1920.

LEGISLATIVE ASSEMBLY.

NEW SOUTH WALES.

REPORT

OF

ROYAL COMMISSION OF INQUIRY

(Hon. N. K. EWING, Puisne Judge of the Supreme Court of Tasmania),

INTO

THE MATTER OF THE TRIAL AND CONVICTION AND SENTENCES IMPOSED ON CHARLES REEVE AND OTHERS.

Ordered by the Legislative Assembly to be printed, 11 *August*, 1920.

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COMMISSIONS,

GEORGE the FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To our Trusty and Well-beloved—

THE HONORABLE NORMAN KIRKWOOD EWING, Puisne Judge of the Supreme Court of Tasmania.

Greeting:

WHEREAS Charles Reeve, Thomas Glynn, Peter Larkin, John Hamilton, Bernard Bob Besant, Thomas Moore, Donald McPherson, William Teen, William Beatty, Morris Joseph Fagin, Donald Grant and John Benjamin King (who, when hereinafter jointly referred to, are called "the prisoners") were tried on three charges of conspiracy before THE HONORABLE MR. JUSTICE PRING and a Jury on the sixth day of November, one thousand nine hundred and sixteen and subsequent days at the Central Criminal Court, Darlinghurst: AND WHEREAS the said Charles Reeve, Peter Larkin, Bernard Bob Besant and Thomas Moore were found guilty of both the first and third charges and were each sentenced to concurrent sentences of ten years' hard labour upon each of such charges AND the said John Benjamin King was found guilty of the third charge and was sentenced to five years' hard labour, such sentence to commence at the expiration of the sentence of three years' hard labour he was then serving for forging an Australian Note, and the remainder of the prisoners were found guilty of all three charges and were each sentenced to concurrent sentences of fifteen years' hard labour upon each of such charges: AND WHEREAS the prisoners duly appealed against their convictions and sentences on such trial to the Court of Criminal Appeal which quashed the convictions of the said Thomas Glynn and Donald McPherson on the second charge but confirmed their convictions on the other charges and reduced their sentences on each of such charges to concurrent sentences of ten years' imprisonment with hard labour, and such Court confirmed the convictions of and sentences on the others of the prisoners: AND WHEREAS by the "Police Inquiry Act, 1918," the HONORABLE MR. JUSTICE STREET was appointed a Commissioner to inquire into certain charges made against members of the New South Wales Police Force in respect of their conduct in connection with the case of the King against the prisoners and was given the powers therein mentioned: AND WHEREAS the HONORABLE MR. JUSTICE STREET has made his report in pursuance of such appointment: AND WHEREAS in order to assist Us in the administration of justice in the consideration of the questions whether and, if so, when the prisoners or any of them should be released from prison, WE are desirous of having made the inquiries hereinafter authorised: NOW KNOW YE that WE reposing great trust and confidence in your ability zeal industry discretion and integrity Do by these presents with the advice of OUR Executive Council authorise and appoint YOU the HONORABLE NORMAN KIRKWOOD EWING to make full and diligent inquiry into the following matters namely:—

(1) All facts and circumstances surrounding or relating to or in any way connected with the said trial of the prisoners or which shew or may tend to shew the guilt or the extent of the guilt or the innocence of the prisoners or any of them;

(2) Whether the conviction of the prisoners or any of them of the crimes or any of the crimes as the case may be for which they are now respectively serving sentences was in all the circumstances just and right and whether upon the evidence at the trial or on evidence produced before the HONORABLE MR. JUSTICE STREET under his appointment as aforesaid or in this Commission such conviction of any or all of the prisoners ought to be sustained or not;

(3) Whether the sentence or sentences which any of the prisoners was and is required to serve is or are excessive; and

(4) Any or all matters arising out of or in connection with such trial and conviction:

AND We do by these presents direct you that in prosecuting such inquiry you shall have regard to the following evidence and exhibits so far as the same may be material that is to say: (*a*) that taken and admitted at the Police Court when and by force of which the prisoners were committed for trial as aforesaid; (*b*) that taken and admitted before the HONORABLE MR. JUSTICE PRING at such trial; and (*c*) that taken and admitted before the HONORABLE MR. JUSTICE STREET in the execution of his appointment abovementioned: PROVIDED that nothing in thi clause shall limit your power to take such evidence and do such things as you may consider necessary or advisable for the prosecution of such inquiry: AND WE DO BY THESE PRESENTS give and grant to you full power and authority, with all proper

or necessary assistance, at all times to call before you all such persons as you may judge necessary, by whom you may be better informed of the truth of the premises, and to require the production of all books, papers, writings, and other documents as you may deem expedient, and to visit and inspect the same at the Offices and places where the same or any of them may be deposited, and to inquire of the premises by all lawful ways and means; AND OUR FURTHER WILL AND PLEASURE is that you do within the space of twenty-one days after the date of this our Commission, certify to Us in the Office of Our Premier what you shall find touching the premises: AND WE HEREBY COMMAND all Government Officers and other persons whomsoever within Our said State that they be assistant to you in the execution of these presents: AND WE DECLARE this Our Commission to be a Commission for all purposes of the Act No. 23 of 1901 intituled "An Act to Consolidate the Law relating to the Taking of Evidence by Commissioners under the Great Seal."

In testimony whereof, We have caused these Our Letters to be made Patent, and the Seal of Our said State of New South Wales to be hereunto affixed.

WITNESS our Trusty and Well-beloved Sir WALTER EDWARD DAVIDSON, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George,
(L.S.) our Governor of Our said State of New South Wales and its Dependencies, in the Commonwealth of Australia, at Sydney, in Our said State, this fifteenth day of June, in the year of our Lord, One thousand nine hundred and twenty, and in the eleventh year of our Reign.

(Sgd) W. E. DAVIDSON,
Governor.

By His Excellency's Command,
(Sgd.) E. A McTIERNAN.

Entered on Record by me in Register of Patents, No. 38, page 87, this fifteenth day of June, one thousand nine hundred and twenty.

For the Chief Secretary and Registrar of Records,

(Sgd.) E. B. HARKNESS,
Under Secretary.

GEORGE the FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To Our Trusty and Well-beloved—

The HONORABLE NORMAN KIRKWOOD EWING, Puisne Judge of the Supreme Court of Tasmania.

