

Sex-related Offences, NSW, to 1809

This file is under constant review and will be updated at regular intervals. The major source still IN PROCESS is the trial proceedings (see 1840 for an example) and a few other semi-legal sources.

SYD-SEX

Court of Criminal Jurisdiction, Minutes of Proceedings, 1788 to 1794, State Records N.S.W., 5/1147A[1]

R. v. Wright

Court of Criminal Jurisdiction

Collins J.A., **10 September 1789**

[141] At a Court of Criminal Jurisdiction held by Precept under the name and seal of His Excellency Arthur Phillip Esquire Governor in Chief and Captain General in and over the Territory of New South Wales, and its Dependencies, for the trial of such offenders as shall be respectively brought before it:

The Judge Advocate

Captain John Hunter, of the *Primus*

Captain Campbell, of the Marines

Lieutenant H.L. Ball, of the *Supply*

First Lieutenant Thomas Timmins of the Marines

First Lieutenant Ralph Clark of the Marines

Second Lieutenant Mr Feaddy of the Marines

The Precept being read and the Court duly sworn;

HENRY WRIGHT, of Sydney Cove in the County of Cumberland, Private Soldier, was indicted for that he not having the Fear of God before his Eyes but being moved and seduced by the Instigation of the Devil on the twenty third Day of August, in the twenty ninth year of the reign of our sovereign Lord George the Third, now King of Great Britain, France and Ireland, defender of the Faith and with Force of Arms at a certain Place near Long Cove in the County of Cumberland aforesaid in and upon one **ELIZABETH CHAPMAN**, Spinster in the Peace of God and our said Lord the King, then and there being, violently and feloniously did make an assault and her, the said Elizabeth Chapman then and there feloniously did ravish, and carnally know, against the Form of the Statute in that Case made and provided, and against the Peace of our said Lord the King his Crown and Dignity.

Elizabeth Chapman, being called was asked

Question. How old are you?

Answer. A little more than eight.

Question. Do you know that it is wrong to speak an untruth?

Answer. Yes.

Question. What will happen to you if you do?

Answer. Go to the Devil.

[142] Question. Where do you expect to go if you speak Truth ?

Answer. To Heaven.

Question. Can you say your Catechism ?

Answer. Yes.

Question. The Lords Prayer?

Answer. Yes. [She repeated it.]

Elizabeth Chapman was then duly sworn. She deposes that she knows the prisoner, that his name is Wright. That she saw him often Sunday. That she had breakfasted. That after Dinner she was walking with Mrs Kennedy to Mrs Thomas's. That after they were going along to borrow a couple of saucers and cups, they were met by her little sister Jane who told her that Wright wanted her to come down for some flower. That she went to Wright's house. Mrs Kennedy giving her leave to go that her sister did not accompany her all the way. That she went back to the Prisoner's house. That no one was in the house but Wright, the Prisoner. That he asked her if she would have some flower. That she said yes. He then gave her some flower. Soon after she had been there the Prisoner's wife, two [?] of the Prisoners. And Mary saw Wright come in. Then he asked her if she would go on a walk. Then she answered yes and went to Mrs Kennedy's for her hat. That then she followed the Prisoner, who was going with **MARY ANN WRIGHT**, towards the Guard House. That then they walked on a little further than Cockle Bay in Long Cove. Mary Ann accompanied them all the way. When he came to Cockle Bay, the Prisoner said "Baby shall we play". That she said no and ran away [143] from him. That he came after her and overtook her. That then the Prisoner [?] upon the ground and put her upon his Lap. That she saw him unbutton his Breaches. That at this time she was sitting on his lap. That he put her saddled across him. That he took up the Petticoat. That he then put his Private part where she makes water. That he hurt her very much. That she told him to be quiet. That he had touched her with his finger before he touched her with his Private Part. That he put his finger also where she makes water. That he was still sitting on the ground. That Mary Ann was still sitting a little distance from them. That she was not standing on the ground, but resting on him. That she was endeavouring to get away. That he kept her still and straddled across him. That she was in great pain all the time. She told him he hurt her. That he did not tell her he would use her ill, if she got away. That after he had done, she felt something was between her legs. That she did not know how it came there. That she had not made water herself. That he then wiped her with his shirt. That as they were walking home she told him that she would tell her mother, he said he did not care. That she walked on before him leaning Mary Ann with him. Mary Ann shortly after ran after her. They then walked on together. The prisoner picked some flowers which after they came home he gave her. That while in the woods, after he had hurt her, he [144] told her he would give her a doll, which he did that evening. That she then went to Mrs Kennedy's where she had tea. That she would have told Mrs Kennedy, but she was afraid she would have beaten her for going with him. That she did not feel sore or in Pain either coming home on that Nightfall or the next Morning. That the Friday after she found herself ill. She found herself sore. That she never told her Mother for fear she would beat her. That the Prisoner told her not to tell Nanny Ainsworth. She said she would. He said if she did, he would smack her backside. That when he gave her the Doll he did not like her not to mention what he had been doing, to any body. That she did not mention it to any Person until the Sunday after when she told her Mother.

Question. Can you tell how far he put his Private Part into her.

Answer. I do not know.

Question. Did he put them in at all.

Answer. I believe so.

MARY KENNEDY, being sworn deposes that Elizabeth Chapman was coming to her house to drink a Cup of Tea on January 23 last, that about three or four in the afternoon she came. That not having cups and saucers enough, she went down to Mrs Thomas's to borrow some. She took the [?] with her. That as they were going along

they met her little sister, Jenny who said, she must come along soon to Mr Wright's [145] to get some and to [?]. That she gave her leave to go. Telling her if she staid, she should go to tea with her. That having got the Cups and Saucers, she returned and soon after which Elizabeth Chapman came in for her Hat saying she was going into the woods with Mary Ann Wright and the Prisoner. That the Child [?] her, that looking out she saw the prisoner with the Prosecution and the old [??] passing the Guard House. No other person was with them. That they appeared as if going to Cockle Bay. That Elizabeth Chapman returned to her House in about an hour and a half. That she had a wooden doll in her hand, that she said the Prisoner had made for her, and something to wear he had given her. She gave her some tea. Soon after which she wanted honey. That also he came to her the next Morning but she did not observe anything particular about the girl. Except that she frequently wanted to go out and make water.

Question to the Prosecutrix. Did ever any other Person play with you or use you or use you as the Prisoner had done.

Answer. No.

JAMES BAGLEY, Corporal of Marines, being sworn, deposes that he saw the Prisoner on Sunday Evening the 23rd of last Month,. That he was there standing opposite the Door briefly. Kennedy Hunt - no one with him but Mary Ann Wright. That he saw no more of him. Does not recollect the exact time of the Day.

JOHN RUSSEL, Private Soldier, being sworn, deposes, that on Sunday Evening the 23rd instant, he saw the Prisoner standing outside of Mary Kennedy's hedge, with a Child in his Hand but whose he does not know. That he did not see any more of him as he went into the Guard House, where he was on Duty.

[146] **JANE CHAPMAN** being sworn deposes that the Prosecutrix is her Daughter. That on Friday Night the 26 Instant, as her Daughter was asleep in Bed, it being her common practice to look at her Children before she goes to Bed, to hug them as free as she can from [?]. She perceived something white coming from her private Parts, as she lay asleep. Then she wiped her. Nothing else happened that night. She did examine her very close meaning to take her time. That she went to bed, and the next night, she looked again and examined her linen which she found discoloured.

The linen and sheet produced, which appear, stained very much, and in some places, spots tinged with Blood.

That she gave her permission to go and drink tea with Mrs Kennedy the Sunday evening. That she returned about six or seven. That she has never known her daughter tell her a lie in her life. That she has always brought them up in the fear of God. That he, the Prisoner, never came to the [147] house after her daughter. That as asking her how her linen came out so distained, if anyone had been meddling with her, she said she had been a little farther than Cockle Bay, with the Prisoner and Mary Ann Wright. That he sat down and took her across his lap, with one leg on each side of him. That he put his Private Parts to her, and hurt her very much. That she cried out. That he told her, if she did not be quiet, he would smash her legs. She said, she would not, he said he would kick her [?]. She said, that after he had done, she felt something wet, which he wiped with her shirt. That she told him she would acquaint her when she came home. That he replied he did not care so long as he done what he wanted. That she saw a doll sometime after in the House. That on asking her why she had not told her sooner, she said she was afraid she would beat her, as she had forewarned her of going with the Prisoner and had heard he had the Character of doing such things with Children. That had she known the Prisoner Wright wanted the Child she should not

have let her go with him. That from the Sunday the injury happened to the Sunday following she did not have any [] in the Child.

[148] Mr **THOMAS ARUNDELL**, assistant Surgeon, being sworn, deposes that on the 31st of last Month, he was called to look at the Prosecutrix, that he went down with Mr Balmain. That on examining the Child, he found the Private Parts very much inflamed externally. That they observed a sore internally, from which there was Discharge of thick Matter. That there was also a very great inflammation within. That on a Slip and a Sheet, he saw some very large spots or stains some tinged with Blood. That some violence and that very considerable had occasioned. That the tinge of blood might be re-examined by pressure against the Parts that he cannot positively say it was occasioned by any Venereal. That he does not think it possible any perfect Penetration could be effected in such a child, but against penetration as would be made by a person processing on normal state. There the sore might be occasioned by a person.

The prisoner in his Defence says that he had walked one with his wife and [?] towards the Birch field. That he returned without them. That he found Elizabeth Chapman at home. That his wife came home. That Mary Ann Wright asked him to watch and got some flowers. That Elizabeth Chapman asked to go with them. That passing by Kennedy's hut, she went in for her [149] [dinner]. That he was not twenty yards from the Guard House the whole time. That several people saw him. One [was in] conversation with him the whole time.

CHARLES BRIFY, Corporal of the Marines being sworn, deposes that he does not remember seeing the Prosecutrix. That he was waiting with him between the hours of three and five towards the [?] Kilm. That the prisoner left him. On his return to the Prisoner's house, he found him at home and did not see Elizabeth Chapman there. That he saw Mary Ann Wright there. That after this the prisoner went out to watch, but he did not notice the time of his return.

Guilty - Death

He was humbly recommended to the Governor for Mercy.

David Collins

Judge Advocate

Note

[1] This transcription is taken from a very difficult handwritten text. We have published it here before finalising the proofreading, in order to make this important case available as soon as possible. We will replace the text after final proofreading.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

Court of Criminal Jurisdiction, Minutes of Proceedings, Feb. 1788 to Oct. 1794, State Records N.S.W., 1147A[1]

R. v. Davis

Court of Criminal Jurisdiction

Collins J.A., **21 November 1789**

[151] At a Court of Criminal Judicature held by Virtue of a Precept under the Hand and Seal of His Excellency, A. Phillip Esqr., Captain General and Governor in Chief, in and over the Territory of New South Wales and its Dependencies, for the trial of such offenders as shall be respectively brought before it:

Present:

The Judge Advocate

Captain John Hunter, of the *Sirius*

Lieut Mr Bradley of the *Sirius*
Capt Lieut Nathan Tench, of the Marines
First Lieut James Furzer
First Lieut John Poulder
First Lieut J Maitland Shairp

ANN DAVIS

Alias JUDITH JONES: The Precept being read and the Court duly sworn: was charged, for that she on Saturday the fourteenth day of November in the thirtieth year of the Reign of our Sovereign Lord George the Third, now King of Great Britain, France and Ireland, Defender of the Faith, at about the Hour of four in the afternoon of the same Day, with Force and Arms, at Sydney Cove, in the County of Cumberland the Dwelling house of **ROBERT SIDAWAY** there situate, feloniously did break and enter (the Prisoner the same Dwelling house then and there being) and four Linen Shirts of the value of Twenty nine shillings and Six pence; One cheque shirt of the value of four Pence; one Linen Waistcoat of the Value of Two shillings; two Cambrick Handkerchiefs of the Value of Three shillings; one Silk Waistcoat of the Value of Two shillings; one Dimety Waistcoat of the Value of Eighteen Pence of the Goods and Chattels of the said Robert Sidaway; and one Linen Bed gown of the value of Two Shillings; one Linen Apron of the Value of Eighteen pence; Two Linen Caps of the value of Sixpence; One Piece of a Cap of the Vale of one Penny; one muslin Handkerchief of the Value of Six Pence; and One Pair of Linen Pockets of the Value of One Penny of the Goods and Chattels of Mary Marshall [152] in the same Dwelling House, then and there being found, feloniously did steal, take and carry away, against the Peace of One said Lord the King, his Crown, and Dignity.

The Prisoner on her arraignment, having pleaded Not Guilty.

Robert Sidaway being sworn deposes, that on Saturday last the 14th Instant about four in the afternoon he was at wash and the Bake House which near a Quarter of a Mile distant from his House. That he left his House about 2 o'clock. That he left **JOHN RYAN** in [?]. That at about 4 o'clock Ryan came to tell him that his House had been broke open and several articles taken away. When he got home he found a Box broke open. that he missed the Articles mentioned in the Indictment. The box seemed to have been opened with a shovel that was in the Room. The Hatch of it was wrenched from the lid. That it was very well secured and nailed. That when he went out of the House to go to Work, he left his box locked,. That he had been at it, a few minutes before to take some flour out. That he had not seen the prisoner there that Day and has not spoken to her for five or six months. That he is alleged to leave his house five days out of the Seven, to go to the Bake House. That Saturdays is always one of those days on which he is alleged to be absent. That he does not know that the Prisoner has any knowledge of his absence. That he does not pass by her Hut going to the Bake House.

The following articles deposed to by this witness

[153] One Silk Waistcoat, 3 shirts, 1 Cambrick Handkerchief, 1 cheque shirt, 1 Linen Waistcoat, 1 new shirt.

Question: What time was Ryan to stay in your House.

Answer: No particular time was fixed. He was told when he went out to lock the Door.

MARY MARSHALL, being sworn deposes, that she lives in the House with the last witness. There she keeps her property in the same Box with Sidaway. That last Saturday the 14th Instant she lost 1 Bedgown, 1 Apron, 2 Capes, a piece of tarp, 1 pair of Pockets and 1 Piece of Linen Cloth. that she was certain these article were in the

chair on Saturday last, for in the Morning ... she had taken them to clean them and put them in again. That she knows the Prisoner very well but she has not seen her for some Months in her house. She never came there but to casually light a pipe as she passed by. She left her house about 10 o'clock on Saturday and went to the Bakers House. That she did not return until told by John Ryan that her house was broke open and several things stole. That the window was secured when she went out. It is a sliding shutter made hard by a wooden peg at the [?]. That the window was open when she came home. The house is divided into two apartments. The Box stands in the first of them which also has the window in it. The window is large enough for a person to get in it. A tub of water which stood under a stool under the window, was found thrown down. Any person [?] by the assistance of the stool, step into the window.

The following articles produced and deposed [154] by this witness - 1 Bedgown, 1 Pair of Pockets, 1 apron, 1 piece of [?] and 1 piece of a cap. That Ryan has taken care of her house when she is about for several Months for which purpose he has the Bag that he leaves in an outhouse on the outside.

John Ryan, being sworn, deposes, that he lives with the two last witnesses who employ him to get wood chopped for them and leave him frequently to take Care of the House serving their home. That he was left in Charge of the House last Saturday the 14 Inst. That they left the house about there about 8 o'clock in the Morning of that Day and returned again about one and immediately went out again to the Bake House leaving him in charge of the House. That he staid in it until about 4 o'clock, when he went out to chop some wood. That he staid about a Quarter of an hour. On his recollection he was ordered down to the Hospital to see a man punished. That he locked the door and left the window shutters about half way down for the fowls to fly in at. That he secured it by a strong hitch at the Bottom. That he took the key with him. That he was absent about a Quarter of an Hour. That a little before he went out, he brought a tub full of water and put it on a stool under the window. On his notion, he perceived before he got to the House that the Door was open, and suspected that it was a robber. That he ran as fast as he could, and found the shutter door. The Hitch [?]. The Box had been open several Articles lying on the ground. That the tub was overturned. The stool remained. The lock of the Door was shoved back the ball of it gone into a staple. [155] He had not seen the Prisoner at all that Day. That the nearest house to Sidaway might be about fifty yards. That when he went to tell Sidaway of the robbery he locked the Door. That it locked easily. That being told by the fry that he had seen the Prisoner near the Garden hedge with something in her apron, he taxe her with the Robbery. When she denied he then charged one of the watch with her.

CHARLES FRY being sworn deposes, that last Saturday afternoon between four and five o'clock as he went from his own House to chop some wood, as he stopped upon the Hill, to pick up some wood, he saw the Prisoner turning the corner of Sidaway's hedge, just by his House. That he was not very far from her. That he observed a large parcel in her apron. She was turning the bend of the House, and appeared as if she was going into the woods, but seeing him, she turned about upon her Heel and fell down. He did not perceive anything fall from her apron but she got up, and walked away as well as she could being very much in Liquor. That he went straight home soon after while Ryan came to him, and he told him he had seen the Prisoner, and no else upon the Hill. That he took particular notice of the Prisoner, and when she went away, he looked after her for half an Hour, to see which way she went. That less positive the Prisoner is the woman he saw turning the corner of Sidaway's Hedge. That he was not at the Punishment on Saturday last, but was cutting wood.

That when the prisoner got up, she called in a low tone of voice for [156] ...That her apron was as full as it could hold.

Question: The prisoner : What time was it you saw me on Saturday afternoon?

Answer: Between four and five o'clock.

JOHN SILVERTHON being sworn, deposes that he knows the prisoner by sight. That last Saturday afternoon, between four and five o'clock, he was standing at the Door of his Hut, he saw the Prisoner, coming down the Hill, over the Rocks. She staggered very much as she came down. That she had a bundle in her apron, which he took to be a bundle of clothes. It appeared to be very large and she also [?] some [?] as she came along... The road lands for Sidaway's House almost down to his Door and the Prisoner came down that road. She was alone, and her rolling about a good Deal made him take Notice of her. That she stopped several times as she came down and when at the Bottom of the Hill, she stretched across towards her own Hut. He was soon after asked by Ryan and Fry if he had seen the Prisoner and he gave them all the Information he could and they went on to her house.

JOSEPH MARSHALL, being sworn, deposes, that he is employed as one of the watch. That he knows the Prisoner, and sees her on a Saturday afternoon in her own House about 5 o'clock. He was called there by Ryan, Fry and Silverthon who told him that Sidaway's House was broke open and that they suspected the Prisoner. That he went in and asked her if she had any theory of the Robbery - which she denied. That a woman that was in the Hut, told him she had [157] a suspicion that the Prisoner had committed the Robbery and asked her about it and desired her to give the property to him if she had any of it, the Prisoner immediately took from behind her a waistcoat and an apron which she desired him to conceal. That he searched but could not find nothing else and she said she had no more. That he went up to Sidaway's with the waistcoat and apron and found the door broke open and the window open. An hour later he met Sidaway and Mary Marshall coming home. That he told them he had got some of their property from the Prisoner. They requested him to take charge of her, which as he was proceeding to do, he met two others of the watch, who had found some more of the property. that the prisoner was in liquor. On his return to her house he took charge of her.

JOHN COEN WALSH, being sworn, deposes that he saw the Prisoner last Saturday afternoon in her own house between the Hours of four and six o'clock about which time he heard the alarm of Sidaway's being rolled and was called out by Silverthon who took him to the place where he had at different times seen the Prisoner stoop. That he went with Silverthon [?]. That they found a white shirt and an old one - a waistcoat - a piece of a woman's cloth - and a piece of cloth. That there articles were found hid under the Rocks, and appeared as if disguised and stacked in to be concealed. They were hid some Distance from the Road. That Silverthon told him, he as first imagined the Prisoner was very much in Liquor, by her stooping frequently, but on hearing the Robbery, he suspected she was [158] the person who committed it, and when she stooped she was concealing the property. That consulting with others of the watch, they agreed to watch about the place where the articles were found, and the next morning about one hundred yards where he found the first articles he found in and with Harris a silk waistcoat, spotted, a white working waistcoat, a Pair of Women's pockets, and a cheque shirt. They were likewise concealed under the Rock. The silk waistcoat, one linen shirt, a chequed shirt, a waistcoat without lining, the Pocket for a bedgown, the Piece of a Cap and a Piece of Cloth, an old shirt, being shown to this witness, he believes then to the best of his Remembrance to be the same articles he found.

John Silverthon being again called in, deposes, that he went with Harris and Peate, to the different places where he saw the Prisoner stopping there they found the articles already stated by watch. That having seen the Prisoner not something like a Bundle, he went with Harris and Peate, to the spot and a shirt was found there.

MARY ALLEN

Alias Mrs GORMAN: being sworn deposes, that she was in the same house with the Prisoner. That the prisoner came home about 5 o'clock on Saturday afternoon. Just after Symics had been punished. That he was in the house when she came home. That she had a Bundle in her apron which contained a Cap. That he saw some and shortly after Ryan came to enquire for her. That she told him she was within. He came in and asked her if she knew any thing of Mrs [159] Marshall's Property. She denied having any knowledge of it. Then Marshall came in and made the same inquiry. She at first denied, but at last she put her hand behind her Hand behind her and gave him and apron and a waistcoat. She was then sitting on the bed. The Cap was still in her apron. There was nothing on the Bed when she went out. That it was very near upon 9 o'clock when she went out and about 5 o'clock when she came in. that about 4 o'clock she saw the Prisoner standing nearly opposite the Sirius. She said she was coming down to get some wood. She then saw a seaman of the Sirius (Terry) come up to her and ask her if she would take a cap up to his washerwoman - which she did. The cap did not seem heavy. She was not in liquor when she went out at 9 o'clock but at 4 o'clock she looked as if she had been drinking and when she came Home, she was very much in Liquor. She did not see her drink anything with the Seaman.

The Prisoner in her Defence says, that last Saturday about ½ past 2 o'clock in the afternoon Mary Allen and **MARY DIRKS** went down with her facing of the *Sirius* having promised to go on the Wednesday before. They staid there till past 5 o'clock. They drunk a considerable quantity of grog and as it is but said had not drunken many, it very soon took effect upon her and there were three men with them from the Sirius (one of [?]). Burn and Mary Dirks went first. She (the prisoner) was unwilling to supply. Mrs Whites being in liquor. She left Mrs Allen and conversely left the Sirius there. **JONATHAN TERRY** came up to her and asked if she would take a cap [160] home for her as Mr Allen was afraid to take it past Mr Whites. That she went at the back of the hospital with it. There was some grog in it, how much she cannot tell, but it ran out and made her apron stay wet. That as she went on, near M. Dawson's House, she met **ELIZABETH DRUDGE**. She told her she was going down fairing the *Sirius*, to send some clear Liquor on board on board to one of the Seamen. She gave her a Parcel which she desired her to keep for her until she came Home. That she took the Parcel not knowing what it contained, and was the same she gave to Marshall. That Marshall. That Marshall came in and asked her about the Robbery. That she told him she knew noting about it. That she told her if she had any part of it, she would give it to him, he would try it where it might be found, and nothing said about it. She then gave the Parcel, which she suspected to be a Part [?], to him.

ANN FOWLER

Alias E. DRUGE: being sworn and called by the Prisoner, or

Prisoner: Did not I meet you on Saturday last in the afternoon, as you were going to the Sirius

Answer: No you did not.

Prisoner: Did you not give me a Parcel that Day to keep for you.

Answer: No I did not. I never saw you.

MARY DIX: called also by the Prisoner, was sworn.

Prisoner: Were not Mary Allen, myself and you drinking grog with some Seamen of the *Sirius*, on Saturday afternoon.

Answer: On Saturday afternoon I took some linen for [161] Burn down where he was boiling Pitch. That while I was there the Prisoner came with some Hitches in her apron. And Terry gave her a Cup to take home for him. That she went away leaving me there. I cannot tell the time the Prisoner staid. It might be about 10 minutes. That I did not notice whether she was solen on liquor. Upon the Oath I have taken, I did not drink any Liquor in Company with the Prisoner or the Seamen of the *Sirius*. That Mary Allen walked down to the same Place, at a little Distance behind me.

JAMES TERRY, Seaman on His Majesties Ship, *Sirius*, called by the Prisoner, was duly sworn.

Prisoner: Did not Mary Allen and the Prisoner come together on Saturday afternoon, to where you was employed, boiling Pitch.

Answer: I cannot tell - being at wash under the shed.

Prisoner: did you not drink grog with Mary Allen, Mary Dix and the Prisoner that afternoon

Answer: She did drink grog there

Prisoner: Did you not drink a small Cup of grog on Ship

Answer: He does not know he brought more on there.

Prisoner: Did you pull a large cup out for the Rock.

Answer: No upon the Oath he has taken

Prisoner: Did you not give me a Cup to keep for

Answer: Yes, I gave her an empty Cup, which I took from her as soon as I went up.

Prisoner: can you recollect the time that you gave me the Cup

Answer: As near as I can remember, it might be betwixt four or five o'clock.

[162] He went away soon after she got the Cup. Does not know how long the Prisoner was there. She had nothing in her apron when he gave her the Cup, which might hold a gallon. That to his knowledge she was not in Liquor. That as soon as he left wash, he went up to the Prisoner's House. That he does not recollect that she was in Liquor. That he went to work about ½ past 2. That it was near 3 when he went to the Pitch Pod. About that time he saw the Prisoner there together with Mary Allen and Mary Dix. He does not know what quantity of Liquor was drunk. But in positive the Prisoner was there between an Hour and an Hour and a half ago.

JAMES COVENTRY, Seaman on board the *Sirius*, called by the Prisoner was sworn,

Question: Did Mary come with the Prisoner to where you were boiling Pitch last Saturday.

Answer: He saw a woman there, but who cam with or together he does not know.

Question: Was not Jn Terry and Burn, sitting together when the Prisoner came down.

Answer: He cannot be positive, if they were sitting together, but they were together when the women were there.

Question Cont.. What time did the women go away

Answer: The Pitch Kettle went on about 4 o'clock. They had gone away before.

Question: What Liquor was drank there.

Answer: Our grog was drank before the women came. He was there the whole time the women went. He saw the Prisoner go away, but does not recollect who she went with. To the best of his knowledge, he thought the [163] Prisoner was sober. He does not remember any grog being drunk while the women were there. He saw Terry give

the Prisoner a Cup, which he imagined was empty. That he did not expect the women there that Day. That he had expected M. Allen before.

Prisoner: Did you not desire me to come down with M. Allen, last Saturday.

Answer: I do not recollect that I did. I did not desire M. Allen to come that Day. I expected her two days before.

Question: Was the Pitch Kettle sent away at 4 o'clock and were the women gone.

Answer: I do not exactly recollect. I was sent away soon after 4 o'clock. I remained there some time after, and the women had been gone some time.

Guilty - Death.

David Collins

Judge Advocate

On receiving Sentence, the Prisoner declared that she was with Child.

A Jury of twelve Matrons were then inpanelled and sworn to try if the Prisoner is quick with Child.

On their return into Court, the Forman delivered in their Verdict. That the Prisoner at the Bar is not with Child.

David Collins

Judge Advocate

Executed the 23d November

David Collins

Judge Advocate

[1] We have included this case even though the manuscript is very difficult to read. We intend to make another careful attempt at proofreading our transcription.

This case resulted in the first execution of a woman in Australia. When the prisoner claimed to be pregnant and thus that she could not be executed, the court ordered a trial by matrons. The jury of matrons was the most important function women performed in eighteenth century courts.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

Court of Criminal Jurisdiction, Minutes of Proceedings, 1796 to 1797 Apr 1795 – Dec 1797, State Records N.S.W., 5/1147B

Court of Criminal Jurisdiction

Collins J.A., **23 April 1796**

[81] **FRANCIS WILKINSON**, Labourer, was brought before the Court charge for that, he on the sixth Day of March, last, at Macquarie Place in the County of Cumberland, and in the year of Our Lord One thousand seven hundred and ninety six, with Force and Arms at the Place and County aforesaid, in and upon one Joseph Pearce, Yeoman, in the Face of God, and our Lord the King, then and there being, did make an Assault, and him the said Joseph Pearce, then and there did beat, wound and illtreat, so that his Life was greatly despaired of, with an Intent that most horrid, detestable and sodomitical Crime (among Christians not to be named) called Buggery, with the said **JOSEPH PEARCE**, against the Order of Nature, then and there feloniously, wickedly, and devilishly to commit and do, to the great Displeasure of Almighty God, to the great Damage of the said Joseph Pearce, and against the Peace of our said Lord the King, his Crown and Dignity.

The Prisoner on his Arraignment, pleaded Not Guilty.

Joseph Pearce, being sworn deposed, that he is a Settler on the East Creek at the River Hawkesbury, that he is touched of sixty years of Age; that the Prisoner came out in the same ship with him; that on the Day this Affair transpired, he came and

spoke to the Prisoner at the House of one Robinson a Settler; that several People were present, who asked him to drink; that he played with an Old Man at Quarters, for half a Gallon of Paley which having lost, he drank more and became fuddled; that he was playing and smirking [82] the whole Day; that he left the House an Hour before sunset; that he turned out of the Path and laid down in an heap pulling off his Shirt and putting the [?] the Bosom of his Shirt. He lay down upon his Face; that having laid there a considerable time, the Prisoner came by and got a top of him; that he was washed by his Attempts; that he abused him for such Conduct, endeavoured also to extricate himself from him and called and bellowed by no Person came near him; that having left him the Prisoner returned at Day light; that he taxed him with his Attempt to which the Prisoner did not act in any manner. That the Prisoner had carnal Connection with him when he had him on the Ground; that he was taken ill in consequence of the Prisoner's treatment ...; that he was ashamed of what had happened to him and therefore did not make any Complaint to the Surgeon or any one else. That although he had drank a great deal, yet having slept in the Hollow, for two or three Hours he was nearly sober when the Prisoner came to him; that he was dressed the same as when he saw him at Robinson's House. That he saw and spoke to him and called him by his name and the Prisoner also called him [83] by name that he mentioned what had happened to him to some People the ..., but did not mention the Name, until three days afterwards . That he then hold **REIKERBY** the Constable the Man's name, the Prisoner, that when this assault was made on him he was 3 miles from his own house. That he left the prisoner in Robinson's when he came away. That the Cart which brought him over returned for the Prisoner, who came in it, and in standing with one of the People in the People the prison. He was in the House only told so.

The Prisoner in his Defence said, that next morning after this affair happened, witness spoke of it, but declares he never received who it was that had assaulted him and that he offered four pounds reward to anyone who would give him information and that [?] elapsed, before his name was mentioned....

SIMON FREEBODY being sworn deposed that the prisoner slept at his house on the night that Pearce was assaulted. That he saw Pearce the next morning and asked him why he had not gone home. He said he had been drunk and lost in the woods. He then told him he [84] had been buggered, but that he did not know by whom, though he thought he should know his Voice. He had lost his Hat, which if he could find he should not care any thing about it. That Pearce's House does not lay in the same Direction with his own. That Pearce staid the whole of the Day at his House. That being at Robinson's House the preceding Day, he saw Pearce and the Prisoner there. He asked them both to come to his House, but Pearce refused. The Prisoner said he would come. That the last time he saw the Witness Pearce that Day was between 3 and 4 in the Evening, and he appeared neither drunk or sober. That the Prisoner came over about 8 o'Clock. That he staid there all the Evening and until Bedtime, when he went to Bed that the Prisoner slept in one of the other Rooms of the House with one Smith. That the Prisoner left his House an Hour before Day light saying he must go down to the ?. he cannot swear that the Prisoner did not go out of his House during the Night. That Pearce did not shew him his Trowsers. That in two of three Days afterwards, he heard that Pearce had said it was the Prisoner that when the Prisoner came to his House in the Evening, he appeared to be stern.

ROBERT SMITH, Settler on the River (called by the Prisoner) being sworn, deposed [85] that he lives at the Back of Simon Freebody's; that he had slept at Freebody's for about 3 Months. That he remembers the Prisoner sleeping at

Freebody's with him on the Night that Pearce accused him of an Assault. That they went to Bed about Ten at Night. There were 7 or so others in the House. That he and the Prisoner slept in a back room adjoining to the Kitchen. That he woke at 12 o'Clock and found the Prisoner asleep. They had all been drinking that Day. That they had all been over at Robinson's. He saw Pearce and the Prisoner there. That he cannot positively swear the Prisoner did not quit the House during the Night, but if he did he must have passed near 2 or 3 People who were sleeping there. That he saw Pearce at Freebody's in the Morning, but he did not stay there long. That the Prisoner came over the preceding Evening about Dark. That the Prisoner sat in the Room with him and Freebody and some others until that Time.

WALTER LUNNEY [?], (Labourer) called by the Prisoner being sworn deposed, that he was at Freebody's House the Night the Prisoner was there. The Prisoner was laying between Smith and another Man, and he laid down at his Feet. That [86] he never waked during the Night, but found the Prisoner in the same place in the Morning. That the Prisoner came from Robinson's House to Freebody's some time in the Evening, but cannot say when. That Pearce came the next Morning, and staid till about 10. That he told every Person there, what had happened to him, and said he should give ? and told he knew the Man. That he had lost his Hat and his Handkerchief. That he believes the Prisoner laid down at Freebody's as soon as he came in until that Time. That he does not know whether he went out or not before Bed Time.

Not Guilty.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

Court of Criminal Jurisdiction, Minutes of Proceedings, 1796 to 1797 Apr 1795 – December 1797, State Records N.S.W., 5/1147B

R. v. Hyson

Court of Criminal Jurisdiction

Collins J.A., **23 April 1796**

[87] **GEORGE HYSON**, Labourer, was brought before the Court charged for that he not having the fear of God before his Eyes, but being moved and seduced by the Instigation of the Devil on the fourth Day of April, in the Year of Our Lord One thousand seven hundred and ninety six, with force of Arms at Sydney in the County of Cumberland, in and upon one she Dog, then and there being, feloniously did make an Assault and then and there feloniously, wickedly, diabolically and against the Order of Nature, had a Venereal Affair with the said she Dog, and then and there carnally knew the said she Dog and then and there, feloniously, wickedly and diabolically and against the Order of Nature, did commit and perpetrate that detestable and abominable Crime of Buggery (not to be named among Christians) to the great Displeasure of Almighty God, to the great Scandal of all Human kind, against the Form of the Statute in such Case made and provided, and against the Peace of Our Lord the King, his Crown and Dignity.

The Prisoner on his Arraignment, pleaded Not Guilty.

JAMES ORMOND, Labourer, being sworn, deposed, that he lives with Mr Dirison, taking Care of his Goats. That he has known the Prisoner about two years. That on the fourth of April, between the Hours or Twelve and one in the Forenoon, as he was returning from Cockle Bay, whither he went for some [?] as passing by a House which had been used as a shelter, hearing a noise he looked in, and in one corner of the room he saw the Prisoner upon his Knees [88] with a Terrier Bitch; that

being surprised, he walked from the Door and returned again and saw him with the Bitch; that he called to him, on which the Prisoner said, you larack you will not say I was having Connection with the Bitch. He told him he should believe his own Eyes. That he found the Prisoner on his Knees, with his Trowsers down; that his Private Parts were close to the Bitch's, close to her Backside. The Prisoner was holding the Bitch with his two Hands by the hinder Legs. She was making a Noise which drew his Attention to the House. That when he looked in at the Door, the Prisoner was in the corner, with his Side of her. That when he perceived him (the Witness) he appeared much flurried and immediately buttoned up his Trowsers. That upon the Oath he has taken he had found him with his Private Parts out, his Trowsers down and the Bitch drawn close to him. That he told him if he had a Gun, he would blow his Brains out. That he then let the Bitch go. He mentioned this Affair to some People and to a Constable (Kabel). That he had not been drinking that Day, but was perfectly sober. That the Door of the House was open, the Prisoner not having secured himself in.

Question from the Prisoner. Did you not see me in the Path before you as you came up.

[89] Answer. No I did not. I never saw you till I saw you in the House.

Question. Were there not other Dogs in the same Place, and did you not ask me if I was holding the Bitch to be liced.

Answer. There were other Dogs, three I believe

HENRY KABEL (Constable) being sworn, deposed that on the 6th Day of April, the last Witness told him he had caught the Prisoner with a Bitch. That on questioning him about, he told him he had caught him in the back with a Bitch in a House at Cockle Bay. That he does not know of any [?] or slight subsisting between the Prisoner and the Witness Ormond.

The Prisoner in his Defence says that being accustomed to go to Cockle Bay for Wood, as he was returning, he had Occasion to ease him, and seeing the Witness Ormond coming along, with Spears, he turned into this House to ease himself privately. That he had a Terrier Bitch which followed him in and some other Dogs, and he was playing with the Bitch, when the Witness came. That he asked him, if he was holding the Bitch to be liced. That he told him Yes. That being told he had been accused of this Ormond, he went to find him out and spoke to Peale about it, who told him to go about his Business. Ormond ... and deserved a Hiding.

[90] Not Guilty of the Crime of Buggery but Guilty of the Assault with an Intent to commit it.

To stand three Times in the Pillory on three [?] Days, and to stand an Hour each Time. To stand the first Time on Saturday the 30th Instant opposite the Provision Store at Sydney, from nine to ten o'Clock.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

Court of Criminal Jurisdiction Minutes of Proceedings, 1798 - 1800, State Records N.S.W, X905 - 66

R. v. Reece

Court of Criminal Jurisdiction

Dore J.A., **31 January 1799**

[66] On the Prosecution of **PATRICK BRANNAGHAN** for Bestiality

Plea: "Not Guilty"

The Prosecutor having no Faith to establish but by the Testimony of others, being the own of the Sow and therefore the Prosecutor,

RAYMOND TIERNEY was duly sworn who disposeth that on the 19th day of January and about 8 in the morning as he was passing the Dwelling House on Captain Johnson's Farm (in the occupation of the Prosecutor) he observed in the Swine Stye a sow lying therein and the Prisoner also lying at her stern in the act and fact of having carnal knowledge of the said sow, whereupon he called to his Companion with whom he was walking (namely Dennis Newnham) to witness this extraordinary Circumstance. That the Prisoner was in Consequence of such calling disturbed. Swears that he saw the Prisoner withdraw his private parts from out of the Body of the said Sow and that his Semen or nature flew from him upon the hinder parts of said Sow. That the prisoner's penis was also in a like condition and that this witness was particularly observant as to this transaction and also desired his Companion the said Newnham to be particular also. That this witness leapt over the Fence and seized upon the Prisoner before he had time to button up his affairs. That the Prisoner was secured and brought into Custody to Sydney.

DENNIS NEWNHAM, being sworn, Deposeth that at the time sworn to by the last witness his companion Raymond Tierney called to him saying "Come, here, Dennis, here's a fellow by b__ gg __g a Sow" that the last witness when he so called was at some little distance from this witness and was leaning over the swine stye. That this witness accordingly went and saw the Prisoner sitting down in the rear or behind the Body of said Sow. That the said Sow was also lying down. That he got over the fence and proceeded to draw aside the Prisoners Trousers which were not buttoned up. That he discovered his Penis besmeared with his nature, not in an erect state. That upon viewing the sow move minutely he discovered her private parts to be much initiated or inflamed and that the hinder parts of said sow were besmeared with what he believes to have been nature discharged from Prisoner.

The Prisoner on his Defence Denies the fact. Generally says he was hired by the Prosecutor to repair the Hog stye and that on the day on which the charge is laid in the Indictment he was employed to take care of the Prosecutor's House.

Patrick Brannagh being sworn, Deposeth that on the Friday before he employed the Prisoner to repair the stye for which he paid him one [66] shilling, that on the day whereon said Prisoner is Charged he employed him to take Care of his House. Whilst he went to Sydney on Business and on his Return was met by the two witnesses who had the Prisoner in Custody.

Guilty. Death.

Ordered by the Court that the Sow mentioned in this Indictment be put to Death under the immediate Direction of the Provost Marshall or his Deputy and that the Report be made of the execution order.

But the Court taking into Consideration the extreme Poverty and Distress of Patrick Brannagh the Prosecutor in this unhappy Business who appears unable to sustain a loss so material as the value of said Sow which he estimates at £15 sterling and moreover as it appears that the said sow has ferried since the Commitment of this unnatural felony and produced a litter of the 11 pigs, also which must be necessarily lost by the condemnation of the said Sow.

The Court beg here respectfully to submit this poor man's hard case to His Excellency's humane Consideration, and humbly to recommend such Remuneration to the unfortunate man in the present case as to His Excellency's wisdom and Humanity may seem met.

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

Court of Criminal Jurisdiction Minutes of Proceedings, 1798 - 1800, State Records
N.S.W, X905 – 221

R. v. Owens

Court of Criminal Jurisdiction

Dore J.A., **31 May 1799**

[221] At the Court of Criminal Judicature: holden at the Court house Sydney on
Friday the 31st day of May 1799

Present:

The Judge Advocate

Lieutenant William Kent

Lieutenant John Shortland

Lieutenant Matthew Flinders

Captain John McArthur

Lieut James Hunt Lucas

Qual Mshll Thomas Laycock

In consequence of the indisposition of Lieutenant Kent, Lieutenant Thomas Hobby
of the New South Wales Corps was substituted in his stead and took his seat
accordingly.

The Precept being read and the Court duly sworn

The following Prisoners were placed at the Bar and severally arraigned.

JOHN OWENS to his Indictment for a Rape pleaded “Not Guilty”

MARY FROST, otherwise MARY PECK being duly sworn Deposeth that last
Wednesday week she was going from Toongabbie to the Hawkesbury when the
Prisoner overtook her about a mile beyond Toongabbie and asked her if she was going
to the Hawkesbury; and on the Road the Prisoner asked her if she would give him a
stroke. That she answered him no, whereupon he struck her a Blow on the side of her
head with his Fist and knocked her down. That she then got up again when the
Prisoner dragged her into the Bushes and on her attempting to call out the Prisoner
clapped his Hand over her mouth to prevent her. That the prisoner pulled her Legs
from under her. That having an infant child in her arms the Prisoner forced the Child
from her and threw it on the ground. That having gotten her on the ground the
prisoner put his private parts into her Body by force and against her will did lavish
and carnally know her. That she entreated the Prisoner not to use violence with her,
but he persisted and gained his Ends. That after he had so done the Prisoner took a
Key from his Pocket and wanted her to swear she would never speak of what had
passed, where upon she said she would not under the apprehension that if he would ill
use her if she did not answer him to that effect. That the Prisoner then parted from her
and returned towards Toongabbie, whither she would also have [422] returned, but
shewing the Prisoner behind a Tree she was afraid and went on her way to the
Hawkesbury when she overtook the Cart of John Stodgell whose two servants she
acquainted with her having been ill used by a Soldier on the Road.

Prisoner had no Questions to put to this witness.

CHARLES WINDSOR, Corporal New South Wales Corps being sworn, Deposeth
that he was on duty at Toongabbie on the day above stated and the Prisoner was
absent on Wednesday Sennight from his quarters from daylight until the hour of
Eleven in the Forenoon. That on Saturday last the Prosecutrix applied to this witness
and related to him that the Prisoner had ravaged her on the day he alluded to, who
thereupon told the Prisoner that he had done a pretty job. That the Prisoner made no
Reply, but looked confused. That the witness ordered the Prisoner to be confined.

Prisoner had no Questions to put to this Witness.

JOSHUA PECK, being duly sworn, Deposeth that the Prosecutrix is his lawful wife and that he was married to her by the Rev Mr Johnson about 8 Years since. On being interrogated as to the Fidelity she had shewn towards his Bed he answers that about two Years ago he had Cause to complain of her Incontinence, but forgave it. That he has five children by her born in wedlock and that they live together on Terms of Conjugal Affection. Being asked if he had any acquaintance with the Prisoner answers that he had been twice at his house with one of his Comrades from Toongabbie who had threshed Corn for the witness, but that his wife was not at home either of the times. Further says he is certain that his wife never spoke to the Prisoner before the fact took place with which he is charged.

Question proposed by the Prisoner to the witness.

Has not your wife being on board of the Reliance for the space of nine days within the three weeks passed backwards and forwards.

Answer: Not to my knowledge, but she has been at Sydney on business with my consent.

Question: Has not your wife been on board the above ship keeping company with a sailor and said she has been down at Sydney on the present Prosecution.

Answer: She has never been out of my Company since she came down Wednesday morn, except whilst I was attending the Civil Court on Business which was in the mornings during the sitting of the Court and I always found her, when I returned to my lodgings, there.

Captain **JOHN THOMAS PRENTICE**. New South Wales Corps being duly sworn Deposeth that he was President of a Military Court Martial holden at Sydney on the Prisoner the 20th of March last when the Prisoner was found Guilty of unsoldier-like Behaviour when on duty and in which general accusation the charge of having Committed a Rape on the body of one **MARY BUTLER** was included. That the Prisoner was sentenced to receive 500 lashes (minutes of the Court Martial referred to and produced).

There closed the Evidence for the Prosecution.

[223]

Prisoners Defence

Last Wednesday Sennight about seven or eight o'clock in the morning I was going from Toongabbie to the Hawkesbury and overtook the Prosecutrix. I offered her some Calico to lie with her. She agreed to it, but I refused afterwards to give her the Calico.

JOHN CARVER called by the Prisoner Sworn.

Question by the Court at the instance of the Prisoner

Has not John Thistle, Seaman of the Reliance, slept with the wife of Joshua Peck at the house of Griffiths within these three weeks and by the knowledge of her husband.

Answer: I cannot positively say within these three weeks, but that he has done, I know as to the knowledge of her husband I cannot answer to that.

JOHN THISTLE called and sworn

Question by the Prisoner

Have you not slept with Pecks wife in the Course of these three weeks passed at Griffiths's House on the Rocks.

Answer: No. At no place whatever.

Court being cleared after deliberating on the Evidence unanimously acquit the Prisoner from insufficiency of Proof.

But at the same time observe that nothing could have saved the Prisoner from being adjudged guilty but the want of that corroborative Testimony which the Law requires to balance to the Character of the Prosecution which if it had been declared

irreproachable would have inevitably tended to the Conviction of the Prisoner and of course to his Execution. The court hope that this narrow escape may be so far operate upon his mind as to prevent him from a Repetition of those heinous offences which there is too much at Reason to believe him addicted to.

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

Court of Criminal Jurisdiction Minutes of Proceedings, 1801 -1808, State Records N.S.W, 5/1149 – 187

R. v. Bevan

Court of Criminal Jurisdiction

Atkins J.A., 17 May 1804

[187] New South Wales

May 17th 1804

Proceedings of the Court of Criminal Judicature Held by Virtue of a Precept under the Hand and Seal of His Excellency Philip Gidley King Governor and Commander in Chief in and over His Majesty's Territory of New South Wales and its Dependencies &c &c &c

The Judge Advocate

[Members:]

Major George Johnston

Captain A Kemp

Ensign Drapper

Captain Edward Abbott

Ensign William Minchin

Ensign Charles Crossley

The Precept being read and Members Sworn

JAMES BEVAN put to the Bar Vide Indictment No 1.

ELIZABETH DOUGLAS an Infant Eight years of Age being asked if she knew what was the consequence of telling a lie said that God Almighty would not love her, but if she told the truth he would love her. Says that as she remembers being sent from her fathers house with some barley to the house of **JOHN BOOTHE** , that she recollects Warminster meeting of her, (being desired to point him out, she fixed on the Prisoner) putting his hand on her mouth and knocking her down, pulled down his trousers, got between her legs and hurt her very much, he then got off her and told her that if she mentioned what he had done [188] to her he would kill her the first time he met her out of the House. That she was in Consequence afraid to leave the house.

Mr **CHARLES THROSBY** Surgeon being Sworn deposes that Elizabeth Douglas was brought to him for examination, he found her very much injured, that violence had been used, and that penetration had actually taken place. On asking some questions the child informed him that the man that had used her ill was in prison, he went there and on examining the prisoner he found him very ill with the Venereal.

SARAH DAILY being Sworn says that she lives with **Wm. DOUGLAS** Father of the child, that she recollects the child being sent to the house of Jonathan Boothe with some Barley, that the child on her return did not mention what had happened. That the child cried on being desired to go out of the house. That three days after she had been sent with the Barley the Deponent found out that the child had been violently used. On being asked by her father who had ill treated her after some hesitation told him that the Prisoner Warminster was the person that had done it, that the Child said the

Prisoner through her down put his hand on her mouth, and used her in the manner as above stated.

THOMAS PATRICE being Sworn deposes that on the Father questioning the child, she said that it was the prisoner at the Bar and no other person that had used her so ill [189] and that it was on her return from the Booths and further corroborates the story as told by the child.

ALICE FRIDO being Sworn says that soon after the Child's return from Booths the prisoner came in, that she heard the child tell her father, that it was the Prisoner that had ill used her in the manner as stated by the other Evidences.

EDWARD ROBERTS being Sworn says that the Prisoner worked for him and that he has often heard him say that he would have connections with Elizabeth Douglas, that on the Deponent saying that it was a shame to mention such a thing, for that he would be charged he then said if she was big enough he would have connections with her. That the Prisoner told the Deponent that the child had asked him to have connection with her.

James Bevan being put on his defence calls

JOSEPH SMITH who being Sworn says that he sent the Prisoner to Douglas's Farm. That a child being with him and told him that he saw Warminster and Douglas's child together.

The Prisoner denies the Charge.

Guilty. Death.

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

Court of Criminal Jurisdiction Minutes of Proceedings, 1801 -1808, State Records N.S.W, 5/1149 – 241d

R. v. Daily

Court of Criminal Jurisdiction

Atkins J.A., **1 October 1805**

[241d] **JAMES DAILY** placed at the Bar Vide Indictment No 2.

MARY COLE the Infant on being asked if she knew the Consequence of telling a lie, says, that God Almighty will hate her but if she tells the truth he will love her says that your knows the Prisoner at the Bar (here she pointed him out) says, that she well recollects being with the Prisoner in an Indian Corn Field, that he laid her down, took her petticoat up got between her legs unbuttoned his trousers got on her and hurt her very much and after some little time got off her, desired her not to tell her mother, and he would give her a Pincushion a knife and a comb. That at the time he was upon her, he put his hand on her mouth to prevent her crying out. That on her being asked by her mother what ailed her [241e] she said that the Prisoner at the Bar had been doing naughty tricks to her, that the Prisoner was, at the time she went to get raspberries, cutting the Corn stalks down.

MARY COLE the mother Sworn says that the only knowledge that can speak of respecting the prisoner proceeds from what her daughter told her, which in substance is, that the prisoner threw her down among the Corn, and that he there pulled her Petticoat up, unbuttoned his trousers got on top of her and that the Prisoner desired her not to tell her mother, for that he would give her pincushion a knife and a comb, that she carried the child to Mr Mason a medical man to have her examined.

Questioned by Prisoner: Did not Major **JURPOLD'S** woman tell you that she caught your child and a black boy together?

Answer: She never did.

Mr **MARTIN MASON** Surgeon being Sworn deposes that the prisoner at the Bar was under his care from the 26th May to the 19th of July for the Venereal Disorder, that the prisoner has [241f] had medicines subsequent to the date as above-mentioned. That when he was again appointed to, he examined the prisoner and his disorder was the remains of his old one. Says, that he examined the child Mary Cole colouring under the the venereal disorder. That there was some peculiar appearance on the Prisoner that is not unusual in the common stages of that disorder, and, that those appearances were on the child. That he is certain the child must have had some improper connection with a man, but that penetration had not been effected.

The prisoner being put on his defence calls Colonel Hurst who being Sworn

Questioned by Prisoner: Have you not declared that the child Mary Cole had coloured under the distal order 10 months back

Answer: No.

THD UPTON Sworn says that the prisoner has lived with him for 10 months, that he is a sober hard-working man. That he (the Deponent) has five [241g] children, one of whom is about the age of Mary Cole, and that he never knew the prisoner before in an improper manner towards her.

The Prisoner not Guilty of the first Indictment, but find him Guilty of the second Indictment, for the [assault?] And do sentence him to receive a hundred lashes on his back and posterior, at such time and in such places as His Excellency may direct, and the Jail Gang for 12 months on heavy Irons.

Richard Atkins Judge Advocate

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

Court of Criminal Jurisdiction, Minutes of Proceedings State Records N.S.W., 5/1150

R. v. Dundas

Court of Criminal Judicature

Atkins J.A., **18 March 1809**

[91] **DAVID DUNDAS** place at the Bar Vide Indictment No 1.

Sergeant Major **WHITTLE** Sworn:

Question: Was any intelligence of an unpleasant nature reported to you on Tuesday the 14th Instant?

Answer: I was walking in the rear of the Barracks that morning, and I heard a Corporal, and several of the men talking together about an attempt that was made on three of the Sentries the preceding night, I went to them, and asked them what was the matter, they told me that an attempt was made by the Prisoner on three of the Sentries to have an improper connexion with them; on asking who the Sentries were, they told me their names were Thomas Lynch, William Hutton, and James Stephens; on requiring [92] of Thomas Lynch and James Stephens the circumstances from them they informed him, that they did not have the person, Deponent says, he cautioned them not to make use of any Gentleman's name, particularly Mr Dundas's name as he can not think he was capable of committing such a crime. I awaited until Hutton was fetched to me, on his coming I asked him what had happened to him on his part the preceding night, he stated it, and particularly said it was the prisoner that had made the attempt. I then took the three to Major Abbott.

Question by Prisoner: then you have nothing respecting this witness but from hearsay?

Answer: I do not.

2: Was you not the first Evidence that was examined before the Magistrates on the 14th?

Answer: I was.

Peter Ashford a Corporal in the New South Wales Corps Sworn:

Question: would you Corporal of the Main Guard on the 13th Instant?

Answer: I was.

[93] 2. Who was planted Sentry at the Hospital Wharf between the hours of 8 and 10 at night?

Answer: William Hutton.

William Hutton a private in the N.S.Wales Corps sworn

Question 1: Was you one of the Main Guard on the 13th instant?

Answer: I was.

2: Was you planted Sentry at the Hospital Wharf at eight o'clock, and did you remain Sentry at that place from eight to ten?

Answer: I did.

3: state to the Court distinctly what passed between those hours?

Answer: Before 9 o'clock, several Gentlemen passed me, and went down towards the end of the Wharf, when some person hailed with the *Hibernia*, and a Boat came from her, I went down towards the end of the wharf, and some persons in the Boat, which I suppose to be some of the Gentlemen that had passed me, there was a woman in the Boat, I asked her where she was going, her answer was "not/or [94] far", I told her that was no answer, and that she should not go in that Boat, Mr Dundas was then standing on my right hand, and told me she should go, I answered she should not go; Mr Dundas then told me that I did not know the duty of a Soldier, or I would not act in that manner; I answered him that I knew my duty as a Soldier on Shore, as well as he did as a Captain, on board. When one or two of those Gentlemen that were in company with Mr Dundas, took him a short distance to the rear of me, and returned. One of those Gentlemen told Mr Dundas not to trouble the Sentry in that manner, as he was doing nothing but his duty, by this time the woman had come from Boat upon the Wharf, when they all went away from me; in a few minutes the woman returned by herself, I at that time saw Mr D. as for as the corner of Mr Nicol's pailing, and shortly after he returned alone, and enquired of me as he passed me where [95] was the woman; I told him I knew nothing about her, observing he was in liquor. The prisoner then went to the end of the Wharf, and entered into the Conversation with the woman. All that I heard of such conversation was, the woman saying, I cannot, or will not, or both. He then left the woman and passed me, and I again saw him as far as Mr Nichols's pailing, when in a short time he again returned, which he had done two or three times before, and came up close towards me, and laid hold of me of my fingers. I immediately pulled my hand from his hand. He then told me not to mind him, you and me can do something between ourselves, and stroke me down the fore part of my trousers with his hand, I then asked him what he meant, and he again desired me not to mind him; now says he, what shall I give you to give me a genteel T_g. I then paced one pace backwards, and brought my arms to a Part and desired him to gone for a [?] [96] or a B __r (but cannot speak positively of those words I make use of). Or I would put my bayonet into his guts, he then left me, and went towards camp some time after I heard a foot approaching towards me, I challenged, and an answer was given "Dundas" he approached so night time that I could see it was the same person that had before been with me, I desired him to go, and not trouble me upon my past. He then went away, and I saw him no more that night.

2. How long have you known Mr Dundas by sight?

Answer: Since he came in the Fravanish.

You have said it was dark, do you not think it possible you might mistake him for another man?

Answer: I am certain I did not mistake.

3: Have you not seen a man very much resembling Mr Dundas both in appearance and dress?

Answer: No I never did.

4: How was the person dressed that had this conversation with you?

Answer: A dark [?] coat, the vest I cannot [97] speak to but he had white trowsers or Breaches on.

5: Had he Boots or Shoes on ?

A: I am of opinion he had shoes.

6: Did you ever hear Mr Dundas speak before that evening ?

Answer: I have.

7: Would you know him by his voice among a crowd of persons?

Answer: Yes.

8: What is the Gentleman's name who called him "Dundas" when he came to the Wharf?

Answer: I do not know.

9: Can you positively swear that the same person who told you that the woman should go into the Boat, was the same that acted in the manner you have described?

Answer: I do positively swear it was.

10: Did the person that told you the woman should go with the Boat, appear to you to be in a state of Intoxication?

Answer: He was.

11: Were there any other persons on the Wharf at this time Mr Dundas and the other Gentlemen came there?

Answer: Yes, there were among others the woman.

[98] 12: Did those persons all leave the Wharf at the same time the Gentlemen left it?

Answer: No they did not.

13: Why did not you secure the person that had acted in the manner you have described?

Answer: Because he was in the character of a Gentleman and I was much agitated.

14: You say you was much agitated, at the conduct of this person, and you say there were a number of persons on the Wharf within the range of your part, did you mention what had passed any person?

Answer: I did mention it to one person.

15: How long was it after these circumstances had passed, that you mentioned it to this man?

Answer: From ten to twenty minutes.

16: During that interval had not many other persons passed you?

Answer: None.

[99] 17: Did you report it to the Corporal, or the Sergeant on your return to the Guard House?

Answer: I did not.

18: Did you not mention it to Sergeant Johns?

Answer: Not that night nor to any other person except to the man at the Wharf.

19: Was the man that you mentioned it an acquaintance of years?

Answer: No.

20: Is it not together surprising, that you should tell a stranger of what had happened, and not to your Sergeant, Corporal, or Comrades?

Answer: I observed to you before, but I was very much agitated, and this man making mention of Mr Dundas's name, and asking me if he was gone, caused me to give him this reply.

Question by Prisoner: You have stated that I went down upon the Wharf with several Gentlemen, some of whom went into Boat, and some remained at the Wharf with me, was the girl in the Boat or what became of her afterwards?

Answer: The Girl can account where she went.

[100] 2: What became of the Gentlemen, that came to the Wharf with me, did they go away, and leave me there, or did I go with them?

Answer: The Gentleman went up toward the Camp with Mr Dundas and I saw them as far as Mr Nichols's pailing, and Mr Dundas returned by himself.

3: Was there any other boat went off from the Wharf, except the one that went on board the Reliance?

Answer: I cannot say whether there was or was not any boat went from Wharf at that time.

4: How long time had elapsed, between the person who went to camp, and whom you have sworn to be me, and the return of that person, who answered "Dundas" when he was challenged by you?

Answer: I cannot tell, it might be from 10 to 20 minutes.

[101] 5: In what situation did you come to this Country?

Answer: As a prisoner.

6: Did you come to this country for Perjury?

Answer: No.

Thomas Lynch a private in the NS Wales Corps sworn:

Question 1: Was you on the Main Guard on Monday the 13th Instant?

Answer: I was.

2: Was you planted Sentry at the Bonded Stores at ten o'clock on that night, and did you continue on that post until twelve?

Answer: I did.

3: State to the Court what particularly part during that time?

Answer: About Eleven I Challenged some person, and he answered "Gentlemen". I told him to advance, and he came close to the Sentry Box, and he asked if a woman had not gone through the passage between the Two Stores, I told him no; he replied there was one; I again repeated that no woman had gone that way, but if he thought there was, he might go and see; he then rubbed his hand on his upper part [102] of my Trousers; I then told him to go away, or I would take him prisoner he then stepped away.

Question: Can you take upon yourself to say who the person was?

Answer: I cannot.

2: Are you acquainted with Mr Dundas?

Answer: I am not.

3: Was the person drunk?

Answer: He was.

4: How was the person dressed?

Answer: I cannot tell.

5: Are you positive as to the time you challenged this person?

Answer: Just as he passed, the town clock struck Eleven.

James Stephens a private in the New South Wales Corps Sworn:

Question: Was you on the Barrack Guard on Monday the 13th Instant?

Answer: I was.

2: Was you posted Centry on Colonel Patterson's House at ten o'clock on the night.

Answer: I was.

3: Did you remain there until twelve?

Answer: I did.

4: State to the Court what passed during the time you was Centry?

[103] [blank]

[104] Answer: About 20 minutes after 11 o'clock, I was walking backwards and forwards on my part I saw a person advancing and I challenged "who comes there". He made no answer, and I challenged him a second time; he then came up and asked me if I had seen a woman pass that way; this question he repeated; I told him that no person had passed him since he had been Centry; he then asked me of what time I was planted Sentry. I informed him at 10 o'clock; he then with his fingers, touched me in the palm of my hand and took hold of me by my fingers, and rubbed the back of my hand down the front of his breeches or trousers; I then pulled my hand from him, and ordered him to leave my part immediately, and go home for he appeared to be in liquor; he then went away.

Question: From what part of the Camp did he come?

Answer: From the back of the Colonel's pailing.

[105] 2: Which way did he go after he went away?

Answer: Down towards Richard Cheers.

3: How was this person dressed?

Answer: It was a very dark night, that he appeared to me, to have a dark coloured Coat, and a white waistcoat and I think the colour of his trousers were dark.

4: Do you know who the person was, that accosted you?

Answer: I do not, he was a middling stout man.

Sergeant Johns of the New South Wales Corps Sworn:

Question: You was Sergeant of the Main Guard on Monday the 13th Instant.

Answer: I was.

2: William Hutton was a private with you on that Guard?

Answer: He was.

3: Did he not inform you of some particular circumstance that had happened to him, whilst Centry at the Hospital Wharf, between the hours of eight and ten?

Answer: Yes he did.

4: State the Information he gave you?

Answer: On the 14th in the morning, between 5 and 6 o'clock, he informed me that he had been Centry at the Hospital Wharf between 8 and 10 on the 13th and that between 9 and 10 a Gentleman [106] had come to him, accompanied by Mr Davison, as far as Mr Nichols's pailing; the Gentleman came up to him, and felt him with his hand, and asked him what should he give him for a genteel T__g. That he the Centry stepped back, a yard or two, and told him, if he did not go off his post, he would run the bayonet through his Guts, and that he called him a B__r or some such name. That the person then left his post, and returned before he was relieved in the same manner; he observed that had a white pair of Trousers on, and that one of his knees were dirty; that he again ordered him from his post, or he would either take him prisoner or run him through. He then told me he did mean to keep it a secret of his name was "Dundas."

Question: Did Hutton signify to you, that he had already told a stranger the Story?

Answer: Some of the guards knew it some time before I did.

[107] 2: Did he tell you he knew Mr Davison?

Answer: He did.

William Thiny Sworn: says that he was on the water at the Dockyard on the 13th about 10 o'clock some person came to him and offered him £5 to have a connexion with him, but that he is certain it was not Mr Dundas.

James Fox a Watchman, Sworn, corroborates the Testimony of the preceding Evidence.

Mr William Hossley Surgeon of the Descent, Sworn, says, that he had left Mr Redfern at a little after ten, that he saw some person at the Dock Yard paling, that passing Mr Wells's home, he was asked by Mr Wells if he had see a person at the paling; that he had observed him for some time, and that he supposed he was meditating some mischief; the Watchman then informed himself, and Mr Wells, with what had passed. Soon after Mr Dundas came up, apparently in liquor, and the circumstances of the Watchman was told him says he has no reason to believe it was Mr Dundas that he had seen [108] at his paling and that the Watchman said the person was Mr Donovan.

Mr Wells Sworn corroborates the testimony of Mr Hossley.

Here the Evidence on the part of the Crown closes and Mr Dundas being put on his defence calls Walter Davison who being Sworn,

Question by Mr Dundas: Was you at the Hospital Wharf on Monday night with me, and if you was, relate to the Court what passed?

Answer: Between 6 and 7 o'clock on Monday Evening, I went to Mr Blaxcell's house, in company with Mr McArthur, Mr Kent, and Captain Harrison. I remained there until half past Eight, when I walked down to the Wharf with Captain Dundas, Captain Burnside, and Mr Burton and Dr Jones on our arrival at the Wharf the [?] was hailed for a boat to come on Shore, and also after me, Captain Burnside and Mr Burton stepped onto the boat; two or three minutes afterwards, I discovered a Woman sitting in the Boat with them and heard the Sentry telling Captain Dundas [109] that he was only doing his duty in preventing that woman going on board, It struck me instantly, that it was so, as the admission fly had not been lashed, and in consequence of me communicating this to Captain Dundas, we headed out of the boat. The Boat then shoved off to the Wilhelmina, and I walked to that end of the wharf where the Sentry was, and asked what woman that was, when the woman herself and some Gentlemen said it was Rose Lucett. Mr Kent and myself then walked away arm in arm and Captain Dundas followed with the Woman; I think we all stopped opposite Mr Morris's house, and entered into conversation for a short time, after which Mr Kent and myself walked on before Captain Dundas, and the woman still following us until we got opposite William Blake's house, when Mr [?] and myself again stopped with Captain Dundas and the woman came up and I believe the [110] conversation then was to the last of my recollection, interrogating the Woman whether she was not very much dispirited by not getting on board the Brig. A short time after, Mr Ghant and myself again left there, at I suppose might be from 10 to 15 minutes, counting from the time the woman had been taken out of the boat, and we had left the Wharf, and after walking a short way I [said] to Mr Ghant, that we should return, and see Captain Dundas home, as he was very merry with liquor. Mr Kent objected to it, and in consequence we walked home calling in to Mr McMillan on our way home and as we passed the stores opposite Bevans ...

Mr Thomas Kent sworn,

Question by Mr Dundas: Was you to the Hospital Wharf on Monday night with me and if you was relate to the Court what passed?

Answer: Mr Kent's evidence corroborates the testimony Mr Davison.

[111] Mr Dundas calls Mr Driver who being Sworn,

Question by Mr Dundas: As you was at my house on Monday night please to state to the Court at what hour I came home?

Answer: At near 11 o'clock.

Question: Did I go out again?

Answer: No.

Dently Black Mr Dundas's Servant Sworn,

Question by Mr Dundas: At what time did I return home on Monday night?

Answer: About 20 minutes before 11 and did not go out again that night.

The Prisoner delivers into Court the paper No 1.

Not Guilty.

