

A Case of Arson

Investigating the Fire at the Steiglitz Coffee Palace in September 1895

Mary Daley

'A Case of Arson: Investigating the Fire at the Steiglitz Coffee Palace in September 1895', *Provenance: The Journal of Public Record Office Victoria*, issue no. 11, 2012. ISSN 1832-2522. Copyright © Mary Daley.

Mary Daley, in her retirement, is undertaking history research as part of a Masters Degree at La Trobe University. When learning how to work in the records at PROV, Mary found the story of the fire at Steiglitz amongst the files of capital crimes. As a fifth-generation Victorian with relatives currently living close to the tiny town of Steiglitz, and as a bushwalker who has walked in that area, Mary was intrigued. The case of arson she uncovered proved to be complex, sad and disturbing.

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Abstract

In rural Victoria in September 1895, the Steiglitz Coffee Palace burned to the ground. At a Supreme Court trial held in Geelong, the jury found two people guilty of deliberately setting fire to the building. As arson was a capital crime in that period, the judge sentenced them both to death. Later, the prosecuting lawyer himself appealed for the release of the two prisoners. Had Joseph Gill and his mother-in-law been condemned on false evidence? This article reveals the curious story of the fire at the Steiglitz Coffee Palace.

Persons in the Report

The accused:

Ella Hicksh
A widow
Mother of *Mabel*, Julie, Olga
Mothers-in-law of *Joseph Gill*
Mothers-in-law of Will Liebenow

Joseph Francis Gill
Lessee of the Victoria Coffee Palace at Steiglitz
Husband of *Mabel*

The judge:

Mr Justice Williams (also known as Sir Hartley Williams)

The lawyers:

Mr JTT Smith (Crown Prosecutor)
Mr Purves QC and *Mr Schutt*
(Defence lawyers for Mrs Hicksh)
Mr Eagleson (Defence lawyer for Mr Gill)

Coroner at Steiglitz:

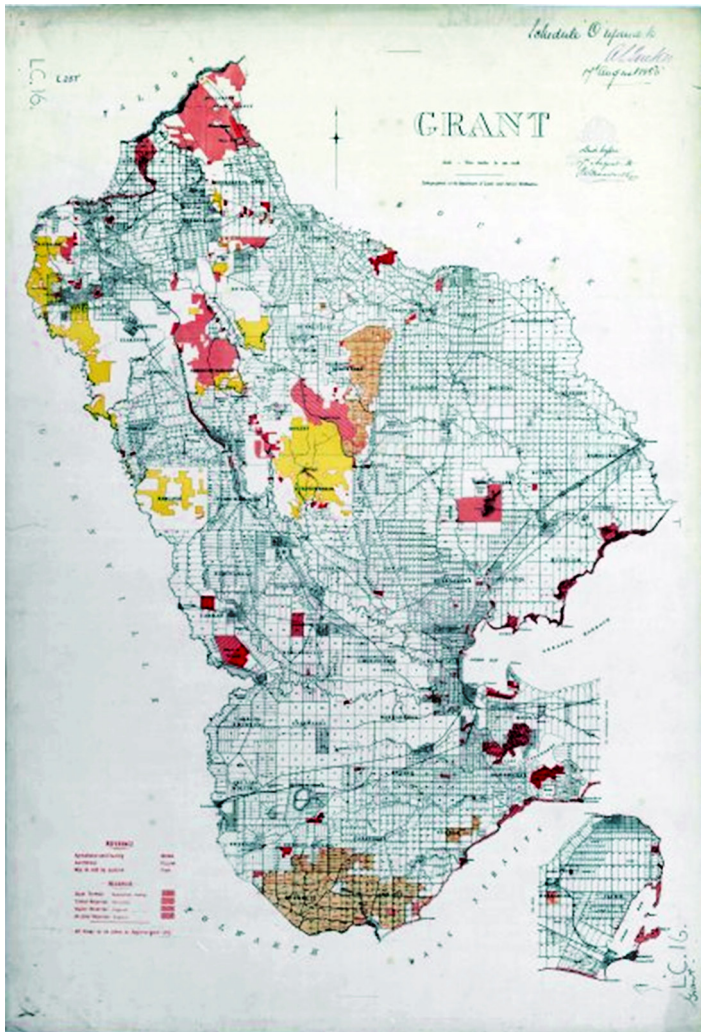
Mr GWF Patterson (Police Magistrate)

