Notice CC 96/18

CAPITAL CASE.

No. 14814

Now CC 96/19

Year 1918

Department of the Secretary of State

CANADA.

Name of Trial Judge Mr Chief Justice Falconbridge

Address Toronto, Ontario.

Date of Report 9th November

Date of Receipt 12th do.

SUBJECT:

Report on Capital Case of Hassen Neby

Date fixed for Execution: 3rd January 1919.

Ottawa, 13th November 1918.

Referred to the Honourable the Minister of Justice for his consideration with evidence and plans.

BY COMMAND,

Thurgar Murphy

UNDER-SECRETARY OF STATE.

Proceedings duly noted (signed) J. R. Cartwright for Deputy Minister of Justice

JAN 16 1919

14th January 1919.

Referred to the Honourable the Minister of Justice for his information as to the Execution of the judgment of death.

By Command,

Thurgar Murphy
Under-Secretary of State.

614A

14814

28—200-5-15.

Osgoode Hall,

Toronto, Ont.

November 9th. 1918.

Sir:

The King v. Hassan Neby.
(Murder of George Tucker)

I have the honour to report that on the 31st. ultimo I sentenced this prisoner to be hanged on Friday the 3rd. day of January next. I have no doubt of the correctness of the jury's verdict and if applied to I would not recommend remission or commutation in this case.

I enclose the transcript of evidence; also two exhibits filed at the trial as follows:

Exhibit (6) Plan of the locus in quo showing the position of the cars in one of which Tucker was murdered;

Exhibit (8) Plan of the third floor of 569 King Street West, where the prisoner lodged.

I have the honour to be, Sir,

Your obedient servant,

Glenholme Falconbridge

Chief Justice of the King's Bench.

The Honourable,

The Secretary of State,

Ottawa, Ont.

JDC/L

C.C. 96-18

November 15th, 8.

Sir,-

I have the honour to acknowledge receipt of the report by Mr. Justice Falconbridge of Toronto on the case of Hassen Neby, together with the evidence and plans.

I have the honour to be,

Sir,

Your obedient servant,

for Deputy Minister of Justice.

Thomas Mulvey, Esq.,

Under-Secretary of State,

O t t a w a.

E/EE.

NO. 14814
CAPITAL CASE
REGISTER.

Ottawa, November 13th, 1918.

Sir:

I have the honour to acknowlege the receipt of your letter of the 9th instant, reporting that, upon conviction of the crime of murder, Hassen Neby was sentenced by you to be hanged on Friday the third day of January, 1919. I have also received the evidence adduced in this case as well as exhibits six and eight. Your report has been referred to the Minister of Justice for his consideration.

I have the honour to be,
Sir,
Your obedient servant,

THOMAS MULVEY.

Under-Secretary of State.

The Honourable
Sir Glenholme Falconbridge, Knt., Bach.,
Chief Justice of the King's Bench,
Osgoode Hall,
Toronto,
Ont.

JDC/L

REMISSION REGISTER.

No. C.C. 96 1918

Department of Justice,

CANADA.

Report re

From Chief Justice Falconbridge

Address Toronto Ontario

Date November 15th, 1918.

~~Petition for Release~~ on Case of Hassen Neby,

~~From~~ Confined in the Jail at Toronto Ontario

Crime MURDER,

Date of Sentence October 31-1918

Sentence Death -

ACTION.

DATE OF EXECUTION :- January 3rd, 1919.

THE KING

VS

HASSEN NEBY

Convicted of murder before The Honourable Sir Glenholme Falconbridge, Knt., Bach., Chief Justice of the King's Bench, at a sitting of the Supreme Court of Ontario, held at Toronto, on the 30th and 31st days of October, 1918, and sentenced to be executed on Friday, the 3rd day of January, 1919.

MEMORANDUM FOR THE HONOURABLE THE ACTING MINISTER OF JUSTICE.

The prisoner, who is stated to be a native of Albania, was found guilty of the murder of George H. Tucker, in a Canadian Pacific Railway boarding car, on a siding at Weston, Ontario, on Sunday May 19th last. The victim was an unmarried man, about twenty years of age, whose home was at Orangeville, Ontario.

With a foreman and five other workmen, Tucker left Woodbridge Station, on the Canadian Pacific Railway, on Saturday, May 18th, and went to Weston, where they took up quarters in a boarding car, on the siding. Four of the men went home for the week-end, and three, including Tucker, slept in the car on Saturday night, and remained there together till about half past one o'clock on Sunday afternoon, when Tucker

left.

JOHN HUNTER,
p.3.

John Hunter, the foreman, who was one of these men, deposed that on Sunday they all got out of bed about twelve o'clock noon, and that he left about three, and returned at one o'clock Monday morning. He last saw the deceased about one-thirty p.m. on Sunday, May 19th, when he left the car. There were three doors in the car, one at each end and one at the side. Hunter says he gave Tucker the key of the side door, on the town side. On 15th May Tucker drew $39 for wages. His board bill was $14.73, which it was likely he paid, and he sent his mother $10; and bought boots for $5. If, therefore, he paid the board bill he would have about $8 left; and if he did not pay it he would have that much more.

WILLIAM HILL,
p.7

William Hill, the remaining employee who slept in the car, swore he left at between one and one-thirty on Sunday afternoon, and returned about ten p.m.; and found Tucker dead in his bunk. His trousers and under-drawers were torn, and down over his feet; and his shirt was up under his arms, the body being exposed from the breast to below the knees. The inference was that the person who thus stripped the deceased man, having killed him, was searching for money or valuables. Witness

deposed that there were no foreigners in their gang of seven; and all were on friendly terms. Witness missed a pair of field glasses, which he had in the car, also a bunch of keys.

DOCTOR
ELI FRANKLIN IRVIN
p.16

Doctor Eli Franklin Irvin, Weston, who made a post-mortem examination of the body, deposed that the deceased had been stabbed to death. The unfortunate man was, physically, one of the finest he had ever seen. Apparently, the first wound, over the heart, had caused death within a very few seconds. There were thirteen other wounds on various parts of the body, but they were probably inflicted after life was extinct. The condition of the wounds would be consistent with the use of a stiletto. The instrument was apparently sharp on both sides. From the condition of the undigested matter in the stomach, witness reached the conclusion that Tucker had partaken of a meal not more than an hour and a half, or two hours, before his death.