Richard Atkins

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1150 R. v. Davis (No. 2)

Court of Criminal Judicature

Atkins J.A., **7 June, 1809**

[129] **WILLIAM DAVIS** placed at the Bar Vide Instant No. 3.

MARY GRIMSHAW being sworn deposes that she is the wife of **RICHARD GRIMSHAW** and the mother of **ELIZABETH GRIMSHAW** the Girl as stated in the Indictment, says, that she recollects her Daughter coming from the Prisoner's house in company with a [?] [130] Settler's Wife, about a fortnight last past, that the Girl went to the fireside, and Deponent asked her what was the matter with her, the girl told her that the Prisoner had been doing naughty tricks with her, that on her asking the Girl what she meant by naughty tricks, she said that the prisoner pulled out his private parts, and wanted her to shake it, and pulled the binding of her petticoat. That he then pulled her between his legs and put his finger up her body. That she examined the child and found her parts much inflamed, and her linen very much sustained.

Question by Court. Had you ever less observbed her linen stained in the same manner as you say it was when you examined her?

Answer: No I never had.

2: Do you know a woman of the name of **McMAHON**?

Answer: Yes.

3. Did she not some months ago, examine the child at your request and did she not take the Girl's linen to wash and did she not tell you that she could not get the stain out?

[131] Answer: Yes she did.

4. Had you not been informed both by the girl and Mr Mahon that a man at Sydney had endeavoured to commit a rape on your daughter? 7 months back.

A. Yes

The Court think it unnecessary to put the prisoner on his defence being perfectly convinced that Mr Davis from the goodness of his Character as well as from the infamy of the Prosecutrix was incapable of the Crime he was charged with.

Court of Criminal Jurisdiction Minutes of Proceedings, 1809, State Records N.S.W, 5/1150 - 144

R. v. Wilson

Court of Criminal Jurisdiction

Atkins J.A., **21 August 1809**

[144] **JOHN WILSON** brought to the Bar v Indn. No 9

JACOB BAYSELL a Boy of 11 years of age, being Sworn, says, that he was linked with the Prisoner at about an Hour before daylight, and the Prisoner told him that if he would part his legs down he would give him a knife, defendant told him that he would not accept it, he then got over on the left side of me, [said] that he wanted to connect with one, but could not. That he was a full quarter of an hour making such attempt, that he went to call out, but the Prisoner kept his hand on his Mouth which prevented him. That on getting up he acquainted his father with what had passed.

JACOB BAYSELL Senior Father of the Preceding Evidence Sworn, says that the Boy informed him of the circumstance as stated in his Evidence.

The Prisoner denies the charge and calls a character **GRIFFITHS**.

Question by Prisoner: what is my general Character.

Answer: You have lived with me four years and have always behaved well. I have every reason [145] to believe that that you was Intimate with one of Jack Brysells daughter.

Acquitted.

Mr **BAYLEY** that Provost Marshal informs the Court **JOHN WALL** living at the Nepean was regularly subpoenaed as on Evidence to attend this Court, and he gave/or answered that he would not attend. The court do therefore fine him £5 and to be imprisoned until paid.

Richard Atkins

Judge Advocate

NON-HOM ASSAULTS – 1810-19

SYDNEY GAZETTE, 14/09/1811

R. v. Malkins

Magistrates Court, September 1811

Supplement, 14 September 1811 [1]

By a letter from Windsor, dated the 10th Instant, we have been favored with an account of a most disgraceful transaction which has lately taken place there, and we feel it a duty owing to Society to give it public notoriety, as well for the purpose of exposing the parties themselves to the contempt and disgrace which they have so highly incurred, as also to put the ignorant and abandoned on their guard against the commission of a crime which every sense of manhood should revolt from with detestation.

“A person (for a man I cannot call him) of the name of **RALPH MALKINS**, led his lawful wife into our streets on the 28th ultimo, with a rope round her neck, and publicly exposed her for sale; and, shameful to be told, another fellow equally contemptible, called Thomas Quire, actually purchased and paid for her on the spot, sixteen pounds in money, and some yards of cloth. I am sorry to add, that the woman herself was so devoid of those feelings which are justly deemed the most valuable in her sex, agreed to the base traffic, and went off with the purchaser, significantly hinting, that she had no doubt her new possessor would make her a better husband than the wretch she then parted from. This business was conducted in so public a manner, and so far outraged all laws human or divine, that a Bench of Magistrates, consisting of Mr. Cox, the Rev. Mr. Cartwright, and Mr. Mileham, had it publicly investigated on Saturday last, and all the odious circumstances having been clearly proved, and even admitted by the base wretches themselves, the Bench sentenced this no-man to receive 50 lashes, and put to hard labour in irons on the gaol gang at Sydney for the space of three calendar months; and the woman to be transported to the Coal River for an indefinite time.

“The public indignation at so gross a violation of decency was most unequivocally expressed, by the acclamations with which the sentence was received by a numerous concourse of people who assembled to know the event of so extraordinary and unprecedented a business – Their feelings were worthy of Men, and judging from them, I trust with confidence that the recurrence of such a crime will not take place here at least for the present generation. The laudable promptitude with which our Magistrates took up the business, and the quantum of punishment (still less than they deserve) which they pronounced, will, I have no doubt, produce the most salutary effect throughout the Colony, and check the progress of a crime, which if persevered in, would degrade the Inhabitants, and entail perpetual disgrace on their children and families.”

Note

[1] This has the elements of the traditional English practice of wife sale. See E.P.Thompson, *Customs in Common*, Penguin, 1993, ch. 7. Thompson suggested that the women were not always passive victims of the practice, but sometimes sought it out as a form of informal divorce. It continued well into the nineteenth century. Wife sale was the basis of the plot in Thomas Hardy's novel, *The Mayor of Casterbridge*. Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

R. v. Wilson

Court of Criminal Judicature

Bent J.A., **28 March, 1814**

[277] **CALEB WILSON**, of Parramatta Labourer charged with assaulting one **JAMES CUNNINGHAM** at Parramatta on the 14th of December 1813, with a felonious intent there and then and there to commit an unnatural crime on the person of the said James Cunningham.

To this Information the Prisoner pleads

Not Guilty.

(Information No. 16)

James Cunningham sworn and examined for the Prosecution says: I am a free man I live at Windsor and was a settler there. I was at Parramatta on the 14th of December. I have known the prisoner two or three years. I slept at the house of **EDMUND WRIGHT** at Parramatta on the night of the 14th December. He keeps a house of entertainment for travellers. Caleb Wilson the Prisoner was there that night. The prisoner and I slept in the same bed with Wilson in a back skilling I believe at the [278] back of the Kitchen. I slept till the morning. When I awoke I found that prisoner close by me, his face towards my back and he was pushing right at me. His private parts were in his hands pointing against my back close to my sump, making a motion. I jumped out of bed immediately and I struck at him. I struck at him three or four times with my fist and hit him, till I knocked my hand against the wall. I then ran into Edmund Wrights bedroom and begged of him to let me have a stick or a whip. He said he had not any and asked me what was the matter? I told him the whole business. I did not get a stick. I did not beat him with a stick at all. I then went out of doors and saw a man named **PHILIP REILLY** a Constable. I told him what was the matter. I took Reilly immediately to the prisoner in the house and he asked him why he acted in such a manner and he the Prisoner said he thought he was in bed with a woman. Reilly apprehended him immediately. He was taken before Mr Marsden that very morning and in consequence of my information he was committed to Gaol. I am sure the prisoner was perfectly awake. He did not say a word when I was beating him. **JUDITH SIMPSON, EDMUND WRIGHT** and his wife were in the house at the time.

Cross examined says: I did not exhibit a similar charge against any persons for a like crime before Mr Bell at Hawkesbury four years ago. I do not go by the nickname of **Wingajemmy** to my knowledge. [279] By the court says: It was daylight at the time. I did not take notice of the prisoner's eyes. I bounced out of bed immediately and struck at him. I never slept before with the prisoner nor in the same house with him. Nor ever in that house. Nor should. I have slept there that night if Mr Lucas had been at home to have given me what I went to Mrs McArthur's for. I did not take notice of there being more than one bed in the room. I never recollect ever having any quarrel with the Prisoner.

EDMUND WRIGHT, sworn and examined for the Prosecution says: I live at Parramatta. James Cunningham slept in my house one night in December last. I cannot positively tell the day of the month. Caleb Wilson slept in the house that night. They slept in the same room. In the same bed. There was only one bed. My wife said I suppose you Hawkesbury people have no objection to sleep together. They had no objection. Early in the morning, Cunningham came to the door of my bedroom and says Wright give me a Stick, I thought he wanted to take his horse out of the yard. I said I have not got one. I said what do you want with a Stick. He replied this damned Taylor wanted to bugger him. He then left me and went into the room and I heard him

swearing and kicking up a row with this Wilson. I then left him. I did not think anything of it. I thought it was only joke. When I came in I saw the Constable Reilly in charge of the prisoner.

[280] By the Prisoner says: The Prosecutors has always gone ever since. I have known him by the name of **Whannryjemmy. It means lying James.** It is a native name. When a Black man thinks you are telling him a lie he says "Whanya".

By the Court, says: Cunningham appeared to be in a great passion. I supposed it to be a joke because I could not have thought of such a thing. The Prisoner and prosecutor had not any dispute in my house. I cannot say Cunningham was perfectly sober when he went to bed. He went to bed between nine and ten. As near as I can guess it was between the hours of five and six in the morning when this took place.

PHILLIP REILLEY sworn and examined for the Prosecution says: I am a Parramatta Constable. I apprehended the Prisoner at the Bar on the 13th of December last, by Cunningham's desire. I told the prisoner that it was a truly atrocious crime if what Cunningham stated to me was true. He told me he thought he was in bed with a woman. That the woman lived at the Hawkesbury and had made proposals to come and live with him and that he dreamed he was in bed with her, he said there was a woman from the Hawkesbury had made a proposal to leave her husband and live with him, and this he deemed it was her. The prisoner was taken before Mr Marsden that morning and committed for trial.

The Case closed on behalf of the Prosecution.

[281] The Prisoner presents a written memorial to the Court which is read in his behalf.

JAMES MILEHAM Esquire sworn and examined for the Prisoner says: I have a faint recollection of the prosecutors having exhibited a similar charge at the Hawkesbury against some persons before me [and] Mr Bell. It is so many years ago I cannot speak positively. I cannot speak positively as to the charge being dismissed. I have known the prisoner some years. I never heard anything against him: he was a married man and has a family. I know James Cunningham the Prosecutor. I would not believe him on his oath. I would not place any confidence in his oath. I think he may be biased to say anything.

By the Court. This opinion is founded on a general knowledge of his character. I have heard that the prisoner was after one Judith Simpson. I do not know if the prisoner had cohabited with any woman since the death of his wife. I am one of the resident magistrates at Windsor. I do not know of any quarrel between the prisoner and prosecutor. Judith Simpson cohabited with one James Smith.

Mr **JOHN HOWE** sworn and examined for the Prisoner says: I am chief constable at Windsor. I have known the prisoner six years. He lives at Windsor and has done for four or five years and before he lived there he lived at a farm about 3 miles from Windsor. My firm opinion of the Prisoner from a knowledge [282] of his character is that he would not be guilty of the charge in question. I always conceived him to be a modest and decorous man in his conduct. He was a married man, he has two children. One about eleven or twelve, the other two or three years younger. I understood his wife died on the passage here. I know of his having made proposals of marriage to two different women since married. I cannot positively say whether he has cohabited with any woman since the death of his wife. I know that Prosecutor will. I really should doubt his oath. His character for a liar is proverbial at the Hawkesbury.

ANDREW JOHNSON sworn and examined for the Prosecution says: I have known the prisoner about ten years. I have seen a good deal of him. He has not lived nearer to me than Windsor used to Parkland head. I have frequently seen him. I have

slept at his house and he at mine. I do consider him a modest decorous man in his conduct. His behaviour is quite the reverse to anything of this kind. I believe he has made proposals of marriage to several persons. He has two children a boy and a girl. The girl is twelve or thirteen years of age. The boy is younger. The prosecutor is a notorious liar. He is known by the name of **Whinnya Cunningham**. The children call him by no other name.

The Court having maturely considered and fully understood that the premises doth adjudge that the said Caleb Wilson is Not Guilty of the Misdemeanour wherewith he stands charged. Ellis Bent J.A.

Source: Court of Criminal Jurisdiction, Minutes of Proceedings, State Records N.S.W., 5/1121

SYDNEY GAZETTE, 28/09/1816

R. v. Mow-watty and Bioorah

Court of Criminal Jurisdiction

Garling A.J.A., 27 September 1816

DANIEL MOW-WATTY and BIOORAH, two native men, were brought to the bar, and stood charged, the first with having committed a rape on the person of a girl 15 years of age, the daughter of a settler in the vicinity of Parramatta; and the latter with being present and accessory to the offence. Before the arraignment of the prisoners took place, however, the Judge Advocate observed with respect to Bioorah, who understands English tolerably well, that as there did not appear in the depositions upon which he had been committed to trial sufficient cause, under the peculiar circumstances in which he stood, before proceeding to try him, he should direct his being discharged accordingly.

The prisoner Daniel was then arraigned, and a competent person appointed by the Court to assist him in his defence. A number of natives who were in attendance were directed to be admitted near the prisoner, and among these were Bidgy Bidgy and several others who speak and understand English, and can converse upon all ordinary topics.

The trial commenced with the testimony of the prosecutrix, who narrated in the story of her misfortune with much evident distress of mind. She had left Parramatta on the 6th of August last, at about 12 at noon, on her return home, which was at a distance of five or six miles. She passed the gate of Mr McArthur's stock farm in company with two women whom she knew that they shortly after separated from her, and took another road, which led to their own farms. She walked on by herself, and when she had advanced about a quarter of a mile farther, a black man, whom she positively affirmed to be the prisoner at the bar, came out of the bush and asked her where she was going? She answered that she was going home; and to this the prisoner returned - "No, you are not." He then seized her rudely by the neck, and dragged her into the wood, where he beat her head against a tree, and beat and bruised her all over. He then accomplished the crime for which he was indicted; and she, recollecting that she had some bills and copper coin with her, which she had received in Parramatta for her father, told the prisoner she had some money, which she would give to him to let her go. To this he consented, then she gave him two bills, one of 10s. the other for 2s. 6d. He then demanded the copper coin, and on receipt of it permitted her to go from him; she made as much haste as possible to regain the public road, but was pursued and antagonised by the prisoner, who renewed his cruel treatment, and beat her violently against the stump of a tree. The native Bioorah (who had been discharged from the bar of the Court), was a near spectator of the whole transaction and several

times cried out "kill her; kill her;" but did not otherwise interfere. While the prisoner was again beating her she supposed he must have perceived Mr McArthur's stockman, as he suddenly left her and ran off, and she immediately after saw the stockman at about 30 yards distance; she ran towards him, but fell through weakness and affright, after proceeding a few paces; the stockman had raised her up, and she enquired of him where she was; he conducted her to a hut at a short distance, where she drank a little water, and remained until she was sufficiently recovered to pursue her journey, under the protection of a man whom he sent home with her. She had used every effort to resist the ill treatment she received, and cried for help as well as she was able, but all was unavailing; the prisoner, was naked, as the bush natives generally are; she had observed several marks in his forearm, and was convinced the prisoner at the bar was the same man. She had never before seen him, but had described him before he was apprehended, and recognized him as soon as she afterwards saw him. On her arrival at her father's house, she told her parents she had met with a severe misfortune, and withdrew with her mother to whom she communicated the whole of her calamity, and the day following she went into Parramatta, accompanied by her mother, and gave information to a magistrate of the transaction. The prisoner was not then in custody, but was apprehended the day following, and she immediately knew him to be the person, but he denied the accusation. When he attacked her he looked around as the fearful of being surprised and appeared much frightened and agitated while he was treating her in the manner described.

JOHN SHEE, stockman to Mr McArthur, gave evidence in corroboration of that of the prosecutrix; stating also that when he went to her as she fell in running towards him, he found her speechless on the ground. He had previously heard a noise like the cries of distress, but they were inarticulate, and did not at first seem to proceed from a human voice. When she was a little recovered she asked where she was, and was by him taken to a hut near the place from whence he sent a man to conduct her home to her parents. She appeared to have been nearly choked: the neck was very black, and she had every appearance of being very ill used. Witness had known the prisoner at the bar about 12 months; at the beginning of August he worked as a labourer for a Mr. Bellamy, a settler at Pennant Hills; he considered the prisoner to be in the common habits of life of labouring persons; he worked as other labourers, and lived in the same way: he also knew that the prisoner was at work at Bellamy's farm, which is a few miles distant from Parramatta, on the 5th of August, and that he was not there upon the 6th.

The mother of the prosecutrix gave evidence of her daughter returning from Parramatta on the afternoon of the 6th of August, and corroborated her testimony as far as regards to what passed subsequent to that period.

JAMES OLDGATE, Constable of Parramatta, accompanied the prisoner at the bar, a few days after he was apprehended for this offence, to the farm of Mr Bellamy, for the purpose of recovering some money which he, the prisoner, had acknowledged taking from the prosecutrix, in which he said he had concealed at Bellamy's. On their arrival there the prisoner stopped at a spot of earth which he had noticed, and said, "it is all right; what I took from her is here;" on saying which removed a clod and took from beneath it a ten shilling note and a few copper pieces, all which were produced in Court. Witness had known the prisoner at the bar 12 or 13 years; he was brought up in the families of Europeans, and had informed him that he could not live in the bush now, from his being habituated to the white people's mode of living. He had been for a length of time in the service of Mr. Kerry, a botanist, he went to England in the Porpoise, and took the prisoner with him thither; from whence he returned to this

Colony in 1811; he had known the prisoner since his return, he worked with any other labourer, received wages, and lived as labourers generally do.

The Court wishing clearly to ascertain the prisoner's clear and conscious discrimination between good and evil, in the examination of the several witnesses were particularly attentive to this point. This witness being interrogated as to his opinion of his intellects, said that he had always considered him shrewd and sensible; as he had worked as other men, were the stockman to Bellamy when the crime before the Court was perpetrated, had been reared from his infancy among the European inhabitants of the Colony, and he could have no doubt was well aware of the difference between a good and an evil act.

G. BLAXLAND, Esquire deposed to his knowledge of the prisoner; whom he considered to be an intelligent man, and one of the best acquainted with the English language that he had ever met with; that he had a clear conception between a good and an evil acts he could not possibly doubt; neither could he doubt that from his constant habits he must be aware of any act that would give offence to our laws and usages; and upon those occasions where it had been found necessary to proscribe certain natives for their atrocities against the settlers, he had always shielded himself under the protection of the law by adhering to the habits in which he had been reared; he knew that crimes were punished by the law, and could not if he committed a crime be ignorant that he was doing wrong.

The Rev. Mr. **MARSDEN** spoke also to his knowledge of the prisoner, which had consisted for nearly 20 years. He was reared in Parramatta from his infancy, first in the family of **RICHARD PARTRIDGE**, and afterwards with Mr. **CALEY**, botanist, who took him to England with him; where he resided about a twelvemonth, and then returned to this Colony. He had met him since his return naked in the woods, and a considerable distance from the settlement; knows that he was in the service of Mr Bellamy; had no doubt of his acquaintance; from long experience, with our manners and customs, and had a discrimination between right and wrong; he had admitted the act for which he was then on trial to the wrong, and appeared to possess as strong an intellect as persons in general possess who have not the advantage of education.

ROBERT LOWE, Esquire also deposed to his knowledge of the prisoner, who came in the same ship with him from England in 1811. He considered him a sensible man; very intelligent, and is much pleased with the manners and customs of Europeans, that he had frequently during the passage avowed a determination to conform to them entirely after his arrival.

The examination here concluded; and the prisoner rested his defence on a palpable denial of any knowledge of the transaction. From the clear proof that had been established to the contrary, however, the Court was of a different opinion, and returned a verdict Guilty.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

NON-HOM ASSAULTS, 1820-29

SYDNEY GAZETTE, 24/06/1820

Court of Criminal Jurisdiction

Wylde J.A., 22 June 1820

THOMAS STRACHBURY, WILLIAM FORD, and JOHN JONES were indicted for a highway robbery, by taking from a cart, the property of **ABIGAIL McLUCAS**, a considerable quantity of goods, her property; and further, on the second count, the said Strachbury was charged with violating the person of Abigail McLucas, by committing a rape on her; and further, on a third count, the said Ford was in like manner charged with committing a rape on the said Abigail McLucas, immediately after the perpetration of the said robbery, on the Liverpool road, about the hour of 8 on the evening of the 16th March last. The circumstances that were disclosed on this violent outrage, were such as to be offensive to common decency, and therefore we pass them over with the remark of there being of a most dreadful and atrocious and nature. The prisoners attempted to set at an alibi, by proving that they were all in their huts at the hour of 8 that evening; but the evidence of the prosecutrix was so strong and conclusive, and collaterally supported by the testimony of her son, a youth of 15 years old, that it was held by the Court as too powerful to be shaken by an alibi of so uncertain a nature as to the exact time; and the prisoners were all found Guilty. Remanded for sentence.

SYDNEY GAZETTE, 01/07/1824

Supreme Court of New South Wales

Forbes C.J., 29 June 1824

JOHN CABLE was next indicted for a rape, on the person of **MARTHA HARRIS**, a married woman living in the town of Windsor, on the 1st of May. The prosecutrix, by her testimony, had been most brutally treated by the prisoner; but as the evidence, in the earliest stage of the trial, proved incomplete as to the establishment of the capital felony, with which the information charged the prisoner, he was Acquitted.

The same prisoner was then arraigned for the misdemeanor; which went to charge him with the perpetration of a gross and violent assault upon the person of Martha Harris, with an intention to commit a rape. The prisoner was found Guilty. Remanded. [*] On 3 July 1824, Cable was directed to pay a fine of £20, to be imprisoned 14 days, and then to enter into sureties to keep the peace for 12 months: Sydney Gazette, 8 July 1824.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY GAZETTE, 21/11/1825

Supreme Court of New South Wales

Stephen J., 16 November 1825

WILLIAM CRESWELL was indicted for an assault, with intent to commit a rape, on the person of **MARY ANN JOHNSON**, a child of 8 years old.

This, as His Honor Judge Stephen observed, was one of those atrocious crimes, which, to the honour of human nature, seldom came before a Court of Justice. From the evidence of the child herself, who detailed the circumstances of the revolting

transaction, corroborated by the evidence of a boy 10 years of age, who was the companion of the little girl when they were induced to accompany the prisoner in a walk down to Woolloomooloo, and who was present when the assault was made, together with the testimony of Dr. **BLAND**, and the mother of the child, by whom she was examined, no doubt whatever was entertained by the Court of the monster's guilt; and the Jury, without a moment's hesitation, returned a verdict of Guilty. Remanded. Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY GAZETTE, 28/11/1825

Stephen J., 10 November 1825

The following prisoners received sentence: ... **JOHN CRESWELL**, for an assault, with intent to commit a rape on the person of **MARY ANN JOHNSON**, a child of 8 years old, to be imprisoned for 1 year, and to stand in the pillory twice, with a label stating the nature of his offence; the first time on Thursday the 1st day of December, and the second time, on the Thursday preceding the expiration of the term of his imprisonment.

[The Gazette went on to state that at the same session, a judgment of death was recorded against John Warwick for sheep stealing, while John Flinn was sentenced to death for highway robbery. Judgment of death recorded meant that the sentence would not be carried out, while a sentence (or judgment) of death often was.

In R. v. Leary, 25 November 1825 (Sydney Gazette, 28 November 1825), **LEARY** was sentenced to death on two counts: breaking and entering with intent to steal, and with intent to commit rape. He committed the rape in the presence of the woman's husband but took no property; he was sentenced to death without recommendation for mercy. He was hanged on 12 December 1825: Sydney Gazette, 15 December 1825. On 24 December 1825, **THOMAS JAMES** was also sentenced to death for rape, with a suggestion that clemency might be granted: Sydney Gazette, 29 December 1825.

See also R. v. **THOMAS FLANAGAN**, 23 November 1825 (Sydney Gazette, 28 November 1825): he received 12 months imprisonment on being found guilty of assault with intent to commit rape: Sydney Gazette, 8 December 1825; Australian, 8 December 1825.]

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 19/08/1826

R. v. Jones (No. 2)

Supreme Court of New South Wales

Forbes C.J., [1] 16 August 1826

BENJAMIN JONES was indicted for having committed violence to the person of **ELIZABETH CUTTER**, a child of 9 years of age, on the 26th of May last. From the evidence [2] adduced in support of the prosecution being insufficient to sustain the capital charge, the case was abandoned by the Attorney General, and the Court acquitted the prisoner.

On another motion being made he was detained to answer for the same offence under the title of a misdemeanour. [3]

[1] Stephen J. resigned as temporary Justice of the Supreme Court on 27 May 1826, and was not sworn in as puisne Justice until early November 1826. See C.H. Currey, *Sir Francis Forbes: the First Chief Justice of the Supreme Court of New South Wales*, Angus and Robertson, Sydney, 1968, pp 97-98; *Australian*, 3 June 1826. In the meantime, Forbes C.J. sat alone.

[2] Evidence was given by the child, and by a "Medical Gentleman": *Sydney Gazette*, 19 August 1826.

[3] The *Sydney Gazette*, 19 August 1826, said that he was to take trial at the Quarter Sessions at Windsor for the assault. This was a common outcome in cases of this kind. The same happened on 8 February 1826, when **William Cunningham** was found not guilty of rape on the person of **Harriet Smith**, a six year old girl, but was then sent before the magistrates on a charge of assault: *Sydney Gazette*, 11 February 1826. On 11 September 1826, **Richard Day** was charged before the magistrates with an assault on seven year old **Sarah Biggs**, "under circumstances which manifested a design on the part of the prisoner to commit a most serious outrage on the child, if she had not got away from him." He was ordered to keep the peace for 12 months, in a competent recognizance: *Sydney Gazette*, 16 September 1826.

Again, in *R. v. Brown*, *Australian*, 3 June 1831, a capital prosecution for a sexual assault on a six year old child led to acquittal. Justice Dowling said that the applicable Act, 9 Geo. 4 c. 31, required less proof than had been necessary in the past, but it was essential to prove some personal injury. The child had appeared in court "but was so intimidated by the array of the Court, and of such tender years, that nothing definitive could be collected from what she could be got to say."

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 25/11/1826

Supreme Court of New South Wales

Stephen J., 22 November 1826

CATHERINE CONNOR was indicted for wilful and corrupt perjury. The assignments in the information, were two in number; the first setting forth, that the prisoner on being examined before the Police Bench at Windsor, did depose, on oath, that she never allowed one **Wm. CONNOLLY** to take unbecoming liberties with her, and that on a certain day he violated her person, &c.

Wm. Connolly stated, that in the month of September last, he was assigned to **JOHN CONNOR**, a settler living near Windsor - he was in the habit of meeting his mistress, by appointment, at various places - she sometimes sent for him. Connor's situation not suiting him to his wishes, he begged his master to assign him to some other person. - Mr. Redman, a farmer in the neighbourhood, was proposed, and witness accepted the offer. He had not remained many weeks in his new master's employment, when his late mistress (Connor) urged him to return to his former situation, and promised to get him an acre of ground for his own cultivation. He consented, and prevailed on Mr. Redman to return him to Connor. Whilst in Redman's employment his mistress used to send for him - he occasionally met her. Upon his return, Connor's wife and him "played the old game, as usual", they occasionally went out together to drink; they most drank rum. Witness obtained a pass from his master, to go to Parramatta to see a former acquaintance - this was on a Saturday. Early on the same morning, as he was preparing himself to start, his mistress (Connor) came to him, before master was up, and said she would clean herself, and then go along with him - it was proposed by his mistress (the prisoner),

that she should meet him about 4 miles on the road leading from Windsor; they met there, between seven and eight o'clock in the morning, and went on together towards "the Hills" - on their way they stopped at the house of one Parker, a sawyer; but did not stay many minutes - afterwards went to Doyle's public-house, in Windsor, and drank 3 gills of rum between them. Witness requested Doyle not to mention to any person that they had been there. It was thought by them, that Connor would be in Windsor that day; and prisoner begged of Doyle to tell Connor, if he should come, that he (witness) must be then at Parramatta, as he had left there a long time before. Prisoner and witness left Doyle's house early in the afternoon, and returned home together. On their way thither, about four miles from the farm, they went off the high road, into a thick scrub - they were here a few minutes, when Connor, the prisoner's husband, came and surprised them in an unequivocal situation. He shook his head at witness and the prisoner, and then walked away - there had been no cries of murder, nor any other noise of alarm made by the prisoner - they went home together the spot where they had been surprised at, was about 16 rod from the roadside. Connor was not seen by either witness or the woman, until he came within a few yards of them - prisoner and witness walked away home - next morning prisoner appointed "Taylor's" as a place of meeting the following Sunday - on that day they met there, and were on the usual terms of familiarity together, witness remained at Taylor's that night - he saw prisoner all night. Neither at this time nor upon any previous occasion had the prisoner charged him with committing acts of violence on her person. Witness was charged before the Magistrates at Windsor, with violating the person of the prisoner, in the beginning of September - the charge was not preferred against him for a month after that period, although he was in the daily employment of Connor, and lived on his premises in the interim. Witness knows that Connor and his wife had words, on several occasions, relative to his having surprised them in the manner related. Several witnesses were called to substantiate particulars connected with the foregoing statement.

The prisoner was found Guilty.

The trial was also reported by the Sydney Gazette, 25 November 1826.

[*] On 28 December 1826, she was sentenced to transportation for three years: Sydney Gazette, 30 December 1826.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 15/02/1828

Supreme Court of New South Wales

Forbes C.J., 9 February 1828

RICHARD MORGAN and --- FOX were indicted for a capital assault on the person of **MARGARET MURRAY**. A second count charged the prisoner Fox with assisting the other to commit the offence.

Margaret Murray deposed, that on the morning of the eleventh of last month she was assigned from the factory to the service of Mr. **WILLIAM LOVE**, at Concord, and was provided with a seat on one of the Parramatta coaches, for the purpose of being delivered over to her new master, or such other person as he should depute to receive her at the Half-way House, on the Parramatta-road, at which house she met the prisoner Fox, who called himself her fellow servant, invited her to drink with him, which she did, and with the other prisoner, Morgan, who happened to be in the house. Dusk at length approaching, she begged of Fox (her new fellow servant) to go home. Fox and Morgan said they would both go with her to Concord, which, by a cut

through the bush, was no great distance off. Witness, after a little time, remarked to Fox that she thought he was misleading her. Fox made answer "no, I am not, come along," and told her if she felt tired to sit down a little. Witness did so; at that instant Morgan came up to her and said, "I must have cobbler's knowledge of you before you go any farther." Morgan then threw her down on the grass. Prisoner Fox stood by. She, however, succeeded in getting away from Morgan, and ran to Fox, thinking that as they were to become fellow servants, he would assist her. Morgan, however, repeated his attack, and throwing the deponent to the ground, attained the completion of his desires, while Fox forcibly kept her down. From the violent struggles she made to get away, and from the perturbation of mind she was in from an apprehension that the violence would not end there, prosecutrix became quite exhausted and faint, but had, notwithstanding, a distinct knowledge of every circumstance that occurred. Fox in turn adopted the same practices as Morgan had pursued. After this the prisoners took away her bundle of clothes, and some trifle in money. Had never heard anything of them since the prisoners left her in the bush, and she consequently remained under the shelter of a tree the whole of that night, during which it rained very hard. Next morning she came up to a house, which happened to be her master's.

The witness, when cross-examined, said that Morgan, as she thought, did not complete the full end of his wishes with her, though Fox, from being the more powerful man of the two, certainly had.

Fox's defence rested on the plea, that the woman had got drunk with him, and when in that state had consented to his acts.

The learned Judge left it with the Jury to decide, whether, from the woman's testimony they could gather, that the will of the prisoner Morgan had been completed. Of the guilt of the other prisoner, if the Jury believed the testimony of the prosecutrix, there could be little doubt.

The jury found Fox guilty, and Morgan not guilty.

The latter prisoner was ordered to be detained in custody, to answer to an information for a common assault; and the other prisoner Fox, was remanded for judgement. Morgan, however, before the Court broke up, was, upon the application of his Counsel, admitted to bail.

Fox was sentenced to death: Australian, 5 March 1828; Sydney Gazette, 5 March 1828.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

MONITOR, 16/08/1827

Supreme Court of New South Wales

Forbes C.J., 14 August 1827

JEREMIAH alias TIMOTHY FLANAGHAN, of Richmond, free labourer, stood charged with committing a rape on **MARY ANN SILK**, on the 2nd of July last.

The Attorney General (Mr. Baxter) having presented the information, called Mary Ann Silk, who stated, that she is a married woman, and on the day laid in the indictment, lived with her husband on a small farm at Richmond, as did also the prisoner. On the 2nd of July he (the prisoner) left the house in company with her husband, whom she did not expect to return. In the course of the evening the former returned, making some trifling excuse for doing so. At her usual hour she retired to rest in her own apartment, fastening her chamber door with a leathern strap and button. The prisoner slept in an adjoining room; about 11 or 12 o'clock he forced open her door, and coming to her bed side, he threatened if she resisted to take her

life. She did so for half-an-hour, when he took from the foot of the bed a cloak, and muffled her head in it. She did not communicate what had passed on the following day to any of her female friends. Her husband returned at night; she told him he was angry with the prisoner, but went quietly to work in a field with him. Accounts for his inactivity in seeking satisfaction, being a smaller man, and consequently deterred by fear. On the third day after, however, she went to Mr. Bell, the Police Magistrate, and communicated the circumstance, whereupon a warrant was issued and the prisoner apprehended. She exhibited to Mr. Bell a mark of violence. The prisoner cross-examined this witness with shrewdness and ingenuity. It did not appear, however, that even though she had called for assistance, she would have been heard. The woman (who appeared to be about 25 years of age) gave her evidence with consistency and promptitude, but with a total absence of delicacy. **JOHN JAMES**, a constable, was called by the prisoner, and deposed, that on apprehending him, he immediately informed him of some stolen property being concealed in the prosecutrix's house, and found it; it had been stolen six months previously. The prosecutrix he had known for a number of years, she was a very bad character - bush-rangers had been harboured in her house - her husband is now suffering imprisonment for having stolen property found on him; he would not believe her on her oath. The prisoner put in a written defence, wherein he stated, that he had been on terms of criminal intimacy with the prosecutrix for a long time past; that on obtaining his freedom he entered into partnership with her husband in a small way of farming, and the latter being very poor, he stocked the ground with seed, and improved it with his labour; that now the fruits of his labour were forthcoming, this plot had been made to deprive him of them, that Silk and his wife might obtain them wholly.

The Chief Justice recapitulated the evidence, and minutely pointed out the peculiarities of the law in such cases as the present, observing, that if the testimony of the prosecutrix was considered worthy of credit, the case had been proved in all its points - her credibility, therefore, it was the province of the Jury to decide on. After retiring a few minutes a verdict of Not Guilty was returned.

See also Sydney Gazette, 15 August 1827; Australian, 17 August 1827.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 09/05/1828

Supreme Court of New South Wales

Trial, 7 May 1828

THOMAS KENNEDY, an aged man, was indicted for an assault upon a female child, not more than six years of age, a child named **ELLEN McPEAK**, the daughter of a settler living at Parramatta, with the intent to commit a rape.[1] The prisoner, on being asked in the usual way to hold up his hand in pleading to the indictment, began to mutter some words unintelligible to the Court, in his native tongue in Irish; but making no answer more intelligible to the repeated questions put to him by the Clerk, an intimation was given to the Court by the Crown Officer that the prisoner acted thus through wilfulness, and that by calling a witness he would be enabled to prove his assertion. The Court in consequence directed such a witness to be called as would establish the fact.

JOHN McPEAK, father to the child in question, was then put into the witness box and sworn. In reply to some questions put both by the Crown Officer and the Court, he said that he had frequently conversed with the prisoner, who on all such occasions spoke the English language in a way sufficiently intelligible to most persons and the

witness also felt confident that the prisoner perfectly well understands the meaning of any plain question put to him.

The Court upon this ordered a plea of not guilty to be recorded, and for the trial to be proceeded with.

We will not so far outrage decency as to enter into details of the conduct sworn to have been exercised by this hoary Satyr. He was finally found guilty, and remanded for sentence.

See also Sydney Gazette, 9 May 1828. [Rape was a capital offence and difficult to prove. Defendants were often convicted of assault instead. In *R. v. Cutter*, 3 March 1828, Dowling, Select Cases, Vol. 1, Archives Office of N.S.W., 2/3461, p. 7, George Cutter was charged with assault with intent to commit a rape on a 13 year old girl, but was only convicted of common assault. In his affidavit in support of mitigation of sentence, he denied his guilt, but the Court held that he could not do so after the verdict. He was released on bail between the verdict and the sentencing: see Sydney Gazette, 27 February 1828. (See, similarly, *R. v. Curtain*, Sydney Herald, 5 March 1832.)

On 3 May 1828, James Deegan was convicted of assault with intent to commit rape on a girl under four years of age. He was sentenced to work in irons on the public roads for two years: see Sydney Gazette, 7 May 1828. See also Australian, 16 May 1828 (Henry Breeden sentenced to two years in iron-gang for assault with intent to commit rape on six year old girl).

Some were executed for rape of children however, such as Thomas Ashton: Sydney Gazette, 17 November, 8 December 1829. See also *R. v. Smith*, Sydney Gazette, 12 January 1830, where the defendant was sentenced to death for the rape of his seven year old daughter.]

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 09/12/1828

Supreme Court of New South Wales

Stephen J., 5 December 1828

Mr. Justice Stephen having taken his seat, **JAMES STEPHENSON, HENRY AIRS, THOMAS TURNER, and -----** were arraigned, being severally indicted for an unnatural crime.[1] One of the prisoners, it appeared in evidence, was chief mate, and the others were seamen belonging to a whaling vessel, which recently put in here. We shall not enter into the disgusting details of this case. Suspecting, from the apparent close intimacy of the parties, and their secluded habits, that all was not correct, the Captain and others took an opportunity of observing their conduct, with more than common circumspection, which finally induced the Captain to bring his vessel into port, and the merits of the case under legal investigation.

The prisoners being indicted capitally, and there being no direct proof of the suspected object of their assembling having been effected the Court directed a verdict of acquittal. The prisoners were, however, detained to answer to a fresh information.

[*] When **GEORGE BROWNE** and **WILLIAM LYSTER**, marines on the ship *Royal Sovereign*, were convicted of this crime, Forbes C.J. said: "George Browne, and Wm. Lyster, you have been severally convicted of an unnatural crime, called sodomy, --- a crime which our laws hold in particular abhorrence. I shall not go into any observations on the offence of which you have been convicted, further than to state, that, after the most anxious consideration which I was enabled to give your case, and after putting it to the Jury as one deserving of their most attentive regard, with respect

to all the circumstances connected with it, they came to the conclusion that you were guilty. The law has made your offence capital. It is one at which nature shudders; and it therefore only remains for me to pass upon you that sentence which is affixed to the crime of which you were convicted." He then sentenced them to death. Source: Sydney Gazette, 15 December 1828. Despite this statement, he did have a discretion to impose a lesser sentence: under (1823) 4 Geo. IV c. 48, s. 1, except in cases of murder, the judge had considerable discretion where an offender was convicted of a felony punishable by death. If the judge thought that the circumstances made the offender fit for the exercise of Royal mercy, then instead of sentencing the offender to death, he could order that judgment of death be recorded. The effect was the same as if judgment of death had been ordered, and the offender reprieved (s. 2). Browne, who had been chief officer of the Royal Sovereign, was hanged on 22 December 1828: Australian, 23 December 1828. Lyster, a boy, was reprieved: Sydney Gazette, 24 December 1828, and 13 January 1829. The Gazette said on 24 December that "the youth fell a victim to the artifices of Browne".

Sodomy (or buggery) was difficult to prove. See Sydney Gazette, 30 January 1830, on the unsuccessful prosecutions of Maher and Cheesman. The former was acquitted on the capital charge, and remanded to take his trial on a charge of misdemeanor. The latter resulted in a nolle prosequi, a decision not to prosecute. The witness to the offence was himself a participant and liable to be indicted. Mr Justice Stephen held that a witness could not be called on to incriminate himself, so the witness's testimony could not be admitted.

One of the few statements of the law on the issue was made in 1830 in R. v. Unwin: "The 9 G 4. C. 31. s. 18 does not make any alteration in the nature of the crime of Buggery. Therefore where a prisoner penetrated the body of a Bitch dog but was disturbed before he sated his lust Held that he could not be capitally convicted." (Source: Dowling, Select Cases, Vol. 2, Archives Office of N.S.W., 2/3462, p. 288. See also Sydney Gazette, 2 February, 6 May 1830.) See also Sydney Gazette, 7 May 1828 (William Simmons acquitted of an "unnatural crime"); Sydney Herald, 27 February 1832 (Michael Connolly sentenced to death recorded, that is transportation, upon conviction of an "unnatural crime" and Thomas Edwards to be worked in irons on the public roads for 12 months for attempting to commit the crime).

See also R. v. Thomas Evans, Sydney Gazette, 4 September 1830; Australian, 10 September 1830.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

NON-HOM ASSAULTS, 1830-39

AUSTRALIAN, 25/05/1830

Supreme Court of New South Wales

Dowling J., 24 May 1830

MONDAY.

Before Mr. Justice Dowling.

JOHN MARTIN was indicted for a capital assault, on the person of **ELIZA DEERING**, a child not 8 years of age; and on the clearest evidence found guilty, immediately upon which, he was sentenced to Death; at the conclusion of the Judge's address, Martin, who has been well known about town, under the designation of "Jack the Drummer," said with an affected air of simplicity, "so I am to be hanged; am I? Oh! Then I'll take care to visit Mrs. Ball the very night after, that I will." He took up his drum sticks, and walked composedly out of the dock. It was in the yard, at the back of Mrs. Ball's house, in George-street, that the wretch perpetrated this diabolical outrage.

[*] Justice Dowling recorded this case in his notebook (Dowling, Select Cases, Vol. 2, Archives Office of New South Wales, 2/3462, p. 307) with the following statement of the legal principle involved: "Where the hymen of a child under ten years was ruptured by the penis of a man, with proof of emissio seminis, though no proof of penetration beyond the hymen. Held that if the jury thought upon the evidence that there was the least degree of penetration, that would be sufficient to constitute the crime of rape." His record of the case said that the child was seven years old, and that he allowed her to give evidence because she "said she knew her prayers and that she believed naughty people who told lies would go to hell."

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 11/06/1830

Execution, 7 June 1830

EXECUTION. – **MARTIN**, nicknamed **Jack the Drummer**, whom we lately described as having been found guilty of a capital assault upon a child scarcely eight years of age, was hanged on Monday from off the drop in rear of the jail in George-street, with two others, Michael Toole, [*] for a burglary at Pitt Water, and Daniel Curwen, for shooting a constable through the back, on the Windsor-road. Martin said if he had committed the base act alleged against him, he must have been drunk, for he remembered nothing of it. The other two confessed their guilt.

See also Sydney Gazette, 12 June 1830.

[*] See R. v. Toole, 1830.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 07/11/1831

Supreme Court of New South Wales

Dowling J., 4 November 1831

Friday, November 4. - Before Judge Dowling, and the usual Commission.

TIMOTHY FOLEY was indicted for violating the person of Sarah Holding, at Maitland, on 15th August. On the prosecutrix being placed in the box, she refused to be sworn, and declared that she would have nothing more to do with it, having forgiven the prisoner for what he had done to her. A witness was then placed in the

box, who swore that prosecutrix was sworn at Maitland, her deposition taken and read over to her, on which prisoner was committed. The learned Judge then put it to her distinctly, to say whether she would be sworn, and state the circumstances of the case, or be committed to gaol; she preferred the latter, and was accordingly committed for the contempt. The prisoner was found not guilty, and discharged.

See also Sydney Gazette, 8 November 1831, and following:

Archives Office of N.S.W., 2/3466

Source: Dowling, Select Cases.

[p. 89] [Where a prisoner had been committed for trial on the oath of a female charging him with rape & when she came into Court refused to be sworn the Court committed her for a contempt.]

Friday 4th November 1831

Rex v Foley

Coram Dowling J

Indicted for ravishing on 15th August 1831 at Maitland Sarah Holdern.

Moore

SARAH HOLDERN refused to be sworn.

WILLIAM LEDGERWOOD - I am a waterman living on the Farm of Mr Francis Mitchell. I was examined on the 18 August before Captain Anley at Wallis Plains. I saw Sarah Holdern examined on oath the deposition was read over to her and signed it [p. 90] I believe the prisoner was under examination before. Her statement did not appear to come from her voluntarily. She appeared reluctant. She came down with another man off the Farm, and I overtook them. He was a new hand not a constable. She charged him with having his will of her with violence. She came in the vessel. She was in Mr Cobbs service. He was in Mr Francis Mitchells service. He was at the Bank of the River three days before the man was committed nearly two months.

Let her stand committed for her contempt in refusing to be sworn she having been warned twice or three times.

Not Guilty.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY GAZETTE, 02/06/1832

Supreme Court of New South Wales

Dowling J., 7 May 1832

JOHN SPILLANE, JOHN COSTELLO, and MICHAEL ORMSBY were indicted for violating the person of **CATHERINE HAYES**, at the Wheather-boarded Hut, on the 27th of January last. The indictment, in different counts, charged the prisoners, severally and respectively, as principals and accessories to the felony.

The Attorney General (with whom was Mr. Moore, the Crown Solicitor), without making any statement of the case to the Jury, called the following witnesses:-

Catherine Hayes - I am a married woman; my husband's name is **WILLIAM HAYES**; I live at the Curryjong, seven miles from Richmond; my husband is assigned servant to John Town, of Richmond, settler ad publican; I am a free woman; I came out bond; I have no children alive; I was travelling from Bathurst after Christmas last, on my way to Richmond; I stopped at the Weather-boarded Hut, and asked the mistress of the house, **MARY HEYLING**, for a bed, as the drays were gone before, and I could no came up to them; I had come with three drays, more or less, from O'Connell's Plains; I was coming with them and another woman; my husband was not with me; before I got to the Weather-boarded Hut, about six miles, I

met with a soldier; the Weather-boarded Hut is a place for travellers to stop at; the soldier I met went in with me, and bid me and the mistress of the house good night; the candles were lit after I went in; whilst I was there, a Mr. Brown came in; three soldiers also came in; one had a blue coat, a police coat, a great big coat, and the others were in red; three soldiers came in; I knew one of them; John Spillane, was one; I had my back to the fire-place when they came in; the soldiers called for some rum and some brandy; they asked me to drink, and I said I would take no more than what I had before; I had a glass of rum before then from Mrs. Heyling; they asked me to drink; I refused; the three men went out, and then came in again; I do not know how long they were out; when they came in, they began to measure one another with chalk against Mrs. Heyling's door, to see which was the tallest; this was in the kitchen, and I was present, standing with my back to the fire; one said to the other, "I'll bet you half a pint of rum that the mistress standing there (meaning me) is taller than me;" the three were just in a cluster at the door; they called to Mr. Heyling for a bit of chalk, and Mr. Heyling called me to him, and said, "Mistress, put your head under my arm - there is no harm;" I put my head against the door, turning my back, thinking there was no harm, and one of the men put his two hands under me, and said, "We have her now;" and I put my hand against the jamb of the door, and they took me a little distance from the door, out of the house; one had hold of me by the gown at the back of the neck, and the other with his hands under me, as I mentioned before; the man who knocked me down when we got out had a big coat on; the others had not; they told me to be quiet; they were all Irishmen; I called to Mr. and Mrs. Heyling, and said, "Will you not come and protect me? Heyling said, "I am very sorry I can't protect you; my own life is in danger;" one of the men who had a hold of me said to the other man, "Put him in, or I'll blow his brains out." They took me a little distance further; they said I was too near the house; they lifted me up and carried me further; I felt one of the men put his hand into my pocket; I said, "do you want to rob me? - there is not much in my pocket; one of them told the other to get my certificate (of freedom), and they would make me out a bushranger; I had previously left my certificate with Mrs. Heyling to take care of; they told me to be quiet; I said "no - if you are all Irishmen, did any of you come from a woman?" One of them said -----, and the other said ---- ; the middle man said that he ----- ; I should not have known him, but that I cut him in the nose at the time he said that; then they knocked me down, and what occurred afterwards I don't know; they hit me on the head and kicked me; I became insensible; I don't know what happened after; another soldier came while the others were with me, and said they had done a very wrong thing, and that he would protect me and take me into the place; he asked me if I would go with him, though a soldier? I said yes, if you protect me till morning; he took me into the place where the rest of the soldiers were; I remained till morning in a bed; the man who took me in stopped up all night; nothing took place before I became insensible - till they knocked me down; they knocked me down with a round stick; my bonnet was tore, my cap full of blood, and I lost seven shillings and sixpence; as long as I had my senses they did not injure me, and after that I don't know what happened.

Examined by the Jury. - I cannot tell how long I was insensible.

MARY HEYLING - I am a married woman; my husband's name is Heyling; I live at the Weather-boarded Hut, opposite the barracks, on the mountain road going to Bathurst; I know Mrs. Hayes coming to my place, and asking for accommodations on the 27th of January, in the evening; candles were just alight; she came to the house with a soldier; three more soldiers came in after; on John Costello, John Spillane, and Ormsby; I know the prisoners at the bar; one had a policeman's cloak, Costello; after

they came in they had something to drink; they were talking Irish the greatest part of the night; I did not understand what they said; one said they would have the woman that night; I understood them to mean Mrs. Hayes, who was then in the room; this was said in English; the woman made answer, and said "she would bet them a shilling they would not have her that night;" then they got talking about chalking to see which was highest; another man, named Brennan, was present, who first came in with the woman; one man got up to measure his height against the door, and the woman likewise, and then one of the men lifted the woman up in his arms and took her out of the house; John Costello was that man; the three prisoners at the bar, and the woman left the house together; a little way from the door the woman called out for assistance, "Murder," as loud as she could call; I, and my husband, and the waiter went out; when I went out I saw one of the soldiers having connexion with the woman; this was John Spillane; me and my husband called out shame; the man with that took the woman up in his arms and carried her further into the bush, and told us to go away - to go home to our own place; when we heard the woman call out, my husband and I went out; the woman cried out for mercy, and said "For God sake, come to my assistance;" my husband said, my good woman I dare not render you any assistance; two soldiers, Spillane and Costello, followed us home then and said they wanted the woman's certificate, to see if she was a bushranger; they thought she was a bushranger; the old waiter said to them it ought to be reported to Captain Wright, the Magistrate; they looked up and down for the man that said this, and said they would have his head that night or in the morning; the two men then went away to the woman; I did not see any thing else, only I heard the cries of the woman in the course of the night, calling out for somebody to assist her - "Murder," we heard, - "Be merciful to me, that they must have come of a woman themselves;" Serjeant **MILLWOOD** brought the woman to our house next morning about seven o'clock; she then had no bonnet, her cap was all torn; her ears had been bleeding; she asked me to take her into a room; I took her in; she showed me where she was bruised; she was bruised over her shoulder, and all over her back; I examined her; she appeared greatly injured, as if she had been ill-used; I did not observe any thing more than usual; I did not take any particular notice; I gave her some wine, and put her to bed; when I saw them take her away, it appeared to me, that they took her against her will; during the time the men kept company with her, they had four half-pints of rum and one half-pint of brandy, and she partook her share of this liquor; she did not appear to be tipsey; I don't know quantity of this she took; I was going backwards and forwards; I saw her drink two glasses myself, what more I can't say; she was in conversation a long time in Irish, and I did not understand what passed; a prudent woman would not, I think, have the moenouvres [sic] and manners she observed towards the soldiers; they seemed all very friendly together; she was laughing and talking with them all the time; I had never seen her before to my knowledge; she remained the whole of the following day, and went away on Sunday morning with Mr. Frazier's ration cart; she seemed better; she appeared to be very ill-used; I heard her screams and cries until between two and three in the morning, and it was approaching ten when she was taken out.

Cross-examined by Mr. Therry - This was on the 27th January I was examined first by Captain Wright and Mr. Savage, and then by Sir John Jamison and Mr. Druitt, on the Bench; the woman was examined before me; I was examined by Captain Wright at Penrith, and again when Sir John Jamison came up to our house, about six weeks ago; from 27th January, until about six weeks ago, this matter all rested; Sir John Jamison made a stir abut [sic] it then; she took the drink freely; I saw her take two glasses myself; I did not see any shyness; she did not refuse to drink; next day she did;

she was merry, skylarking, wheeling a large stick about that she brought with her; she was joking and gammoning the soldiers; I heard one man say, he would have her that night; she said she would bet a shilling that he would not have her that night; she had the shilling in her hand, and wanted to put it into my husband's hands as stakeholder; the shilling was not staked; from her manner and behaviour, one could not think any other than that she gave encouragement to the soldiers; when I saw her outside, she was at the stock-yard corner; it was a light night; I could see her distinctly: I don't think she was insensible; she did not appear so; I did not take particular notice of her person; next morning she made no farther reference to the shilling; she said if the men would give her a new bonnet she would make it up with them; she said she would not mind it, if they would only make her a recompense for her bonnet; and she said, that, out of a regard for me, she would drop the matter altogether; and the matter was dropped, till Sir John Jamison took it up about six weeks ago.

Examined by the Jury. - The other men were at the door when she was carried out; but one man took her out of the house - the man in the cloak; I only saw one man on the top of her; there was no other man; when I first saw her she was crying out, and must have been aware of what was going on.

Cross-examination continued. - Shortly after this Capt. Wright called, and I told him it was all settled; she said she would not have stirred a step in it but at Sir John Jamison's instigation; I felt ashamed of having such a woman in my house, but it being a travelling-house I was obliged to receive her; she paid for half-a-pint of rum; she said she would pay me another time; she did not say she had no money; I only saw the shilling in her hand, and the money she paid the rum with.

Examined by the Court. - One of the men in the room she said she knew; his brother was a fellow-servant, and lived with her; they both lived together at Mr. Marsden's; she says she is the mother of ten children; she came along the road; I did not take notice of any teams passing the house before she arrived; she said the teams she was going down with were on before; she said she had stopped on the road for refreshment, and so parted company with the drays; she was sober when they came; I listened to see if she did call out; I should not have thought any thing of it if she had one out with the men; after she was on the ground she called out.

In this stage of the case, the Attorney General (after conferring with Mr. Moore, the Crown Solicitor), addressed the Judge, and said he could not carry the case any farther; and as the prosecutrix did not, by her evidence, establish the fact required by law to be strictly proved, so as to constitute the crime of rape, he felt it unnecessary to take up the time of the Court by examining other witnesses. On the part of the Crown, therefore, he would not press the prosecution any farther.

This intimation having been conveyed to the Court in a tone of voice not very audible.

Mr. Justice Dowling said, "Be so good, Mr. Attorney General, as raise your voice, in order that the grounds on which you mean to abandon this prosecution may be audibly proclaimed to and distinctly understood by the world. Do I understand you to say, that there are no grounds for the prosecution?"

Mr. Attorney General. - No, your Honor, I do not say that there are no grounds for the prosecution; but as I have no means of proving, by other evidence, the fact essential to sustain the capital charge against the prisoners, I, in the exercise of my discretion, beg leave to retire from the prosecution. I find, upon enquiry, that the other witnesses I have do not supply evidence of the important fact which the prosecutrix herself has failed to prove. As the charge cannot, therefore, be sustained in strictness

of law, I do not feel the propriety of occupying the time of the Court by calling other witnesses whose testimony cannot carry the case farther.

Mr. Justice Dowling - Am I to understand from you distinctly, Mr. Attorney General, that you mean to call no more witnesses?

Mr Therry, the prisoners counsel, her interposed, and submitted that where the King's Attorney General publicly gave up a prosecution against a prisoner charged with felony, it was not usual for the presiding Judge to press the accused; he therefore hoped that His Honor, who was supposed by law to be of counsel for the prisoner, would not depart from the usual course, whence the counsel for the prosecution intimated that he could not sustain his case.

Mr. Justice Dowling. - I have a public duty to discharge, Mr. Therry, and I am bound to know distinctly from the Attorney General, the ground on which he abandons the prosecution, in order that that ground may go forth to the world. The public eye is upon this case.

The Attorney General. - I shall call not more witnesses; I cannot prove the fact of penetration.

Mr. Justice Dowling. - Gentlemen of the Jury - After the intimation from the King's Attorney General, that the case against the prisoners cannot be legally made out, I apprehend you are bound to return a verdict of not guilty. In order to sustain a charge of this nature, where the lives of the prisoners are at stake, it is necessary to prove carnal knowledge, against the will of the party, though distinct proof of seminis is not in all cases necessary. The Attorney General to whose hands this case is confided, as the public prosecutor, admits that there is no case for legal conviction. If the whole case had been submitted to you, there are some circumstances to which you attention must have been directed. One is the alleged staleness of the charge, which, in all cases of this kind is expected to be made promptly; and another, is the conduct of the prosecutrix (if believed) in laying a wager with the prisoners upon her own chastity, before the alleged violence was committed. What could any woman reasonably expect when such a Gauntlet is thrown down to three drunken soldiers? The terms on which (according to the evidence) she proposed afterwards to look over the matter, namely, for a new bonnet, would also be to be taken into consideration as a circumstance, shewing her own sense of the injury. Most undoubtedly, the poor woman has been grievously ill used, but the question for our present consideration is whether the prisoners are guilty of a rape, in the legal sense of the charge. It had been insinuated that this prosecution has been got up in some quarter or other, but with that we have nothing to do. We must deal with the case as it is now presented to us. The Attorney General publicly notifies that he cannot sustain the case, and therefore you have no other course left, but to find the prisoners not guilty.

Verdict - Not Guilty.

See also Sydney Herald, 14 May, 4 June 1832; Australian, 18 May 1832; Sydney Gazette, 10 May 1832.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY GAZETTE, 09/02/1833

Supreme Court of New South Wales

Dowling J., 7 February 1833

PHILLIP CUNNINGHAM stood indicted for committing a rape on the person of **ELIZA BESFORD**, at Lower Minto, on the 25th December last. The prosecutrix, on being called to give evidence, was found to be in such a state of intoxication as to

render her evidence inadmissible. The prisoner was accordingly acquitted of the capital charge, but remanded to take his trial for the assault.

Phillip Cunningham was again indicted for committing an aggravated assault on the person of Emily Besford, at Lower Minto, on the 25th December last.

WILLIAM CRISP, is constable at Lower Minto; remembered going along the Campbell-town Road on the day laid in the indictment, when within about quarter of a mile from the public house, bearing the sign of the Robin Hood, his attention was attracted by the cry of murder in the bush; the voice was that of a female; witness then proceeded to where the sound came from; it might be about one hundred yards from the turnpike gate; saw the prisoner in the act of rising from a female who was lying on the ground, she appeared to have been maltreated and scratched, as with thorns; she appeared to be very much intoxicated; witness asked prisoner how he could use a female in such a manner; he said, any female whom he caught on his master's premises he would serve the same way; prisoner he believes to be an assigned servant to **EDWARD MOORE**, settler; does not know of any intimacy between the prisoner and prosecutrix; a person named **RICHARD CARR** was in company with witness at the time; on reaching the place woman exclaimed. "Oh Crisp I'm very glad you are come, or he would have murdered me."

By the prisoner - Prosecutrix was much intoxicated, saw her in the company of her husband in the public house, some time previous; prisoner told witness he had been stooping down to ask her what ailed her, when she shrieked out; prisoner in looking for his master's cows, must cross the paddock where the prosecutrix was found.

RICHARD CARR is a constable at Campbelltown; was in company with the last witness, Crisp, on the day laid in the indictment; heard a cry of murder in the bush; found prisoner and prosecutrix in the state described by last witnesses; does not know her name positively, but believes she answers to the name of Emily Besford.

By the Prisoner - Prosecutrix told us to take the prisoner into custody; does not remember her asking who we were; saw prisoner buttoning up his small clothes; cannot say that he had ill-treated the prosecutrix in any manner; told us he had come after his master's cattle; the place might be 140 yards from the road; did not see any man running away; was a short distance behind Crisp; after taking prisoner, went to Robin Hood; believes the husband of prosecutrix was there, but did not see her.

The case for the prosecution closed here.

In behalf of the prisoners, several witnesses were called, the object of whose testimony was to show that the prosecutrix was a depraved, worthless person, and was in a state of intoxication on the night in question.

The learned Jury summed up, and left the case to Jury as one of evidence, solely for their consideration. If they believed the witnesses on the part of the crown, that the conduct of the prisoner had been such as had been described by them, and that he had assaulted the prosecutrix, intending to violate her person without her consent, then the defence set up by him could not avail him in law. The jury, after retiring for a few moments, returned a verdict of guilty. The learned Judge, after a most impressive admonition to the prisoner on the enormity and inhumanity of his offence, in taking advantage of the imbecile and helpless state of the prosecutrix, and his total disregard of that respect for the female sex which should be the characteristic of every man, sentenced the prisoner to two years' hard labour, in irons, on the public roads.

See also Sydney Herald, 11 February 1833.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 22/08/1833

Supreme Court of New South Wales

Dowling J., 17 August 1833

Saturday, Aug. 19. – **WILLIAM BLACK** was indicted for ravishing the person of **ISABELLA YEOMANS**, and **ROBERT WATSON** and **GEORGE MATTHEWS** were jointly indicted for aiding, abetting, and assisting in the said felony, at Newington, on the 7th of July. In the second count, Watson was charged as the principal, and Black and Matthews as accessaries; and in the third count, Matthews as accessaries.

The details must not sully our pages.

The prisoners were found guilty, and the learned Judge passed upon them the awful sentence of death, holding out no hopes of mercy.

During the examination of the witnesses for the prosecution, a tailor in the employ of Mr. Blaxland stated, that the prosecutrix had confided to him, that other three men had committed the same offence upon the same evening, being a continuation of the outrage of the men then being tried. The prosecutrix being called up to explain this, stated that such was the fact, but that she had not stated this to her husband, because she was afraid he would desert her and her family. The learned Judge immediately ordered the three men to be confined, and they were taken into custody accordingly.

[*]The Herald incorrectly gave the date as 19 August, which was a Monday not a Saturday. See also Sydney Gazette, 20 August 1833; and Dowling, Proceedings of the Supreme Court, Vol. 88, State Records of New South Wales, 2/3271, p. 24, giving the correct date.

Less than two weeks earlier, Clement Doughty was also sentenced to death for rape: Sydney Herald, 12 August 1833; Australian, 12 August 1833; Dowling, Proceedings of the Supreme Court, Vol. 87, State Records of New South Wales, 2/3270, p. 135. See also R. v. Smith, 1833. On 30 August 1833, the Australian noted that there were eight men in gaol under sentence of death for sexual crimes.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 02/09/1833

Burton J., 29 August 1833

Wednesday. - Before Judge Burton, and the usual Commission.

JOSEPH HAWLEY, JOHN BRICKFIELD, and RICHARD COGLAN, were severally indicted as principles, and then as accessaries, in aiding, abetting, and assisting in committing a rape upon the person of **ISABELLA YOEMAN [YEOMANS]**, at Newington, on the Parramatta road, on the 7th of July. The prisoners were all found Guilty, after a consultation of the Jury for about three minutes; and having been called up for judgment, the learned Judge observed, that they had been convicted on the most satisfactory evidence, and that every person who had heard the trial, must have been satisfied of their guilt; they were fast hastening from that to another tribunal, and he would advise them to make the best use of the few short hours that remained to them in this world to atone for their sins. His Honor then passed the awful sentence of death upon them, ordering them for execution at such time and place as His Excellency the Governor might think proper to appoint. The prisoners were removed from the dock protesting their innocence.

See also Sydney Gazette, 31 August 1833.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY GAZETTE, 07/01/1834
Supreme Court of New South Wales
Forbes C.J., 6 January 1833

PATRICK GALLAGHER was put to the bar, charged with a rape on the person of **ELLEN WALSH**, at Sydney, on the 1st December last, to which he pleaded not guilty.

The Jury being sworn, the Attorney General called Ellen Walsh; I am an assigned servant to Captain Perry, who lives at Darlinghurst; on the 1st December last, I came into town, to go to evening prayers; it was on a Sunday; I was accompanied by a fellow servant, a female, named Ann, I do not know her other name; after service we proceeded home by a path behind the Catholic Chapel; some men followed us, saying we were Captain Perry's servants; we asked them what they wanted to know; they passed on; when we arrived at the bottom of the hill, the men were again there; my fellow servant was three times knoced [sic] down; the prisoner followed me; it was about half-past seven o'clock; seeing the follow me I returned to where I had left my fellow servant; the prisoner caught hold of me, and after I had struggled with him some time he got me down; he then called out to some one saying, ``Jack, come and hold her b--y legs"; a man then came up, and assisted the prisoner in holding me down; I scratched his face, and screamed out; the prisoner got the upper hand of me; I fainted away; when I came to myself, the prisoner exclaimed, ``there, you b--y Irish b--h, there is a blaze in your forehead now": (the witness described how the prisoner completed the offence); when he went away, he asked if I knew him; I said I did not then, but perhaps I might know him next day; he said he had a good mind not to leave it in my power to know him; when I got up, I was scarcely able to stand, I called out to my fellow servant; she was looking for her shawl, which the men had taken away; I went home, and told my mistress what had happened; she told my master; in the course of the week, my master asked me if I could describe his height, colour of his hair, &c.; the first time I saw the prisoner afterwards, was at Mr. McLeay's, where I went with my master; I went to identify the prisoner; nobody pointed him out to me; I immediately identified him; the prisoner was at work picking up stones; I told him he was the man that had ill-used me; he said he, was not; I swear positively to the prisoner being the man who violated my person; I picked out another man at Mr. Hallen's, for the person whom the prisoner called Jack, and who assisted to keep me down; but I could not say positively he was the man.

By the Jury - It was light when we met the men; but not so when we got home; the prisoner was dressed in a white shirt and trowsers, grey waistcoat, and black hat; he had on no coat or jacket.

(At the suggestion of the Jury, who expressed themselves dissatisfied at the nature of the evidence respecting the completion of the offence, the witness again stated the circumstances attending its accomplishment.)

The prisoner declined cross-examining the evidence.

By the Jury - When I saw the prisoner at Mr. McLeay's, the scratches I had made on his face were observable; I knew them again, and showed them to my master.