Greeting:

WHEREAS a Commission by Letters Patent under the Seal of the said State and the Hand of SIR WALTER EDWARD DAVIDSON, the Governor of our said State, dated the fifteenth day of June, one thousand nine hundred and twenty, and duly recorded was issued by Us to you to inquire into divers matters touching the guilt or innocence of Charles Reeve and others convicted of conspiracy before the HONORABLE MR. JUSTICE PRING and a Jury at a trial commencing on the sixth day of November, one thousand nine hundred and sixteen: AND WHEREAS it is expedient to enlarge the time within which you are required to present your Certificate on our said Commission: NOW KNOW YE, that We do, by these presents, with the advice of our Executive Council, require you to inquire into the said matters referred to you by our said Commission in the manner therein set out, and to on or before the twenty-seventh day of July, one thousand nine hundred and twenty, certify to Us, in the Office of our Premier, what you shall find touching the said matters referred to you by Our said Commission: AND WE declare that this Our Commission shall be read with Our said Commission and shall be a Commission for all purposes of the Act No. 23, of 1901, intituled "An Act to consolidate the law relating to the taking of Evidence by Commissioners under the Great Seal."

In testimony whereof, we have caused these our Letters to be made Patent, and the Seal of Our said State of New South Wales to be hereunto affixed.

WITNESS Our Trusty and Well-beloved Sir WALTER EDWARD DAVIDSON, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George,
(L.S.) Our Governor of Our said State of New South Wales and its Dependencies, in the Commonwealth of Australia, at Sydney, in Our said State, this second day of July, in the year of our Lord One thousand nine hundred and twenty, and in the eleventh year of Our Reign.

(Sgd.) W. E. DAVIDSON,
Governor.

By His Excellency's Command,
(Sgd.) W. J. McKELL.

Entered on Record by me, in REGISTER OF PATENTS, No. 38, page 90, this second day of July, one thousand nine hundred and twenty.

For the Chief Secretary and Registrar of Records,

(Sgd.) E. B. HARKNESS,
Under Secretary.

GEORGE the FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India.

To Our Trusty and well-beloved –

The HONORABLE NORMAN KIRKWOOD EWING, Puisne Judge of the Supreme Court of Tasmania.

Greeting:

WHEREAS a Commission by Letters Patent under the Seal of the State of New South Wales and the Hand of SIR WALTER EDWARD DAVIDSON, the Governor of our said State, dated the fifteenth day of June, one thousand nine hundred and twenty, and duly recorded, was issued by Us to you to inquire into divers matters touching the guilt or innocence of Charles Reeve and others convicted of conspiracy before the HONORABLE MR. JUSTICE PRING and a Jury at a trial commencing on the sixth day of November one thousand nine hundred and sixteen: AND WHEREAS by a further Commission by Letters Patent dated the second pay of July, one thousand nine hundred and twenty (to be read with Our said Commission) the time for the presentation of your Certificate on Our said Commission was extended to the twenty-seventh day of July, one thousand nine hundred and twenty: AND WHEREAS it is expedient to further enlarge the time within which you are required to present such Certificate: NOW KNOW YE, that We do, by these presents, with the advice of Our Executive Council, require you to inquire into the said matters referred to you by Our first-mentioned Commission in manner therein set out, and on or before the ninth day of August, one thousand nine hundred and twenty, certify to Us, in the Office of Our Premier, what you shall find touching the said matters referred to you by such Commission: AND WE DECLARE that this Our Commission shall be read with Our said Commissions and shall be a Commission for all purposes of the Act No. 23, of 1901, intituled "An Act to Consolidate the Law relating to the taking of evidence by Commissioners under the Great Seal."

In testimony whereof, We have caused these Our Letters to be made Patent, and the Seal of Our said State of New South Wales to be hereunto affixed.

(L.S.) WITNESS Our Trusty and Well-beloved Sir WALTER EDWARD DAVIDSON, Knight Commander of Our Most Distinguished Order of Saint Michael and Saint George, Our Governor of Our said State of New South Wales and its Dependencies, in the Commonwealth of Australia, at Sydney, in Our said State, this twenty-third day of July, in the year of our Lord One thousand nine hundred and twenty, and in the eleventh year of Our Reign.

(Sgd.) W. E. DAVIDSON,
Governor.

By His Excellency's Command,
(Sgd.) W. J. McKELL.

Entered on Record by me, in REGISTER OF PATENTS, No. 38, page 102, this twenty-fourth day of July, One thousand nine hundred and twenty.

For the Chief Secretary and Registrar of Records,

(Sgd.) E. B. HARKNESS,
Under Secretary.

ROYAL COMMISSION OF INQUIRY INTO THE MATTER OF THE TRIAL AND CONVICTION OF AND SENTENCES IMPOSED ON CHARLES REEVE, THOMAS GLYNN, PETER LARKIN, JOHN HAMILTON, BERNARD BOB BESANT, THOMAS MOORE, DONALD McPHERSON, WILLIAM TEEN, WILLIAM BEATTY, MORRIS JOSEPH FAGIN, DONALD GRANT, and JOHN BENJAMIN KING.

REPORT.

To His Excellency Sir WALTER EDWARD DAVIDSON, Knight Commander of the Most Distinguished Order of Saint Michael and Saint George, Governor of the State of New South Wales and its Dependencies, in the Commonwealth of Australia.

MAY IT PLEASE YOUR EXCELLENCY,—

I have the honor to present herewith my Report in respect to the matters into which I was authorised and appointed by your Excellency to inquire as set forth in your Excellency's Commission to me of the 15th day of June, 1920.

Before proceeding to deal with the various convicted persons individually, and presenting my conclusions in their respective cases, I propose making a general statement in connection with the matters of the inquiry as a whole.

When the Crown case was presented to the jury in November, 1916, the evidence of four witnesses, namely, Davis Goldstein, Louis Goldstein, Scully, and McAlister, was given in support of the charges made against the various accused. The evidence of these witnesses was properly placed before the jury, and the presiding Judge left the jury to say whether, under all the circumstances, these witnesses were accomplices, but whether the jury placed them in this category cannot now be ascertained. They were admittedly police informers.

Since the trial it has been made quite clear, by the evidence given before Mr. Justice Street, and also adduced before me, that the two Goldsteins and Scully are persons of such a character that they may justly be described as liars and perjurers, and men who, whenever it served their own ends, and irrespective of the consequences to other persons, would not hesitate to lie, whether upon oath or otherwise. It has to be borne in mind that these witnesses were not fully known at the trial, and were not presented to the jury with the description which I have given them—a description which is now admitted upon all hands to be a fair and proper one. The conviction of the prisoners, so far as the Crown case was presented to the jury, had perforce to depend to a very large extent, in one case exclusively, and in other cases almost exclusively, upon the evidence of these witnesses. So far as Davis Goldstein is concerned, there can be no question whatever as to his dishonesty and the fact that he committed perjury in connection with the subject matter of this Commission. As to Scully, there is no doubt in my mind that he, in certain material matters, also committed perjury. No more reliability can, in my opinion, be placed upon the trustworthiness of Louis Goldstein than upon that of his brother and Scully.