ELIZABETH WAGNER,
p.19

Elizabeth Wagner stated that Tucker left her house in West Toronto, on the Sunday afternoon in question, about twenty minutes to six, when he said he was going to the boarding car. She invited him to stay for tea, but he declined, saying he had had a good tea.

FREDERICK K. DALTON,
p.20

Frederick K. Dalton, who lived in the vicinity of the siding where the

boarding car was, stated that on Sunday evening, May 19th, about twenty minutes to eight o'clock he passed along a lane leading to the Roman Stone Company's premises and met a man between the Canadian Pacific and Grand Trunk tracks, coming from the Grand Trunk to the Canadian Pacific tracks. He declared he was reasonably sure the prisoner was the man; "He looks very like him." Witness said, "Good night," to the man, and he answered in a foreign tongue. He identified the hat produced in Court as like the one worn by the man he met; he added that he did not make a very close examination of the man's general appearance.

WILLIAM BLAIR, p.32

William Blair, caretaker of the Roman Stone Company's premises, deposed that on the Sunday night in question, about eight o'clock, he was at the gate where the Grand Trunk is, when he saw the prisoner come up the steps, and asked him, "Are you staying down in those cars now?" Prisoner replied, "Oh!, no, no, no." Prisoner had a parcel in his hand, wrapped up in paper, which he was trying to put in his pocket. Prisoner appeared excited, and in a hurry. The witness knew witness Dalton, to see him, and he saw him that evening about half an hour before. The man with the parcel, (whom he now identified

as the prisoner), got the parcel into his pocket, crossed the Grand Trunk track, and went to the main street, in the direction of Burk's Hotel. The witness further stated that a few days afterwards he was in the Canadian Pacific Railway office, when twelve men were being paid off. He then saw the prisoner receiving his cheque, and pointed him out, without any suggestion on the part of any one else, as the man whom he had seen in the vicinity of the scene of the murder on May 19th. Witness added that he was absolutely positive the man met by him and spoken to, on the occasion referred to, was the prisoner.

JOSEPH WATSON, p.46

Joseph Watson, a Conductor on the Toronto Suburban Railway, ~~who~~ which has its terminus at Burk's Hotel, Weston, stated that he started back to West Toronto at ten minutes to the hour. On the Sunday night in question he was, while in charge of his car, at the Burk's Hotel terminus, when a man rushed for the car, either at ten minutes to eight or ten minutes to nine. This man was the only passenger; and he saw him at the inquest a week later. He positively identified the prisoner as this passenger. The man never offered to get into the car till he rang the bell, waiting till the last moment, and then he made a rush for it. Witness did not remember what

clothing he wore, and he identified him only by his face, adding, "I am not mistaken; the more I see of him the more I am sure."

POLICE INSPECTOR JOHN MILLER, p.55

Police Inspector John Miller, deposed that he and Inspector Greer visited the premises at #569 King Street West, Toronto, where a number of Albanians lived, and made a search for a pair of field glasses, and a wallet, which had been taken from the car in which the murder had been committed.

In a vacant room, on the third floor, they found a black suit case, which contained the field glasses and the wallet, the latter having in it an insurance identification card, belonging to George H. Tucker (the murdered man). In the same suitcase were a coat, a muffler, a coloured shirt and other clothing, and two envelopes. Trousers corresponding to the coat were found in the bedroom occupied by the prisoner, who came in after the articles had been found. Prisoner denied that he owned the grip, and said it belonged to someone else. Aasked where his own suitcase was, prisoner produced one that belonged to another Albanian. Subsequently he produced a suitcase of different coloured leather that belonged to Mike Demo, another fellow-countryman. When the prisoner was searched it was

found he had about $73, in a purse in his pocket.

INSPECTOR GEORGE KENNEDY, p.66

Inspector George Kennedy, who belonged to the Toronto City Police Force, gave evidence as to the statement made by the prisoner after his arrest, at which time he denied ever having been at Weston or West Toronto; stated he was at home in Toronto all Sunday, May 19th; denied ownership of the black suit case and the articles found therein; and claimed his suitcase was of a yellowish colour.

CONSTABLE WILLIAM CAMPBELL, p.83

Constable William Campbell swore that he searched the murdered man's clothing after the body was discovered. He found no money; the pockets were empty.

SAM ALI, p.84

Sam Ali, who was foreman for the Canadian Pacific Railway, when the prisoner with other Albanians were working for that corporation, stated that they left the service of the company on 26th April. The prisoner boarded for a short time in the car, at Weston, and afterwards, he, with the prisoner and other Albanians, boarded at #569 King Street West, Toronto. Witness identified a black suitcase found on these premises as belonging to the prisoner. He also identified a coat, trousers and muffler, as the property of the prisoner. The envelopes found in the prisoner's suitcase, were he stated, given to Neby by him, so that the prisoner might have the addresses given on them. Witness stated that

there was a meeting of Albanians at #534 King Street, West, on May 19th. When he went to his work at 5.30 that evening prisoner was in the house at #569 King Street, West.

JIM CHARLIE, p.104

Jim Charlie, another Albanian, says prisoner went out of the house, on May 19th, about six p.m., after partaking of supper, and came back about nine p.m. The evidence of this witness was in the main corroborated by John Ali, another Albanian.

DETECTIVE WILLIAM GREER, p.114

Detective William Greer stated that a person could go by street car, from #569 King Street, West, to Weston, easily in fifty minutes.

HASSEN NEBY, p.117

Hassen Neby, the prisoner, was the only witness examined for his defence. He stated that he boarded in the Canadian Pacific car while in Muskoka, and came down in it to Weston. He left the car and the employment of the railway company as soon as he got to Weston. Prisoner now identified the black suit case as his. He denied that he had at any time said he did not own this suitcase. He had only denied owning the articles found in it. He did not know how the field glasses and the wallet came to be in the suitcase, and he had never seen these articles before they were produced in the Police Court. Prisoner said he was living at #569 King Street, West, Toronto, on May 19th, when Tucker was murdered; but he

denied he knew anything about Tucker, or the crime. He could not explain how the two envelopes found in his suitcase came to be there. They were not given him by Sam Ali, as sworn to by that witness.