THOMAS JONES being sworn, said, I am a constable in the Sydney Police; I live on the Surry Hills; I took the prisoner into custody on Saturday the 7th December, at Mr. McLeay's residence at Elizabeth Bay; he had a check shirt on him, a Scotch cap, a pair of white duck trowsers, a dark coloured waistcoat and a straw hat; his beard was of about a week's growth; I had him shaved; after he was shaved, I saw some marks on his face; I took him to Captain Perry's; a female servant there identified him as the

man who had assaulted her; before she saw him, she told me of the scratches on his face; I asked the prisoner how his face got scratched, and he told me it was in consequence of a fall; on the previous Monday, the girl had picked out four or five men from Mr. Hallen's, who she said were with the prisoner when she first met him; but she stated they were not with him when he committed the offence; I had received a note from the chief constable to apprehend the prisoner; the girl might have seen the prisoner at Mr. McLeay's before I took him to Captain Perry's.

By the Jury - I enquired of the Superintendent at Mr. McLeay's for a white shirt, and black hat belonging to the prisoner, but they were not forthcoming.

The prisoner declined to cross-examine the witness.

SAMUEL AUG. PERRY, Esq., being sworn, said - I reside at Darlington; I had an assigned servant on 1st December last, named Ellen Walsh; I remember on that Sunday afternoon, she, with a fellow servant obtained permission to go to religious worship; they not returning in proper time, I proceeded towards the town, and met Ellen Walsh, about 200 yards from my residence; she seemed nearly frantic; I sent her home; she told her mistress that evening, that she had been violated; she gave a description of the man; she also said that she had scratched the man's face and bit his chin; she said she had made all the resistance in her power; she said he was dressed in a white shirt and trowsers, dark waistcoat, black hat, and heavily nailed shoes; in consequence of my own idea, I took Ellen Walsh to Mr. McLeay's, without giving her any previous notice; it was early in the morning; on walking through Mr. McLeay's garden, she saw three men working there; she fixed her eye on the centre man, and appeared immediately struck with him; she said, if that man was not so old, I should think he was the man who violated me, but he was younger and smoother faced; in the evening, the same man was brought to my premises, and Ellen Walsh on again seeing him, immediately exclaimed that is the man; I saw a mark on his chin, which appeared like a bite; he said he had had this a long time; there were two other marks, apparently of recent make on his face; he said one was made by a fall, and the other, by his razor when shaving; they seemed like scratches.

The prisoner declined cross-examining the witness.

ROBERT HENDERSON being sworn, said - I superintend Mr. McLeay's Estate at Elizabeth Bay; the prisoner is an assigned servant of Mr. McLeay's; on Sunday the 1st December, the prisoner went into town; he did not return until Monday morning, between six and seven o'clock; I saw him at that time; his face was scratched and broken in several places; I know the prisoner had a white shirt, but I do not know whether he wore it on that occasion; he had also a black hat; I afterwards searched for the shirt but could not find it; the prisoner, and the rest of the men on the ground said it had been tore up for above a month; I do not know whether this is true or false; I found the hat; the prisoner wore it on his return on Monday morning.

The prisoner did not cross-examine the witness.

CHARLES APPLEBY being sworn said, I live at Dr. Bowman's gate behind the Catholic Chapel; I am a free man; I remember a Sunday evening in the beginning of December; I was returning home; I saw two women, and seven or eight men near a back gate; I made way to let them pass; after I went home I heard female screams; my wife heard them also; I went out and heard another scream; I did not perceive from whence it came; it seemed to be distant; I did not go towards it; many persons pass by that way.

The prisoner did not cross-examine the witness.

MARY ANN ARNOLD being sworn said, I am an assigned servant to Captain Perry at Darlington; on Sunday afternoon the 1st December, I accompanied Ellen

Walsh to chapel; we left it between 7 and 8 o'clock; we went home by the way of Dr. Bowman's; we met several men; I was knocked down by some one; I heard Ellen Walsh screaming, but I could not go to her assistance; I screamed out also; I do not know any of the men; I asked Ellen Walsh why she did not come to my assistance; she said she could not take care of herself; she did not tell me what had happened; we were not apart many minutes; I was looking for my shawl which I had lost; it was brought home on Monday morning; Ellen Walsh did not tell me that night what had happened to her; my mistress told me of it next day; Ellen Walsh then told me of it herself; I asked her why she did not tell me of it when we were walking home together; she said she did not like to mention it to me, she thought it would be best to tell it to her mistress herself.

By the Jury - I was about 8 o'clock when we got home; I do not think I went away from Ellen Walsh more than five minutes; I was insensible myself for a short time in consequence of a blow I received; we were both perfectly sober; we so[?] met Captain Perry; I had not much time to speak to Ellen Walsh before we met him I did not see the prisoner at the bar; have only been a short time in service of Captain Perry's, and did not know much of Ellen Walsh.

The prisoner declined to cross-examine the witness.

At the request of one of the Jury, Capt. Perry was called, and spoke highly of the character of the prosecutrix during the time she had been in his service, which was more than six months.

This was the case for the prosecution.

For the defence the prisoner called upon

GEORGE MASSEY, who, being sworn, said, I am an assigned servant of Mr. McLeay's, I was in company with the prisoner on a Sunday morning, from 9 to 10 o'clock, about five weeks ago; I did not see the prisoner again until the following morning, at 7 o'clock; I do not know any thing about the prisoner in the intermediate time; the prisoner had on when with me a coloured shirt, light waistcoat, black hat, and white duck trowsers; when I saw the prisoner at breakfast, at 8 o'clock on Monday morning, he had on the same dress as when I parted with him on Sunday.

By the Jury - I do not recollect seeing any marks on the prisoners face on the Monday morning; I did not take particular notice; I am positive that when I parted with the prisoner on Sunday morning, he had on a dark striped shirt, such a one as he now wears.

The prisoner had subpoenaed two females now in the Parramatta Factory on his behalf. Mr. Moore, the Crown Solicitor stated, that a subpoena had been forwarded to them on the 28th December, but they were not now in attendance.

The prisoner declined making any defence.

The Chief Justice proceeded to sum up the evidence. His Honor drew the attention of the Jury to the law as now standing with respect to the proof of the offence, of which the prisoner was charged. Formerly it was necessary to establish in evidence an actual emission; whereas by a recent Act of Parliament, passed in the last year of the reign of his late Majesty King George the Fourth, the fact of penetration only, was deemed a sufficient proof of the completion of the offence. His Honor made these observations, in consequence of the questions which had just been put to the witness, Ellen Walsh, by some of the Jury, and which as the law now stood, was not necessary on the present information. The learned Judge then commented upon the evidence at length, leaving it to the Jury to decide, as regarded the guilt, or innocence on the prisoner at the bar. The Jury retired for a few minutes, and pronounced the prisoner guilty. The prisoner was remanded.

[1] See also Sydney Herald, 9 January 1833. John Elliott was also found guilty of rape and sentenced to death on 3 February 1834: Sydney Herald, 6 February 1834; Sydney Gazette, 6 February 1834. He was executed: Australian, 15 March 1834. See also Sydney Gazette, 13 February 1834; Australian, 14 February 1834 (acquittal of George Foster for rape).

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 16/01/1834

Forbes C.J., 13 January 1834

Monday. - His Honor the Chief Justice, having taken his seat, the following prisoners convicted during the past week, were brought up for sentence.

PATRICK GALLOGHER, convicted of a rape on the person of **ELLEN WALSH**, being put to the bar, His Honor addressed him in an impressive manner to the following effect - Patrick Gallogher, you have been brought before the Court in order to receive that sentence which the law has assigned to your offence. You have been convicted by a Jury of your countrymen, of one of the basest offences which degrade the character of man. I do not feel it necessary, indeed it could answer no useful purpose, to advert to the particulars of your offence; the Jury, after the most patient attention, returned their opinion that you were Guilty. It has come to the knowledge of this Court, although it was not taken into consideration at the time of your trial, that the scene of your outrage[*] is a notorious resort of persons disposed like yourself, so much so, that it has become unsafe for decent females to walk in its neighbourhood without protection, even in day time; and it therefore becomes quite time by a visitation of the penalties of the law, in order that by your example others may be deterred from the commission of a similar offence, to put a stop to the vile practice which has long prevailed, even at the short distance of one mile from the abodes of men. I find with deep regret, that you complain of the absence of witnesses, who could have served you for your defence at the time of your trial; I can only say that I would have been most happy to go into their evidence in your behalf, in order that you might have had the full benefit of it, because I felt that your case was one, which in case of your conviction, would call for the awful visitation of the extreme punishment of the law. I have subsequently attended to the testimonials of two persons, whom you have named as evidences in your favour, one of whom I find was not near the scene of action at the time; and the other, a female, was by her own confession, in such a state of intoxication, as to be incapable of knowing any thing that might have taken place. She admits having gone with you in that direction, and having fallen asleep for some time, when on awaking, she found you at her side; her evidence therefore, unfortunately, avails you nothing; but it brings you within the neighbourhood of the scene of your offence, thereby strengthening the evidence against you. Of your guilt there can be no moral doubt; the marks on your face, as sworn to by the prosecutrix - the appearance of a recent infliction of the wounds which caused them - the unhesitating and decisive manner in which the prosecutrix identified you amongst others, can leave no doubt of your identity. It therefore now only remains for me to pass upon you the sentence of that punishment which the law has contemplated for the offence.

His Honor then passed sentence of death upon the prisoner, to be carried into execution at such time as His Excellency the Governor may appoint.

See also Australian, 15 January 1834; Sydney Gazette, 14 January 1834.

[*] The Sydney Gazette, 14 January 1834, said that this was the road from Sydney to Darlinghurst.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 16/01/1834

Forbes C.J., 13 January 1834

MICHAEL QUIGLEY, convicted of a rape with violence, on the person of **MARY ANN STAFFORD**, at Torbay Point, on the Parramatta River, was then put to the bar. His Honor observed that with regard to this case, a difference would be made in the punishment between it and that of **PATRICK GALLOGHER**. In making this difference, he would observe that there were circumstances connected with it, that induced the Court to abate the rigor of the law; the prosecutrix was living at the time in a state of shameless prostitution with a man in the house in which the offence was committed, holding out temptations, which such men as the prisoner made no scruple of yielding to. The law could not be expected to throw that protection around persons so circumstanced, who had retired as it were, to the most remote places for the purposes of prostitution, as it did to decent and virtuous females, engaged in the ordinary duties of life. His Honor then directed that the sentence of death be recorded against him.

See also Sydney Gazette, 7, 11 and 14 January 1834; Australian, 15 January 1834.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 13/05/1834

Supreme Court of New South Wales

Burton J., 13 May 1834

MICHAEL CARY was indicted for an unnatural offence. Guilty. The prisoner was then called up for judgment. The learned Judge, in passing sentence upon him, observed, that he had been satisfactorily convicted, and no doubt could rest upon the mind of any man who had heard the trial, that he was guilty. He had been convicted of an offence that all laws, human and divine, punished with death. If there was any relief to a frail human being like himself, when passing the extreme penalty upon a prisoner, it was when the human followed the divine law. Since the creation his offence had been punished with death. Whole nations had been rooted out of the earth for the like offence, which had arrived at such a height, that the Almighty considered it necessary to sweep them from the face of the creation. It would be by the blessing of God if the boy of such tender age on whom he had committed the offence, recovered from the infamous lesson he had taught him. The sentence of the Court was, that he should be hung at the usual place of execution, on Monday next, and that the boy who had witnessed the transaction, and the one on whom he had committed the offence, should be present at the time. The prisoner as he left the bar, said he had no objection to die, he should obtain justice in another world.

Judge Burton - God grant it:

[*] See also Sydney Gazette, 13 May 1834, which reported the case as follows:

“**MICHAEL CARNEY** was convicted of an abominable offence committed on a boy named **MICHAEL MINTON**, of the tender age of ten years, on the 17th of April last. The prisoner was found Guilty on the clearest evidence, and after a most impressive exhortation from the Judge, was (no hope of mercy being expressed to him) sentenced to be executed on Monday morning next. His Honor also directed that

the prosecutor and a boy named **OWEN DAVIS**, the only material witnesses in the case, should be present at the execution." The trial took place on 12 May 1834, before Burton J. For the judge's trial notes, see Burton, Notes of Criminal Cases, State Records of New South Wales, 2/2415, vol. 12, p. 92 (calling the defendant "Carney"). The boy, Michael Minton, said that he was 10 years old. The boy said that the defendant chased him, put his hand on his mouth, pulled down his trousers and committed the act of buggery.

Cary (or Carney) was hanged at the Sydney Gaol on 19 May 1834: Australian, 20 May 1834.

Two other trials for "abominable offences" were held in August 1834, both resulting in acquittal and the witness being charged with perjury: see Sydney Gazette, 21 August 1834; Australian, 22 August 1834; Dowling, Proceedings of the Supreme Court, State Records of New South Wales, 2/3285, vol. 102, p. 141. The defendants' names were **Daniel Coffey (or Coffe) and John Morris (or Morrison)**. The witness was not named in the newspapers. However, the depositions for the case reveal that the unnamed witness (victim) was the 16 year **Samuel Rooney**. There was also another person mentioned as witness on the depositions' cover

sheet, his name being, **John Mangan**. Source: State Records of NSW, Supreme Court, Criminal Information, depositions and related papers, Item T38, No. 59. Thanks to Peter de Waal for the reference to the depositions.

SAMUEL JONES was sentenced to death on 15 February 1834 for an "unnatural offence": see Sydney Herald, 20 February 1834; and see Australian, 14 February 1834; Sydney Gazette, 18 February 1834; the trial notes are in Dowling, Proceedings of the Supreme Court, State Records of New South Wales, 2/3275, vol. 92, p. 133.

In 1836, **WILLIAM HAZELDON** was sentenced to death for sodomy on a boy: Sydney Gazette, 10 November 1836; Sydney Herald, 10 November 1836. Mead was also sentenced to death for a nameless offence in 1836: R. v. Mead, Sydney Herald, 17 November 1836; he was hanged: Sydney Gazette, 1 December 1836; Australian, 2 December 1836. For another 1836 sodomy case, see R. v. Warren, Sydney Gazette, 6 August 1836; Sydney Herald, 8 August 1836.

In 1835, William Lee was found not guilty of buggery of a girl of 10: 6 August 1835, Burton, Notes of Criminal Cases, State Records of New South Wales, 2/2420, vol. 19, pp 34-70.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 08/08/1834

Supreme Court of New South Wales

Dowling J., 6 August 1834

THOMAS ROSE, a corporal of the Mounted Police, was charged with committing a rape on the person of **BRIDGET JACKSON**, while escorting her along with some other prisoners from Campbell Town, to Liverpool, and also robbing her at the same time of seven shillings and sixpence in silver money.

The prosecutrix gave her evidence, which is of course unfit for insertion in the columns of a newspaper, she swore positively to the prisoner having taken seven shillings and sixpence from her bosom. [*]

She underwent a very severe cross-examination by Mr. Therry, who was counsel for the prisoner.

TRISTRAM, gaoler at Liverpool, swore to the prosecutrix having related to him on her arrival at the gaol at Liverpool, the violence committed on her by the prisoner, she

appeared agitated on her coming there, and she seemed as if recovering from drinking. In consequence of what she informed him, he considered it to be his duty to apprise the Magistrates, and the prisoner was taken into custody and ultimately committed to take his trial.

JOHN BOOTH, constable of the Liverpool Police, went along with the prisoners from Campbell Town to Liverpool, there were 11 men and 2 women; prosecutrix is one of the women. This witness admitted that he had drank two or three times on the road, and had allowed those under his charge to do so also. The prosecutrix paid the reckoning on two occasions. Martin's was one of the places they stopped at, had met a man on the road who asked him to drink with him, witness did so, did not make a practice of drinking with every person who asked him, when he was on duty. The man appeared to know Bridget Jackson. At Martin's, Jackson became unwell, and we left her behind along with the corporal. After we had gone along some way, they came up and joined us. The prosecutrix was in good humour, laughing and joking with all in the party until it arrived at Liverpool.

Mr. Therry addressed the Jury, and called the following witnesses for the prisoner.

RICHARD MARTIN, Licensed Victualler on the Campbell Town Road, recollected the prosecutrix along with others coming to his house on the day laid in the indictment. She was not sober, nor yet drunk - She was very abusive and sat down opposite his door, she pulled out a pair of scissors, and said ``you - Policeman, if you come near me I will stab you to the heart." The prisoner did not use any more force than was necessary to get her on, as she did not appear inclined to go along, and kept hanging by the fence.

Mr. **JOHN SCARR**, Clerk to the Bench of Magistrates at Campbell Town, knows the prosecutrix, recollects her preferring a charge against a man named **HEREMIAH SCOTT**, there were three examinations on that occasion, when in consequence of the gross prevarication of the prosecutrix, the case was dismissed, and she was sent to the cells for fourteen days, could produce the depositions if necessary.

Mr. Therry - Have the goodness to read the sentence which was passed upon her. Solicitor General - Your Honor, I submit that this is no evidence.

Court -- It cannot be taken.

Cross-examination continued - From the very great prevarication of prosecutrix on that occasion, and the manner in which she gave her evidence, I would not believe her on her oath.

JOHN SILVESTER, Constable in the Liverpool Police, knows the prosecutrix conducted her once from Liverpool to Parramatta, she gave him all sorts of encouragement to take liberties with her, which he declined, knowing her trade, she said witness was a very quiet man to travel with.

ELIZA HART knows the prosecutrix, was one of the prisoners who went along with her from Campbell Town to Liverpool. When prosecutrix arrived at Martin's, she refused to go any further; she and prisoner remained behind; when she came into the gaol she did not tell witness that she had a charge against the prisoner, neither did witness know that she had preferred any charge at all against the prisoner, until she came into the gaol.

Cross-Examined. - Never told witness that prisoner had committed a rape upon her.

Solicitor General. - Now then, on your solemn oath, do you mean to say, that when the prosecutrix arrived in the gaol, she did not immediately tell you and all the other women that he had done so.

Witness, (after considerable hesitation.) - Yes, she did tell me when she came in, that the prisoner had committed a rape upon her.

GEORGE INNES, Esq. J. P. was put into the box to prove, that on one occasion, about four months ago, as he was going along the Campbelltown Road, he saw the prosecutrix and a man cross the fence and go into the bush together.

Solicitor General. - I submit your honor that this is no evidence. Mr. Therry, I maintain I have a right to put this witness in the box to prove the circumstance, as the whole of this case rests upon the credibility which is given to the prosecutrix. His Honor could not allow such a line of defence, it would be establishing a bad precedent; the circumstance which Mr. Innes was put into the box to prove, was totally irrelevant to the case before the court.

Mrs. **LUCRETIA HELEY** knows the prosecutrix, Bridget Jackson, she was her assigned servant from the ship. The first Sunday she was with witness, she went out and got quite drunk, believes her to be a profligate and abandoned character, she was absent, on one occasion, for three days; has heard she was along with soldiers, has no doubt of it; would not believe her on her oath.

The prisoner received the highest character from Major **BOUVERIE**, Captain **MACPHERSON**, Adjutant **COOPER**, and Lieutenant **MACALLISTER**, the latter of whom had been his commanding officer for the last two years, and had frequent occasion to place him in trusty situations, and he, in every instance, had given him the greatest satisfaction, he would trust him with untold gold. Major Bouverie had known him since 1830, and recommended him to the mounted police, in consequence of his good character.

Adjutant Cooper had known him since 1829, and his conduct on all occasions, had been most excellent and praiseworthy.

Captain Macpherson, (to whose company the prisoner belonged,) had known him since he joined the regiment in 1829, he was always a quiet well behaved young man, a good soldier, and in every instance had acquitted himself to his entire satisfaction.

Eliza Hart was again put into the box, and asked by one of the jury, whether, during the journey from Liverpool to Campbell Town, the prosecutrix had not, on more than one occasion, and to different persons, made many immodest expressions, and otherwise conducted herself in a lewd manner; and the witness answered in the affirmative, on coming along the road, they drank at more houses than one. On coming to the gaol, the prosecutrix said, that she would not like to be escorted to any place by any person but the prisoner. (This witness prevaricated greatly, and hesitated for a considerable time.)

Solicitor General. - As several witnesses had been put into the box to contradict the prosecutrix, he should feel it his duty to re-examine her.

Bridget Jackson, on again being put into the box; said that she had not on any occasion, either to the corporal or any person else, given any immodest invitations, but on the contrary, the witness, Eliza Hart, had been keeping company with one of the constables the whole of the journey; she again said that she was not aware of her having threatened to stab the policeman, she also persisted in declaring that on entering the gaol, she immediately told all the women as well as the gaoler the treatment she had experienced at the hands of the prisoner.

His honor proceeded to charge the jury at considerable length, in his usual clear and perspicuous manner, recapitulating the whole of the evidence. He animadverted in a pointed manner, to the circumstance of the constabulary and others drinking with prisoners, whom they were carrying from one station to another, and alluded to the very high character given to the prisoner by the respectable officers who had been called.

The jury retired for a few minutes, and returned with a verdict of Not Guilty. On the verdict being announced, there was a simultaneous burst of applause in the court, which was crowded to suffocation. His honor repressed this, and ordered the court to be instantly cleared.

See also Sydney Gazette, 9 August 1834; Dowling, Proceedings of the Supreme Court, State Records of New South Wales, 2/3283, vol. 100, p. 48 (calling the defendant Henry alias John Rose).

[*] The details are in Dowling's trial notes: the prosecutrix admitted to stopping several times to drink alcohol at public houses. On the first stop, for instance, she said she drank half a pint of rum and ``half a gin". At the time of the rape, she said she fainted from the effects of drink and the weight of the man.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 20/11/1834

Supreme Court of New South Wales

Forbes C.J., Dowling and Burton JJ, 18 November 1834

WILLIAM SMITH, convicted of an unnameable offence. His Honor Mr. Justice Dowling said, that after a patient trial, a Jury of his Country had found him guilty of a most atrocious offence, not to be named amongst mankind; he should follow the example of the learned Chief Justice, and forbear polluting the ears of the auditory by referring to the particulars of the heinous offence; all that remained for him then, in obedience to the commands of the law, was to order that the prisoner be taken to the place whence he came, then to the place of public execution, and then to be hanged by the neck until dead, at such time as his Excellency the Governor should direct.

Smith was tried on 10 November 1834: Dowling, Proceedings of the Supreme Court, State Records of New South Wales, 2/3288, vol. 105, p. 70. He was found guilty of bestiality with a female dog.

See also Sydney Gazette, 20 November 1834; Australian, 21 November 1834.

There was also a charge of bestiality with a calf: R. v. Williams, recorded in Burton, Notes of Criminal Cases, State Records of New South Wales, 2/2411, vol. 8, p. 45 (not guilty). James Dalton was charged with the same offence with a cow, and tried on 5 February 1834: Dowling, Proceedings of the Supreme Court, State Records of New South Wales, 2/3289, vol. 106, p. 58 (not guilty, but remanded for a misdemeanour). For another bestiality case, which led to a sentence of two years in irons on the public roads, see Sydney Gazette, 20 February 1834.

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SYDNEY HERALD, 20/11/1834

Supreme Court of New South Wales

Forbes C.J., Dowling and Burton JJ, 18 November 1834

JAMES CULLEN convicted of an assault, with an intent to commit an abominable offence. His Honor the Chief Justice observed, that in this case, one, which in the language of the law, was ``not to be named amongst christians," he should refrain addressing any observations in reference thereto; if the revolting character of the offence were not in itself sufficient to deter parties from its commission, all that the Court could observe would be totally unavailing; it only remained then to pass sentence, which was, that the prisoner be worked in irons on the public roads for the period of two years.

[*] **JAMES CULLEN and GEORGE DUTTON** were charged with the capital offence of buggery on 10 November 1834, and found not guilty: Dowling, Proceedings of the Supreme Court, State Records of New South Wales, 2/3288, vol. 105, p. 82. See also Australian, 21 November 1834; Sydney Gazette, 13 and 20 November 1834; and see R. v. Cary, 1834.

For other sodomy cases, see Burton, Notes of Criminal Cases, vol. 23, State Records of New South Wales, 2/2424, p. 41 (5 February 1836, no result, apparently); and R. v. McLean, 1836, in Burton, Notes of Criminal Cases, vol. 28, State Records of New South Wales, 2/2428, p. 26 (not guilty); R. v. Hayleton, 1836, same vol. p. 102 (guilty, sentenced to death).

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 12/02/1835

Supreme Court of New South Wales

Forbes C.J., 10 February 1835

Tuesday. – **WILLIAM WOODHEAD, PETER GORDON, and ROBERT HUTCHINS**, stood indicted for a rape on the person of **SOPHIA WORDSWORTH**, at Maitland, on the 18th January. The prosecutrix and her husband were at a public-house on the day in question kept by a person named Grant, where they met the prisoners, one of whom (Woodhead) was known to Wordsworth, and the parties drank together; about dusk, prosecutrix and her husband left the house for the purpose of proceeding home, inviting Woodhead and his friends to accompany them to take tea, which they complied with. Their way home lay through the bush, and they had not proceeded more than a mile, when the treacherous villains suddenly struck Wordsworth down, and seizing the prosecutrix, dragged her into a scrub, where she was struck and kicked about the head in such a brutal manner as to render her incapable of protecting herself from the atrocities which they had designed to subject her to; after robbing her of nine half-crowns, a one-pound note, and her handkerchief, they successively committed the offence laid in the indictment; apprehensive that they would destroy her, she begged the remorseless villains to leave her, and she would not report the circumstance, when Gordon observed that they might depend upon it she would betray them, and seemed evidently disposed to put an end to her; Hutchins and Woodhead went away, leaving Gordon in charge of their victim, who remained standing over her a few minutes, when he also left her; in about half an hour after they were gone, she made an effort to crawl to the road side, almost in a state of nudity, her clothes having been destroyed by the violence of her brutal assailants, and remained until the arrival of her husband, who had gone in search of her. With much difficulty he supported her home, where she lay during a fortnight unable to rise from their bed. The prisoners were taken on the following morning.

For their defence, the prisoners called **GRANT**, the person who kept the public-house before spoken of, and who was now brought from the hulk, he having been subsequently sentenced to transportation, to prove, that on the evening the transaction was said to have been committed, they returned to his house in less than half an hour, and consequently could not have remained with the prosecutrix during the time sworn to, and have had time to return. His Honor summed up elaborately, and put the case to the Jury, who returned a verdict of Guilty against all the prisoners, and Sentence of Death was passed upon them. [*] [These worthies, under the law passed by Governor Bourke and the Legislative Council, would have been eligible as Jurors, to the moral degradation of the country, and to the annoyance of every respectable man in the

community. - EDS.] See also Australian, 13 February 1835; Sydney Gazette, 12 February 1835. For a case of rape on a nine year old girl, see R. v. Morris, Sydney Gazette, 9 May 1835: convicted and sentenced to death.

[*] The sentences of all three were commuted to transportation. Gordon and Hutchins, being convicts, were sentenced to Norfolk Island for life, and Woodhead, being free, to Van Diemen's Land for life: McLeay to Forbes C.J., 16 March 1835, in Chief Justice's Letter Book, 1824 - 1835, State Records of New South Wales, 4/6651, p. 395.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY GAZETTE, 14/02/1835

Supreme Court of New South Wales

Burton J., 12 February 1835

MICKEY and **MURPHY**, **two aboriginal natives**, were placed at the bar, charged with committing a rape on one **MARGARET HANSHALL**, on the 5th November last.

Margaret Hansall, sworn - I am free; came free to the colony; in the beginning of November last, I lived with Mr. and Mrs. **LYNCH**, at Sugarloaf Creek; as servant; at that time some blacks came to the hut where I was living; the prisoners at the bar were among them; I can swear to them both; we observed there were no gins amongst them, and began to be alarmed; Mr. Lynch was some short distance from the house; I told Mrs. Lynch to send for her husband, as I thought the blacks were no good; Mr. Lynch then came in and some of them shook hands with him; there was a calf just killed; they were offered the head of it which they refused, and said they would have the whole of it, and they made a fire and cooked the calf and eat it; they had a fowling piece with them which they were pointing at one another, and made several other motions which I cannot describe; they then took me out of the house forcibly, five or six yards away; Mr. and Mrs. Lynch at this time were defending themselves against another party of blacks that were about the house endeavouring to get in; they then took me forcibly over some mountains, about 3 miles from the house; both the prisoners at the bar violated my person there, and another held a fowling piece over my head, swearing with a horrid oath, that if I did not lie still he would blow my brains out; there were 11 blacks came to the hut of Mr. Lynch, and the whole 11, from first to last, violated my person. (The description this witness gave of the conduct of the aborigines towards her, was shocking, almost beyond description).

JOHN LYNCH sworn - The blacks came to my house on the 5th November; they carried **HENSHALL** into the bush, and kept her there 5 hours; when I found her she was covered with wounds and bruises, and nearly all her clothes torn off her back; I could not run to her assistance when she called me at the hut, as I was there defending my own house, wife, and children, from another attack they were making; I had a scythe in my hand, and made use of it as well as I could; I am told that one of the party died from the wounds he received; I recollect one of them told me he wanted my child to do what he liked with; that was a child not above 9 years of age; he also laid hold of my wife, and told me he wanted to take her into the bush to ravish her; at least words to that effect.

Mrs. Lynch deposed to the same effect as her husband.

This closed the case for the prosecution.

The prisoners in their defence, said that they did not do it, it was somebody else.

The Jury, after retiring about half an hour, returned to the jury box, and had Margaret Henshall again put into the witness box; who distinctly swore to the person of the prisoner Murphy. They then returned a verdict of Guilty against both.

His Honor passed sentence of death on them both, to be executed on such day as His Excellency the Governor should be pleased to appoint.

See also Australian, 17 February 1835. See also Burton, Notes of Criminal Cases, State Records of New South Wales, 2/2418, vol. 17, p. 24. This same attack led to a prosecution of others for robbery in a dwelling house: see notes to R. v. Monkey, 1835. For other trials of Aborigines in this period, see R. v. Lego'me, 1835; R. v. Monkey and others, 1835; R. v. Long Dick and others, 1835. On 20 February 1835, the Australian reported that the judges had ordered the Aborigines who had been convicted of several offences to witness the execution of Bowles (R. v. Bowles, 1835) and that they manifested the utmost indifference at the sight.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 16/02/1835

Burton J., 12 February 1835

MICKEY MICKEY and **CHARLEY MUSCLE**, two aboriginal natives, were indicted for assaulting and violating the person of **MARGARET HANSWELL**, a free servant to **JOHN LYNCH**, at Brisbane Water. The detail of this case, which is not fit to meet the Public eye, discloses circumstances of a peculiarly atrocious character, and points out the necessity of adopting rigorous measures for the preservation of the lives and property of the settlers from the attacks of the native blacks. Being found guilty of the crime charged against them, sentence of death was passed upon them, after an impressive charge addressed to them by His Honor the Judge, which was interpreted to them by the Reverend Mr. Threlkeld. They appeared much agitated and expressed extreme fear of death. The prosecutrix, a simple looking girl, about seventeen years of age, stated, that there had been eleven in the party by whom she was assaulted twice; but the two prisoners were the only individuals whom she could identify, from the strong resemblance the blacks bear to each other.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 16/02/1835

THE BLACKS.

To the Editors of the Sydney Herald.

Gentlemen, - Howsoever it may be doubted that a people can be justified in forcibly possessing themselves of the territories of another people, who until then were its inoffensive, its undoubted, and ancient possessors: - and howsoever may be doubted the right or the policy of our forcing our Laws on the Aborigines of this Country, who still reject our civilization, and haunt the recesses of our, or their land; it is not, it cannot be doubted that we are bound to be conciliative in the former, and most lenient in the latter case. The law of conquest applies not here, for it presumes a previous grievance, and a previous state of warfare. It is true there are crimes that violate the laws of nature, and which appear to be so understood and punished by every people, and every tribe; - but when the culprit is forcibly subjected to the legal procedure of a foreign people, whose language he does not understand, it ought here to be remembered that he stands on a footing the law did not contemplate. I was never more struck with this truth than this morning on entering the Supreme Court, and seeing two Blacks at the English Bar. I felt the awkward, embarrassing doubt, how far the Juridical Forms of a highly civilized people were applicable to the rude savage.

It appeared that eleven Blacks carried off a young women into the bush, where they kept her some hours, and all, severally perpetrated the crime of Rape. One of the prisoners, Hickey Hickey [sic], was identified by all the three witnesses, who were the girl herself, her master, and mistress. The other prisoner, Charley Myrtle, or Murphy, was identified by the girl only. Lynch and his wife said, they saw all the party - he (C. M.) might have been there - but they did not see him - indeed Lynch expressed his belief that he was not one of the party. So that the case against the last prisoner rests altogether on the girl's evidence - who says, she recollects him principally because his teeth were whiter, than those of the others. At the same time she confesses that all the while she was with them, she was in a state either of confusion of stupefaction; that at her first seeing him in the gaol she did not recognize him, but at the second sight, she did. In one word, the case against Charley Myrtle is the uncorroborated evidence of one person; and that person had never seen him before; and at the moment she saw him, she was in a half stupified state. On this evidence the man is convicted, and sentenced to death.

Every white resident in the Colony will readily acknowledge the difficulty - nay, often the impossibility of recognizing blacks whom they may have frequently seen. Indeed, in this very case, another person and myself, saw these two prisoners pass us in the street after the trial, among some other black prisoners, and we disagreed as to their identity.

It ought to be remembered that the English culprit stands on very different grounds from the native black. The former knows something of the law under which he is tried - understands every word that is said, objects - cross-examines - calls his exculpatory evidences - and avails himself of manifold circumstances and finesses, of which the latter is utterly ignorant. Here stands the white man - the enlightened, often the artful, not unseldom the successful defender of a true accusation; there stands the savage - the mute - helpless spectator of a scene in which his life is at stake. The laws of England decree that the prisoner shall have the benefit of every doubt; so would the spirit of the same laws decree that the foreign barbarian prisoner should have the benefit of that doubt, even in a double, in a treble degree. In this case there is not only doubt; but I almost say, insuperable doubt.

Apart from the Juridical view of the case - suppose the man is innocent - his tribe well know it - his execution will rankle in their breasts, and when our countrymen talk of the unerring justice of our polished scales, they will point to the instance of a murdered relative. Neither ought to be omitted in the politic view of this case, the lewd lawlessness of our out stationed assigned servants and we know that the savage deems retaliation neither crime nor disgrace.

This case now lays before another tribunal - where the legal opinions of the Judge are offered to the extended views of the Ruler - where Mercy is tempered with Justice - and where Clemency finds a home.

Feb. 12th, 1835.

AM. JUS

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 06/03/1835

Execution, 27 February 1835

On Friday morning last **MICKEY MICKEY**, the aboriginal native, who was convicted and sentenced for a rape upon the female servant of Mr. **LYNCH**, at Brisbane Water, underwent the sentence of the law at the gaol in Sydney. This is only

the second instance of the execution of an aboriginal native, and it consequently attracted a considerable crowd, amongst whom were many of the sufferer's countrymen. He ascended the ladder without shewing much trepidation, nor did he appear afterwards to be in any very painful state of apprehension. In about ten minutes time the drop fell, and he was launched into eternity; he struggled violently for a few minutes before life was extinct.

It is difficult either entirely to approve or to condemn the decision of the Government on this occasion; there is but one thing which can be urged in extenuation of the offence for which he suffered death - which is, that that crime is a custom amongst these, as we believe it is amongst most other savages; this is the first step in their courtship - and it is hopeless to expect to inspire them with our estimation of offences of this nature, till they participate with us in the blessings of knowledge.

It is generally admitted that the efforts that have been hitherto made to civilize the aborigines of this Country have entirely failed; sums are annually voted for the attainment of this object, and an establishment is still kept up at Wellington Valley; sufficient time has elapsed to shew that the *modus operandi* is essentially wrong - and that while the present ideas upon the subject prevail, no better result can be expected than disappointment and failure.

We do not allude alone to the futile endeavours of the Missionaries, though we are of opinion that of all others theirs are least likely to be successful; we can point to other schemes -- amongst others to the establishment at Eastern Creek some eight or nine years ago, where it was endeavoured to get them to cultivate the soil after our fashion; in both these plans the Colony has had to witness failures - and notwithstanding, no improvement is attempted, and the natives are consequently as far as ever from the light of civilization, and in a fair way of extermination by their own and by our irregularities.

Whether there may be not some means as yet unpursued of accomplishing this object, we will not attempt to decide; but it is our earnest desire, as the first step towards a better plan, that that which is at present pursued, should be at once abandoned; while that continues, there is reason to fear the Government will be contented without further improvement.

To teach religion and literature to these poor wretches is absurd - the one it is impossible that they should understand - the other cannot be accomplished without putting a force upon the inclinations of the adults, to which they would never submit, or else removing them when of the tenderest age from their natural guardians, which involves cruelty to one party, and no lasting benefit to the other; experience shews that where young children have been so removed and trained up, the presence of their kindred has had the invariable effect of inducing them to exchange the trammels of civilization for the unconstrained freedom of their native habits.

It may appear perhaps rather unphilosophical, or perhaps not very humane, to ask in conclusion, why should we make any further attempts in the matter; we must be allowed nevertheless to doubt whether it would not be both wise and humane to adopt the principle of non-interference; those who are acquainted with their natures capacities and habits, agree that they are happy and comfortable, and that their troubles are in exact proportion to their vicinity to or their separation from Europeans; if instead of attempting their civilization, some pains were taken to ensure their absence from our haunts, the grand remedy would be nearer accomplishment than by any other means. See also *Australian*, 27 February 1835.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 12/05/1835

Supreme Court of New South Wales

Forbes C.J., 8 May 1835

Friday. - Before his honor the Chief Justice and Civil Jury.

PATRICK KILMARTIN was charged with the wilful murder of **JAMES HAMILTON** on the Botany-road, on Friday the 24th of April last.

WILLIAM CHRISTIE, wardsman in the police, knew late James Hamilton - saw him last on 24th April, about 11 o'clock dead on the Botany-road, he had a bruise on the left side of the neck, apparently by strangulation, or the mark of a knee - the body was naked, except a pair of socks on the feet. I observed a long cut on the belly and a cut on the penis; I was ordered to take the prisoner in charge; I know prisoner, he was an assigned servant to Mr. W. Dowling; he was reported as a runaway; I apprehended him in Denman's booth on the Botany road; the booth was about 50 chains from where I saw the body next day; when I apprehended the prisoner he had on a blue jacket and waistcoat, which I never saw upon him before; I took a bundle from him, after sending him in charge to Sydney I sent for him back again to Duncan's booth, thinking he had robbed some one; I made him pull off his jacket and waistcoat, having some knowledge of the jacket and waistcoat, I asked him how he came by them, he said they were his own; I did not take the hat which prisoner had on until the following morning, Friday; J. S. Hamilton was written in the lining of the hat; the hat produced is the same prisoner had on; I knew the prisoner well, and he knew me; upon finding these clothes, I thought it best to send for deceased's wife; when I took the prisoner he had a bundle of clothes with him, he told me upon asking him, that he was bound for the bush; I knew Hamilton wore a jacket much like this; I knew it because it was a coat cut down jacket; 1 pair trowsers, 1 pair drawers, 1 pair boots, 1 shirt, 1 waistcoat, were tied in the bundle; I took from his person 1 black handkerchief and pad, jacket and waistcoat; I sent for Mrs. Hamilton on Friday 24th, she came; I asked her where her husband was, she said she had not seen him since Wednesday 22d; I asked her if she would know any of her husband's clothes, she recognised all the articles except 1 waistcoat, handkerchief, 2 laded knife, and cross barred handkerchief in which the clothes were tied; I took the knife from prisoner's pocket; the case knife produced was given up to me by a boy who follows Joe Love, a blind man about the town, there was blood upon it, and fresh when delivered up to me.

Cross-examined by prisoner. You told me when I apprehended you, the clothes were your own, I was first up to you, and apprehended you.

By a jury. The clothes fitted prisoner very tight.

SARAH HAMILTON, widow of James Hamilton, saw my deceased husband on Wednesday, the 22d last, he was going to the races; I know the dress he had on there; the jacket, waistcoat, trowsers, drawers shirt, hat and boots were his, on which he was dressed on Wednesday; I saw my husband dead when the jury sat upon him; I did not know prisoner.

JAMES STEWART. I am a surgeon; I was called to examine a body on the 25th April, by the Botany-road; deceased's name was Hamilton; I found the body naked except a pair of socks; I observed a mark of injury on left side of neck, and on the left jaw, appeared to have caused by pressure by some heavy body on those parts; there was a wound in the abdomen 6 inches in depth, 2 inches in breadth; 1½ inches depth, sufficient to cause death, but not immediate; I observed an injury in the private member, apparently as if an attempt had been made to sever it from the body; I am of opinion that strangulation was the cause of death, and that the wounds were inflicted

before vitality had ceased; I did not open the head to examine the brain; I consider the injury on the neck quite sufficient to cause strangulation; the pressure on the neck caused respiration to be intercepted; the knife produced would inflict such wounds as I saw on deceased; the deceased certainly came by a violent death; the pressure of a strong man might produce that death.

JOHN BROWN - I keep the Edinburgh Castle, corner of Bathurst-itreet [sic]; I had a booth on the Race Course, during the Sydney races, on 22d April; I knew the deceased, James Hamilton, in my booth on 23d April in the evening, the prisoner was with him; I saw them drinking together, Hamilton had been drinking, prisoner called for the liquor, they left my booth together, about 7 o'clock in the evening, prisoner proposed going, deceased rather wished to stay; prisoner him to go, and they went in company, they did not say where they were going; I supposed they were going to Sydney; the booth was about 3 miles from Sydney; prisoner was dressed in a blue shirt and no jacket; and I think a straw or cabbage-tree hat, not a black hat; deceased had on a blue jacket and black hat; after they left my booth, I did not see the deceased; on the following morning I heard of his death.

Cross-examined by prisoner - When you asked for a gill of rum, I was near to you and barefaced you; afterwards you pressed me and I ordered my boy to give it to you; I did not see you give deceased any rum.

Cross-examined by a Juror - I am positive it was a blue shirt prisoner had on; they did not remain in the booth more than half an hour.

RICHARD CAINBURN - I am a constable in the Sydney police; I gave constable Christy information about bringing the deceased body of Hamilton; I saw about 10 o'clock, on Friday morning, on one side of the Botany Bay; it was naked, except a pair of socks; when I found it; I covered it with bushes.

JOHN LOVE. I was with **ANDREW GOODWIN** on the morning we saw the dead body; it was 7 fathoms from the road, Goodwin found a knife, he gave it to me, I gave it to my brother who gave it to a constable; the knife produced is that found by Goodwin.

GEORGE LOVE [?]. I was with my brother J. Goodwin when we saw a dead body; Goodwin found a knife, this is the knife, I gave to constable Armstrong.

This closed the case for prosecution.

Prisoner in defence. Had no way of getting a counsel; I was unfortunate to find the clothes mentioned; I tied them up in a bundle.

Ch. J. in summoning up, remarked that in this case, the evidence is entirely circumstantial, but expressed his opinion that circumstantial evidence where it lead but to one conclusion is the strongest of evidence.

Verdict Guilty. Ordered for execution on Monday.

See also Sydney Gazette, 9 May 1835. Kilmartin was hanged on 11 May 1835: Sydney Gazette, 12 May 1835; he was a Roman Catholic, about 25 years old. In this, as in many other murder cases in New South Wales during the period in office of Forbes C.J., the trial was held on a Friday and the prisoner condemned to die on the following Monday. This was consistent with the provisions of a 1752 statute (25 Geo. III c. 37, An Act for Better Preventing the Horrid Crime of Murder). By s. 1 of that Act, all persons convicted of murder were to be executed on the next day but one after sentence was passed, unless that day were a Sunday, in which case the execution was to be held on the Monday. By holding the trials on a Friday, judges gave the condemned prisoners an extra day to prepare themselves for death.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY GAZETTE, 07/11/1835

Supreme Court of New South Wales

Forbes C.J., 6 November 1835

NICHOLAS HAYDEN stood indicted with wilfully, maliciously, and malice aforethought, kicking and beating one **JAMES HONY**, in the month of July.

JOHN O'LAUGHLIN sworn - James Hony was my servant; he died on Friday the 10th of July; he was unwell the previous night; he complained of being very soer [sic] from the blows he had received from the new sawyer; I asked him on the morning of his death whether he would take some tea, as I thought his illness might have proceeded from hard drinking the day previous.

PATRICK HARNETT sworn - I am a surgeon; was called to examine the body of the deceased on the 10th of July; I reside at Goulburn; I found a slight embrasion [sic] on the right knee; the right eye was blackened; there was also a contusion on the forehead; the brain was perfectly healthy; not the slightest appearance of inflammation; on the upper part of the stomach there was a slight contusion; four of the ribs on the left side were fractured, at a distance of three or four inches from the breast bone; one of the ribs protruded through the cavity of the chest, and appeared to have injured the left lung; the inflammation of the pleura, and the left lung, I believe to have caused the man's death; I am positive that violence was the cause of the man's death; he was a very old man.

Cross examined by Mr. Kerr - A fall might have caused the injury; there was a quantity of sawed wood near the hut where the deceased lived; he had been dead about 10 hours when I saw him.

JAMES KERSHAW, sworn, I reside at Goulburn Plains; I knew the deceased; I saw him the day before his death; he appeared to me to be as well as I had seen him for some time past; he said he had been shamefully used, I have a shocking pain in my left side now; I believe he died the next morning; when I saw him he was a little in liquor.

JAMES RYAN, sworn, I hold a ticket of leave at Goulburn; I knew the deceased; I slept at O'Laughlin's house on the 8th July; there were five of us slept in the same hut; the prisoner at the bar was one; we all went to bed together, about 11 o'clock; I was awaked by the screams of the deceased; I asked the prisoner at the bar what was the matter; he said the deceased wanted to commit an unnatural crime; he then kicked the deceased in the side, and was going to strike him with a stool, but I would not let him; when I went to bed, the prisoner and two of the men remained up by the fire; they had not quarrelled before going to bed; we all left the public house together; there could have been no quarrel, without my knowing it; we were all apprehended for the murder; the prisoner owned kicking the old man, and said he would kick any one, that would be guilty of the like offence; the deceased was in bed, on the ground, when the prisoner struck him.

The learned Judge in putting the case to the jury, very carefully explained to them the difference between murder and manslaughter. They after a short consultation, returned a verdict of not guilty.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY GAZETTE, 05/05/1836

Supreme Court of New South Wales

Trial, 3 May 1836

JAMES CROOK stood indicted for having, on the 23d February last, committed a rape upon the person of Mrs. **CHARLOTTE DENNISEALL**, at Campbell Field, near Campbell Town.

It appeared that the husband of prosecutrix was an hired servant to Mr. Pendergast, and on the day in question was not at home. Prosecutrix hearing a noise amongst the fowls, went out to see what was the matter. In passing the threshold, prisoner came up to her, seized hold and dragged her into the back room of the house, threw her down, and then committed the assault. Prosecutrix frequently called out murder, but no one came to her assistance. When he was going away he enquired if she would "come it on him." When she was free from him she ran to Jackson's farm, and acquainted two servants with what had happened, one of whom accompanied her immediately to the Police Office, Campbell Town. Prisoner had lived in the bush close by the house for about a fortnight, herding goats, and was allowed to boil his pot of tea at the fire of prosecutrix.

The case having been gone through, His Honor minutely summed up the evidence, and the Jury after a brief consultation, returned a verdict of Guilty.

Mr. Therry having prayed the judgment of the Court, prisoner was asked if he had any thing to say why sentence of death should not be passed upon him. He merely asserted his innocence.

The Acting Chief Justice addressed him, saying Prisoner at the bar. After the verdict of the Jury has pronounced you guilty, a verdict in which I perfectly concur, only one thing now remains for me to do, which is to pass the awful sentence of the law upon you. It is absolutely necessary - the power, happiness, and security of society require that defenceless and helpless females should be protected from the brutal attacks of those who cannot controul their lustful passion. I will submit your case to a higher authority. But at the same time it is my duty to caution you against entertaining any hope of mercy, and to make the best use of the short time allotted to you, in preparing yourself for that awful doom the law awards. The sentence of the Court is, that you be taken to the place from whence you came, from thence to the place of execution, and may the Lord have mercy on your soul.

Prisoner (quite a young man) was much affected during the passing of the sentence, and left the dock crying bitterly.

[*] In the same series of reports in the Gazette, there was a report of a similar prosecution: Barney Cullen was charged with carnal knowledge of a girl of 11, and eventually found not guilty.

AUSTRALIAN, 07/02/1837

Supreme Court of New South Wales

Burton J., 2 February 1837

CHARLES COLLARD was indicted for an assault and rape on the person of **MARY COLEMAN**, a girl about Fourteen years of age, near Windsor, on the 6th of October last. On the girl being brought forward to give evidence, His Honor Mr. Burton interrogated her as to her knowledge of the obligation of an oath, when the following conversation took place:-

Mr. B. - How old are you, my girl?

Witness. - *I don't know - no one ever told me.*

Mr. B. - Where do you live?

Witness. - *At Vinegar Hill.*

Mr. B. - Do you know anything of the nature of an oath?

Witness. - *No.*

Mr. B. - You know, of course, that there is a God?

Witness. - *No one ever told me so.*

Mr. B. - Do you go to church, or any place of worship?

Witness. - *No.*

Mr. B. - Do you ever say your prayers?

Witness. - *No.*

Mr. B. - I suppose you have been taught some prayers, and your catechism?

Witness. - *No, I have not.*

Mr. B. - Did you never hear your father pray or read the Bible to you?

Witness. - *No, I have no father.*

Mr. B. - Does no clergyman ever come to your mother's house?

Witness. - *No. I have seen a priest there several times.*

His Honor enquired for the mother, who stated that the girl was foolish - that she had used every means in her power to instruct her in the principles of religion, had taught her the prayers and the creed, which she had by heart, but thought it very likely that she had not retained them in her memory. His Honor could not think of allowing the girl to give evidence under such circumstances against a man on trial for his life. The evidence of several other witnesses were taken, but no case could be made out by them, and His Honor directed them to find the prisoner Not Guilty.

See also The Sydney Herald, 6 February, 1837; Sydney Gazette, 4 February 1837. See also R. v. Winberry, Sydney Herald, 20 November 1837; Sydney Gazette, 16 November 1837, in which the defendant was found not guilty of ravishing a girl under 10, but guilty of assault.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 07/08/1837

Supreme Court of New South Wales

Dowling A.C.J., 4 August 1837

Friday. - Before the Chief Justice and a Jury of Civil inhabitants.

MARK HILLAS stood indicted for feloniously assaulting, &c., one **LOUISA RULE**, at Parramatta, on the 14th May last.

This is a description of case, the evidence given in which we cannot publish; but the following are the circumstances:- The prisoner is a man of some substance at the Hawkesbury, and the prosecutrix one of the daughters of a person named Rule, a surgeon, who, at the time of this transaction, resided with his family at Windsor. The prisoner had previously been a suitor to Louisa Rule, and a rejected one, but about this period his attentions were renewed and favorably received by the girl and her family. It appeared that during one of the prisoner's visits to Windsor, the prosecutrix expressed a wish to see a sister of her's who lived at Parramatta; and he, with the permission of her parents, took her with him in his gig on his return. It was on this journey that the violence complained of was alleged to have taken place. The prosecutrix swore that, on the road at Rouse's Hill, near Parramatta, in the evening, the prisoner drove the gig off the road into the adjoining bush - that he then drew a knife, threatening to murder her; that he ultimately by force effected his purpose there, and then regained the road by driving through the bush in another direction, in order, as he said, to avoid passing the White Horse Inn. She stated also, that upon arriving at Parramatta, the prisoner took her to the house where he resided, and forcibly detained

her all night; that he there committed another assault, and that she endeavoured to alarm the house by screaming nearly throughout the night. On cross-examination, this witness admitted that she made no alarm as they drove along the road towards Parramatta, after the first act of violence, thought they passed several inns and houses; and though they stopped a short time at one house, where she partook of some ginger beer with the prisoner. She did not tell any one at Parramatta on arriving there - she knew there were Magistrates and constables there, but she made no complaint except to her sister privately, who though it most prudent to say nothing about the matter until she returned to her parents at Windsor. The only direct testimony, therefore, in support of her statement, was that of her father and mother, who both swore to having seen marks of violence on her person, and the evidence of her sister as to the prosecutrix having told her how she had been treated by the prisoner. Two other witnesses for the prosecution contradicted some portions of the prosecutrix's statement as to circumstances detailed by her; and one of them, a military surgeon stated at Windsor, who also examined her person, stated that she bore no marks of violence, and directly negatived other facts sworn to by her father as a surgeon, and by her mother as a matron.

The prisoner made a long defence, in the course of which he avowed having frequently taken liberties with the prosecutrix, but always with her own consent, and for some time before that of which she spoke in her evidence. He denied altogether that there was any truth in her statement about driving into the bush, and regaining the road by another direction; he admitted that she remained all night with him at Parramatta, but it was with her own consent; there was no screaming in the night, and she breakfasted with him in the morning. After breakfast they went out together arm-in-arm, and walked through Parramatta towards her sister's, calling at two or three houses on the way; he left her at her sister's, where he parted with her most amicably, telling her that when she desired to return to Windsor, she had only to send a message or note, and he would come and take her up. He also stated that at one time he had some intention of marrying the prosecutrix, but had given it up on account of circumstances which had come to his knowledge, and others which had passed under his own observation. The prosecution, he said, was got up to force him to marry her, or to extort money from him.

Several witnesses were then called for the defence. A person named **BRADSHAW**, of whom Rule rented a tenement at Windsor, adjoining his own residence, deposed to the frequency of the prisoner's visits to the prosecutrix, and of his being left alone with her by her parents, while they drove out in his gig for hours together. The window of this witness's sitting-room is only twenty-feet in a directly opposite direction from the prosecutrix's bed-room; and in that room he distinctly saw her, with the prisoner, for nearly three hours, one day while her father and mother were out in his gig. The prosecutrix saw she was observed, and drew the curtain; but the witness was positive they did not come out of the room during the time he stated. Mrs. Bradshaw corroborated the evidence of her husband. Mr. **PALMER**, one of the Magistrates by whom the prisoner was committed, stated, that he examined the place where it was alleged the prisoner drove the gig into the bush, and that there was no way of getting out so as to avoid the "White Hart" Inn. - There was, in fact, no other way of getting out at all, except the one by which he was alleged to have entered, unless he could drive over a three-rail fence. Another witness, a labouring man, swore that, on the evening stated, he was returning from his work at sun-down, when he saw the prisoner, with a female, in a gig driving towards Parramatta; when he first saw them they were at a good distance off from him, but coming towards the spot

where it was stated the prisoner drove into the bush; he never lost sight of the gig till it descended Rouse's Hill, on the Parramatta side; the gig passed the only place where it could be driven into the bush, and it also passed the "White Hart" Inn; the witness saw it driven past both those places. A man named **DUNN**, and his wife, who inhabited part of a house in which the prisoner had temporary apartments, at Parramatta, stated that he brought a female with him on the night in question; they could not identify her, as she seemed to shun observation, but she made no complaint whatever to either of them, though she had ample opportunity of doing so; she and the prisoner had tea together, and Mrs. Dunn sent for some eggs for them; there was no screaming in the night; the prosecutrix and the prisoner breakfasted together next morning, one of Dunn's children having been sent for some milk and some beef-stakes for them; after breakfast they went out together arm in-arm; the prosecutrix appeared in good health and spirits. Several other witnesses, who were present in houses at which the prisoner and the prosecutrix called subsequent to the time of the alleged violence had been committed, stated that they seemed on the most familiar terms together, and that she made no complaint. The last witness called gave direct evidence to impugn the chastity of the prosecutrix.

The learned Judge put the case to the jury as one in which the grossest perjury had been committed either on the one side or on the other. There was no middle view to be taken of the case - either the witnesses for the prosecution or the witnesses for the defence had committed wilful and corrupt perjury. His Honor then called the attention of the jury to the statement of the prosecutrix herself, and asked them whether they thought it was consistent with the acting of a modest virtuous young woman under such circumstances? Would such an one not avail herself of the very first opportunity, even at the risk of her life, to escape, or make her injuries known, in order to bring to justice a man who had treated her, while under his protection, in the manner in which the prosecutrix in this case alleged she had been treated by the prisoner? But throughout the whole train of the transactions detailed by her, not one witness had been produced to speak of any fact corroborative of her story, but member of her own family - her father, her mother, and a sister. - True it was, that cases such as this must mainly depend upon the testimony of one witness; but then it was for the jury to take the statement of the prosecutrix in connection with her acting, and ask themselves whether they were consistent with each other - whether her conduct subsequent to the violence which she alleged had been committed upon her, was the conduct of a virtuous young woman? Even resting the case as it had been presented to them on the part of the Crown, His Honor asked the jury whether they could make up their minds to consign the man at the bar to destruction on that evidence? But it did not rest there. The prisoner had undertaken to call witnesses to prove that the prosecutrix was wholly unworthy of belief, and that this was a case got up solely from some vindictive motive. The jury had heard the testimony of those witnesses, and it was for them to decide whether or not they were the witnesses of truth? His Honor then went through the principal points in the evidence for the defence; and, after making some remarks upon the conduct of the parents of the prosecutrix, in permitting the prisoner to be alone in their house with her for hours, while they drove about the country in his gig - then suffering her to accompany him alone from Windsor to Parramatta, and again calling the attention of the jury to the positive contradiction to the evidence of the father of the girl, by the military surgeon, who had himself been called as a witness of the prosecution - left the case in their hands as one depending entirely upon the credit which they might attach to the witnesses either on the one side or on the other.

The jury, after retiring for a few minutes, pronounced the prisoner - Not Guilty. The Chief Justice said that, after the verdict, he felt it his bounden duty to order the prosecutrix, her sister, and Mr. and Mrs. Rule to be committed to gaol for conspiracy and perjury. The parties were taken into custody accordingly.

The prisoner was defended by Mr. Stephen and Mr. Foster; and by Mr. Rowe as his attorney.

See also Dowling, Proceedings of the Supreme Court, Vol. 138-1, State Records of New South Wales, 2/3322, p. 116, and see Vol. 140, 2/3325, p. 63.

John Paul, who allegedly received a summons to give evidence in this case but failed to attend, was charged with contempt, but the attempted attachment failed: see Sydney Herald, 2 and 16 October 1837; Sydney Gazette, 3 and 17 October 1837; Australian, 3 and 17 October 1837.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 4/233, 17/01/1838.

On Monday a wretch in human form, named **MANUEL GOMEZ**, was fully committed to take his trial for violating the person of a child [**SUSANNAH REDHEAD**] under ten years of age, with results too disgusting for description. He was fully committed for the minor offence of assaulting another child with intent, &c.

CJA, 4/236, 27/01/1838.

On Thursday, the man **LYONS**, the sweep, was fully committed to take his trial for robbing and violating the person of Mrs. [**MARY**] **LARKINS**, commonly called the "Royal George." She is now much recovered and able to walk about.

CJA, 4/239, 07/02/1838.

SUPREME COURT – CRIMINAL SIDE.

MANUEL GOMEZ, a Portuguese, a native of Bravo, was indicted for violating the person of a child named **SUSANNAH REDHEAD**, above ten, but under twelve years of age, at Sydney, on the 8th January; from the evidence of the surgeon it appeared that the offence had never been completed. The prisoner was again indicted for the assault, with intent, &c. Guilty. – To be worked upon the Treadmill for two years.

CJA, 4/240, 10/02/1838.

Notice re attempted rape in the Domain, as above. Mrs Neil, and Clarkson. A Hearing held in private – editorial comment. See previous report in 4/239.

The man named **CLARKSON** was sworn to, and on Wednesday fully committed to take his trial, for an assault, with intent to commit a rape. He would be allowed bail if he could find it.

CJA, 4/241, 14/02/1838.

JOHN LYONS was indicted for assaulting and carnally knowing, **MARY LARKINS**, at Sydney, on the 8th January. This case has been fully before the public, repetition is therefore unnecessary. The prosecutrix swore positively to the identity of Lyons, as the man who had violated her person. His Honor in the most impressive manner passed sentence of death upon him, and warned him to expect no more mercy than he had shown towards the unfortunate woman.

CJA, 4/245, 28/02/1838

On Saturday a fellow named **WILLIAM THOMSON** was brought before the Police charged with indecent exposure, under circumstances of the most scandalous aggravation. These cases are of daily occurrence, and have attained such a pitch, that respectable females have a dread of passing through the more retired streets for fear of encountering miscreants prone to these abominable offences. We were therefore glad to see that the bench marked the enormity of the offence by passing the utmost sentence of the law, viz., to be fined £10, or be imprisoned in Sydney gaol for six months.

SCANDALOUS ASSAULT. - On Monday a man named **WILLIAM GORE**, jun., was placed at the bar of the Police Office, having surrendered himself to Sergeant Shields, at the North Shore, understanding that a warrant was out against him. The following is an outline of this infamous case, - A decent looking woman, named **JULIA DOYLE**, deposed that she was a married woman and resided on the North Shore; and had several children; on Tuesday, the 22d instant, Gore, who also resides on the North Shore, came to her house and offered her four half-crowns if she would go with him into her bed room; the woman repelled the infamous proposal with scorn; he seized her with the intention of carrying her there, when she struggled and resisted violently, he knocked her down, and ill used her by beating and kicking; in the struggle she wounded him with a file, and while crying for assistance her husband came in and parted them; he (Gore) went away, threatening to pull their house down. The witness very impressively remarked, that if Gore was to be believed he had made a blackguard of every woman that he knew in Sydney. The defence was of such a nature, that even if true, which the woman most positively denied, would disgrace any man, leaving the term gentleman totally out of the question, to which we should presume by his address he claims the title. The Bench saw clearly through the case, and committed him to take his trial for the offence. Allowed to find bail. We publish this case to show parties that we shall not wink, however high they may be in society, at such irregularities.

SUPREME COURT – CRIMINAL SIDE.

SENTENCES.

WILLIAM WADE, convicted of a rape upon the body of **CATHERINE FREWIN** – Sentence of death passed, and no hope of mercy held out.

CJA, 4/250, 17/03/1838

LYONS, convicted of a rape upon the person of Mrs. **LARKINS**, alias the “Royal George,” will undergo the extreme penalty of the law, at the usual place of execution, Sydney Jail, On Tuesday next.

CJA, 4/251, 21/03/1838

The man **LYONS**, for a rape upon Mrs. **LARKINS**, and who had been ordered for execution yesterday morning, has been reprieved until the 3rd April.

CJA, 4/254, 31/03/1838

No further respite has been received at the Jail for the man **LYONS**, for the rape upon Mrs. **LARKINS**; his execution on Thursday next, unless further respited, will therefore take place.

CJA, 4/255, 04/04/1838

The man **LYONS**, for the rape on Mrs. **LARKINS**, has been respited until Tuesday the 17th instant.

CJA, 4/258, 14/04/1838

No further reprieve has been received for the man **LYONS**, sentenced to die on Tuesday next.

On Tuesday, the man **CLARKSON** was indicted at the Court of Quarter Sessions for grossly insulting a respectable female in the Government Domain, with intent, &c., and sentenced to be worked on the tread-mill for two years. We hope this sentence will have the effect of checking those miscreants who were in the habit of prowling about the Domain, with a view of insulting any female of respectability they might chance to meet in those retired walks.

CJA, 4/259, 18/04/1838.

The man **LYONS** is reprieved, and has been removed from the condemned cell into the yard with the other prisoners.

CJA, 4/264, 05/05/1838.

The two men for rape and robbery on the North Shore were received into jail yesterday, fully committed to take their trials on the above charge. The particulars have been by us fully detailed.

SYDNEY HERALD, 07/05/1838

Supreme Court of New South Wales

Burton J., 2 May 1838

JOHN MERCHANT was indicted for violating the person of **EMIL NYE**, an infant aged eight years, at Berrima, on the 13th November. Guilty. Remanded.

This case was also recorded in Burton, Notes of Criminal Cases, vol. 34, State Records of New South Wales, 2/2434, p. 122, Burton noting that the defendant was "bond", i.e. a convict, at the time of the trial. At the same place, there is a loose piece of paper with the defendant's criminal record. He had been convicted of 7 minor offences, receiving sentences of 50 and 100 lashes, periods in the iron gang, and three days on the treadmill.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 4/267, 16/05/1838

SUPREME CRIMINAL COURT.

Wednesday. Before the Chief Justice and a Military Jury.

DENNIS HEBBERLANE and **JOSEPH PERRY**, were jointly indicted for a rape upon the person of **SARAH ROLLS**, at Murdering Bay, Lane Cove, on the 5th April. It appeared from the evidence of the prosecutrix that the capital offence had not been committed, and the parties were acquitted.

SYDNEY HERALD, 24/05/1838

Dowling C.J., Burton and Willis JJ, 23 May 1838

JOHN MERCHANT, convicted of carnally knowing an infant [EMILY NYE] under the age of ten years. Mr. Justice Burton said that as there was some doubt on his mind whether the prisoner had actually committed the offence, the unfortunate victim of his lust, not being able to speak positively, and the medical gentleman rather wavering in his evidence he had been induced to spare his life, but as a Jury had found him guilty he must send him to spend the remainder of his days at Norfolk Island, with a

recommendation that he never be allowed to return. See also Australian, 25 May 1838.

For a Report on Moreton Bay and Norfolk Island, see Historical Records of Australia, Series 1, Vol. 19, p. 150.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 4/276, 16/06/1838.

EXECUTION. - Yesterday morning the four unhappy men, **FLANIGAN AND MALONEY**, for murder; ... and **ROBBINS** for a robbery and attempt of rape at the North Shore, underwent the extreme sentence of the law, at the common place of execution; their conduct up to the moment of their exit from this life was marked with a sense of feeling approaching to a future and better hope which we have seldom seen displayed on such melancholy occasions. They were attended by the Rev. Mr. **M'ENROE**, to whose religious instructions they appeared to pay the greatest and most devout attention. We cannot pass this awful catastrophe without lamenting, that the public executioners are not more expert in their unenviable situation. It is a glaring fact that the writhings of two of these men, occasioned by some neglect was, we will not say disgusting, but shocking in the extreme.

CJA, 4/279, 27/06/1838

PETER LEGG, charged by constable **LOVE**, with being drunk and indecent exposure of person, was ordered to pay a fine of five pounds, and in default of payment, to be imprisoned two months.

CJA, 4/284, 14/07/1838

There were also received from Newcastle and the different Benches of the Hunter, last night, seven male prisoners for trial, one of which is a soldier of the 28th regiment, for rape.

CJA, 4/285, 18/07/1838

Quarter Sessions.

Monday, 16 July.

HENRY GIBBS (free) was convicted of an assault with intent to commit a rape, and sentenced to one year's imprisonment in the house of correction, and to be kept to hard labour.

CJA, 4/320, 17/11/1838

Yesterday, Court of Quarter Sessions, Parramatta.

