

## MURRAY CHARGED WITH BREACH OF LIQUOR LAWS

On Wednesday morning a case was brought on at the Police Office here, which is of such importance, and the judgment upon which was of so unaccountable a nature, that though we have not yet made arrangements for reporting cases of this sort yet it would be inconsistent with our duty to the public were we to leave it uncommented upon. Mr. Murray came to Nelson from Port Nicholson with the intention of opening a public house. He used every endeavour to procure a license but, as our readers well know, it has hitherto been out of the power of any one to obtain one. An information was exhibited against Mr. Murray, for selling liquor without license, on Tuesday last, and on Wednesday he appeared before the police magistrate to answer it. Mr. Tod and Captain England, justices of the peace, supported Mr. Thompson in the performance of his duties on that day. It was shown in, evidence that Mr. Murray had, on Monday night last, sold liquor without license; and this was admitted on the part of Mr. Murray. It was shown that there was a fiddle and a fiddler at the house of Mr. Murray; that people danced there; that one man struck another in the face; that these men were immediately turned out and prevented from fighting; that Mr. Murray endeavoured to the utmost to keep order, and that he succeeded in putting a stop to indications of unruliness in some of his customers; that liquor was refused to be served by him after ten o'clock at latest.

It was endeavoured to be shown that on Monday there was "a row" in the house but the witness, brought to substantiate this could give no evidence on the subject, but that he had heard there was a row. Mr. Murray was served with a summons late on Tuesday afternoon, and it was represented on his behalf that he had not time to procure his witnesses, and an adjournment was applied in consequence. This was refused. It was afterwards represented that the evidence he wished to produce was most important; that it would show that his character was high in Port Nicholson and here for steadiness and respectability and other matters most requisite to be made known; and, in part, to supply the place of such evidence, Robert Tod, Esq., from the bench stated that he himself would speak to Mr. Murray's respectability at Port Nicholson. It was further represented that it was unjust to enforce a law upon a man *to whom that law could not possibly have been known*, and who was not enabled to comply with it even if he had known it. It was represented that it was not fair to proceed against one house while others were left at liberty to sell as they pleased; that it was in the power of the magistrates to have informed Mr. Murray that his announcement of an intended convivial meeting was unwise, and that such a meeting had better be postponed, or even altogether given up, instead of sending constables with the intention of procuring evidence of an offence against a law not known to be in existence. The magistrates were unanimous in inflicting a fine of £30.

We are satisfied that the public opinion on the subject of this conviction and the penalty inflicted is the same as our own - that there was nothing in the circumstances to warrant it, and that it was unfair to the individual informed against, as well as to the public, who would be placed in the predicament of having no house for refreshment or entertainment, if the principle which it implies were carried out. The principle of inflicting a fine for the commission of one offence because the law does not enable you to punish for a supposed offence of a different character, is most dangerous. It is questionable whether or not the magistrates had jurisdiction at all in the matter but, if they had, there can be no question as to the use which they made of their power.

For reasons which cannot well be mistaken, we are anxious to say as little as possible on this subject. Our sense of the duty we owe to the public would not allow us to say less than we have said and a meeting of some gentlemen to take this decision into consideration (of which our readers will see a notice in our advertising columns) has saved us the necessity of saying more. We conclude with this, that it will be impossible that the people can have confidence in the judgment of their magistrates, if their decisions continue to be based upon principles so arbitrary, and therefore so dangerous.

*(Nelson Examiner and New Zealand Chronicle, 9 April 1842)*

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### **CONVICTION OF WILLIAM MURRAY.**

THE following Resolutions were passed at a Meeting of Gentlemen, held in the Examiner Office, on Thursday, April 7, 1842; present, Messrs. Spence, Poynter, Duffey, D. Brown, E. J. Wakefield, G. B. Richardson, Trower, W. C. Young, Hamilton Smyth, Drake,' and Arnold.

W. C. Young Esq., in the Chair:

1. Moved by Mr. Poynter; seconded by Mr. Spence:

That, in the opinion of this meeting, the magistrates, of the district were not justified in their decision on the information exhibited against William Murray, for keeping a house of public entertainment without a license, inasmuch as the said William Murray was unable to obtain a license, because no licenses have been granted to this district, and no means of obtaining them have been pointed out by the Government.

2. Moved by Mr. Wakefield seconded by Mr. Smyth

That this meeting views with great jealousy and alarm the indication which was manifested throughout the proceedings in Murray's case, of a disposition to adopt the dangerous and oppressive practice of entrapping the accused by laying an information for one offence in order that conviction may be obtained for another.