Witnesses:

Senior Constable Arnold (Policeman at Steiglitz)
Elizabeth Rocks (niece of Mrs Bligh and staff member at Coffee Palace)

Landlord:

Mr Thomas Eyre



PROV, VPRS 8168/P2, Unit 2431, Map of the County of Grant, showing the town of Steiglitz at centre in the yellow shaded reserve. Steiglitz is approximately 80 km west of Melbourne and 39 km north-west of Geelong.

In the early 1890s, a major recession in the colony of Victoria was being felt in a pretty country town called Steiglitz. Steiglitz had been settled when gold was found around the Sutherland Creek area in 1854. Though the population was no longer at the record gold rush levels of the 1860s of approximately 1500 residents, there were still sufficient numbers of people in the area to support seven working mines. In June 1893 a newspaper was introduced: the *Steiglitz miner* was published every Saturday morning and cost one penny per copy.

In 1892 Mr Eyre, a Melbourne investor, purchased one of the oldest hotels in Steiglitz. His original idea was to pull it down and rebuild a more spacious and opulent venue, but, considering the economic climate, he decided instead to renovate the timber building as a coffee palace with licensed wine bar. It had an adjoining store and he added a doctor's residence and surgery, all under the one roof.

The Victoria Coffee Palace at Steiglitz burned to the ground in September 1895. The doctor's residence and surgery and the adjoining McLellan's grocery store were also destroyed. Ellis's draper's shop opposite was saved with great difficulty. There was no loss of life because a miner riding into town to summons Doctor Scott for a medical emergency smelt smoke, and was able to rouse all the people sleeping in the coffee palace and in the adjacent buildings.[1]

The Investigation

In November 1895, before a jury at the Steiglitz Court House, Police Magistrate Mr GWF Patterson conducted an inquest into the fire. The jury found that the fire was deliberately lit but by persons unknown.[2] However, just a few days later the police arrested the lessee of the coffee palace, Joseph Francis Gill. The case was heard in the Supreme Court of Geelong, as this was the closest sitting of the court to Steiglitz.

The local newspapers, in particular the *Steiglitz miner* and the *News of the week and Western District advertiser* extensively reported the investigations into the fire at Steiglitz. The main witness was Miss Elizabeth Rocks, a friend of the lessee, who had met Joseph Gill in 1888 when he first arrived in Australia from Ireland. She went to Steiglitz in March 1895 to work at the coffee palace, and she left Steiglitz the morning before the fire, in September 1895. As Miss Rocks was then the sole employee at the coffee palace, when she left her employment on the morning of 8 September 1895, Mr Gill employed Mary Jane Moody to replace her. Two local girls, Mary Jane Moody and Amelia Murray, had been employed previously, but were layed off when business became too slow to support them. Mary Jane Moody was thus re-employed by Mr Gill on the evening before the fire and was asleep in the coffee palace at the time of the fire. Mrs Mabel Gill, wife of Joseph Gill, went to Melbourne temporarily in August 1895, but was detained there when she became ill with Influenza.

When giving evidence Miss Rocks stated that Joseph Gill had told her that he intended to set fire to the coffee palace. She stated that just two days before the fire she had overheard Joseph Gill and his mothers-in-law, Ella Hicksh, in a heated argument about a matter of Mr Gill repaying her a debt of £90. According to Miss Rocks, Mrs Hicksh threatened to make Gill insolvent the following Monday. Miss Rocks gave evidence that goods and paintings had been removed from the coffee palace about a month before the fire.



