

The Seditious Trials of F.C.B. Vosper

by Paul D. Twomey

©Copyright Reserved

*Presented at a Meeting of the Society
28 February 1985*

Frederick Charles Burleigh Vosper was a radical journalist and politician, in an age of radical agitation. He was a fiery orator and fluent writer. Very often he was biting in his criticism, and yet he was not simply a bitter critic without any reforms. He proposed, and fought for, reforms in the mining industries of Queensland and Western Australia and for the right and conditions of the poor itinerant miners. Vosper was one of the most colourful labour leaders of the 1890's.¹

Frederick Vosper arrived in Queensland on August 3, 1886. Born in Cornwall, and having spent some time in Bolivia, Vosper was a literate lad of seventeen when he disembarked at Maryborough from the sailing ship *Scottish Hero*. Registered as a labourer, Vosper found employment within two days and left the Immigration Depot on August 5 for Gympie where he was to work for £20 per annum.²

Vosper had a varied life. He worked as a timber-miller, miner, drover and boundary-driver.³ Finally he became a journalist and began to express his strongly radical views concerning the Labour movement in Queensland. He first wrote for the *Eidsvold Reporter* then for the Maryborough *Chronicle* and *Colonist*. Probably attracted by the radicalism of Thadeus O'Kane, editor of the *Northern Miner* at

Mr Paul Twomey completed a Bachelor of Arts degree with First Class Honours in History at the University of Queensland, graduating in 1983. Subsequently he was a Rotary Foundation Graduate Fellow at Pennsylvania State University, and obtained his Master of Arts. He has since worked at the Asia Bureau Australia in Melbourne and had been awarded the James Cook Travelling Scholarship to Cambridge University to do a Doctorate in History.

The paper was read in his absence by Mr Michael W.D. White, Barrister-at-Law.

Charters Towers, Vosper took up the position of sub-editor at the *Northern Miner*. But O’Kane died in 1890 and this led to the paper losing its radical tone.⁴ As a consequence, Vosper took up the editorship of the *Australian Republican* a new radical weekly which was the mouthpiece of the recently emerged Australian Republican Association.⁵

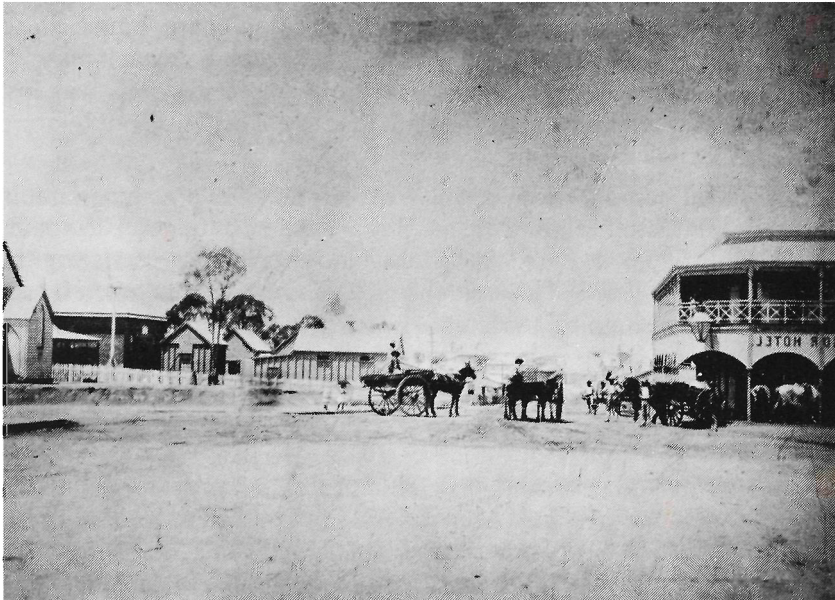
With the growing radicalism of the miners in the region, the *Australian Republican* became a widely read journal. The advent of the shearers’ strike in 1891 inflamed the emotions of radicals throughout the State, and Vosper was no exception. On Saturday, February 21, there appeared a volatile editorial in the *Australian Republican*. Entitled “Bread or Blood”, it was a highly emotional piece of rhetoric which supported the strikers at Clermont and Barcaldine to the hilt “even should their action precipitate revolution throughout Australasia and lead to bloodshed” and told the men, “Better to see the last squatter and the last member of this hateful Government butchered than to see one jot or one tittle of the sacred rights of the people lost!”⁶ This editorial caused something of a sensation, especially amongst the law and judiciary officers of the town, and on March 20 Vosper was summonsed to appear before the Police Court at Charters Towers on March 23, where he was charged with seditious libel.⁷

COMMITTAL PROCEEDINGS

Before tracing the developments of Vosper’s trial it is essential to examine the nature of the offence with which he was charged. Seditious libel is an offence at common law and has three elements: the matter must be published in anything capable of being a libel; it must be published with a seditious intention; and there must be an incitement to disorder and violence. All three of these elements must be proven before the offence is established. There are also several evidentiary prerequisites to the charge of seditious libel. In the indictment, the words alleged to be seditious must be specified. These words must be proved to be substantially constituting sedition. It is no defence that the published seditious words are true. Finally, if the manuscript of the seditious libel is proved to be in the hand-writing of the defendant and it is also proved that the libel was in fact published, then there is this prima facie evidence that the defendant published the libel, whether or not there is evidence that he directed the publication.⁸

The criminal proceedings against Vosper commenced on March 20 with the making of a complaint by Detective Constable James McQuaker before a Justice of the Peace. In this complaint McQuaker alleged that Vosper had fulfilled the three elements of seditious libel:

Frederick Charles Vosper ... being a wicked malicious seditious and ill disposed person and wickedly maliciously and seditiously contriving devising and intending the peace of Our Lady the Queen and of the said Colony to disquiet and disturb and the liege subjects of our said Lady the Queen to incite and move to hatred and dislike of the person of our said Lady the Queen and of the Government by law establishment within the said Colony and to incite move and persuade divers of the liege subjects of our said Lady the Queen to riots insults insurrections and breaches of the peace and to prevent by force of arms the execution of the laws of the said Colony and the preservation of the public peace on the Twenty-first day of February in the year of Our Lord one thousand eight hundred and ninety one wickedly maliciously and seditiously did write and publish and cause and procure to be written and published in a certain newspaper ... called the Australian Republican a certain false wicked malicious scandalous and seditious libel of and concerning our said Lady the Queen and the Government established by law within the said Colony...⁹



Corner of Gill and Church Streets, Charters Towers about the time of the trial. (R.H.S.Q. Collection)

McQuaker went on to specify the words which he alleged to be seditious. He quoted the entire editorial and in brackets gave his own interpretations of the meanings of certain words and phrases. With the witnessing of this complaint by the Justice of the Peace, a summons was then issued for Vosper to appear at the Police Court on March 23.