HASSEN NEBY - Cross-examination - p.121

In cross-examination prisoner said he had lived in Canada for three years; that he was not in Waterbury, Connecticut, in the Fall of 1917, or in January of this year; that he had not been convicted at Waterbury of attempting to murder Frank Dowd, and sentenced to eighteen to twenty years in the State Prison; and he added that he did not escape from the New Haven County Sheriff while being conveyed to gaol. Prisoner stated that on the 9th January, 1918, he was working on the Canadian Pacific Railway at Muskoka. He changed his name to Jack Ali in April last, when he went to work for the John Inglis Company, in Toronto, with which firm he remained till he was arrested. Prisoner declared he had supper on 19th May at #569 King Street, West. He remained there till half past six, when he went to #534 King Street, West, where he was till eight o'clock. There were from twenty to thirty persons at that place, who were there all the time till he left. He declared he knew all of them.

SAM ALI - Recalled - p.130

Sam Ali was recalled to deny

the evidence of the prisoner that he, Ali, was working for the Canadian Pacific Railway, ~~at~~ in Muskoka, in January last, and that he had the prisoner working under him. Witness did not start to work for the Canadian Pacific Railway till 26th February, when the prisoner also began to work. Witness also contradicted the prisoner's statement that he did not work at Weston. Neby actually did work seven or eight days at Weston, in April last.

It is conceded that the prisoner had a fair trial, and that ample opportunity was given him to establish his defence. By Neby's own evidence alone, an attempt was made to set up an alibi, to meet the testimony of the men who swore positively that they saw, or met and spoke to him, in the vicinity of the place of the murder, on the evening of the tragedy. But this expedient signally failed. The prisoner's assertion that he was not in Weston, or neighbourhood, between the hours of six and eight o'clock, on the evening of May 19th (the time when in all probability the murder was committed) but at a meeting of his compatriots, a short distance from his place of abode, was capable of proof, if proof there was, inasmuch as, according to the prisoner's own statement there was at the meeting which he attended, twenty to thirty of his countrymen, whom he knew and who knew him, and who were

present all the time that he remained in the place. Why then were not one or more of these friends of the prisoner called to support his story? Simply, one is forced to the conclusion, because it was not true. The prisoner's numerous contradictions of the evidence given by himself at previous enquiries, and his unsatisfactory explanations in regard to his immediate past life, all told against him, and made it a comparatively easy task for the jury to reach the conclusion that he was guilty of the murder and robbery - a verdict acquiesced in by the trial Judge, who in imposing sentence declared that the prisoner was guilty of a most cruel and barbarous murder.

There is really nothing in the record now submitted to support any other conclusion, and the undersigned is therefore of the opinion that the law should be permitted to take its course.

Respectfully submitted

J D Clarke

For Deputy Minister of Justice.

DECEMBER 6TH, 1918. (JDC/TSW).

P. C. 3110.

At the Government House, Ottawa

Thursday, the nineteenth *day of* December, 1918.

Present:

The Governor General

In Council.

The Governor General has been pleased to lay before the Privy Council the Report and notes of evidence of the Honourable Mr. Chief *Justice* Falconbridge, *in the case of* HASSEN NEBY,

who was *tried before him at* a sitting of the Supreme Court of Ontario, held at Toronto on the thirtieth and thirty-first days of October, 1918.
for the Crime of MURDER
and having been convicted thereof, was sentenced to Death—such sentence to be carried into execution on Friday, the third day of January, 1919.

The Honourable,
The Secretary of State.

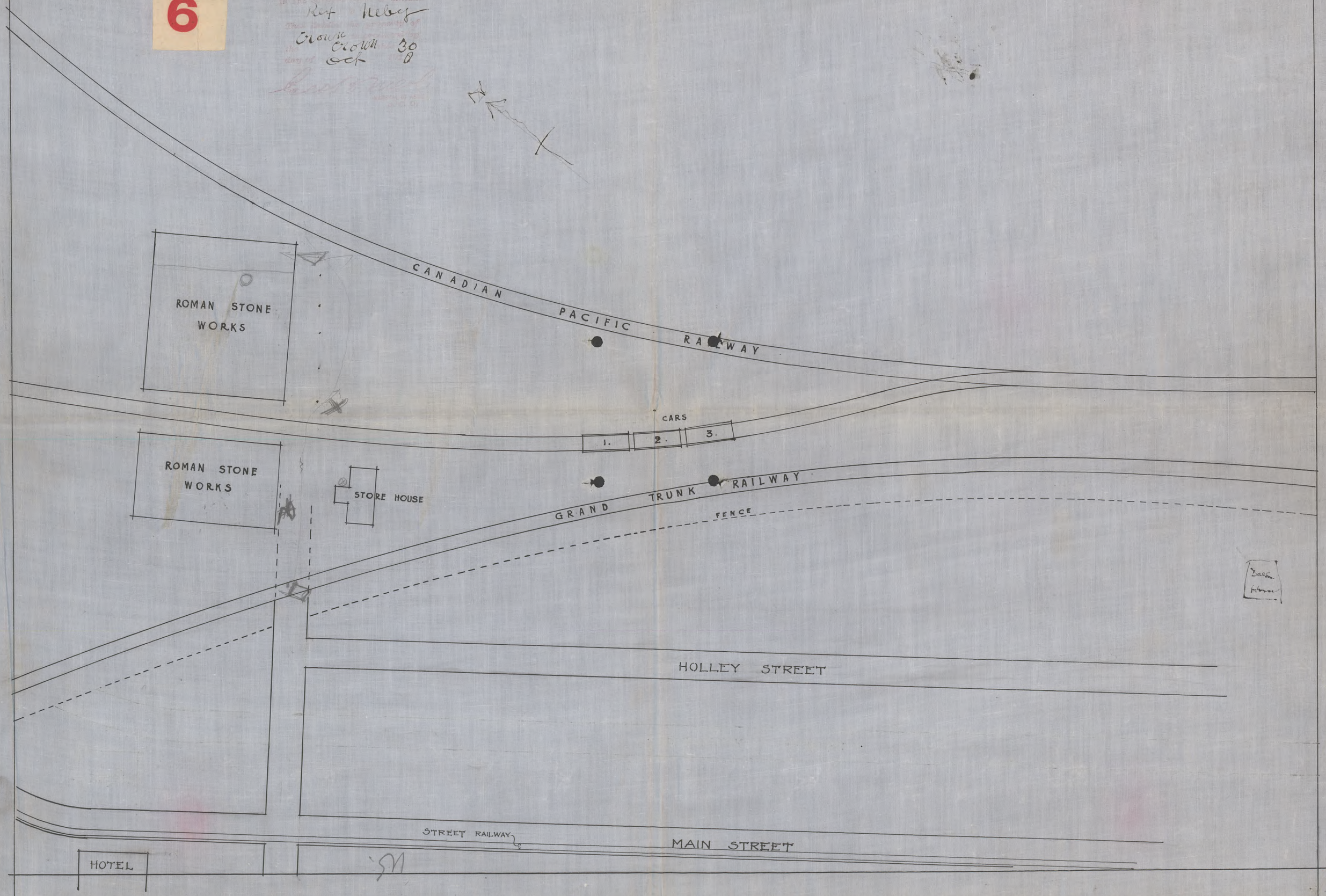
The Governor General has also laid before the Privy Council a transcript of the evidence adduced at the trial, and other documents relating to the case.