JOHN MACARTHY for a violent assault, with intention of committing a rape on the person of **MARY MURPHY**, of Breakfast Creek. *Not Guilty* – it appearing from the evidence that the whole of the prosecutor's evidence was a tissue of falsehood, got up for the purpose of extorting money from the accused.

CJA, 5/348, 23/02/1839

SUPREME COURT – CRIMINAL SIDE

Tuesday, 19th. Before the Chief Justice and Mr. Justice Willis

HENRY HARDEN, for a rape. The sentence of death was recorded, with a recommendation that the sentence be commuted to seven years transportation.

CJA, 5/354, 16/03/1839

A man named **JOHN LYONS**, who narrowly escaped death for a most diabolical assault upon Mrs. **LARKINS** some time ago, was sentenced on Wednesday last to pay a fine of £5, or to be imprisoned for two months in her Majesty's gaol, for a violent assault upon a female in the race-course, on the previous evening.

CJA, 5/360, 06/04/1839

DISGRACEFUL CONDUCT. - A man named **JAMES ROBERTSON** was charged on Tuesday before the Police Bench, by Mrs. **SHEEHY**, with using towards her highly indelicate language, and exposing his person. This charge was as gross an one as any we ever heard; and the Bench inflicted the greatest punishment in its power, by sentencing the prisoner to three months hard labour in the House of Correction; remarking that the Bench would have been justified in sending him to the Quarter Sessions for trial.

SYDNEY HERALD, 03/05/1839

Supreme Court of New South Wales

Dowling C.J., 2 May 1839

Thursday. -- Before the Chief Justice and a Military Jury.

JOSEPH GALLEY, THOMAS SUMNER, DENNIS DACEY, GEORGE COOK, and **RYDER GORMAN**, were indicted for burglariously entering the dwelling house of **WILLIAM WOOD**, at King's Plains, on the 10th January, with intent to steal the goods of the said William Wood, and then and there violently assaulting the said William Wood, with intent to kill and murder him. A second count charged the prisoner with stealing sundry article, the property of **DARBY HAMLIN**, and assaulting **ANN HAMLIN**.

On the night of the 10th of January, a gang of bush-rangers attacked the house of a person named Wood, residing at King's Plains, they fired several slugs through the door, and broke open the windows, one of them saying "Billy Woods, you scoundrel, get up and give us that double-barrelled gun you lagged Gowenlock for." Woods opened the door, when one of them "hit him a lick" on the back of the neck with a gun. They then made the persons in the house come out and lay down, and five of them ravished a middle-aged woman named Hamlin, the mother of thirteen children while a man kept a musket at her husband's head. Shortly afterwards, the prisoner Galley came up, and remained while the robbery was committed. When the bush-rangers went away, they took a considerable quantity of property belonging to Woods and Hamlin. The prisoners, Dacey, Cook and Gorman, were runaway convicts; Summer was assigned to Mr. Allen, and Galley to Mr. Liscombe. The whole of the prisoners were positively identified, and Woods stated, that Cook was with a man named **GOWENLOCK**, who was transported for robbing him about ten months ago. When the three bush-rangers were apprehended, some of the stolen property was found in their possession.

The prisoner Galley, stated that he had lost himself in the bush, and merely went to the station from hearing the shots fired; and Mr. Liscombe's superintendent proved, that he had sent Galley to a distant sheep-station the previous day. The other prisoners merely averred their innocence. Dacey stated, that he was at Mr. Sayer's robbery last year, for which, five men were transported, three of whom were innocent. The Jury returned a verdict of Galley not guilty, the others guilty; remanded on other charges. See also Sydney Gazette, 4 May 1839; Australian, 4 May 1839.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the
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CJA, 5/369, 08/05/1839

SUPREME COURT - CRIMINAL SIDE

Friday, May 3.

(Before Mr. Justice Willis and a Military Jury)

PATRICK M'CABE stood indicted for ravishing **AMELIA BOWEN alias WILSON**, on the 29th of March, at Kissing Point. – Not guilty. – discharged.

Saturday, May 4.

(Before Mr. Justice Willis and a Civil Jury)

WILLIAM FRANKLIN stood indicted for abusing an infant between 10 and 12 years of age, named **JANE KENT**, at Campbell-town. On this case failing, the prisoner was indicted for an assault upon the said infant, on the same day laid in the previous indictment. – Guilty - 4 months imprisonment in gaol, the first week in each month solitary confinement.

CJA, 5/370, 11/05/1839

POLICE INCIDENTS. - Thursday, May 9. - A woman named **GARDENER**, appeared on warrant, charged with deserting her child, a boy, about 4 years old. The woman, it appears, lives with a man, not the father of the boy, who had done his best to frighten the child away. The child stated that it was through fear of the man – the monster – that he ran away. The Bench directed the woman (mother she hardly can be called) to take the child home, and if she again appeared before them for deserting it, she would undoubtedly be committed to take her trial.

THOMAS ODELL, WILLIAM GREEN, and Miss MOORE, were put to the bar, the former charged with improper conduct towards the latter, who was insensible through the effects of a free use of ardent spirits. The men were bound over to be of good behaviour, and the latter, as an improper character, to three weeks confinement in gaol.

CJA, 5/372, 18/05/1839

POLICE INCIDENTS.

Thursday, May 16.

JAMES SPRING appeared on warrant, charged with committing a rape upon a child 8 years of age, named **AMELIA HOOPER**, on the premises of Mr. **SETH HAWKER**, Publican, George-street. Remanded for the evidence of the child.

Friday, May 17.

JAMES SPRING was again put to the bar, and the evidence of the child being taken, he was again remanded for the evidence of the doctor and other persons.

CJA, 5/373, 22/05/1839

SUPREME COURT – CRIMINAL SIDE

Saturday, May 18.

THOMAS SUMMER, GEORGE COOK, DENNIS DACY, and RYDER GORMAN, found guilty of a robbery with violence, and violating the wife of the owner of the house, where the robbery was committed. On the prisoners being called upon to say why the sentence of the Court should not be passed upon them, they all declared their innocence, Dacy and Gorman particularly, the latter being much affected, even to the shedding of tears; the two said that the suddenness with which

they were brought to trial, and not thinking the matter was so serious with which they were charged, they had not had time to procure the necessary witnesses to prove an alibi. Gorman said that he could bring witnesses to prove he was full ten miles from the spot at the time when and where the outrage was committed. The Chief Justice having passed the sentence of the law, that they be severally hanged by the neck, until they were dead, Gorman burst into tears, and said he was innocent.

POLICE INCIDENTS.

Saturday, May 18.

JAMES SPRING, remanded on the day previous for further evidence, on a charge of rape upon **AMELIA HOOPER**, was put to the bar, and on the evidence of Dr. **NICHOLSON** being taken, the prisoner, declining to say anything in his defence, was fully committed to take his trial.

CJA, 5/374, 25/05/1839

POLICE INCIDENTS.

JAMES HARDY VAUX, for a criminal assault upon a child eight years of age, was remanded for two days, on bail, himself in £80, and two sureties in the sum of £40 each.

CJA, 5/375, 29/05/1839

POLICE INCIDENTS

Saturday, May 25th.

JOHN HARDY VAUX, for a criminal assault upon a child eight years of age, was again put to the bar and further examined. He was afterwards fully committed to take his trial.

CJA, 5/376, 01/06/1839

POLICE INCIDENTS

Wednesday, May 29.

JOHN FARRELL, came free to the Colony, was put to the bar, charged by an old dissipated looking hag, named **MARY JOHNSON**, with committing a rape upon her person, on Monday morning last, between the hours of twelve and one o'clock, on the Brickfields. The woman positively swore to the identity of the prisoner. Remanded.

Thursday, May 30.

JOHN FARRELL, for the rape upon **MARY JOHNSON**, was again put to the bar. The constable who saw the prisoner and the woman on the Monday morning together at the door of Green's public-house, Parramatta-street; stated that after they had knocked at the door several times, I accosted them, and asked them what they wanted – "Something to drink" was the reply. The prisoner then moved from the door to the water trough, and seeing him stoop down I looked to see what the prisoner was about, and saw he was endeavouring to wipe some dirt from his knees. I asked him if he was free, and he stated that he was; I put the same question to the woman, and she showed me her certificate. The woman did not complain to me at that time; they appeared to be friendly enough at that time; the prisoner then went in the direction of the boundary stone, and the woman walked towards the town before me as I proceeded to the station-house, where I remained; she appeared as if going into Sydney; I think it was not likely that they could have met again that night. The prisoner in his defence stated that on the following day he was coming up George-street, near the gaol, and met the same woman; she asked him to give her something to drink, and on his refusing to comply with her request, she said she would give him into custody; and a constable

coming up at the same time she put her threat into execution; but he had previously threatened to give her in charge. Committed. Allowed bail, himself in the sum of £80, and two sureties in £40 each.

CJA, 5/386, 06/07/1839

POLICE INCIDENTS. - **JOHN GARD**, private in 50th Regiment, was put to the bar charged with violently assaulting a respectable female in Pitt-street, he being drunk at the time. Remanded to the Military Court.

CJA, 5/395, 07/08/1839

SUPREME COURT – CRIMINAL SIDE

August 1, 1839

Before the Chief Justice and a Military Jury

JAMES SPRING stood indicted for rape upon a child named **AMELIA HOOPER**. Not Guilty – remanded on another charge.

THOMAS SMITH, **JAMES DOWNING**, and **CHARLES WILSON**, stood indicted for an assault and robbery on one **MARGARET MURRAY**. The information was quashed, as it was imperfect, in some parts stating the prosecutrix as **MURRAY**, and in others as **MORRIS**. The prisoners were remanded for a fresh trial, upon a correct information

Friday, Aug 2.

Before the Chief Justice and a Military Jury

THOMAS PARRY, a prisoner of the crown, stood indicted for committing an unnatural offence, at Liverpool Plains, on the 22nd September last. Guilty – remanded for sentence.

JAMES SPRING, who had been acquitted on a charge of rape, stood charged with an assault, &c., upon **AMELIA HOOPER**. Guilty – to be worked in irons for two years.

Saturday, August 3.

THOMAS SMITH stood indicted for an assault and robbery on **MARY MURRAY** at Parramatta, on 21st July last; and **JAMES DOWNING** and **CHARLES WILSON** with aiding and assisting in the crime. Not guilty discharged.

Monday, August 5.

Before the Chief Justice and a Common Jury

GEORGE HOWARD stood indicted for an assault upon a female, with intent, &c., Not Guilty. The prosecutor and prosecutrix in this case were committed to take their trial for perjury.

Tuesday, August 6.

Before Mr. Justice Willis and a Common Jury

JOHN HARDY VAUX, sixty years of age, stood indicted for a violent assault upon a little child, named **ANNE ARUNDELL**, on the 10th May, with intent, &c. Guilty of the assault. Sentenced to be confined with hard labour in Sydney Gaol for two years; at the expiration of sentence to be bound to be of good behaviour, himself in £40, and two sureties of £20 each.

SYDNEY HERALD, 09/08/1839

Supreme Court of New South Wales

Willis J., 6 August 1839

TUESDAY. -- Before Mr. Justice Willis and a Civil Jury.

JOHN HARDY VAUX was indicted for assaulting **ANN ARUNDELL**, a child under ten years, with a felonious intent, at Sydney, on the 11th of May.

The prisoner, who is the notorious author of "The autobiography of a swindler and thief," decoyed the child of a neighbour into a dark room, under pretence of giving her some sweetmeats and a penny, and there behaved very indecently. The jury found a verdict of guilty. In passing sentence, His Honor lamented that he could only pass a sentence which he felt to be altogether inadequate. To be imprisoned for two years.

See also Sydney Gazette, 10 August 1839.

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CJA, 5/400, 24/08/1839

SUPREME COURT

Saturday, August 16

Before the Chief Justice

THOMAS PARRY, convicted of an unnatural crime, was put to the bar and sentence of death was passed upon him.

CJA, 5/400, 24/08/1839

SUPREME COURT

Monday, August 18

Before the Chief Justice

ALEXANDER NISBITT for rape, and **SMITH** and **RHODES** accessories – detained, as the witnesses had not yet been found so as to summons them.

CJA, 5/410, 28/09/1839

Report has just come to town from Captain **BENSON'S** of Green Hills on the Kissing Point Road, that as Miss **AGNES BYRNE** was returning home from afternoon service, she was stopped on the Kissing Point Road, and dragged into the bush by two men, one, is supposed to be a servant to Mr. **JAMES BYRNE**, fortunately a servant of the Captain's came up, which prevented the villains foul intent. [Since the above was in type we have received a Police Report of the examination of the two desperadoes, who, have been fully committed to take their trials for the offence; and have been received into the Sydney Gaol. Further particulars will appear in our next. – Ed.]

A woman has been brought into the Hospital, by District Constable **HENDERSON**, most dreadfully and brutally cut in different parts of the body with a spade; her husband was from home when a man named **JOSEPH WILLIAMS**, formerly in the employ of Mr. **H. TAYLOR**, committed this act of brutality, for refusing to comply with his villainous desires.

CJA, 5/416, 19/10/1839

COMMUTING SENTENCES. - On Thursday last, a man was tried at the Quarter Sessions for a most dangerous assault upon a female, and it is generally supposed, that had not Mr. **G.R. NICHOLLS** interfered, she would have been murdered by the ruffian. The prisoner was found guilty of the offence, but the Jury recommended him to the mercy of the Court; and in consequence, a lenient sentence was passed upon him, namely – to three years in an ironed gang. Almost immediately after the prisoner was removed from the bar he in a most undaunted manner declared, within the hearing of several officers of the Court, that at the expiration of his sentence he would

be “even” with his prosecutor; meaning, no doubt, that he would, to use a colonial phrase, settle the prosecutor, or, in other words, commit murder; whereupon the chairman was informed of the threats, and the prisoner forthwith recalled to the bar, when the evidence of Mr. **KECK** was taken to confirm the villain’s threats, while yet the Jury was in the box, and the prisoner’s sentence was commuted to fifteen years to a penal settlement, he being free only by servitude.

QUARTER SESSIONS

Saturday, October 12

JOHN CROFT stood indicted for assaulting a female child. Guilty; remanded.

WILLIAM HARDING stood indicted for an assault. Guilty – fifteen years to a Penal Settlement.

CJA, 5/418, 26/10/1839

QUARTER SESSIONS

Monday, October 21.

ANDREW CONROY stood indicted for assaulting an infant female. Guilty; two years hard labour in a house of correction.

SYDNEY HERALD, 04/11/1839

Supreme Court of New South Wales

Dowling C.J., 2 November 1839

Saturday -- Before the Chief Justice.

WILLIAM MORRIS was indicted for the wilful murder of **THOMAS RENTON**, alias **WAUGH**, at the Bargon River, on the 22nd of January, by shooting him.

The prisoner was a freeman in the employment of a gentleman named Matson, at Port Phillip, as hut-keeper, at a sheep station, the shepherds at which were named Renton and Sumner and all the parties had been known to each other in Van Diemen's Land. On the evening of the 22nd of January, the shepherds returned home about the usual hour, and found their supper, some mutton, standing before the fire; Renton said that it was not fit for a dog to eat, and **SUMNER** told Morris to put it in the pan and warm it, which he did. Morris asked them whether they would have their suppers inside or out; they said inside, and sat down, when the prisoner passed across the hut, took up a musket, and without saying a word shot Renton through the neck, and taking a powder flask from Renton's pocket reloaded his gun and made his escape, and was not taken for four months, when he was apprehended by a gentleman named Sullivan. Renton lingered about twenty-four hours, and expired. No cause whatever could be assigned for the act, the parties having been friendly. The Chief Justice examined the witnesses as to the prisoner's sanity, and they all agreed in thinking him of sound mind. Mr. **KECK**[*] said that when Morris first arrived in Sydney he made some clumsy attempts at insanity, but upon his threatening him and telling him he would not be imposed upon, he left off his attempts, and he believed him to be sane, but he was always very much depressed. Guilty.

After the jury had returned their verdict Mr. Matson stated that he had taken some pains to enquire as to the motives of the prisoner, and he believed that he had committed an unnatural offence, and was afraid that Renton would inform against him, and that was the reason he had committed the murder.

His Honor immediately passed sentence of death upon the prisoner.

See also Australian, 5 November 1839; Sydney Gazette, 7 November 1839. [*] The gaoler. The Sydney Gazette, 7 November 1839 reported this as follows: “Mr. Keck the governor of the gaol, was then called and sworn. His Honor asked him if he

had observed anything strange in the conduct of the prisoner since he had been in his custody in the gaol. Mr. Keck replied that when Morris was first received he made several clumsy attempts at insanity; but he told him he would not impose him as he would be punished; after which time he appeared perfectly sane. He, witness, continued closely to watch him, and he observed nothing which led him to suppose him of unsound mind."

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 06/11/1839

Supreme Court of New South Wales

Dowling C.J., 6 November 1839

Wednesday, November 6. -- Before the Chief Justice.

STEPHEN TOUGHER, convict, was indicted for assaulting **AGNES CATHERINE BYRNE**, at Parramatta, on the 22nd September, with intent to ravish her, and **PETER KELLY** was indicted for being present, aiding, and assisting; a second count charged the intent to be to commit a robbery; a third count was for a common assault. Tougher pleaded guilty to the common assault.

The Attorney-General, after stating the facts of the case as afterwards proved in evidence, said that if convicts are allowed to prowl about the country and commit outrages of this kind there will be no existing in the Colony; whatever motive the prisoners had for committing the assault, they were punishable for it. A short time before the assault was committed, the young lady was before the public, having taken a part in a religious controversy. (His Honor said, is it necessary to go into that? -- I shall allow no religious controversy here.) The Attorney-General said only to caution the Jury. The circumstance of this young lady having done what every one has an undoubted right to do, given publicity to her opinions, had made her familiar to the minds of the public; but he cautioned the Jury against suffering their minds to be carried away by what they had heard out of doors; whatever unholy feelings might be raised by the storm of public controversy in the public press, [h]e trusted the temple of justice would never be polluted by them.

The following witnesses were then called:--

Miss Agnes Catherine Byrne -- I reside at Captain Benson's, whose house is about two miles from Parramatta, on the Kissing Point road; I recollect Sunday, September 22nd; I left Captain Benson's in the morning to go to church; after church I went to the Tract Repository, and remained there about half an hour; I was unwell and left it between three and four; a daughter of the person who keeps the Repository accompanied me as far as the houses on the Kissing Point Road; she left me at the last house at the extreme end of the town; there are two houses near Captain Benson's; there is an entrance to Mr. Brown's house, and another to the Orphan School; at the entrance to Mr. Brown's I passed an old man who was going towards Parramatta; I had not proceeded far when I saw two men near Mr. Brown's gate; this was before I saw the old man; they were looking down the road in the Parramatta direction; they turned round and gave a shout, and I thought they were drunk and exulting about something; I became alarmed, and in a few minutes they disappeared on the right hand side of the road; I walked on quicker; in sight of Mr. Brown's entrance I saw th[o]se two men crouch down inside the posts of that entrance; seeing me they rose up, and at that moment this old man passed me as I passed them; two or three minutes afterwards I heard a footstep coming after me quickly; one man came alongside me and the other stood opposite me; Kelly is the man who stood by my side, and Tougher

stood opposite to me; the man by my side asked me where I was going; I was so frightened I could hardly reply, but I asked him if he had seen a gig on the road, that he might think protection was near; one said no, and the other yes; they again asked me, and I said I was a member of Captain Benson's family; he immediately gripped me and said I was the one he wanted; I screamed aloud, and tried to extricate myself; he dragged me on by this cape; one man looked at the other and a word passed between them, but I was so frightened I did not know what it was; one man pointed to the other and said that is the way, pointing to the bush; I still tried to get away, and cried murder; he threw me on my face, and partly on my side, and dragged me by the cape; he dragged me to the best of my belief between thirty and forty yards; I heard a footstep of a horse, and still cried aloud murder; they had not come completely to the end of the fence at the side of the road; there was a place where the fence was broken, and that was where the man pointed to; there was no other place to get into the bush; the[y] fled at hearing the sound of the horse, leaving me lying in the road; they said nothing to me more than I have already said, only ``I was just the one they wanted;" I got up as quick as possible and ran towards the horse, and be[g]ged of the man on the horse not to leave me, as two men had attacked me on the road; the man said he would go after them, and at that moment the old man I had passed returned to my assistance; the cape was fastened with a common brass pin; the cape was dragged off by them and remained in the road; I do not know how they dragged me after the ca[p]e came off; it was not by the hand, bu[t] some grip they had hold of my shoulders I think; I got very faint and weak, and sat alongside the road after I got under the protection of the old man; the man on the horse went to Captain Benson's groom, and went in pursuit; a little boy came up at the time and stopped with me; I remained a little while sitting by the road side; I then proceeded home in care of Captain Benson's groom; I am quite sure the prisoners are the men; I saw Kelly that night in Captain Benson's parlour; he was brought in that I might identify him, and I knew him at once; one of the men had white clothes -- white trousers, and a coat with skirts to it; the other had a blue jacket and straw hat on, and some sort of white trousers; Tougher was dressed in white clothes; on the Tuesday following I saw Tougher in the Court-house; the little boy said he was a servant to some one at Kissing Point.

Cross-examined by Tougher -- You took no more unbecoming liberty with me than knocking me down and taking me by the tippet.

By Kelly. -- Tougher caught hold of me; the other man did not touch me until the word passed between them; I did not hear Kelly tell him to lay hold of me, but he did not touch me until the word passed between them.

By the Court. -- I never saw these men before to my knowledge: I do not know of my own knowledge that they knew me, unless I had been pointed out to them. Captain Benson's is about two miles from the Repository; I had about a mile to go by myself; I had often been alone; there was bush on either side of the road. Captain Benson's groom walked in to church with me in the morning; Mrs. Benson begged of me not to go alone, but I thought the walk would do be good.

Private **WILLIAM STONE**, 28th regiment: in September I was groom to Colonel French; I was out on the Pennant Hills exercising a horse on the 22nd September, I went into a cartpath that led into the bush, and was returning, when I heard a female screeching; I stopped my horse and heard the scream repeated, and rode to see what it was; when I got into the road I saw a young lady standing, I rode up to her; she came and took me by the arm, and begged me not to leave her, and I said I would not; she appeared very much fatigued and frightened, and in a great perspiration from fright; she said that two fellows had been dragging her on the road, and gave her a deal of ill

usage; she said that one had on a blue jacket, straw hat, and fustian trowsers, the other a white jacket, black hat, and rather light-colored trowsers; an old man and a boy came up, and I told them to stop with her, and I rode on the road and overtook Peter Kelly; I passed him by, pretending to take no notice, and rode on to Captain Benson's; Captain Benson's servant and I went on the road and took Kelly; he made no resistance; he was rather intoxicated; had been drinking; I left him in charge of the servant and went back to fetch my horse, I returned and Kelly asked me if I knew where the magistrate lived at Parramatta and I said I did; he said he had a pass until four o'clock, and if I detained him I must get his pass renewed; we took him to the spot where it happened, but the young lady was gone; I rode after her and overtook her, leaving Kelly in charge of the servant. I explained Kelly's dress, and she said it was one of the men, I told her to return and see the man, but when I got back to the servant, Kelly was gone; I told Kelly that I took him for being one of the men that interrupted Miss Byrne on the road; he said that he had not, that he was a married man. I took Kelly the same evening by Mr. Byrne's hut; Captain Moffitt's nephew called us and asked us if we knew the man, the constables did not, but I recognised him, and told the constables to handcuff him: Capt. Benson offered £5 reward to any one who would apprehend the prisoners. It is a lonely place where the transaction happened, and is not much frequented; it is the road to Kissing Point.

Cross-examined by Kelly. -- You did not tell me you was [sic] assigned to Patrick Neville, of Kissing Point, I do not recollect any such thing.

CHARLES LANGRIDGE, assigned to Captain Benson: I recollect the soldier coming to my master's place; we went up the road and met the prisoner Kelly at the bottom of the hill; he was walking alone, and was rather in liquor; Stone left him in my charge while he returned for his horse; Kelly stopped with me very quiet until Stone returned, and we all went to the place where the young lady was ill-used; she was not there, and Stone rode after her; as soon as Stone was out of sight, Kelly said the devil a yard will I go further with you; he put his hand into his pocket and drew a knife, and said I never shed blood yet, but if you offer to make any resistance I will rip your guts out; I had not hold of him, and he ran into the bush and escaped; I went on the road and met Stone, and we searched but could not find him.

Cross-examined. -- Kelly told me he belonged to somebody, but it was not the right party; I never saw him before in my life; he told me that he came down the country with a team from Goulburn, and that he was employed by Mr. Small, but was not his servant.

GEORGE CARTER, laborer, residing at Parramatta -- I have had a ticket-of-leave about 3 years; I was on the road on the 22nd September, I met a young lady as you turn off to go to Pemberton Grange; I saw two men in the road a little before I came to it, they were five or six rods from the main road; they came out on the main road, and Kelly asked me the road to Kissing Point; at this moment a young lady passed by; I proceeded on the road, and the men went after the young lady, I walked towards Parramatta, and Tougher said, oh come along, that old fellow ain't good for nothing, I am sure that's she; I walked very slow, as I was almost afraid something might happen; after we had parted I heard somebody cry out murder, and I was just the same as if I had been struck, I heard them cry out two or three times; I ran back as hard as I could, and saw the young lady coming along, she had dropped some part of her dress, and she asked me to fetch it; she was just ready to drop down. I saw Colonel French's servant coming: some of the rails of the fence were down, the bush was very near to the fence, quite handy.

Cross-examined -- Tougher had a sort of light frock on, [Kelly had on a jacket; I am not sure that I] could pick the prisoners out, but I believe they are the two men.

Constable **THOMAS ARMSTRONG** -- I went to apprehend the prisoners on Sunday night; I took Kelly on Captain Moffitt's nephew's farm, I clapped a pistol to his breast, he said he would'nt [sic] be taken by any constable, he resisted, and said if he had known what he knew then, he would'nt have been taken. Colonel French's servant identified the man; Kelly had a knife in his pocket, he told me he was assigned servant to Mr. Devlin, of Kissing Point; both the prisoners got passes to come to divine service at the Church of Rome; I took Tougher in his master's hut, he was smoking; when I put the handcuffs on him, one of the convicts in the hut said that if they were men he would be d--- if I should take him, he was punished for it in Parramatta; I took him to Captain Benson's, and then I asked him if he was not in Parramatta on Sunday, he said he was; I asked him if he saw a young lady on the road, he said he did not; Miss Byrne identified him as the man who had dragged her into the bush.

Cross-examined -- Mr. Devlin told me that Tougher was out on Sunday night; I made Kelly a prisoner.

THOMAS SMITH, laborer, living at Mr. T. Small's, Kissing Point -- I recollect master giving the prisoners a pass to go to Parramatta to prayers; they went away between nine and ten o'clock, Tougher returned about half-past five, and appeared to have had some drink; I have known him about eleven months, he has borne a good character. Kelly had only come from the Murrumbidgee about ten or twelve days. This was the case for the prosecution.

Tougher said nothing in his defence. Kelly said he was a stranger in that part of the country, having been a month from Murrumbidgee; he had never had a pass to go to Parramatta before, and did not intend to do any one any injury.

The Chief Justice said that he could not see why this case had not been tried in the Court of Quarter Sessions, it being a misdemeanour that could very well have been disposed of in that Court. The Attorney-General in opening the case, had cautioned the Jury against suffering their minds to be influenced by anything that had been said out of doors; had he not done s[o], he (the Judge) would not have alluded to any publications that had taken place, but he was sure the Jury would do the prisoners the same impartial justice that they would anybody else. It was for the Jury to say with what intent the prisoners committed the assault, whether it was with intent to ravish her, to rob her, or merely to frighten her. There was nothing to shew that either of the prisoners knew Miss Byrne, but was it not probable that being influenced by liquor, and seeing a female alone on the road, they were prompted by their own brutal passions to assault her. In no country could a young female go along a private road without being subject to insult. There was nothing before the Court to shew that the prisoners had been incited by any one to assault the young lady, on the contrary it appeared to be the mere ordinary transaction of two men assaulting a young woman whom they met on a lone road. Had any other young lady gone by they would probably have insulted her in the same way. It was for the Jury to judge with what intention the assault was committed.

The Jury retired about an hour, and returned a verdict of guilty of a common assault.

The Chief Justice said that he must own that, after hearing the facts of the case, he was somewhat surprised at the array that had been made in trying the prisoners in the Supreme Court, for from what he knew of the Parramatta Magistracy, he was sure that justice would have been done to the prisoners had they been tried at the Court of Quarter Sessions, but from some local excitement, raised in a most extraordinary

manner, the Attorney-General instead of having them tried in a summary manner, sent them to the Supreme Court, where they had the advantage of being tried by a Jury. By their verdict the Jury had negatived the intent of the prisoners to commit either rape or robbery, and from the evidence it did not appear that they had been incited by any one, or acted upon any other motive than those furnished by their brutal passions - the ordinary motives of drunken ruffians meeting an unprotected female in a lonely place. He lamented that a case of this kind should have caused so much excitement, which he was afraid might have influenced the Jury in their verdict, but as they had thought fit to acquit the prisoners on the two first counts, he could only deal with it as a case of common assault. The case was one which called for a severe sentence; in his own mind he was convinced that had not assistance providentially arrived, they intended to have carried their violence still further, but the Jury had taken a more merciful view of their case. -- To be worked in irons for twelve months. [The case appeared to excite considerable interest, the Court was thronged while it last.]

[*] See also Australian, 7 November 1839 (which includes a list of the jurors); Sydney Gazette, 7 November 1839. The Sydney Gazette, 9 November 1839, published a highly critical editorial on the conduct of Dowling C.J. in this case. It argued that he had acted not as neutral judge, but as counsel for the prisoners. See also Sydney Herald, 11 and 13 November 1839 making a similar general criticism of Dowling C.J., and claiming that Willis J. invariably delivered judgment in equity cases before hearing argument on the point at issue. The attacks were continued in the Legislative Council, by H.H. Macarthur: Sydney Herald, 18 November 1839 (the Herald arguing that colonial judges "are the creatures, the mere stipendiary dependents of the Crown, and can be removed at pleasure by the principal Secretary of State for the Colonies"). These were the strongest criticisms of the judiciary since the Herald's relentless attacks on Forbes C.J. a few years earlier.

See also Sydney Herald, 27 November 1839, in which it extended the attack to the "Roman Catholic Attorney-General," (John Plunkett) who should have included the "Popish priest" as an accessory before the fact. Miss Byrne had been denounced by the priest, which drew the ruffians' attention to her. She had ceased to be a member of that church.

Chief Justice Dowling had a very different view of the proceedings. When the session finished, he noted that it had been very satisfactory and there had been little delay. The Attorney General attributed the lack of delay to the abolition of military juries: Sydney Herald, 18 November 1839.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 5/421, 06/11/1839

Upon Saturday last a man named **JAMES DOYLE**, free, appeared upon summons, for violently assaulting one **MARY ANNE GAYNOR**, per ship *Diamond*, on the 28th ult., she being a convict prisoner of the Crown. Mr. **DAVIES**, to whom the female was assigned, proved the assault, but the female was disposed to say it was her own fault, not her suitor's. The Bench found him guilty and sentenced him to pay 40s., with 5s. 4d. costs, or two months in gaol.

CJA, e005/421, 09/11/1839

THE LAW PAYS NO RESPECT TO PERSONS

EDITORIAL

The trial of the two ruffians for assaulting, with intent, &c., Miss **BYRNES**, took place in the Supreme Court on Wednesday last, before his Honor Sir James Dowling.

This case excited much interest, the prosecutrix having made herself notorious, through the Public press, relative to the abuses of the Catholic Church, and in consequence of which, and the public condemnation of her heretical conduct in the Catholic Church at Parramatta, it was conjectured was the main cause of the outrage, and this opinion is borne out by the fact, that many members of that Church have unhesitatingly declared that the ill-used lady deserved the worst punishment that could be inflicted at the hands of the miscreants.

As far as we are concerned, we dwell not a moment upon the opinion of Protestant or Catholic in this matter; but simply now feel it is our duty to remark upon the trial and its results, which latter has not a little astonished the public generally; more particularly when they take into consideration that the perpetration of this disgraceful and unmanly act – to speak in the mildest terms – are prisoners of the crown, and were on the Sabbath-day proved to be under the influence of intoxicating liquors.

Could it be for a moment supposed, in the mind of any reasonable man, that two ruffians observed to be in the bush, and heard to say, as a witness stated, these two ruffians said, before the unfortunate lady came up to them, had no other motive than simply to gratify their turbulent spirits, by assaulting her? Can any reasonable man for a moment doubt but their intentions were of the most diabolical description, back, as they were, by the effects of drink? If their object, we repeat, was simply to give vent to their turbulent spirits – why, we ask, did they not attack and assault the man who had preceded Miss Byrne on the road, who saw the men concealed in the bush, and heard them, as he stated to the court, say – that he was no good – or something to that effect; it was the lady in the distance they were after. What, too, could they have wanted with a knife? For what purpose does a bushranger carry arms in the bush, but to strike terror into the breasts of those whom they may determine to rob, and perhaps murder. Was the treatment of these men common or uncommon? We are decidedly of opinion that it was the latter. Then how can we be satisfied with the result of the trial? How can the public be satisfied, or even safe, after such a conclusion? – and how can this unfortunate lady feel satisfied that she is safe?

We differ widely with His Honor, that the case was of too trivial a kind to bring before the Supreme Court; from the leniency of the sentence passed, His Honor has decidedly shown his feelings with regard to the whole affair, and that the trial should have come off in the Court of Quarter Sessions. We do not dispute the right of the learned Judge, to pass only such sentence as he might deem necessary for the ends of justice, (to wit – the *very lenient* (?) passed upon the unfortunate officer of the *Sesostris*, for the ends of justice, and for the benefit of the Queen's Purse.)

The Jury, after the manner in which His Honor summed up (we will not say *impartially*), could not well come to any other conclusion than the one they did, when it is taken into consideration that one of the prisoners had pleaded, to the last count, which had laid the offence only as a common assault; but we feel that His Honor, in summing up, did not dwell upon those points with sufficient pathos, which clearly showed, as far as circumstantial evidence goes, the diabolical designs of the prisoners.

SUPREME COURT

CRIMINAL SIDE

Wednesday, November 6

(Before the Chief Justice and the following Jury)

Messrs. **JAMES NEWSHAM, JOHN O'DOWD, JOHN MORRISON, WILLIAM PATTEN, THOMAS MORTIMER, CHARLES MAY, WILLIAM M'ALPINE, WILLIAM PATTISON, JAMES MINTON, ALEXANDER M'DONALD, ROBERT PIERCE, and WILLIAM PAWLEY. STEPHEN**

TROUGHER stood indicted for assaulting, with intent to ravish, **AGNES CATHERINE BYRNE**, of Parramatta, on Sunday, the 22nd of September last, in the bush; and **PETER KELLY** with being present, aiding, assisting, and abetting the said Stephen Trougher; a second count charged the prisoners with an assault to rob, and a third count with a common assault. Trougher pleaded guilty to the charge in the last count, and Kelly pleaded not guilty.

The Attorney-General opened the case to the Jury, by stating that Trougher the principal was indicted for an offence varied in three counts, and Kelly with being an accessory. The assault in question was committed on the prosecutrix, Miss Agnes Catherine Byrne, a young lady residing with Captain **BENSON**, who was returning from church alone, on the 22nd. Miss B. had left the church before the service was over, in consequence of her being unwell; when she had arrived at a place on her way to Captain Benson's, where several roads meet and cross each other, Miss B. saw two men lying down, and as soon as she came up to them they jumped upon their feet, stopped her, and asked her who she was and where she was going; the reply was no sooner given, than Trougher said, you are just the person we are looking for; both the prisoners then knocked her down and dragged her into the bush, but fortunately just at this time Colonel French's servant came up on horseback, and the prisoners decamped. The Attorney-General here alluded to the newspaper controversy in which Miss B. had taken a part, and said, that no doubt the Jury were well acquainted with the particulars of the affair; he therefore wished them to dispel any previous impressions on the subject from their minds that they might in consequence of the reports have entertained, and direct their attention solely to the evidence adduced on the trial.

The particulars of the above case having already been laid before our readers, we deem it unnecessary to occupy our space with the evidence, at the close of which for the prosecution, Trougher said he had nothing to say in his defence; Kelly said he was a stranger to Parramatta, and had never but once before received a pass to go to that town, and more over, that he had no desire to do any body any injury.

His Honor, in summing up, stated, that from the nature of the evidence before the Court, he was surprised the case was not sent for adjudication to the Quarter Sessions Court, as it was of so common a nature. The Jury, His Honor stated, would be warranted, if they dismissed the first two counts from their consideration, in finding Trougher guilty of the third, to which he had pleaded guilty.

The Jury retired for about an hour, and returned a verdict of guilty against both, on the third count.

The Judge then passed sentence upon the prisoners, which was, that they be individually worked for the space of twelve months, in any ironed-gang His Excellency the Governor may appoint.

(Before Mr. Justice Willis)

ROBERT ROBERTSON was indicted for ravishing **JANE MORGAN**, aged fourteen years. Guilty; transported for life.

Before Mr. Justice Stephen

JOHN DENHIR stood indicted for ravishing **HARRIETT OXFORD**, on the 1st of September, at Tulligarry, Port Stephens. Guilty; death.

CJA, 5/422, 13/11/1839

SUPREME COURT

CRIMINAL SIDE – Friday, November 8.

(Before the Chief Justice)

ELIZA WARBURTON stood indicted for wilful and corrupt perjury in July last, before **H.C. WILSON**, Esq., for having sworn that she had been assaulted by a man named **EVAN THOMAS**, when it was clearly proved that no assault had been committed. The jury found the prisoner guilty, and she was sentenced to be transported for seven years. [No punishment is bad enough for a perjurer, in our opinion. The judges are too lenient at times in their sentences, but in this case the prisoner has got all the law can inflict – and justly so – for her abominable crime.]

CJA, 5/423, 16/11/1839

EDITORIAL. Comment, with details of the evidence, on the trial and sentence of **ELIZA WARBURTON**, for perjury.

NON-HOM ASSAULTS 1840-49

CJA, 6/445, 01/02/1840.

JAMES CRIBB, a settler, residing in North Richmond, appeared on summons to answer a charge preferred against him for having, within the limits of the town of Windsor, offended against decency, by the exposure of his person. The defendant pleaded guilty and was fined £5 and costs.

SYDNEY HERALD, 01/02/1840

Supreme Court of New South Wales

Dowling C.J., 1 February 1840

JOHN DOYLE was indicted for ravishing **MARY McMAHON**, at Wollongong, on the 9th July.

The prosecutrix, a girl about fourteen years of age, swore positively to the offence having been committed by the prisoner. The girl's uncle swore that he found a hat at the place where she alleged that the offence was committed, and in the hat was a certificate of the prisoner's character, which he produced. Dr. Osborne swore that on the day, on the evening of which the offence was committed, the prisoner shewed him the certificate: he also swore that he examined the prosecutrix, and was confident she had been recently violated, and there were several bruises on different parts of her person, which shewed that there had been considerable violence. After she was served with a subpoena, the prosecutrix was told that if she prosecuted the prisoner he would be hanged, and then his ghost would haunt her; and she was persuaded to go out of the way to Campbelltown, where she resided three weeks, cohabiting with a sawyer. There were some slight discrepancies between the evidence given by the prosecutrix in Court, and before the Magistrate, but not on any material point.

Mr. Purifoy addressed the Jury at considerable length, dwelling with great force upon the discrepancies of the evidence, and the character of the prosecutrix.

The Chief Justice summed up at some length, recapitulating the whole evidence, and the Jury, after a few minutes' absence, returned a verdict of Not Guilty. See also Australian, 4 February 1840; and see R. v. Wholohan, 1841.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 02/02/1841

Supreme Court of New South Wales

Dowling C.J., 1 February 1841

GEORGE SAUNDERS was indicted for having on the 7th of December last, violated the person of **FRANCES HUNT**, a female child, aged seven years; a second count charged him with having been guilty of an assault with intent, &c.; the offence was charged as having been committed at Jamberoo, near Kiama, in the house of a female named **ANN COSSAR**, in whose care the prosecutrix had been placed by her parents. Ann Cossar admitted in examination that she had been upwards of twenty years in the Colony, and had lived with several single men as house-keeper, and had had several children by them, she also acknowledged to having been drunk for as much as a week at a time while on the spree. It appeared that the prisoner was not the only person who had taken improper liberties with the prosecutrix. The prisoner was defended by Mr. Purefoy, whose line of defence appeared to be that of getting the witnesses to stultify themselves by giving different accounts of the affair. The Jury

retired for about ten minutes, and returned a verdict of not guilty on the capital charge; but guilty of the assault. His Honor ordered the prisoner to be remanded. Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/446, 05/02/1840.

Monday, February 4.

JOHN COOK alias **COHEN** was put to the bar, charged with committing a most outrageous assault upon a female, on Sunday evening. The prisoner, as soon as he was put to the bar, was recognised as the notorious bushranger, Cohen, who has been at large for a long period. He was remanded to Hyde Park Barracks.

SUPREME COURT – CRIMINAL SIDE.

Monday, February 4.

[SEE ALSO 6/447 AND 6/449, Supreme Court.]

JOHN DOYLE stood indicted with ravishing a girl named **MARY M'MAHON**, aged fourteen years, at Wollongong, on the 9th July last. The prosecutrix swore positively to the offence and outrage having been committed; and Dr. **OSBORNE** swore that when he examined her, violation had taken place, and considerable violence must have been used, judging from the bruised appearance of the body. It appeared that after this affair, prosecutrix cohabited with another man; and her evidence in some parts was very faulty. The judge having summed up at length, the jury retired, and after a few minutes absence returned with their verdict – Not Guilty.

SYDNEY HERALD, 07/02/1840

Supreme Court of New South Wales

Dowling C.J., 5 February 1840

EDWARD WHOLOHAN, MICHAEL WHOLOHAN, ANN WHOLOHAN, and FRANCIS DARLING were indicted for a misdemeanor.

The information recited that heretofore, to wit on the 27th July, at Wollongong, in the Colony of New South Wales, Patrick Plunkett, Esq., being one of the Justices assigned to keep the peace within the said Colony, did in due form make out a warrant of commitment, directing the keeper of Sydney Gaol to detain the body of **JOHN DOYLE**, who stood charged with a rape upon the body of one **MARY McMAHON**, and the Attorney-General informed the Court that the prisoners being wicked and evil disposed persons, knowing the premises and also that the said Mary McMahon was a witness against the said John Doyle, and intended to appear to give evidence against him, but they contriving and intending, as much as in them lay, to obstruct and prevent the due course of justice, and to prevent the said John Doyle from being convicted, and enable him to evade justice and go unpunished, on the 27th of October at Wollongong, aforesaid did conspire combine and confederate together to solicit and persuade the said Mary McMahon to leave the district of Wollongong, and remain in another place during the session of the court in which the said Doyle was to have been tried, and in pursuance thereof did promise the said Mary McMahon that if she would keep out of the way until the trial was over she would be rewarded for it, to the manifest obstruction of public justice in contempt of the laws, to the evil example of all others, &c. &c. A second count charged that the prisoners in pursuance of the conspiracy, did unlawfully threaten the said Mary McMahon, that if she did not keep out of the way and refrain from giving evidence against the said John Doyle, she should be abused and ill treated. The third count charged the prisoners generally with conspiracy to induce the said Mary McMahon to suppress her evidence against Doyle.

The fourth charged the prisoners with knowing that an information for felony was about to be exhibited against John Doyle, and that in order to prevent his conviction they conspired together to prevent the said Mary McMahon from attending as witness against him.

Mary McMahon, a girl about thirteen years of age, (who is twenty in appearance,) was ravished by a man named Doyle, who was committed to take his trial for the offence. McMahon lived with her uncle and aunt a short distance from Wollongong, and the prisoners lived a few rods from the house. After the committal of Doyle the prisoners and others always used to call after McMahon, there goes the prosecutor, and they told her that if she went to prosecute Doyle he would be hanged and his ghost would haunt her. The prisoners, who all lived together, enticed McMahon into their house, and persuaded her to go away saying that Darling would marry her. Mrs. **MURPHY**, McMahon's aunt, who has had charge of her since she was six months old, took an active part in the prosecution, which excited the ire of the Wholohans, who used to call her a prosecutor, with a number of abusive epithets, and the female prisoner accused her of wanting to make a prosecutor of a poor innocent angel, the angel meaning Mary McMahon. Murphy told Wholohan not to allow McMahon into her house, but the only reply that she got was that she "wanted to pay for Mary's clothes with Doyle's blood money." After she had been served with a subpoena, Mary McMahon absconded from her aunt's house and went to Campbelltown (the Wholohans accompanying[sic] her a mile or two on the road) with Darling, with whom she lived as his wife for nearly a month, when Darling gave her some money to come to Sydney, but she arrived too late for the criminal session. When she missed McMahon, Murphy went to the house of the prisoners, when Ann Wholohan abused her very much and told her that she had got the girl a good husband, and that she was planted and could not give evidence against Doyle.

Mr. **PUREFOY** addressed the Jury for the prisoners at considerable length, contending that the only person whose conduct was reprehensible was Darling, in not fulfilling his promise to marry the girl, but the conduct of the other prisoners he argued was commendable, as it was evident their only intention was to get her married to Darling.

The Judge summed up at considerable length, leaving all the Jury to say whether the intention of the prisoners was to seduce the girl, or to prevent her from giving evidence.

The Jury retired for a few minutes, and returned a verdict of guilty against all the prisoners.

The Judge enquired the character of the prisoners. Dr. **OSBORNE**, a Magistrate in the neighbourhood, said that there never had been any charges against them, but they were not persons of good repute.

The prisoners were remanded for sentence. See also Australian, 8 February 1840; and see R. v. Doyle, 1841.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the

SYDNEY HERALD, 10/02/1840

Dowling C.J., 8 February 1840

The Attorney-General prayed the judgment of the Court upon **EDWARD WHOLOHAN, MICHAEL WHOLOHAN, ANN WHOLOHAN, and FRANCIS DARLING**, convicted of conspiracy.

The male defendants handed in a petition in which they asserted their innocence, and prayed the judge to consider the case of their mother with mercy on account of her age, and offered to undergo her sentence among them.

The Chief Justice said that the verdict of a jury having been obtained he was not at liberty to consider them innocent. Independent of the enormity of the crime in an abstract point of view this offence was attended by so many circumstances of aggravation, that he could not do less than pass the heaviest the law allowed, in order to shew others that they cannot with impunity interfere with the due administration of justice. With respect to the female prisoner, her age and sex were only aggravations of her offence. The sentence of the court was that Ann Wholohan be confined in the factory for two years; that Michael and Edward Wholohan be imprisoned for 2 years, and that Francis Darling be worked in irons for two years. See also Australian, 13 February 1840; Sydney Gazette, 11 February 1840.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/452, 26/02/1840

SUPREME COURT

CRIMINAL SIDE – Wednesday, February 5.

Before the Chief Justice.

EDWARD, MICHAEL, and **ANN WHOLOHAN**, and **FRANCIS DARLING**, stood indicted for a misdemeanor – namely, for conspiring together to prevent the course of justice by causing one **MARY M'MAHON** to be hidden, so that she might not appear when summoned before the Supreme Court, as the prosecutrix against one **JOHN DOYLE**, for a rape upon the said Mary M'Mahon. A second count charged the prisoners with threatening the said Mary M'Mahon with ill usage if she did not keep out of the way, and refrain from giving evidence against Doyle. A third count charged the prisoners generally with conspiracy, to induce the said Mary M'Mahon to suppress her evidence. A fourth count charged the prisoners with conspiring together, in order to prevent the conviction of Doyle, to prevent the said Mary M'Mahon from attending as a witness against him. Guilty. Remanded for sentence.

CJA, 6/449, 15/02/1840

SUPREME COURT

Saturday, February 8. [see 6/446 and 6/447]

(Before the Chief Justice)

EDWARD WOLOHAN, MICHAEL WOLOHAN, ANN WOLOHAN (aunt to the two former), and **FRANCIS DARLING**, who were found guilty of conspiring together to prevent **MARY M'MAHON** from giving evidence in a case of rape on the 6th instant, were put to the bar and sentenced the three first to two years imprisonment, and the latter to two years hard labour on the roads.

SYDNEY HERALD, 16/02/1841

GEORGE SAUNDERS George Saunders, an aged man, who had been convicted before the Chief Justice of having assaulted a female child, under ten years of age, with intent to commit a rape, on an information charging the capital offence, was then placed at the bar to receive sentence, when called on to state what he had to say why the sentence of the court should not be pronounced against him, he shrugged up his shoulders, but said nothing. His Honor the Chief Justice said, it was a lamentable fact that the calendar of criminal offences which had been presented to the court during

the present criminal sessions, contained a long list of offences similar to that of which the prisoner had been convicted. It was a lamentable fact, that even amid the profligacy and the crime with which society appeared to abound, such offences were becoming more common than they used to be. In the case of the prisoner before the court, the jury, who had tried the case in the most impartial manner, had by their verdict virtually decided that, as far as morality and decency were concerned, they had found him guilty before God and their country of the capital charge; but it was fortunate for the prisoner that there was a legal defect in the evidence, which compelled the jury to acquit him of the capital charge. As it was, he must tell the prisoner that he was ashamed of such conduct being charged against one of his own sex. Had the capital charge been confirmed against the prisoner, the heaviest punishment which the law authorized would have been awarded; but as the jury had only convicted of the charge of an assault, with attempt, the court would, for the protection of the public virtue, award the heaviest sentence which the present state of the law allowed it to inflict, viz., That the prisoner be worked in irons on the roads of the colony for the period of three years.

JOHN O'HIEFE, who had been convicted of a similar offence, was next placed at the bar, but declined assigning any reason why sentence should not be pronounced against him. His Honor the Chief Justice, previous to passing sentence on the prisoner, said, You are another of the guilty persons whose names appear on the black calendar of the present sessions as being charged with an offence which you, as a man, ought never to have contemplated, far less being guilty of. You, a hoary headed monster, for that is the proper term for you, with one foot in the grave, have dared, at your advanced years, to do your utmost to violate a young and innocent human being; had the jury convicted you on the capital charge, the law should most assuredly have been allowed to take its course; but as it is, the law has saved you from being subjected to more than being worked on the roads in an ironed gang for three years, and he trusted, that during the time he was thus exhibited on the roads of the colony, that he would see the evil of his ways and also be a salutary warning to all those, who, like him, violated the rules of religion and morality.

WILLIAM MANSON, late bandsman of the 28th Regiment, who had been convicted of a similar offence, was next placed at the bar, and like the others had nothing to offer in arrest of judgment.

His Honor the Chief Justice, previous to passing sentence, informed the prisoner that it was a redeeming circumstance in his case, that he had the audacity to appear before the Court in his regimentals; he was now before the Court to receive sentence for an offence, which was, in any state of society which made the least pretensions to decency, decried and regarded with horror. The Court, however, could not shut its eyes to the fact, that the prisoner had by his attempt to commit the crime, done all he could to disgrace the service of his Queen and country, and had thus brought disgrace inferentially on a body of men, who were, of all others, looked up to as being examples of public decency and decorum. His Honor was sorry to perceive by the documents before the Court, that the offence of which the prisoner had been convicted was becoming so prevalent, that he considered it his duty, as a minister of justice, to state that should the examples made during the present sessions not check the evil, that the Legislature would be warranted in immediately passing a more stringent law for its suppression, as the law had to protect the virtuous, as well as to punish the vicious. The Court could not close its eyes against the fact, which had

judicially come before it, viz., - that the prisoner, not content with attempting to violate the person of his victim, had previously endeavoured to destroy the effect of all moral principle in her mind. He was sorry to have good reason for believing, that the present was not the only case in which the prisoner had stood in the place where he then appeared. Under all the circumstances of the case he did not see that a less sentence could be awarded the prisoner than that he should be confined, and kept to hard labor in Newcastle gaol for two years, one week in each month to be spent in solitary confinement.

See also Sydney Gazette, 4 February 1841; Australian, 2 February 1841. See also R. v. Welsh, 1841, R. v. O'Keefe, 1841, R. v. Manson, 1841, all in Australian, 6 February 1841; and R. v. Fenningham or Finnighan, Australian, 15 July 1841; Sydney Gazette, 15 July 1841 AND Sydney Gazette, 18 February 1841; Australian, 16 February 1841.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/451, 22/02/1840

WINDSOR

COURT OF QUARTER SESSIONS

Wednesday, February 12, 1840

EDWARD ARMFIELD, aged 14 years, was indicted for assaulting one **HANNAH MAYHEW**, on the Windsor Road, in the month of January last. It appeared from the evidence that the prosecutrix, a maiden lady, was travelling from Parramatta to Windsor by the coach, when the assault in question took place. Guilty – three months imprisonment in Windsor Gaol.

The Court was crowded to excess during this trial, in consequence of the age of the defendant and the nature of the assault said to be committed; there was much laughter during the cross-examination of the prosecutrix; the poor lady stated that after the assault her feelings were so excited, that she was obliged to have recourse to a glass of brandy and water (not very weak), to recover herself, it also took her ten days to write her complaint to the Police Magistrate, and when finished it occupied a half a quire of foolscap paper written in large text hand.

CJA, 6/459, 21/03/1840

JAMES BARTLETT, per *Neva*, was brought before the Bench charged with disorderly and indecent conduct to a female child, named **MARGARET GILL**. The Bench sentenced him to be worked on the Treadmill two calendar months, and to be returned to Government.

CJA, 4/463, 04/04/1840

QUARTER SESSIONS

Wednesday, April 1, 1840.

JOHN ARMSTRONG, free, stood indicted for an assault, with intent to violate the body of an infant. Guilty of common assault. Nine calendar months hard labour in House of Correction.

AUSTRALIAN, 04/08/1840

Supreme Court of New South Wales

Dowling C.J., Willis and Stephen JJ., 1 August 1840

JOHN RUSHTON was indicted for an unnameable offence on **JAMES JOHNSTONE** at Bathurst, on the 5th June last. The prisoner pleaded Not Guilty.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/473, 09/05/1840

Tuesday, May 5.

Before the Chief Justice.

FRANCIS HANLEY stood indicted for committing a rape upon Mrs. **M. DAVIS** at Maitland on the 29th February last; and **JOHN MARSHALL** and **JAMES EVERRETT**, with being present, aiding and assisting in the committal of the said outrage. Not Guilty.

AUSTRALIAN, 08/08/1840

Dowling C.J., 5 August 1840

JOHN RUSHTON, labourer, late of Bathurst, was indicted for an unnatural offence with a boy named **JAMES JOHNSON**, of Bathurst, on the 6th of June last. The evidence for the prosecution failing to support the capital charge laid in the information, the prisoner was remanded to the bench of magistrates at Bathurst, to be dealt with under the summary jurisdiction Act, for the indecent assault. See also Sydney Herald 7 August 1840

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/499, 08/08/1840

SUPREME COURT.

Wednesday, August 5.

Before the Chief Justice.

JOHN RUSHTON stood indicted for the committal of an unnatural crime. Not Guilty.

EDWARD FERN stood indicted for a rape upon a woman named **ANN ORAM**, on the road between Wollongong and Dapto, on the night of the 8th of May last. The prisoner endeavoured to prove an alibi, and failing therein the Jury found him guilty. Death recorded.

CJA, 6/502, 19/08/1840

WINDSOR

QUARTER SESSIONS

Thursday, August 13.

PATRICK LONG, an emigrant, was indicted for assaulting, with intent to ravish one **MARY HICKEY**, at Penrith, in June last; the prisoner was also indicted for a common assault.

Mary Hickey stated, she was the wife of **THOMAS HICKEY**, a constable, at Penrith; her husband lived on Mr. **E. COX'S** Farm, about seven miles from Penrith; the first Sunday in June, she went to Penrith to Chapel; after prayers, the prisoner was requested by her husband, to see her home; he accompanied her about half way, and then laid hold of her, but fortunately escaped from his grasp.

Cross-examined by Mr. **NICHOLS** – she slept with a government woman all the night after the occurrence, but did not tell her what prisoner had done; did not tell any-

one until a person remarked that witness looked unwell. Guilty of a common assault – one month imprisonment in Windsor Gaol.

CJA, 6/526, 11/11/1840

SUPREME COURT – CRIMINAL SIDE

Friday, November 6.

(Before Mr. Justice Stephen)

JOHN LEGG [LEGGE], a man fifty years of age, was found guilty of a rape upon the person of **SARAH BROOKS**, a girl only four and a half years old; sentence – death.

CHARLES STEPHENS was found guilty of a rape upon the person of **ELIZABETH ROLFE**, in Liverpool-street, Sydney, on the 30th of September last; but recommended to mercy, on account of his previous good character; remanded.

TEMPERANCE, 1/7, 18/11/1840.

The following is a list of the murders, &c. tried during the sessions:- **JOHN LEGG**, for rape – Guilty. Death.

CJA, 6/532, 02/12/1840

We should like to know what has become of the unhappy child [**SARAH BROOKS** @ 4½] who was the unfortunate victim of the brutal passion of that Scoundrel **LEGGE**, whose life will shortly be forfeited for his outrage against the laws of humanity. The unfortunate little creature possessed neither friend or relation to guide her in the right path, or even to save her from starvation unless some philanthropic individual should think proper to do so. It is therefore, we think, the duty of the Government to adopt some measures for her safety and maintenance. We believe they have not yet done so, although we shall be happy to hear that our supposition is incorrect.

TEMPERANCE, 1/11, 16/12/1840

WEEKLY SUMMARY

JOHN LEGGE for rape, aged 60; **ENOCH BRADLEY**, and **MICHAEL MONEY**, for murder, underwent the extreme penalty of the law on Friday last.

CJA, 6/539, 26/12/1840

CHARITY. - The little girl [**LOUISE BROOKS**] for the violation of whose person an old man suffered lately, was humanely taken care of by Mr. **COOK**, of the Edinburgh Castle, up to a recent period, when he procured her admission into the female Orphan School. His benevolence, however, has not ended here, for he has made a moderate claim of ten pounds on the Government for the support of this child (who, we believe, is destitute), for the purpose of placing it in the Savings' Bank for her, until she arrive at an age sufficiently mature to understand its use. He has opened subscription lists for the contributions of the charitable at his own house; and, at Mr. Cook's request, Messrs. Moffitt and Tagg have kindly consented to have copies there. We are sure that no appeal, beyond a plain statement of the facts of the case, is needed to excite compassion or draw forth the liberality of the Australian public. Mr. Cook's conduct to the child is beyond all praise, for had he not humanely and generously protected her, she must have perished in the streets.

TEMPERANCE, 1/19, 10/02/1841

SUPREME COURT – CRIMINAL SIDE

MONDAY, February 2

(Before the Chief Justice)

JAMES WELSH, indicted for having on the 1st of December last violated the person of one **CHARLOTTE BEATON**, of Gloucester-street, Sydney; a second count charged him with having committed an assault, with intent, &c. – Not guilty.

JOHN O'KEEFE, stock-keeper and bullock-driver, was indicted for having on the 15th of December last violated the person of **BELINDA BOOKER**, a child of seven-and-a-half years of age. - Remanded.

WILLIAM MANSON, private bandsman of the 28th regiment, was indicted for having, at Parramatta, on the 28th of December last, violated the person of **MARGARET DOOLAN**, aged seven years. - Remanded.

SYDNEY HERALD, 13/07/1841

Supreme Court of New South Wales

Dowling C.J., 12 July 1841

JAMES SHEAN, who had pleaded not guilty to an information charging him with assaulting and carnally knowing a female child named **ANN CHAPMAN**, in the house of a woman named Anderson, at Jack the Millar's Point, Sydney, on the 17th May last, the prosecutrix being under five years of age. In putting the case to the jury, his Honor told them to dismiss from their mind the charge of felony, and to consider whether there was evidence to support the charge of assault.

The Jury consulted for a few minutes, and returned a verdict of guilty of the common assault.

The prisoner was then remanded, in order to enable his honor to bring the case before the other judges, so as to fix the manner in which such cases should in future be dealt with.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 15/07/1841

SENTENCE FOR ASSAULT.

JAMES SHEAN, a freed man, who had been tried before his Honor for carnally knowing a female child under ten years of age, and who had been found guilty of a common assault, and had been remanded to allow time for his Honor to consult the other Judges as to whether the prisoner being tried on such an indictment could be found guilty of a common assault, was placed at the bar for sentence.

His Honor stated, that although he had been of opinion that such a verdict was a new one in the Colony, yet on enquiry he had learned that the Chief Justice had in the month of February last, tried two cases of the same kind as that of the prisoner's, in each of which a similar verdict had been recorded, and the punishment for a common assault awarded. The prisoner was then sentenced to be confined for twelve months in Sydney Gaol, and the Court adjourned. See also Sydney Gazette, 15 July 1841 and see R. v. Hilton in the same issue of the Gazette.

Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

FREE PRESS, 1/57, 15/07/1841

SUPREME COURT – CRIMINAL SIDE

TUESDAY, JULY 13.

BEFORE his Honor Mr. Justice Burton

AMOS HINTON, of Sydney, was indicted for rape upon a female child named **MARIA HESLEM**, about eight years of age, and being found not guilty, was discharged. The evidence in this case was totally unfit for publication.

NOAH FURINGHAM, was indicted for assaulting a girl named **ELIZA MURPHY**, eleven years of age, on the 6th of May last, with intent to commit a rape upon her person, a second count in the indictment charged the prisoner with a common assault. – Verdict, Not Guilty, discharged.

FREE PRESS, 1/84, 21/09/1841.

CIRCUIT COURT, BERRIMA.

WEDNESDAY, SEPTEMBER 15.

BEFORE His Honor Mr. Justice Burton

PATRICK CURRAN, was placed at the bar and indicted for committing a rape on the person of **MARY WILMORE**, at Bungadore, on the 8th of February 1841. It appeared by the evidence, that the prosecutrix was the wife of a labouring man, who resided near Bungadore, and that on the day stated in the indictment, her husband went to a place a few miles off. During her husband's absence from home, the prisoner and a man named White, went into the hut and obliged the prosecutrix to make them some tea: the prosecutrix went out of the hut to procure some wood, when Curran followed her, knocked her down, and putting a knife across her throat, committed the offence with which he was charged. The Jury found the prisoner guilty.

FREE PRESS, 1/90, 05/10/1841.

WILLIAM VALLENCE, was charged with violating the person of a married woman named **ELIZA WRIGHT**. Not Guilty – discharged.

FREE PRESS, 1/93, 12/10/1841.

SUPREME COURT – CRIMINAL SIDE

MONDAY, OCTOBER 11.

BEFORE His Honor the Chief Justice.

MICHAEL MCMULLAN, was indicted for a rape upon the person of **MARGARET LODGE**, a female between fifteen and sixteen years of age, on the 13th of July last in Sydney. The case was clearly proved, and the jury after about quarter of an hour's consideration, returned a verdict of guilty against the prisoner, who was remanded for sentence. The evidence was unfit for publication.

FREE PRESS, 1/95, 16/10/1841.

SUPREME COURT – CRIMINAL SIDE.

THURSDAY, OCTOBER 14.

BEFORE Mr. Justice Stephens.

JAMES CONNOR, a private of the 28th regiment, was indicted for assaulting **SUSANNAH ASKEW**, with intent to commit rape upon her person, near Kissing Point, on the 30th of July last. The majority of the evidence in this case was unfit for publication, but it appeared that the prosecutrix was proceeding to Kissing Point in a cart, accompanied by another married female, when the prisoner, who was labouring under the influence of liquor, sprang into the cart and committed the assault

complained of. The screams of the prosecutrix brought Captain **MOFFIT** to her aid, and the ruffian was secured before he could complete his purpose.

The Jury having found the prisoner guilty he was sentenced to two years imprisonment with hard labour.

BEFORE Mr. Justice Burton.

JOHN SUNDERLAND was indicted for a rape upon the person of **MARTHA TARRANT**, a married woman, residing at Currajong, on the 12th of April last, but in consequence of the bad character of the prosecutrix, who admitted the fact of her having previously co-habited with the prisoner, the trial was not proceeded with any further than the hearing of her evidence, and the prisoner was accordingly discharged.

FREE PRESS, 1/98, 23/10/1841

SUPREME COURT – CRIMINAL SIDE

THURSDAY, OCTOBER 12.

BEFORE His Honor the Chief Justice.

... and **MICHAEL MCMULLAN**, who had been convicted of a rape upon the person of a female named **MARGARET LODGE**, were severally placed at the bar and received sentence of death, accompanied with an impressive address from His Honor.

REMISSION OF SENTENCE.

The sentence of death passed upon **McMILLAN** for rape, by his honor the Chief Justice on Thursday last, has been commuted by the Executive Council to transportation for life.

FREE PRESS, 2/132, 11/01/1842.

SUPREME COURT – CRIMINAL SITTINGS.

MONDAY, JANUARY 10, 1842.

BEFORE Mr. Justice Burton, and a Common Jury.

FRANCIS POTTS, was indicted for assaulting a girl named **MATILDA COBCROFT**, of Wilberforce, aged 15, with intent to commit a rape upon her person, on the 20th of September last. It appeared from the evidence, that the prisoner was a prisoner of the Crown, assigned to the father of the prosecutrix, and that on the day in question (being Sunday), he met her as she was coming from Church, and throwing her to the ground endeavoured to effect his purpose; the girl, however, screamed out, and the noise of her cries happening fortunately to attract the attention of some person who was passing near the spot he came to her assistance, and the prisoner finding himself detected took the opportunity of decamping, and was not heard of until three weeks afterwards, when he was apprehended and committed for the offence. The statement of the prosecutrix was confirmed by other evidence, and the Jury without leaving the box returned a verdict of guilty. The prisoner was sentenced to be imprisoned and kept to hard labour in Sydney gaol for the space of two years.

SYDNEY HERALD, 11/01/1842

Supreme Court of New South Wales

Burton J., 10 January 1842

R. v. Potts

This prisoner stood indicted for an assault on the body of **MATILDA COLCROFT**, with intent, &c., at Wilberforce, on the 26th September, 1841.

The Attorney-General stated that the prisoner at the bar was an assigned servant of Mr. Colcroft, resident at Windsor; and that the offence for which he stood at the bar was committed on the person of Matilda Colcroft, the daughter of the prisoner's

master, as she was returning from church on a Sunday evening to her grandmother's house.

The daughter being called and examined by the Attorney-General stated that she lived at Wilberforce at her grandmother's, that she was between fifteen and sixteen years of age, and on the evening in question when returning from church, she found she was being followed, she was then within about half-a-mile of home, and on a bye-road. There were no houses near, but one other person was in sight, a blacksmith. The prisoner came up to her, and without speaking, knocked her down. Whilst struggling with the prisoner, the blacksmith came up, and the prisoner then desisted from his violence, and went away. Witness then went home to her father's. Prisoner had not spoken to her at all, from the time he first came up. After several questions put to the witness in cross-examination by the prisoner.