The committal proceedings which took place before H.M. Mowbray P.M. and then W.G. Kelly Cusack P.M., lasted from March 23 until March 31. In that time much more detail came to light as to the events surrounding the "Bread and Blood" column. James McQuaker told the court of a conversation he had with Vosper about 'the shearers' strike on February 19, in which Vosper told him, "You ought to read the next Republican. I am writing a very strong article in it. I would not be surprised if you get the job of arresting me for publishing it".¹⁰ It was typical of the defiance of Vosper that, on the evening that the column was published he handed a copy of the *Australian Republican* to Sub-Inspector Alexander Meldrum on Hodgkinson Street, just opposite the Court House.¹¹ Three days later Vosper asked McQuaker: "Have you got a warrant for me yet? You know I fully expect to be arrested for publishing that article in the Republican. I know the Police Magistrate has the power to seize the plant and have me arrested if he wishes but I don't care. I am doing it for a good cause and I will stand by that cause let it be what it may."¹² Some of the conclusiveness of these apparent confessions was lost when McQuaker was forced to admit that the article was not referred to by its title.

D.C. McPherson, who was the Charters Towers' Postmaster, told the court that, after reading the leading article, he detained 120 copies of the newspaper at the Post Office and wired Brisbane stating the action he had taken.¹³ This evidence was probably relied upon by the prosecution as helping to establish the three elements of seditious libel, but upon being questioned by Vosper, McPherson revealed a disturbing fact. In reply to cross-examination, he said, "There was a copy of the Australian Republican put into my hands to read and I was asked if it was a thing that should be allowed to pass through the post. Mr Mowbray and several other gentlemen called my attention to the article . . . On the strength of that complaint I took action aided by my own judgements."¹⁴ From this evidence it seems that Mowbray played two roles in *R v Vosper*. The first as the Police Magistrate presiding over the committal proceedings and deciding the very important issue of whether there was sufficient evidence to establish a prima facie case which should be heard by a judge and jury. The second as some kind of unofficial prosecutor – a man with personal and expressed feelings of disapproval concerning the article. This dual role suggests a breach of the principles of natural justice.

Considering the evidence of McPherson, it certainly could have been argued that there was a real likelihood of bias against Vosper on the part of Mowbray. Vosper, however, did not raise the issue at all. In fact, it is unlikely that he grasped the significance of McPherson's evidence. This was the price the self-assured and eloquent Vosper paid for not seeking legal representation at the committal proceedings. The failure to be represented legally might have been a very costly one, for if Mowbray had found a *prima facie* case against Vosper his findings could have been declared a nullity, by the Supreme Court, for breach of natural justice.¹⁵ This possibility became less tenable, however, when, on March 25, Mowbray was taken off the case and was replaced by Kelly Cusack.¹⁶ Nevertheless, a good lawyer might have been able to argue successfully that the contribution Mowbray made to the final determination as to the existence of a *prima facie* case was sufficient to taint the entire finding.

The rest of the evidence produced by the prosecution sought to prove that either Vosper, as editor, directed the publication of "Bread or Blood", or that even if he did not do so, the manuscript was in his handwriting. At no stage did Vosper admit to writing the article. When asked did he do so, by McQuaker on March 20 he replied, "I cannot answer a question like that. My name appears on the paper as Editor and published by me but beyond that I will make no admission".¹⁷ On March 24, H.S. Stockham, a clerk at Maisland and Maisland, the local solicitors representing the prosecution, served Vosper a notice to produce the original manuscript at the hearing.¹⁸ When Maisland called for the production of the document on the following day, Vosper replied: "I decline to produce it on the grounds that the document is not in my possession and therefore I am unable to produce it. I do not know where the document is now or if any one has it in their possession".¹⁹ W.G. Bowden told the hearing that he, as a compositor, had set up "Bread and Blood" and that he believed, though he could not swear positively, that the article was in Vosper's writing.²⁰ H.S. St. Paull, as manager of the Australian Republican Association's bank, explained that Vosper was paid £2 fortnightly by the Association.²¹ Roland Court and James Charles Clarke, both involved with the *Australian Republican*, said that they thought Vosper was the editor.²² On March 31, the hearing reconvened for its fourth, and final day's sitting. Before Kelly Cusack P.M. Frederick Sutherland, a member of the Australian Republican Association's newspaper committee stated that Vosper received £1 per week remuneration for the unfettered work as editor.²³

During the morning sittings Vosper saw fit to complain that an official envelope containing copies of the *Australian Republican*, which he had posted to his solicitors in Brisbane was stopped by

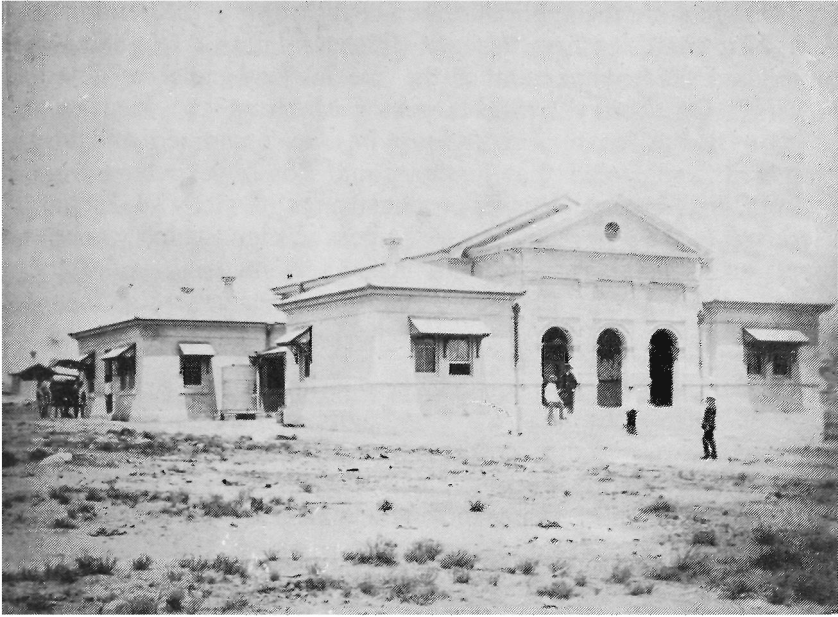
postal officials, and asked the Bench whether such a communication between client and solicitor was not privileged. Kelly Cusack replied that at “the first blush the detention of the packet was perfectly right and justifiable, and the postmaster had every right to detain anything supposed to contain seditious matter. It was frequently done in England and Ireland.”²⁴