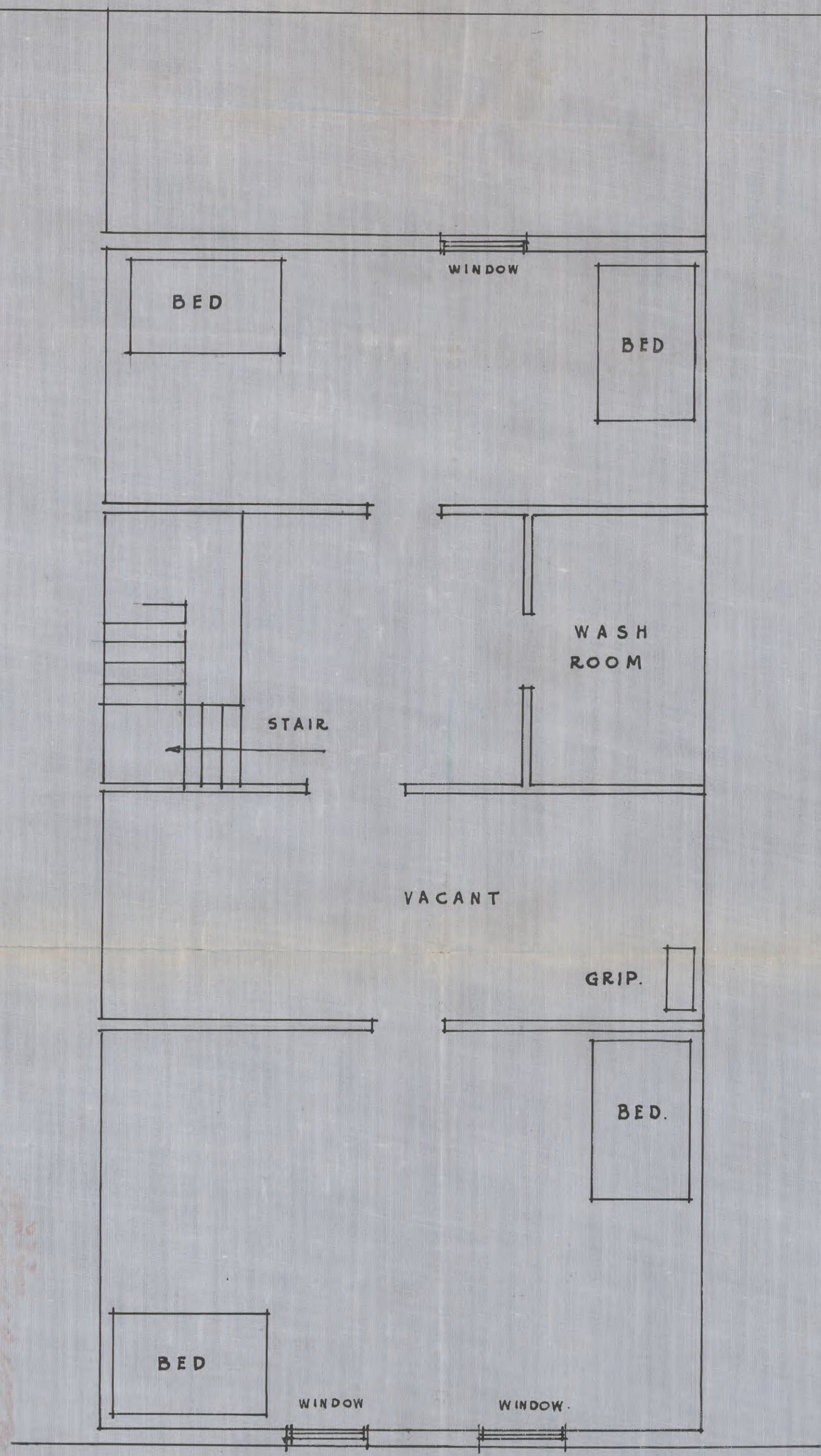
The circumstances of the case having been fully considered by the Governor General in Council, together with the Report of the Minister of Justice adverse to *the commutation of said sentence.*

The Governor General is unable to order any interference with the sentence of the Court.

Clerk of the Privy Council.

6


CANADIAN PACIFIC RAILWAY
ROMAN STONE WORKS
ROMAN STONE WORKS
CARS
1.
2.
3.
STORE HOUSE
GRAND TRUNK RAILWAY
FENCE
HOLLEY STREET
STREET RAILWAY
MAIN STREET
HOTEL



Rep. Medby
Cosgrave
Oct 30/8

8

569 KING STREET WEST

CANADIAN PACIFIC R'Y. CO.'S TELEGRAPH

FORM T. D. 2

TELEGRAM

CABLE CONNECTIONS TO ALL PARTS OF THE WORLD

J. McMILLAN, Manager Telegraphs, Montreal.

Sent No.	Sent By	Rec'd By	Time Sent	Time Filed	Check

Send the following Message, subject to the terms printed on the back hereof which are hereby agreed to:

The Sheriff of the City of Toronto, Ottawa, December 20th, 1918.