The Attorney-General called **RICHARD WILLIAM COLCROFT**, the father of the last witness. He stated that on the morning of the day in question, the prisoner had left his service, without leave. That witness and his daughter had been to church on the day on which the offence was committed, the daughter was returning to her grandmother's house. Witness was at home when his daughter came to his house in the evening; she was crying, and her clothes appeared disordered; she said she had been ill-used by the prisoner. Witness afterwards went to the spot, where he saw marks as if produced by struggling.

WILLIAM ASHLEY stated he was a blacksmith at Wilberforce; on the evening in question he was walking on the road between Wilberforce and Windsor, when he met the first witness who was crying very hard, and her clothes appeared as if she had been rolled in the dirt.

The constable proved the apprehension of the prisoner, who acknowledged that he was a runaway from the Colcrofts.

His Honor summed up, and the Jury returned a verdict of guilty. His Honor, in passing sentence, said, that the prisoner had been found guilty of an assault on a young woman, who, for aught that appeared to the Court, was a person of good and unblemished character. His Honor regretted that the present state of the criminal law in the Colony did not permit of the prisoner being sent to a road-gang; his offence being one for which his Honor thought the law could award scarcely an adequate punishment. The prisoner's sentence was that he should be imprisoned for two years in Sydney Gaol. *See also Sydney Gazette, 11 January 1842.*

FREE PRESS, 2/143, 05/02/1842.

NEWS AND RUMOURS OF THE DAY.

Constable **BRADBURY**, of the Sydney Police, has been dismissed from that body, and committed for trial, in consequence of a gross and unprovoked attack which he committed upon a respectable married female named **SLATTERY**.

Source: Sydney Gazette, 19 April 1842

SYDNEY GAZETTE, 19 April 1842

R. v. Robertson; R. v. Nelson

Supreme Court of New South Wales

Stephen J, 15 April 1842

ROBERT ROBERTSON and **RICHARD WILLIAM NELSON**, who were out on bail, were called upon and indicted for an assault upon the high seas on board the

emigrant ship *Carthaginian*, on the 23rd or 24th of December last. The information contained two counts, to both of which the defendants pleaded not guilty.

The Attorney General, after stating the case, called —

EDWARD FARRELL — I am a shoemaker; I was a passenger in the *Carthaginian*, which sailed from Liverpool in October last, and arrived in this colony in the month of January following: I knew an emigrant on board of the name of **Margaret Ann Bolton**; I recollect some water being thrown over her [boat?] about six weeks before we came into the harbour; I saw the captain and doctor go forward, who ordered several women on deck, placed them on one side of the ship, and **Mary Ann Bolton** on the other; this was at ten o'clock at night; I saw them handcuff the prosecutor and other women, it was done jointly by the captain and doctor; Bolton said she had done nothing; she had on a dress resembling a night dress; saw the captain throw five, and the doctor two, buckets of water over the person of Bolton; she was handcuffed and standing up at the time; she was the only person that water was thrown upon; when she embarked on board the vessel, she appeared to be in good health, much better than she appears now; after the water had been thrown over her, the following day she was confined to her bed; I took medicine to her, and remarked that she was not in as good a state of health afterwards; when I went down below Bolton remained on deck in handcuffs.

Cross-examined by Mr. **BROADHURST**. — I was sitting on the starboard side of the vessel when the captain and doctor went below; I did not hear any noise below; I did not see the other women released; I did not hear any insolent expressions escape Bolton; I was on one side of the vessel, and Bolton on the other, at the time of the water being thrown over her; **GREAVES, MOSSLEY, and BLACKFORD** were also present when the water was thrown over Bolton; it was a fine night; I never had any quarrel with the captain; I never said that I would not have sworn against him as I did, if I had been given a bed and a pillow on leaving the ship; I never said any thing of the kind to persons named **LAWSON and LAWLER**.

Re-examined by the Attorney General — I have no doubt that Margaret Ann Bolton was the person the water was thrown upon; I am married, my wife was on board the vessel at the time, but she was in bed.

MARGARET ANN BOLTON — I am about 26 years of age; I was a passenger in the *Carthaginian* from Liverpool; on Sunday night, between four and five months since, about nine o'clock at night, there was some persons making a noise between decks, a young woman in a berth near mine screamed; the captain and the doctor asked who screamed, they were below at this time, it was quite dark, they ordered us out, swearing if we did not come out they would pull us out; the doctor took a bundle of handcuffs, a pair was put upon me by the captain; I cannot say where the doctor then was, but I conjecture he was near me, but cannot say whether he was present when the handcuffs were put on me; I was handcuffed with my hands behind my back, we were ordered to be kept separate, sitting on a wet deck, it had been raining; I expostulated with the doctor for this treatment to me, observing, do you mean to take our lives, what is this for? The doctor said, fetch a bucket of water, he did not stop until he threw seven over me; several hours after the captain came to take the handcuffs off; a young woman said I should not be able to walk where the captain stood, who was opposite to me amongst the other women; I did not reply, when the captain said, I had not had them on long enough, and then walked into the cabin; I then sat down on the planks. The young woman said, Bolton will not be able to stand this usage, we must take her down with us. Some person threw a great coat over me; the young woman went down to their berths, unable to stop on deck any longer; in

about an hour afterwards the handcuffs were taken off me. Mr. Greaves assisted me part of the way down between decks; I did not want him there, he had been there too often ; on my way to my berth I was obliged to sit down on the gangway; I could not find my keys, and that prevented me getting any dry clothing; I had a petticoat, a dress, and a shawl, but had not time to pin the shawl round me; I had on my nightcap; I had also stocking and shoes on; after the water had been thrown over me, I found the cold penetrate me to the heart; the captain or mate might have thrown part of the seven buckets of water over me , but I am of opinion that the doctor was the person who threw the water over me; at the time I was in a good state of health, but since that, I have been very ill, and am now incapable of procuring a living; the following day, (after the water had been thrown over me) I was confined to my bed; I was in a perfect state of health when I went on board the *Carthagenian* at Liverpool.

Cross-examined by Mr. **WINDEYER**. — I was living upwards of nine years in Manchester, in different capacities; I had brothers also residing there, with whom I occasionally resided; I cannot speak positively how many different families I lived in during the time I was at Manchester; I only remained three days in Liverpool prior to my embarking on board the *Carthagenian*.

JOHN KEATING, immigrant by the ship *Carthagenian*, knows Margaret Ann Bolton; she appeared to be in good health at the time she came on board; he knew of other transactions previous to that, but he knew nothing of that day; he had known her in Liverpool three or four weeks before coming on board, and she appeared to be in good health during that time.

ROBERT GREAVES, third mate of the *Carthagenian*, knows Margaret Ann Bolton; he recollects a bucket of water being thrown upon her some time in December last; there was a great noise below, and seven women were brought on deck by the captain and doctor, and handcuffed; the doctor threw a bucket of water on Bolton; I did not notice the captain at the time; there was nobody there at the time the water was ordered but the captain and doctor; witness is still third mate of the ship; there might have been more water thrown, but he did not see it; I am a relative of the defendant Robertson, he is my nephew; I heard some improper language used by Bolton to the captain.

By a Juror — I was standing by the capstan about four feet from Bolton, when the water was thrown upon her.

Cross-examined by Mr. Broadhurst — Bolton was famous for using her tongue on board , and said she would not hold her tongue for such a — master as the doctor; the other women were quiet and went down to their berths.

Re-examined by the Attorney General — When I went off duty at 12 o'clock, Bolton was still in handcuffs, and remained upon the deck. I do not know what time she was released; more water than one bucket might have been thrown over her without my seeing it.

By a Juror — The whole seven women were brought up together; I did not assist in throwing the water over Bolton; it was a fine night; I did not observe the captain or doctor go down for any more women.

WILLIAM KENNEDY — I arrived in this Colony in the *Carthagenian*; I knew Bolton, and recollect the doctor calling out for handcuffs; I went on deck, and saw the captain, the doctor, and some others about the capstan; there was one woman, disturbing and talkative; she gave some impudence to the captain or doctor, when some water was called for by the doctor; there was more called for after that, but I cannot say how much, as I was requested to go into my cabin by Mr. **M'EVEY**; I saw

one bucket of water thrown upon her by the doctor; I heard water called for more than once; she had a night wrapper on, or something white.

Sydney Gazette, 19 April 1842; continued from last publication)

Trial of Robert Robertson and Richard William Nelson for an assault on the high seas.

The Rev. **NICHOLAS COFFAY**, examined by Mr. Broadhurst. — I was a passenger on board the *Carthagenian*; I know Ann Bolton; I recollect her being brought up with some other women near the cabin one night , owing to her having given some insolence to the captain; I never saw any water thrown over Bolton, nor did I hear of it until I came on shore in this colony; Bolton never told me that any had been thrown over her; the captain's conduct was gentlemanly, humane, and kind to the immigrants, so far as came under my observation; I was examined at the Post Office on the part of the Crown.

Cross-examined by the Attorney General.— I was a cabin passenger; we fared very well; other individuals were treated differently; I think Mary Ann Bolton was a very moral character; I cannot swear she was handcuffed; she was brought in and refused to make an apology; I don't recollect the substance of the apology she was required to make; her language was insolent to the captain, but I do not recollect what the nature of the language was; I do not recollect what was said to induce her to make the apology; Bolton was of retired reserved habits.

ROBERT LAWLOR.— I recollect being on board the *Carthagenian*; I was a cabin passenger; I recollect six or seven women being brought up; Bolton was very insolent; I remember a bucket of water being called for , and thrown upon her; I heard her say (previous to the water being thrown upon her) that she would not be quiet , it is possible that other water might have been thrown upon her; I was standing by the capstan at the time; we were then near the Cape; I know Edward Farrell; I have spoken to him more than once since I landed in this colony; he said to me that if the captain had given him a bed and pillow he would not have gone against him; this was said in addition to the shoe matter; the bucket of water I saw thrown over Bolton was by the doctor; Bolton's conduct was abusive to every one on board.

The Attorney General observed that the examination was at this stage of the proceedings rather inconsistent and singular.

Cross-examined by the Attorney General.— I am clerk to the coroner; I dined with the captain on Sunday last, and have had many glasses of grog with him, and found him as hospitable on shore as I did on board; the immigrants (females) were generally well conducted; the doctor likewise keeps a good table; generally speaking, the conduct of the captain and doctor was good; when I left the deck the girls were all there; I did not see any water thrown over any person but Bolton; I heard water called for twice, no doubt to be thrown over Bolton; I know nothing of her moral conduct; she was abusive; I know that she was called “an old maid,” which I think must have annoyed her; I have nothing to say against her conduct; Farrell told me he had sued the captain for a pair of boots; he would not have gone against the captain if he had given him his bed and pillow in the first instance; I might have been in the cabin half a minute after the first bucket of water was thrown: the bucket was emptied; when Farrell and I had the conversation together, Bolton's name was mentioned.

By the Court .— I never knew Margaret Ann Bolton before she came on board; I came to join the ship from Dublin; I am a scrivener; I was examined at the Post Office, and gave the same testimony as I have given this day; I am asingle man at present.

It being at this stage of the proceedings past five o'clock, p.m., after some conversation between the Attorney General and the counsel for the defence (Messrs. Windeyer and Broadhurst), His Honor adjourned the Court until 10 o'clock on Saturday morning.

Sydney Gazette , 19 April 1842

In the case of Robert Robertson and Richard William Nelson, for assault – (adjourned proceedings.)

The Attorney general, on the opening of the court, stated to His Honor , that he was desirous that the prosecutrix Margaret Ann Bolton, should be questioned regarding the state of health she was in at the time she was taken out of her berth. She was therefore-called, and questioned by His Honor , when the witness stated she was very hot when brought on deck, and that she considered it very dangerous to have cold water thrown upon her; and from that time she had been suffering under sever illness.

Edward Farrell re-called, at the request of Mr. Windeyer, stated to the court – before the women came on deck, he heard the captain say, that he knew the women's voices.

This closed the case for the prosecution.

Mr. Windeyer addressed the court and jury in behalf of the prisoners, animadverting at great length, on the discrepancy of the evidence, which had been adduced, and proceeded to call the following witnesses for the defence.

ROBERT LAWSON, examined by Mr. Broadhurst - I arrived in this colony, as a cabin passenger, on board the *Carthaginian*; I knew Margaret Ann Bolton; I recollect her, with others, having been brought on deck, some time in December last. I heard the doctor desire Bolton to be quiet, she said she would not do any master like him; I saw the doctor throw some water over Bolton; it was thrown over her after she had been requested to be quiet: her manner was very insulting: it was examined at the Police Office after the arrival of the ship; Bolton's conduct. In his opinion, was quarrelsome; she used expressions of defiance to the doctor when he threatened to throw water over her; I do not remember the words she made use of; there was noise below near the cabin, loud talking, and a quarrelsome altercation; there was 243 immigrants on board, exclusive of the cabin passengers; the captain and doctor were both cool; the conduct of the Captain and doctor, were humane and attentive; the captain used to go down below, and swap the decks after the emigrants had been sick; I did not see more than one bucket of water throw on over her; it might have been so but I do not think it possible.

Cross-examined by the Attorney General. — I am still residing on board the vessel, and living there, and do not pay anything for my board; the captain is very kind, too much so in my opinion, if he had been less kind, I think you would have been more thought of; more water might have been strong upon the woman, Bolton, whilst I was in the Roundhouse; I knew Mr. Coffay on board; I did not see all that took place; I did not hear them call for the water at all; I was in the cabin at the time when the first bucket of water was called for; I am waiting for my brother coming down the country, and remaining on board until he arrives in Sydney.

By the court. — I saw handcuffs on Bolton; her hands were fastened behind her back.

FRANCES ALEXANDER DUBOIS Alexander Dubois, examined by Mr. Windeyer. — I am an emigrant by the *Carthaginian*; I was overseer on board; I recollect Margaret and Bolton; she was very unmanageable, while on board, so obstinate that no person could do anything with her; she had a very abusive time; I remember her being called upon deck with six others, about 10 o'clock at night, are making a noise below; it disturbed the whole ship; Bolton was the person who commenced the noise;

she was put on one side of the vessel, the other woman on the other; the six were released shortly after; I recollect Bolton saying, that she had great difficulty in obtaining a certificate from the surgeon, from having had for a considerable time, a complicated number of disorders; it was refused by the medical men in Liverpool, but subsequently, she said that she got one from a gentleman in Manchester; she was idle on board, and would not take her share of clearing the berths; I did not observe that the ducking had any effect upon her; she told me that she had been afflicted with asthma and cough for five years, and appeared to me livelier when on board, and when she embarked at Liverpool; I did not see any water throw on upon her; I was sufficiently close to see if seven buckets of water had been drawn over her; it could have been done without my seeing it.

Cross-examined by the Attorney General, my wife was present when she told me of her sickness (previous to her coming on board); she also told it to other persons on board; I saw her teased; I have heard her called the old maid, or the Cheshire lady; I could have seen what took place; I saw no water thrown, or any called for; I was in the main batch way; I heard of some water being droll and; seven buckets could not have been thrown without my seeing it; she said she ought to have begged. The captain's pardon as the rest had done, but that her temper, would not allow her.

By a juror. — I heard the splash of some water.

Re-examined by Mr. Windeyer. — the doctor did not throw any lime in the emigrants eyes; lime was used to cleanse the ship; I never heard any complaint made.

By the court. — I saw the women handcuffed; Bolton's hands were handcuffed before her.

By a juror. — When lime was throw on the deck, it has on many occasions made me sneeze; Bolton has abused me; I am now in a situation; it was light night, when the women were brought on deck; there was no light below; I was never taken out of bed myself; lights were ordered to be extinguished between eight and nine o'clock.

Re-examined by Mr Windeyer. — I did not see Bolton handcuffed myself; I cannot say whether she could slip her hands through the irons.

SUSAN DUBOIS, examined by Mr. Broadhurst — I am the wife of the last witness, and know Margaret and Bolton; I recollect a disturbance between deck; Bolton was one of the persons making the noise; I did not go on deck; I remained below; shortly after the girls were taken on deck they were allowed to return to their berths; Bolton would not apologize to the captain; she told me so herself; she told me that she had been in bad health for several years, and that she could not obtain a certificate in Liverpool; afterwards, she got a certificate signed; I expressed my surprise at her venturing coming to sea; she said that as she could not obtain the situation in England, she might as well die on Sea, as on land; she told me after her arrival in this colony, that she had procured a situation in Sydney, and afterwards feigned illness, in order to get away from her place; she never assisted to clean on board, always saying that she was sick.

Cross-examined by the Attorney General. — I could particularly distinguish Bolton's voice, when the noise occurred; I have been on board, the *Carthaginian* once, since my arrival in Sydney; she in the lead so often at night, that frequently the captain had been requested to keep her quiet.

Dr. **ALEXANDER CUTHILL**. — I know Margaret Ann Bolton; she was received into the Asylum, on the 11th of April, and placed in the quietest room in the institution; I am decidedly of opinion, that while she was in the house she was sane, and capable of being responsible in any court of law; but I believe that ill usage or continued excitement would produce insanity; she was of sound mind when she came

into the Asylum; I never gave Dr. **NELSON**, to understand that I thought Bolton insane; I am of opinion that she is an intriguing, artful, woman.

ANN CHAPMAN, examined by Mr. Broadhurst. — I was an emigrant on board the *Carthagenian*; I knew Bolton, and remember the night that she and six others were ordered on deck, for making a noise; and on board, she was very abusive; she never took any share in cleaning the berth; the captain and doctor were very attentive to the passengers; the captain gave up his Cabin and to steerage passenger, during a fit of illness, for three weeks; I never saw the doctor throw lime in the women's eyes, nor did I hear any complaints to that effect.

Cross-examined by the Attorney General. — I did not go on deck, but I could distinguish Bolton's voice: I heard her voice before the captain and doctor came down below, where the noise was: I cannot say I could recognize the voices of any of the others.

BETSEY SMITH, examined by Mr. Windeyer. — I arrived in this colony, a passenger in the *Carthagenian*; I was one of the women taken on deck; Bolton was also of the number; she was very noisy; the doctor and captain, what kind to the emigrants; Bolton often made a noise by night, as well as by day; I knew a woman named Cook; the captain allowed her the use of his cabin during the whole time she was sick.

By the court. — I am married, and came to this colony to join my husband; I told them in the office, I was married, in Liverpool: I also told them that my husband was in this colony.

ROBERT BLACKFORD, examined Mr. Broadhurst. — I came out in the *Carthagenian*; I recollect some girls have been put in irons near the cabin; Margaret Bolton was amongst the number; I saw one bucket of water thrown over her; I mean, the last of the number that was thrown over her; I heard some water thrown before that; I was talking to the other girls who were in irons; I continued to converse with five who were in handcuffs; those that I saw, were handcuffed by the doctor; I heard the captain talking to Bolton, desiring her to be quiet; I heard water throw on, but did not see over whom; Bolton's conduct to the captain was insolent; the doctor through the water; the captain was standing at the capstan, assorting the handcuffs; the captain was kind and attentive, and I consider him a person of a humane and kind disposition; I was and oversee a part of the time; I was dismissed by the doctor.

Cross-examined by the Attorney General. — I heard persons talking about water, amongst them was Farrell; several were speaking about water; Farrell, was there knows better than I did.

By the juror. — It was a fine night; I do not recollect if it had been raining; I cannot say whether the morning was up; I do not think it was spread on the night in question.

FREDERICK CLINE. — I recollect Margaret and Bolton, on board the ship *Carthagenian*; I remember some time in December last, have been brought on deck; she was insolent to the captain; it was about 11 o'clock at night; she was several times desired to be quiet; she still continued speaking, and abuse you; I saw water thrown; I can swear to a bucket, but I cannot say whether it was full or not; I was on deck, the greater part of the time; when the water was thrown I was in front of the captain: seven buckets of water could not have been brought without my seeing it; the conduct of both the defendants was kind to the passengers.

Cross-examined by the Attorney General. — There might be a possibility of other water being thrown; there might have been a splash of water; I could not say I heard a splash.

Re-examined. — After the water was thrown, she was not quiet; we were not passed the cape at the time of the occurrence; it was warm, and did not rain; it was about three weeks after we passed the line; I cannot say whether the awning was up or not; it was about 11 o'clock at night; I recollect, when we passed the Cape of Hope.

ELIZABETH SIRCUIT examined by Mr. Broadhurst. — I was an emigrant on board the *Carthagénian*; I knew Margaret Ann Bolton; I recollect anomalies on board one night; Bolton made a noise; she was a disagreeable character on board; she said all the women were prostitutes except herself; the captain was particularly kind, as was also the doctor.

Cross-examined by the Attorney General. — There was other girls making a noise; I am married and my berth was within five or six, of Bolton's; she appeared to be generally in good health.

THOMAS SIRCUIT examined by Mr. Broadhurst. — I know Margaret Ann Bolton; she came out in the *Carthagénian*; I recollect the disturbance on board the vessel, but I cannot say particularly who they were except Bolton; I could distinguish Bolton's voice; I did not see her after she was taken on deck; I saw her a day or two after, she appeared as usual; her general character was quarrelsome on board, I have heard her called names.

Cross-examined by the Attorney General. — There were some persons of bad repute on board; Bolton was very cross on board; it seemed to me to be her natural disposition; she had a good appetite; I understand that persons afflicted with consumption have generally a tolerable appetite.

JAMES HASTINGS examined by Mr. Windeyer. — I am steward on board the *Carthagénian*; I have noticed the conduct of the captain and doctor; I have sailed with many captains, but never noticed one is so kind before.

Cross-examined by the Attorney General. — My time was principally employed in the cuddy; I recollect, a woman occupying the captain's cabin during that time she was ill; we were to the southward of the Cape of Good Hope at the time we passed by; it was very warm.

WILLIAM ALEXANDER PUREFOY, Esq., barrister. - I knew Dr. Nelson in Dublin about six years ago; from my personal acquaintance, I consider Dr Nelson, a very humane and kind person, and incapable of behaving unkind to any one.

The Attorney General, in a most eloquent and powerful address, pointed out the enormity of the offence the defendants were charged with, observing that it was of the most vital importance that the case should be fully investigated for the furtherance of justice, and the great importance of the character of this community.

His Honor explained the law of the case to the Jury, who retired at 10 minutes past five o'clock, and after an absence of nearly an hour, returned a verdict of guilty against both the prisoners on the first count, and acquitted them on the second count in the information.

The prisoners were remanded to the custody of the Sheriff, and ordered by His Honor to be brought up for sentence on Thursday next at 12 o'clock.

The prisoner, Robertson was the master, and the other (Nelson), the surgeon superintendent of the emigrant ship *Carthagénian*, which arrived in this harbor some time ago from the Port of Liverpool .

The trial lasted two days, the Court being crowded to excess during the proceedings, and it was manifested that the spectators took a great interest, and commiserated the sufferings of the unfortunate prosecutrix Margaret Ann Bolton.

COURT OF QUARTER SESSIONS. - TUESDAY, APRIL 11.

PATRICK RYAN was indicted for an assault upon **CATHERINE CLAFREY**, with intent to commit a rape, at Dungog, on the 1st December, 1842. It appears that on the day in question the prisoner went to the house where the prosecutrix resided and asked her to give him a drink of water, which she did, and seeing no one else in the house but a child he began to pull her about, but she resisted, and the child crying very hard he desisted from his attempt. The jury returned a verdict of guilty of common assault, and as he had been in prison for four months the court ordered him to be further imprisoned until the end of the sessions, and then discharged.

WREGISTER, 1/7, 09/09/1843.

BERRIMA ASSIZES.

Before Sir James Dowling, Chief Justice.

THOMAS READY was charged with having, at Queanbeyan, on the 9th April last, violated the person of **ELIZABETH BAILEY**, wife of **JOHN BAILEY**, brick-maker, of the same place. Mrs. Bailey gave evidence of the fact, but in answer to question by the Chief Justice said, she could not read or write, had never been to church, and did not know what religion was; neither did she understand the nature of an oath, not the consequence of violating it. She had no idea, in fact, of a future state. She had been taught the Lord's Prayer, however, and repeated it to His Honor, but she did not know the meaning of it. - The jury returned a verdict of not guilty.

TEETOTALLER, 1/28, 16/07/1842

SUPREME COURT – CRIMINAL SIDE

Before Mr. Justice Stephen – JULY 13.

The Queen v Childs.

This was an indictment charging the prisoner with an assault, &c.

MARIA CROFT being sworn, deposed, that she had been spending the day at the house of a friend, in Pitt-street. She left her friend's house, and was going down Pitt-street; between Bathurst and Liverpool-streets she heard footsteps behind her, she turned round as they came close to her, she was immediately laid hold of, when opposite the residence of the prisoner **CHILDS**, and carried by the prisoner and another man into the house – she was lifted entirely off her feet. They kept her in the house for three hours; she screamed, and made every effort to get away, but was unable to do so. About half-past ten, the prisoner let her out of the house; she immediately went to the watch-house, and complained of the treatment she had received; a sergeant of the Police accompanied her to the place, and found the prisoner there. He (the prisoner) was in a state of intoxication. During the time they detained her in the house, one of them fetched some liquor, and attempted to pour it down her throat, when she resisted them so doing, when part of the liquor fell on her clothes.

Cross-examined by Mr. **PUREFOY** for the prisoner: Had drunk one glass of porter, and one glass of wine on that day; had not drank any more; was perfectly sober; did not go into the Cottage of Content; did not go into any house to drink with the prisoner; this transaction occurred three weeks ago last Sunday night; the bell of St. James' Church was ringing when it took place; the other man had absconded, she had been told he was in the neighbourhood of Maitland.

By the Judge: Has anyone attempted to intimidate you, to prevent you giving evidence?

Yes, My Lord.

Sergeant **ADAMS**: Received a charge against two men one Sunday night from the prosecutrix; the [] shirt which he produced torn, was given to him that night by the prisoner; her clothes were much disordered; when she stood near him, he could perceive a strong smell of spirits; found the prisoner in the house to which she took him, he was in a state of intoxication; the prosecutrix appeared to be sober.

Mrs. **O'BRIEN**: Heard screaming proceed on the Sunday night in question from the house of Childs, it continued at intervals about three hours; she did not interfere, she thought it was the prisoner beating his wife; saw **MARIA SWAIN** come out of the house, heard her charge Childs the same night with the crime for which they were now trying him.

Mr. **PUREFOY** said he should only call the witnesses for the defence, and the Jury would, from the evidence which he would produce, easily see that the whole story was merely a fabricated one.

SARAH TURTON, late barmaid at the Cottage of Content, Pitt-street; I know the prisoner at the bar, and Maria Swain. The Sunday evening referred to in the indictment, Childs, Maria Swain, and another man whom I do not know, came to our house between six and seven o'clock; they each of them got a nobler of gin, and a glass of beer; they took some whisky with them; they were in the house about twenty minutes on the Sunday night, and they drank spirits, this I positively swear; I served all of them, because I knew Childs to be a *good* customer; she herself had come a prisoner to this country, she declined saying what for.

A man in Child's employment was the next witness; he swore positively that he saw the three persons referred to come down the street together; that they went into Childs' house; that Childs went round the house, and opened the door for the other two; he heard no screams, he lived close by; he was sent here for breaking into a dwelling-house by night.

- - - **WANTLY**, a person who lives nearly opposite the prisoner, (who had been committed to gaol by the magistrates for intimidating the prosecutrix,) he also saw them coming down the street, and also saw Childs go round the back and fetch a light, he heard the screaming described by Mrs. O'Brien; it did not come from Childs' house, but from the house of a man named **ROBINS**, who lived at the back; he was sent here for stealing £150.

- - - **ROBINS** was then called to swear that he was beating his wife on the Sunday night in question. But Mr. Purefoy said, that in the exercise of his discretion, he should not call any more witnesses, although there were some four or five who would swear to the same facts. He would leave the case in the hands of the Jury.

Mr. **CALLAGHAN**, for the prosecution, was about to comment on the case, when the Jury intimated that they had made up their minds as to the verdict, viz., that the prisoner was guilty of the assault.

His Honor enquired if they believed Sarah Turton?

The Jury said, No. She was then committed by the Judge to take her trial for wilful and corrupt perjury.

The Attorney-General having prayed the sentence of the Court upon the prisoner, he was asked what he had to say, why the sentence of the Court should not be passed upon him?

His Honor, in passing sentence remarked, that this was the most atrocious case which had been brought under his notice since he had been in these Colonies. You, prisoner, have acted the bushranger in the streets of Sydney, on a Sunday evening, while the inhabitants of the town were engaged in their religious exercises, you took from one of the most crowded streets of this town, to you an unoffending female; you

did not know that she was a person of loose character. If this state of things is allowed, the wives and daughters of none of the inhabitants will be safe. You, a married man, who ought to have been her protector, became her assailant. That you were drunk, is no excuse for the crime you intended to commit. You likewise tried to pour spirits down her throat to weaken her powers of resistance, and now you have the audacity to attempt to prove your innocence by aborning the most diabolical perjury. I sentence you to be confined in Her Majesty's Gaol at Sydney for two years.

TEETOTALLER, 1/32, 17/08/1842

SYDNEY QUARTER SESSIONS

Tuesday [August 10]

JOHN FORD, attempt to commit rape; not guilty – discharged.

TEETOTALLER, 1/36, 14/09.1842

MAITLAND CIRCUIT COURT

STEPHEN LAWRENCE was indicted for an assault, with intent to commit a rape. Guilty; two years to an ironed gang.

SYDNEY GAZETTE, 13 October 1842

Supreme Court of New South Wales

Dowling CJ, 12 October 1842

WILLIAM ROBSON was placed at the bar charged with assaulting one **MARIA SWAINE**, with intent to commit rape, on the 19th of June last.

The Attorney General stated the circumstances of the case, and called.

Maria Swaine -, who deposed, that she was a single woman, and resided in Prince's Street, living on an annuity: she had been in the colony more than five years; she knew the prisoner at the bar, and recollected that on the 19th of June she went to see a person named Smith, when she saw the prisoner for the first time, who was then sitting on a table: this was between the hours of 12 and one o'clock in the afternoon, and as she was returning home at about half-past seven o'clock the same evening, two men met her and she came out of the house, and carried her into a weather-boarded place, a few yards from the house she had just left. She had not dined that day, but she had a slight meal at Mrs Smith's, where a bottle of wine and two bottles of Porter which the witness had sent for, from her house, were drank. Witness, however, drank very little, and the remainder of the liquor was drank by the inmates of the house. In carrying her into the house, one man held his hand on her mouth, while the other opened the door and got a light; they then carried her in by her head and feet, and the prisoner, who was one of the men, asked her to take off her bonnet and shawl, which she refused to do, that he (the prisoner), dragged them forcibly off. The witness then went on to describe the manner in which the prisoner and the other man, whose name was **CHILD**, had attempted to violate per person; one of the men, holding his hand over her mouth, while the other committed the assault; finding they could not succeed, one of them went out and procured some spirits which they endeavoured to pour down her throat; but finding all attempts ineffectual, the day at length let her go, having first robbed her of a gold brooch which you wore in her habit shirt. In the struggle, her clothes had been much torn, and she was greatly hurt; after getting away from the men, she went first to Mr O'Brien's, and then to Wandey's, and subsequently went to the station house, where she complained to the Police of the treatment she had received, in consequence of which the prisoner was afterwards taken into custody.

The witness was cross-examined at considerable length by Mr **WINDEYER**, who appeared on behalf of the prisoner, but nothing material was elicited.

Sergeant **ADAMS**, of the Sydney Police, deposed, that the last witness had informed him of the manner in which she had been treated, and he accompanied her to the house in question, where Child was taken into custody; the prisoner was apprehended about a month afterwards.

MARY O'BRIEN corroborated the evidence of prosecutrix, by stating that she had heard the screams of the latter, for upwards of two hours on the evening in question; subsequently, she saw a prosecutrix come out of the house, much disordered, when she told witness's husband that the two men had forced her into the house and attempted to ill use her; the witness afterwards saw her return to the house in company with two constables.

The prosecutrix was recalled, and stated that she had never told any one that the charge was false, or that she had a wish to make it up.

Mr. Windeyer then for the defence address to the Jury at great length, endeavouring to show that the prosecutrix was a woman of light character, and had preferred the charge against the prisoner from revenge for having lost her brooch, while in his company. He then called seven or eight witnesses in support of those statements, and a great deal of conflicting evidence was given.

The Attorney General, then replied at great length, and contended, that nothing had been elicited to shake the credibility of the prosecutrix, and the witnesses brought former defence work, according to their own account, a set of most worthless characters, nearly all of them having been transported to the colony.

His Honor summed up, and the Jury, after a quarter of an hour's absence, returned a verdict of guilty, against the prisoner, who was remanded to sentence.

The trial of this case, lasted until half past eight p.m., when the court adjourned till Friday (to-morrow).

TEETOTALLER, 1/42, 26/10/1842
SUPREME COURT – CRIMINAL SIDE
Gaol Delivery
Friday
(Before the three Judges)

WILLIAM ROBSON, who had been convicted before the Chief Justice, of an assault on **MARIA SWAINE**, on the 6th of June last, was next placed at the bar. This man was an accomplice of the man named **CHILDS** (of whose trial we gave a full report.) Their crime was committed on a Sunday evening, while in a state of intoxication. Childs was sentenced to be confined in Sydney Gaol for two years, and Robson was now sentenced to be confined in the same gaol for two years, with hard labour.

TEETOTALLER, 2/56, 01/02/1843
POLICE OFFICE BUSINESS
[Monday list]

WILLIAM BOADLEY, for an assault on a child, sentenced three months on the treadmill.

MAITLAND MERCURY, 01/15, 15/04/1843
COURT OF QUARTER SESSIONS
TUESDAY, APRIL 11

PATRICK RYAN was indicted for an assault upon **CATHERINE CLAFREY**, with intent to commit a rape, at Dungog, on the 1st December, 1842. It appeared that on the day in question the prisoner went to the house where the prosecutrix resided and asked her to give him a drink of water, which she did, and seeing no one else in the house but a child he began to pull her about, but she resisted, and the child crying very hard he desisted from his attempt. The jury returned a verdict of guilty of a common assault, and as he had been in prison for four months the court ordered him to be further imprisoned until the end of the sessions, and then to be discharged.

MAITLAND MERCURY, 0132, 12/08/1843

TAMPERING WITH A WITNESS. - On Saturday morning last a man named **PATRICK BURKE**, a ticket of leave holder, was brought before the police bench charged with having tampered with two witnesses, a man and his wife named **BAKER**, in order to induce them to refrain from giving their evidence in a case of assault committed by Burke's brother on the female witness, with intent to commit a rape. The prisoner was convicted of the offence, and the bench recommended that his ticket should be cancelled.

WREGISTER, 1/8, 16/09/1843.

BERRIMA ASSIZES.

Friday, September 8.

JACOB JAMES, a middle aged man, was indicted for having, at Bungonia, on the 1st June, 1842, carnally known **AMELIA FOSTER**, a child of eleven years. - Not guilty, discharged.

HENRY MACKAY was then placed at the bar, charged with carnally knowing **MARIAN GRIFFIN**, alias **BETSY MACKAY**, at Murrumbidgee, on the 1st May last, the girl being at the time under eleven years of age. From the child's statement it appeared, she was proceeding from Sydney, with her mother, to join her father in Bathurst, and when they had got as far as Penrith it rained very hard, and they wished for shelter, which they requested of the prisoner's wife, previously unknown to them, whom they saw standing at a door. She took them in, and there they saw the prisoner, who was a tailor, working at his trade. He professed great kindness towards them, and made them stay a week at his house. At the end of that time, when her mother was about to proceed on her journey, he said he had lost his own child, and would be very glad if her mother would leave her with him and his wife for a while, which would be better than taking her over the mountains in bad weather. That was agreed upon, and the child was left there. The prisoner then picked a quarrel with his wife, parted from her, and left the neighbourhood, proceeding first to Richmond, then to Cowpastures, and finally to Murrumbidgee, where his long premeditated and unmanly crime was perpetrated. The jury found the prisoner guilty, and he was remanded for judgement, his Honor telling him that if he had been convicted of the capital felony, he would have, infallibly left him for execution on Monday morning, for a more atrocious crime he never heard of in a court of justice.

WREGISTER, 1/11, 07/10/1843.

SUPREME COURT.

CRIMINAL SIDE - MONDAY.

(Before the Chief Justice and a Common Jury)

THOMAS HUNT, late of Liverpool, was indicted for having, on the 20th of August last, at Bankstown, carnally known **MARY BRIDLE**, aged nine years and six

months; a second count charged a common assault. From the evidence given it appeared that the parents of the prosecutrix first became aware of the circumstances by her being infected with an unclean disease. The Jury returned a verdict, finding the prisoner guilty of the second count, when he was remanded for sentence.

BERRIMA CIRCUIT COURT.

Monday, March 4.

MICHAEL MURPHY, late of Goulburn, labourer, was indicted for violating the person of **NANCY SPELSLIE**, at Lockyersleigh, on the 6th of October last. Guilty. His Honor passed sentence of death upon the prisoner.

MAITLAND MERCURY, 01/40, 07/10/1843

THE BLACKS. - We have been frequently disgusted at the number of naked blacks strolling about the streets of Maitland, and we are glad to find that this outrage upon public decency has at length been taken notice of by the proper authorities. Orders have been this week issued to the constables to apprehend such of the blacks as are found in a state of nudity in the streets of the town, and place them in the lockup, afterwards to be dealt with by the bench of magistrates.

MAITLAND MERCURY, 01/41, 14/10/1843

(Summary Jurisdiction)

THOMAS BAGNELLY was charged with an assault on the person of **HENRIETTA DAVIS**, at Paterson, on the 24th August last. The assault was clearly proved, and the prisoner in his defence said that some years ago, when in the service of the Australian Agricultural Company, he received an injury in his head, from which, whenever he had the misfortune to take a drop of drink, he was distracted, and did not know what he was doing. The court found the prisoner guilty, and in passing sentence upon him observed that there appeared reason to believe that what he had stated was true, but he ought on that account to refrain from taking any drink, and this would be no excuse for him if he came before them again on any other offence. In the present case, however, they would pass upon him a lenient sentence, which was that his ticket should be cancelled for three calendar months. The court then adjourned.

RECORD, 1/16, 20/01/1844

WILLIAM BRENNIE, late of Port Macquarie, labourer, was indicted for a violent assault on a child, above the age of ten, and under the age of twelve years.

The evidence given in this case was of the most disgusting nature, and showed the shocking depravity of the prisoner.

The prisoner attempted to set up a defence, that the prosecution was got up by the girl's father, who had a spite against him, on account of some suspicion he entertained, that his wife had been harboured by him during his absence from home.

The Judge recapitulated the evidence, and expressed an opinion that the law with reference to cases of this kind was of the most anomalous kind; for, while an offence like the prisoner's, with a child under the age of ten years, with or without consent, was punishable as a capital offence, the crime, if she passed ten years, was reduced to a misdemeanour, thereby depriving the court of all power to inflict punishment at all proportionate to the enormity of the offence. There was every reason to believe that the law would be altered in this respect.

The jury, without any hesitation, found the prisoner guilty, and he was sentenced by the Court to be imprisoned, and kept to hard labour, for the space of seven years. The judge said, he regretted that the law did not permit of a more severe sentence.

MAITLAND MERCURY, 02/55, 20/01/1844

SUPREME COURT – CRIMINAL SIDE

JOHN M'CARNE, of Port Macquarie, was found guilty of assault and violence on a female child of ten years old; to be imprisoned and kept to hard labour for seven years.

DEATH OF MRS. JAMIESON. - This unfortunate woman, who was so brutally ill-used and robbed about a fortnight ago by a man named **KNATCHBULL**, died this morning about half-past seven o'clock. An inquest was held on her body this afternoon, and the jury returned a verdict of wilful murder against Knatchbull; he will probably be tried during this sessions of the criminal court.

WREGISTER, 2/26, 20/01/1844.

SUPREME COURT.

Wednesday.

Before his Honour Mr. Justice Burton, and a Common Jury.

MARY ANN FRENCH stood indicted for having, on the 29th day of April last, at Campbelltown, falsely accused **DENNIS RYAN** and **JOHN DWYER**, before **DONALD M'LEAN**, Esq., J.P., of assaulting and violating her person. In consequence of the absence of one of the witnesses, the case was not proceeded with, and the prisoner was remanded till another day.

Thursday.

Before Mr. Justice Stephen and a Common Jury.

WILLIAM BRENNIE, late of Port Macquarie, was indicted for violently assaulting the person of a child namely **MARY ANN WOODLANDS**, above the age of ten and under the age of twelve years. Guilty – to be imprisoned and kept to hard labour for the space of seven years.

WREGISTER, 2/27, 27/01/1844.

SUPREME COURT.

Saturday.

Before his Honor the Chief Justice, and a Common Jury.

MARY ANN FRENCH was placed at the bar charged with having committed wilful and corrupt perjury, in preferring a charge of rape, at Campbelltown, on the 29th of April last, against one **DENNIS RYAN**, with violating her person, and one **JOHN DWYER** with aiding and assisting him in perpetrating that offence. Guilty – remanded for sentence.

MAITLAND MERCURY, 02/56, 27/01/1844

SUPREME COURT – CRIMINAL SIDE

SATURDAY, 21TH JANUARY

Before the Chief Justice and a Common jury

MARY ANN FRENCH was charged with having committed perjury, in preferring a charge of rape against **DENIS RYAN**, at Campbelltown, and against **JOHN DWYER** for aiding and abetting him in the perpetration of the offence. Guilty; remanded for sentence.

SUPREME COURT – CRIMINAL SIDE

THURSDAY, JANUARY 25

MARY ANN FRENCH, who had been found guilty of perjury, was sentenced to be imprisoned and kept to hard labour for two years in the Female Factory.

MAITLAND MERCURY, 02/60, 24/02/1844

DRUNKEN ABORIGINES. - On Monday last two aborigines were brought before the bench by constable **KERR**, charged with being drunk and making a disturbance in the streets. They were fined 5s. each, or to be confined six hours in the stocks. The others were fined £5 each, or to be confined in Newcastle gaol for one month, for being drunk and exposing their persons in the streets.

WREGISTER, 2/28, 03/02/1844.

SUPREME COURT.

Saturday.

Before their Honors the three Judges.

MARY ANN FRENCH, who had been found guilty of perjury, was placed at the bar, and sentenced to be imprisoned and kept to hard labour in the Female Factory, at Parramatta, for the space of three years.

MAITLAND MERCURY, 2/57, 03/02/1844

SUPREME COURT. - CRIMINAL SIDE. - THURSDAY, JANUARY 25.

MARY ANN FRENCH, who had been found guilty of perjury, was sentenced to be imprisoned and kept to hard labour for two years in the Female Factory.

MAITLAND MERCURY, 02/62, 09/03/1844

CALENDAR FOR THE ENSUING CIRCUIT COURT

ROBERT FLEMING, bond, for rape and robbery;

GUARDIAN, 1/1, 16/03/1844

BERRIMA ASSIZES, THURSDAY, MARCH 7.

CRIMINAL SIDE.

JOHN NICHOLAS SPENCER, rape. Three years in irons.

RICHARD [MICHAEL] MURPHY, rape. Death. His Honor, before the Assize closed, reprieved the prisoner Murphy, with a recommendation to mercy, in consequence of the infamous character of a girl in evidence against him.

WREGISTER, 2/34, 16/03/1844.

Berrima Circuit Court.

Thursday, March 7.

JOHN NICHOLAS SPENCER was indicted for violating the person of a child named **SARAH EADEN**, under the age of ten years. Guilty – sentenced to three years' hard labour in the ironed gang.

IN THE MATTER OF **MICHAEL MURPHY**, who had sentence of death pronounced against him on a former day for a rape, his Honor stated that, from the readiness and apparent simplicity of the girl's answers, he was perfectly convinced of her truth and virtue, and he did not doubt but that every person who attended the trial was equally so; under this impression, therefore, he had looked upon the prisoner's assertion against the girl's character as an aggravation of his crime; but to prevent the slightest possibility of error in a case of such vital importance, he had despatched a message to Lockyersleigh, where the girl had before resided, with a view of enquiring into the truth or falsehood of these statements. He did this with a full assurance that the answer would be a direct contradiction to all which the prisoner had advanced; but they might judge how great was his surprise, when he learnt that her character was, if

possible, worse than the prisoner had painted it. He had at that moment before him proof, upon the oaths of persons whose testimony could not, under the circumstances, be shaken, that the conduct of this unhappy and misguided young female had been for a long time past of the most infamous description, and that she must in her evidence before the court, have been guilty of so much falsehood, as to render it extremely doubtful whether any portion of her testimony was true. It was a most dreadful and humiliating thought, that the stream of justice could by any possibility be so polluted as in the present instance, and it ought to act as a warning to them all, to hold with trembling care the scales of justice, and to almost doubt the reality of their own judgement, where a question of so much importance as the existence of a rational being was concerned. It was also another proof of what a deficiency of all religion and morality there must be among certain classes of the people of this country, when a girl of such tender years, could not only be guilty of the most gross depravity in her general conduct, but could deliberately bring a false accusation against another, and so maintain her story, as to impose an implicit belief in its truth upon the administration of justice. It was a melancholy proof indeed, of how much more was required in the way of religious instruction, to dissipate the horrible darkness which hangs over the minds of these unhappy people. He was deeply thankful to the Almighty, that although the truth of this matter had not been made known, as either himself or the Jury would have wished, it had pleased Him in His own good time to declare that truth, and snatch an innocent man from unmerited punishment. Under the present circumstances he should now relieve the man alluded to (**MICHAEL MURPHY**), of which fact the Sheriff would inform him, and he would also recommend him for her Majesty's pardon.

The Court was then adjourned *sine die*.

MAITLAND CIRCUIT COURT.

[Wednesday, 12th]

MARY ANN CLIFTON was indicted for wilful and corrupt perjury, committed before the Maitland Bench whilst giving evidence in a case of assault on the 17th November, 1843. Guilty – remanded.

ROBERT FLEMING was indicted for an assault with intent to commit a rape upon **ANN HAYES**, a married woman, aged 50 years, at the Green Hills, on 31st October, 1843. Guilty – remanded.

Monday.

MARY ANN CLIFTON, who had on a previous day been convicted of perjury, was sentenced to be imprisoned for twelve months.

ROBERT FLEMING, convicted of rape, sentence of death recorded.

MAITLAND MERCURY, 02/63, 16/03/1844

HUNTER RIVER DISTRICT NEWS

NEWCASTLE

POLICE. - On Tuesday last **MARY RICE**, a bold, masculine looking female, was arraigned before **J.H. CRUMMER** and **JOHN ARMSTRONG**, Esquires, on a charge of assault committed on the person of **AMELIA TUCKER**. The prosecutrix deposed that a day or two back she had been bitten by a dog belonging to the accused, and on expostulating with her for not having the animal tied up she made use of abusive language; and then stabbed prosecutrix in the arm with a knife. The defendant was bound over to keep the peace for twelve months, and on payment of 10s. costs was discharged.

MAITLAND CIRCUIT COURT.

... After the proclamation against vice and immorality was read, and the jury lists called over, the Chief Justice delivered the following

CHARGE

... There are, indeed, some offences which will invite your serious attention.

The calendar, I perceive, exhibits a case of violence towards a married woman, under circumstances of imputed aggravation. When this comes on, your vigilance will be awakened in applying the tests by which the truth of such painful charges is evolved.

ASSAULT WITH INTENT.

ROBERT FLEMING was indicted for an assault, with intent to commit a rape, upon **ANN HAYS**, a married woman, aged fifty years, at the Greenhills, on the 31st October, 1843.

A great number of witnesses were examined, both for the prosecution and defence. The prosecutrix swore positively to the prisoner, and also that he had committed the offence. The prisoner in his defence, attempted to show that the prosecutrix was drunk, that she knew not what she was about, and that she was not a woman of good character.

The jury returned a verdict of guilty, and the prisoner was remanded.

MAITLAND MERCURY, 02/63, 19/03/1844 (SUPPLEMENT)

MAITLAND CIRCUIT COURT

CRIMINAL SIDE – MONDAY, MARCH 18

JUDGEMENTS. - **ROBERT FLEMING**, who had been convicted of a rape upon **ANN HAYS**, was then placed at the bar, and his Honor having pointed out the enormity of the crime, and the aggravating circumstances with which it was attended, said that but for some demerits on the part of the prosecutrix it would have been his painful duty to have passed sentence of death upon him. As the circumstances of the case now were, he would order sentence of death to be recorded against the prisoner, and it would be for the Governor and Council to decide upon his fate. The prisoner was then removed.

MAITLAND MERCURY, 2/64, 23/03/1844

PEEPING IN AT BACK WINDOWS. - On Monday night, about half-past nine, as constable **TONGE** was coming down High-street, near the Buck's Head, he heard a woman in the opposite house desiring a person to go to the teetotal meeting, and tell her husband to come home directly. Tonge went up, and saw a man named **THOMAS WILLIAMS** standing in the road, whom the woman said had just been round in the yard, peeping in at the windows. The woman's statement to Tonge was that she was sitting in the front room, which is a butcher's shop, and hearing steps going by the house down the yard, went to the back, expecting to meet her husband there; but was much alarmed by finding a strange man peeping in at the window. Tonge asked the man if he was free, and he said he was, and Tonge desired him to come to the light in front of the shop, and show him his papers. On this the man appeared quite drunk, and got very abusive, having before been quiet and apparently sober. Two constables coming up they took the man to the lockup, on his way to which he amused himself by pricking the constables with a couple of spurs he had in his hand, and other like pranks. On Tuesday he was brought before the bench, but the woman not being in attendance, after the above evidence had been given by Tonge, Williams was remanded till the next day, when he was brought up and discharged.

MAITLAND MERCURY, 02/65, 30/03/1844
TICKETS OF LEAVE CANCELLED
JOHN PALMER, Mermaid, gross indecency, Maitland Bench.

MAITLAND MERCURY, 02/66, 06/04/1844
NEWCASTLE

POLICE OFFICE. - MARCH 29.

TICKET OF LEAVE CANCELLED. - **MICHAEL DONOVAN**, a ticket of leave holder, residing at Lake Macquarie, in the service of Mr. **THRELKELD**, was charged by **JOHN HAMMOND**, also employed by Mr. Threlkeld, with grossly immoral conduct in seducing his wife, and visiting his house while complainant was at work. Hammond stated the facts of the case in such a manner as to leave no doubt of the prisoner's criminality, and the bench, after commenting severely on the prisoner's depravity, ordered him to be returned to the service of government, with a recommendation that his ticket should be cancelled.

MAITLAND ASSIZES.

We understand that his Excellency, with the advice of the Executive Council, has been pleased to direct the following commutations of sentence, with respect to the undermentioned parties convicted at the late Maitland Assizes, namely:-

ROBERT FLEMING, bond, for rape, death recorded, sentence commuted to three years' hard labour in irons. *Australian*.

MAITLAND MERCURY, 02/70, 04/05/1844
TICKETS OF LEAVE CANCELLED

MICHAEL DONOVAN, Albion I, immoral conduct, Newcastle bench; ...

MAITLAND MERCURY, 02/75, 08/06/1844

COMMITTAL. - A man named **JOSEPH SPRAGG**, a ticket of leave holder, was on Friday, the 31st ult., committed to take his trial for a rape upon a little girl named **MARY ANN SMITH**, aged between ten and twelve years.

GUARDIAN, 1/17, 06/07/1844.

SUPREME COURT – CRIMINAL SIDE

Wednesday.

RAPE. - **W.R. EYLES** was indicted for carnally knowing one **ROSINA THOMAS**, a child under ten years of age. A second count charged the prisoner with a common assault on the child.

The prisoner was found guilty of the assault, and sentenced to three years imprisonment in Sydney Gaol, the first week of each month to be passed in solitary confinement.

WREGISTER, 3/50, 06/07/1844.

Wednesday, July, 3.

WILLIAM HENRY EYLES, late of Bateman's Bay, was indicted for carnally knowing **ROSINA THOMAS**, a female child under ten years of age. A second count charged the prisoner with having committed a common assault on the prosecutrix; both counts laid the offences as committed on or about the 22nd of April, 1844. Guilty of a common assault – to be imprisoned in Parramatta gaol for three years, every first week in every month to be in solitary confinement.

GUARDIAN, 1/21, 03/08/1844

GAOL DELIVERY

DISCHARGED: **GEORGE ROBERTSON** of Port Macquarie, under committal from that bench for rape, remanded until next sessions.

MAITLAND MERCURY, 0284, 10/08/1844

NEWCASTLE

POLICE OFFICE. – MONDAY AUGUST 5.

WILLIAM COLCLOUGH, per Westmoreland, a prisoner assigned to the A.A. Company, was charged with gross disorderly conduct. Constable **RINKIN** deposed to the facts of the case, having found him in company with a black gin at the back of a public-house on the Saturday previous. After the evidence of the constable was given, the police history of the prisoner was read over, and his general bad conduct proved. The bench sentenced him to 28 days solitary confinement, and to be returned to government.

MAITLAND MERCURY, 02/88, 07/09/1844

CALENDAR OF PRISONERS FOR TRIAL AT THE MAITLAND CIRCUIT COURT.

BILLY, alias **TOMBO**, an aboriginal, for assault with intent to commit a rape;

JOHN JACKSON, for rape.

MAITLAND MERCURY, 02/89, 14/09/1844

MAITLAND CIRCUIT COURT

CRIMINAL SIDE. - WEDNESDAY, SEPT. 11

RAPE. - **JOSEPH SPRAGGS** pleaded guilty to a charge of assaulting **MARY ANN SMITH**, a child of eleven years of age, and carnally knowing her, at Newcastle, on the 19th May last, and was remanded for sentence.

ASSAULT BY AN ABORIGINE.

BILL, alias **TOM**, alias **TOMBO**, an aboriginal native, was indicted for an assault upon **ELLEN DEWSNAP**, with intent to commit a rape, at Woodville, on the 19th May last. The prosecutrix deposed the facts of the case, and swore positively that the prisoner was the man, and that she could not be mistaken. The prisoner said that all prosecutrix said was "tell him lie;" he never spoke to her at all, not ill-used her. The jury returned a verdict of guilty, and the prisoner was remanded for sentence.

THURSDAY, SEPTEMBER 12

RAPE

JOHN JACKSON was indicted for violently and feloniously assaulting **REBECCA PEARSON**, and committing a rape upon her person at Red Hill, on the 3rd July last.

The Attorney General having stated the case to the jury, called the prosecutor, a girl between thirteen and fourteen years of age, who detailed the circumstances attending the commission of the offence, and from the evidence of Dr. **WEST** it appeared that the injury complained of had been sustained by the prosecutrix.

The prisoner, in his defence, said he was innocent of the crime, but happening to be on the road he was picked up as the first man whom the victim's father happened to come across.

His Honor having summed up, and stated the law relating to offences of this nature, the jury, after retiring for about twenty-five minutes, returned a verdict of guilty, and the prisoner was remanded for sentence.

MAITLAND CIRCUIT COURT. - SENTENCES

JOSEPH SPRAGGS, who had pleaded guilty to assaulting a female child at Newcastle under eleven years of age, was then placed at the bar, and sentenced to be imprisoned and kept to hard labour in Newcastle gaol for one year.

BILLY, alias TOM, alias TOMBO, who had been found guilty of an assault with intent to commit a rape, was then placed at the bar, and his Honor having briefly addressed him he was sentenced to be imprisoned and kept to hard labour in Newcastle gaol for eighteen months. The prisoner on hearing the sentence said "Very good, sir."

JOHN JACKSON, who had been convicted of rape, was then placed at the bar, and his Honor after addressing the prisoner for some time on the enormity of his offence, and alluding to the mitigation which the law had made in the punishment of this crime in England, said that in conformity with the spirit of the age and the dictates of humanity the court would not pass upon the prisoner the sentence of death, but he must not expect to remain in this colony. Judgement of death would be recorded against him, and he would be transported for life.

GUARDIAN, 1/28, 21/09/1844

MAITLAND CIRCUIT COURT

THURSDAY, SEPTEMBER 12

Before his Honor Mr. Justice a'Beckett

JOHN JACKSON was indicted for violently and feloniously assaulting **REBECCA PEARSON**, and committing a rape upon her person, at Red Hill, on the 30th July 1844. Guilty. Remanded for sentence.

MAITLAND MERCURY, 2/93, 12/10/1844

RUM AND JEALOUSY. - On Friday last two women who reside at Morpeth, one named **MACDONALD**, and the other **ELLEN YATES**, were drinking together until they became drunk, when Yates accused Macdonald of being a little too fond of her (Yates's) husband; upon which Mrs. Macdonald, by way of showing the purity of her own character, immediately sullied one of the bright eyes of the fair Ellen by a blow of her fist. Ellen, not wishing to be quiescent under such treatment, seized a knife, and attempted to disfigure the features of her opponent; but not succeeding in this, she stabbed her in the arm; upon which Macdonald made a complaint to the magistrate, and Ellen was apprehended. She was yesterday examined at the police office, when it being proved that she was not one of the most orderly ladies in Morpeth, the bench recommended her ticket to be cancelled.

WREGISTER, 3/67, 02/11/1844.

CRIMINAL COURT.

The three Judges sat on Saturday for the purpose of delivering the gaol. The following sentences were passed:

GEORGE ROBERTSON, rape, fifteen years transportation.

EMANUEL PHILLIPS, assaulting a child, to be imprisoned for two years.

MAITLAND MERCURY, 02/96, 02/11/1844

TICKETS OF LEAVE. - CANCELLED.

JOSEPH SPRAGGS, Asia, assault with intent; Newcastle bench;

WREGISTER, 3/71, 30/11/1844.

COMMITTALS. **JAMES WELDON**, also free by servitude, was committed for an aggravated assault on a female child nine years of age.

WREGISTER, 4/78, 18/01/1845
CENTRAL CRIMINAL COURT

Saturday, January 11

JABEZ WELDON was indicted for having, on the 23rd of November last, assaulted, abused and violated one **ELIZABETH BURTON**, a child under ten years of age. Guilty of the assault with intent – remanded for sentence.

WREGISTER, 3/80, 01/02/1845
SUPREME COURT – CRIMINAL SIDE

Before their Honors the three Judges

In the case of **THE QUEEN v. JABEZ WELDON**, who was tried before his Honor Mr. Justice Dickinson, at the last criminal sessions, for the capital felony of sexually knowing a child under ten years of age, the proof required to support this charge being defective, his Honor had directed the Jury to find the prisoner guilty of an assault, reserving for the consideration of the other Judges whether such a verdict could be supported, under the provisions of the 1 Vic., c. 185, sec. 11. The other judges being of a different opinion from that of his Honor, the judgement was arrested: the prisoner to be detained, in default of bill, to answer an indictment for assault with intent to commit rape.

WREGISTER, 4/85, 08/03/1845
BERRIMA CIRCUIT COURT

Before his Honor Mr. Justice Dickinson

DIONYSUS WILLIAM BLOOMFIELD was indicted for a rape, alleged to have been committed on one **ELIZABETH TURNER**, at Arthursleigh, on the 24th of October, 1844. The prisoner was acquitted of the charge, but was taken into custody as a runaway.

MAITLAND MERCURY, 3/115, 15/03/1845

BATHURST. - A man named **SLOANE**, charged with rape on the person of a girl 11 years of age, at Clements' boiling down establishment, King's Plains, was remanded to Carcoar, where the offence had been committed, for examination.

MAITLAND MERCURY, 3/116, 22/03/1845
SYDNEY NEWS. - ATTEMPT TO MURDER.

A man named **CORNELIUS MURPHY** has been committed to take his trial in Sydney for shooting at a government man, with intent to kill him. The man, it appeared, had seriously ill-used the prisoner's wife, and he, on hearing it, took his musket, and laid in wait for the offender; when he met him, a struggle took place between them, and the piece going off the ball passed near prosecutor's body, the powder igniting his jacket sleeve.

MAITLAND MERCURY, 3/117, 29/03.1845

ATTEMPT AT RAPE. - **An aboriginal black, named "JOE,"** about fifteen years of age, was on Monday last fully committed to take his trial for an attempted rape on the person of an infant child, only three years of age, daughter of **ALEXANDER**

WELSH, a labouring man residing near Wallis's Creek, in West Maitland. The prisoner said nothing in his defence.

MAITLAND MERCURY, 3/119, 12/04/1845

MAITLAND QUARTER SESSIONS. - ASSAULT WITH INTENT, &c.

JOE, an aboriginal black, was indicted for an assault on **MARY ANN WALSH**, with intent, &c., at Maitland, on the 19th March last; a second count charged him with having committed as common assault. The prisoner was found guilty on the second count, and sentenced to be imprisoned in Sydney gaol for six months.

WREGISTER, 4/90, 12/04/1845

CENTRAL CRIMINAL COURT

Monday

Before his Honor the Chief Justice

JABEZ WELDON was indicted for an assault with intent to commit a rape on one **ELIZA BURTON**, a child. Guilty – sentenced to two years' imprisonment, and to find securities for good behaviour for two years.

WREGISTER, 4/91, 19/04/1845

CENTRAL CRIMINAL COURT

Saturday

Before his Honor Mr. Justice Dickinson

RICHARD LAWSON was indicted for having, on the 22nd December, committed a rape upon one **SUSANNAH MORGAN**, an infant under nine years of age. Guilty – remanded.

Thursday

Before their Honors the three Judges

RICHARD LAWSON, found guilty of carnally knowing a child under ten years of age, without her consent, had sentence of death recorded against him, with an intimation that it would be recommended to the Governor that he should be transported for the period of his natural life. [ex Pentonville (Mitcham) landed from Geelong only a fortnight ago.]

MAITLAND MERCURY, 3/120, 19/04/1845

IMPROPER CONDUCT OF A CONSTABLE. - A constable in the Maitland police, named **GEORGE WALKER**, has been dismissed from that body, by the police magistrate, for very improper conduct towards a female, named **MARY HOW**, residing in West Maitland, by threatening "to keep a look out for her and to have her before long." The woman had said nothing to him, but some days previously had had a few words with his wife.

WREGISTER, 5/103, 12/07/1845

CENTRAL CRIMINAL COURT

Tuesday

Before his Honor Mr. Justice Dickinson

HENRY CARTER was indicted for having, at Wollongong, on the 20th April last, committed a rape upon the person of **MARY ANN FISHLOCK**. Not guilty – discharged.

MAITLAND MERCURY, 3/132, 12/07/1845

MAITLAND QUARTER SESSIONS.

ASSAULT. - **DONALD M'LAUGHLAN**, out on bail, appeared when called on, and, after a discussion between the Crown prosecutor and his counsel, Mr. Purefoy, as to whether he should be allowed to take his trial on the floor of the court or in the same manner as prisoners for felony, he was placed in the dock, and indicted for the misdemeanour of an assault with intent, &c., on the person of **AGNES HEPBURN**, a child aged 4 years and 10 months, at Maitland, on the 5th May last. A second count charged him with a common assault.

JOHN ANDREW MEEK, tailor, in West Maitland, and his wife (the step-father and mother of the girl), and Dr. **BEARDMORE**, of West Maitland, were called for the prosecution; but the details of the evidence were necessarily of such a nature as to be unfit for publication. The girl herself was also brought forward, but was not found sufficiently well informed as to the nature of an oath to render her evidence admissible. Dr. **LIDDELL**, of West Maitland, **ISABELLA SHARP**, and **MARGARET GLEESON** were called for the defence.

The trial, in the course of which the jury were addressed at considerable length by the Crown prosecutor and Mr. Purefoy, lasted the greater part of the day.

The jury retired for upwards of an hour, when they returned to court with a verdict of guilty of a common assault, with a recommendation of mercy on account of the improper conduct of the parents of the child as shown by the evidence.

The Chairman informed the prisoner that the recommendation of the jury would be attended to, although it did not appear to the court that the circumstances under which the offence was committed were such as to palliate the conduct of the prisoner. The sentence of the court was, that he should be confined six months in Newcastle gaol; and if he had been committed on the first count, the severest punishment the law allowed would certainly have been inflicted.

COMMON ASSAULT.

WILLIAM M'VIE MITCHELL, a free man, pleaded guilty to a common assault on **CATHERINE FAIRBROTHER**; and in consideration of his already suffering three months imprisonment, was sentenced to only three months' additional confinement.

MAITLAND MERCURY, 3/137, 16/08/1845

ASSAULT. - **Wm. FINNER** and **PATRICK M'NAMEE** were brought before the bench yesterday, charged with having been drunk, and with assaulting constables **CRAWFORD** and **M'GINNIS**, near the Race Course, on the previous day. It appeared from the evidence that Finner was given in charge on the Race Course for fighting. He went pretty quietly until outside the ground, near the windmill, when he declared he would go no further, and just then a companion came to back him in his resolution, in the person of the other defendant. A scuffle ensued, during which Finner escaped, after having severely kicked constable M'Ginnis in the face, the marks of which were still visible. Both the constables were assaulted by the defendants, who were extremely violent. They were fined £5 each, or, in default, to suffer one month's imprisonment.

MAITLAND MERCURY, 3/140, 06/09/1845

CALENDAR OF PRISONERS FOR TRIAL AT THE MAITLAND CIRCUIT COURT.

The Maitland Circuit Court will open on Wednesday next, the 10th instant, before Mr. Justice Dickinson. The following are the prisoners who have been warned for trial up to the 3rd instant:-

WILLIAM GOODBURY, free, sodomy.

WREGISTER, 5/111, 06/09/1845

BERRIMA CIRCUIT COURT

Wednesday

Before Mr. Justice a'Beckett and a Common Jury

JAMES GORMON, late of Picton, was indicted for having, on Sunday, the 23rd of March last, at the crossing place over the Creek at East Bargo, violated the person of **FRANCES OXENBRIDGE**, the wife of **HENRY OXENBRIDGE**, labourer, residing at the Pass, at East Bargo. Guilty – Sentence of death recorded, with a recommendation that the same be commuted to that of transportation for life.

WREGISTER, 5/112, 13/09/1845

BERRIMA CIRCUIT COURT

Friday

Before his Honor Mr. Justice a'Beckett and a Common Jury

JOHN CHAMBERS, late of Berrima, pleaded no guilty to a charge of carnally knowing a female child, named **MARY ANN HANCOCK**, on the 15th February last, at Little Forest, near Berrima. Acquitted.

MAITLAND MERCURY, 3/141, 13/09/1845

MAITLAND CIRCUIT COURT.

This court opened on Wednesday last, the 10th instant.

SODOMY. - **WILLIAM GOODBURY** was indicted for having, at Nelson's Plains, on the 10th July, 1845, committed an unnatural offence with **JAMES BOXALL**, a boy of ten or eleven years of age.