Upon completion of the case for the prosecution, Vosper reserved his defence. With no hesitation the Police Magistrate found that there was a case to answer and committed Vosper to take his trial at the next sittings of the Northern Circuit Court to be held at Charters Towers on May 4. Bail was allowed; Vosper in his own recognizance of £100 and two sureties of £50 each. Vosper named John Gard and William R. Richards as his sureties, to whom the prosecution had no objections.²⁵

TRIAL BY SPECIAL JURY

Having got Vosper committed for trial, despite some irregularities concerning the Police Magistrates, the Crown then gave some thought to the nature of the jury which would judge Vosper. Charters Towers was a strongly union town and with the growing radicalism of the miners as the shearers’ strike developed, the prosecution realized that it would be difficult to empanel a suitably unbiased jury. Although the readiness of fellow-members of the Australian Republican Association to give evidence for the Crown during the committal proceedings is probably a good indication that other labour leaders were becoming disenchanted with Vosper’s violent approach to labour issues,²⁶ Vosper still had support from the rank and file. Therefore, a summons was taken out by G. Selwyn Smith, Crown Solicitor, Townsville, calling all parties to the chambers of Mr Acting Justice Mansfield on April, 8, 1891 to hear the application by the Crown that the common jury panel for the Circuit Court at Charters Towers on May 4 be extended and the number of jurors to be summoned be double the number already ordered.²⁷ On March 9 Mansfield AJ had ordered the sheriff to gather 36-48 “good and lawful men of the Jury District of Charters Towers” at the Court House on May 4.²⁸ On 15 April 1891, Selwyn Smith sent Vosper notice of a motion before Mansfield AJ to be heard on April 20, in chambers at Townsville, that the trial be by special jury.²⁹

The provisions for trial by special jury were among the most inequitable existing in the Queensland criminal law of the pre-code era. They were a continuation of the common law position where a special jury, composing of persons above the rank of ordinary freeholders, could be summoned by a court to try questions of greater importance than those usually submitted to common jurors.³⁰ The Jury Act 1867 (Qld) listed the men available for special jury service



The Government Mines Department building, Charters Towers. (R.H.S.Q. Collection)

as "esquires, accountants, brokers, engineers, architects, warehousemen or commission agents".³¹ Judges of the Supreme Court had the same power and authority as English judges to order trial by special jury.³² Therefore, the Crown, which had objected to the fact that a large number of the class from whom the common jury would be chosen would sympathise with Vosper, on the grounds that this would result in an unfair trial, proposed that Vosper be tried by a jury consisting of men from the very capitalist class which his article had attacked. This action clearly shows that the Crown was not the least interested in ensuring a fair and impartial trial, but rather in the conviction and punishment of an outspoken critic of the Government. The result was a trial clearly divided along class lines.

On April 17, Vosper sent Selwyn Smith notice of his intention to oppose the motion for trial by special jury.³³ Three days later the two parties met before Mansfield AJ. Leu, for the prosecution, alleged that Vosper "was so popular with the class from which the common jury was drawn that a fair trial could not be expected under the ordinary circumstances." Vosper, who appeared in person, counter-argued that he "was unpopular with the class from which the special jury would be recruited, and could not expect a fair trial at their hands". Mansfield AJ was not sufficiently impressed by Leu's

argument to grant the application but he did adjourn the hearing until April 22 to enable both parties to file fresh affidavits. At the same time he ordered the enlargement of the special jury panel at Charters Towers.³⁴ On April 22, Sub-Inspector Meldrum appeared for the Crown. By the leave of the Court he was examined and cross-examined, and stated that justice could not be expected from a common jury. In reply, Vosper produced an affidavit by W. Richards, Secretary of the Charters Towers Miners' Union, which was to the effect that a special jury of merchants, bankers and landowners would not give the defendant fair play.³⁵ After hearing further argument by both parties, Mansfield AJ granted the Crown's application.³⁶

Throughout the legal wrangling about juries, Vosper's radical spirit was not at rest. In fact, his campaign against the Government continued. On April 12, Vosper spoke at a meeting of 300 to 400 people at the Victoria Park at South Townsville. The meeting was chaired by T. Foley, and speakers included E.Y. Lowry and Vosper.³⁷ Vosper, in his speech urging working men to vote labour men into Parliament so as to solve the shearers strike satisfactorily, stated:

I am already charged with sedition and probably will be charged with the same thing for what I now am going to say. There are three courses open to us. First a conference, secondly the ballot box and thirdly resort to arms. Of these courses I on principle would prefer the middle but I would just as soon resort to arms. Before I would sign the pastoralists' agreement and sign my manhood away I would lay low the stations and towns and cover the country with gore.³⁸

Not surprisingly, the police took note of what Vosper had to say, and on April 17 a warrant was issued for the arrest of Vosper on the charge of publishing and uttering seditious words.³⁹ James McQuaker arrested Vosper at Charters Towers on the same day and read to him the charge. Vosper's only reply was: "I can assure you I am wrongly represented". Vosper then appeared before Kelly Cusack P.M., who remanded him to appear in Townsville. Vosper made a claim for bail, referring to section 115 up to section 120 of the Justices Act, which, he said, entitled him to bail. Kelly Cusack ruled: "The prisoner is already at Bail on Charge of 'Seditious Libel'; under the Circumstances I decline to take Bail. Prisoner to be sent on to Townsville as early as may be."⁴⁰ McQuaker accompanied Vosper to Townsville on that evening's train.⁴¹ The following day Vosper appeared before McDonald P.M. where he was charged. Leu appeared for the prosecution while Vosper was unrepresented. After the information had been read a remand to April 21 was granted. Vosper asked for bail but was refused.⁴²