Steiglitz Court House. Photograph courtesy of Mary Daley.

In the witness box for five hours at the Supreme Court trial in February 1896, Elizabeth Rocks claimed that Mrs Hicksh had said that

both Mr Gill and his wife had been a terrible nuisance to her for a long time and if they got this insurance money I will have done with them, I will pack them off home to his father and let him have the bother I've had for a while... Mrs Hicksh told me her daughter had married Gill on the sly and that he was always a nuisance. Then she said that if she had known that Mrs Gill was going to be such a nuisance she would have twisted her neck when she was a child and that she wished that Mr and Mrs Gill would go and commit suicide...[3]

Miss Rocks further claimed that Gill had asked her to stop scrubbing the kitchen and had said, 'I forbid you before to scrub; you are not going to spoil my chance of a fire by damping the boards.' Miss Rocks stated that she had turned off the bath water running out of the bath, but that Gill had said that he wanted to empty the water tank. (On being cross-examined she agreed that Mr Gill had 'spoken before about putting lime into the tank to prevent typhoid fever'.) Miss Rocks stated that Gill had asked her to sleep in his dressing room when his wife was away because Mrs Hicksh had asked him to say this. Mr Gill and Mrs Hicksh denied the accusations made by Miss Rocks. They pleaded Not Guilty at all times.

The Crown Prosecutor called thirty-seven witnesses. Many people from the community of Steiglitz gave evidence. Details emerged. Some boxes taken from the coffee palace had been stored at the Cobb & Co Station before they were carted to Melbourne and to Port Fairy. The lists of all their contents were provided to the court. Claims that wood shavings were found in the billiard room, the room where the fire started, were noted. The carpenter working in the coffee palace to renovate and

extend the bar confirmed the shavings, and he claimed that a bag of shavings was missing. He said that Mr Gill had asked him to take his tools home 'in case of a fire'. A local police constable said in the courtroom that what struck him as peculiar was that Gill was remarkably well dressed after the fire. Several witnesses gave evidence about not finding money in a cash box recovered from the fire, the implication being that it had been emptied before the fire. The pump for water was found to be locked and broken. There was evidence that Mr and Mrs Gill had travelled to Port Fairy using tickets in the names of Mr and Mrs Liebenow (Mrs Hicksh's son-in-law Will Liebenow and her daughter Julie). A piano had been removed from the bar to a small anteroom, reportedly at the request of Mrs Gill to protect it from the miners. The grocer gave evidence that he considered that the amounts of kerosene purchased by Mr Gill were very large quantities. A local farmer who supplied firewood had thought that Mr Gill needed further supplies on the day before the fire, but Mr Gill (who stated that he was thinking to change his supplier of firewood) had instructed him to wait until the Monday following.

Joseph Gill and his mothers-in-law Ella Hicksh were found guilty of deliberately lighting the fire and were both sentenced to death.[4] The case is more complex, and more intriguing than the newspapers at the time suggested. The records from the trial still exist. And the story of what happened after the trial raises further questions.

The Judge's Report of the Trial

The trial judge's report is held at PROV. It is apparent that Justice Hartley Williams was surprised that the jury found the accused guilty, as the decision suggested to him that the jury had believed the evidence of the witness Elizabeth Rocks. He wrote:

her story when read or heard strikes the mind as a most extraordinary one; but the jury evidently believed her, as they could not possibly have convicted the accused without accepting her evidence.

Sir Hartley Williams went on to itemise eight pieces of evidence needed to corroborate the evidence of Miss Rocks:

1. the locking up of the pump
2. the breaking of the pump on the morning of the fire
3. the purchase of kerosene
4. the removal of furniture &c from the Coffee Palace shortly before the fire

5. the moving of the piano from the Commercial room into a small parlour from which it would be very difficult to get it out
6. emptying a tank over bath
7. removal of pictures
8. giving false names to shipping agent when taking passengers for Port Fairy.