After some difficulty with the boy as to his knowledge of the nature and obligation of an oath, it was decided by his Honor that as he evidently understood the obligation of an oath, and the perilous consequences of breaking it, although it did not appear that he understood its nature, his evidence should be admitted.

The case was then proved by the evidence of the boy, and his father, and of **PATRICK MURPHY**.

His Honor called attention to the importance of parents instructing their children in the nature of an oath, which it was of the utmost consequence that all should comprehend.

The jury found the prisoner guilty without leaving the box, and his Honor directed sentence of death to be recorded against him, telling him that he would take care that at all events he should leave the country for the term of his natural life.

WREGISTER, 5/113, 20/09/1845

MAITLAND CIRCUIT COURT

Before his Honor Mr. Justice Dickinson

WILLIAM GOODBURY was indicted for having, at Nelson's Plains, on the 10th July, committed an unnatural offence with **JAMES BOXALL**, a boy of ten or eleven years of age. The jury found the prisoner guilty, and sentence of death was recorded against him. His Honor told him that he would undoubtedly be sent out of the country

WREGISTER, 5/116, 11/10/1845

CENTRAL CRIMINAL COURT

Tuesday, Oct. 7, 1845

Before their Honors the Chief Justice and Mr. Justice Dickinson

ALEXANDER STARK was indicted for having, on the 14th of August, 1845, violated the person of **CAROLINE WATSON**, a child between ten and eleven years of age. Not guilty – discharged.

MAITLAND MERCURY, 3/145, 11/10/1845

TICKETS OF LEAVE. - The tickets of leave belonging to the under-mentioned prisoners of the crown have been cancelled for the reasons stated opposite their respective names:-

ROE Samuel, Ocean, immoral conduct; Newcastle bench.

SENTINEL, 2/53, 08/01/1846

THE CRIMINAL CALENDAR

The calendar for the ensuing sittings of the Supreme Court presents the following cases: ... and **HENRY JOHN HONEY**, for committing a rape; **FREDERICK BLACKWELL** and **FREDERICK WESTON**, for an unnatural crime; ...

ATLAS, 2/59, 10/01/1846

CENTRAL CRIMINAL COURT

Monday, 8

(Before his Honor Mr. Justice Dickinson)

UNNATURAL CRIME

FREDERICK BLACKWELL and **FREDERICK WESTON**, late of Cockatoo Island, convicts, were indicted for an unnatural offence, on the 9th November last. Both the prisoners were found guilty of a common assault, and were sentenced to be kept at hard labour in her Majesty's gaol, Darlinghurst, for twelve calendar months.

CHARGE OF RAPE.

GEORGE KEATING, **MICHAEL CALLAGHAN**, **CHARLES DORAN**, **WILLIAM BROWN** and **HENRY JOHN HONEY** were indicted, the first for having on the 21st October, 1845, at Cook's River, committed a rape upon one **MARGARET RYAN**, and the others were charged with being present, aiding and abetting the said George Keating. Not guilty.

MAITLAND MERCURY, 4/163, 24/01/1846

CENTRAL CRIMINAL COURT

JAMES KELLY was arraigned on a charge of assault, with intent, &c., and remanded for trial.

MAITLAND MERCURY, 4/167, 07/02/1846

AN ARDENT LOVER. - A young woman named **MATILDA HUXLEY** yesterday appeared before the bench to prefer a complaint against **HUGH FITZPATRICK**, for a series of annoyances kept up for the last eighteen months, ending at last in threats to take her life. According to her statement, this ardent swain had, by his obnoxious attentions, caused her to leave the service of Mr. **DEE**, and engage with Mr. **WRIGHT**, of the accommodation paddocks, in the hope of avoiding him by removing to so great a distance. In vain, however: he appeared to have no pursuit but her. He stopped for three days together at Mr. Wright's, and on being told by her seriously that she wished never to see him more, his love turned to hatred, and he went so far as to threaten her life. This he did more than once, and with such vehemence and apparent rancour that she became seriously alarmed, and caused him

to be apprehended. She declared that she was under apprehension that he would do her some bodily harm. Mr. Wright fully corroborated the evidence of the first witness; and constable **M'MAHON**, who apprehended him (at Mr. Wright's) deposed to his extreme violence in resisting apprehension. The defendant strongly denied any intention of injury to the complainant. He was bound over to keep the peace for twelve months, himself in £10, and two sureties in £5 each, and to be imprisoned until the same be furnished.

MAITLAND MERCURY, 4/169, 14/02/1846

SHOCKING CASE. - An elderly man named **PATRICK DUNN** has been apprehended in Maitland on a charge of assaulting, with intent, two female children. Evidence has already been taken, disclosing a shocking degree of depravity on the part of the old man, who is still in custody awaiting further evidence.

WARNING TO TICKET-OF-LEAVE HOLDERS. - A ticket-of-leave holder named **JOSEPH MARR**, was brought before the bench yesterday. He had been found by constable **KERR** in an infamous house in a street in West Maitland, about twelve o'clock on Thursday night last. It appeared that those in the house had aided him in an endeavour to conceal himself, but the vigilance and boldness of Kerr got the better of him. He had no pass for this district, and was drunk. The bench informed him that steps would be taken to deprive him of his ticket-of-leave.

MAITLAND MERCURY, 4/172, 25/02/1846

COMMITTAL. - **PATRICK DUNN** was yesterday committed for trial for assaulting two female children in West Maitland. Mr. **GRACE** applied for bail on his behalf, but it was refused.

SENTINEL, 2/60, 26/02/1846

SEDUCTION.

On Saturday last the Supreme Court was crowded to excess, to hear the case of **DOUGLASS v SILVER** for the seduction of an orphan girl in the plaintiff's service named **CAROLINE SARAH CHANTRY**, aged 14 years. The plaintiff is a respectable tailor and draper, residing in George-street, and the defendant is Dr. **SILVER**, the Assistant Colonial Surgeon, and a married man. The alleged seduction took place in May, 1845, when the defendant lodged at the plaintiff's house. The Jury returned a verdict for the plaintiff, damages 25l. The further particulars of the case are unfit for publication.

MAITLAND MERCURY, 4/173, 28/02/1846

BATHURST

Since the apprehension of **PETER THE BLACK**, several charges have been preferred against him: one for rape, on which a long investigation took place before the bench, on Monday last; there are also several charges of robbery against him. Much credit is due to Serjeant **SHEADY**, of the mounted police, in ferreting out and bringing forward evidence of this man's depredations and crimes.

ATLAS, 2/66, 28/02/1846

SUPREME COURT

Saturday, 21

(Before his Honor Mr. Justice Dickinson, and a Jury of four.)

DOUGLAS v SILVER

The declaration alleged that the defendant, **JOHN SILVER**, had, on the 1st of May, 1845, seduced one **CAROLINE SARAH CHANTRY**, the servant of the plaintiff, **ALEXANDER DOUGLASS**. It then went on to assert that the intercourse between the defendant and the said Caroline Sarah Chantry terminated in the *accouchement* of the latter, on the 3rd of January, 1846, and that by the expenses attendant on this event – by the subsequent burial of the infant, which died shortly after its birth, and by the loss of the woman's services during her confinement, &c., - the plaintiff had sustained damages to the extent of £200. To this defendant had pleaded not guilty.

Mr. **LOWE** counsel for the plaintiff, and Messrs. **WINDEYER** and **DARVALL** for the defendant.

Verdict for the plaintiff – damages, £25.

We understand that notice of motion for a new trial in the above cause has been given.

SENTINEL, 2/61, 05/03/1846

PARRAMATTA

HORRIBLE CASE. - A wretch in human shape, a **CHRISTOPHER KELLY**, was on Wednesday, committed for trial, for a rape on the person of a child named **JANE [KERR?]**, only seven years old.

MULTUM IN PARVO. - An inquest was held on the previous day [Monday, 16th] on the body of a married woman of dissolute habits, named **BRIDGET FARRELL**, who expired in gaol on the previous Saturday in consequence of ill-treatment by a parcel of miscreants who, after violating her person, when in a state of intoxication, tied her under clothing round her shoulders, and threw her, in a state of semi-nudity, into a water-hole, where she was found insensible and conveyed to gaol.

SENTINEL, 2/62, 12/03/1846

UNMANLY ASSAULT. - A young man of respectable appearance named **WICKAM**, was committed for trial by the Mayor and Alderman **FLOOD**, at the public office on Monday, under the following disgraceful circumstances. **ELIZA BUTTERWORTH**, an interesting young female of indifferent character, stated that she had co-habited for some time with the defendant and supported him when out of employment, but that lately he had obtained a situation, and in consequence of his brutal treatment of her she was obliged to leave him. Since then he was in the habit of persecuting her by following and beating her. On the previous occasion he came to a house where she was in Castlereagh-street, in a state of intoxication, and insisted on seeing her child, which was at the time asleep in a bedroom in the same house. On her refusing him admission thereto, he produced a stick which he had concealed on his person, and beat her unmercifully on the head, inflicting two contused wounds in the scalp, one behind and the other before, from which the blood flowed copiously. One of the girls ran into the street and called for assistance, when Dr. **TIERNEY** was sent for, who dressed the wounds and gave the defendant into custody. Mr. **NICHOLS** appeared for the defendant, but offered no defence for his client, who was committed for trial to the Quarter Sessions, and admitted to bail for his appearance.

ASSIZE BUSINESS – CALENDAR

THOMAS BRENNAN, freed, assault with intent, &c.

ROBERT YOUNG, freed, assault with intent, &c.

MAITLAND MERCURY, 4/177, 14/03/1846

MAITLAND CIRCUIT COURT. - ASSAULT WITH INTENT, &c.

ROBERT YOUNG was indicted for having, at Dungog, in January last, assaulted, with intent, &c., one **ANN ERTHERBROOK**.

Ann Ertherbrook, wife of **ISAAC ERTHERBROOK**, a miller at Dungog, remembered her husband going to Sydney on the 15th of January. There was only the prisoner, another old man named **PETTIFORD**, and the apprentice, **JAMES ALLEN**, left in the house. It was arranged that the prisoner should sleep in the mill, very near the house. One night the prisoner came into the house on the plea of being sick. The other men were at the mill. He blew out the lamp, and committed the assault complained of. He used no great violence, and desisted when the dogs were roused by the screams of witness, who saw no more of him that night. Witness's husband came home on the following day, when she immediately informed him of what had occurred. The prisoner had been about seven weeks in her husband's employment, and had never taken similar liberties before. The prisoner was reading a book until Allen, the apprentice, went away, immediately upon which he commenced the misconduct of which he was accused. Allen slept in the house that night, but he did not come home till after this had occurred.

In cross-examining this witness, the prisoner endeavoured to make it appear that there was an undue familiarity between her and the apprentice. She admitted having told Allen of what had occurred before her husband's return from Sydney. This was to induce him to sleep in the house in future. She did not mention it to the old man, because he would have told everybody, and the prisoner, hearing of it, would have had time to escape. He was at work in the mill at the time.

James Allen, aged 19, deposed, that the prisoner asked him to work for him at the mill, while he went to the house, because he was unwell. In what related to himself, he corroborated the evidence of Mrs. Ertherbrook. He had never seen any improper conduct on the part of the prisoner. He had instructions from his mistress not to leave the house at all till his master's return, in order to be a protection against the prisoner, although the mill should stand still.

In cross-examination, the prisoner laid great stress on the fact of Allen having come from the mill two or three times during the evening in question. He seemed to think that the lad must have had some motive in doing so; and maintained that these interruptions would not allow him sufficient time, out of the short period he was with Mrs. Ertherbrook, to offer her any violence.

Isaac Ertherbrook deposed that previous to his departure from Sydney he gave instructions that Allen should sleep in the house and the prisoner in the mill during his absence. On the evening of his return, the prisoner sat with them after supper, till bed-time, when he voluntarily went to the mill to sleep, taking with him, as usual, a fowling piece, for the protection of the mill. His wife then told witness all that had happened. He was positive in his opinion that his wife had never been guilty of any impropriety. The conduct of Allen, the apprentice, had always been good.

The prisoner called **THOMAS ABBOTT**, chief constable of Dungog, who apprehended him at the instance of Mr. Ertherbrook; but his only object seemed to be to make a complaint against the chief constable for using him as a felon, when apprehended, putting handcuffs on him, &c.

The prisoner then addressed the jury at some length, attempting to throw suspicion on the character of Mrs. Ertherbrook and the young man Allen.

Mr. Ertherbrook then stepped forward, and wished several documents attesting the respectability of himself and his wife, from highly respectable persons, to be handed to the learned Judge. His Honor, however, declined to receive them, but informed

Ertherbrook that he need not be so sensitive on the point, as nothing had occurred to leave an injurious impression.

The prisoner handed in a document, being a statement of his case. It contained no point in his favour.

In the course of his remarks on the evidence, his Honor took occasion to comment on the irregularity of the warrant on which the prisoner had been arrested. It appeared that it had been issued on the affidavit of the husband, which was of course only hearsay, instead of that of the wife. That certainly was not ground on which a warrant should have been granted; but if the prisoner conceived himself injured thereby, he had the usual remedy in cases of the kind. It was a matter wholly irrelevant to the present proceeding.

The jury consulted together in the box for a few minutes, and then retired to consider their verdict, for a quarter of an hour, when they found the prisoner guilty of a common assault, and he was remanded for sentence. The Court then adjourned at a quarter past six, to the following day.

MAITLAND MERCURY, 4/179, 21/03/1846

MAITLAND CIRCUIT COURT. - THURSDAY, MARCH 19, 1846

ASSAULT WITH INTENT, &c.

THOMAS BRENNAN was indicted for having, at Willing Grove, on the 30th November last, assaulted, with intent, &c., **MERON M'LEAN** and **MARGARET M'LEAN**, two children under twelve years of age.

This was another New England case, also unprepared for trial.

On the application of Mr. Holroyd, the prisoner was allowed bail, himself in £50, and two sureties of £25 each.

FRIDAY. - OTHER SENTENCES.

ROBERT DUNN, for a common assault on **ANN ESTHERBROOK** (not Ertherbrook, as formerly printed), was sentenced to six months' imprisonment in Newcastle gaol.

SENTINEL, 2/64, 26/03/1846

MULTUM IN PARVO. - On the same day [St. Patrick's Day] a woman named **KIRKPATRICK** was committed for perjury, having falsely accused a man named **STEWART** of violating her person.

MAITLAND MERCURY, 4/182, 01/04/1846

COMMITTAL. - On Thursday last an old man named **BARNARD M'QUADE** was committed for trial for assaulting, with intent, &c., two female children of the ages of nine and a half and eight years. He also stands committed on a separate charge for a similar assault on a child of five and a half years of age, sister of the others.

MAITLAND MERCURY, 4/183, 04/04/1846

SYDNEY NEWS.

BATHURST CIRCUIT COURT. - **PETER ADONIS** was indicted for rape, and the jury returned a verdict of guilty of an aggravated assault. He was sentenced to six months' hard labour in Bathurst gaol, subject to the future decision of a point raised as to the verdict, which Mr. Lowe contended should be one of guilty of a common assault, if any.

ATTEMPTED MURDER. - About eight o'clock on Sunday evening, **THOMAS JACKSON**, free by servitude, went to Ford's public-house, the Napoleon Inn, at the

corner of Kent and Windmill-streets, and on the door being opened he asked to see the landlord; a few seconds after he had gained admission, Jackson placed a loaded musket to his shoulder, and deliberately took aim at Ford's head, and discharged the piece at him. His intended victim fortunately evaded received the charge, by moving his head on one side while the trigger was being pulled. The charge, which is appears was powder and ball, passed clean through the bar, and within a few inches of Mr. Ford. Jackson was secured, and sent to the hospital, as he was found to be suffering from *delirium tremens*. **MR. FORD** had accused him of stealing some money a few hours before. *Herald, March 31*

SENTINEL, 2/66, 09/04/1846

CENTRAL CRIMINAL COURT

Thursday

Before His Honor Mr. Justice Dickinson

WILLIAM BARTLETT was indicted for having, at Wilberforce, on the 2nd of January last, violated the person of one **CATHERINE ARMSTRONG**, and **JAMES LEMAN** and **ROBERT JONES** were severally indicted for being present aiding and abetting the said William Bartlett to commit the before-mentioned felony.

The prisoners pleaded not guilty: and Mr. **PUREFOY**, who came into Court shortly after the commencement of the trial, agreed at His Honor's request to watch the evidence on their behalf. Mr. **LAMBTON**, who was also present, agreeing at the same time to communicate with the prisoners as an attorney.

The prosecutrix in the case was a married woman, rather advanced in years, and it appeared by her evidence that on the afternoon of the day named in the information, she was drinking at a public-house in the vicinity of Windsor, at which house the prisoners were drinking. The prosecutrix, who was rather the worse for liquor, although still sensible and able to walk, left the house about four o'clock, in company with a man named **MURRAY**, who was a servant of the public-house in question. After they had got a short distance from the house, at a spot where it was not visible, the three prisoners came up and commenced assaulting her; Murray, after a slight struggle in the woman's defence, ran back to the inn and told what had happened, after which he returned with all speed to the spot, and arrived just in time to rescue the prosecutrix from the attack of **LENMAN**. In his return to the scene of the outrage, Murray met Bartlett and Jones coming away; and by the evidence of the prosecutrix herself it appeared that during Murray's absence the capital offence had been committed, under circumstances of great aggravation, by each of those men. The prosecutrix, after this, went on to the house of a friend, where she remained for the night, and early next day gave information to the police authorities of what had occurred. Bartlett was apprehended at once, but some delay existed in effecting the capture of Lenman, and Jones was not apprehended until the 30th of March, having absconded from the district. All the prisoners appeared, when apprehended, to have little doubt what they were taken for; and Lenman in particular remarked that "it was a drunken spree" and that "it would be better for her (the prosecutrix) to take £8 nor £10, than to deprive a man of his liberty."

The prosecutrix was cross-examined at considerable length by Mr. Purefoy, but without shaking her testimony as to the material facts of the case, although there were some minor contradictions upon minor points between her and that of the witness Murray, and the witness was constrained to make several admissions which went to show that her previous character had not been good. These contradictions and admissions were commented upon at length by the learned counsel in his address to

the Jury, and he pointed out to them that if they should not look upon the affair in the light of a mere drunken spree, as stated by one of the prisoners, and should have a doubt of the prosecutrix testimony, as to the perpetration of the capital offence, they might find the prisoners guilty of a common assault, or might even acquit them altogether.

His Honor then summed up and the Jury having retired for about an hour and a quarter found the prisoners all guilty of an assault only, when they were severally sentenced to be imprisoned and kept to hard labour, in Sydney Gaol, for the space of twelve months.

ATLAS, 2/72, 11/04/1846

CENTRAL CRIMINAL COURT

Tuesday, 7

(Before His Honor Mr. Justice Dickinson)

WILLIAM BARTLETT was indicted for having, at Wilberforce, on the 2nd of January last, violated the person of one **CATHERINE ARMSTRONG**; and **JAMES LENMAN** and **ROBERT JONES** were severally indicted for being present and aiding and abetting the said Robert (sic) Bartlett. The prisoners were defended by Mr. **PUREFOY**. The jury found the prisoners all guilty of an assault only, when they were severally sentenced to be imprisoned and kept to hard labour in Sydney Gaol for the space of twelve months.

MAITLAND MERCURY, 4/185, 11/04/1846

MAITLAND QUARTER SESSIONS. - THURSDAY, APRIL 9, 1846

ASSAULT, WITH INTENT, &c.

PATRICK DUNN was indicted for having, at Maitland, on the 1st February last, assaulted, with intent, &c., **ELIZABETH MEDLAM**, a child of three years of age.

Mr. Holroyd appeared for the defence.

It appeared from the evidence of **JOSEPH MEDLAM**, the father of the child, and of **PATRICK WHALAN**, a carrier, who lived near the prisoner, that the prisoner (a crippled old man) lived in Bulwer-street, West Maitland, and that the child (two years and between three and four months old) had been thrown in his way by the circumstance of her grand-mother living at a place to reach which she would have to pass the prisoner's house.

It was proved by Patrick Whalan, a carrier, and **THOMAS KERR**, constable, that the prisoner had kept out of the way after the discovery of the offence having been committed.

The medical evidence was given by **F.J. BEARDMORE**, surgeon, of West Maitland.

The jury retired for a few minutes, and found the prisoner guilty.

The Crown Prosecutor stated to the Court that there was a similar charge against the prisoner on the depositions, but he did not mean to proceed upon it.

The prisoner was sentenced to two years' imprisonment in Newcastle gaol.

CENTRAL CRIMINAL COURT.

On Tuesday **WILLIAM BARTLETT** was indicted for rape, on the person of a married woman named **CATHERINE ARMSTRONG**, at Wilberforce, on the 2nd January last; and **JAMES LENMAN** and **ROBERT JONES** were charged with aiding and abetting. They were all convicted of a common assault, and sentenced to twelve months' hard labour in Sydney gaol.

ATLAS, 2/73, 18/04/1846
CENTRAL CRIMINAL COURT
Tuesday, 14

(Before His Honor Mr. Justice Dickinson)

CHARLES KELLY, late of Parramatta, labourer, was indicted for having, at the Parramatta Road, on the 23rd of February last, assaulted and violated one **JANE KERR**, an infant under ten years of age. Mr. **PUREFOY** defended the prisoner, who was acquitted of the capital charge, but remanded in order that a fresh information might be filed against him, for an assault with intent, &c.

Wednesday, 15

(Before His Honor Mr. Justice Therry)

ASSAULT ON A CHILD

CHRISTOPHER [CHARLES] KELLY, who had on Tuesday been tried and acquitted upon the charge of having violated the person of **JANE KERR**, a child seven years of age, was again placed at the bar, charged with an assault upon the same child, with intent to commit a rape. The evidence was the same as that adduced on the former trial, and the assault having been clearly proved, the prisoner was found guilty. Remanded for sentence.

RAPE

HENDRICK WHITNALDER, late of Brisbane, labourer, was indicted for having, near Brisbane, on the 6th of February, 1846, violated the person of **ELIZA GAZE**. The prisoner was a Hottentot, of very low stature and meagre appearance, but possessed of great personal strength. On the day named in the information, the prosecutrix was proceeding alone from Brisbane Town to her own residence, about three miles off, when she was met by the prisoner, who at once assaulted her with great violence; and, after a long struggle, committed the capital offence. The prisoner made no defence. His Honor then summed up, the jury found the prisoner guilty.

From a reference to the Indents, it appeared that the prisoner, who had been one of the Hottentot bullock-drivers attached to the Garrison at the Cape of Good Hope, arrived in the colony during the year 1840, under sentence of fourteen years' transportation for mutiny. It therefore followed that at the time of committing the offence he must have been a convict illegally at large. Remanded.

Thursday, 16

(Before their Honors the three Judges)

Gaol Delivery

HENDRICK WHITNALDER, a Hottentot, who had been convicted of rape, was sentenced to death, without hopes of mitigation.

LEADING ARTICLE.

A most disgraceful case of seduction has occurred in this city within the last few days. The seducer is **CAPTAIN COCKBURN**, of the 11th regiment, and the unfortunate female is the daughter of a respectable shopkeeper in George-street. It is stated on good authority, that the heartless principal in this lamentable affair had had the unblushing audacity to make a bet, a few evenings before, that he would accomplish his purpose – thus adding to his crime the atrocity of the most cool and studied deliberation. We know not whether Captain Cockburn is in any way amenable to military law for his conduct, but if not, he is, at all events, open to the punishment of exclusion from all reputable society – a punishment which we trust will be strictly meted out to him.

MAITLAND MERCURY, 4/187, 18/04/1846

CENTRAL CRIMINAL COURT. - TUESDAY, APRIL 14

CHARLES KELLY was indicted for having assaulted and violated one **JANE KERR**, an infant under ten years of age. The evidence of the surgeons went to show that there had been no completion of the capital offence; and under these circumstances the prisoner was ordered to be discharged on finding bail.

WEDNESDAY, APRIL 15.

CHRISTOPHER KELLY, who had on Tuesday been tried and acquitted upon the charge of having violated the person of **JANE KERR**, a child seven years of age, was again placed at the bar, charged with an assault upon the same child, with intent to commit a rape. The evidence was the same as that adduced on the former trial, and the assault having been clearly proved, the prisoner was found guilty. He was then remanded for evidence.

HENDRICK WHITNALDER, a Hottentot, of low stature and meagre appearance, but, as was proved in evidence, of great bodily strength, was indicted for having, near Brisbane, on the 6th February last, violated the person of one **ELIZABETH GAZE**. The prisoner had been in the employ of the husband of the prosecutrix. Some time before the commission of this offence, he had preferred a claim for wages against his master, which was clearly proved, in the police office, to be a groundless one. On the day named in the information, the prosecutrix was proceeding alone from Brisbane Town to her own residence, about three miles off, when she was met by the prisoner, who at once assaulted her with great violence; and, after a long struggle, succeeded in committing the capital offence. The prisoner threatened further violence, and there is reason to fear that he might have done the prosecutrix some further injury, or might even have gone to the length of murdering her, if Captain **WICKHAM** and another magistrate belonging to the Moreton Bay district had not fortunately appeared in sight. To these gentlemen Mrs. Gaze made her complaint, and they immediately pursued the prisoner, who was apprehended. The only witness for the crown was Mrs. Gaze herself, who appeared to be a very respectable woman, and gave her testimony in a very straight-forward manner, although very much agitated. The jury returned a verdict of guilty. From a reference to the indents, it appeared that the prisoner, who had been one of the Hottentot bullock-drivers attached to the garrison at the Cape of Good Hope, arrived in the colony during the year 1840, under sentence of fourteen years' transportation for mutiny. It therefore followed that at the time of committing the offence he must have been a convict illegally at large. Mr. Dowling suggested, in mitigation of punishment, that the prisoner, from his foreign origin and want of education, might probably be ignorant of British laws and customs. The prisoner was then remanded for sentence.

JOSEPH WARD, a constable of Sydney, was indicted for a scurrilous and indecent libel on Mrs. **JANE NOBBS**. The jury having found the prisoner guilty, he was remanded for sentence, but admitted to bail.

MAITLAND MERCURY, 4/188, 22/04/1846

SYDNEY NEWS.

CENTRAL CRIMINAL COURT.

HENDRICK WHITNALDER, the Hottentot who had been convicted of a rape upon a former day, was brought up for sentence. He addressed the Court in broken English, attempting to throw discredit on the evidence of the prosecutrix, but without effect. Mr. Justice Therry then passed upon him sentence of death, which, he said, would in all probability be carried into effect. He heard it with fixed attention, but without the

slightest gesture or expression which might serve as an index to what was passing in his mind.

JOSEPH WARD, for a libel on **JANE NOBBS**, was sentenced to twenty-one days imprisonment in Sydney gaol.

SENTINEL, 2/68, 23/04/1846

EDITORIAL re sentencing for rape.

MAITLAND MERCURY, 4/193, 09/05/1846

THE CONVICT WHITNALDER. - The Hottentot, **HENDICK WHITNALDER**, who was convicted of rape at the Criminal Sessions of the Supreme Court, and was sentenced to death, has been reprieved, and will be transported for life. *Herald*, May 5

MAITLAND MERCURY, 4/210, 08/07/1846

MAITLAND QUARTER SESSIONS.

This Court was opened on Monday last, the 6th instant. ...

ASSAULT WITH INTENT. - **BERNARD M'QUADE**, freed, was indicted for having, at Hart Hill, on the 25th March last, attempted to assault, with intent, &c., **JOHANNA HILL GARVEN**, an infant five years of age.

The evidence is of a nature unfit for publication; but the prisoner was acquitted, on account of the child being too young to understand the nature and obligation of an oath.

The prisoner was again indicted for a similar offence, at the same place, on the 23rd March, against **MARY HART GARVEN**, an infant nine years of age.

The offence was fully proved by the evidence of the child and her next youngest sister; and the jury immediately found the prisoner guilty.

The prisoner was a third time indicted for a similar offence, at the same place, on the 23rd March, against **MARGARET BROWN GARVEN**, an infant seven years of age.

This offence was also clearly proved by the evidence of the child and her elder sister; and the jury, without hesitation, returned a verdict of guilty. The prisoner was sentenced to be imprisoned, and kept to hard labour, in Parramatta Gaol, for two years.

The Court then adjourned till ten o'clock the following morning.

SENTINEL, 2/79, 09/07/1846

CENTRAL CRIMINAL SESSIONS

ELIZA KILPATRICK, perjury (on bail), **JOHN SMITH**, rape (on bail), **MATTHEW KILLEN**, carnally knowing a child, &c. ...

ATLAS, 2/85, 11/07/1846

CENTRAL CRIMINAL COURT

Monday, July 7

(Before his Honor Mr. Justice Dickinson.)

MATTHEW KILLEEN, late of Campbelltown, labourer, was indicted for having, at the Cowpastures, on the 16th of May, 1846, violated the person of **CATHERINE O'BRIEN**, an infant under eleven years of age. Guilty – remanded for sentence, in order that the opinion of the other judges might be taken as to whether the prisoner

could be legally convicted under this indictment, or whether he should be placed upon trial for the capital felony.

ATLAS, 2/86, 18/07/1846

CENTRAL CRIMINAL COURT

Friday, July 10

(Before his Honor Mr. Justice Therry)

PERJURY

ELIZABETH KILPATRICK, late of Windsor, was indicted on a charge of wilful and corrupt perjury, by having, on the 7th day of March last, sworn before **ROBERT FITZGERALD**, Esq., Justice of the Peace at Windsor, that one **THOMAS JONES** had had carnal connexion with her person. Not guilty.

Monday, 13

(Before his Honor Mr. Justice Dickinson)

RAPE

JOHN SMITH was indicted for rape upon the person of **ANNE HATHAWAY**, aged 65, on the Liverpool Road, on the 16th May last. Not guilty.

Thursday, 16

(Before their Honors the three Judges)

MATTHEW KILLEEN, who had been tried for carnally knowing a child, but convicted of a common assault only, was sentenced to be imprisoned and kept to hard labour for four years.

MAITLAND MERCURY, 4/231, 19/09/1846

MAITLAND CIRCUIT COURT. - THURSDAY, SEPTEMBER 17, 1846.

ASSAULT WITH INTENT.

TOMMY TOMBO, an **aboriginal**, was indicted for assaulting one **MARY DOBSON**, at the Upper Paterson, on the 25th June, with intent to commit a rape.

The Solicitor General briefly opened the case, and called Mary Dobson, a married woman, living on the Paterson River with her husband, deposed that, on the 25th June, she was coming through the bush, and was picking some tea-tree for a broom, when a black-fellow, the prisoner, came up and seized her, and threatened her with a tomahawk if she made a noise. In the struggle witness's arm was broken; and a white man coming up, the prisoner ran away.

ROBERT FRY heard screams in the bush, and went to the spot, when he saw a woman struggling with a black-fellow, who ran away on witness calling out.

MARY FERRETT knew the prisoner. On the 25th June she saw him at Mr. Cory's farm, between three and four o'clock in the afternoon. Witness was certain prisoner was the black.

The prisoner then addressed the jury, and said it was all a mistake, and that he knew the blackfellow who had broken the woman's arm, and was named "Wild-duck."

His Honor having summed up, the jury, without leaving the box, returned a verdict of guilty.

The prisoner was then indicted a second time, for assaulting one Mary Ferrett, a young girl of thirteen years of age, at the Paterson, on the 25th June, with intent to commit a rape.

The case was clearly proved by the evidence of the prosecutrix and Mary Dobson, and the jury, without leaving the box, returned a verdict of guilty.

The Solicitor General prayed the judgement of the Court, and said he must press for a severe sentence, because in 1844 the prisoner had been convicted of a precisely

similar offence, and had been sentenced to eighteen months' imprisonment. He had scarcely been a month out of gaol when he was again taken for the same offence; and no female would be safe unless a severe punishment was inflicted.

His Honor, in passing sentence, gave the prisoner a severe warning as to what would have been the result had he effected his purpose, and that death would have been the punishment of his offence. He (his Honor) was determined, in all cases of rape brought before him, to pass sentence of death on all convicted; and should the government, in the exercise of the prerogative of mercy that it possessed, chose to pardon them, the responsibility would not rest with him, but with the government. The sentence of the Court was, that the prisoner should be imprisoned and kept to hard labour for four years, being two years for each offence.

MAITLAND MERCURY, 4/236, 07/10/1846

DARING OUTRAGE. - On Friday evening last, a young girl, whilst traversing Castlereagh-street, Sydney, was snatched up into a cab by the driver of the vehicle, who proceeded to drive towards the Woolloomooloo road; and it was only by jumping out of the cab, and at the expense of some severe injuries to her face, that she escaped from the clutches of the miscreant.

MAITLAND MERCURY, 4/238, 14/10/1846

CENTRAL CRIMINAL COURT. - Wednesday.

Before his Honor Mr. Justice Therry.

JOHN CURTIS, a private soldier of the 99th Regt., was found guilty of an assault, with intent to commit a rape, on a child under ten years of age, and sentenced to two years' imprisonment.

MAITLAND MERCURY, 4/239, 17/10/1846

ASSAULTING A FEMALE. - A ticket-of-leave holder, named **JOHN SELWOOD**, underwent an examination at the Police Office, yesterday, on a charge of assaulting one **MARY ANN JORY**, residing on the Morpeth roads, on the previous Friday, with intent to commit a rape. The evidence in this case did not go far enough to justify a committal, and there were also other circumstances in the case which induced the bench to discharge the prisoner.

MAITLAND MERCURY, 5/261, 02/01/1847

SUPREME COURT. - CRIMINAL SESSIONS.

THOMAS BLACKALL was found guilty of having, in August last, assaulted one **SARAH SNOWDEN**, a girl about twelve years old, with intent to violate her person. He was sentenced to be imprisoned for two years; to pay a fine of £50; to find two sureties in the sum of £50 each, and himself to be bound also in £100, to keep the peace for three years; and further to be imprisoned till the fine should be paid, and the sureties entered into. *Australian, Dec. 31*

MAITLAND MERCURY, 5/272, 10/02/1847

MAITLAND CIRCUIT COURT.

The following is the list of prisoners warned for trial before the above court, which commences its sittings on Friday next, the 12th February:-

THOMAS BRENNAN, for an assault with intent to commit a rape.

MAITLAND MERCURY, 5/275, 20/02/1847

MAITLAND CIRCUIT COURT.

GAOL DELIVERY. - On the motion of Mr. Purefoy, **THOMAS BRENNAN** was admitted to bail on his own recognizance to appear when called on.

MAITLAND MERCURY, 5/285, 27/03/1847

AGGRAVATED DRUNKENNESS. - Yesterday, **SUSAN FLYNN**, an inhabitant of Durham-street, was brought before the court charged with drunkenness, using obscene language, and indecency in the street, on Wednesday. The charge was fully proved by constable **RUSHTON** and Mr. **IRWIN**, and this being her fourth conviction for drunkenness, she was convicted as a rogue and vagabond, and sentenced to three months' imprisonment in Newcastle gaol.

IDLE AND DISORDERLY. - A damsel rejoicing in the name of **AGNES LUDLOW HOWE**, aged eighteen, very good-looking and decently attired, was charged with idle and disorderly conduct, and having no lawful or visible means of employing herself. A constable stated that the night before there was a *shindy* in one of the public-houses, when he went in and enquired what the row was about, and saw several men quarrelling, the fair defendant appearing to be the cause. One of the revellers, evidently an admirer, called her his "beauteous flower," another the "Derwent slasher," and a third "the light of other days." Singing appeared to be young Agnes's chief accomplishment, and her liquid notes drew forth many encomiums. Still the "beauteous flower" had one fault – a proneness for hot rum, &c., and on the occasion referred to she had, it would seem, partaken of a glass with one of her ardent admirers, under the influence of which it was presumed she must have been when the constable entered the house. The witness added that he believed the defendant, Mrs. Howe, sometimes lived at one house and sometimes lodged at another; that sometimes she evinced a partiality for one gentleman, and was not particular on other occasions in her attentions to others; and that she was frequently to be found "going it" at different public-houses. Young Agnes was called on for her defence. She spoke in rather a low voice, so that we could not catch all that she said, but we heard the words – "own exertions," "needlework," "industry," "ill-feeling," "husband in gaol," "kind consideration," and "sin no more." Their worships appeared evidently affected at the eloquent appeal made by the "beauteous flower," and sentenced her to three months' imprisonment, with hard labour, in New castle gaol. Agnes left the dock stately and slow, like a heroine, while several of her ardent admirers, who were present, left the court on the conclusion of the case looking most particularly chop-fallen.

MAITLAND MERCURY, 5/286, 31/03/1847

ASSAULT ON A CONSTABLE. - On Friday last, when Constable **RUSHTON** went to Sarah Riley's house in Durham-street, to serve the summons on her, he found her door locked. On its being opened, he delivered the summons to Riley, when a man named **MICHAEL FITZSIMMONS**, who was in the house at the time, drew a knife from his pocket, and Riley catching hold of the constable, Fitzsimmons punched him with his fist to his heart's content. Rushton got away from him, and soon after meeting constable **BOYLAN**, they traced Fitzsimmons to a lodging house, where he had just boiled himself a pot of tea, and the two constables, after a desperate resistance on his part, handcuffed him, and took him to the lock-up. On Saturday he was fined £5, or to be confined two months in Newcastle gaol, for the assault.

KEEPING DISORDERLY HOUSES. - A vigorous attempt has been made by the inhabitants of Durham-street to rid themselves of the disreputable characters who

have so long made that street a bye-word in Maitland, and on their information warrants were issued for the apprehension of **MARGARET FOWLER, SARAH RILEY**, and **ANN SNELL**, who were charged with keeping disorderly houses. The cases came on for hearing on Monday, when, on the evidence of **WILLIAM IRWIN, STEPHEN COMPTON, and constable RUSHTON**, Fowler and Riley were committed for trial, and Snell, who represented herself as a widow, having young children depending on her, was allowed bail, to leave the town on Wednesday (this day), or she would also be committed for trial.

MAITLAND MERCURY, 5/287, 03/04/1847

DISORDERLY HOUSE. - Another of the disorderly inhabitants of Durham-street, named **MARY CRANFIELD**, was brought up on Thursday before the bench, having neglected to attend on the day named in her summons. On the evidence of **WILLIAM IRWIN, STEPHEN COMPTON**, and constable **RUSHTON**, she was proved to have acted for some time past as mistress of a disorderly house in Durham-street. She pleaded hard for forgiveness this time, on account of having two small children dependent on her, and was allowed two days to leave the neighbourhood, or in default to be committed for trial.

HUNTER RIVER DISTRICT NEWS. - PATERSON.

POLICE OFFICE, THURSDAY, 1st APRIL. - Before **A. WARREN and W. SCOTT**, Esqrs., - **M'GOWEN v. JOHNSON**. - This case, which had been adjourned from the 4th ultimo, came on today. It was a summons under the Deserted Wives and Children Act. **JANE M'GOWEN**, the mother of the child, it appeared, is deaf and dumb, and had been born so, and never received any instruction whatever, except to enable her family to converse with her by signs in household affairs. It appeared that she did not know the nature of an oath, nor could her mother make her comprehend its meaning. The magistrates, therefore, decided that they would dispense with her evidence, and take that of the witnesses. The case was then gone into, and **MARY M'GOWEN** was first called, who proved the birth of her child, and that her daughter had taken her to Johnson's house, and explained by signs that he was the father; that she had spoken to Johnson about it, who denied all knowledge of the child, and refused to contribute to its support. It did not appear from Mrs. M'Gowen's evidence that an intimacy had ever existed between Jane and Johnson, nor had the latter ever been to the house. The next witness was **MARY DUNCAN**, who stated that she knew the parties; that one day, about a year ago, she was with Jane M'Gowen, when Johnson passed them with his dray; that he stopped his bullocks and spoke to Jane; this was about four o'clock in the afternoon; that witness then went home, and could not say how long they were together; that this interview was near her mother's house, and that Jane went into the bush in the direction of the house. The witness further stated that she saw them together on another occasion, near the Presbyterian chapel at Hinton; she was a good way off, and could not say where they went, or how long they remained together; this was about a week after the first interview; that these were the only two occasions on which she had seen them together. **HANNAH SCAMMELL** was then called, who merely stated that upwards of a year ago she had seen Johnson and Jane M'Gowen together in the public road, near the Catholic chapel at Hinton; that they were walking down the roads together, but she did not see where they went to; that this was on a Sunday afternoon, and plenty of people were walking about. This closed the plaintiff's case. Dr. Davis, of Maitland, appeared for the defendant, and urged on the magistrates that the case must be dismissed, on the grounds - first, that there was no direct evidence of any kind that

the defendant was the father of the child, as the mother was incapable of giving evidence; that the 8th section of the Act had not been complied with, as the evidence offered in corroboration of Mary M'Gowen's statement was not sufficient to fix the defendant as the father; and that, as the bench had decided in taking the case without the oath of the mother, that the other evidence ought to be of the strongest and most convincing nature; and that any statement made by Jane M'Gowen to her mother, not being on oath, could not be received in evidence. After some consideration, their worships decided on referring the case for the opinion of the Attorney General.

SENTINEL, 3/122, 06/05/1847

COURT OF QUARTER SESSIONS

MONDAY

WILLIAM BARR was indicted for an assault upon an infant named **ELIZA FENTON**, with intent, &c., and also for a common assault upon the same person. Guilty of a common assault and remanded for sentence.

MAITLAND MERCURY, 5/298, 12/05/1847

DRUNKENNESS AND DISORDERLY CONDUCT. - On Saturday last **MARGARET PLOWER [FOWLER]**, formerly too well known about Durham-street, was brought before the bench, charged with giving way to her old habits. It appeared that Plower now blesses Morpeth with her presence, and on Friday last, about nine in the evening, she was found by constable **M'GUINNESS** drunk in the street, using the most obscene language, and behaving most disgracefully, in the presence of a number of people. She was convicted, and sentenced to one months' imprisonment in Newcastle gaol.

SENTINEL, 3/124, 20/05/1847

COMMITTALS. - **SAMUEL KEARNS**, a native of the colony, was committed on Saturday last to take his trial on a charge of rape, preferred against him by a married woman named **ELIZABETH HARBUTT**, residing on the North Shore. The prisoner was subsequently allowed bail, himself in £40, with sureties of £10 each.

CHARGE OF RAPE. - On Tuesday last, **G. W. RYDER**, was brought before Mr. Sillitoe, J.P., charged by the wife of a person named **SLOMAN**, for having, on Sunday week, committed a rape upon her person. The prisoner was committed to take his trial for the offence, and particulars of the case are too shocking for publication.

MAITLAND MERCURY, 5/301, 22/05/1847

CHARGE OF RAPE. - **FRANCIS KERNS** was brought up before the police bench, on Saturday, and committed to take his trial, on a charge of rape brought against him by a female named **ELIZABETH HARBUTT**, a married woman, residing at the North Shore. *Australian, May 18*

MAITLAND MERCURY, 5/305, 05/06/1847

SUPREME COURT.

CRIMINAL SIDE. - WEDNESDAY, JUNE 2

RAPE. - **FRANCIS KEARNS** was indicted for committing a rape on the person of **ELIZABETH HARPER**, on the – of March last.

The evidence being insufficient, the jury returned a verdict of not guilty.

MAITLAND MERCURY, 5/308, 16/06/1847

EXPOSURE. - On Saturday, **THOMAS COFFEY** was convicted of exposing his person in the street of West Maitland, on the evidence of constables **RUSHTON and BOYLAN**, and fined five pounds.

SENTINEL, 3/127, 10/06/1847

SUPREME COURT – CRIMINAL SIDE

Friday

Before his Honor Mr. Justice Therry

FRANCIS MORELY was indicted for the wilful murder of **ELIZA MOSS**, at Lapstone Hill, on the 24th March last.

In opening the case to the Jury, the ATTORNEY-GENERAL said, that in the whole course of his experience he never knew, or heard of a case in which greater brutality was exemplified, and the annals of crime did not describe a greater monster, than, he would be able to show, was the prisoner at the Bar. A number of witnesses would speak as to the facts of the case; and it was worthy of remark, that these witnesses were all strangers to each other – having so far as he could ascertain, never seen each other before the time of the occurrence, which they would detail, and therefore the history they gave could not by any possibility be a story concocted against the prisoner. The deceased woman was wife of a settler, residing at or near Mudgee, and had been to Sydney on business; a dray belonging to her husband, of which the prisoner at the bar was the driver, was in Sydney, and on her return, she, for the sake of economy he supposed, preferred travelling with the dray to taking her passage in the coach. However this may be, there was no trace of them until they reached a place called Lapstone Hill, on the road towards Mudgee. They stopped for the night at Wilson's public-house, where it is alleged by the prisoner the deceased purchased some rum. They are next seen at Jane's public-house, on Lapstone Hill, about ten or eleven o'clock in the day named in the indictment (the 24th March), where they stopped a short time and had something to drink, but the woman did not leave the dray. Before they left, the woman of the house (Mrs. **JAMES**) saw the prisoner give deceased a blow with his hand on the face; and again, a few yards from the house, to buffet a blow or blows upon her with the whip he used in driving the team. It did not appear that the prisoner and deceased proceeded more than a mile and a half beyond this place, and on the next morning Mr. James was knocked up at about six o'clock by the prisoner, who had returned with his team, and his exclamation was "She's dead – she's dead!" Information was sent to the police, an inquest held, and the prisoner committed by the magistrates to take his trial for the murder. There was, however, not a tittle of evidence or any provocation on the part of the unfortunate deceased; and were it not for the evidence of the medical gentleman who made the *post mortem* examination, at the request of the coroner, that he discovered proofs of sexual intercourse within a short time – a very few hours – of the decease of the woman, he (the Attorney General) could not fix on anything indicative of what possible motive the prisoner had been induced to the commission of so monstrous a crime. If it should appear that the prisoner was brutalised by drunkenness at the time, that would not at all excuse him; unfortunate indeed would it be for society if such a circumstance should be admitted as an excuse for crime.

The case was fully proved against the prisoner and the Jury returned a verdict of guilty.

The prisoner was remanded for sentence; his case would be argued in banco on Saturday the 12th instant.

VIOLENT ASSAULT. - **CLINTON SIGLER** alias **SINCLAIR**, apparently about twenty-three years of age a native of the colony, residing in Argyle was on Friday brought before the mayor and Dr. **MITCHELL** by warrant, for violently assaulting a respectably dressed and decent young woman, named **SUSAN HAWKINS**, for asking him why he had insulted her mother. There was a deep ragged wound of about an inch and a half in length on the right side of the forehead, penetrating to the bone, which she said had been inflicted by him; her eyes were both as black as coal, and her body exhibited other marks of violence, which she swore had been produced by his beating and kicking her. The prisoner admitted striking her, but asserted she struck him first. He was committed for trial. Bail was applied for and tendered, but refused.

MAITLAND MERCURY, 5/313, 03/07/1847

RICHLY DESERVED PUNISHMENT. - On Wednesday a man named **DANIEL LARKINS** was punished for drunkenness, and being again brought up was convicted of a most gross case of exposure of his person. He was fined £10, or to be imprisoned two months in Newcastle gaol.

MAITLAND MERCURY, 5/314, 07/07/1847

AFFILIATION. - Yesterday **JOHN SADLING** appeared before the bench, to answer the complaint of **CAROLINE FLYNN**. The complainant stated that in April she became the mother of an illegitimate child, of which the defendant was father. He had only paid her £4 for its maintenance since that time, although he had talked of allowing her five shillings a week. Having inquired into the defendant's circumstances, the bench ordered him to pay £1 9s. 6d. to complainant, and to pay 5s. per week for twelve months to the clerk of petty sessions for the maintenance of the child.

MAITLAND MERCURY, 5/317, 17/07/1847

MAITLAND QUARTER SESSIONS. - WEDNESDAY, JULY 14, 1847

POSTPONEMENTS. - **MARGARET FOWLER** and **SARAH RILEY**, charged with keeping a house of ill fame; to be discharged on their giving bail to appear when called on.

SENTINEL, 3/135, 05/08/1847

COURT OF QUARTER SESSIONS

ROBERT WORCESTER was indicted for an assault upon one **MARY ANNE GREENWOOD**. Guilty – Sentenced to three months' imprisonment in Sydney Gaol.

MAITLAND MERCURY, 4/325, 14/08/1847

CHARGE OF RAPE. - A few days ago a man named **FRANCIS MORRIS** was charged with having committed a rape on **SUSAN HEAD**, a girl of thirteen years, residing in service in West Maitland. The charge was made so positively that Morris was apprehended, and the parties to whom Head had told her tale were examined by the bench. When sent for to give evidence she herself could not be found at first; and when she was discovered, both Susan Head and her mother refused to give evidence, the girl saying in reply to all questions, "I have nothing to say – I don't wish to press the charge." Morris was remanded for the time, but further enquiries having been made by the bench, he was yesterday discharged.

MAITLAND MERCURY, 5/334, 15/09/1847

GOULBURN CIRCUIT COURT. - *Monday, Sept. 16*

RICHARD FRENCH was found guilty of assaulting **CHARLOTTE ADAMSON**, a child of seven years of age, with intent, &c., and was sentenced to two years' imprisonment and hard labour, in Goulburn gaol.

MAITLAND MERCURY, 5/336, 22/09/1847

The tickets of leave of the under mentioned prisoners of the crown have been cancelled for the reasons stated opposite their respective names:

MARY WOODS, Margaret 3, 1840, misconduct while in hired service and immoral conduct; Maitland bench.

MAITLAND MERCURY, 5/337, 25/09/1847

MAITLAND CIRCUIT COURT. - WEDNESDAY, SEPT. 22, 1847

ABDUCTION.

WILLIAM ANDREWS was charged with having, at Irrawang, on the 7th February, taken **MARY ANN KING**, an unmarried girl under sixteen years of age, from under the care and protection of her father, **CHARLES KING**, against his consent.

From the evidence of Charles King and **JAMES BEVERSTOCK** it appeared that the parties resided near Raymond Terrace, and that while Mary Ann King, who was then under fourteen years old, was at service, Andrews came to her father to ask his consent to her marrying him. Mr. King refused, and Andrews told him he would have her in spite of him, and that they had already been called in church. Mr. King got his daughter home, but about three weeks after she eloped, on a Sunday night, with Andrews. On the Wednesday after, Andrews again came to ask his consent to the marriage, and Mr. King apparently consented, in order to get his daughter back again. On the Friday following she was brought back by Andrews, and at Mr. King's suggestion Andrews went into Raymond Terrace with Mrs. King, to buy some liquor, and did do so, but after drinking two glasses of rum with Mrs. King, she brought in a constable, and Andrews was apprehended. Being allowed bail after committal, however, the girl twice afterwards eloped and joined him for brief periods, and was residing with him at the time his bail surrendered him for trial.

In defence, Mary Ann King was called, and stated that Andrews did not coax her away, nor use any bad ways or language to her afterwards, and that her mother wanted her to be married to an old man of between sixty and seventy years old, who had bought a wedding dress for her. Andrews stated also in defence that the girl had always come to him of her own free will, and that but for her father's refusal he would have married her, and still wished to do so.

His Honor, in summing up, told the jury that by the law it was a serious offence to delude girls of the tender age of Mary Ann King from the protection of their parents, whether with their own consent or not, and whether the outrage was followed by marriage or otherwise. The consent of the parent was absolutely necessary by the law. The wisdom of this provision, which punished men who would take advantage of the youth and inexperience of young damsels, had been repeatedly shown, and the offence was always severely punished.

The jury returned a verdict of guilty, and the prisoner was remanded for sentence.

FRIDAY, SEPTEMBER 24, 1847. - SENTENCES.

WILLIAM ANDREWS, convicted on Wednesday, the 22nd, of abduction, was sentenced to eighteen months' imprisonment in Newcastle gaol.

MAITLAND MERCURY, 5/338, 29/09/1847

BATHURST CIRCUIT COURT. - Before Mr. Justice Dickinson. - This Court commenced its sittings on the 20th September.

SEPT. 21

JOHN HAMPSON was found guilty of committing an assault on **REBECCA PEACOCK**, and was sentenced to two years' imprisonment with hard labour.
Abridged from the S.M. Herald

MAITLAND MERCURY, 5/344, 20/10/1847

AFFILIATION. - Yesterday **MARY JOHNSON**, a married woman, appeared before the bench to procure maintenance for her infant child from **PETER O'BRIEN**, who she deposed was its father. Mr. Davies appeared for the defence, and it was elicited from Mrs. Johnson that she was living with her husband up till a very recent period, on which the bench dismissed the case.

MAITLAND MERCURY, 5/345, 23/10/1847

CHARGE OF ASSAULT WITH INTENT. - On Wednesday **JOHN SHEA** appeared before the bench, to answer the charge of assaulting **ELIZABETH PARTRIDGE**, with intent, &c. The assault was charged to have been committed on the 18th instant, but the bench thought the evidence did not substantiate the charge, and dismissed the case.

HUNTER RIVER DISTRICT NEWS. - SINGLETON.

PATRICK FARROLL was charged with decoying from her parental home **ELIZA ANDREWS**, aged thirteen years. Evidence at great length was heard, both for the prosecution and defence, but the bench adjourned this case also till next Thursday, as it required a second magistrate. When completed, I will forward you the proceedings.

MAITLAND MERCURY, 5/347, 30/10/1847

HUNTER RIVER DISTRICT NEWS. - SINGLETON

POLICE COURT. - THURSDAY, OCTOBER 21

ABDUCTION.

PATRICK FARROLL, a ticket-of-leave holder, was placed in the prisoner's box charged with decoying from her parental home one **ELIZA ANDREWS**, aged 13 years.

ABRAHAM ANDREWS, the father of the girl, having been sworn, deposed that he was a farmer, and resided at Falbrook. In Wednesday week, the 13th instant, between seven and eight o'clock in the evening, he had been told that the prisoner had taken away his daughter Eliza, who is but thirteen years of age, into the bush. The prisoner came next day for his things, and he (witness) took him into custody, and caused him to be placed in the lockup at Singleton. He saw them both together about twenty minutes before he missed his daughter, but upon looking round he found she was gone. Prisoner had been living under the same roof with them at Mrs. Chilcot's.

Cross-examined by the prisoner: The witness saw them both together at Mrs. Chilcot's, both outside and inside the house. Witness had seen prisoner acting improperly with his daughter, and prisoner used her very bad about a week since, but witness looked over that, and he cautioned the girl not to be seen in that place again.

ELIZA ANDREWS, the fair heroine, being placed in the witness box, gave the following statement, as she did not appear to thoroughly understand the nature of an oath:- The prisoner persuaded me to run away from my father's house, and to bring my clothes. I drank two glasses and a half of rum, which I didn't want to take, but he made me. I consented to go away with him after I took the rum, and tried to get Mrs.

Chilcot's horse to take me, but the saddle was locked up. I found the rum taking effect on me, and I went with the prisoner about half a mile, when I wanted to return, knowing I was doing wrong, but the prisoner would not allow me. We then went to Magney's inn, and I there had a glass of porter from the prisoner, which I drank. The prisoner wanted to get a bed there, but Mr. Magney said that they were full. We then came on to Mr. Singleton's public-house, near Patrick's Plains, and arrived there about sunrise. We had breakfast and dinner there, and after dinner the prisoner went away, saying he was going to get his clothes. Almost at dusk, a man named **CHARLES STANLEY** came, and took me home on his dray. While we were at Singleton, the prisoner wanted me to forge my mother's name, for the purpose of getting married to him. The prisoner offered me marriage at Singleton's, but I did not consent. Stanley took me to Mrs. Hart's, and the next day my mother fetched he away, when I related what had happened.

Cross-examined by the prisoner: I did not see anything at Magney's because I was frightened, and at Singleton's for the same reason. I did not ask you to run away with me.

SARAH ANDREWS, the mother of the last witness, was then sworn, but her evidence being of a delicate nature and unfit for publication, we must omit it, as the court was cleared during her examination.

The prisoner having been called on for his defence, said that he had several times warned the girl not to come near him; that the girl had said that he was not game to take her away; that he could not stop in the house for her annoying him; and that the girl went away first, and he had followed her afterwards. The prisoner then called the following witnesses:-

Mrs. **ELIZABETH CHILCOT**, who deposed that she lived at Falbrook, and Andrews's family lived with her, in an adjoining part of the house; prisoner had been in her service for the last eighteen months, but was now discharged. Never did hear Eliza Andrews ask prisoner when he would go away with her; never knew the girl take any improper liberties with the prisoner; had heard prisoner say that if once he laid hold of a woman she should never get out of his hands again.

FANNY FORDEN, who was next called by the prisoner, having been sworn, was examined: She lived with her parents at a short distance from Mrs. Chilcot's. She had seen prisoner and Eliza Andrews free and laughing at each other; had seen Eliza take off prisoner's hat in play; had never seen her take up a knife to rip his trousers; had heard her say that she liked Farrell better than **BERESFORD**.

This closed the case, when the magistrate said that he regretted that the case could not be decided that day for want of another magistrate being present; he would therefore remand the prisoner till the following Thursday, when the witnesses must again appear.

THURSDAY, OCTOBER 28TH.

ABDUCTION

PATRICK FARROLL was again brought up, and the evidence gone into (as reported above), when the prisoner was fully committed for trial at the next Court of Quarter Sessions, for the abduction of Eliza Andrews (a girl under 16 years of age), without the consent of her parents.

MAITLAND MERCURY, 5/347, 30/10/1847

THE MURDER CASE. - **CHARLES COOPER**, committed yesterday for the murder of **BERNARD FOX**, was sent off this morning, heavily ironed, in company with **PATRICK FARROLL**, on their way to Maitland in a cart. October 20, 1847

MAITLAND MERCURY, 5/348, 03/11/1847

ASSAULT CASES. - The fourth case heard was **PETER O'BRIEN v. MARY JOHNSON**. Mrs. Johnson had lately failed in affiliating her child to O'Brien, but being resolved on throwing on him the expense of its maintenance, she tried to get admittance into his house on Thursday last, but he refused to open the door. Not daunted by this, she effected an entrance by getting down the chimney about ten o'clock that evening, and became so obstreperous in her threats against his person and property if he would not support the child that O'Brien swore his life was in danger. The bench bound Mrs. Johnson over to keep the peace.

MAITLAND MERCURY, 5/349, 06/11/1847

CENTRAL CRIMINAL COURT. - NOV. 2

JAMES CADBY and ROBERT CADBY were charged with having taken **BRIDGET M'FARLANE** out of the possession of her father, she being under sixteen years old. The evidence showed that James Cadby had been asked by Mr. M'Farlane to take his daughter back to Cook's River, where they resided, on the 16th August; that the girl did not return home, nor did Cadby, and that several days after she was found in Cadby's house at Parramatta; the girl deposed that Cadby pressed her to return home by herself on the 16th August, but she refused, and accompanied him. The prisoners were found guilty of taking without using compulsion or persuasion, and were remanded for sentence. A point raised by Mr. Purefoy, as to whether the girl was legally in the possession of her father, was reserved by Mr. Justice Dickinson.

BIRTHS.

On the 1st Nov., the lady of Sir Alfred Stephen, Chief Justice, of twin sons – one still-born.

MAITLAND MERCURY, 5/350, 10/11/1847

CENTRAL CRIMINAL COURT. - NOV. 6

JAMES and ROBERT CADBY, convicted of abduction on Tuesday, were discharged after argument heard, the Judges deciding that the verdict was bad. *Abridged from the S.M. Herald*

MAITLAND MERCURY, 6/365, 01/01/1848

ASSAULTING A CONSTABLE. - On the evening of Monday last constable **RUSHTON**, who had been called into Mr. Tuck's tap, was leaving it again when he saw a drunken man, named **RAFFERTY**, behaving indecently close by the door. Rushton took him by the shoulder and removed him to some distance from the door. In a short time Rafferty came back, and seizing Rushton by the throat, told him he would take him to the lockup. Rushton told him he had made a blunder, as he was a constable. Rafferty d---d his constableness, and gripped him the harder; and, persisting in his idea of taking the constable to the lockup, he struggled with him for a good half-hour, till the chief constable and another constable came up, and relieved Rushton, after which all three, with some difficulty, conveyed Rafferty himself to the lockup. Rafferty was brought before the bench on Thursday, and recommended to be deprived of his ticket-of-leave.

MAITLAND MERCURY, 6/368, 12/01/1848

MAITLAND QUARTER SESSIONS. - ABDUCTION.

PATRICK FARRELL was indicted for unlawfully taking **ELIZA ANDREWS**, a girl under the age of sixteen years, from the protection of her father, **ABRAHAM ANDREWS**, and against his will, at Falbrook, on the 13th of October, 1847.

[mostly faint and unreadable.] ... The prisoner then returned to Mrs. Chilcott's, and the girl following him, he persuaded her to run away with him, and as a preliminary step to go and fetch her clothes. She did so, and they left the house, and after walking all night, reached a public-house kept by Mr. **JOHN SINGLETON** at sunrise next morning, where they took breakfast. The prisoner then returned home, leaving the girl at the inn, but a friend of her father's, hearing of her being there, took her away in the evening, and on the second morning she returned home with her mother. Neither her father or mother had ever given their consent to her marriage with prisoner; and Eliza Andrews deposed that after going a mile she wanted to return home, as she knew she was doing wrong, but the prisoner would not let her. When charged with the abduction on his return, the prisoner denied it, and refused to say where the girl was.

The Purefoy addressed the jury, endeavouring to destroy the credibility of Abraham Andrews, who he was instructed had consented.

The jury returned a verdict of guilty, and the prisoner was sentenced to twelve months' imprisonment in Newcastle gaol.

MAITLAND QUARTER SESSIONS. - WEDNESDAY, JANUARY 12, 1848
ASSAULT WITH INTENT.

PATRICK SOMERS was indicted for having, on the 28th October, 1847, assaulted **CAROLINE NEWMAN** with intent to commit a rape; a second count charged him with having committed a common assault on the said Caroline Newman.

Mr. Purefoy appeared for the defence; attorney, Mr. Davies.

It appeared that Caroline Newman, a girl of fourteen years of age, lived with her parents at Kirkton. The prisoner had been formerly employed at Kirkton, but had been away for three years, when on the morning of that day he called at Newman's house. Newman and his wife were in, but Newman shortly after went to his work; Mrs. Newman waited till the prisoner had left, and then she went to visit a sick neighbour, leaving Caroline Newman and her little brother, two years old, in the house. Caroline Newman, however, deposed that as soon as Mrs. Newman was out of sight, the prisoner returned to the house, and notwithstanding her cries and endeavours to escape, he there endeavoured to commit a rape on her. To the questions of the Crown Prosecutor, however, as to the extent of the assault, the witness returned no answer. As soon as Mrs. Newman returned home, her daughter, or rather step-daughter, complained to her.

Mr. Purefoy submitted that the evidence had failed to sustain the first count in the indictment, to which the Crown Prosecutor agreed, and the case was sent to the jury on the second count only.

The jury found the prisoner guilty on the second count, and he was sentenced to two years' imprisonment in Parramatta gaol.

MAITLAND MERCURY, 6/371, 22/01/1848

ASSAULT WITH INTENT. - On Thursday a man named **HENRY HURD** was brought before the bench, charged with having assaulted **ELIZA MURPHY**, a girl of from 12 to 15 years old, with intent to commit a rape. It appeared that both parties were in the service of Mr. M'Donald, of Black Creek, and that Eliza Murphy was an orphan, and did not know her age. Hurd had on one occasion taken liberties with the

girl, and complaint had been made to Mrs. M'Donald; and on the 13th instant, finding Eliza Murphy alone near the barn about sundown, where she had been sent to collect eggs, he there seized her, but failing to effect his purpose, he let her go again, after tearing her clothes. Hurd was committed for trial at the Quarter Sessions.

MAITLAND MERCURY, 6/373, 219/01/1848

DRUNKENNESS AND INDECENCY. - On Wednesday **JAMES HONEY** was charged with drunkenness, and exposing his person in the street, on the previous evening. Constables Boylan and Rushton deposed to the facts, and Honey was convicted and fined £5, or one months' imprisonment in Newcastle gaol.

SENTINEL, 4/155, 06/01/1848

INDECENT ASSAULT. - On Saturday afternoon two daughters of a resident on Strawberry Hill, were sent by their parent to bring home a cow. They were overtaken by a man dressed in a suit of tweed, who violently committed an assault on the person of the younger girl. We regret to learn that the villain is not in custody, but from the minute description of which the children have given of his person, there is reason to hope that the police aided as they are by the exertions of a distressed parent, will soon obtain a clue for his apprehension.

SENTINEL, 4/157, 20/01/1848

MAITLAND QUARTER SESSIONS

(Abridged from the Maitland Mercury)

Wednesday, January 12.

PATRICK SOMERS was indicted for having, on the 28th October, 1847, at Kirktown, assaulted **CAROLINE NEWMAN**, with intent to commit a rape; a second count charged him with having committed a common assault on the said Caroline Newman. Guilty – to be imprisoned for two years.

MAITLAND MERCURY, 6/378, 16/02/1848

MAITLAND CIRCUIT COURT. - MONDAY, FEBRUARY 14

ASSAULT WITH INTENT TO COMMIT RAPE.

HENRY HURD was indicted for assaulting **ELIZA MURPHY**, at Black Creek, on the 30th January, 1848, with intent to commit rape; a second count charged the prisoner with a common assault.

The Solicitor General stated the case to the jury.

His Honor said that before the witnesses were called, he would direct the attention of the jury and the public to a late alteration in the law regarding attempts to commit rape. By it a man who was proved to have attempted to commit the crime, without proof being offered of his having completed the offence, was liable to be punished with great severity. Formerly it was necessary to produce proof of the offence having been committed, but the law had been altered to afford more protection to females, and particularly to young females.

From the evidence of Eliza Murphy, a young girl, it appeared that on the day mentioned in the indictment she had been sent to collect eggs by Mrs. M'Donald, her mistress, and that Hurd had called to her as his little dear; she replied to this by running towards him and throwing stones at him, on which he followed her and pushed her down, taking liberties with her; she resisted, and he then carried her into a

barn with an open door, and again took liberties with her, keeping her there nearly an hour.

This witness was cross-examined by the prisoner and the Court, and it then appeared to have been more of a romping struggle, brought on by her throwing stones at Hurd on that day; she also admitted having thrown stones at him the previous day.

Mrs. M'Donald deposed that the girl had complained of the assault, and had also complained previously of prisoner's taking liberties with her.

The prisoner said nothing in defence.

His Honor having charged the jury, they returned a verdict of guilty on the second count. The prisoner was sentenced to three months' imprisonment in Newcastle gaol.

MAITLAND MERCURY, 6/380, 23/02/1848

HUNTER RIVER DISTRICT NEWS. - DUNGOG.