The elements of this charge are similar to those of seditious libel, and at the committal proceedings the Crown had little difficulty in establishing that there was a *prima facie* case. Thomas Allen Gulliver, telegraph manager at Townsville, gave an interesting insight into Vosper's opinion of the case already directed against him for seditious libel: "I heard the defendant . . . saying that the charge against him contained about 16 aspects that there was no act in force in Queensland under which they could arrest him, and they had to rake in old acts of George the first, or George the fourth".⁴³ While Vosper was really charged under the common law, he was correct in pointing out that the Government was relying upon very old and draconian law to obtain his censure and punishment. Vosper called no evidence and reserved his defence; he was committed by Mr J.G. McDonald P.M. to take his trial at the next sittings of the Circuit Court on June 3.⁴⁴ Bail was allowed: Vosper in his own recognizance of £200 and two sureties of £100 each.⁴⁵ £200 in 1891 was a large amount of money and was equal to four years wages for Vosper. But as Fred Sutherland had pointed out to Kelly Cusack P.M. on March 31, Vosper had more money in the bank than he was paid.⁴⁶ These may have been the profits of his involvement in mining in the area, as Vosper was a very keen mining engineer and geologist.⁴⁷

Vosper returned to Charters Towers where, less than a fortnight later, he stood trial for seditious libel. The trial was before Mr Justice C.E. Chubb; a judge noted for his fair-mindedness and his courteousness to all parties.⁴⁸ Vosper was represented by Charles Powers who requested that Vosper be allowed to sit at the solicitor's table. This request was granted. The indictment was read and upon its completion Powers objected that the indictment did not state where the liege subjects of Her Majesty were who were likely to be incited by the libel. Powers then said before the jury was empanelled he wished to challenge the whole panel. Chubb J thought the whole jury must be so called and pass into the box first. The jurors were called but not sworn.⁴⁹ Powers then handed in a challenge to the whole jury on what can be reduced to three grounds: that a special jury should not have been granted unless it could be positively shown that a fair trial could not be tried before a common jury, and this had not been done; that sufficient notice was not given to the defendant that a special jury was about to be applied for; and that the special jury list was not exhausted before other persons were summoned to serve as jurors.⁵⁰ On the first ground Chubb J ruled that this was a question of fact not up to him to judge. His Honour also said the objection as to notice should have been taken when the judge's order was applied for. As to the objection that the Jury Act section 20 had not been complied with, in as much as the jurymen's summonses were improperly served, and some others

were passed over, Chubb J ordered an adjournment until 3.00 pm to give the Crown an opportunity to prepare its rebuttal.⁵¹

Upon the Court resuming Chubb J delivered a scathing attack upon the jury system in Charters Towers. He said it was “strange that in a district like Charters Towers, claiming to have 30,000 people within a radius of thirty miles special jurors could not be obtained. It pointed to one of two things, either great carelessness on the part of those who compiled the lists, or else collusion between officials and those qualified to serve, by which the latter escaped being placed on the jury list”.⁵² He then turned to the defendant’s challenge and the counter-pleas put in by G.R. Byrne, counsel for the prosecution. Bryne explained that the reason some special jurors on the list had been overlooked when jurors were summoned for Vosper’s trial, was that they had already been summoned for special jury service in the May session. Some men capable for special jury service were not served because they were not in the district, while others were dead.⁵³ Powers stated that he accepted these as the facts and His Honour allowed Byrne’s demurrer then adjourned the Court until 10.00am the next day. The following morning the jury was called, and only five were sworn in before the panel was exhausted. Powers challenged 22 and Bryne stood aside some. On being called a second time the jury was completed after 26 challenges.⁵⁴ The Crown then opened its case. Byrne read the article to the jury, contending that it had all the elements of sedition, and was calculated to incite the people to bloodshed, outrage, rebellion, revolution, and civil war, and was bringing the Government into hatred and contempt. He did not believe that any union man, any republican, or any man of sense could justify the article, calculated to incite the shearers to commit acts of depredation.⁵⁵ Byrne then lead similar evidence to that presented at the earlier committal proceedings. Interestingly, D.C. McPherson did not mention any conversation with Mowbray P.M. throughout the entire trial. The defence did not produce any evidence.

SUCCESSFUL DEFENCE

Powers then addressed the jury on behalf of the defendant. It was, upon all accounts, a brilliant speech.⁵⁶ He said it was now his duty as far as he could to enable the jury to sift the evidence on the article which was the cause of this prosecution, and to place before them the reason why they should bring a verdict of “not guilty”.⁵⁷ Powers said that the jury need not take notice of the definition of sedition given by the Crown Prosecutor. That would be laid down to them by His Honour. He combatted the idea that the article brought the Ministry into hatred or contempt, and argued that any opposition and any press had a perfect right to abuse ministers, who as public men were subject to criticism. He argued that however bad the article might be, it must

be proved that the defendant had not only printed and published it, but that he had done so with a criminal intent. He spoke of the liberty of the press and told the jury that they must consider whether it would be wise, seeing the times that they lived in, that they should go back on previous decisions in cases of seditious libel, and so restrain the freedom of the press.⁵⁸

If he had a criminal intent, the defendant would have sent some of the papers to Clermont. Powers urged that the question was entirely one for the jury and proceeded to cite various authorities on the subject of seditious libel generally and its various definitions at various periods in English history. No definite law except that found by juries had been applied in any of the cases he referred to. Seeing that it was now lawful to talk sedition in Parliament, which was the most public place in the country, juries should be very careful how they did anything that would tend to restrain the liberty of the press.⁵⁹ Upon the close of Powers' address the audience of several hundred broke into applause. His speech had lasted four-and-a-half hours.⁶⁰

Byrne then spoke for ten minutes. He simply told the jury that, while not interfering with the liberty of the press, they should place a limit somewhere.⁶¹ The session having gone well into the evening, Chubb J then adjourned the proceedings until 10.00am the next morning.