Toronto, Ontario.

I am commanded to inform you that His Excellency the Governor General is unable to order any interference with the sentence of the Court in case of Hassen Noby to be hanged on Friday third day of January, nineteen nineteen. Repeat back this telegram immediately after same has reached you. Letter will follow.

F. Colson,

Acting-Under-Secretary of State.

Charge S. of S.

APPROVED BY THE BOARD OF RAILWAY COMMISSIONERS FOR CANADA UNDER ORDER 162 DATED MARCH 30, 1916.

It is agreed between the sender of the message on the face of this form and this Company, that said Company shall not be liable for damages arising from failure to transmit or deliver, or for any error in the transmission or delivery of any unrepeated telegram, whether happening from negligence of its servants or otherwise, or for delays from interruptions in the working of its lines, for errors in cypher or obscure messages, or for errors from illegible writing, beyond the amount received for sending the same.

To guard against errors, the Company will repeat back any telegram for an extra payment of one-half the regular rate, and in that case the Company shall be liable for damages, suffered by the sender to an extent not exceeding $200, due to the negligence of the Company in the transmission or delivery of the telegram.

Correctness in the transmission of messages can be insured by contract in writing, stating agreed amount of risk, and payment of premium thereon at the following rates, in addition to the usual charge for repeated messages, viz: one per cent. for any distance not exceeding 1,000 miles, and two per cent. for any greater distance.

This Company shall not be liable for the act or omission of any other Company, but will endeavor to forward the telegram by any other Telegraph Company necessary to reaching its destination, but only as the agent of the sender and without liability therefor. The Company shall not be responsible for messages until the same are presented and accepted at one of its transmitting offices; if a message is sent to such office by one of the Company's messengers he acts for that purpose as the sender's agent; if by telephone the person receiving the message acts therein as agent of the sender, being authorized to assent to these conditions for the sender. This Company shall not be liable in any case for damages, unless the same be claimed, in writing, within sixty days after receipt of the telegram for transmission.

No employes of the Company shall vary the foregoing.

E/MCG.

NO. 14814
CAPITAL CASE
REGISTER.

Ottawa, 21st December, 1918.

Sir;

In confirmation of my telegram of yesterday's date, I am commanded to inform you that His Excellency the Governor General has had under his consideration the case of Hassen Neby who was tried before the Honourable Mr. Chief Justice Falconbridge, at a sitting of the Supreme Court of Ontario, held at Toronto on the thirtieth and thirty-first days of October, 1918, for the crime of murder, and having been convicted thereof, was sentenced to death - such sentence to be carried into execution on Friday, the third day of January, 1919, and to state that His Excellency is unable to order any interference with the sentence of the Court.

Kindly acknowledge the receipt of this communication, immediately after the same has reached you.

I have the honour to be,

Sir,

Your obedient Servant,

F. COLSON

Acting Under Secretary of State.

The Sheriff
of the City of Toronto,
Toronto, Ontario.

E/EE.

NO. 14814
CAPITAL CASE
REGISTER.

Ottawa, December 23rd, 1918.

Sir:

I am commanded to inform you that His Excellency the Governor General is unable to order any interference with the sentence of death passed by you on the 31st October last in the case of Hassen Neby upon conviction of murder.

The Sheriff of the City of Toronto has been notified accordingly.

I have the honour to be,

Sir,

Your obedient servant,

Under-Secretary of State.

The Honourable

Sir Glenholme Falconbridge, Knt. Bach.,

Chief Justice of the King's Bench,

Osgoode Hall,

Toronto,

Ontario.

CANADIAN PACIFIC R'Y. CO.'S TELEGRAPH

FORM T. D. 1

R.1503

TELEGRAM

CABLE CONNECTIONS TO ALL PARTS OF THE WORLD

J. McMILLAN, Manager Telegraphs, Montreal.

N 8.16 pm.

H 2 67 RN P 46 3 EX

TORONTO DEC 20-18

F COLSON

ACTING UNDER SECRETARY OF STATE

OTTAWA

PHONED

691

By..... Time..9:38

FOLLOWING MESSAGE RECEIVED I AM COMMANDED TO INFORM YOU THAT HIS EXCELLANCY THE GOVERNOR GENERAL IS UNABLE TO ORDER ANY INTERFERENCE WITH THE SENTENCE OF THE COURT IN THE CARE OF NASSAN NEBY TO BE HANGED ON FRIDAY THIRD DAY OF JANUARY NINETEEN NINETEEN

FRED MOWAT (SHERRIFF OF TORONTO)

FORM 1 T.W.

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

If none of these three symbols appears after the check (number of words) this is a day message. Otherwise its character is indicated by the symbol appearing after the check.

GREAT NORTH WESTERN TELEGRAM

TELEGRAPH · GREAT NORTH WESTERN · AND CABLE

CLASS OF SERVICE	SYMBOL
Day Message	
Day Letter	Blue
Night Message	Nite
Night Letter	N L

If none of these three symbols appears after the check (number of words) this is a day message. Otherwise its character is indicated by the symbol appearing after the check.

Z.A.LASH, PRESIDENT — HEAD OFFICE, TORONTO, ONT. — GEO.D.PERRY, GENERAL MANAGER

4.45 PM

R 8 N CV 29 RUSH

TORONTO ONT 24

HON C J DOUGHERTY 301

DEC 26 1918

MINISTER OF JUSTICE OTTAWA ONT

RE HASSAN NEVY I HAVE BEEN RETAINED TO INTERCEDE ON BEHALF OF THE ABOVE ACCUSED COULD YOU GRANT ME AN INTERVIEW SATURDAY OR MONDAY WIRE ME AT MY EXPENSE

W A HENDERSON

CC 96/18

Barrister Toronto ?

DEPARTMENT OF JUSTICE · REMISSION BRANCH · DEC 26 1918

4-5-5 Jan

FORM 2.

The Great North Western Telegraph Co.