RAPE AND ATTEMPT TO MURDER BY THE ABORIGINES. - On Monday last two aboriginal blacks committed a rape on a young girl, a servant of the A.A. Company, and about twenty miles from this, near the Gloucester, they were apprehended, on the same evening, by an overseer of the Company, but they managed to effect their escape again the same night. Next morning the same two villains made to another sheep station, where they caught hold of another girl. After violently assaulting her they threw her into a deep hole of the river, called a duck hole. The young woman was fortunately a good swimmer and managed to make her way under water to some long grass near the bank, where she just tilted her head above water, but kept herself concealed. The blacks then, satisfied that she was done for, agreed to murder the rest of the family, which consisted of a woman and three children. Happily a little girl who witnessed the transaction apprised them of what was going on, and the helpless family escaped to the next station. In a short time two men arrived, and relieved the unfortunate young woman from her place of concealment. The shock, however, had been so great that she was insensible for two days, but she is now out of danger. An express was sent over here on Wednesday by **P.G. KING**, Esq., for our mounted police, but agreeably to the report of the wise committee of Council and the Police of the Colony, they were not to be found. In the present state of affairs we do not know what to do for protection from the blacks. For months past they would, in the open day, and in the presence of the owners, shoot a bullock, roast and eat it, and then be off for another beast. In one camp they have thirty stand of arms. Now what is nearest and dearest to us is not safe from their attacks, and our wives and daughters are in danger close to their own homes, for in the above case the young woman was not forty rods from her father's house on the Teligherry. The foot police are out in search, but what can they do? It is only risking more human life.

MAITLAND MERCURY, 6/381, 26/02/1848

TWENTY-FIVE POUNDS REWARD, OR A CONDITIONAL PARDON.

Whereas, it has been represented to the government that on the morning of Sunday, the 18th instant, a rape was committed on the person of a female residing at a station of the Australian Agricultural Company, in the county of Gloucester, by an aboriginal native, named "**DARLEY**" - His Excellency, etc. ,etc.

MAITLAND MERCURY, 6/384, 08/03/1848

HUNTER RIVER DISTRICT NEWS. - PORT STEPHENS.

THE BLACKFELLOW "**DARBY**." - You will be glad to hear that this native has been apprehended. He was taken by one of the Australian Agricultural Company's

overseers, and immediately committed by Captain King. The unfortunate girl could not swear to the black previously taken as Darby's accomplice; search is therefore still being made for his apprehension. The mounted police have been most active, with **P.G. KING**, Esq., in securing every native they could find, and have had them all in the Stroud lockup for some time. One of the troopers, in firing at a black who had made off into the thick bush, had a narrow escape, his carbine having burst. The cartridge had either worked out of its place, or in the hurry of loading had not properly sent home. The unwearied exertions of P.G. King, Esq., on this occasion, are highly creditable to him. He has been out ranging the bush with the mounted police for ten days, and is about to proceed to the Manning with them, the magistrate in that quarter being indisposed. March 4, 1848

MAITLAND MERCURY, 6/385, 11/03/1848

BRUTAL AND SERIOUS ASSAULT. - On Sunday morning last, between the hours of two and three o'clock, constable A 36, whilst on duty in Pitt-street, heard violent screams and cries of murder; and, going to the spot whence they proceeded, found a man named **JOHN OSBORNE** beating an unfortunate woman named **AMELIA BEARD**, with a handsaw, in the most barbarous manner. The unfortunate woman was most frightfully cut, he having struck her previously with an iron hoop. Her clothes were almost completely torn from her person, and were burning in several places, the monster having set fire to them with a candle. The constable immediately secured the man, and then took the woman to the Infirmary, where her wounds were dressed. Yesterday morning Osborne was brought before the city police court, when the above facts were proved in evidence against him. The woman, however, gave her testimony with the greatest reluctance, notwithstanding the brutal usage she had received, and could not be induced to give positive evidence against the prisoner. He was fully committed to take his trial for the offence. *Chronicle, March 7*

MAITLAND MERCURY, 6/386, 15/03/1848

THE BLACKS IN GTHE COUNTY OF GLOUCESTER. - The three blacks, **DARBY, TELLIGARIE JACKKEY[?], and LONG JA[??]**, who lately committed rapes, and other fearful outrages, in the county of Gloucester, have been captured by Sergeant **GILES** and a party of mounted police sent in pursuit of them. The commandant has sent a strong detachment of mounted police to the Manning River, for the apprehension of other aboriginals, who for some time past have been slaughtering cattle, and setting the country at defiance. *S.M. Herald, March 10*

SENTINEL, 4/165, 16/03/1848

LIVERPOOL. - RAPE. - A man named **MOUNTFORD ROWLING** was on Tuesday last before the Police Court of this district charged with rape on a young female of the name of **ELIZA ONSLOW**. Rowling, who was defended by Mr. **NICHOLS** was committed to take his trial, but allowed bail, himself in £80 and two sureties of £40.

MAITLAND MERCURY, 6/390, 29/03/1848

HUNTER RIVER DISTRICT NEWS. - TELLIGHERRY.

The party of mounted police sent to the Manning for the blacks who were spearing cattle there have captured two of them, and as I was returning from Stroud yesterday I met them with the blacks in charge.

There was evidently a mistake in the paragraph published in your paper of the 15th March, taken from the *Herald*, relating to the capture of “**DARBY**.” He was taken at one of the Company’s sheep-stations named Walkivey, near Gloucester, by an overseer named **WILLIAM FROODE**. Darby was allured into the camp by two of Froode’s blacks, by assurances that all was right, and some tea and damper were given to him; whilst he was eating they engaged him in conversation, when Froode walked quietly behind him and clasped him round the arms; he was then bound and handed to the police the same day, the 28th of February.

SENTINEL, 4/189, 31/08/1848
CENTRAL CRIMINAL COURT

Saturday

FRANCIS DURHAM, alias **DIAMOND**, late of Shoalhaven, was indicted for that he did on the 1st November, 1847, last, on the body of one **MARY GREEN**, did feloniously make an assault, &c.

The prisoner was defended by Mr. **HOLROYD**; attorneys, Messrs Nichols and Williams.

The Solicitor-General conducted the case for the Crown.

The prisoner was an American Black, and went to the hut of the prosecutrix on the night of the 1st November, 1847. After endeavouring for a considerable time, he obtained an entrance and effected his purpose. The prosecutrix, apparently a very respectable woman, gave her evidence in the most creditable manner, and was corroborated in her testimony by the circumstantial evidence of several witnesses.

Mr. Holroyd addressed the Jury for the defence, contending, without the least intention of casting any reflection on the prosecutrix, who gave her evidence more circumstantially and more becomingly than any women he had ever heard, that the evidence as to the identity of the prisoner was incomplete.

His Honor summed up, and the Jury retired for five minutes, and returned with a verdict of guilty.

The Chief Justice passed sentence upon the prisoner.

He was informed that the prisoner had lived in the colony for several years, and therefore must know the punishment consequent on the crime of which he had been guilty. It had further come to his knowledge that he had previously lived in England, and it was only within the last few years that the crime of rape had been punishable by anything but death. In this colony it has always been punishable by death alone. It was quite true that by the laws human life ought to be held dear, - that it was a dreadful thing to have to sentence a fellow-being endowed in most respects with like feelings and passions, as ourselves, to die. But while the law and society held human life sacred, there was also another thing which was dear to society, and that was the sanctity of chastity – the safety of the wife or daughter from the brutal lust, the unrestrained passions, of lawless men. What had been the circumstances of the present case? The prisoner, at midnight, had broken into the home of an absent man, and there, in the presence of her screaming children, had violated the person of his wife under circumstances of extreme barbarity.

His Honor after some remarks relating to the present law proceeded to pass sentence, which was that the prisoner be taken to the place from whence he came, and from thence on a day hereafter appointed, to a place of execution, there to be hanged by the neck till his body be dead, and might God have mercy on his soul. The prisoner was then removed from the dock.

MAITLAND MERCURY, 6/393, 08/04/1848

You may perhaps have noticed a charge of burglary preferred against a young man named **LEMMINGTON**, by **MARY ANN MURPHY** and her sister, two females of ill fame. From inquiries made by the police, it appears that the charge is a well concocted perjury; and that the whole of the prisoner's statement is true. He has, however, been remanded to Saturday; but there is no doubt that the two women will have to meet a charge of perjury.

A DOUBTFUL CHARGE. - Yesterday morning, **THOMAS LEMMINGTON**, a decent looking young man, who represented himself as an engineer recently arrived in the colony, was placed at the bar of the Police Court, charged with an attempt at burglary in the house of **MARY ANN MURPHY**, a woman of ill-fame residing at Miller's Point. By the evidence, for the prosecution, of Mary Ann Murphy and her brother and sister, it appeared that the prisoner had been found by her in her bed room at two o'clock that morning, when she had alarmed her brother and sister, who immediately came to her rescue. That on their arrival, the prisoner had taken out a watch, a ladies' companion, and a scent bottle from his pocket, and handed to them, requesting them not to take any notice of the affair. The statement of the prisoner, however, was, that he had passed the evening and the night with Miss Murphy; that he had accused her of robbing him, when she immediately turned round and charged him with burglary, and sent for a constable. On her doing so, he had proceeded to dress himself, and had not quite completed his toilette, when the constable arrived; and then he had insisted on having the room searched, when twenty shillings and six-pence, the amount he declared to have lost, was found concealed beneath the blanket in prosecutor's bed. Much of the prisoner's statement was corroborated by the apprehending constable, but the prosecutor and her witnesses strongly denied having ever seen the prisoner before two o'clock that morning, that he had taken tea in the house, or that he had passed the night there. The bench remanded the case to this day, when evidence as to certain facts mentioned by the prisoner will be taken before the court. *Chronicle, April 6*

SENTINEL, 4/192, 21/09/1848

MAITLAND ASSIZES:- CIRCUIT COURT

(Abridged from the Maitland Mercury)

Wednesday, Sep. 13.

Before his Honor Mr. Justice Dickinson

CHARLES ROBINSON was indicted for having committed an unnatural crime at Armidale, on the 6th July, 1848.

The evidence of this case is unfit for publication.

The Jury returned a verdict of guilty, and sentence of death was recorded against the prisoner.

TILLIGHERRY JACK, an aboriginal, was indicted for having assaulted **ANN MONAGHAN**, at Gloucester, on the 15th February, 1848, and with having beat and wounded her, with intent to commit a rape.

The Attorney-General stated the case, and called Ann Monaghan, a young woman, who deposed that her parents resided on the Williams River twelve or fourteen miles from Stroud; and that on the 15th Feb. she and her sister, aged eleven, were out about 300 yards from the house looking for two sheep when they met an aboriginal named **DARBY** (the same who was convicted on Tuesday of rape,) who walked with them some distance, and then sent home witness's sister, saying that he should be down

there soon. He then caught hold of witness by the arm, and asked her to go in the bush with him; she refused, and on his insisting, and threatening to kill her if she would not, she tripped him up and ran towards home. Darby an across the bush, and cut her off, and another struggle took place. Darby insisted with threats that she should go into the bush, and witness succeeded twice in throwing him; Darby then cooed, and while the struggle was still going on, the prisoner came out of the bush, with a gun on his arm, and threatened to shoot witness if she did not stand, presenting the gun at her. The two blacks then, with threats to kill her and burn her mother and pressed witness to go into the bush, but she refused, telling them to kill her first. They then each caught hold of an arm and dragged her several yards, when they stopped and wound an opossum skin round her mouth to stifle her screams, and laying her head on a log, threatened to cut her head off if she would not consent to go into the bush; she still refused, and they conversed about carrying the threat into execution, but they agreed not to do it for fear the whites would be alarmed by her sister, and find the blood there. Darby then struck a light and lit his pipe, and pressed witness to smoke; she took a few whiffs, and he then offered her some opossum flesh, saying it was budgery. She refused, and also refused to go into the bush with them, on their again pressing her, and again threatened to kill her. They seized her again, and dragged her to a rock, where they lifted her up, and threatened to dash her brains out against a rock; she turned over to Darby's arms, and fainted, falling on the ground by the rock. How long she remained insensible she did not know, but when she recovered her senses she pretended to be dead. They dragged her away some distance further, and then took off her upper clothes; Darby stood on her breast for a moment to see if she was really dead, but she lay still; they debated, and were taking her to a stockyard, where they proposed to rip her up, but altered their intention and took her down to the river, where they threw her in. The water was deep, and witness who was able to swim, dived and swam under the water, as long as she was able, and then made her way to a place where the bank overhung, and where long grass grew. Here witness raised herself so as to be able to breathe, and saw the two blacks occasionally looking over, as she thought; at length, on her father's mare galloping down to the river, the blacks ran away, and after some time witness ventured out and crawled home on her hands and knees, for her injuries had deprived her of the use of one side, and she could not stand.

The prisoner cross-examined the witness, denying that he was the black who was with Darby, but she positively swore that he was.

The Jury retired for a few minutes, and returned a verdict of guilty.

His Honor sentenced the prisoners to two years' imprisonment, with hard labour, in the Sydney Gaol.

MAITLAND MERCURY, 6/398, 26/04/1848

HUNTER RIVER DISTRICT NEWS.

DISTRESSING CASE. - On Sunday last, a poor woman, named **DAVIDSON**, (whose husband left Singleton for Sydney some time ago, professedly to settle in business there, but who is supposed to have left the colony for England,) was confined with a fourth child, under the most distressing circumstances. A few charitably disposed individuals, with honor to themselves, immediately commenced a subscription, which in half an hour amounted to nearly £2, the whole being collected in the "Fitz Roy." It is to be hoped that in a few days the Singleton folks, who are always ready to respond to the appeal of humanity, will subscribe a sufficient sum to

place the unfortunate woman and her infant children out of the reach of want. April 25, 1848.

MAITLAND MERCURY, 6/400, 03/05/1848

APPREHENSION OF A MAN CHARGED WITH RAPE. - Chief-constable **FOX** has apprehended a man, named **DAVID THOMAS**, charged at Newcastle with carnally knowing an infant under the age of ten years, and for whose apprehension a warrant was issued. It appears that after, as alleged, committing the infamous offence, he absconded from Newcastle; search was made for him in all directions by the police of different districts without success; nothing was heard of him until Friday last. Mr. Fox, when at Newcastle lately, had received a description of the offender, and on Friday was riding out on the Muswell Brook road, where he met a horse-team, bound for New England; a short distance behind the dray, he saw a man walking, who, on observing the chief-constable approaching towards the dray, ran to get on the other side of the dray to escape his observation, which, however, he did not succeed in doing. Mr. Fox considering he answered the description of the man apprehended him, and this day he was brought before the bench and identified as the man who committed the offence, and was ordered to be forwarded to Newcastle. April 29, 1848

MAITLAND MERCURY, 6/406, 24/05/1848

UNFORTUNATE CASE. - Mr. **GILL**, the hotel keeper of Pitt-street, is in custody of the Parramatta police for having yesterday discharged a pistol at Mr. **JOHN KINCHELA**, of Bathurst. From what has transpired, it appears that a daughter [Mary Ann Gill] of Mr. Gill's having eloped with Mr. Kinchela, her father pursued them, and coming up with Mr. K. at Cutt's Inn, on the Parramatta-road, fired at him, but failing in hitting him, was about discharging a second pistol, when it was taken from him, and he was secured. *Herald, May 22*

MAITLAND MERCURY, 6/407, 27/05/1848

ELOPEMENT AND ASSAULT. - On Sunday morning last, the eldest daughter of Mr. **MARTIN GILL**, hotel-keeper, of Pitt-street, a young girl of about 17 years of age, eloped from her parents with a Mr. **JAMES KINCHELA**, of Bathurst [the *S.M. Herald* says Mr. Kinchela is of Moreton Bay], a gentleman who had occasionally, on visiting Sydney, stopped at her father's house. Shortly after she had left her home, the news reached her father's ears, and he instantly pursued the errant couple, coming up with them at Cutts's Inn on the Parramatta Road. When within a short distance of Mr. Kinchela, the enraged father drew a pistol and fired at him; but as good fortune would have it, without effect. Finding he had missed him, he drew another pistol, which however was torn from his hand before he could discharge it. He was then secured and handed over to the Parramatta police stationed at Concord, and by them conveyed to Parramatta. The case came on for hearing before the Parramatta bench of magistrates, when it was initiated only, in consequence of the absence of Mr. Kinchela. The further examination has been deferred to Monday next, Mr. Gill in the mean time being allowed bail, himself in £200 and two sureties in £100 each. We learn that the misguided girl, Miss **MARY ANN GILL**, has returned to her parents. *Chronicle, May 23*

MAITLAND MERCURY, 6/408, 31/05/1848

ABDUCTION. - Mr. **JAMES KINCHELA**, of Moreton Bay, was yesterday fully committed by the Parramatta bench to take his trial for the abduction of Miss **MARY ANN GILL**, daughter of Mr. **MARTIN GILL**, hotel keeper, of Pitt-street, Sydney, she being under the age of sixteen years. *Chronicle, May 27*

MAITLAND MERCURY, 6/409, 03/06/1848

PARRAMATTA POLICE OFFICE. - MR. GILL'S CASE. - The charge against Mr. **MARTIN GILL**, of Pitt-street, for shooting at Mr. **JAMES KINCHELA**, was yesterday, pursuant to adjournment, resumed. The only additional evidence taken was that of Mr. James Kinchela, whose testimony was corroborative of that of the other witnesses, a report of which appeared in last Tuesday's *Herald*, with the addition that if the pistol discharged at him by Gill had been loaded with ball he must inevitably been killed. Gill was then committed for trial, but allowed bail, himself in £200, and two sureties of £100 each. *Herald, May 30*

MAITLAND MERCURY, 6/410, 07/06/1848

GOOD BEHAVIOUR. - A man named **JOHN EUSTON** was yesterday brought before the bench charged with indecent exposure, but the charge was not sufficiently proved. Mr. **R. KEDDIE**, however, deposed that Euston, though quiet when sober, was in the habit, when half drunk, of using such insulting language to him that he feared a breach of the peace would ensue, and he therefore prayed the protection of the bench. Euston was ordered to enter into recognisances, with two sureties, to be of good behaviour for twelve months.

CENTRAL CRIMINAL COURT. - SATURDAY, JUNE 3, 1848.

SHOOTING WITH INTENT.

MARTIN GILL was indicted for that he, on the 21st day of May, did unlawfully, maliciously, and feloniously, shoot at one **JAMES BUTLER KINCHELA**, with intent to murder the said Kinchela. A second count charged him with intent to do some grievous bodily harm.

The prisoner pleaded not guilty.

The Attorney-General prosecuted for the Crown; Mr. Lowe for the prisoner; Mr. G.R. Nichols attorney.

It appeared that the prisoner rode up to Cutts's Inn, Parramatta Road, in a very excited state; Mr. Kinchela and other parties were standing at the door; prisoner drew out a pistol, and presented it at Mr. Kinchela's head, asking if he should give him any more time; a Mr. **DAVIDSON**, standing by. Seized the pistol, when the prisoner told him he would blow his brains out of he did not let go; Mr. Davidson let the pistol go, and prisoner immediately presented it again at Mr. Kinchela, and fired; he was standing in front of Mr. K., at about half a yard off, but Mr. Kinchela was not hit, nor was any mark made on the wall behind Mr. Kinchela, although Mr. Davidson deposed that the pistol was so directed that the charge could not have gone over the verandah; prisoner exclaimed, "My God, how could I have missed him," and throwing away the pistol, he drew out another, but walked up and down with it for a minute, during which Mr. Kinchela ran in-doors, and the prisoner was seized and disarmed, the pistol then taken from him being found loaded with ball.

Mr. Lowe addressed the jury, pointing out that there was no proof that the pistol discharged was loaded with ball or shot.

The jury returned a verdict of not guilty, and Gill was discharged.

(Before Mr. Justice Manning, and a common jury.)

JAMES BUTLER KINCHELA, late of Parramata, gentleman, was indicted for that he, on the 21st day of May last, did unlawfully take one **MARY ANNE GILL** out of the possession and against the will of **MARTIN GILL**, her father, the said Mary Anne Gill being an unmarried girl under the age of 16 years, to wit, 15 years. There was another count, charging the prisoner with causing the said Mary Anne Gill to be taken away.

Mr. Lowe appeared for the prosecution, attorneys Messrs. Nichols and Williams; Mr. Holroyd for the defendant, Mr. Little attorney.

It appeared from the evidence that the prisoner had for some time resided in Mr. Gill's house, but had left it, by desire of Mrs. Gill, about April; about one o'clock on Friday morning, the 19th May, prisoner had an interview with Miss Gil, who stood at her bed-room window, while prisoner was in the street below, and she then agreed to leave her home on the Saturday evening following, and be married to prisoner at Parramatta on the Sunday morning; about eight or nine on Saturday evening she did leave, and saw prisoner in the street, by whose desire she went to a public-house in Parramatta-street, where prisoner afterwards called and saw her; the landlord of the house, however, went for Mr. Gill, and he came and took home his daughter; prisoner, having heard that her father was sent for, had urged her to leave again the following morning, take a particular cab, and drive to a particular house on the Parramatta road; she did so, but on arriving at that house found prisoner was not there; the cabman went and found him, and prisoner, by note, desired her to go on to Parramatta, where he would follow her in the evening; she was driven on there by the cabman, but before prisoner made his appearance the chief constable at Parramatta arrested her, and she was taken to another house.

Mr. Holroyd cross-examined Miss Gill to show that all she did was by her own free will, and that all orders to the cabman and others were given by herself, and not by Kinchela.

Mr. Holroyd made an elaborate defence, treating the affair lightly, and endeavouring to throw doubt on Miss Gill's evidence and character.

His Honor, in summing up, blamed this defence as unmanly.

The jury returned a verdict of guilty, and the prisoner was remanded for sentence, bail being refused.

The court then adjourned till Monday.

BATHURST. - POLICE OFFICE. - ABDUCTION. - MAY 26.

ROBERT LEARY was this day committed for trial on the above charge. It appears that the prisoner had become acquainted with a person named **MARTIN M'LACHLAN**, of Sydney, had paid his addresses to his daughter **CATHERINE**, under sixteen years of age, had two or three times asked her father's consent to marry her, which he refused on account of her age. The girl was living with a Mr. **DAWSON**, in Sydney. Leary persuaded her to abscond from this service and accompany him. They travelled to Bathurst, passing as man and wife, and there entered the service of Mr. **J.W. LOWE**, J.P., of Sidmouth Valley, both stating to that gentleman that they were married, and he engaged them as house servants. The father, hearing of their whereabouts, made a deposition of the facts, a warrant was issued, and Mr. Leary eventually lodged safely in Bathurst gaol to await his trial. *Correspondent of S.M. Herald.*

MAITLAND MERCURY, 6/412, 14/06/1848

CENTRAL CRIMINAL COURT. - FRIDAY, JUNE 9
ABDUCTION.

JAMES BUTLER KINCHELA, convicted of the abduction of **MARY ANNE GILL**, before Mr. Justice Manning, was brought up for sentence.

Mr. Holroyd moved, in arrest of judgement, that his Honor the Judge, who had tried the case, had refused to hear evidence material to the defence, and which the defendant was entitled to offer. He should therefore pray that the judgement of the court might be arrested till the first day of next term, when the defendant would move for a rule to show caused why a new trial should not be granted.

His Honor the Chief Justice stated that the practice in cases of felony or misdemeanour was to sentence immediately, and the only cases in which this rule was departed from were those in which points were specially reserved for argument by the Judge. If there was any objection to make, it would be better argued at once, as they were as much the Supreme Court, sitting as they were to deliver the gaol, as they would be if sitting in the Banco Court.

Mr. Holroyd stated that he had followed what he conceived to be the practice of the court, and at present was not prepared with the affidavits on which to argue the objection he had taken to the last trial.

The Attorney General making no objection, judgement was allowed to stand over till next term, during the first four days of which the counsel for the defendant might move for a new trial.

The Chief Justice stated that it was the intention of their Honors to frame a rule of practice, under which the whole of the business relative to criminal proceedings would hereafter be disposed of before the Criminal Court.

MAITLAND MERCURY, 6/414, 21/06/1848

ABDUCTION. - The case of **EDGAR v. THOMAS KINGSMILL ABBOTT and others**, for the abduction of **MARY ANN CHALLENGER**, was yesterday again brought before the police court. Mr. Grant appeared for the prosecution, and Mr. Johnson for the defence. It appeared that Miss Challenger was a young lady under the age of sixteen years, who had resided with her mother, Mrs. **EDGAR**, formerly Mrs. Challenger, until the 8th of April last; on that day Miss Challenger left her mother's house on an errand, but instead of returning she stepped into a boat containing some of defendant's friends, went across the water, jumped into a carriage, entered the Baptist Chapel in Bathurst-street, and was married to the defendant by the Rev. **JOHN HAM**. Mr. Johnson, for the defence, contended that the material part of the offence charged had not been proved; evidence had been given of the marriage, and of the young lad's having left her mother's, and stepped into a boat, but none was offered to prove that the defendant provided the boat, or induced her to enter it. Mr. J. recited a case, **Regina v. Meadows**, in support of his argument, in which Judges Park and Coleridge had held that the taking away must be proved. Captain Innes said the case cited by Mr. Johnson had satisfied him that the proof was insufficient as to the taking away, the more material part of the offence, and he must therefore dismiss the case, which he regretted had not been arranged between the parties. *Abridged from the Daily Advertiser, June 17*

MAITLAND MERCURY, 6/418, 05/07/1848

SUSPICIOUS CONDUCT. - For two or three weeks past parties residing about the upper part of the Stockade Hill, East Maitland, have been alarmed by some man endeavouring to entice their children into the bush. On Monday morning a little girl, named **ANN RIGNEY**, living with a family named **EUSTON**, was beckoned to several times by a man standing near the edge of the bush. The little girl told Mrs.

Euston, who informed her husband, by whose direction Mrs. Euston told the girl to go to the man if he spoke to her again, and speak to him. Early in the afternoon Euston, who had gone to his work, received word that the man had again appeared, and that the little girl had gone to him, and had gone into the bush with him. Euston and another man hurried after them, and after some time sighted them just as the man sat down on a log, and appeared to be talking to the little girl. Euston's companion begged him to be patient for a minute, to see what the fellow's designs were, but Euston was in too great a passion, and ran on. The fellow now saw the two men, and rising he ran away as hard as he could. Euston and his companion caught him, however, and he turned out to be an elderly man named **ARTHUR SMITH**. Yesterday Smith was brought before the bench, and Euston gave the above evidence. The little girl was then sworn, after being examined as to her knowledge of a future state, and deposed that Smith asked her to show him the bush way to the Newcastle-road, as he wanted to avoid passing a particular house; that she told him she did not know it, but that he persuaded her to go with him till he reached the log, some distance in the bush, and out of sight from any road or path; that he then sat down, and gave her sixpence for guiding him; that just at that moment Smith saw Euston and his friend, and bolted. Smith protested loudly against the imputation thrown on him, and protested that he only required the little girl to guide him to the road, for doing which he gave her sixpence. When asked why he ran away, he said he had watches and valuable property about him, and was afraid Euston and his companion were going to rob him. The bench said he had had a narrow escape from committal, owing to Euston's quickness, but that, as he held a ticket-of-leave, they should recommend that he be deprived of it.

SUPREME COURT. - **Regina v. THOMAS KINGSMILL ABBOTT**: On the motion of Mr. Lowe, the Court granted a rule *nisi*, returnable on Monday next, calling on the defendant to show cause why a criminal information should not be filed against him for the abduction of **MARY ANN CHALLENGER**.

MAITLAND MERCURY, 6/419, 08/07/1848

ASSAULT WITH INTENT. - On Thursday a man named **MICHAEL JENNINGS** was committed for trial, on the charge of assaulting, with intent to commit a rape on, **MARY M'CANN**, a girl of fourteen years of age. Jennings had previously asked her parents to allow her to marry him, but was refused, on account of her youth. As the case will probably be tried next week, at the Quarter Sessions, we refrain from giving the particulars.

MAITLAND MERCURY, 6/420, 12/07/1848

MAITLAND QUARTER SESSIONS. - TUESDAY, JULY 11, 1848

ASSAULT. - **MICHAEL JENNINGS** was indicted for assaulting **MARY M'CANN**, at Maitland, on the 11th June, 1848.

It appeared that the prisoner had been a visitor at the house of Mary M'Cann's parents, and on Easter Sunday asked their consent to let her marry him; they refused, the mother saying the girl was too young; she being only fourteen years old. On that day week the prisoner was accompanying Mary M'Cann and her little brother home from East Maitland, and on the way he stooped the girl and asked her to go home with him; she refused; he then seized hold of her, and dragged her away into the bush, towards his place, notwithstanding her struggles; after going about 200 yards into the bush he stopped, and tried to throw her down; the prisoner then asked her brother to go home and tell his mother to get tea ready for them by the time they should get

home, offering him 6d. to go; the boy refused; the prisoner then, by threatening to keep the girl out all night, forced her to swear on the prayer book that she would marry him in a fortnight. The two children then went home, the prisoner first ordering the boy not to tell his mother. On the following Saturday night the prisoner went to M'Cann's house, and claimed the girl by virtue of her oath; Mrs. M'Cann had then heard nothing of it, and on hearing what had passed she told the prisoner instead of giving him her daughter she would give him a kettle of boiling water. Mrs. M'Cann then spoke to a clergyman, and by his advice gave information to the police.

Mr. Purefoy made light of the case, stating that the mere laying hands on the girl was not assaulting her; the prisoner's intentions were honourable, as he would prove by a witness whom he called. The witness proved that prisoner was a man of good character, and that he had provided a hut to live in, when he should be married.

The jury found the prisoner guilty, and he was sentenced to three months' imprisonment.

SUPREME COURT. - THURSDAY, JULY 6, 1848

THE QUEEN v. J.R. KINCHELA

The defendant, during the last Criminal Sessions, was tried for abducting one **MARY ANN GILL** from out of the possession and against the will of **MARTIN GILL**, her father. The defendant was found guilty, but was not sentenced, leave being reserved to move for a new trial on grounds mentioned at the time.

Mr. Holroyd now moved for a new trial, on three grounds: first, that evidence had been improperly rejected, by certain questions proposed to be put to the principal witness for the prosecution being refused; second, that while one abduction only was charged, evidence was given of two, while the judge refused to compel the prosecutor to elect which case he would go on; third, that a witness for the prosecution, whose name had been endorsed on the back of the indictment, had not been called, whereby the defendant was deceived, and deprived of the opportunity of cross-examining him on points wherein he could have contradicted the evidence of the principal witness.

On this last point some little discussion ensued, as to the right of a prisoner to compel the crown to call every witness whose name was indorsed on the back of the indictment. The practice seemed not settled.

The Court granted a rule nisi upon the last point, with a view to have the practice settled thereon, as well as upon the other two points. The Court declined to make any order upon whom the rule is to be served, whether upon the solicitor who was concerned for the prosecution (it having been a private one), or upon the Crown Solicitor.

MAITLAND MERCURY, 6/421, 15/07/1848

SUPREME COURT.

The Queen v. Abbott. - The rule *nisi*, calling on the defendant to show cause why a criminal information should not issue against him for the abduction of **MARY ANN CHALLENGER** (now his wife), was argued on Monday. The Court reserved judgement till Wednesday.

In re Kinchela. - The motion for a new trial of Kinchela, for the abduction of **MARY ANN GILL**, was also argued; judgement reserved till Wednesday.

SUPREME COURT. - WEDNESDAY, JULY 12.

The Queen v. Abbott. - His Honor the Chief Justice gave judgement in this case as follows:- We have considered this case; and we are of opinion that the leave which is asked for, to file a criminal information against the defendant, must be given.

The Queen v. Kinchela. Judgement will be delivered in this matter on Thursday.
Herald, July 13

DEATHS.

Perished, on the 11th June, during his homeward journey from Bathurst, Mr. **JAMES VINCENT**, of Carwell Creek, near Dabie, aged 76. The deceased arrived in the colony per the *Minorca*, in the year 1801.

MAITLAND MERCURY, 6/422, 19/07/1848

SUPREME COURT. - The Judges have not yet delivered judgement on the motion for a new trial in the matter of the ***Queen v. Kinchela***, for the abduction of **MARY ANN GILL**.

MAITLAND MERCURY, 6/423, 22/07/1848

SYDNEY NEWS.

IN RE KINCHELA. - His Honor the Chief Justice stated to-day, in the Supreme Court, that he was not prepared to pronounce judgement in the above matter, but intimated that his learned colleagues, as well as himself, were of opinion that there were not sufficient grounds for granting a new trial, and that in passing sentence on a future day, the length of time the prisoner had been in confinement would be taken into consideration.

MAITLAND MERCURY, 6/426, 02/08/1848

SYDNEY NEWS.

THE QUEEN v. KINCHELA. - The Court delivered judgement in this matter, refusing a new trial. The defendant was then brought up for sentence, which was that he should be imprisoned for nine months, reckoning from the date of his conviction.

MAITLAND MERCURY, 6/427, 05/08/1848

ABDUCTION. - Yesterday **PETER MEGGETT** was committed by the bench, charged with the abduction of **SARAH MANTEL**, a girl under sixteen years of age. Mr. Nicholl appeared for the defence. From the evidence of constable **COLLINS** and **MARY KNEE**, mother of the girl, it appeared that the girl having left her mother's house on Monday last, Mrs. Knee heard on Wednesday that she was in Meggett's house, and having procured a constable, she went to the house, where she found an old woman in charge, named **SARAH ALLEN**, Meggett himself being out at the time. The found the bedroom door locked, but on asking the old woman who was in the room, she said that no one was there, and persisted in saying so. On this the constable went to one window, and Mrs. Knee to another, when they saw the girl under the bed, having the key of the door in her hand. At this moment Meggett came home, and when told by the constable that he wanted the girl, Meggett asked what claim he had to her; the constable replied that he mother was there, and he wanted to deliver the girl to her; Meggett at first said he would not give her up, but afterwards, on the constable saying that he would break open the door, Meggett gave way, but still, when the girl came out, according to the evidence of the constable, Meggett did all he could to prevent the girl's going home with her mother, and told her if her mother beat her she should give herself up to a constable. Sarah Mantel deposed that she left her mother's house on Monday, because her mother had threatened on Sunday to beat her; she first went to a neighbour's house, and stopped there till late on Tuesday evening, when she went to Meggett's, where she had formerly been a servant; she slept there that night with the old woman, and in the morning, after

Meggett had gone out, she locked herself in the bed-room, for fear her mother should come; Meggett knew nothing of her leaving her mother's, till she reached his house that evening. Sarah Allen's evidence corroborated that of the girl; she deposed that it was ten o'clock at night when the girl arrived at the house, and that Meggett at first refused to admit her; in a short time, however, he did so, and the girl slept in the same bed with witness that night, Meggett himself sleeping in the kitchen; in the morning, after Meggett left, the girl locked herself in the bedroom, and begged witness to deny her if anybody came asking for her. Mr. Nicholl submitted that there was no case against Meggett, there being not the slightest proof of his having taken the girl away from, or induced her to leave, her mother's house. The bench committed Meggett for trial, but admitted him to bail.

MAITLAND MERCURY, 6/432, 23/08/1848

BILLS IGNORED. - The Attorney-General has ignored the bills against **PETER MEGGETT**, for abduction, ...

SYDNEY NEWS. - ABDUCTION.

The case of the Queen v. ABBOT, for the abduction of Miss **CHALLENGER**, an infant under sixteen years of age, was set down for trial this day, at the Supreme Court, before a jury of twelve. It seems, however, that the matter was settled out of court, and the jury was discharged.

MAITLAND MERCURY, 6/433, 26/08/1848

SYDNEY NEWS. - FOUND DEAD.

A report having reached Mr. **TEMPLER** and the police, that a boy was found dead near Mr. Trappitt's station, on the Mulyerr, no time was lost by Mr. Templer and other gentlemen in going to the place; the father of the boy had been in search several days. He had sent him to Summer Hill on a message, and gave him an order of 30s. and 1s. in silver, to purchase some goods at the store; he returned by Blackman Swamp, had some liquor in bottles, and made a sheep station of Mr. Kite's; he was not heard of until found dead near an old tree, with his face disfigured as if by birds. He was twelve years of age, in the employ of Mr. **FINCH**, and found by a shepherd. *Bathurst Advocate, August 19*

ATTEMPTED SUICIDE. - A man named **JAMES BIGGS**, the holder of a ticket-of-leave for this district, was brought up at the police-office on Monday last, charged with attempting to commit suicide, under the following circumstances. Dr. **DORSEY** stated that on the Friday evening previous, between ten and eleven o'clock, he was called from his home to visit a man at the Queen's Arms, Ipswich, who, he was informed, had hanged himself. On proceeding thither he found the man in a state of utter insensibility, and saw the rope and marks of strangulation on his neck. After the application for about an hour of the usual means to restore suspended animation in such cases the prisoner recovered. Dr. Dorsey and Dr. **BALLOW** gave a joint certificate to the effect that the prisoner was a dangerous lunatic, and unfit to be at large. The bench recommended the cancelling of his ticket, and ordered him to be returned to Hyde Park Barracks, as being a prisoner unable to take care of himself. The sum of £40 14s., principally in orders, was found in the possession of the prisoner. *Moreton Bay Courier, Aug. 5*

MAITLAND MERCURY, 6/434, 30/08/1848

CENTRAL CRIMINAL COURT. - WEDNESDAY, AUGUST 23, 1848
ASSAULT WITH INTENT

GEORGE WILSON, late of Tabula River, in the district of Clarence River, was indicted for an assault with intent to commit a rape on the person of an **aboriginal native girl, known as "MARY ANNE,"** about ten years old, on the 18th May last.

Guilty; sentenced to hard labour on the roads or other public works of the colony for the term of seven years.

FRIDAY, AUGUST 25

AGGRAVATED ASSAULT

MICHAEL MONAGHAN was indicted for assaulting **ELEANOR CORRIGAN**, at Wollongong, on the 24th June, with intent to do her bodily harm.

Guilty of common assault; three years' imprisonment, with hard labour.

RAPE

SAMUEL MAJOR, late of Liverpool, was indicted for that he, on the 6th June last, did feloniously make an assault on the body of one **ELIZABETH CAPPS, alias FROST, &c., &c., &c.** The details were of the most disgusting nature, and were entirely unfit for publication. Without calling on the prisoner for his defence, the jury returned a verdict of not guilty, and the prisoner was discharged.

SATURDAY, AUGUST 26

RAPE

FRANCIS DURHAM, alias DIAMOND, late of Shoalhaven, was indicted for that he did on the 1st November, 1847, on the body of one **MARY GREEN**, did feloniously make an assault, &c., &c.

The prisoner was defended by Mr. Holroyd.

The prisoner was an American black, and went to the hut of the prosecutrix on the night of the 1st November, 1847. After endeavouring for a considerable time, he obtained an entrance and effected his purpose. The prosecutrix, apparently a very respectable woman, gave her evidence in a most creditable manner, and was corroborated in her testimony by the circumstantial evidence of several witnesses.

Mr. Holroyd addressed the jury for the defence, contending, without the least intention of casting any reflection on the prosecutrix, who gave her evidence more circumstantially and more becomingly than any woman he had ever heard in his life, that the evidence as to the identity of the prisoner was incomplete.

His Honor shortly summed up, and the jury retired for five minutes, and returned with a verdict of guilty. His Honor sentenced the prisoner to death.

RAPE

EDWARD GRIFFIN was indicted for that he, on the 14th May last, at Tenterville, on the body of one **MARGARET M'LAUGHLIN, otherwise MARGARET KEEFE**, did feloniously make an assault, &c., &c.

The prisoner was defended by Mr. Holroyd; attorneys Messrs. Nichols and Williams.

The case was of a disgusting nature, the prosecutrix being a woman of bad character, and the jury acquitted the prisoner without calling on the learned counsel for any defence.

MAITLAND MERCURY, 6/435, 02/09/1848

CENTRAL CRIMINAL COURT. - GAOL DELIVERY.

EDWARD JUDD, committed in June last on a charge of assaulting a female child, was allowed bail to appear at the next Sessions.

MAITLAND MERCURY, 6/438, 13/09/1848

MAITLAND CIRCUIT COURT. - TUESDAY, SEPTEMBER 12, 1848

INDECENT ASSAULT IN A CHILD

DAVID THOMAS was indicted for having, at Newcastle, on the 16th April, 1848, made an indecent assault on one **ANN HEEN BIRRELL**, an infant under the age of ten years, with intent to carnally know the said Ann Heen Birrell.

It appeared from the evidence that on Sunday afternoon, the 16th April, the little girl and her brother **JAMES**, who was about ten years old, were sitting on a hill behind their father's house, when the prisoner came up and wanted the little girl to shake hands and kiss him; she refused at first, but did so on his giving her a penny; he then induced the girl to walk away with him into the bush, and sent away her brother. The little boy went home and told his father, and was sent after his sister; he heard her screaming in the bush, and when he came up to where his sister and the prisoner were, the prisoner went away at once, and the little girl went home with her brother, crying bitterly. The little boy described minutely the position in which he found them, but the girl was not sufficiently instructed to be examined. Their father and another man followed the prisoner, and the father told the prisoner he should pull him for it; the prisoner denied what he was charged with, but said that if Birrell pulled him to court he should get another lagging. The prisoner, it appeared, left Newcastle immediately, but was apprehended at Muswellbrook about ten days after.

The prisoner said little in defence, but called on two or three individuals in court to testify to his character.

His Honor, in summing up, said that the jury would have to decide as to whether the prisoner did make the assault with the intent charged, and that the girl was not a consenting party; had he been charged with committing a rape on her, her consent would not have been material, but as he was only charged with committing an assault, it was.

The jury retired for three quarters of an hour, and returned with a verdict of guilty.

His Honor impressively addressed the prisoner on the detestable nature of his offence, and expressed his determination to visit all prisoners found guilty of such crimes with severe sentences. His Honor then sentenced the prisoner to seven years' labour on the roads or public works.

RAPE

DARBY, an aboriginal, was indicted for committing a rape on the person of **ELIZABETH LINDSAY**, at Ward's River, on the 13th February, 1848.

At the request of his Honor Mr. Purefoy undertook to watch the evidence on behalf of the prisoner.

By the evidence it appeared that the prosecutrix, a young woman named **ELIZABETH HINTON**, whose name was then **ELIZABETH LINDSAY**, was on a visit at her father's place, near Ward's River, in the county of Gloucester, and was, on the morning of the 13th February, proceeding from her father's house to that of a neighbouring settler, about three miles off; the way thither was entirely through the bush; she had got about half-way when the prisoner came out of the bush, and tapped her on the shoulder, asking her to go into the bush with him. She refused, and ran away screaming, but he caught her, and dragged her some distance off into the bush, where he effected his purpose, in spite of her utmost resistance. The witness gave her evidence in a very proper manner, and positively identified the prisoner, whom she had seen several times before with blacks in the neighbourhood; the prisoner several times addressed her in English during the outrage, and when he let her go cautioned her to tell no white fellow. She then ran as fast as she could to her mother, and on the way met constable **EVANS**, of the Port Stephens police, whom she told what had occurred. Constable Evans deposed to meeting Mrs. Hinton in a very distressed state,

with her gown torn and her hair about her face, and to making a search for the prisoner in consequence of the information he received from her; prisoner was not, however, taken for some little time; Evans knew prisoner, and knew that he spoke English pretty well.

Mr. Purefoy cross-examined the witness at some length in regard to the identification of the prisoner, and to the resistance offered by the prosecutrix.

Mr. Purefoy addressed the jury, commenting on the graveness of the inquiry that had to make, more particularly where the prisoner was an aboriginal, imperfectly acquainted with the language of the witnesses. He called their attention particularly to the uncertainty of the prosecutrix being able to identify a black whom she said she had never spoken to before, nor had seen by himself; while there was no corroborative evidence offered in regard to identity. He would not attempt to throw doubt on the evidence of the prosecutrix in regard to the offence having been committed, and by an aboriginal, but he did contend that the evidence was insufficient to establish the identity of the prisoner.

His Honor said that the jury must be satisfied that the offence was fully committed, that it was against the consent of the prosecutrix, and that it was committed by the prisoner, before they could find him guilty. If they believed the evidence of the prosecutrix, who had given her evidence very clearly and in a very becoming manner, they could scarcely doubt that the offence had been completed, and against her consent; but, although she had positively identified the prisoner, as there was a possibility of her being mistaken in that respect, they would weigh carefully the whole of her evidence, and the remarks of the learned counsel who had kindly undertaken the prisoner's defence at a moment's notice.

The jury retired for ten minutes, and returned with a verdict of guilty.

His Honor impressively addressed the prisoner, expressing his perfect concurrence in the verdict of the jury. By the law of England persons were not now punishable with death for the crime of rape in England, although it had been stated that the crime of rape had increased in frequency since the punishment of death had been abrogated for that crime. In this case it was his intention to have the sentence of death recorded, instead of passing sentence of death and leaving the prisoner for execution, because he did not think the prisoner's education and opportunities could have fitted him for an early death, and because he thought the example of such a being losing his life was more likely to excite commiseration and pity than to act as a warning. The sentence of the Court was, therefore, that sentence of death should be recorded against the prisoner.

MAITLAND MERCURY, 6/438, 13/09/1848

GOULBURN CIRCUIT COURT. - TUESDAY, SEPTEMBER 5.

ASSAULT WITH INTENT, &c.

HENRY THOMAS SIBLEY, late of Goulburn, labourer, was indicted for assaulting one **ELLEN CLIFFORD** on the 13th day of May last, with intent, &c.

The evidence in this case is unfit for publication.

The jury returned a verdict of guilty.

His Honor sentenced the prisoner to two years' imprisonment in Parramatta gaol with hard labour.

SYDNEY NEWS.

GOULBURN CIRCUIT COURT. - MONDAY, SEPTEMBER 4, 1848

ASSAULT ON A CHILD

JOHN BOWLES was charged with having, on the 25th day of April, 1848, at Berrima, in and upon **ANN ELIZABETH PAWSEY**, an infant of the age of eleven years, unlawfully made an assault, and with having then and there unlawfully and carnally known the said Ann Elizabeth Pawsey.

It appeared that the prisoner and the little girl were fellow-servants at an inn at Berrima. The evidence of the girl was clear as to the commission of the offence, and her testimony was corroborated in several material points.

Guilty; twelve months' imprisonment, with hard labour.

MAITLAND MERCURY, 6/439, 16/09/1848

MAITLAND CIRCUIT COURT. - WEDNESDAY, SEPTEMBER 13, 1848

UNNATURAL CRIME

CHARLES ROBINSON was indicted for having committed an unnatural crime, at Armidale, on the 6th July, 1848.

The evidence in this case is unfit for publication.

The jury returned a verdict of guilty, and sentence of death was recorded against the prisoner.

ASSAULT WITH INTENT TO COMMIT RAPE

TELLIGHERRY JACKY, an aboriginal, was indicted for having assaulted **ANN MONAGHAN**, at Gloucester, on the 15th February, 1848, and with having beat and wounded her, with intent to commit a rape.

The Attorney General stated the case, and called

ANN MONAGHAN, a young woman, who deposed that her parents resided on the William River, twelve or fourteen miles from Stroud, and that on the 15th February she and her sister, aged eleven, were out about three hundred yards from the house, looking for two sheep, when they met an **aboriginal named DARBY** (the same who was convicted on Tuesday of rape), who walked with them some distance, and then sent home witness's sister, saying that he should be down there soon. He then caught hold of witness by the arm, and asked her to go into the bush with him; she refused, and on his insisting and threatening to kill her if she would not, she tripped him up, and ran towards home. Darby ran across the bush, and cut her off, and another struggle took place, Darby insisting with threats that she should go into the bush, and witness succeeded twice in throwing him; Darby then cooed, and while the struggle was still going on, the prisoner came out of the bush, with a gun on his arm, and threatened to shoot witness if she did not stand, presenting the gun at her. The two blacks then, with threats to kill her and burn her mother and sisters, pressed witness to go into the bush, but she refused, telling them to kill her first. They then each caught hold of an arm, and dragged her several yards, when they stopped and wound an opossum skin round her mouth to stifle her screams, and laying her head on a log they threatened to cut her head off if she would not consent to go into the bush; she still refused, and they conversed about carrying the threat into effect, but agreed not to do it for fear the whites would be alarmed by her sister, and find the blood there. Darby then struck a light and lit his pipe, and pressed witness to smoke; she took a few whiffs, and he then offered her some opossum flesh, saying it was budgerie. She refused, and also refused to go into the bush with them, on their again pressing her, and threatening her again to kill her. They seized her again, and dragged her to a rock, where they lifted her up, and threatened to dash out her brains against a rock; she turned over in Darby's arms, and fainted, falling on the ground by the rock. How long she remained insensible she did not know, but when she recovered her senses, she pretended to be dead. They dragged her away some distance further, and then

took off her upper clothes; Darby stood on her breast for a moment to see if she was really dead, but she lay still; they debated, and were taking her to a stockyard, where they proposed to rip her up, but altered their intention, and took her down to the river, where they threw her in. The water was deep, and witness, who was able to swim, dived and swam under the water as long as she was able, and then made her way to a place where the bank overhung, and where long grass grew. Here witness raised herself so as to be able to breathe, and saw the two blacks occasionally looking over, as she thought; at length, her father's mare galloping down to the river, the blacks ran away, and after some time witness ventured out, and crawled home on her hands and knees, for her injuries had deprived her of the use of one side, and she could not stand.

The prisoner cross-examined the witness, denying that he was the black who was with Darby, but she positively swore that he was; stating, in answer to the jury and the Court, that she had known the prisoner for nearly seven years, and knew him and Darby well.

FRANCIS MONAGHAN deposed that he was the father of Ann Monaghan, and that when he returned home that day he found his daughter lying helpless in bed, being unable to stand. Another black of the tribe, named **JACKY**, was first apprehended, but his daughter, on his being brought to her, immediately said he was not the man; but on prisoner, who was well known as Telligherry Jacky, being brought, she at once identified him.

The prisoner, who also cross-examined, or rather made long statement to, this witness, did not say anything in defence.

His Honor, in summing up, said the jury would have to satisfy themselves that the prisoner really intended to commit rape before they could find him guilty on the whole indictment; if not, they could, if they believed the witness Ann Monaghan, find him guilty of a common assault.

The jury retired for a few minutes, and returned with a verdict of guilty.

His Honor sentenced the prisoner to two years' imprisonment, with hard labour, in the Sydney Gaol.

THE SENTENCE ON TELLIGHERRY JACK. - On Thursday, in the Circuit Court, at the close of the proceedings in William Smith's case, his Honor, addressing the Attorney General, said he wished to explain publicly the apparent disproportion between the sentences of **DAVID THOMAS**, convicted of assaulting a child under ten years of age, with intent to commit a rape, and **TELLIGHERRY JACKY**, convicted of assaulting a child not so described, with like intent. The former case, that of assaulting a child under ten or twelve years, was expressly provided for by a colonial enactment, and under it he had sentenced the prisoner Thomas to seven years' hard labour on the roads or public works; but there was no colonial enactment providing the punishment for a prisoner found guilty of assaulting a female, not a child under ten or twelve years, with intent to commit a rape; and, therefore, in sentencing Telligherry Jacky, he was obliged to resort to the English law, which provided for it either transportation or imprisonment not exceeding two years. It was not expedient at present to pass sentence of transportation, and he had therefore been obliged to pass sentence of two years' imprisonment, although otherwise his sentence on Telligherry Jacky would have been probably as severe, if not more so, than that on David Thomas.

THE CONVICT DERMOTT OR DEAMOND. - This unfortunate man, who was convicted at the last Criminal Sessions for committing a rape on one **MARY GREEN**, of Shoalhaven, and on whom sentence of death had been passed, is ordered for execution on Friday, the 22nd instant. The intelligence of his fate was

communicated to him by Mr. **KECK**, the governor of the gaol. Since his sentence he has been very penitent, and acknowledged to the crime for which he is about to suffer. *Advertiser, Sept. 12*

MAITLAND MERCURY, 6/440, 20/09/1848

THE CONVICT DIAMOND. - We regret to state that nothing has transpired in the case of this man to authorise the Executive to interfere with the sentence passed on him by the Court. He will be executed on Friday next. *Herald, Sept. 15*

MAITLAND MERCURY, 6/440, 20/09/1848

[EDITORIAL]

WEDNESDAY, SEPTEMBER 20, 1848.

LEGAL ANOMALIES

On Friday next an American black named Diamond is to be executed in Sydney for a rape committed in a married woman at Shoalhaven. At the Circuit Court just concluded here, an aboriginal named Darby was convicted of a rape, and his Honor Mr. Justice Dickinson caused sentence of death to be recorded against him, which will, we presume, be commuted to so many years' labour on the roads or public works. Why is the law thus unequally administered to two men guilty of the same crime under equally atrocious circumstances? Why is the life of Diamond to be exacted in expiation of his guilt, and that of Darby to be spared? They are both coloured men, and in all probability the education of both has been equally defective. Instead of there being anything on Darby's case to render him more an object of pity and commiseration than the man who is to be hanged, the evidence in a subsequent trial proved that in addition to the crime of which he was convicted, he had been the principal in a murderous and most atrocious assault on a second girl, with intent to commit a similar offence on her – that he did in fact, so far as intention went, murder her. Yet his life is to be spared, while that of Diamond, who has not been shown to be guilty of an attempt to murder in addition to the crime for which he is to suffer, is to be forfeited. This is not even-handed justice: one of the two conclusions is inevitable; the punishment of Diamond is too severe, or a misplaced lenity has been extended to Darby. We leave it to the Judges and to the Executive Council to reconcile these incongruities in the administration of the laws affecting the crime of rape.

There were two other cases disposed of at the late Circuit Court exhibiting a kindred anomaly. A man called **THOMAS** was convicted of assaulting a child under ten years of age with intent to commit a rape, but no violence was used; he was sentenced to seven years' labour on the roads or public works, and we think he got no more than his deserts. **TELLIGHERRY JACKY**, the accomplice of **DARBY** in the assault on **ANN MONAGHAN**, was convicted of a similar offence, but under circumstances of atrocity which fully amounted to an attempt to murder; but as his victim was not under ten years of age, the law only allowed of his being transported, or imprisoned for two years; and as transportation from this colony is virtually abolished, he was only sentenced to two years' imprisonment. His Honor Mr. Justice Dickinson appears to have been very conscious that this was a very inadequate punishment for the enormities disclosed in the evidence, for he felt it necessary to explain, the day after the trial, that he could not, in the existing state of the law, award any heavier punishment. So far, therefore, as far as the Judge was concerned,

the inequality of punishment in these two cases arose from the law, and not from its administration.

But in the case of Telligherry Jacky the Attorney General might have taken a course which would have resulted in a punishment more proportionate to the crime of the prisoner. Jacks, according to the calendar, was committed for an assault with intent to murder; and the evidence adduced at the trial went to substantiate this charge much more conclusively than that on which the prisoner was convicted. The Attorney General was in possession of the depositions made at the committal – as a lawyer he must have known that conviction on a charge of assaulting with intent to commit a rape would result in a very inadequate punishment – why then did he not indict Jacky on the charge of assaulting with intent to murder, so that he might have received his deserts. The evidence clearly proved that Jacky and his associate intended to kill Ann Monaghan – that while the girl was to all appearance insensible, and to their belief dead, they threw her into deep water, either to complete the deed, or get rid of the body. Here, so far as intention went, was a case of absolute murder; but owing to Jacky being indicted on the minor charge instead of the graver charge, he escapes with a couple of years' imprisonment. At the end of that time he will return to his tribe, possibly to repeat his attempt on the life and honor of some other unprotected woman. From whatever consideration the Attorney General might have been induced to prosecute on the lighter charge, the result has been the Jacky has escaped the severity of punishment which his crime so richly deserved.

MAITLAND MERCURY, 6/440, 20/09/1848

INDECENCY. - On Monday **GEORGE WADDINGTON** and **MARY MAGUIRE** were brought before the bench, and convicted of indecent conduct near Lyndsay-street, East Maitland; they were each sentenced to two months' imprisonment in Newcastle gaol.

MAITLAND MERCURY, 6/441, 23/09/1848

THE CONVICT DIAMOND. - An attempt hasd been made in the last few days to get up some sort of agitation in favour of **DIAMOND**, now under sentence of death for rape, but with very little effect. Mr. **G.C. TURNER** was using his influence on Monday to obtain signatures to a petition, and we are informed procured four hundred. The petition was sent in yesterday morning and laid before the Executive Council, but as the petitioners had no arguments to adduce, the Council advised the Governor not to interfere with the execution of the sentence of the law, which will be carried into effect on Friday. *Herald, Sept. 20*

SENTINEL, 4/193, 28/09/1848

RAPE.

CHARLES HENRY M'KIE, charged with rape on a child under ten years of age; the prisoner had been confined in Bathurst Gaol since August, 1847, on this charge; he had been remanded from one assize to another on a plea that he was from ill-health unfit to be put on trial, in fact he had at first imposed on some of the medical gentlemen who attended him. On his being brought up for trial, he appeared not to understand what was going on, and when the indictment had been read, and the question put whether guilty or not, he made no reply and took no notice. At the

suggestion of His Honor the Chief Justice, a Jury was empanelled and sworn, to enquire whether the prisoner was mute by malice, or by the visitation of God.

Doctors **BUSHBY** and **MACHATTIE** were called: the former stated that he had attended the prisoner for more than twelve months; he had complained of being paralytic on the right side, but he was not so; he heard that on certain occasions, towards the approach of Circuit Courts, the prisoner had abstained from food, sometimes for weeks, yet he did not appear at all emancipated (sic), which would be the natural result of long abstinence; further, that when the assizes were ended the prisoner would return to his food with voracity; this gentleman was also of opinion that the prisoner could clearly understand what was said to him, and had no doubt that if he would, he could, speak so as to be understood. Dr. Machattie in every particular corroborated the opinion of Dr. Bushby. The gaoler **CHIPPENDALE**, was next called, and he stated many anecdotes of the scheming and manoeuvring of the prisoner, and that on more than one occasion, when the assizes were approaching, he would gammon to abstain from food. Considering that the man was playing the rogue to obtain a particular object, namely, postponing his trial, he had narrowly watch him, and had paid particular attention to his food when sent to him, and when brought from him, observed that at the periods named, although a casual observer might fancy that he was living on air, yet he, the gaoler, noticed that the prisoner skimmed off the top of his dish of homony and cut off the outside of his allowance of bread quite sufficient to sustain life; and whenever he found the assizes were over, he pitched into his rations in good earnest, and would no doubt have eat double to make up for lost time.

The Foreman of the Jury said, they had made up their minds that the prisoner was mute from malice; one of the Jury, however, said he was not quite satisfied on that point. It was on this occasion that Dr. Machattie was called on for his opinion, after the hearing of which the Jury were unanimous in their verdict that the prisoner was mute from malice.

The same Jury was again sworn to enquire whether they considered the prisoner of sufficient intellect to understand the present proceedings against him, and if he was fit to be placed on his trial. The witnesses in the previous instance were re-called, and after hearing them, the Jury, without a moment's hesitation, returned a verdict that the prisoner was perfectly competent to understand all that was passing and fit to take his trial.

The prisoner was then arraigned on the charge preferred against him, and on being asked whether he pleaded guilty or not, he refused to answer, when His Honor directed a plea of guilty to be recorded; the case was then gone into. It appeared that the prisoner kept a school near Hassan's Walls, at which both girls and boys attended, the assault with which the prisoner was charged was on a child under nine years of age, it was extremely difficult to draw from this child the particulars of the case; His Honor the Judge and Solicitor-General took much pains in their endeavours to exhibit the facts; but the principal witness was the doctor, **AULD**, who had examined the child shortly after the circumstance became known; his evidence was, however, conclusive, and brought the fact home to the prisoner. The Jury after a short absence, returned a verdict of guilty. His Honor, after the return of the verdict, took some time to consult the authorities on the law in such cases, and ordered the prisoner to be remanded for sentence.

During the whole of the trial the prisoner sat in the dock moaning and grunting, except at intervals, in the most interesting parts of the case, when he appeared to pay some attention.

Whilst the Jury were absent, the Solicitor-General said that he had four other similar charges to prefer against the prisoner. One of the witnesses, an interesting girl of twelve years of age, admitted that the prisoner had on several occasions committed similar assaults on her.

MAITLAND MERCURY, 6/442, 27/09/1848

EXECUTION. - **DIAMOND**, the negro convicted of rape at the late sittings of the Criminal Court, was yesterday executed pursuant to his sentence. From the time of his conviction he never denied his guilt. In consequence of the illness of the gaol chaplain, Diamond has been attended by the Rev. Mr. **G.F. MACARTHUR**, and displayed much penitence for the crime he had committed. He had never been baptised, and wished to have that sacrament administered to him, which was done a few days since by the Rev. **W. WALSH**; and on Thursday the Bishop of Sydney confirmed him, and afterwards admitted him to the Sacrament of the Lord's Supper. Yesterday morning he was quite calm and collected, and expressed no fear of death. He was attended to the last moment by the Rev. Messrs. Walsh and Macarthur. There was a large number of persons present to witness the execution. *Herald, Sept. 23*

BATHURST CIRCUIT COURT.

The Bathurst Circuit Court was opened on Wednesday, the 20th instant, before his Honor the Chief Justice.

RAPE

CHARLES HENRY M'KIE, charged with rape on a child under ten years of age. The prisoner had been confined in Bathurst Gaol since August, 1847, on this charge. On his being brought up for trial, he appeared not to understand what was going on, and when the indictment had been read, and the question put whether guilty or not guilty, he made no reply, and took no notice. At the suggestion of his Honor the Chief Justice, a jury was empanelled and sworn, to enquire whether the prisoner was mute from malice, or by the visitation of God. After the examination of Drs. **BUSBY and MACHATTIE**, the jury returned a verdict that the prisoner was perfectly competent to understand all that was passing, and fit to take his trial.

The prisoner was then arraigned on the charge preferred against him, and on being asked whether he pleaded guilty or not, he refused to answer, when his Honor directed a plea of not guilty to be recorded. The case was then gone into. It appeared that the prisoner kept a school at Hassan's Walls, at which both boys and girls attended; the assault with which the prisoner stood charged was on a girl under nine years of age; it was extremely difficult to draw from this child the particulars of the case; his Honor the Judge and the Solicitor General took much pains in their endeavours to exhibit the facts; but the principal witness was the doctor, **AULD**, who had examined the child shortly after the circumstance became known; his evidence was, however, conclusive, and brought the fact home to the prisoner. The jury, after a short absence, returned a verdict of guilty. His Honor ordered the prisoner to be remanded for sentence.

During the whole of the trial the prisoner sat in the dock moaning and grunting, except at intervals, in the most interesting parts of the case, when he appeared to pay some attention.

When the jury were absent, the Solicitor General said that he had four other similar charges to prefer against the prisoner. One of the witnesses, an interesting girl of twelve years of age, admitted that the prisoner had on several occasions committed similar assaults on her. *Abridged from the S.M. Herald*

SENTINEL, 4/193, 28/09/1848

EXECUTION.

DIAMOND, the negro convicted of rape at the late sittings of the Criminal Court, was on Friday executed pursuant to his sentence. From the time of his conviction he never denied his guilt. In consequence of the illness of the Gaol Chaplain, Diamond has been attended by the Rev. **G.F. MACARTHUR**, and displayed much penitence for the crime he had committed. He had never been baptised, and wished to have that sacrament administered to him which was done a few days since by the Rev. **W.H. WALSH**; and on Thursday the Bishop of Sydney confirmed him, and afterwards admitted him to the sacrament of the Lord's Supper. Thursday morning he was quite calm and collected, and expressed no fear of death. He was attended to the last moments by the Rev. Messrs. **WALSH** and **MACARTHUR**. There was a large number of persons present to witness the execution.

MAITLAND MERCURY, 6/443, 30/09/1848

SYDNEY NEWS.

BATHURST CIRCUIT COURT. - FRIDAY, SEPTEMBER 22, 1848

ASSAULT WITH INTENT.

PETER M'CLUSKY was charged with an assault with intent, &c.

The occurrence took place on Saturday night last, the 16th, about ten o'clock. The prosecutrix was a married woman, with two children, the wife of a baker. The defendant called two or three witnesses, with an intent to prove an alibi, but failed.

The case occupied much of the time of the Court.

The defendant, in cross-examining the prosecutrix, put many questions that elicited answers that told much against himself.

The jury, after an absence of twenty minutes, returned a verdict of guilty of misdemeanour.

Sentence, two years with hard labour in Bathurst gaol, and at the end of that time to enter into bail, himself in £40 and two sureties in £20 each, to be of good behaviour for the further term of two years.

MAITLAND MERCURY, 6/444, 04/10/1848

BATHURST CIRCUIT COURT. - MONDAY, SEPT. 25, 1848

SENTENCE.

CHARLES HENRY M'KIE, who had on Thursday been found guilty of a rape on a child under ten years of age, was brought up for sentence, which was that of death, his Honor intimating that there was no chance or likelihood of its being mitigated, and warning the prisoner to prepare for as future state.

MAITLAND MERCURY, 6/445, 07/10/1848

THE CONVICT MACKIE. - This unfortunate man, who was on Thursday sentenced to suffer the extreme penalty of the law, and who has for the last thirteen months been feigning paralysis and long continued fits of insensibility, for the purpose of evading, or at least delaying, the stroke of justice, has since sentence undergone a complete change. On the evening that he received his fatal sentence he threw off his apparent imbecility, and recovered the use of his speech; he expressed his sorrow for the trouble he had caused, and acknowledged that his sickness from the commencement had been feigned. We are happy to be able to add, that he appears fully sensible of the awful situation in which he is placed, and shews signs of sorrow and penitence.

Bathurst Advocate, Sept. 30

MAITLAND MERCURY, 6/451, 28/10/1848

ASSAULT WITH INTENT, &c. - About half-past four o'clock yesterday afternoon, as a respectable married female, named **HUFF**, was sitting on one of the seats by the side of the Hospital; Wall, in the Domain, a man suddenly jumped over the wall, pulled her from the seat, tore off her bonnet, wrapped her shawl round her head, and forced a handkerchief into her mouth. The ruffian was near accomplishing the object of his violence, when a gentleman in a gig driving up, he made off. *Herald, Oct. 26*

MAITLAND MERCURY, 6/452, 01/11/1848

SYDNEY NEWS.

CHARGE OF ASSAULT WITH INTENT TO COMMIT A RAPE.

EDWARD M'CANN, who was remanded on Friday last, on a charge of assaulting Mrs. **HUFF** in the Government Domain, was again brought up before the police court this morning, but as the gentleman who left his gig and went in chase of the man who made the diabolical attempt has not yet made his appearance, the case stands remanded till Wednesday.