The following morning, His Honour had occasion to review two very different cases. The Crown had gone to a lot of trouble to establish the various elements of seditious libel, The defence, however, had not argued a legalistic case at all, but had made a very impassioned and idealistic plea for freedom of the press, and had told the jury that its decision was not only one of fact, but also one of law and public policy. Chubb J, in his summing up, referred to the law of libel from Roman times, and pointed out that the liberty of the press and of the subject must not be allowed to degenerate into licence, and that while a man was justified in defending his own rights, he must not trespass on the rights of others. His Honour stressed that the offence was one against the people of Queensland. With respect to republicanism there was no harm in suggesting that the Government of the country should be conducted on the principle, provided that it was done peaceably; but if the person proposing it advocated the establishment of it by force of arms he would be guilty of inciting the people to rebellion against the law and the constitution. As far as liberty of the press was concerned, a newspaper had not more right to publish matter than a person had to shout his opinion on the footpath. His Honour could not see any direct evidence in the article of any intention to incite the people against the Queen, unless the term "Queen" was embraced in the comprehensive word "government".

The jurors were, however, the judges of that. They must try the case as they would any other, and they must find whether there was a criminal intention. Every man was presumed to know the consequences of his acts. If there was no criminal intention, no matter what else had been proved, the Crown would have failed to substantiate its case. His Honour finally left the jury with four questions:

1. Did the defendant publish the article?
2. Does the article fairly bear the interpretation which the Crown put on it by the innuendoes?
3. Is it a seditious libel?
4. Was it published with the intention imputed: to incite the shearers and others to commit deeds of bloodshed, burning, revolution and riot?

The jury retired at 12.30pm and returned at 9.00pm. The foreman, J.B. Whitehead, told Chubb J that the jury had not agreed on a verdict, despite full discussion, and that they were unlikely to do so. His Honour said it was unusual to discharge a jury after eight hours, but since he had to go to Mackay in the morning, he took it upon himself to do so. The jury expressed their regret at being unable to agree, and were discharged. Chubb J then remanded Vosper to the next sittings of the Circuit Court at Charters Towers on October 5. Bail was allowed; Vosper in £200 and two sureties of £100 each.⁶²

The trial was followed closely by most of Charters Towers, and local support for the Judge and defence counsel was not marred by the lack of verdict. The *Charters Towers Times*, a labour orientated daily, which had given full coverage to the case, praised Mr Justice Chubb, saying “never have we witnessed such striking impartiality, such rare talent, and such a evident desire that ‘justice be done though the heavens should fall’ as that envined by Mr Justice Chubb during the past two days”.⁶³ Powers was also hailed as a giant of justice and hero of the working man. The case was also keenly followed in the Brisbane headquarters of the Justice Department. When the defence lodged its objections to the jury, Under Secretary for Justice Cahill telegraphed Byrne: “‘Regina versus Vosper’ – reported in newspaper here that Powers, solicitor for defendant, has raised fifteen objections to legality of jury panel. Report by urgent wire particulars of these objections.” Byrne’s reply confidently dismissed the objections.⁶⁴ Cahill maintained a close interest in the trial and would not have been pleased by its result. For the Government, the case against Vosper was more than another criminal proceeding. It was a matter of political importance.

The next round in Vosper’s defence came on May 18 when he received notice, from Selwyn Smith, of a Crown motion that the

charge of publishing and uttering seditious words be tried by a special jury, to be heard before Mr Justice Cooper in Townsville, on May 22.⁶⁵ The two sides prepared similar arguments to those they had presented before Mansfield AJ earlier. Indeed, the Crown simply amended appropriately a number of the affidavits it had submitted with respect to the seditious libel trial.⁶⁶ The motion was not, however, heard before Cooper J on May 22, but was reset to be heard before Chubb J on May 27.⁶⁷ Presumably the defence argued that, firstly, the Crown had not proved that trial by common jury would be unfair, and secondly, that Vosper was unpopular with the class from which a special jury would be drawn and this would result in a partial trial.⁶⁸ In the end result, Chubb J refused the Crown's application.⁶⁹ The trial for publishing and uttering seditious words was never heard. The *Deposition Register* records that a "No True Bill"⁷⁰ was entered on May 30, four days before the trial was due to commence.⁷¹ This is a good indication of how much the Crown was relying on the intrinsic biases of the members of a special jury to obtain a conviction.

The retrial of the charge of seditious libel definitely did take place. Like the two previous proceedings the Crown moved that the trial be by special jury.⁷² The motion was heard on August 14 before Mr Justice Cooper, a judge noted for severity in criminal cases.⁷³ The Crown argued that the class which would make up a common jury sympathised with Vosper and that this would lead to an unfair trial. The prosecution relied upon affidavits from Sub-Inspector Meldrum, who stressed the union support for Vosper saying "I verily believe that there are about twelve hundred members of . . . Trade and Labor Unions at Charters Towers". The Crown also produced evidence that the defence had been given adequate notice of the hearing of the motion for trial by special jury. James McQuaker stated that he had personally served Vosper with a copy of the Notice of Motion on August 11.⁷⁴ Cooper J then adjourned the hearing until August 21, to give Vosper time to answer the Crown's affidavits.⁷⁵ Vosper's reply took the form of an affidavit from Henry Murgatroyd, a non-unionist ironmonger, who stated, upon looking at the list of special jurors set down for the sittings, "From my personal acquaintance with some of these persons and my knowledge of their political opinions I verily believe that a huge majority of these persons are prejudicial against the defendant and will not give a fair and impartial verdict on the issues. . . ."⁷⁶ Having heard all the arguments, Cooper J ordered that the trial on October 5, be by special jury. The special jury was to be struck from the whole panel of special jurors for the District of Charters Towers.⁷⁷ It was not to be the same jury who had sat at the previous trial.