3. Moved by Mr. Richardson seconded by Mr. Duffey

That this meeting has learned that one of the magistrates who was on the bench during the inquiry, and who publicly expressed his acquiescence in the decision of his colleagues, has since joined in a subscription which has been opened for the purpose of compensating the defendant for the injury he sustained in consequence of that decision; and that the meeting cannot but perceive in so unprecedented a circumstance a virtual admission of the injustice of the conviction.

4. Moved by Mr. Spence seconded by Mr. Brown

That, apprehensive of the dangerous consequences to the liberty of the subject which are involved in the admission of the principle, that a bench of magistrates, appointed by and representing the Executive Government — irresponsible to and independent of the people of this settlement, and possibly influenced by interested considerations, may exercise with impunity so arbitrary a power, — this meeting now resolve to appeal to their fellow citizens to resist, in their earliest appearance, the indications of so dangerous a tendency, and to assert the rights of a free citizen against the unjust decision of an irresponsible tribunal.

5. Moved by Mr. Drake seconded by Mr. Arnold

That, for the purpose of ascertaining the opinion of the public with respect to this question, a Public Meeting be held on Tuesday next, the 12th instant, to take into consideration the foregoing resolutions.

6. Moved by Mr. Poynter seconded by Mr. Spence

That the thanks of this meeting be given to Mr. Elliott for his kindness in affording the use of his room for the convenience of the meeting.

7. Moved by Mr. Poynter; seconded by Mr. Trower:

That these resolutions be advertised in the Nelson Examiner, and that placards containing copies thereof be posted throughout the town without delay.

W. C. Young, Chairman.

*(Nelson Examiner and New Zealand Chronicle, 9 April 1842)*

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### **To the MAGISTRATES of NELSON.**

*"I wish them, earnestly and calmly, not to fall off from their first principles, nor to affect rigour and superiority over men not under them; not to compel unforcible things - not to dart against the actions of their brethren, for want of other argument, the wrested laws which, though they hurt not otherwise, yet taken up to the condemnation of their own doings, give scandal to all men, and discover in themselves either extreme passion or apostasy. Let them not oppose their best friends and associates, who molest them not at all. \* \* \* but are still seeking to live at peace with them, and brotherly accord. \* \* \* Let them fear, therefore, if they be wise, rather what they have done already than what remains to do, and be warned in time, lest they be added to the examples of those that miserably tasted the event." John Milton.*

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Gentlemen - Called by a large number of my fellow citizens to preside at a meeting which was lately held for the purpose of inquiring into the justice of your judgment in the case of William Murray, I hold it to be my duty both to you and to myself, to give you knowledge of our proceedings, and of the motives which led us to adopt them.

Your judgment is thought to be unjust for these three reasons

First - Because it was clearly given either to make a severe example of a venial offence, or to punish the defendant for an offence not charged in the information.

Secondly - Because the law was strained, for the purpose of bringing within its grasp a man who had made himself obnoxious to the authorities.

Thirdly - Because the temper of the bench was so manifestly moved as to give no chance of an impartial verdict.

These were our reasons for challenging your judgment.

Either William Murray was fined for keeping open a tavern without a license, or he was not. If he were fined for keeping open a tavern without a license, the penalty, to say the least, was too severe. It was proved that William Murray had done all he could to obtain a license. It was proved that he could not obtain a license. Do the magistrates of Nelson desire that a man shall do more than he can do or do they, from a particular antipathy to grog shops, mean to punish a man for doing all he can?

If he were not fined for keeping open a tavern without a license, he was fined for an offence not charged against him in the information. In either case the decision appears to all men of sense unjust.

Gentlemen, the next reason why your sentence is, in the judgment of your fellow-citizens, unjust, is this: It is notorious that William Murray had made himself very unwisely, beyond doubt obnoxious to your bench by having more than once had the misfortune of admitting into his house certain disorderly and riotous persons, whom he, being unsupported by your constables, was unable to restrain from somewhat riotous proceedings. It was dwelt on with peculiar unction by one of your worships, that the public peace was in particular disturbed by those persons on a Sunday: "the last Lord's day" was the phrase employed. It was very well known that, as William Murray had been prevented by the forms of law from getting a license, the forms of law would not admit of openly punishing William Murray for keeping a disorderly house; but then William Murray must be punished for having been unable to restrain a tipsy mob. What was to be done? Luckily, the forms of law, which prevented William Murray from getting a license, which prevented him from being openly punished for keeping a disorderly house, neither prevented William Murray from being fined for the folly of other people, nor restrained the magistrates from wresting those forms out of the ordinary course, in order to allow of their punishing William Murray for an offence of which his customers had been guilty. How, then, gentlemen? Do you hold him guilty for being over-careful of his worldly interest, or for being unable to control his customers? True, he is a Scotchman, and keeps a grog shop but there are other Scotchmen who keep grog shops. William Murray is not damned because many publicans are sinners, any more than a magistrate is saved because there are Pharisees in Heaven.