In his summary of the evidence at the trial, Judge Williams was satisfied that six of these points had received a reasonable explanation in the course of the evidence adduced at the trial. For item number 8, he accepted the defence counsel's suggestion that a clerk may have made a mistake when writing the names on the tickets. And he seemed to leave the matter of the broken pump unproven. He wrote: 'There is no evidence as to how the pump came to be broken on the morning of the fire except that contained in the deposition of Gill.' The judge also wrote: 'Wholesale searches seem to have been made everywhere ... and nothing found which could in any degree tell against the accused.'

Despite any misgivings the judge might have had, his report concluded: '... the jury having convicted both the accused I ordered sentence of death to be recorded against them. The jury recommended the male prisoner to mercy.'

The jury, in recommending mercy for the accused, Joseph Francis Gill, had apparently relied on the argument given by the Crown Prosecutor that the most significant blame for this crime lay with Ella Hicksh. In March 1896, Sir Hartley Williams approved an application to commute the death sentences. Joseph Francis Gill's sentence was commuted to a period of five years gaol, and Ella Hicksh's death sentence was commuted to eight years in gaol.

These sentences may seem unduly harsh today, but they need to be understood in the context of the fire risk at the time. Although Furphy's water cart had been developed in the 1880s and might have been used for water cartage by fire brigades, in fact in the 1890s fire brigades were rare. There was no fire brigade in Steiglitz. Fires took hold quickly, and in rural areas the risk of bushfires was real. Losses of life and property often resulted from fires. For these reasons, a severe penalty such as capital punishment was thought to be an effective and appropriate deterrence for this crime.

Petitions

Two events then occurred which make the story of arson in Steiglitz a curious one. The first is that both people accused of deliberately lighting the fire were released

from prison early. Joseph Gill was released from gaol in December 1898 – after serving less than three years – and Ella Hicksh was discharged from prison in July 1900, after only four years' imprisonment. The second event is more remarkable. The Crown Prosecutor, Mr JTT Smith himself petitioned for the release of both prisoners. In the matter of Ella Hicksh's release, Smith expressed grave doubts about her guilt and was convinced 'of the high possibility of a mistake [having] being made in this matter'.

At the trial in the Supreme Court in Geelong, the Crown Prosecutor had provided evidence to the court by calling thirty-seven witnesses. The legal team of three defence lawyers had called just three witnesses for the defence. The defence lawyers included Mr Purves QC, who, with Mr Schutt, had represented Mrs Hicksh. In 1900, the Crown Prosecutor was critical of the limited number of witnesses called. He wrote: '... and I have always felt that if Mr Purves had adopted the course of calling witnesses the result in all probability would have been different'. Even so, in his cross-examining Mr Purves was able to elicit that two fires had previously broken out at the coffee palace, the first when a kerosene lamp overturned and the second when a burning log rolled out from the open fireplace.

Mabel Gill

The early release of her husband and her mother was the result of the unflagging endeavours of Mabel Gill. About three months before the fire, Mabel's only child, born 7 June 1894, had died a day before his first birthday, on 6 June 1895. Mabel was in Melbourne on the night of the fire, unable to return to Steiglitz because she had succumbed to influenza, and her mother had travelled to the town in her stead.

More than a century later, we can only surmise about her level of grief on that trial day in February 1896 when she heard that her husband and mother were sentenced to death, but Mabel Gill did not falter. In October 1896 she presented a petition by forty-two signatories to plead for her husband's release from gaol. These signatories comprised solicitors, barristers, clergymen, accountants, a doctor, an architect, three merchants, a Justice of the Peace, and signatories from several other reputable occupations, forming a powerful list. How did Mabel manage to persuade such a respectable group to plead for her husband? One wonders whether the signatories personally knew Joseph Gill and thought him a man of good character, or if they signed out of pity for the bereaved wife and mother.