Lower Gill Street and Millchester Road near the Railway Station, Charters Towers. (R.H.S.Q. Collection)

THE FINAL CASE

The trial opened on October 6 before Mr Justice Chubb. Vosper conducted his own defence. Once again, the empanelling of the jury was a vexatious business. Upon being called the first time the panel was exhausted when only five jurors had been sworn in. Vosper challenged 22 and Byrne set aside 12. On the second calling only three jurors were secured when Vosper exhausted the number of challenges allowed to him without showing cause. Vosper successfully challenged the next three jurors, showing that they were all members of the Employer's Association and that two of them were also personal enemies. These men were extreme examples of the class of juror eligible for special jury service and show just how unfair a trial by special jury could be. The remainder of the jury was sworn in without any further trouble.⁷⁸

After the reading of the charge, the Crown Prosecutor called the witnesses who appeared at the first trial. Their evidence was in the main similar to that of May 6-7. Vosper called no witnesses but addressed the jury for over half an hour "speaking with considerable ability".⁷⁹ He explained that in the first place it was by no means proved that he was the author of, or responsible for the article, and that, even if he were, that it was seditious. It was simply a matter for the jury to decide whether the article was of a seditious import or not. The laws on sedition were considerably more lenient than they were formerly, and what years ago would have been considered seditious was not now. The article was written in troubled times and seemed to have only good as its object. It recommended the using of all peaceable means for a reconciliation which should not have the effect of causing a riot, and it really seemed to him that the outcome intended by the article was the arranging of a conference, which would have ended the dispute.

His Honour left the jury with the same four questions. The jury retired to consider their verdict for just under an hour. Upon their return the foreman affirmed that they had reached a verdict. To the first three questions put to them to decide, their answer was "Yes"; but to the final one, it was "No". This was a verdict of not guilty and Vosper was immediately discharged.⁸⁰

In delivering this verdict, what the jury in effect said was that Vosper wrote the article. Further, the article was written in such a style so as to incite others to disorder and violence. The words and phrases of the article conveyed the meaning placed upon them by the Crown; and the article, as a whole, was a libelous publication defaming the Government. The most important issue, however, and the one which would have differentiated "Bread or Blood" from hundreds of other editorials written throughout Queensland during the shearers' strike, was whether Vosper wrote the article with the intent of inciting others to disorder and violence. The jury conclusively found that he did not. This conclusion dashed any hopes that the Crown had of gaining any conviction on the grounds of sedition; and this verdict marks the end of the Crown's efforts to have Vosper censured.⁸¹

Frederic Vosper was a vitrolic speaker, an influential radical, and almost by definition, an opponent of the conservative Government in Brisbane. 1891 was a year of labour turmoil and Vosper was a labour-leader of great potential. The McIlwraith Government realized this, and so they sought to censure him. The case against Vosper was not a local phenomenon but a prosecution guided by the Under-Secretary for Justice himself. Vosper's trial was not only a matter of jurisdictional concern; it was an action supported by a Government which was concerned with punishing its opponents during a time of perceived rebellion. The legality of the entire case of *R v Vosper* was, to say the least, strained. The committal proceedings were almost certainly tainted by breach of natural justice and the two trials were products of the Crown's ability to gain trial by the inequitable institution of special jury. The prosecution was motivated more by a desire for a conviction than any desire for a fair trial. The archaic charge of "seditious libel" was evidence enough of this.

The reasons that the Crown failed to get its convictions were probably three-fold. Firstly, the jurors seemed to have taken the judge's advice and put all their prejudices to one side. Secondly, the Crown failed to prove conclusively all the elements of the charges alleged. And thirdly, the defence case as presented primarily by Powers, and supported by Vosper, was a brilliant, impassioned and idealistic appeal to the juror's regard for freedom of speech and the importance of non-interference with the press.

APPENDIX

BREAD OR BLOOD?

The situation at Clermont has reached a crisis hitherto totally unprecedented in the annals of Labor struggles throughout the world. Tired of the partial and menacing attitude of a Government which should be impartial, and of the action of the capitalists who, flushed with victory, wish to exercise the grinding prerogatives of the conqueror, the misrepresentation of the Press and the politicians, the shearers have at last risen in open rebellion, and are making an armed march on Clermont fully determined to do or die in defence of their rights. And we commend them. If we were in their place we should do likewise, and needless to say we wish them all success, even should their action precipitate revolution throughout Australasia and lead to bloodshed. The men are placed in this position – they must either have BREAD or BLOOD – WOOL or HEADS – and if the Government be not careful they will have BOTH. It is high time that something besides property should have the protection of the Government – person should be considered as much if not more. The action of the Government is as despotic and tyrannical as any on the face of the earth. By their present action they are depriving the men of their bread, and by means of armed force they are preventing the men from using those natural opportunities which are necessary to all for subsistence and to which all are equally entitled, and with the money contributed by the very men whom they oppress they are introducing blacklegs and immigrants to a labor market already admittedly overstocked, and while starving their own subjects they back up Victorian crawlers with bayonet and rifle. It is time this sort of thing should cease, and the sooner the better. For our part, we frankly confess that we believe the shearers to be in the right in answering coercive policy with armed resistance, but not only do we so approve but counsel other Republicans and Unionists to follow their example. The Government ought to know that in no country is revolution so easy as here; and once let the masses be roused, then good-bye to capitalistic domination and the sham royalty which is inflicted on us now, and hurrah for the Republic! The time is coming fast, and we should like to see every Democrat able and willing to use his rifle in defence of his rights, whether invaded by Government or by anyone else. We are getting very tired of the present oppression; the election seems a long way off, and the Government are determined to use the utmost of their short-lived power as long as they possess it. We can stand it no longer, and would be glad to see the revolutionary movement spread far and wide, and Australia become at one bound a nation. It is evident that the Government are as despicable tyrants and heartless robbers as could be elected by any people in the world, and they must be overthrown whether by constitutional means or by force of arms matters not one iota. The prostitution of the police force to the capitalistic needs is the last straw on the camel's back, and if he does not buck he ought to. We believe that the men of Barcaldine, the hardy shearers of the West, will never yield as did their brethren on the coast, but will, with every man his horse and every man his rifle, fight to the bitter end for manhood and Independence. Another defeat would be crushing, but it shall be dearly given, and we warn the squatters and the Government that they are raising such a flame as shall not leave one station unburned nor one town in their possession. Beware! Imperialists! for