OF CANADA

It is agreed between the sender of the following message and this Company, that said Company shall not be liable for damages arising from failure to transmit or deliver, or for any error in the transmission or delivery of an unrepeated telegram, whether happening from negligence of its servants or otherwise, or for delays from interruptions in the working of its lines, for errors in cypher or obscure messages, or for errors from illegible writing, beyond the amount received for sending the same:

To guard against errors, the Company will repeat back any telegram for an extra payment of one-half the regular rate, and in that case it shall not be liable for damages beyond fifty times the amount received for sending and repeating.

Correctness in the transmission of messages can be insured by contract in writing, stating agreed amount of risk, and payment of premium thereon at the following rates, in addition to the usual charge for repeated messages, viz.: one per cent. for any distance not exceeding 1000 miles, and two per cent. for any greater distance.

This Company shall not be liable for the act or omission of any other Company, but will endeavor to forward the telegram by any other Telegraph Company necessary to reaching its destination, but only as the agent of the sender and without liability therefor. The Company shall not be responsible for messages until the same are presented and accepted at one of its transmitting offices; if a message is sent to such office by one of the Company's messengers, he acts for that purpose as the sender's agent; if by telephone, the person receiving the message acts therein as agent of the sender, being authorized to assent to these conditions for the sender. This Company shall not be liable in any case for damages, unless the same be claimed, in writing, within sixty days after receipt of the telegram for transmission.

No employee of the Company shall vary the foregoing.

Z. A. LASH, President.

HEAD OFFICE: TORONTO.

GEO. D. PERRY, General Manager.

DIRECT CONNECTION WITH WESTERN UNION TEL. CO. **CABLE SERVICE TO ALL THE WORLD.**

CUSTOMERS' TYPE-WRITER BLANK.

SENT NO.	SENT BY.	REC'D BY.	TIME SENT.	TIME FILED.	CHECK.
					RUSH

Send the following message, subject to the above terms, which are hereby agreed to.

Wm. A. Henderson, Esq.,
Messrs. Henderson & Co.,
Barristers,
Manning Chambers, TORONTO, Ont.

Re Hassan Neby. Case considered by Governor General in Council and disposed of a week ago. Minister of Justice away from Ottawa at present but if you desire to make representations before me can see you eleven o'clock Monday forenoon.

E. L. NEWCOMBE,
Deputy Minister of Justice.

ONTARIO

DEPARTMENT OF ATTORNEY GENERAL

COPY

Toronto, December 31, 1918.

Dear Madam,-

I am directed by the Attorney General to acknowledge the receipt of yours of the 31st instant in reference to Hassan Neby and to say that the same has been transferred to The Honorable the Minister of Justice as the Attorney General has no jurisdiction whatever to stay the execution or to pardon or parole Neby.

Yours truly,

(sgd.) M. Currey.

Private Secretary.

Miss Catharine Daly,

668 Parliament St.,

TORONTO.

668 Parliament Street,
Toronto, December 31,1918.

Attorney Gemeral,
Government Buildins,
Toronto.

Dear Sir:

Since reading paragraphs in last evening's Telegram concerning Hassan Neby, who is sentenced to be hanged at Toronto jail on Friday next, for murder of George Nicker at Weston- I have been feeling painfully concerned about the poor wretch, as I am sure many through out Canada feel to-day.....While acknowledging, legally speaking, justice of the courts sentence, from plain, hard facts: still, many thoughtful, right-minded men and women see much in this case that should appeal to human sympathy, and invoke the law of mercy in his behalf;

The prisoner's early environments have evidently been far from good. He has hd no moral training; no helps in life, not able to read or write; a foreigner not understanding English, or seeming to realize that he is condemned to die so soon: yet, he is not lacking in intelligence, and migh still, if given a chance, even in prison- become a good man.....Judging from his photograph in Telegram, he is certainly not naturally vicious. Phrenologists would say: he is of a highly strung nervous constitution and extremely excitable. Persons such as he, when, unfortunately, they have not well developed controlling power, often commit such grave deeds as murder, without the slightest premeditation or malice. Persons of this kind, when they commit lesser offences, are frequently pronounced temporarily insane by Judges and Doctors.....

Mr. Attorney, won't you please, try to stay proceedings, so that the penalty of death may not be carried into effect against the condemned man?.....He is a father with two children. His poor mother and sisters are living, and if the prisoner were to be hanged, think what a sorrow and disgrace it would be for them, when in time they should learn of his fate.....It would do the murdered man or his relatives no good that th e prisoner should be hanged, and public justice would be satisfied by a commutation of sentence. Could not his sentence be commuted to imprisonment for life, with the option of release, if, after a term of years indication were given that he would be a benefit, rather than a menace to society- should he be released.

This is the season of Mercy and Love, and remember that Mercy is sometimes greater and more effective, than stern Justice, alone.

Yours respectfully,

(Miss) Catherine Daly.

Neby seems to have no relatives to speak for him - or get up a petition.

[illegible]

JDC/R

C C 96-18

January 2nd

9

Dear Madam:-

Your letter, addressed to the Attorney General of Ontario, with reference to the unfortunate man, Hassen Neby, now under sentence of death, at Toronto, has been transferred to the Acting Minister of Justice for consideration, and I am instructed to inform you that the case of Neby was given every consideration possible by the Governor General in Council, about two weeks since, when it was found not possible to interfere with the due course of the law.

Since that time the legal representative of the prisoner has made representations on his behalf, with the object of having Neby reprieved, and he has been informed that a reprieve in the circumstances is a matter for the consideration of the learned Judge before whom the prisoner was tried.

The Acting Minister of Justice therefore regrets that he is unable to accede to your request.

Yours truly,

J. D. Clarke

Acting Chief of Remission Branch.

Miss Catherine Daly,

668 Parliament Street,

T O R O N T O.

THE SUPREME COURT
OF ONTARIO.

OSGOODE HALL,
TORONTO.

c/o Harcourt Notly
1 January 1919.

Dear Mr Newcombe,

Many thanks for your telegram. As I am of opinion that the evidence was rightly admitted & in any event it could not have prejudiced the prisoner, I shall refuse to respite.

With all the good wishes of the season I remain

Sincerely Yours
Glenholme Falconbridge

Clarke

2nd January 9.

My dear Chief Justice;

Re Hassan Neby.