The Crown Prosecutor

The Crown Prosecutor's behaviour is also curious. In February 1896 he had argued that Hicksh and Gill were both guilty of deliberately setting fire to the coffee palace in order to obtain insurance money. But in October 1896 he supported Mabel Gill's petition for the release of her husband and he wrote a two-page letter pleading that Joseph Gill did not light the fire. He wrote:

I formed the opinion that Gill had intended to fire the building but being persuaded by Miss Rocks had abandoned his intentions and that there existed facts to justify the belief that probably the place was set on fire by Mrs Hicksh in the early Sunday morning without the knowledge or participation or consent of Gill.

Sir Hartley Williams seems to have been stung by this suggestion of Gill's innocence. He responded firmly: 'It never occurred to me that one was guilty and the other innocent, nor do I now think so.' He also repeated his earlier misgivings about Miss Rock's evidence: '... her evidence, if it be accepted as the truth appears to me to establish a clear case of arson against both prisoners'. He continued: 'The only doubt I had at the trial was to Miss Rock's credibility – but the jury believed her and I subsequently placed my doubts as to her credibility ... before the Executive.'

In response to the judge's written comments, the Solicitor General refused the appeal. He wrote to the Governor:

I was disposed to deal somewhat leniently with the case, but the report of Sir Hartley Williams ... leaves me in no doubt in my mind as to the course I should follow. His Honour is clear as to the guilt of the prisoner Gill and I have therefore no option but to advise His Excellency that there be no interference with the sentence passed by the Court in the case.

In May 1900, Mr Brent Eagleson (who acted as Gill's lawyer) wrote to Mr Smith:

As you know I have been strongly of the opinion and am so still that [Hicksh] was wrongly convicted: I firmly believe, as I have told you all along, that she is an innocent woman, and for that reason I will do whatever I possibly can to restore her to that liberty, of which in my firm opinion she has been wrongly deprived during the last long several weary years.

An initialled note below added 'I concur with the above.' They seem to be the initials of Crown Prosecutor, Mr JTT Smith.

In June 1900, Mr JTT Smith wrote to the Secretary of Law at the Crown Law Office to plead for Mrs Hicksh's release from prison:

As you are aware I have always had grave doubts as to the justice of the conviction in this case which came to me (and to my knowledge) to the presiding judge as

a great surprise resting as the proof did in the almost unsupported evidence of one witness and one animated as she herself explained to me by a sense of a great wrong done to her by Mrs Hicksh and of great anger toward her ... I am more than ever convinced of the high possibility of a mistake being made in this matter...

The petitions by the Crown Prosecutor, pleading for the release from prison of two people he had successfully prosecuted, are curious matters in this story.

Joseph Francis Gill

Joe Gill's story seems straightforward enough. He migrated from Ireland in 1888 and came with good credentials, including a letter stating that his references were available from the Catholic Archbishop of Melbourne, Dr Carr. In Melbourne he boarded with a Mrs Bligh (aunt to Miss Rocks), became employed and was studious in his work as a clerk. He met and married Mabel Hicksh, and moved to Steiglitz some time during 1893 to open the Steiglitz Coffee Palace and licensed wine bar, in partnership with a Mr Brown. Mr Brown left the partnership and returned to Melbourne some months before the fire.

While Gill was a prisoner, he reported that a warder named Charles Foster was taking bribes and also selling contraband to the prisoners. He was assaulted by the other prisoners and suffered injuries to his head. In addition to the petition presented by Mabel Gill, it is probable that an issue of protection for Joseph Gill while in gaol was a factor in his early release. The documentation merely noted that his discharge date included remissions.

Ella Hicksh

Ella Hicksh's story is more complex. She was a widow when she began to visit her daughter and family at Steiglitz. She supported herself and claimed that she belonged to the nobility in Ireland. She was generally regarded with suspicion and distrust. The Steiglitz policeman, Senior Constable Arnold, gave a statement about Mrs Hicksh that included the comment: 'all through my enquiry I could never trace the character of this woman further than that she was a woman living on her means ...'