the doom of your party is at hand, and the day of Independence already dawns – it rests with you whether it shall rise in blood or in peace. At the present juncture, when the forces of Capital and Monopoly on the one hand, and the forces of Labor on the other, are arrayed in bitter conflict, we issue this appeal to all Australia. The liberty which you today enjoy, the rich heritage of citizenship, of which you should take possession; these things have, in the past, been bought for you with great price. The rights which to you may seem so natural and so simple were fought for and won step by step, and the price which was paid by your heroic ancestors was an ocean of blood and a river of tears. With their great bequest of Liberty, which will have its fullest development in Australia, they bequeathed to you the sacred responsibility of guarding those liberties and in doing so, not to hold dear, if needs be, even life itself. We believe that the time has arrived in the history of our commonwealth when its liberties are in danger; we believe a great struggle is imminent, and, therefore, we appeal to you men of Australia to prove that you are not unworthy of your ancestors. We appeal to you to equip yourselves, to bear arms in the coming fray. Your country expects this from you; it is included in the patriotic duty you owe to her. If we thought you would decline to obey her call, we would speak of the maledictions which posterity will heap upon your memories; for the heritage of tarnished liberty and disaster which your apathy would bequeath to them. But we know that you will bow in allegiance to her call and when the time comes carve the way to those greater heights of liberty which lie before you; heights which are grander and fairer than any which your ancestors ever dreamed of. Australians, laborers, MEN; with the fullest knowledge of the consequences; with a knowledge of the horrors of civil war, we call upon you to up and strike for your rights, your manhood, your country and your lives. Exhaust all peaceable means; let no one say that you have wantonly precipitated bloodshed, but if all else fails, strike boldly, mercilessly, fearlessly for your freedom. Do unto others as they have done unto you! If your oppressors will not listen to reason, let them feel cold lead and steel; as they have starved you, so do you shoot them; and allow them not to destroy your liberties and deprive you of your bread without a fight. Better to see the last squatter and the last member of this hateful Government butchered than to see one jot or one tittle of the sacred rights of the people lost!

FOOTNOTES

1. *Australian Encyclopaedia*, Vol. IX, p. 135; J. Bastin and J. Stoodley, "F.C.B. Vosper: An Australian Radical" in *University Studies in History* Vol. V, no. 1, pp38-53; E. Jaggard, "Bread and Democracy: F.C.B. Vosper in the Roaring Nineties" in *Westerly*, No. 4, December 1977, pp29-46; "F.C.B. Vosper the Agitator" in L. Hunt ed., *Western Australian Portraits* (Perth: University of Western Australia Press, 1979), pp 104-110.
2. Assistant Agent Maryborough, List of Immigrants arriving by Immigrant ship 3 January 1885 – 28 December 1887, p.72, IMA 3/7., Queensland State Archives (Q.S.A.). (Both the *Australian Encyclopaedia* at Volume IX, p.135 and J. Bastin and J. Stoodley, *op. cit.*, state that Vosper was born in 1867 and arrived in Queensland in 1883, at the age of sixteen. But the records of the

Immigration Depot at Maryborough show that Frederick Vosper arrived at Maryborough in 1886 at the age of seventeen.

3. J. Bastin and J. Stoodley, *op. cit.* p. 40
4. *Ibid*
5. The Australian Republican Association was established in Charters Towers in February 1890 and was very socialistic in aims. (*Worker*, Brisbane, March 1, 1890) The *Australian Republican* first came off the presses in July. (*Worker* July 7, 1890).
6. *Australian Republican* February 21, 1891 (McNaughten Cutting Book, 1891-3, p.9, Fryer Library, University of Queensland). The full text of this editorial appears in the Appendix.
7. Evidence of James McQuaker, March 24, 1891 *R v Vosper*, Depositions from the Police Court at Charters Towers, March 23 to March 31, 1891, Depositions and Affidavits of *R v Vosper*, Series of Supreme Court Northern Registry Townsville, Criminal File 1891, File no 700, A/18307, Q.S.A. (referred to from now on as Depositions and Affidavits).
8. *Halsbury's Laws of England*, 4th ed. Vol. 11 (London: Butterworth, 1976), p.486-7.
9. The complaint of James McQuaker, March 20, 1891, Depositions and Affidavits.
10. Evidence of James McQuaker, March 24, 1891, Depositions and Affidavits.
11. Evidence of Alexander Meldrum, March 24, 1891, Depositions and Affidavits.
12. as for 10.
13. Evidence of D.C. McPherson, March 25, 1891, Depositions and Affidavits.
14. *ibid.*
15. Even though the Magistrate was not determining the question of guilt, he was deciding whether Vosper should face the trauma of trial, and seeing that Vosper was unrepresented, Mowbray was under a duty to protect the defendant from blatant breaches of natural justice.
16. Depositions and Affidavits. (Before 1886, this changing of Magistrates without the rehearing of all the evidence would in itself be sufficient to invalidate the proceedings; see *Markey v Murray* (1884) 2 Q.L.J. 7. In 1886, however, the Queensland Parliament enacted the Justice Act. Section 110 of that Act covers the situations and states: "A justice or justices may make or join in making an order of committal or dismissal although he or they has not or have not been present during the whole time during which the examinations have been taken").
17. Evidence of James McQuaker, March 24, 1891, Depositions and Affidavits.
18. Notice to Produce, March 24, 1891, Depositions and Affidavits.

