. The said recited Act shall be and the same is hereby continued in full force and effect for one year from the passing hereof and from thence until the end of the then next session of the Legislature of Victoria.

Continuation
of Act 20
Vic. No. 4,
21Vic.No. 9.

No. LXVIII.

An Act for the continuation of Expiring Laws.

[24th February, 1859.]

WHEREAS the Acts mentioned in the schedule hereunto annexed will expire at the end of this present session and it is expedient to continue the same for a further period: Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same that the said Acts as the same have been altered or amended shall be and the same are hereby continued in full force and effect until otherwise provided by law.

Continuation
of Act 20
Vic. No. 4,
21Vic.No. 9.

THE SCHEDULE.

Date of Acts.	Title of Acts.
9 Vic. No. 27	"An Act to amend and consolidate the Laws between Masters and Servants in New South Wales."
10 Vic. No. 1	"An Act to prevent for a limited time Party Processions and certain other public exhibitions in the Colony of New South Wales."
11 Vic. No. 9	"An Act to amend an Act intituled 'An Act to amend and consolidate the Laws between Masters and Servants in New South Wales.'"
13 Vic. No. 10	"An Act to continue an Act intituled 'An Act to prevent for a limited time Party Processions and certain other public exhibitions in the Colony of New South Wales.'"
16 Vic. No. 6	"An Act to amend and continue two Acts passed in the ninth and eleventh years of the reign of Her present Majesty respectively intituled 'An Act to amend and consolidate the Laws between Masters and Servants in New South Wales,' and 'An Act to amend an Act intituled an Act to amend and consolidate the Laws between Masters and Servants in New South Wales.'"
16 Vic. No. 35	"An Act to make provision for the Sale of Fermented and Spirituous Liquors and of Refreshments in certain Districts."
17 Vic. No. 16	"An Act to give a preferable lien on Wool from season to season and to make Mortgages on Stock valid without delivery."
17 Vic. No. 24	"An Act to amend an Act intituled 'An Act to consolidate and amend the Laws relating to the Licensing of Public Houses and to regulate the Sale of Fermented and Spirituous Liquors in New South Wales,' and also an Act intituled 'An Act to make provision for the Sale of Fermented and Spirituous Liquors and Refreshments in certain Districts and to impose a Fee on the Registration of Names of Spirit Merchants.'"
18 Vic. No. 3	"An Act to prevent the influx of Criminals into Victoria."
18 Vic. No. 16	"An Act to re-enact three Acts passed in the ninth eleventh and sixteenth years of the reign of Her present Majesty respecting the Law between Masters and Servants."
18 Vic. No. 17	"An Act to continue an Act intituled 'An Act to make provision for the Sale of Fermented and Spirituous Liquors and of Refreshments in certain Districts.'"
18 Vic. No. 33	"An Act to further continue an Act intituled 'An Act to make provision for the Sale of Fermented and Spirituous Liquors and of Refreshments in certain Districts.'"
19 Vic. No. 1	"An Act to further continue an Act intituled 'An Act to prevent for a limited time Party Processions and certain other public exhibitions in the Colony of New South Wales.'"
19 Vic. No. 3	"An Act to continue for a limited period an Act intituled 'An Act to prevent the influx of Criminals into Victoria.'"