The Capital Case File on Ella Hicksh held at PROV shows that she had been married to Robert Hicksh, a captain in the army who later worked as an engineer in the colony's Railways Department. He obviously left her well provided for, as Mrs Hicksh could prove that she had assets of about £4,000 in 1896.

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Around twenty-three years before the fire, Mrs Hicksh had been incarcerated in the South Yarra Lunatic Asylum 'for six months from February 1872 until June 1873 [sic]' as she was experiencing 'Puerperal Mania'. Puerperal fever is an illness caused by uterine infection following childbirth – by all accounts a highly distressing condition.

In 1882, Mrs Hicksh was injured in an incident referred to in her file as 'the Box Hill Railway Accident'. At that time, she had a toddler – her youngest daughter Olga, born in 1881. The injuries sustained in this accident led to a heart irregularity. Her file does not indicate when she was widowed. When she suffered the loss of her grandchild in June 1895, she arranged for the one-year-old to be buried in Melbourne with her husband.

Ella Hicksh was the mother of three daughters at the time of the Steiglitz Coffee Palace fire: Mabel, Olga and Julie. Julie and her husband, Will Liebenow, lived in Port Fairy. The Liebenows were also caught up in the web of the trial because of the travel tickets written in their names that were used by Mr and Mrs Gill for a trip to Port Fairy.



Steiglitz: Draper's shop and site of the Victoria Coffee Place in foreground. Photograph courtesy of Mary Daley.

If the fire at Steiglitz was meant to be an attempt to raise funds, then it failed. Joseph Gill lost everything in the fire. Mrs Hicksh met all expenses. Insurance claims paid by the insurance companies were paid back. Mrs Hicksh paid out approximately £2,500 to meet all costs, damages and claims. In a final petition, prepared in June 1900, two of her daughters, Mabel then aged 26, and Olga aged 19, pledged to take care of their mother. Mabel wrote that she would not resume her marriage with Joseph Gill and would support and take care of her mother.

Questions Still Unanswered

Why did the jury believe Elizabeth Rocks? Senior Constable Arnold of Steiglitz was clear about Joseph Francis Gill. On 23 February 1896, just two days after Gill was sentenced to death for the crime of arson, he wrote: 'He was a man of orderly and industrious habits and of apparently good character although not generally well liked and in consequence his business did not thrive.' Did the Crown Prosecutor prove his guilt? Or did a man's unpopularity condemn him?

Was it a case of arson in Steiglitz? If the death penalties had not been commuted to terms of imprisonment then Ella Hicksh and Joseph Gill would have been hanged for the crime. This seems to have been a case which included malice and mischief and jury error and legal passivity. The cost was high. A marriage was sundered; a man was imprisoned for almost three years; a woman was imprisoned for more than four years; a man's livelihood was burnt to the ground; a woman's savings of £2,500 were consumed; a doctor's residence and surgery were burned down (Doctor Scott moved to Warracknabeal in October 1895, the move perhaps prompted by the fire[5]); Mr McLellan's residence and newly-opened grocery business were lost. Doubt and sadness and loss prevailed. There are still questions about the fire in Steiglitz. Were two innocent people sentenced to death? Was the fire that burned so fiercely on the morning of 8 September 1895, like other fires in the coffee palace at Steiglitz, accidental?



Photograph of Joseph F Gill, June 1896. PROV, VPRS 515/P0 Central Register for Male Prisoners, Unit 50, prisoner number 27352, folio 76.

Endnotes

[1] *The Age*, 9 September 1895, p. 6; *Geelong advertiser*, 10 September 1895; *The Steiglitz miner and Meredithshire advertiser*, 14 September 1895, p. 1.

[2] *The news of the week and Western District advertiser*, 30 November 1895, p. 5.

[3] PROV, VPRS 264/P0 Capital Case Files, Unit 24, Ella Hicksh. All of the details about the case and the quotations given in the text are taken from this file.

[4] *Geelong advertiser*, 22 February 1896, p. 1.

[5] *Steiglitz miner and Meredithshire advertiser*, 26 October 1895, p. 3.