These considerations had evidently determined the bench, and it is regarded by everybody as a settled point, that the bench had resolved to impose a fine on William Murray for keeping a disorderly house, and for having been unable, without the aid of the police, to prevent some drunken persons from making a disturbance. In other words, it is universally believed that William Murray was charged with one offence and convicted of another.

And therefore, gentlemen, your sentence is regarded as a manifest wresting of the law, with intent to bring William Murray within its grasp.

I was present during great part of the inquiry. I take it upon myself to affirm that the bench had evidently determined from the very first on fining the defendant. If not, why, when the defendant had admitted that he had kept open his house without a license why continue the investigation at all? Why dwell pertinaciously upon the circumstance of the uproar which had taken place at Murray's on Sunday night? Why the excited deportment of the bench throughout the inquiry whenever the evidence inclined in favour of the defendant? It must have been apparent to all present that William Murray had raised a hornet's nest about him, and that the more he struggled the more sharp he would be stung.

Urged by these considerations, we resolved to take the sense of the public upon these proceedings. We shrink from no responsibility. We passed resolutions, which have been laid before the public. We spoke out upon a matter touching the public good, according to the custom of our countrymen, in an assembly of the people. We met freely to question the verdict of our magistrates, freely to tell them how we thought thereon, and to protest, if need might be, against their proceedings. Our enemies will seek to misrepresent our motives. You will be told that we are men discontented and factious - stirrers of sedition rebels against established authority. Believe us, gentlemen, we act from no such motive. It is easy to prove that we are lovers of peace, supporters of just authority - that we respect the magistrates - that we obey the laws - that we are content with the political power which we well know we have, and that we are warm friends of harmony throughout the settlement. How, then, do we encourage faction? They who refuse to join us in a common effort for the common good they who secede from their fellow-citizens employed in securing the general welfare, are the real disturbers of harmony the real enemies of liberty and law.

For yourselves, gentlemen, I take leave to assure you that I have no feeling but that of respect. That you have acted conscientiously, I as little question as that you have acted unjustly. You have erred in judgment. Believe me, if it had been meant to cast aspersions upon your honour and high character, my place would never have been among those who have acted with me here. I have stated publicly, and I now repeat, that I hold it the duty of good citizens to submit to the law, while it remains law, unless all means towards its amendment, short of resistance, have been tried in vain. We do not threaten you. But, to use all lawful measures to abolish that which is oppressive - to meet in assemblies of the people, to petition, to protest, to challenge the verdict of the magistrate - to make those who administer the law answerable to those for whose benefit it is administered - and, more than all,

*"Having to advise the public, to speak free,—"*

This is a right prescriptive among Englishmen, and one which we never will forego.

I have the honour to be, Gentlemen,  
Your obedient servant,  
WILMAM CURLING YOUNG.  
Manuka Street, April 14.

*(Nelson Examiner and New Zealand Chronicle, 16 April 1842)*

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## **PUBLIC MEETING.**

A public meeting was held on Tuesday evening last, at Miller's Tavern, to take into consideration the conduct of the magistrates relative to the conviction of William Murray, which was noticed in our last paper.

W. C. Young, Esq., in the Chair:

The Chairman opened the proceedings. He observed that, in meeting for the purpose of expressing opinion on a matter of such moment, they were exercising the undoubted and familiar privilege of speaking freely upon matters touching the general welfare in assemblies of the people. He dwelt at some length on, the unquestionable necessity for obeying the law, even if it were not just, so long as it was law: but strongly advocated the necessity and justice of protesting and petitioning, and using all lawful means, for changing the law when it was unjust. Respect was due to the office of the magistrate— but that unjust decisions from the bench would weaken confidence in the administration of justice. Harmony and good feeling were of great import, but public liberty was of greater still. He earnestly warned his fellow citizens against the insidious nature of arbitrary power, and would uphold the absolute necessity for crushing it in the very shell. He briefly stated the facts of the case, and concluded by inviting all to come forward and express their opinions freely and without fear, as they courted inquiry, and assembled not to condemn, but to discuss.

On the resolutions passed at the former meeting being read, Mr. Richardson observed that the circumstance which gave rise to the third resolution, had been denied by the gentleman to whom it referred. This he felt bound to state, as it was partly on his authority that the resolution in question had been adopted.

Mr. Duffy moved the first resolution:- "That this meeting cordially approves of the spirit of the resolutions adopted at a meeting held on the 7th instant, and earnestly deprecates the decision of the magistrates in the case of William Murray, as being calculated to weaken the authority of the laws, and destroy the confidence of the people in those by whom the law is administered."