I have received your letter of 1st instant, and I may say that I did not personally read the volume of evidence in this case, but in view of the manner in which Mr Henderson's application was submitted, and the consideration which I was able to give the matter at the time, I was of the impression that there might have been some immaterial evidence admitted upon the question of the prisoner's whereabouts in January, although without objection, and I thought that this was not a ground for executive interference, especially having regard to the admitted strength of the case upon the evidence which was material.

With best wishes for the New Year.

Yours sincerely,

E. Lewis.

The Honourable
Sir Glenholme Falconbridge,
Chief Justice of
the King's Bench,
Toronto.

CC/96/19

Toronto Jan 1/19

Dear Sir

Just a line on behalf of a poor unfortunate who is to hang here in Toronto on Friday morning. a man without a following friends or money. I cant help but think what a difference there would be if he had some good friends. The paper states that as he has no one to take up his cause. He is to hang He has a wife and family in a far off country. He may have been a good Citizen in his own country To marry and have a family and bring them up he must have some good in him
You are the only man now who has the power to save the poor fellow. and spare his family the

If you decide to let our Law take its course I have nothing to say. But if you spare his life you will have nothing to be sorry for

Yours Very Resp. and in Haste

Herbert G. Maddock

1905 Queen st E. Beach

Phone Beach 2073

grief it is bound to cause them Just imagine the Mother and children away over there praying that the only man in this world who could save their Husband and father will do so We are very apt in this Country to say. he is only a foreigner. We would be the same in his country. Those poor fellows have been oppressed in their country by those higher up and made what they are Don't you think you could do something else for him deport him or give him life. You have a chance to spare him as You and I have been spared many a time by one who always forgives I do not know the man and do not know his Counsel. I simply feel for a man in a strange country. with strangers and in trouble

JDC/R

CC96-19

January 3rd 8

Dear Sir:-

I beg to acknowledge receipt of your letter, addressed to the Minister of Justice, dated 1st instant, with reference to the unfortunate man Hassen Neby, who has for some time been detained in the gaol at Toronto under sentence of death for murder.

I am to inform you that the case of Neby was given full consideration by the Governor General in Council about two weeks since and the decision was then arrived at that the law should take its course.

Yours truly,

J. D. Clarke

Acting Chief of Remission Branch

Herbert G. Maddock, Esq.,
1905 Queen St. E,
The Beach, Toronto,

Frederick Mowat.
Sheriff
City of Toronto.

Sheriffs Office.

Toronto, January 3rd 1919.

The Honourable,

The Secretary of State,

Ottawa, Canada.

Re HASSEN NEBY.

Sir:-

I have the honour to enclose the Certificates of the Jail Surgeon and the Declaration of the Sheriff and Others, as to the death of the condemned prisoner, Hassen Neby, also the Coroner's Finding at the Inquisition.

I have the honour to be,

Sir,

Your obedient servant,

Fred Mowat

Sheriff of Toronto.

FM/W
Encl.

DOMINION OF CANADA
PROVINCE OF ONTARIO
COUNTY OF YORK
TO-WIT:

AN INQUISITION, indented for our Sovereign, Lord the King at the COMMON GAOL OF THE COUNTY OF YORK situate in the City of Toronto, County of York on the 3rd day of January 1919, in the ninth year of the reign of our Sovereign Lord the King before Peter Tilering one of the Coroners of our said Lord, the King for the said County on view of the body of

HASSEN NEBY

then and there lying dead upon the oath of

Edward Doyle - Ernest Sharpe - George H. Bigg
James Kerr - George Wright - Duncan B. Martin
William Coulter Peter P. Steele - John C. Schmidt
David Howlett - William Shaughnessy Frank H. Bible

good and lawful men of the said County duly chosen and who being then and there duly sworn and charged to enquire for our said Lord the King where, how and by what means the said Hassen Neby came to his death do upon their oaths say that Hassen Neby came to his death at the Common Gaol of the County of York on the third day of January A.D. 1919 from being hanged by the neck until he was dead in accordance with a sentence under which he lay in the said Gaol.

IN WITNESS WHEREOF as well as the said Coroner as the Jurors aforesaid have hereunto set and subscribed their hands and seals in the day and year first above written

Peter Tilering Coroner

Edwd Doyle
Ernest Sharpe
G H Bigg
James Kerr
Geo Wright
Duncan B Martin
W Coulter
Peter P Steele

John C Schmidt
D H Howlett
W Shaughnessy
F H Bible

[L. S.]

Declaration of Sheriff and Others

We, the undersigned hereby declare that Judgement of Death was this day Executed on HASSEN NEBY in the Common Gaol of the County of York, at Toronto, in our presence.

Fred. McSmith

Acting Deputy Sheriff of Toronto

H. A. Ady

Chief Turnkey

Jas. G. Deeks

Dpy Sheriff Co. York

Dated this 3rd day of January, 1919.

Certificate of Surgeon

I, W. T. Owen Parry, Surgeon of the Common Gaol of the County of York, in the Province of Ontario hereby certify that I this day examined the body of Hassen Neby on whom Judgment of Death was this day executed in the said Prison, and that on such Examination I found the said Hassen Neby was Dead

W. T. Owen Parry

Gaol Surgeon

Dated this 3rd day of January, A. D. 1919.

E/EE.

NO. 14814
CAPITAL CASE
REGISTER.

Ottawa, January 14th, 1919.

Sir:

I beg to acknowledge the receipt of your letter of the 3rd instant, enclosing certificates and a Declaration from yourself and others as to the execution of the judgment of death passed upon Hassen Neby.

I have the honour to be,
Sir,
Your obedient servant,

Under-Secretary of State.

The Sheriff of
The City of Toronto,
Toronto,
Ontario.

18. Strathlaw
Parkdale
Toronto.
31st December 1918.

Your Excellency,

I humbly pray you as a Christian Brother to extend your Royal Prerogative towards that poor wretched Albanian who is to be hanged on Friday next in this City. Many of us, yourself included, have suffered bereavement during this closing year & I feel you will not permit the opening of a New Year to be marred in this our fair City with the death penalty of this poor man. Yours obediently

J. Wardle Bulcock.

His Grace
The Duke of Devonshire K.G.,
Governor General

DEPARTMENT OF JUSTICE

MEMORANDUM.