19. Statement of F.C.B. Vosper, March 25, 1891, Depositions and Affidavits.
20. Evidence of W.G. Bowden, March 24, 1891, Depositions and Affidavits.
21. Evidence of H.S. St. Paul, March 25, 1891, Depositions and Affidavits.
22. Evidence of Roland Court, March 24, 1891; and James Charles Clarke, March 25, 1891, Depositions and Affidavits.
23. *Northern Mining Register* (hereinafter *NMR*), April 4, 1891
24. quoted in *ibid*
25. *R v Vosper*, Depositions and Affidavits.
26. *The Charters Towers Times* (hereinafter *CTT*), another labour orientated paper, criticized "Bread or Blood" as a foolish playing into the Government's hands by giving it some excuse for its repressive actions. (*CTT*, February 25, 1891).
27. In the Supreme Court of Queensland, Townsville, Crown Side, Mr Acting Justice Mansfield in Chambers, Summons, April 7, 1891, Depositions and Affidavits.
28. Order to the Sheriff of Queensland by Mr Acting Justice Mansfield, March 9, 1891, Depositions and Affidavits.
29. In the Supreme Court of Queensland, Townsville, Crown Side, *The Queen versus F.C.B. Vosper*, Notice of Motion, April 15, 1891, Depositions and Affidavits.
30. See H.C. Black (ed), *Black's Law Dictionary*, 5th ed., (St Paul West, 1979) p. 768
31. s. 11, 31 Victoriae no. 34
32. s. 14
33. In the Supreme Court of Queensland, Townsville, *The Queen versus F.C.B. Vosper* Notice of Opposition to motion by the Crown, Defendant's Side April 17, 1891 Depositions and Affidavits.
34. *CTT*, April 21, 1891
35. *CTT*, April 23, 1891
36. In the Supreme Court of Queensland Townsville, Crown Side, Mr Acting Justice Mansfield in Chambers, *The Queen against Frederick Charles Burleigh Vosper*, Order, April 22, 1891. Depositions and Affidavits.
37. Evidence of Thomas Allen Gulliver, April 21, 1891, Depositions and Affidavits.
38. Quoted in Deposition of Witnesses, April 21, 1891, Depositions and Affidavits
39. Warrant in the First Instance to Apprehend or Person Charged with an Indictable Offence or a Simple Offence, No. 5244, April 17, 1891, Depositions and Affidavits

40. Police Court Charters Towers, before Mr G.K. Cusack esq. P.M. on Warrant, Frederick Charles Burleigh Vosper, April 17, 1891, Depositions and Affidavits
41. *CTT*, April 18, 1891
42. *R v Vosper*, Depositions from Police Court at Townsville, April 18 to April 21, 1891, Depositions and Affidavits.
43. Evidence of Thomas Allen Gulliver, April 21, 1891, Depositions and Affidavits.
44. *CTT*, April 24, 1891
45. as for 42.
46. Evidence of Fred Sutherland, March 31, 1891, Depositions and Affidavits
47. J. Bastin and J. Stoodley, *op. cit.* p.39
48. J.A. Douglas, "Charles Edward Chubb" in *Australian Dictionary of Biography*, Vol. 7, pp. 395-396.
49. *CTT*, May 6, 1891; *NMR*, May 9, 1891
50. In the Supreme Court of Queensland, Circuit Court, Charters Towers, *Regina v Vosper*, Challenge to the Jury Panel and the Array, May 6, 1891, Depositions and Affidavits
51. *ibid*; *NMR*, May 9, 1891
52. *NMR*, May 9, 1891
53. In the Supreme Court of Queensland, Circuit Court, Charters Towers, Crown Side *Regina v Vosper*, Demurrer and Counterpleas, May 6, 1891, Depositions and Affidavits; *NMR*, May 9, 1891
54. *CTT*, May 7, 1891
55. *NMR*, May 9, 1891.
56. *CTT*, May 9, 1891
57. *CTT*, May 8, 1891
58. *NMR*, May 9, 1891
59. *NMR*, May 9, 1891
60. *ibid*; *CTT*, May 8, 1891
61. *CTT*, May 8, 1891
62. *NMR*, May 16, 1891
63. *CTT*, May 9, 1891
64. Cahill to Byrne, May 7 1891, and Byrne to Cahill, May 7 1891, Depositions and Affidavits
65. In the Supreme Court of Queensland, Townsville, Crown Side, *The Queen versus Frederick Charles Burleigh Vosper*, Notice of Motion, May 18 1891, Deposition and Affidavits.
66. See notes of Commissioner on *ibid*.
67. In the Supreme Court of Queensland Townsville, Crown Side, *The Queen versus Frederick Charles Burleigh Vosper*, Brief on behalf of the Crown to move for Special Jury, Depositions and Affidavits.

68. The only possible source of information about the defence case would be the *Townsville Evening Star*, May 27-28, 1891. The only copies of this paper are kept at James Cook University, Townsville, and the author has been unable to consult the May 27-28 editions.
69. Note on: In the Supreme Court of Queensland Townsville, Crown Side, *The Queen versus Frederick Charles Burleigh Vosper*, Brief on behalf of the Crown to move for Special Jury, Depositions and Affidavits.
70. Even though a Magistrate commits a person for trial, the Attorney-General may still decide not to proceed with the prosecution and will accordingly file a "No True Bill", which releases the prisoner from the court proceedings.
71. *Depositions Register* 1887-92, Vol. 3, p. 189, JUS/S4, Q.S.A.
72. In the Supreme Court of Queensland, Townsville, Crown Side, Mr Justice Cooper, *The Queen against Frederick Charles Burleigh Vosper*, Notice of Motion, August 8, 1891, Depositions and Affidavits.
73. *ibid*, J.C.H. Gill, "Sir Pope Alexander Cooper" in *Australian Dictionary of Biography*, Vol. 8, pp105-106.
74. Affidavits of Alexander Meldrum and James McQuaker, August 11, 1891, Queensland, Townsville, Crown Side, Mr Justice Cooper, *The Queen against Frederick Charles Vosper*, Depositions and Affidavits.
75. Note on : In the Supreme Court of Queensland, Townsville, Crown Side, Mr Justice Cooper, *The Queen against Frederick Charles Burleigh Vosper*, Brief on behalf of the Crown, Depositions and Affidavits.
76. Affidavit of Henry Murgatroyd, August 20, 1891, Depositions and Affidavits.
77. In the Supreme Court of Queensland Townsville, Crown Side, Mr Justice Cooper, *The Queen against F.C.B. Vosper*, Order, August 21, 1891, Depositions and Affidavits.
78. *NMR*, October 10, 1891.
79. *ibid*.
80. *ibid*.
81. Bastin and Stoodley *op.cit.* state that Vosper's "final acquittal can only have been due to the moving eloquence of his defending speech, or to a very partial jury." This is far from the truth. While it does appear that Vosper gave a fine address to the jury, the failure of the prosecution to gain a conviction must lie in its inability to prove beyond reasonable doubt that Vosper published the article with a seditious intent. Indeed the Crown evidence concerning intent was mostly inferred and rarely stated. As far as the jury being partial towards Vosper, this is far from likely, considering the lengths to which Vosper was forced to go to exclude prominent employers from the jury. After all the very nature of the men eligible for special jury service, meant that they came from the class which Vosper had accused of "capitalistic domination" and "sham royalty".