Seconded by E. J. Wakefield, Esq.

The second resolution was proposed by the Hon Mr. Byng, who pointed out the necessity for uniting in cases of this description, where the individual to whom the injustice was considered to be done was prevented by obvious considerations from pressing his case upon the notice of the public; and urged, in quoting the well-known words of Nelson, the importance to all that none should shrink from performing their duty in a matter which so nearly concerned the interests of all:- "That this meeting distinctly disclaims any desire to raise dissension in this settlement, and is opposed to the formation of factions in a young community; yet, without questioning the high character of the magistrates of this district, and with every disposition to support them in the exercise of just authority, this meeting is of opinion that the inhabitants of Nelson would prove themselves ill qualified for the exercise of the franchise with which they are so shortly to be invested, if they were to

exhibit fear or indifference when their rights are threatened by an act of injustice to a private citizen."

Seconded by Mr. Budge.

Mr. M'Shane rose to say that he was unable to reconcile the circumstance that, in the same resolution the high character of the magistrates should be conceded, and at the same time that they should be charged with an act of injustice. And further, that as yet the public had not had the means of forming an opinion on the subject. All they had learnt of it was from the columns of the Nelson Examiner, which had given but an imperfect account of the transaction. He felt assured that, if it were the fact, as had been stated in the resolutions adopted at the previous meeting, that the magistrates had fined Murray for one offence as a punishment for another, there would have been more public indignation manifested.

After a few observations by Mr. Budge, Mr. Richardson moved the third resolution "That Messrs. [names to be filled up] be requested to prepare a protest for signature and publication, which shall state that the aforesaid decision is considered harsh and unjust, because a penalty was inflicted upon a citizen for an offence which he had committed in common with many others, in order that he might be punished for another offence, of which the law could take no notice, and the commission of which the evidence adduced did not go to prove." Mr. R. proceeded to say that the present meeting had certainly not been called for the purpose of questioning the character of the magistrates, but for the purpose of expressing their dissent from a principle which had been adopted by the "Great Unpaid" in England, and from which the worst consequences had resulted, that of punishing a man for one offence, because the law did not enable them to do so for another. He said that it did not at all follow that the private character of the magistrates was impugned by a questioning of the justice of their decisions. It was quite possible that the principle which they were here met to oppose, might be looked upon by the magistrates as expedient to be adopted. He differed from them and he believed that he followed the higher and better path when he dropped the expedient, for what he considered the true and the just. But to differ from a man was one thing, to impugn his character another. Mr. Richardson further stated that, in reply to Mr. M'Shane's expressed doubt that the magistrates should have adopted the course in question, he could say that the defendant Murray was distinctly told from the bench that such was the case that, being unlicensed, he could not be informed against as keeping a disorderly house, and therefore the present mode of punishing him had been adopted.

Seconded by Mr. Moore.

Mr. M'Shane again rose, and after making a few observations on the first three resolutions passed at the former meeting, commented at some length on the fourth, and stated, that unless it was the wish of that meeting that this colony should declare itself independent of Great Britain, he considered the resolution a most improper one. The magistrates were appointed in conformity with the constitution of the mother country and whatever opinion individuals might entertain as to the manner in which they were appointed, he considered it most unwise to do anything which would tend to subvert the authority of the magistrates appointed, an effect which he considered the resolution in question was likely to produce.

The Chairman rose to state that there must be some mistake as to the object of the meeting. It was certainly never intended to censure the private character of the magistrates. Had it been so, he would never have been a party to agitating the matter. He entertained, and he was sure his friends entertained, great respect for the magistrates. For one of them he entertained more than respect - a sincere regard. This was a question of public interest; a matter in which all men were bound to speak out freely. The magistrates might decide unjustly, and yet their motives be as disinterested, as honest as possible.

In reply to Mr. M'Shane's remarks respecting the resolutions, there was no desire to set the existing laws at defiance but undoubtedly he was of opinion that the Magistracy ought to be popularly constituted. But at the same time, it was never contemplated in using the words "arbitrary power," to complain of the magistrates exercising lawfully the powers delegated to them. The arbitrary power complained of, was the power of wresting the law to serve a special purpose - the power of convicting a man for an offence of which he had received no previous notice. This was the arbitrary power of which they were most justly jealous, and which made it necessary for them to unite in common in order to prevent a dangerous precedent and that they might, when first they saw the very germ of oppression, stand up together in defence of their rights as colonists, and for their liberties as citizens.

The following gentlemen were then nominated to draw up the protest Messrs. Poynter, Spence, Duffy, Young, Byng, Richardson, and Budge.

*(Nelson Examiner and New Zealand Chronicle, 16 April 1842)*