Papers to
Dept of State
3/19 Jus

Clark

Wm. A. Henderson & Co.

Wm. A. Henderson

Barristers, Solicitors, and Notaries
MONEY TO LOAN
MANNING CHAMBERS : 72 QUEEN ST. WEST

PHONES :
BUSINESS - - MAIN 4662
RESIDENCE :
MR. HENDERSON - JUNCT. 2369

Toronto, Jan 3rd, 1919.

Mr. E. L. Newcombe,
Deputy Minister of Justice,
Parliament Buildings,
Ottawa, ONT.

CC 96/1919

Dear Sir: Re-Hassan Neby

We are sending you under separate cover evidence taken at the trial of the above named and we thank you for your consideration in ~~allowing~~ lending the same to us.

Yours truly,

WAH/FH.

W. A. Henderson

JDC/R

CC96-19

January 8th 9

Dear Sir:-

I beg to acknowledge receipt of your letter, dated 3rd instant, and of the evidence which was lent to you in the case of Hassan Neby, which came to hand by the same mail.

Yours truly,

J. D. Clarke

Acting Chief of Remission Branch.

W.A.Henderson, Esq.,
Barrister, etc.,
72 Queen St. West,
Toronto, Ont.

DEPARTMENT OF JUSTICE

MEMORANDUM.

Papers with O.J.

TELEGRAM.

31st December 8.

Chief Justice Sir Glenholme Falconbridge,
TORONTO.

Re Hassan Neby - William A. Henderson who was here yesterday on prisoner's behalf telegraphs as follows. Begin.Made application for respite to Chief Justice Falconbridge.He is willing to grant same if you will advise him that the question raised by me re irrelevancy of evidence concerning Waterbury conviction and rebuttal evidence offered by Crown Counsel constitutes in your mind a legal point for consideration of the appellate court. Kindly wire reply to Chief Justice Falconbridge today if possible.Ends. What I told Henderson was that in the result of the evidence touching the Waterbury conviction the Crown had been permitted to contradict the prisoner upon an immaterial point;that this was not an objection on account of which executive clemency would be exercised inasmuch as it was competent to the court to afford a remedy by way of appeal if it was thought that any substantial miscarriage of justice might have been thereby occasioned,but I did not make any suggestion as to how this evidence should be regarded by the court.

E. L. NEWCOMBE.

Charge Justice.

Mr Clark

DEPARTMENT OF JUSTICE

MEMORANDUM

Papers with AG

Capital case

Harmon reply

CANADIAN PACIFIC R'Y. CO.'S TELEGRAPH

FORM T. D. 1 M.

TELEGRAM

All Messages are received by this Company for transmission, subject to the terms and conditions printed on their Blank Form No. 2, which terms and conditions have been agreed to by the sender of the following message. This is an unrepeated message, and is delivered by request of the sender under these conditions.

J. McMILLAN, Manager Telegraphs, Montreal.

BRIDGE TODAY IF POSSIBLE

WM A HENDERSON

MANNING CHAMBERS TORONTO

CANADIAN PACIFIC R'Y. CO.'S TELEGRAPH

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J. McMILLAN, Manager Telegraphs, Montreal.

H66 RND 68-3 EX RUSH

TORONTO ONT DEC 31/18

Copy

E L NEWCOMBE

DEPUTY MINISTER OF JUSTICE PARLIAMENT BLDGS

OTTAWA

RE HASSAN NEBY

MADE APPLICATION FOR RESPITE TO CHIEF JUSTICE FALCONBRIDGE HE IS WILLING TO GRANT SAME IF YOU WILL ADVISE HIM THAT THE QUESTION RAISED BY ME RE IRRELEVANCY OF EVIDENCE CONCERNING WATERBURY CONVICTION AND REBUTTAL EVIDENCE OFFERED BY CROWN COUNSEL CONSTITUTES IN YOUR MIND A LEGAL POINT FOR CONSIDERATION OF THE APPELL-

245

CANADIAN PACIFIC R'Y. CO.'S TELEGRAPH

FORM T. D. 1 M.

TELEGRAM

All Messages are received by this Company for transmission, subject to the terms and conditions printed on their Blank Form No. 2, which terms and conditions have been agreed to by the sender of the following message. This is an unrepeated message, and is delivered by request of the sender under these conditions.

J. McMILLAN, Manager Telegraphs, Montreal.

ANT COURT KINDLY WIRE REPLY TO CHIEF JUSTICE FALCONBRIDGE TODAY IF POSSIBLE

WM A HENDERSON

MANNING CHAMBERS TORONTO.

CANADIAN PACIFIC R'Y. CO.'S TELEGRAPH

FORM T. D. 1

TELEGRAM

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J. McMILLAN, Manager Telegraphs, Montreal.

H 66 RNO 68-6 EX RUSH RUSH

TORONTO ONT DEC31-18

E L NEWCOMBE
DEPUTY MINISTER OF JUSTICE
PARLIAMENT BUILDINGS
OTTAWA ONT

RE- HASSAN NEBY

MADE APPLICATION FOR RESPITE TO CHIEF JUSTICE FALCONBRIDGE HE IS WILLING TO GRANT SAME IF YOU WILL ADVISE HIM THAT THE QUESTION RAISED BY ME RE IRRELEVANCY OF EVIDENCE CONCERNING WATERBURY CONVICTION AND REBUTTAL EVIDENCE OFFERED BY CROWN COUNSEL CONSTITUTES IN YOUR MIND A LEGAL POINT FOR CONSIDERATION OF THE APPELLANT COURT KINDLY WIRE REPLY TO CHIEF JUSTICE FALCON-

31.69

333

JDC/L

14814

No. C.C. 96-18

Ottawa, November 15th, 1918.

PLEASE ADDRESS REPLY TO
DEPARTMENT OF JUSTICE
REMISSION BRANCH,
AND QUOTE OUR NUMBER

Sir,-

I have the honour to acknowledge receipt of the report by Mr. Justice Falconbridge of Toronto on the case of Hassen Neby, together with the evidence and plans.

Cap. case

I have the honour to be,

Sir,

Your obedient servant,

file

J. D. Clarke,

for Deputy Minister of Justice.

Thomas Mulvey, Esq., K.C.

Under-Secretary of State,

O t t a w a.

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