Had the Judge and the Crown known what is now known of these men, and had the jury been informed that the Crown was presenting to them witnesses who were liars and perjurers, who would lie freely in and out of Court to serve their own purposes, I have very little doubt that the jury would not, and ought not, to have believed their statements unless they were so strongly corroborated in material particulars as to convince them that these perjurers, notwithstanding their character and contradictory statements, were speaking the truth. It

It must also be borne in mind that all these three persons had a real interest in securing the conviction of the prisoners. They were all three endeavouring to protect themselves from prosecution, in the case of Goldsteins in the note forging case, and in the case of Scully to secure immunity from prosecution for complicity in the alleged conspiracy. I am also satisfied that they expected to obtain substantial rewards if they produced to the Crown evidence of an incriminating nature against others.

As to McAlister, I believe from the material that has been placed before me, some of which was neither before the jury nor before Mr. Justice Street, that he knew a very great deal more about the matter than originally appeared. I do not believe his statement that he became a member of the I.W.W. for the first time on the 5th or 6th September, 1916. His wife informed me that he had long before this date told her that he belonged to a certain society, the name of which she did not know. She gave, however, a description of this society which would embrace many of the aims and objects of the I.W.W. It is true that her description of the society might also have covered one whose objects were of an extreme socialistic and communistic nature, but McAlister himself admitted that he had been for a year or so treated by the members of the I.W.W. as a member, and had frequently attended meetings and lectures at the I.W.W. rooms. In my opinion, he lied to the police when he told them that he was not a member of the I.W.W., and he lied to the jury when he informed them that he only joined the I.W.W. in order to gather information for the police. It is my conviction that he had full knowledge of the proposed fires, and I feel that, after due consideration of all the evidence available and the probabilities, one is justified in treating him as an accomplice. I must, however, admit that, so far as he is concerned, my conclusion is not based upon proven facts, but upon inferences from facts and circumstances. For instance, McAlister stated that two days after he joined the I.W.W. he attended at the rooms of that organisation, and that he, Teen, and Moore, in the presence of Mahoney, all members of the I.W.W., drew lots as to who should burn down Way's premises, and that the lot fell upon him. He does not seem to have been very intimate with Mahoney. He was a stranger to Teen and Moore. If he was not then an old member of the I.W.W. of proved trustworthiness, it would be incredible to think that he should have been immediately taken into the confidence of these men in a matter of such vital importance and danger to themselves. I have come to the conclusion that there was a conspiracy to set on fire premises in the City of Sydney, and that some members of the I.W.W. were implicated, and possibly others who were not members of the I.W.W. Conviction is brought to me upon this point by the letters written by Reeve, one of the accused, from Fremantle, in Western Australia, to Morgan, who was then secretary of the Sydney local of that organisation. The letter contains repeated references to "sabotage," and, in addition, these significant words :—

> Let us see to it that the kittens travel and Bryant and May's is not dead yet. Tell all rebels to put on the shoes and kick like hell ; it's high time something was done, and now's the time to do it. Motions and philosophising is not much good. It's action that counts.

If these words, coupled with the events which afterwards occurred, do not bring conviction to the mind of any man as to the existence of a conspiracy to burn, I fail to understand the mental attitude of such a person. It convinces me, in the light of what has since happened, that Reeve and Morgan were concerned in that conspiracy, and that Scully was the manufacturer of the instrument of destruction. In the highest probability, the Goldsteins were also implicated, and if they were not, I am convinced that they knew all about it ; and I believe, whether he was concerned in it or not, that McAlister also had full knowledge of it. I do not believe that the great state of perturbation displayed by McAlister was the outcome of anything more moral than the fear of discovery.

It was argued before me that some of the attempts at fire by their nature were shown to be efforts to manufacture evidence. It was at one time suggested that they were the work of the police. I do not think that there is any justification for such a serious accusation. If the view I have formed of Scully and the Goldsteins, and in a lesser degree of McAlister, is correct—and I do not think that I differ substantially in my opinion of them (with the exception, perhaps, of McAlister) from the opinion expressed by Mr. Justice Street—then these men were capable of almost anything to serve their own ends, and would not hesitate to take any steps in the way of making evidence to incriminate others. It

It is particularly instructive to note the manner in which certain attempts to create fires were carried out. Take a few instances: A fire burst out in Foy's shop when it was full of people; this fire was apparently created after the supposed manner of the destructive fires and by means of similar materials. Another fire occurred on the floor a few yards from the entrance door. Even if it had occurred in the middle of the night in a similar position, it would not have caused any real damage. The departmental manager kicked the burning waste out into the street. On another occasion, a fire burst out in shopping hours at a spot where linoleum was stored; no doubt linoleum will burn, and probably burn readily, but it requires a substantial fire to start it. Again, a fire was discovered in another shop, created by like materials, in a case of rifles, and on another occasion amongst a lot of axe handles. Can any one believe that these actions were the work of persons desiring to burn premises down, premises in which quantities of inflammable material were stored, and where if a fire had really been desired it could easily have been produced, and at a time when the premises were deserted.

It is to be noted that all the fires that had previously occurred showed no such bungling, but were clearly the efforts of men who knew their work. The evidence, on all occasions when this matter has been the subject of inquiry, is that when fire-producing material was put in a building which it was intended should be destroyed, this material was so prepared and wrapped as not to burst into flames until hours after all persons had left the premises.

I am of the opinion that many of the fires which have been brought in evidence, and which occurred about the time when the Goldstein's turned informers, were not caused by the same persons who were responsible for the previous fires, or at least with the same destructive intention, but that the object of those persons was to create suspicion and make evidence against others.

A material piece of evidence placed before me was the book "Sabotage." I do not necessarily hold any person responsible for the views expressed in such a book if it is merely found in his possession, whether such person is a member of the I.W.W. or whether he is not; I do think, however, that a man becomes responsible for the doctrines of the author enunciated in the book when he sells or distributes copies of it in large quantities, and either expressly or in effect enjoins members of the public to read, mark, learn and inwardly digest its contents and practise the methods therein advocated. I also think that those who are so closely associated with a person making statements of this character as to give, in all the circumstances of the case, their support to such statements, must be held to approve of the contents of the book.

"Sabotage," as I understand the meaning of the word, and from the statements in the book "Sabotage," is divided into three classes:—

(1.) The use of distinctly criminal methods in order to destroy society as it stands to-day.

(2.) The destruction of the profitableness of an industry by not giving the employer an honest return for the money he pays his employees. This is immoral and dishonest, but not criminal.

(3.) Organised efforts to compel dishonest employers to act honestly and destroy the profits that are the outcome of the dishonesty of some employers in connection with the articles which they manufacture or have for sale. This is neither illegal nor dishonest.

So that when the word "Sabotage" is used by a speaker one must conclude from the nature of the remarks made, and from the surrounding facts and circumstances, as to what is meant. It is from this point of view (always giving to the speaker the benefit of an innocent construction where one is consistent with the statements made) that I have endeavoured to construe the statements of the various men.

I will now proceed to deal with the cases of the individual men in the light of the evidence at the trial, the evidence given before Mr. Justice Street, and at this inquiry.

REEVE

REEVE.

The first case is that of Charles Reeve, who stands convicted of conspiring with persons known and unknown to destroy property by unlawful means—*i.e.*, by arson—in Sydney and elsewhere. This I will term "Conspiracy to commit arson." He also stands convicted under the third count for what I will term "seditious conspiracy." I will first deal with the evidence against him on the count involving arson or attempted arson. This prisoner made speeches at which he openly and publicly advocated "sabotage." The question then is—What did he mean by "sabotage." He supplies the answer himself in the letter before referred to written by him from Western Australia, which to my mind can bear no other reasonable construction than that he was conspiring with Morgan and others, and advising the destruction of property by fire for the purpose of inflicting injury on certain individuals and classes of society. There is further evidence of speeches made by Reeve; but in the face of his letter these speeches cannot be given the innocent construction which, in the absence of such a document, might have been placed upon them. The conclusion I have arrived at is that his conviction on the two counts was just and right. The sentence he is serving amounts in the aggregate to ten years, and I cannot see that this sentence is excessive in the case of a conviction for such a terrible crime.

GLYNN.

Independently of the evidence of Davis Goldstein, who stands in this respect uncorroborated, I can find no real evidence against Glynn to connect him with the first count, upon which he was found guilty. I have already said sufficient with regard to Davis Goldstein to show that his testimony should not in my opinion be accepted, unless strongly corroborated. I do not think that any reported speeches of Glynn's do corroborate the statement of Goldstein in such a manner as to connect him with the charge of conspiracy to commit arson. It is true that Glynn was secretary of the I.W.W. when he was arrested, and that amongst the papers seized in the I.W.W. rooms was found the letter from Reeve; but there is no evidence to show that Glynn knew of the presence of any such letter. The letter was addressed to Morgan, and probably it was left there by Morgan, and Glynn may or may not have known of its existence. I cannot assume that he did know of it seeing that the letter was not addressed to him but to a previous Secretary.

I am of opinion that Glynn was rightly convicted on the third count, he was the Secretary of the I.W.W., an association which was distributing literature of the type of "sabotage," and therefore was taking an active part in its circulation. He was present at and took part in meetings at which his colleagues were advocating that people should act in the direction indicated and suggested by "sabotage," and it is my opinion that he was in seditious conspiracy with Reeve and others. I feel that upon his conviction on the third count he has suffered sufficient punishment.

LARKIN.

Peter Larkin was convicted on the first count of "conspiracy to commit arson," and on the third count of "seditious conspiracy." The case of this prisoner has given me much serious thought and trouble. As to the first count, the foundation upon which the conviction rests is to be found in speeches and statements made by this man, his association with Reeve and others, and the illustration alleged to have been given by him to some I.W.W. members, which was suggested to be an indication of the method by which fires in buildings were created. If it had been shown that Larkin had knowledge of the letter written by Reeve to Morgan, and with that knowledge he had stood by and listened to the remarks of Reeve, and had at the same time and from the same platform advocated "sabotage," his position would have been a serious one. It is not suggested, however, that he had any such knowledge.

His public utterances fully justify a finding of guilty on the third count of seditious conspiracy. He said at one meeting:

> The boys are prepared, if need be, to show them the ravages of war that are to be seen in Dublin. Far better to see Sydney melted to the ground than to see the men of Sydney taken away to be butchered for any body of infidels.

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What was happening and had happened in Dublin is notorious. The ravages of war referred to clearly were the result of a defiance of law and order, and implied, amongst other things, the destruction of property; but I do not think that the use of these expressions, which are unquestionably the strongest attributed to him, is sufficient proof, even in view of all the surrounding circumstances, that he conspired with others in the creation of the fires which had taken place and which were about to take place in Sydney.

There is another statement, which, if made by Larkin, is a serious one. Detective Lynch gave evidence to the effect that Larkin said in one of his speeches:

> We have got a little scheme on that will make the master class quake in their shoes. I am not going to tell you what it is, because the police are listening, but some of you get me.

These remarks, if made, may have had reference to destruction by fire, or they might have referred to some other scheme. I think they are suspicious; but no man should be convicted on suspicion alone. Lynch was relying on his memory as to this statement having been made by Larkin, but a very intelligent and capable police officer named Mackay gave evidence to the effect that he was present at this meeting when Larkin, Grant, Glynn, and Reeve made speeches, and he also took a shorthand note of everything that these men said that he considered to be of an objectionable character. I caused Mackay's shorthand notes taken on the occasion referred to to be transcribed, and he perused and approved of the transcript. It contains no reference whatever to any remarks such as are deposed to by Detective Lynch. I feel I cannot hold this statement against Larkin, and that I am justified in saying that I believe Lynch's memory has played him false in this connection. I prefer, particularly after having seen the type of man Mackay is, to rely upon the transcript of his notes when considering the purport of any questionable remarks which may have been made upon that occasion. I cannot believe that he would have overlooked the alleged statement or any statement of a like effect.

As to Larkin, I am not entirely free from doubt, but I am bearing in mind what judges have told juries from time immemorial in British courts of justice, namely, that when a real doubt as to a person's guilt or innocence arises in their minds the prisoner ought to be given the benefit of that doubt and ought to be acquitted. I cannot honestly say, after all I know of the case against Larkin, that my mind does not contain not only a doubt but a very serious doubt as to his guilt on the first count. That Larkin's language was not seditious cannot seriously be debated.

Evidence was also given against him to the effect that, on the public footpath in front of the I.W.W. building, he gave an illustration of how to create fires. Assuming that the police have fairly correctly described what they saw Larkin do, I am satisfied that it was not an illustration of the manner in which these fires were created. If it was intended to be an instruction to these men to whom he was talking, it was an incorrect and a silly one. Whatever he was saying to these men, I am satisfied in my own mind that he was not giving an instruction or illustration as to the manner of causing these fires. If he had seriously desired to illustrate any fire project he would not have done so on the footpath in front of the I.W.W. building, but would have made use of one of the rooms of the Association for the purpose. I do not suggest that the police did not see something of the nature which they have described. I am not satisfied that this incident, even coupled with other matters, affords sufficient material upon which a jury could convict Larkin of complicity in the creation of fires, or attempts at fires. Larkin also sets up an *alibi*, but, in view of what I have said, it is unnecessary to deal with this.

I am of opinion that it is not right and just that Larkin should have been convicted upon the first count; but it is right and just that he should have been convicted upon the third count.

Sedition may be merely a technical offence, or it may be a serious one. I look upon the speeches of Larkin as being of a character which suggested to the public a serious form of sedition—in fact, open rebellion in the event of certain projected legislation being carried into effect. But it must be borne in mind that Larkin is a first offender, except that he has already suffered punishment, namely, nine months' imprisonment for the use of some of the expressions which were brought against him at the trial.

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As I have already stated, I do not consider he should have been convicted of conspiracy to commit arson. If he were not guilty on this count, then the sentence of ten years' imprisonment on the third count is a very heavy one. When we look at the sentence of five years which was passed by Mr. Justice Pring upon King, who was convicted of seditious conspiracy only, as distinct from ten years upon those who were convicted of both conspiracies, it will be seen that had the Jury found Larkin not guilty upon the first count, his Honor would not have imposed a sentence of this length. It must also be remembered that when his Honor passed sentence of five years upon King under this count, he had the fact before him that he was a second offender, and that his previous offence, namely, taking part in the forging of bank notes, was a serious one, for which he was serving a term of imprisonment.

Under all the circumstances, making allowance for the nine months already served by Larkin, coupled with the fact that he is a first offender, and that he has already served nearly four years' imprisonment, even considering the serious nature of his sedition, in my opinion he has been sufficiently punished.

HAMILTON.

John Hamilton was convicted on the first, second, and third counts, the second count being substantially the same as the first, the object only being different, the improper motive alleged being the securing of the release of Barker. If the evidence given by Scully and Goldstein was true, no doubt there was material upon which Hamilton was rightly convicted at least upon the first and the third counts. But it is now proved to be the case that not only are Scully and Davis Goldstein accomplices, informers, and associates, but are in addition liars and perjurers, and men of the character I have already indicated, whom it is impossible to believe except in so far as they are corroborated so strongly as to induce one to believe them notwithstanding their perjury in other directions. Clearly these men believed they would receive a financial reward from the Crown for their services. They also had a further object —the securing of their own liberty—by obtaining the conviction of the men against whom they were testifying. Now, to what extent are they corroborated in a material particular which would convince one that they are speaking the truth? Detective Lynch gives evidence against Hamilton to the effect that Hamilton after being some time in the I.W.W. rooms came on to the footpath in front of the building with Goldstein, but went back into the building, and returned again to the footpath when he handed to Goldstein a parcel which looked to the Detective like a paper packet, and which was of a size and character to support the suggestion that it might have contained a bottle and some waste. Goldstein corroborated Lynch at the trial, but subsequently swore that he then lied in that the dope which he says he got from Hamilton was given to him at the back of the building, and not at the front. The consequence of that evidence is that, if he did get a parcel from Hamilton at the front of the building, what Lynch saw pass between them could not have been fire dope. I have personally inspected the building and noted the window from which Lynch was observing, and if Goldstein's statement is correct, that he received the dope at the back of the building, then Lynch could not possibly have seen its delivery. A further defect in corroboration in this respect is that though Goldstein delivered over to the Detective Office a bottle of dope and some cotton waste some time afterwards, there is no evidence to show that what was then handed over by him was what was alleged to have been handed by Hamilton to him on the footpath. It is quite clear to my mind that Goldstein was in possession of opportunities of getting this dope without asking anybody for it, because I believe he was, as one of the witnesses for the Crown put it, "up to his neck in the conspiracy himself." Therefore what Lynch says may be perfectly true, but it is not sufficiently connected to show that what was handed in to the Detective Office some hours later was what was given to Goldstein when these men came out of the I.W.W. building. Again, these men had been in the I.W.W. building together for some length of time, and the fire dope could have been given to Goldstein in the rooms without any fear of observation. Is it likely that in such a dangerous transaction Hamilton would wait until he got into the public view before handing over the articles in question? I do not believe it.

Scully

Scully gives evidence also against Hamilton, and says that Hamilton was present in Fagin's room when he (Scully) was teaching some men, including Hamilton, how to make fires. Scully says that he gave the instruction under threats and unwillingly; but there is this significant fact to be remembered, that on the date on which Scully stated he was teaching Hamilton, together with Beatty, Teen, and Fagin, how to make the fires (which Scully said they were unable to make satisfactorily because they could not get them to burn properly) some of the most successful fires had already occurred. When we find a circumstance like this, coupled with the fact that Scully is an admitted perjurer, it is impossible to believe his evidence. It is admitted that in the place where Hamilton lived with others a copy of "Sabotage" was found. The possession of one copy of "Sabotage" does not, to my mind, point to a conspiracy for the creation of fires, nor is it any real evidence of approval of the doctrines set forth in the book. Hamilton is not known to have ever urged others, or to have taken part in urging others, to read the book, and in effect to carry out the methods therein described. It is said that "stickers" were found in his room, but they are of such a character that I do not attach any importance to them from the standpoint of arson.

I am of opinion that, with the additional information now available, it cannot be said that there is evidence of believable witnesses upon which this man could have been convicted of conspiracy to commit arson. It is my opinion that the evidence against him was manufactured by Goldstein and Scully for their own purposes. It is not just and right that this man should have been convicted.

BESANT.

Bernard Bob Besant was convicted on counts one and three. The material evidence against this man is that when the raid was taking place at the I.W.W. rooms a parcel containing waste was found. The police stated that in the room were six or seven persons, but for some unexplained reason Besant was the only one chosen by the police to take the responsibility for the possession of the waste. I have had the waste in question analysed by the Government Analyst, and he has informed me that it is ordinary waste, and is not impregnated with fire-assisting material such as the waste which would probably be intended to be used for making fires has been proved to have been. In explanation of the presence of the waste in the room there is the evidence of the witness Giffney, who swore he bought the waste and took it to the I.W.W. rooms, and that it was to be used to clean the printing press. He stated where he bought it, and the price he paid for it. I do not hold this as any evidence against Besant. The real evidence against him is that of two detectives, Pauling and Robson, who say that when arrested he stated, "I hear you have been finding some of this in shops lately, but by Christ you will find a bloody lot more before we have done." This statement would indicate that the statement was made at the time the waste was being examined. There is a conflict of testimony as to this statement. Besant swears he never made such a statement. Giffney says that he was near by at the time of Besant's arrest, which was either in the room or in the passage close by. If Besant was arrested in the passage, then apparently Giffney was in the room close by the passage, and he swears positively that nothing of the kind was said; but the two detectives, Pauling and Robson, both say that their recollection on this point is perfectly clear. Mr. Justice Street says about certain detectives, including Pauling: "I hesitate to come to the conclusion that they added to the comparatively venial offence of taking a small present from the Goldsteins the more serious offence of combining to swear falsely in order to conceal what they had done, and yet on the other hand there are features in the case which prevent me from feeling that I can safely accept their story." Against these two detectives is the evidence of Besant and Giffney, who is, as far as I am able to ascertain, a clean witness, unless it can be said that membership of the I.W.W. is sufficient to prevent one from believing a man who belongs to that organisation. Personally, I do not think that proposition is a fair one. The thing which has made me hesitate most is that this is the most material piece of evidence against Besant, and although there were two or three other policemen taking part in the arrest and standing by, yet not one of them has seen fit, on any occasion when this matter has been the subject of judicial or other inquiry, to support these two men in their statements. As it is such a material piece of evidence, I cannot understand why the Crown should have failed to have supported such evidence at the trial before the jury if such support had

had been available. It is true that when I recalled Leary he said he heard the statement made. Now, Leary is a man whom I would hesitate to disbelieve, and I feel that when he told me he heard the statement made he was speaking honestly; but I believe he would have testified at the trial as to the statement had he really heard it; my opinion is that he has had so much to do with this case, and the evidence has been repeated and discussed to such a great extent, that though he really believes he heard the statement made, he is mistaken. It is not suggested that Besant took any part whatever in connection with the meetings or made any seditious speeches. The incident at his arrest is the only real evidence against him. My mind is in such a state of serious doubt with regard to the statement alleged to have been made by him that I feel that he should be given the benefit of that doubt. In my opinion, therefore, it is not right or just that, on the first or third counts, he should have been found guilty.

MOORE.

Thomas Moore was convicted on counts one and three. This man appears to have had comparatively little association with the I.W.W. No doubt he was a member, although some of the other prisoners did not even know him personally. The chief evidence against Moore is that given by McAlister. From the evidence at this Inquiry it would appear that McAlister is not a very reliable person, to say the least of it. In my opinion he was also an accomplice. McAlister says that he became a member of the I.W.W. on the 5th or 6th September (I do not believe this, as my previous remarks show I think he was a member long before). In his evidence, which I am asked to believe, he states he did not know Moore or Teen; that a day or two after he joined the Association he went to the rooms and there and then in the presence of Mahony, Teen, and Moore took part in the drawing of lots as to who should burn down Way's shop, and that the lot fell upon him. Now, if McAlister's evidence is true that this is the first time he met Moore or Teen, and that he had just become a member of the I.W.W., I find it difficult to believe that he was admitted forthwith into the very heart of the conspiracy. He says that the drawing took place with two black discs and one red disc, that these were put into an empty cigar box, which was held overhead whilst the discs were being drawn, and the lot fell upon him to create the fire. He says that he left the building later on in company with Moore, having previously arranged with detectives to watch them and hear what passed, that they stopped near Foy's, and that Moore said "This place has got to go," indicating Foy's, and that "ten or twelve of the bastards should be let go at once and make a good blaze." Leary was standing on the other side of the post, and heard fragments of the conversation—very little indeed according to his statement—but Leary says that he heard a discussion about a racehorse, "Miss Joey," and that he heard the expression "Twelve of the bastards should be let go together. This one must go." It is significant that though Leary heard this piece of conversation, which is practically all that he could positively swear to, he makes no reference to "make a good blaze," which is the most significant portion of the whole statement. McAlister says no conversation with regard to the racehorse "Miss Joey" took place on that occasion; he says that such a conversation did on one occasion take place, but that it was in Goulburn-street, and Leary was nowhere about. Now, without hesitation I believe Leary, because he is supported by Moore, who says that such a conversation did take place, and Leary's actions show clearly that it did, as he made inquiries very shortly afterwards with regard to a horse named "Miss Joey," and found it was true that "Miss Joey" did run. Moore's version of the conversation is that he was talking to McAlister, who was a racecourse frequenter and an ex-trainer, about a horse, "Miss Joey," in which he was interested, and which had taken part in a race that had been run a little time before, and he said "Twelve of the bastards were on the inside of her from the word go." As a fact, thirteen horses started in the race and "Miss Joey" had the outside position. I believe Leary is telling the truth to the best of his ability, and I believe that McAlister lied when he said that no such conversation took place. Leary heard fragments of a conversation under most unfavourable conditions, and he might easily have been mistaken as to the exact form of the words; and I think that Moore should be given the benefit of any doubt that exists. In my mind there is little doubt, for I do not believe that men who are engaged in a wicked and damnable conspiracy of this kind would have taken into their confidence

a new member, with whom apparently they had never discussed such a proposition before (for that is the position taken up by McAlister without doubt) that they should draw lots as to who should create a fire, and that a discussion as to the running of a racehorse should have taken place on the scene where a proposition was alleged to have been made as to the perpetration of a heinous crime. Coupling this with the fact that McAlister was an informer, and in all probability also an accomplice, who certainly thought he was to get a considerable sum of money if these men were convicted, as is evidenced by his having commenced proceedings against the Government for the recovery of a sum of money, it would be extremely dangerous to condemn any man on evidence such as his.

It is also given in evidence that a piece of cotton waste was found in Moore's room, and a small piece in his box. He states that he knew nothing about these pieces, but that they probably belonged to an engineer who slept in the same room with him. It is clear that an engineer did sleep in the same room, and this would appear to be a reasonable explanation of the presence of the waste. It is not alleged that either piece of waste had been treated in any way for the purpose of causing fires.

There is a further incident with regard to Moore to the effect that on one occasion he or someone in whose company he was made use of the word "fire." This isolated expression, even if used by Moore, does not afford material on which a conviction could take place. In considering the truth of McAlister's statements, it must be borne in mind that the I.W.W. rooms were raided without warning, and that Detective Leary stated that no discs of the character referred to were found, notwithstanding the most exhaustive search, nor was any box found of the character referred to, excepting one, which was in use for other purposes. There is absolutely no other evidence against Moore, except the evidence of this man, who is, I believe, in addition to being a police spy and an informer, an accomplice, and who—to further add to his qualifications, if we are to believe Leary—is also a perjurer. To this must be added the evidence of Powell, who volunteered his evidence upon the hearing before me. Powell says that, so far as he knew, McAlister was a man who lived without work, and spent most of his time in public-houses, drinking; that he had had frequent conversations with both McAlister and Scully as to what each would ultimately get from the Crown, and that each had stated to him that the other knew nothing about the case. This suggests to me that Scully charged McAllister with having manufactured his evidence. I am of the opinion that it is not right or just that Moore should ever have been convicted.

McPHERSON.

Donald McPherson was convicted on all three counts. To a large extent McPherson's conviction depends on the evidence of McAlister. Upon the second count, the Court of Criminal Appeal has quashed his conviction. The evidence of McAlister was to the effect that McPherson stated that, "While any members of the I.W.W. were in gaol it would cost the employers £10,000 a day." It is possible that McPherson was there referring to destruction of property; but that expression is equally, if not more, consistent with the creation of industrial trouble which would cost the employers large sums of money, as it is consistent with any suggestion with regard to the creation of fires. McAlister gave evidence to the effect that he met McPherson in King-street, who on that occasion used expressions which, if true, would fairly connect him with the arson conspiracy; and McAlister also said that McPherson asked him if he gave him some of the dope would he be prepared to use it. There are two facts which cause me to disbelieve McAlister's statement to this effect. McAlister says that he was not then a member of the I.W.W., and it seems incredible to me that McPherson, whose real name he did not even know, would then have made this communication to him upon such a serious matter. McPherson showed that he was working that day upon the "Levuka." McAlister says that on this occasion McPherson promised to give him some fire dope. A few days later he met McPherson and received a parcel containing fire dope. On this date McPherson states he was working on the "Manuka," and that he went to his lunch with two or three other wharf lumpers. The statement that he was so working was supported by a representative of the shipping company, and another witness who was with him during the lunch hour. I do not believe that that conversation ever took place, and I believe that McPherson established his alibi. This is quite independent of the view that I take of McAlister as an accomplice. There

There is not any evidence that McPherson ever made any speeches or sold any seditious literature. Substantially his conviction depends on the evidence of McAlister, and McAlister's evidence is uncorroborated, unless one can consider that the fact of McPherson having been in association with Glynn, Larkin, Hamilton, and Teen is evidence in corroboration of his statement. I think that it is not just and right that McPherson should have been convicted.

TEEN.

Teen was convicted on all three counts. The conviction of this man depends upon the trustworthiness of the evidence of Scully, D. Goldstein, L. Goldstein, and McAlister. I have already said, in connection with Moore's case, that I do not believe the evidence of McAlister as to the drawing of lots with regard to Way's fire; and the only other evidence is that given by Louis Goldstein, D. Goldstein, and Scully, which is uncorroborated, unless Teen had a bottle of fire-producing material in his possession. I do not think that their evidence is worthy of belief in view of the character of the men referred to.

The most important fact is the finding of a bottle of fire-producing liquid and some waste in the pocket of an overcoat worn by Teen. The history of this appears to be that Teen and Goldstein were at the I.W.W. rooms on the night Teen was arrested. The night was a very wet one. Teen borrowed an overcoat from a man named Pope; he put this on and walked up the street with D. Goldstein. They had been together at the I.W.W. rooms and were together up to the time of the arrest and yet Goldstein does not suggest that Teen put anything in the pocket of the overcoat, or obtained any fire-dope or waste on the night in question. They decided to go to the stadium. Goldstein walked upon Teen's left side. Detective Matthews arrested Teen, Goldstein still being on his left side. They walked to the station, and Matthews says that Teen made no attempt as far as he could see to get rid of anything. When they arrived at the police station, Teen was searched, and in the overcoat pocket was found this bottle of fire dope and the cotton waste. Immediately they were found Teen said they were not his. He told the policemen the name of the owner of the coat, "Pope," who when interrogated said he had lent the coat to Teen as the night was wet, but that there was then no fire dope in it to his knowledge. The police evidently believed this statement, for they did not take any further steps against Pope.

It is also to be noted that the I.W.W. rooms had been raided a short time before, and were still under police surveillance, so that Teen would have been taking most extreme risks in carrying about with him such incriminating articles when visiting these rooms.

Knowing Goldstein as we know him to-day, there is very grave suspicion that he, knowing of the proposed arrest of Teen, put the material in the overcoat pocket as they were walking along the street in order to manufacture evidence against him. Had the coat been Teen's, and had Teen been alone when arrested and not in the presence of a man like Goldstein, whose full intention and interest was to secure his conviction, it would have been strong evidence indeed; but inasmuch as the coat was lent to Teen practically on the spur of the moment, and that he did not attempt to do away with the dope on the way to the police station, furnishes to my mind the strongest evidence that he did not know that it was there. One can only suspect who put it there.

Teen made no seditious speeches, although he was present on one or two occasions when seditious speeches were made. There is no evidence that he took part in the circulation of "Sabotage" or advised people to behave in a lawless manner. In my opinion it is not right and just that he should have been convicted.

BEATTY.

William Beatty was convicted on all three counts of the indictment. The chief evidence given against him was that given by the witness Scully, and this is uncorroborated. My remarks with regard to Scully have already been made, namely, that no man should be convicted on his uncorroborated statements. It will also be noted that when Scully gave his statement to the police that he, Scully, was in Fagin's room teaching those present how to make fires he did not state that Beatty was one of the persons present; although later at the trial he added the name of Beatty. I am of opinion that his conviction on the first and second counts is unjust.

As

As to the third count it was proved that Beatty had in his possession about a thousand copies of the book "Sabotage." It does not appear that he actively took part in any of the meetings at which Larkin and others spoke, therefore their statements cannot be held against him. But the fact remains that he had these copies of "Sabotage" in his possession. This is a vastly different thing from having one copy, which any ordinary and innocent reader might have; it indicates to my mind an approval of the doctrines therein preached, and I think he must be held responsible for them. Although this fact does not connect him with these fires, it is certainly strong evidence that he was an approver of the illegal, and, in some directions the criminal, methods advocated in that book. Had he been a person selling the book for gain, such as a bookseller, the fact would have had little influence upon me. But seeing that he was a voluntary worker in the cause, he must, to my mind; be taken to incur responsibility for the doctrines that he chooses to disseminate voluntarily. Some of these doctrines are distinctly seditious. I think it is sufficient evidence upon which he should have been convicted on the third count, but my remarks with regard to the others apply equally to his case, namely, that when the matter is robbed of the aspect of complicity in arson, I think that he has been sufficiently punished.

FAGIN.

Morris Joseph Fagin was convicted on all three counts of the indictment. This man's conviction depends substantially upon the evidence of Scully and Davis Goldstein; supported by the fact that a bottle of fire-producing liquid was found in his bag when he was arrested. If he had put that fire-producing liquid in his bag he was undoubtedly guilty; but we have the following facts to consider, and from which to draw inferences and to weigh probabilities. Scully says that he had told Fagin on several occasions shortly before his arrest that the police were on his tracks, and that he was likely to be arrested at any minute. He further says that Fagin obtained fire-dope from him in the shape of two 1-lb. tins of fire-making material while the police had the chemist's shop in which he delivered it to Fagin under observation. On various occasions the police did see Fagin go to the shop where Scully worked. It is not denied that Fagin was receiving treatment medically, and he says that he went there—and, in fact, Scully admits that he did so—for the purpose of obtaining medicine; but upon one occasion, on one of the days when the police were closely watching the shop in which Scully worked, Scully says he gave Fagin two tins of considerable bulk containing fire-making material. The watching police say they saw Fagin go in and they saw him come out, and they saw him while he was in the shop, that no such tins were handed to him, and that it was impossible for a parcel of this size to be handed to him without the incident being noted by them. Scully says that after the warning he gave to Fagin, Fagin told him he took the stuff and buried it in a paddock down in the vicinity of Maroubra. It does appear to me to be absolutely inconsistent with all the probabilities that Fagin should have done away with the dope which he is alleged to have received, and yet should have kept a bottle of it in his bag, after having been told that he was about to be arrested, and knowing, as any sane person must have known, that his bag would be one of the first places searched by the police for any evidence of his guilt. Fagin turned to the police when it was found and said to them "You put it there." There is no evidence to show who put it there, but in this connection it will be remembered that Scully was from time to time in Fagin's room; Scully was then in the service of the police, to whom he had given a plan of the building in which Fagin lived and the name of some of the occupants of the rooms. He has, as he calls it, been "enveloped in a mesh," from which he was endeavouring to extricate himself and to purchase his liberty. It will probably never be known how that bottle got into Fagin's bag; but I do not believe in all these circumstances, that a man who had been warned as he had been would have kept this fire dope in an unlocked bag, when he had every possible opportunity of hiding it where it probably would have never been found, particularly when the fact is considered that he is also alleged to have buried other fire dope so that it could not be discovered. I cannot believe the evidence of the perjurer Scully in this respect; and if one is not satisfied that Fagin knew the stuff was there—and I certainly am not; in fact, I do not believe he did know of its existence,—then there is no evidence left against him excepting the uncorroborated evidence

of

of two accomplices who were also liars and perjurers. I was anxious to ascertain whether the Russian paper in which the bottle was wrapped, together with a piece of a *Daily Telegraph* dated the day before the search was made in Fagin's room, came either from Fagin's room or the I.W.W. room. I had Inspector Leary recalled, and he said that no Russian papers were found in Fagin's room. He also gave evidence that at the time of the raid he made search amongst all the papers found in the I.W.W. rooms to ascertain whether the paper wrapped round the bottle had been torn from any of them, and he said he could find nothing to suggest that the papers had been torn from any belonging to Fagin or from those found in the I.W.W. rooms. Now Fagin is a Russian, and it is reasonable to suppose that any person who desired to implicate him would have wrapped the bottle in a Russian newspaper. This, added to one's distrust of Goldstein and Scully and their interest in obtaining this man's conviction, and the improbability of a man who has been told that he is about to be arrested putting the evidence of his guilt into his bag, brings me to the conclusion that Fagin did not know that the bottle was there. I am of opinion therefore that it was not right and just that Fagin should have been convicted.

GRANT.

Donald Grant was convicted on all three counts. The remarks which I have made with regard to Larkin very largely apply to Grant, but under the circumstances of Grant's association with, and taking part in, the same meetings at which Larkin used the expressions to which I have already referred, I am of opinion that Grant must take the responsibility of his association with Larkin from the standpoint of seditious conspiracy. In addition to that, he himself is said to have made remarks about "sabotaging the employers' property." Upon this there is a conflict of testimony. Grant states that he said "sabotage their profits," but even if he did say "sabotage the employers' property," it does not necessarily point to arson, because sabotaging property would undoubtedly include sabotaging profits. Property includes money, and there can be no question that by one means or another Grant was prepared to sabotage the employers' property; but whether he used the expression "profits" or "property," I think there can be very little doubt that he was prepared, in association with Reeve, Larkin and others, to bring about a change in the social conditions by unlawful and unconstitutional means, and, in addition, that he was engaged with them in stirring up dissaffection among His Majesty's subjects.

There is, however, nothing that really points to his approval or association with others in the creation of fires with that or any other end in view. It is said that the fact that Grant was in Broken Hill when an attempt to create fire similar to that which occasioned the fires in Sydney was discovered is sufficient to connect him with the conspiracy to commit arson. I do not think that such a proposition is just or reasonable in the absence of one tittle of connecting evidence. While Grant was in Broken Hill he undoubtedly preached sedition in one sense, but it must be borne in mind that he made speeches urging the workers to rely upon their industrial power, although he used one or two expressions which, if one is prepared to put the worst possible construction upon them, might possibly support a conviction on the first count. I am not, however, prepared to do this, nor do I believe that any person would be justified in finding him guilty on the first or second counts on such frail evidence, if real evidence it can be called at all.

On the sedition issue there is clear evidence that Grant took part in the commendation of the principles set forth in and the sale of the book "Sabotage." In my opinion he was rightly convicted of seditious conspiracy. My remarks with regard to the terms of sentence in the cases of others who have, to my mind, been relieved of the offence of complicity to commit arson, apply equally in this case. I think that he has been sufficiently punished for anything that he said or did.

KING.

There is no doubt that John Benjamin King used extreme expressions in his speeches, such as "It is the mission of the working class to make this world a hell for the capitalist class and every shirker that belongs to it—I don't mind seeing them roasting and toasting on a grid-iron"; he also had one copy of the book "Sabotage," but this I do not hold to be any offence. He also said "The only dope that

that counts with the master class is sabotage—you must hit them through their stomachs and their pockets." Now, sabotage, as I have pointed out, may be criminal, dishonest, or innocent, and I am not prepared to say that King, in making use of these extreme and wild expressions, which are so often used by Domain orators, necessarily meant that unlawful means should be used to achieve the end that is desired. That it is seditious in the technical sense to use such expressions, in that it is stirring up dissension amongst the King's subjects, and that he was collaborating with others in this direction, is clear; therefore, I think that he was rightly convicted on the third count. If he had advocated the methods set forth in the book "Sabotage" my view of the seriousness of the offence would have been different. The jury has found that he had no connection with any attempted arson. His offence consisted in stirring up disaffection, and although he used the word "sabotage" there is no evidence to point to the fact that he referred to "sabotage" of a criminal nature. I am therefore of the opinion that the sentence of five years cumulative upon the sentence that he is now serving is greatly in excess of the offence.

CONCLUSION.

In conclusion, I beg to inform your Excellency that I have not in this report dealt exhaustively with the evidence which I have the honour to attach, which evidence it may be remarked includes "statements that would not be admissible before a jury." The inquiry is of such a nature that a great deal must depend on the individual opinion, as is always the case when inferences are sought to be drawn. I have, however, done the best according to my ability with the subject matter upon which I have been directed to report. There are many aspects of the case with which I have not attempted to deal, and I wish it to be thoroughly understood that throughout my consideration of the matter I have applied the principles to which I have already referred, namely, the giving of the benefit of the doubt, if any exists, to the accused; and where statements are made which are capable of an innocent as well as a guilty construction, I have given the accused person the full benefit of the innocent interpretation, so far as I have felt that I conscientiously could do so. Though I have given specific instances as to portions of evidence and circumstances which have influenced me considerably, I do not wish it to be thought that they are exhaustive, for there are very many other facts and circumstances which, although not expressly referred to, have been fully taken into consideration by me in forming my conclusions.

I have the honor to be,

Your Excellency's most obedient servant,

(Signed) NORMAN K. EWING,
Royal Commissioner.

Supreme Court,
Hobart, Tasmania.
28th July, 1920.

Sydney: William Applegate Gullick, Government Printer.—1920.

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