THE OUTRAGE IN THE DOMAIN. - Yesterday **EDWARD M'CANN**, who had been apprehended as the perpetrator of the outrage committed on Wednesday afternoon, on the person of Mrs. **HOUGH [HUFF]**, in the Outer Domain, was brought before the Police Court. The accused, it appeared from the statement of Mr. **LACKEY**, the Domain Bailiff, was taken in charge on Thursday forenoon, at the Council Chamber, where he was employed by Mr. **GALVIN**, and had been apprehended by him in consequence of his (Mr. lackey's) recognising him from the very clear description given by Mrs. Hough of the man assaulting her. Two other persons, it seemed, had also been confined on suspicion of the offence, but on them and M'Cann being brought before the prosecutrix, at the watch-house, she at once identified him as her assailant. After M'Cann had been confined, he was searched by the police, when a pair of gloves were found on him. The principal evidence taken yesterday was that of Mrs. Hough, who stated that at about half-past four o'clock on Wednesday afternoon she was in the Domain, and had sat down on a seat, which is close against the Hospital wall, and had scarce wrapped her shawl round her when the prisoner leapt from the wall, and placing his hand in a very indecent manner on her, said "she was the woman he wanted." This he repeated, accompanied with a remark that her husband, when he was an overseer, had given him two years in irons. The prisoner then removed her shawl, and laid it on the grass, and seized hold of her. The witness screamed and wrestled with him, and in the course of the struggle the strings of her bonnet were broken, which he then threw upon the ground. After this he took up the shawl and put it round her head, and dragged her by the feet a few yards into a hollow. During this time the witness continued offered every possible means of resistance, by wrestling with her assailant; and as she was screaming he took a dirty handkerchief out of his hat, compressed it, and forced it into her mouth, and then drew the shawl tighter round her head. Mrs. Hough continued struggling, and did so for some few minutes, when she heard the approach of some vehicle on the road, and the prisoner then suddenly left her, when she unwound the shawl, and saw on getting up a gig without any person in it standing in the middle of the road, and a gentleman running after the prisoner across the grass plot, and in the direction of the Botanic Garden; she then left the Domain, and subsequently gave information as to the dress of the man who had attacked her, which was, that he wore an old Jim Crow hat, and an old blue coat. The prisoner made no secret of his purpose, and said that it was for

satisfaction against her husband; he had torn some of her under clothing. She identified the gloves, and had them on her hands on Wednesday afternoon, but was unaware how they had come off. Mr. Lackey deposed to knowing the prisoner, and had often seen him wearing a hat like that described by Mrs. Hough, and had repeatedly observed him coming over the wall from the Council Chamber, and descending into the Domain by the seat where Mrs. Hough had been. Mr. Galvin was examined, but nothing material was elicited, and some questions were put by Mr. Nichols, who attended to watch the case. The prisoner denied ever having seen the prosecutrix until after his apprehension. The evidence most desirable in the case is that of the gentleman who came up in the gig at the time of the outrage, and pursued the prisoner, and which it is of the highest importance should be obtained. This party it seems was wholly unknown, but as the reports in the public press cannot fail of meeting his eye, it is to be trusted that he will be present at the remanded examination, which stands appointed for Monday. *Herald, Oct. 23*

MAITLAND MERCURY, 6/453, 04/11/1848

THE LATE OUTRAGE IN THE DOMAIN.

EDWARD M'CANN, charged as being the perpetrator of an outrage on the person of Mrs. **HOUGH**, in the outer domain, was yesterday pursuant to remand, again before the Court. It may be remembered that the prisoner had been remanded with a view of procuring the evidence of a gentleman who leaped from his gig and pursued the ruffian who had attacked Mrs. Hough. Notwithstanding every possible exertion has been made by the press, in compliance with the desire of the Bench, to procure the attendance of this party, there was still yesterday, a much to be regretted absence. The Mayor, who has taken a considerable interest in the case, stated that he considered so strong a *prima facie* case had been made, that he felt no hesitation in committing for trial. M'Cann, on being called on to adduce his objection to this, avowed his entire innocence. On the civil condition of the accused being enquired into, it appeared that he was only two days previous to the alleged assault free from a commuted sentence of transportation for life to Norfolk Island, whither he had been sent from Van Diemen's Land, where he was originally a convict for fourteen years. *Herald, Nov. 2*

MAITLAND MERCURY, 6/454, 08/11/1848

CENTRAL CRIMINAL COURT. [Abridged from the S.M. Herald]

THURSDAY, NOVEMBER 2, 1848

ABDUCTION

THOMAS GRAVES was indicted for taking a girl under the age of sixteen, named **CLARINDA THOMAS**, from her home without the consent of her parents, on the 25th October, 1847.

Mr. Holroyd appeared for the defence.

It appeared that on that day **WILLIAM THOMAS** allowed his daughter and her cousin, **CAROLINE WALLER**, to go from Dapto to Kiama accompanied by Graves; as nothing was heard of them for some days, Thomas's son went in search of his sister, and met with her on her way to Wollongong accompanied by Graves and Caroline Waller; the girl refused to return home, and young Thomas at last consented to her going to Sydney to act as bridesmaid to Caroline Waller, whom Graves told him he intended to marry. On reaching Sydney it appeared that Graves was married to Clarinda Thomas; who however, after an absence of eight months, returned home, and now lived with her parents again.

The jury returned a verdict of not guilty.
EXECUTION. - The man, **CHARLES HENRY M'KIE**, found guilty at the last Bathurst Circuit Court of rape on a child of very tender years, has been ordered for execution on the 10th instant. *Herald*.

MAITLAND MERCURY, 6/457, 18/11/1848

EXECUTION. - Yesterday morning the unfortunate man **MACKIE** suffered the extreme penalty of the law, having been convicted at the last Bathurst Assizes of carnally knowing a child under ten years of age. At nine o'clock, the hour appointed for the execution, that gaol gates were thrown open, and the culprit, attended by the Revs. Messrs. **SHARPE and LISLE**, proceeded to the foot of the scaffold which was erected outside the gaol, where they knelt down, and for some few minutes engaged in prayer. Mackie then ascended the scaffold, attended by Mr. Sharpe; the rope was then adjusted, and as he did not wish to say anything to the public, the cap was pulled down over his face, and he continued smiting his breast and crying "O Lord, receive my soul," until the fatal signal was given, and the drop fell. The hangman, with a view to make his death more speedy, left the rope sufficiently long to give him a fall of full eleven feet, but made no allowance for the stretching, and the consequence was, that when the man fell, his feet touched the ground, and the body partially rebounded; the rope ought to have been at least twelve inches shorter; as it was **GREEN** the hangman had to procure a pickaxe and shovel, and dig a hole beneath the feet of the wretched being, so that he might swing upon the rope. There is no doubt that his neck was dislocated by the force of the fall, and that the miserable man was almost immediately insensible to pain, but the convulsive motion of the muscles continued for quarter of an hour, and caused great sensation among the bystanders, who were under the impression that he was suffering all that time. We learn, upon enquiry, that Mackie (attended by the Rev. Mr. Sharpe) spent the whole of the previous night in prayer, and did not sleep at all, and that to the end he persisted in declaring his innocence of the crime for which he was to suffer. When he appeared on the scaffold, he was a wretched and ghastly specimen of humanity, and seemed to feel all the horrors of his dreadful situation. A large number of persons assembled to witness the revolting spectacle, among whom were a great many women and children. *Bathurst Advocate, Nov. 11*

MAITLAND MERCURY, 6/465, 16/12/1848

DARBY, AN ABORIGINAL. - The sentence of death passed on this man by his Honor Mr. Justice Dickinson at the last Criminal Court held at Maitland, on the 13th September, when he was convicted of rape under circumstances of peculiar aggravation, has been commuted by the executive to fifteen years' labour on the roads or other public works.

And a similar sentence passed at the same Circuit Court on **CHARLES ROBINSON**, for an unnatural crime, has also been commuted to twelve years' labour on the roads or public works. *Bell's Life in Sydney, Dec. 9*

MAITLAND MERCURY, 6/467, 23/12/1848

ATTEMPT TO COMMIT RAPE, BY AN ABORIGINAL. - On Tuesday last an aboriginal named **SCOTCHIE** was brought before the bench, charged with attempting to commit a rape. It appeared from the evidence of a married woman, named **MARGARET CHAPMAN**, residing near Rutherford, that on Sunday last she was walking from Rutherford to her own house, by the bush road, having her infant in

her arms, when she met Scotchie, who passed her and then turned back, and after walking a few steps by her, he seized her by the shoulder and pushed her off the road into the bush, in spite of her screams and resistance; her infant was crying loudly, and he took it from her, and then threw her on the ground, and threatened to rip her up and do for her infant if she did not cease screaming and yield to his desires. He then attempted to violate her, but she resisted, and fortunately her husband came within hearing of her screams, and ran up in time to prevent the ruffian from completing the offence; when he came up he heard the blackfellow uttering a threat, and in a position, which left no doubt of his intention. The blackfellow immediately bolted and got clear off. It appeared that chief constable **WOOD** and three policemen went in search of the blackfellow on Monday evening, and obtained the assistance of three men; it was towards morning, however, before they could find the camp where Scotchie was sleeping, and then the other blacks made every attempt to aid the escape of Scotchie; Scotchie resisted so violently, although quite a young man, that it took six men to hold him down while he was handcuffed. Scotchie was fully committed for trial. It is believed that this is not the first attempt of the kind made by Scotchie, and indeed he openly admitted in court that he had made an attempt on a white woman whom he had met one night going home alone in a cart, but that he did not succeed. Scotchie speaks English well, having been for years attached to or living about the Windermere establishment.

MAITLAND MERCURY, 6/469, 30/12/1848

FEMALE WITNESSES.

In a case tried yesterday, in which the evidence was very conflicting, an interesting young lady swore most positively to having the prisoner in her eye during the whole of the time in which it had been previously sworn the offence had been committed. His Honor the Chief Justice, in passing sentence on the prisoner, who was convicted, said he did not wish at all to impeach the veracity of the fair witness – he was indeed convinced that she was thoroughly satisfied in her own mind that she had sworn the truth; but this was only another instance to confirm in him the opinion that females, especially young ones, were the very worst witnesses that could be put into the box. He believed that they most conscientiously desired to tell the truth, but they were too much in the habit of jumping at conclusions; and whatever they thought, and whatever they believed, they were generally quite ready to swear to. His Honor instanced two singular illustrations of this opinion which had fallen under his own knowledge. The first was as follows:- Four men were tried at Maitland for shooting and robbing a man; on behalf of one of the prisoners a young lady, whose character and position were such as to render suspicion of her truth almost impossible, positively swore that she heard him reading aloud for an hour and a quarter, without intermission, at the very time the offence was perpetrated. In consequence of this evidence, the man was acquitted; the other three were convicted. From the confession of the convicts a short time after, and he believed of the acquitted man himself, there was not the slightest doubt but that he was the man who had planned the robbery, and who did it, and it was by his hand alone that the shot was fired.

The other instance was, in the case of the late unfortunate man **DIAMOND**, who was recently executed for a rape. After he was convicted and sentenced, a woman went to two of the jurors, and solemnly swore to them that Diamond was sleeping by her fire side, in her sight, during the whole four hours in which it was sworn at the trial he was engaged in the perpetration of his offence. The two jurors came to him (the Chief Justice), and he carefully examined the woman. He administered the oath

to her and took her affidavit, in which she solemnly swore that she could not be mistaken, and that it was impossible Diamond could have committed the deed. The next morning he proceeded with the affidavit to the gaol to institute a further enquiry, when the first thing he was told was, that Diamond had confessed the night before that he was guilty of the crime, detailing the circumstances in such a manner as placed his sincerity beyond all suspicion. *Herald, Dec. 29*

CENTRAL CRIMINAL COURT. - The sittings of this court commenced yesterday, before his Honor the Chief Justice. The only case tried during the day was the following:-

EDWARD M'CANN was indicted for assaulting **CATHERINE HOUGH**, with intent to violate her, at Sydney, on the 25th October. The particulars of this case were given in the papers at the time. Mrs. Hough was sitting in the Government Domain on the afternoon of that day, alone, when the prisoner jumped over a garden wall, and in spite of her resistance and screams, tore some of her clothes off, covered her head with her shawl, dragged her to a trench, and endeavoured to violate her, but was interrupted by the approach of a gentleman in a gig, when he ran off, pursued by the gentleman. Mrs. Hough positively identified the prisoner, in whose pocket, when apprehended, were found a pair of gloves which Mrs. Hough identified as having been lost by her during the attack. For the defence, evidence was called to prove that the prisoner was at work in the garden during the whole of the time, and before and after, Mrs. Hough described the assault as being made on her; and a person named **SHEE** also deposed that he was sitting, reading, by the well in the open green of the Domain, heard no screaming, and saw no persons running from the direction of the wall. The jury returned a verdict of guilty, and the prisoner was sentenced to two years' imprisonment. *Abridged from the Herald, Dec. 27*

DIAMOND CUT DIAMOND.

During the trial of **M'CANN** at the Supreme Court yesterday for an assault on Mrs. **HOUGH** in the Domain, a witness named **MUNROE**, a cab driver, who lives opposite to the Attorney-General, was called, and did not answer. It appeared that the learned Attorney-General happened, through some indirect channel, to hear on Sunday last that this man could give very important evidence as to the assault. There was no time to subpoena him in the regular way, so yesterday morning the learned gentleman engaged his cab, and while the victimized Jarvey was waiting at the Court for his fare, had a subpoena gilled up and served on him. "You must be sure to attend," said the Attorney-General, chuckling at his own ingenuity. "Sartainly, your honor," said the man, laying his finger against the side of his nose, with a vast sagacity. But the instant the Attorney-General had turned his back, he applied his thumb to the tip of the organ with a still deeper significance, and muttered the familiar phrase "Don't you wish you nay get it." When **WILLIAM MUNROE** was called on, he had betaken himself to the sports of Petersham, where the pickings up were probably more tempting than the fee for his day's attendance in Her majesty's Supreme Court would have been. At the close of the proceedings, the Attorney-General applied for an attachment against Munroe, and his Honor granted a rule *nisi* returnable on Friday next. The Chief Justice having the fear of the Corporation bye-laws before his eyes, and being moved and seduced by the instigation of "Stubbs," duly ascertained that the learned Attorney had paid the cab hire before he would grant the rule. *Herald, Dec. 27*

MAITLAND MERCURY, 7/470, 03/01/1849

CENTRAL CRIMINAL COURT. - FRIDAY, DECEMBER 29, 1848

GEORGE MUNROE, who was subpoenaed to attend as a witness in the case of the **Queen v. M'Cann**, appeared to show cause why an attachment should not issue against him for non-appearance in the case.

The Attorney General did not press the charge, and the defendant apologised to the Court, and was discharged.

MAITLAND MERCURY, 7/472, 10/01/1849

MAITLAND QUARTER SESSIONS.

ASSAULT WITH INTENT.

SCOTCHIE, an **aboriginal black**, was indicted for assaulting **MARGARET CHAPMAN**, at Rutherford, on the 17th December, 1848, with intent to ravish her.

It appeared that on that afternoon Mrs. Chapman left her home, near Rutherford, to go towards the public-house to meet her husband; she had got about half way when she met the prisoner, who looked very hard at her, but passed on; he immediately turned back, and walked some little time by her side, when he seized her by the shoulder, and after a struggle got her off the road, and at length threw her down on her back, and endeavoured to violate her person; she still resisted him, screaming murder, and before he could effect his purpose her husband came within hearing of her cries, and came up; as soon as he came near enough to hear what was passing, he shouted out, on which the prisoner looked up, and immediately ran off. Mr. and Mrs. Chapman both identified the prisoner. The prisoner was apprehended by the police in a native camp, at a late hour of the following night, some miles from the place where the outrage was committed, and made a violent resistance; he admitted having been on the road that day,

. The prisoner uttered a few rambling words in defence, to the effect that he knew nothing of the woman, and was not at the place.

The jury returned a verdict of guilty.

The prisoner was sentenced to two years' imprisonment, with hard labour, in Maitland gaol.

MAITLAND MERCURY, 7/473, 13/01/1849

DISORDERLY CONDUCT. - On Thursday **JOHN BELVIEW** was convicted of disorderly conduct, and of using obscene language, near the Catholic Church, West Maitland, and elsewhere, on Sunday evening last; being a ticket-of-leave holder, he was sentenced to forty-eight hours' solitary confinement.

MAITLAND MERCURY, 7/475, 20/01/1849

CHARGE OF ATTEMPTING TO COMMIT A RAPE. - **BENJAMIN GROCOTT**, a man employed about the premises of Captain **CHILLCOTT**, of Double Bay, was apprehended on a charge of attempting to violate the person of a young girl about fourteen years of age, named **ELLEN O'BRIEN**, the daughter of one of the police force. The girl was in the service of Captain Chillcott, and the prisoner having on the previous evening entered the kitchen, the door of which he closed, he proceeded to effect his diabolical purpose; but it does not appear that he used any violence. The girl, who could not however mistake his intentions, began to scream, rushed to the door, which she succeeded in opening, and made her escape, informing her mistress of the circumstance, and the prisoner was subsequently discovered in a room adjoining the kitchen, in a state of extreme agitation. The prisoner was brought up before the police bench this morning, and after the girl's evidence had been taken, which was very clear, the case was remanded for Captain Chilcott.

MAITLAND MERCURY, 7/476, 24/01/1849

UNNATURAL OFFENCE. - The man **CROFTON**, who has been during the previous three days in custody, charged with an attempt, &c., was on Saturday released, the evidence of the prosecutor not being substantiated by some witnesses whom he had called to establish the charge. *Herald, January 22.*

ATTEMPT AT RAPE. - The man **GROCOTT**, charged with an attempt at rape, was yesterday fully committed for trial. The case was fully established. *Herald, January 20.*

MAITLAND MERCURY, 7/477, 27/01/1849

SYDNEY NEWS. - You may recollect that a man named **KINCHELA**, who was sentenced to nine months' imprisonment for the abduction of Mr. Gill's daughter. This sentence he completed a few weeks ago, and he was this morning brought up at the police office, charged with a similar offence with regard to a young girl under fifteen years of age, the daughter of a person named **AARONS**. On the case being called on this morning, the prosecutor (the father of the girl) did not appear, but Captain **INNES** said he did not feel justified in dismissing such a case, and he should therefore remand it for a week, holding the prisoner to bail.

MAITLAND MERCURY, 7/478, 31/01/1849

INDECENT EXPOSURE. - Yesterday a woman named **MARGARET PACEY** was convicted, on the evidence of constables **JOSEPH DAVIS** and **CHARLES POOL**, of having been in a paddock behind her house quite naked, about seven o'clock on the evening of Tuesday last, the premises being near Honeysett's Mill, West Maitland, and quite in sight from the street. The fact was admitted by the defendant, but she said she had only the moment previous been stripped by her husband to prevent her going out of the house, and that her husband was then sitting on the door-step; this was corroborated by her husband. Constable David deposed that she used abusive and threatening language to him when he went to the house about it, and Constable Poole deposed that the house was not well conducted. Mrs. Pacey was convicted of indecent exposure, and sentenced, as an idle and disorderly person, to one months' imprisonment in Maitland Gaol.

MAITLAND MERCURY, 7/479, 03/02/1849

COMMON SCOLDS. - Yesterday **ELIZA SMITH** and **MARY LUGG** appeared before the bench, charged with being common scolds. It appeared from the evidence of **DAVID JENKINS**, **EWEBANK LOUGH**, **JAMES QUIGAN**, and **HENRY OXLEY**, that the two defendants occupied a small house in Olive-street, West Maitland, close to Mr. Quigan's tannery, and that for some time past they had been a great nuisance to all their neighbours, as they were frequently quarrelling and using most obscene and blasphemous language, while Mrs. Lugg had repeatedly quarrelled with various neighbours and used similar language to them, and at times was heard singing obscene songs; their house was also resorted to by strange men, and they had apparently no other means of obtaining a living. The parents of young children in the neighbourhood in particular complained of the nuisance and injury thus caused. The defendants were committed for trial at the Quarter Sessions for being common scolds and a nuisance to their neighbours.

THREATENING LANGUAGE. - Yesterday **ELLEN WINCHESTER** appeared before the bench, charged with using threatening language to **ELIZABETH**

QUIGAN. It appeared, by the evidence of Mrs. Quigan and **JOHN SAWYER**, that this case arose out of the movement by the inhabitants of Olive-street to remove the nuisance above described, Mrs. Winchester being the landlady of the house wherein **SMITH and LUGG** lived. On Wednesday Mr. Quigan and his neighbours attended at the police office and made the affidavits on which the summons against those women was granted; and on Wednesday afternoon Mrs. Winchester, who lives in High-street, was in her premises immediately adjoining Mr. Quigan's, and abused him and his wife at great length, swearing that she would get worse tenants than the last, and also that she would come and live there herself, and be a terror to them. Mrs. Quigan deposed that she was afraid to pass Mrs. Winchester's house, not knowing to what length her violence would extend. Mrs. Winchester, in defence, denied the charge, stating that she was on the premises because another tenant was leaving, and finding that Mr. Quigan's tannery injured the water of her well, and that he had built a privy close at the back of her fire-place, she went to complain to him of it, and was insulted by him, on which some warm language passed between her and him; she denied having seen or spoken to Mrs. Quigan. The bench said they would protect persons from being threatened for very properly endeavouring to rid their neighbourhood of bad characters, and they ordered Mrs. Winchester to find sureties to be of good behaviour for twelve months, or in default to be imprisoned for six weeks in Maitland gaol.

MAITLAND MERCURY, 7/480, 07/02/1849

THE MAITLAND CIRCUIT COURT

The following is a list of the prisoners for trial at the Maitland Circuit Court, which will commence on Monday next; ...

GEORGE LANEHAM, assault on a child with intent; Dungog bench;
ABDUCTION.

JAMES KINCHELA, charged with the abduction of **LOUISA AARON**, aged fourteen years and nine months, from the house of her father, without his consent and against his will, was yesterday, pursuant to remand, again brought before the police court. Mr. A. Little attended for the defendant. **JOSEPH AARON**, the father was resworn to his information, on which a warrant had been granted for the defendant's apprehension. The information set forth that Louisa Aaron had been taken away, or caused to be taken away from the deponent's house on York-street, on the 1st January last, by James Kinchela, of the Adelphi Hotel, &c., &c. According to the usual form of such documents, Aaron deposed the contents to be true from what had reached him, but knew nothing of the facts from his own knowledge. He then proceeded to state that Kinchela, whom he had never seen before, came to his house on New Year's Day, asked him how he did, and if he wanted to go to the races. He replied in the negative, and the girl came out into the shop, shook hands with Kinchela, and enquired of the latter if he was going. Afterwards she went away, and he (Aaron) never saw her until he heard from a person. Aaron was not allowed to depose what he had heard, and it was found on enquiry that he had no witnesses in attendance, Aaron stating that they had all turned against him. Captain Innes then said the case must be dismissed, but acquainted Aaron that it was in his power to open the case again at any time. *Herald, Feb. 3*

MAITLAND MERCURY, 7/481, 10/02/1849

GOULBURN CIRCUIT COURT

This court was opened in Goulburn on the 3rd instant, before his Honor Mr. Justice Manning, the Attorney General conducting the prosecutions:-

WILLIAM HENRY SKELTON was indicted for stabbing **JOHN NUTTALL**, at Yass, on the 20th November. It appears that Skelton had taken a letter to the hut of Nuttall, and a man named **CARROLL**; Carroll was away at the time, and Nuttall after some time seized Mrs. Carroll, and was carrying her into the hut, when Skelton interfered to protect her; Nuttall turned on him and savagely assaulted him; Skelton got away from him, but Nuttall pursued and caught him again, and stabbed him twice in the back with a knife. Verdict, guilty; to be worked on the roads for six years.

MAITLAND MERCURY, 7/482, 14/02/1849

SYDNEY NEWS.

GOULBURN CIRCUIT COURT. - MONDAY, FEBRUARY 5, 1849

RAPE

JOHN SWIFT was indicted for having committed a rape on the person of **ELLEN O'BRIEN**, a child of six years old, at Gundagai, on the 13th January.

It appeared that Swift had reached the house of **HENRY O'BRIEN**, on the 11th January, in a state of exhaustion from hunger. O'Brien invited him to stop at his house for a day or two, and supplied him with food. On the night of the 13th, about two o'clock, screams were heard from a creek near the house, and on O'Brien and another man going towards it they met Ellen, O'Brien's daughter, coming from the creek, and found that she had been injured by, as she stated, the prisoner Swift. Swift had made off, but was pursued and overtaken, having then on only a shirt. A medical man deposed that the child was much injured, but he could not say whether the capital offence had been committed.

The jury returned a verdict of guilty of assault with intent, and the prisoner was sentenced to be worked five years on the roads.

ASSAULT WITH INTENT

HARTLEY SMITH was indicted for having assaulted **BNRIDGET BURREN**, a child of three years old, at Goulburn, on the 19th January.

It appeared that the prisoner, on the afternoon of that day, was seen to take the child into a recess on her father's premises, between the stockyard fence and the pig-stye. The child was immediately missed by her mother, who, having heard where she was, ran to the spot, and found the prisoner and the child in a position that left no doubt of his intentions.

The jury returned a verdict of guilty, and evidence having then been given of his former conviction for a similar offence, the prisoner was sentenced to three years' work on the roads.

TUESDAY, FEBRUARY 6, 1840

ASSAULT WITH INTENT

WILLIAM NOWLAND was indicted for having assaulted **ANNE HOLDEN STEWART**, a child of seven years of age, at Gundaroo, on the 22nd December, with intent.

It appeared that the prisoner, who was an old man of seventy-seven years, had been left in charge of the premises of a Mrs. **DUNCOMBE**, during her temporary absence; the child was living in the charge of Mrs. Duncombe; about a fortnight after Mrs. D.'s return she observed that an assault had been made on the child's person, and a surgeon was also called in, who was of the same opinion. The child was examined as a witness, and deposed that the assault was committed by prisoner, although her evidence was not conclusive. The prisoner cross-examined the witnesses at length, to

show that the injury was caused by the child's falling from a slip-rail, and in defence he asserted his innocence.

The jury returned a verdict of not guilty, and Nowlan was discharged.

MAITLAND MERCURY, 7/483, 17/02/1849

MAITLAND CIRCUIT COURT. - THURSDAY, FEBRUARY 15

INDECENT ASSAULT

GEORGE LENEHAN was indicted for indecently assaulting **ELIZABETH ANNE LEAN**, a child of nine years old, at Croom Park, on the 12th October, 1848.

Mr. Purefoy appeared for the defence; attorney, Mr. C. Nicholl.

The Solicitor General briefly stated the case.

It appeared from the evidence of Mrs. **LYDIA LEAN**, her daughter **ELIZABETH ANNE LEAN**, aged nearly ten years, and **ELIZABETH TAYLOR**, aged twelve years, that on that day Mrs. Lean left her house for a short time, leaving in it Elizabeth Taylor, Elizabeth Anne Lean, and two younger children, and the prisoner, who was a servant of Mr. Lean's. The children were at play, and Elizabeth Taylor was sweeping out the house, when prisoner nearly pushed her down, and got her to go outside to play with the others. Prisoner then took Elizabeth Anne Lean into the house, and into his own room, and returned outside to tell Elizabeth Taylor to go and hide; she agreed to go and plant at the barn, a short distance from the house, but returned to see what prisoner was going to do with the little girl, and peeping through the slabs, saw him in the room with her. Both the girls agreed in the evidence they gave of what followed, and of the prisoner's promising sixpences and shillings to the little girl if she would not tell, when Elizabeth Taylor said she would tell, and after some exchange of words, prisoner came out and went away. The girl Elizabeth Taylor was twice brought into court, but the first time would scarcely answer to any preparatory questions, apparently from fright, and was not then sworn.

His Honor, prior to summing up, said he had some doubt whether the assault did in fact amount to an indecent assault; and also whether, under the recent Act of Council, in pursuance of which the present indictment was framed, the jury had power to find a prisoner so charged guilty of a common assault. He should therefore reserve those two points, if the verdict of the jury rendered it necessary. His Honor then proceeded to sum up, telling the jury, if they believed the evidence, to find the prisoner guilty of an indecent assault, or a common assault, as they thought the facts amounted to; and, if the first, to mention what particular act they considered indecent, to enable him to confer on it with the other Judges.

Mr. Purefoy addressed the jury in defence, commenting on the tender age of the witnesses to the facts, as throwing great doubt on their evidence. He called two witnesses, **CHRISTOPHER LEAN** and **ROBERT LEAN**, the first of whom knew of no wages account between prisoner and Robert Lean, the father of the girl; while the latter denied that there were any wages owing by him to the prisoner.

The Solicitor General replied.

The jury returned a verdict of guilty of common assault.

The prisoner was sentenced to be imprisoned in Maitland gaol for twelve months, and to pay a fine of £10 to the Queen.

MAITLAND CIRCUIT COURT. - *Saturday, February 24*

JOHN MAHONY was indicted for committing an unnatural crime, at Blackheath; not guilty; discharged. *Abridged from S.M. Herald*

MAITLAND MERCURY, 7/489, 10/03/1849

THE GAOL DELIVERY at the Central Criminal Court will take place on Saturday.
... **JAMES KENT**, indicted for an assault and rape, at Illawarra, on the 8th Feb. last,
on one **MARGARET RING**, was also acquitted.

CENTRAL CRIMINAL COURT. - *Tuesday, March 6*

BENJAMIN GROCOTT was indicted for assaulting **ELLEN O'BRIEN**, at Sydney,
on the 9th January, with intent, &c.; not guilty; discharged.

MAITLAND MERCURY, 7/490, 14/03/1849

CENTRAL CRIMINAL COURT. - *Thursday, March 8*

JAMES KENT was indicted for committing a rape on the person of **MARGARET RING**, at Wollongong, on the 8th of February. Not guilty; discharged.

NON-HOM ASSAULTS 1850-59

MAITLAND MERCURY, 8/575, 05/01/1850
CENTRAL CRIMINAL COURT

Saturday

JOSEPH LEARY was indicted for having, at Sydney, assaulted one **ELLEN HARDEN**, with intent to violate her person. The prisoner was convicted of a common assault, and remanded for sentence.

RICHARD HOLLY was indicted for assaulting **CATHERINE TAIT**, at Newtown, on the 5th August last, with intent to violate her person. Guilty; remanded for sentence. *Abridged from Herald.*

MAITLAND MERCURY, 8/575, 05/01/1850
CENTRAL CRIMINAL COURT

Wednesday, January 2.

RICHARD HOLLY, who was convicted of assault with intent to commit a rape, was sentenced to two years' imprisonment with hard labour, and then to enter into sureties to keep the peace.

JOHN LEARY, convicted of assault, was sentenced to nine months imprisonment with hard labour.

MAITLAND MERCURY, 8/588, 20/02/1850
MAITLAND CIRCUIT COURT

The following prisoners have been recently received in gaol for trial, but not stated whether for Circuit Court or Quarter Sessions:- **WILLIAM BRETT**, rape; Scone Bench. [see 8/593, 9th March]

MAITLAND MERCURY, 8/592, 06/03/1850
CENTRAL CRIMINAL COURT

WILLIAM GILL was found guilty of indecently assaulting **MARY ANN M'KILNEY**, a child of eleven years of age. Three years on the roads.

MAITLAND MERCURY, 8/593, 09/03/1850
MAITLAND CIRCUIT COURT

FRIDAY, MARCH 8, 1850

(Before his Honor Mr. Justice Therry)

ASSAULT.

WILLIAM BRETT was indicted for assaulting **THOMAS HOLLINGSWORTH FOWLER**, at Scone, on the 5th February, 1850.

[re removal of **ELIZABETH FERRY**, see later.]

MAITLAND MERCURY, 8/593, 09/03/1850
WILLIAM BRETT, not guilty; two full columns.

MAITLAND MERCURY, 8/606, 24/04/1850
SYDNEY NEWS

An old fellow, apparently about sixty years of age, bearing the cognomen of **CHARLES MACLEAN**, was committed to-day to take his trial at the next Criminal Court for attempting to violate a female child between seven and eight years of age.

The outrage was committed in one of the stalls of the Market in George-street, into which the prisoner was seen to enter with the child in his arms.

MAITLAND MERCURY, 8/613, 18/05/1850

COMMITTALS. - **THOMAS ALLEN** was committed to take his trial for a rape on a young girl under twelve years of age.

MAITLAND MERCURY, 8/618, 05/06/1850

SYDNEY NEWS

THOMAS MOONEY, indicted for a rape, was found guilty of an assault with intent, &c. Remanded for sentence.

THOMAS ALLEN, of Penrith, for an indecent assault, was sentenced to three years' imprisonment with hard labour.

CENTRAL CRIMINAL COURT

The Supreme Court will sit in its criminal jurisdiction on Monday next. ... Of the cases now in the Calendar, there are ... one of child stealing, ... two of indecent assault, ... and two of rape. *Herald, Jun. 1*

MAITLAND MERCURY, 8/619, 08/06/1850

CENTRAL CRIMINAL COURT

Tuesday, June 4

Before Mr. Justice Dickinson

GEORGE COOMBES was indicted for committing a rape on the person of **MARY ANN ROSS**, at Boyd Town, on the 23rd March last. Not guilty; discharged.

CHARLES M'LEAN was indicted for indecently assaulting **CATHERINE MILLS**, a child eight years of age, on the 20th April last. Guilty; three years on the roads.

INDECENT ASSAULT. - A man named **EMELHAINZ**, a naïve of Germany, was on Saturday given into custody by a person residing near the Circular Quay, for having indecently assaulted two female children, of the ages respectively of seven and four years. The man, it would appear, induced the children, by the gift of some sweetmeats, and the promise of more, to go with him from the Circular Quay to the Inner Government Gardens, where the assault complained of took place. The children were frightened and made a noise, when Emelhainz left them and secreted himself near the water; the children were found alone by a soldier, who kindly took them home; and subsequently their father, on hearing of the circumstances, went to look for, and discovered the miscreant, whom he secured and delivered to the police. The girls, providentially, were not hurt in the slightest degree, and the magistrate declined taking any deposition from either, but ordered the prisoner to enter into sureties to be of good behaviour for twelve months, and in default to be imprisoned for one month. *Herald, June 4*

MAITLAND MERCURY, 8/621, 15/06/1850

CENTRAL CRIMINAL COURT

Wednesday, June 12.

Before the Chief Justice and Mr. Justice Dickinson.

THOMAS MOONEY, convicted of an assault upon a child, with intent to commit a rape, was sentenced to ten years on the roads.

MAITLAND MERCURY, 8/640, 21/08/1850

ATTEMPT AT RAPE. - At the police-office, on Tuesday last, **JOHN BROWN**, a ticket-of-leave holder, by the *Mount Stuart Elphinstone*, was committed to take his trial for assaulting the person of **MARY MADDOX**, a girl thirteen years of age, with intent to commit a rape. The prosecutrix and prisoner were both in the service of a shoemaker, named **HUMBY**, at North Brisbane; and it appeared that some of the neighbours, hearing the girl scream, looked through a window, and saw sufficient amply to corroborate the statement of the girl, who swore positively to the attempted offence. The prisoner was committed for trial, and the magistrates, at the request of the girl's father, authorised her immediate removal from her service. *Moreton Bay Courier, Aug. 3*

MAITLAND MERCURY, 8/643, 31/08/1850

BATHURST CIRCUIT COURT

Before The Chief Justice

Friday, August 23rd

LACHLAN BYRNES was indicted for robbing and assaulting **CATHERINE LAWLER**, with intent to commit a rape. The charge of robbery was abandoned. The prisoner was found guilty, and sentenced to two years' imprisonment, and then to enter into sureties to keep the peace for three years.

MAITLAND MERCURY, 8/644, 04/09/1850

MAITLAND CIRCUIT COURT

JAMES WARD was indicted for committing a rape on **ANN TAILBY**, at Cockfighter's Creek, on the 11th December 1849. The prisoner was undefended, but at the request of his Honor, Mr. **PEARSON THOMPSON** undertook to watch the case for the prisoner, and Mr. **TURNER** undertook to act as his attorney. The prosecutrix, a married woman, the mother of seven children, deposed that she lived with her husband at Cockfighter's Creek, where they had been eighteen years; her husband was away up the country at work from October, 1849, till February, 1850, and was now and again up the country; the prisoner was a labouring man, who had been for years working about Cockfighter's Creek, and on the 11th December, in the evening, he came to tell her that her wheat was ripe, and to enquire if he should reap it for her; she said that she had hired another man to do so; at this time she was within two months of her confinement; the prisoner followed her about the home for a short time, and then first lifted a spade and then an iron as if to strike her, swearing he would have her life if she made any noise; he then insisted on her leaving her house with him, and he took her into a shed, and perpetrated the offence. She deposed positively that this was against her will, although she made no resistance, from fear of her life. There were houses near, but she would have had to call very loud to make any one hear. On the next day she said she was unable to leave her house, to go to give information, and on the following day, the 13th, she was taken ill with cholera.

Long account, to be completed.

Not guilty.

MAITLAND MERCURY, 8/645, 07/09/1850

MAITLAND CIRCUIT COURT

(Before his Honor the Chief Justice)

Thursday, September 5, 1850

RAPE

JAMES WARD, ANN TAILBY, second trial; guilty of assault; three years imprisonment in Parramatta Gaol, with hard labour.

To be completed

INDECENT ASSAULT ON A CHILD. - **PATRICK PURSELL** was indicted for indecently assaulting **ANN ROBERTSON**, a child of six years of age, at Murrurrundi, on the 29th July, 1850. The prisoner pleaded guilty. He was remanded for a time, and was then sentenced to three years' hard labour on the roads or public works.

MAITLAND MERCURY, 8/656, 16/10/1850

NEIGHBOURLY QUARRELS. - Yesterday two cases came before the bench, arising from an unfriendly feeling between neighbouring small settlers. In the first case **WILLIAM BAILEY** was charged with assaulting **ELIZABETH SPENCER**, a little girl; ... The first case was dismissed, there being no direct evidence except that of the little girl, who could not be examined.

MAITLAND MERCURY, 8/668, 27/11/1850

CHARGE OF INDECENTLY ASSAULTING A CHILD. - On Monday a man named **WILLIAM CHRISTIE** was brought before the bench, charged with indecently assaulting **MARGARET HENRY**, a girl of the age of four years. **MARGARET HENRY**, the mother of the little girl, deposed that she returned home on Friday last, in the middle of the day, and going suddenly through the house to the back, she there found Christie and her little girl in a position she described, and she immediately attacked Christie. Mrs. Henry was examined at some length as to what took place between herself and Christie on her making the discovery, and as to other details. A witness named **MICHAEL M'DONALD** deposed to having seen a quarrel between Mrs. Henry and Christie in the street in front of their houses, that it was fully half an hour after she came home: witness was with Christie for two hours that morning, and he described what Christie had been employed about, and who had been with him. The bench dismissed the case.

ASSAULTING A GIRL WITH INTENT. - **JOHN BROWN** was indicted for assaulting **MARY MADDOCK**, a girl under fourteen years of age, with intent to commit a rape, at Brisbane, on the 30th July. The prisoner, a ticket-of-leave holder per *Mount Stuart Elphinstone*, was employed as a journeyman shoemaker in Brisbane, the girl being a servant in the same house. The girl swore positively to the assault, and several other persons saw some portion of the prisoner's conduct. Guilty; five years on the roads.

MAITLAND MERCURY, 8/672, 11/12/1850

MOLONG, NOVEMBER 29. - An aboriginal native, known by the name of **LONG PETER**, was apprehended on a charge of rape on a woman named **ELEMS**, of Buree; after knocking the poor woman down with a blow from a stone on the back of the head, and it is said effected his purpose, he cruelly assaulted her, and inflicted a severe wound on her head. We understand that three more charges of the same nature will be preferred against him.

MAITLAND MERCURY, 9/680, 08/01/1851

MAITLAND QUARTER SESSIONS.

WOUNDING WITH INTENT. - **THOMAS LAMB** was indicted for wounding **FRANCES JOHNSON** on the fore part of the throat, at Maitland, on the 8th December, 1850, with intent to do her bodily harm.

The witnesses called were **JAMES COLLINS, BENJAMIN THOMAS, FRANCES JOHNSON, and ALFRED MUNDEN.**

Lamb and Mrs. Johnson were engaged to be married, and on Sunday, the 8th December, they went together to the house of Collins, in East Maitland; some liquor was sent for, and after some time Mrs. Johnson went into the bedroom, and laid down on the bed, being quite overcome; **SARAH WHITTY**, Collins's housekeeper, was also laying on the bed; Mrs. Johnson then called Lamb to come and take her gown off, and Lamb did so, with Collins's consent; Lamb afterwards asked him to let him go in and rouse up Mrs. Johnson to take her home; he went in, and Collins heard him saying "Fanny, get up and go home," after his saying this several times there was silence, and Collins then heard Mrs. Johnson saying "no, no"; Collins rose and pushed open the door and saw Lamb coming out, and noticed blood on his hands, he having a knife in his hand, cutting tobacco; on looking towards the bed Collins saw that Mrs. Johnson was bleeding from a wound under her chin, and he immediately seized Lamb, who had left the room, and accused him of cutting Mrs. Johnson's throat; Lamb said he knew nothing of it; Collins gave Lamb in charge to Thomas, who had been sitting with them, but Lamb afterwards bolted from him, knocking him down; Collins went for a doctor, and brought in Mr. Munden, an apothecary, who found it very difficult to stop the bleeding; Collins then went for Dr. **BROWN**, who sewed up the wound. The next morning Lamb came to the house, and had some conversation from the outside with Mrs. Johnson, who told Lamb he had cut her throat; Lamb expressed his sorrow at what he had done, or at seeing her lying in that way, Collins was not certain which. Thomas gave a somewhat similar account to Collins's of what he saw, except that he said he could see Lamb and Mrs. Johnson from where he sat; he saw Lamb had a little knife in his hand, but did not see him do anything with it. Mrs. Johnson could just remember Lamb coming to tell her it was time to go home, and her refusing; Lamb was cutting up tobacco at the moment; she remembered nothing further till she found herself all bloody; she knew nothing of the doctor's having been there; when Lamb came on the following day she did not say a word to him about her throat, nor he to her; her chin was all well the following day; she still intended to keep her promise of marriage to Lamb. Mr. Munden, when he saw Mrs. Johnson, found her bleeding profusely from a wound under her chin, inflicted by some sharp instrument, the wound being about an inch in length, and a quarter of an inch in depth; it had cut a blood vessel, and it proved very difficult to stop the bleeding; she must have bled to death had not the bleeding been stopped.

In defence, Lamb said he was not guilty, that he knew nothing of how the wound was caused.

The jury recalled Mr. Munden, who said the wound might have been caused by a fall against or on some sharp edge, but his opinion was that it was not done by a fall, but by a sharp instrument.

The jury, after some consideration, returned a verdict of guilty of assault. The prisoner was sentenced to six months' imprisonment, with hard labour.

INDECENT ASSAULT ON A CHILD.

WILLIAM SIMMONDS was indicted for indecently assaulting **SARAH GILBERT**, a child of nine years old, at Newcastle, on the 9th October, 1850.

The witnesses were **MARY GILBERT (the mother), MARY ANN HUGHES, and HENRY HUGHES.** Mrs. Gilbert is the wife of William Gilbert, a miner, living

in New castle, and is the mother of four children, Sarah, nine years old, a girl of seven years old, a boy of four years old, and an infant. On the afternoon of the 9th October the children were playing together, when the prisoner, a stranger to them, came up, threw a half-penny to the eldest, and told the two younger ones to go away; he then acted as the little girl described to the jury. Mrs. Gilbert heard her daughter call out "Mother," and looking out she saw her daughter and the prisoner together, and she called to her to come home; Sarah then came home, and showed her mother the halfpenny, and told her what had occurred. Mrs. Hughes, the wife of a policeman, at Newcastle, saw the prisoner and the little girl together, and afterwards saw the prisoner lying down on the ground behind the stockade, in liquor; her husband sent him out of the yard. Constable Hughes apprehended the prisoner on the day following in a public-house; witness had turned him out of the stockade on the evening previous.

In defence the prisoner said he was drinking from the Saturday evening till the day on which he was apprehended, and knew nothing of what he was doing in the interval.

The jury returned a verdict of guilty. The prisoner was sentenced to twelve months' hard labour on the roads or public works.

MAITLAND MERCURY, 9/684, 22/01/1851

SERIOUS CHARGE. - Mr. **WILLIAM JENNINGS**, cutler, George-street, was on Saturday placed in the dock at the Water Police-office, before Captain Browne, to answer a charge of rape, alleged to have been committed by him on the person of one **CATHERINE COX**, an orphan immigrant girl, about fourteen years of age, who was at the time in the prisoner's service. Mr. Robert Johnson conducted the prosecution on the part of the Immigration Board, and Mr. G.R. Nicholls attended for the prisoner. After a minute investigation, which occupied a considerable portion of three days, the prisoner was committed to take his trial on the capital charge, but the medical evidence was so far in his favor that the bench admitted him to bail. *Bell's Life, Jan. 18*

MAITLAND MERCURY, 9/687, 01/02/1851

SYDNEY NEWS.

COMMITTALS. - **WILLIAM ADAMS** was this day committed to take his trial for an attempt to commit an unnatural crime.

ASSAULTING WITH INTENT. - **BERNARD COYLE**, aged about fourteen, was yesterday committed to take his trial for assaulting with intent, &c., one **HANNAH HOOPER**, at Waverley, on the 6th of the present month. *Herald, Jan. 29*

MAITLAND MERCURY, 9/690, 12/02/1851

COMMITTAL FOR PERJURY. - A female named **MARY ANN JOHNSON** was this day committed on a charge of perjury, resulting from the evidence she gave last week against the present complainant, one **PATRICK FREEMAN**, whom she then charged with a rape. From the testimony brought forward today it appeared that Freeman could not possibly have been where she stated at the time the offence was alleged to have been committed.

GOULBURN CIRCUIT COURT.

SAMUEL ROLF was indicted for committing an unnatural crime, at Gundagai, in December. Guilty of assault; sentenced to hard labour on the roads.

MAITLAND MERCURY, 9/691, 15/02/1851

PERJURY. - It will be recollected that on Thursday last a person named **FREEMAN**, residing at Petersham, was brought before the police bench, at the instance of a woman named **JOHNSON**, who charged him with having at or about four o'clock in the afternoon of Saturday, the 1st February, entered her residence, she being at the time ill in bed, and then and there did forcible ravish and carnally know her. The case was at once dismissed by the presiding justice, after the prosecutrix had been cross-examined by Mr. Nichols. An information was instantly made against the woman for wilful and corrupt perjury, the hearing of which came on before Mr. Dowling yesterday. It was shown by Mr. Freeman that he was in Sydney on the day in question, and did not return home until five o'clock in the afternoon – that he did not see the woman at all on that day. Several other witnesses were called, whose evidence showed that from ten until four on that day Freeman was in Sydney – that until at least a late hour in the evening it was impossible that he could have been at the residence of Johnson. She was therefore committed to take her trial for the offence at the next sitting of the Criminal Court. *Herald, Feb. 11*

MAITLAND MERCURY, 9/692, 19/02/1851

ASSAULT AND ALLEGED RAPE. - The charge of alleged rape preferred by **CATHERINE DUNN**, an Irish orphan immigrant, against her master, **EDWARD DAVIES**, was yesterday dismissed. There is too much reason to believe from the evidence, which is of course unfit for publication, that the entire charge is a fabrication; but what could have induced the girl to such a course of conduct is altogether inexplicable. Application was made to the bench by Mr. Nichols, on behalf of the accused, for a copy of the depositions, which was granted on the usual terms. These ulterior proceedings may probably throw more light on the matter than has yet transpired. *Herald, Feb. 15*

CUTTING AND MAIMING. - On Friday last, a murderous attack was made upon a man named **HENRY CAMPBELL**, by **MATTHEW ADLAM**, a small settler residing near Rainham, about five miles from Bathurst. It appears, Adlam had left home on Thursday with a team, intending to be absent some few days, but being haunted with suspicions of his wife's fidelity, he left his team at Calula, and returned unexpectedly on Friday. On reaching his house, he saw Campbell at a short distance with his (Adlam's) wife, and he watched them for a considerable time, until at last losing all self-control, he rushed upon them with a large knife in his hand; Campbell was making away, but he ran after him and stabbed him behind, wounding him also severely on the hand; he then aimed a stroke at his throat, missing which he inflicted a most terrific gash on the lower part of his face. Campbell was the next morning conveyed to hospital in a cart. The chief constable, accompanied by constable **FINNERTY**, followed in the track of Adlam, who had absconded, and succeeded in effecting his capture on Saturday afternoon, at a place called Bartlett's, about fifteen miles from Bathurst. *Bathurst Correspondent of the Herald*

MAITLAND MERCURY, 9/693, 22/02/1851

HUNTER RIVER DISTRICT NEWS. - **SINGLETON.**

COMMITTAL FOR RAPE. - Yesterday (Tuesday) a man named **JAMES BUTLER** was fully committed to take his trial for committing a rape on the wife of **THOMAS SAUNDERS**, of Singleton; the woman is about sixty years of age, and swore that on Friday evening last the prisoner came to her house during her husband's absence, and went into her bedroom; she went in after him to order him out, when he threw her on the bed, and violated her person, threatening her if she resisted to knock her down

with an axe; her husband shortly afterwards came in, and asked who was in the bedroom, when she stated what had happened. The prisoner was then given into custody; he is about half the age of the woman, and a married man. Bail was refused.

MAITLAND MERCURY, 9/694, 26/02/1851

BATHURST CIRCUIT COURT. - Wednesday, Feb. 19

MATTHEW ADLAM was indicted for feloniously stabbing **HENRY CAMPBELL**, at Rainham, on the 7th February, with intent to do grievous bodily harm. Campbell and Adlam's wife were on such intimate terms during Adlam's absence, which frequently happened, that he heard of it, and threatened them both; one day he left his home, but returned and found his wife and Campbell conversing together, as Campbell stated, and ran at Campbell with a knife, and overtaking him wounded him with the knife and with a razor. He afterwards, when apprehended, expressed a strong wish that he had killed Campbell. Adlam in defence admitted the wounding, but said he found his wife and Campbell lying together on a mattress, when he rushed on them. Adlam received a good character from Mr. Lane, his former master, and it was stated that Mrs. Adlam had told Mr. and Mrs. Lane that she intended to leave her husband and live with another man. Guilty, but strongly recommended to mercy; three months' imprisonment.

THURSDAY, February 20. - **PETER, an aboriginal**, previously convicted of rape, was sentenced to death.

PERJURY. - **CATHERINE DUNN**, the Irish orphan who a few days since preferred a charge of rape against her master, Mr. **E.S. DAVIES**, of York-street, but which was dismissed, was yesterday committed to take her trial for wilful and corrupt perjury. The evidence adduced, besides the deposition of Davies himself, was to the effect that on the evening in question Mr. Davies was in the company of other persons for hours, both before and after the time at which Dunn swore that her master committed the alleged outrage upon her person. *Herald, Feb. 20*

BATHURST CIRCUIT COURT. Monday, February 17th

MICHAEL DILLON was indicted for indecently assaulting **JANE ELIZABETH OXLEY**, a child of four years old, at Big Hill, on the 18th November. Guilty; three years on the roads.

Tuesday, February 18th.

PETER, an aboriginal, was indicted for having committed a rape on **DIANA ELMES**, at Cheeseman's Creek, on the 18th November, 1850. The case was clearly proved by the prosecutrix, who had been inveigled out of the hut by the prisoner, under the pretence that some of the sheep were in the creek. She was then knocked down by him, and the offence committed, she being in a state of insensibility; she has been married about seven years, and has four children, the youngest being about ten months old. Other witnesses corroborated her testimony in part. The prisoner denied having committed the crime. Guilty; remanded for sentence.

MAITLAND MERCURY, 9/695, 01/03/1851

CENTRAL CRIMINAL COURT. TUESDAY, FEBRUARY 25.

(Before his Honor the Chief Justice)

INDECENT ASSAULT.

WILLIAM ADAMS was indicted for assaulting **JAMES MOUNTAIN**, a boy of fourteen or fifteen years, at Sydney, on the 27th January, with intent, &c. Guilty; two years' imprisonment.

(Before Mr. Justice Dickinson)

RAPE.

WILLIAM JENNINGS was indicted for having, on the 6th January, violated one **CATHERINE COX**. The details are unfit for publication. The evidence, owing to the inconsistencies of the statement of the prosecutrix, was of a very contradictory nature. Messrs. Foster and Holroyd appeared for the defence, and called witnesses to rebut the evidence of the prosecutrix. The jury retired about half-past five o'clock, and remained locked up all night.

MAITLAND MERCURY, 9/696, 05/03/1851

CENTRAL CRIMINAL COURT. - *Sentences.*

BERNARD COYLE, the boy of twelve found guilty of a common assault on a girl seven years of age, was sentenced to six weeks' imprisonment by Mr. Justice Dickinson, but the conviction was afterwards set aside by their Honors, on the ground that the verdict of the jury was, under the circumstances of the case, tantamount to an acquittal, and the boy was ordered to be discharged forthwith.

Gaol delivery.

The prisoners Tommy (an aboriginal) committed for stealing in a dwelling-house, and **JOHN WORTHY**, committed for rape, both from the Clarence River, were discharged by proclamation. The discharge of the former was occasioned by the impossibility of procuring an interpreter; that of the latter from the omission of the bench to transmit the depositions, which had been sent back by the Attorney General for further evidence – or even to return any answer to his requisition for further investigation.

(Before his Honor Mr. Justice Therry)

CATHERINE DUNN was found guilty of having committed perjury on the 12th February, by swearing that **EDWARD S. DAVIES** had violated her person against her will, and was sentenced to three years' imprisonment with hard labour. *Abridged from the Herald.*

MAITLAND CIRCUIT COURT.

RAPE. - **JAMES BUTLER** was indicted for committing a rape on **WYNN SAUNDERS**, against her will, at Singleton, on the 14th February, 1851.

Mr. Purefoy appeared for the defence; attorney Mr. C. Nicholl.

The witnesses called were **WYNN SAUNDERS**, **THOMAS SAUNDERS**, and **SAMUEL HORNE**. Wynn Saunders, an elderly woman, the wife of Thomas Saunders, a sawyer, residing at Singleton, was alone in her house on the evening of a Friday, when prisoner came in between seven and eight o'clock; she told him to go away, that she expected her husband home; prisoner went inside her bed-room, and she followed him in, and told him to be off, that he had no business in her bed-room at all; he seized her, and offered her a shilling; she refused to take it; he threatened her life on her resisting, and effected his purpose, against her will; she was so frightened at his threats that she was not able to call out; the nearest neighbour lived twenty or thirty yards off, and could have heard her had she cried out loud; they remained nearly half an hour in the bedroom; she had been out of the bed-room nearly half an hour, sitting down, when her husband came home; she did not see her husband till he came within the kitchen door; her husband saw that the bed-room door was shut, and heard some one inside, and he asked who was there; she said it was Butler, but did not say what had passed; her husband told her to go for the constables; she left the house, and heard the window of the bedroom forced out, and she went into a neighbour's house, being frightened; her husband went for the chief constable, Mr. **HORNE**; she was afraid, and stayed at the neighbour's all night, as her husband had knocked her down

because she did not go quick enough for the constables. In cross-examination Mrs. Saunders admitted she drank some glasses that day, but she knew what she was about; she was a little drunk but not stupid; she repeated distinctly that she was out of the bedroom half an hour before her husband came in; her husband was in such a way that she had not time to tell him what had passed before he sent her for the constables. She was closely cross-examined as to all the circumstances, and said she was about fifty-six years old. Thomas Saunders, who had been working that day about four miles from Singleton, had been away from home since the Monday morning, but returned on the Friday evening, having finished his job; he got home about eight o'clock, and put down his saw, having seen at that time no one in the house; as he turned round from putting down the saw he saw his wife standing in front of him, and hearing a noise in the bedroom he asked who was there; his wife said it was Butler; he asked her to give him the light; at this moment the bed-room door was slapped to; he tried to shove the door open, but after opening it a little, it was forcibly closed again, jamming his fingers; he prized the door open with the axe and released his fingers, and then forced the door open; he heard the window smash, and running round the house he saw the prisoner jumping out from the window, and made a blow at him; prisoner then ran across the paddock; when he asked his wife for a light, she was not quick enough, being too much in liquor; he hit her with the stick; she ran off, saying she would lay her complaint to Mr. Horne; the complaint was not against witness for striking her, but she said it was against Butler for forcing his way into the bed-room; witness ran for Mr. Horne, and passed his wife on the green, going there; his wife did not return home that night, but stopped at a neighbour's place; the next morning she told witness all that had passed between Butler and herself. In cross-examination witness described the kitchen as a room about 12 x 14; there were two doors opening from it, one into the bed-room, and one into the skillion; when witness was putting down the door his side was to the bed-room door; witness had many times seen his wife the worse for liquor before, and had corrected her for it. **MR. HORNE**, chief constable of Singleton, apprehended prisoner on a charge of assaulting Mrs. Saunders; witness went to Mrs. Saunders after her husband had been to him, and Mrs. Saunders told witness that Butler had been to her house, and assaulted her, and threw her on the bed; in answer to witness's queries she said more [it was here ruled that these answers could not be given, prisoner not being present]; witness afterwards apprehended prisoner at his own place, less than a quarter of a mile from Saunders's, and told prisoner that he apprehended him on a charge of assaulting and committing a rape on Mrs. Saunders; prisoner said he had not been to her place; prisoner was sitting with his wife at the time. In cross-examination Mr. Horne said he had seen Mrs. Saunders drunk more than once, and she had been punished for it at the police-officer; she was not what witness considered a disorderly person.

Mr. Purefoy addressed the jury for the defence. This was a case that particularly called for the jury to judge of the credibility of the evidence of Mrs. Saunders, on whose testimony alone the charge rested, as regarded the alleged rape; without advert to the age of Mrs. Saunders, or her appearance, as rendering her a probable object for such an outrage, was it credible that under the circumstances detailed by herself such a crime could have been committed at such an hour, without the knowledge of her neighbours, at the time or immediately afterwards, unless she were a consenting party. Did not the evidence of her husband bear out the supposition that she remained voluntarily in the bedroom with Butler, and only left the room when she heard her husband come in? He contended that the jury could not possibly come to

the conclusion that she was even assaulted by Butler, but must believe that everything that took place did so with her own consent.

His Honor, in summing up, told the jury that the material question for them was whether or not Wynn Saunders was ravaged by the prisoner, and whether it took place against her will. He went carefully through the evidence, calling the attention of the jury to the material points for their consideration. If they thought there was a reasonable doubt on the whole, or any part of the charge, they would acquit the prisoner, or if they doubted the commission of rape, but believed there had been an assault, they could find the prisoner guilty of assault only.

The jury retired for a quarter of an hour, and returned with a verdict of not guilty. Butler was then discharged.

CENTRAL CRIMINAL COURT. - Wednesday, February 26

(Before his Honor Mr. Justice Dickinson)

In the case of **WILLIAM JENNINGS**, charged with rape, the jury, who had been locked up for the night, returned with a verdict of not guilty in favour of the prisoner as to the capital offence. As to the assault, however, the jury was equally divided; but their discharge without a verdict was assented to by the Crown. The prisoner also was then discharged.

BERNARD COYLE, a boy about twelve years of age, was indicted for having at Waverley, on the 8th of January last, indecently assaulted one **HANNAH HOOPER**, aged seven years. The assault was distinctly sworn to both by the girl herself and by another female child about the same age. The jury, however, found a verdict of not guilty in the prisoner's favour, but convicted him of a common assault. His Honor received the verdict, but stated his intention to consult his brother Judges, as to whether, under the circumstances, it did not amount to a verdict of not guilty. The prisoner was remanded.

Friday, February 28

MARY ANN JOHNSON was indicted for perjury, in having, on the 6th February, deposed that **PATRICK FREEMAN** had violated her person. Freeman deposed that at the time she named he was not near her hut, but was in company with other men, returning from Sydney homewards; he was never inside her hut, where she swore the offence was committed. Other witnesses corroborated this statement, and Johnson's deposition at the Police-office was proved. Guilty; to be transported for seven years.

(Before Mr. Justice Therry)

CHARLES CRANE was indicted for indecently assaulting **MARIA WOOD**, a child of three years old, at Sydney, on the 4th February. Guilty; three years on the roads.

MAITLAND MERCURY, 9/697, 08/03/1851

SYDNEY NEWS. - COMMITTALS. - **WILLIAM SHAW and MARGARET** his wife were this day committed to take their trial for a violent assault committed on one **JENNINGS**, as reported in this morning's *S.M. Herald*.

VIOLENT ASSAULT. - **WILLIAM SHAW, and CATHERINE**, his wife, were yesterday placed in the dock, charged by one **CHARLES JENNINGS** with having violently assaulted him. The prosecutor deposed that about four o'clock on Tuesday afternoon he was proceeding along Castlereagh-street with a horse in charge, when he was met by the male prisoner, who struck him with a tub he was carrying; about two hours afterwards he was at home, in Castlereagh-street, and while engaged in the yard putting up his fowls, the two prisoners came into the yard; before he had time to speak to them or to ask what they wanted, he was attacked by them – the man in front striking him with his fists – the woman behind beating his head with a brick; in the

scuffle he received a blow in the eye which knocked him down; he fell into a tub; the woman then called out, "Now, kill him, Bill;" the man said, "You ----, now I'll kill you," and threw a stone (produced in court – about the size of a 4 lb. loaf), which just passed his head, but struck his shoulder; heard some one from the other side of the street call out, "Don't kill the man; and "Go for a constable;" he became insensible for a few minutes, and when he came to a female was washing his head; after this saw the male prisoner, and pointed him out to constable **EAGAN**, who apprehended him. (The woman was amongst the spectators in court at the commencement of the case – and had obtained a summons against Jennings for an alleged assault upon her; she was pointed out to the bench by the prosecutor, and Mr. Dowling ordered her to be taken into custody and placed with her husband in the dock). Dr. **DOUGLASS** had been attending him. By the bench: Shaw said nothing either when he struck witness with the tub, or on the subsequent occasion, before he struck. Cross-examined by Mr. **REDMAN**: Have known the prisoner for some years, but until Tuesday had not seen him for about two years; might possibly have struck a blow at Shaw with one hand in self-defence, but as the woman held him (witness) by one arm, while she was beating his head with a brick, he had not the opportunity of squaring up to her husband in a fighting attitude; did call out for assistance to get rid of the woman that he might defend himself against the man; the woman had asked him for money which she said he owed her; he did not call her any names on that occasion, nor strike, nor offer to strike her, before he was attacked as described; could not say but she might have received a blow in the scuffle. The further hearing of the case was then postponed to this morning. *Herald, March 6*

MAITLAND MERCURY, 9/702, 26/03/1851

PETER THE ABORIGINAL NATIVE. - This unhappy man, who was convicted at the late Assizes of rape, and sentenced to death, has been ordered for execution on Friday, the 4th day of April. *Herald's Bathurst Correspondent*

MAITLAND MERCURY, 9/704, 02/04/1851

EXECUTION. - We understand that the execution of **PETER, the blackfellow** – convicted at the last Bathurst Assizes of rape – has been postponed from the 4th to the 18th of April. *Herald, March 29*

MAITLAND MERCURY, 9/705, 05/04/1851

RAPE. - **FRANCIS JAMES ROBERTS**, late master of the ketch *Gitana*, was yesterday arrested on a charge of assaulting one **REBECCA COULTER**, of Brisbane Water, with intent to commit a capital offence. *Empire, April 1*

MAITLAND MERCURY, 9/706, 09/04/1851

PUNISHMENT OF DEATH FOR RAPE. - The Supreme Court was occupied on Saturday in hearing an argument raised by Messrs. **PUREFOY, WRIXON, and SMYTH**, in favour of **PETER, an aboriginal** sentenced to be executed for rape. It was contended that the punishment of death for rape having been abolished in England could not be carried into effect here, but their Honors were unanimously of opinion that the objection was untenable, and that the sentence was a legal one. The case came on for argument on a letter from the Colonial Secretary requesting their Honors to give an opinion on the point, which had been strongly urged on the government. *Herald, April 7*

MAITLAND MERCURY, 9/707, 12/04/1851

CENTRAL CRIMINAL COURT. - TUESDAY, APRIL 8.

Before the Chief Justice.

THOMAS HARVEY was indicted for committing a rape, at Sydney, on the 25th February. Not guilty; discharged.

MAITLAND MERCURY, 9/708, 16/04/1841

THE ABORIGINAL "PETER." - This man, sentenced to suffer death for the crime of rape, is not now to be executed, but his sentence commuted to 15 years' hard labour on the roads or public works, and to be kept at Cockatoo Island. *Herald, April 11*

MAITLAND MERCURY, 9/710, 23/04/1851

STOWING AWAY. - **ELIZABETH CASTLES, ELIZABETH JOHNSON, and FANNY DAVIS**, were brought before Captain Browne, on Saturday, under the following circumstances. The master of the *Spec*, bound for the South Sea Islands, having received information that the crew intended to stow away several women, gave notice to the water police, and on Thursday night the three females before the court were found under the aft deck among the coals, nearly in a state of nudity. In their defence, they said that they had been invited on board by some of the sailors, and promised a trip to California. Captain Browne said that, although a severe punishment, under the Vagrant Act, might be inflicted, he, having forgiven first offences in the cases of several men who were stowed away in vessels bound for California, would dismiss the girls, warning them, however, of the consequences if again detected in a similar attempt. *Herald, April 21*

MAITLAND MERCURY, 9/712, 30/04/1851

DISORDERLY CONDUCT. - On Monday **ELIZA RAWLINGS** was brought before the bench, charged with being on the premises of Mr. **WILLIAM NICHOLSON** early on Sunday morning last for an unlawful purpose. Mr. Nicholson having deposed that on that morning, after previous warning, he found defendant in a hut occupied by several of his men, and evidence having been taken as to defendant's general character, she was convicted and sentenced to three months' imprisonment.

MAITLAND MERCURY, 9/716, 14/05/1851

SYDNEY NEWS. - **GEO. DODDERY**, charged with an assault with intent to commit a rape on an orphan girl in his service, named **ELLEN LANE**, was brought up before the Police Magistrate and discharged. The defendant has applied for a copy of the deposition – no doubt with a view to prosecute for perjury.

MAITLAND MERCURY, 9/721, 31/05/1851

DISGRACEFUL OUTRAGE. - A little after nine o'clock on Tuesday evening, **JAMES SMITH** and his wife, residing at Botany, were proceeding homeward from Pembleton's public-house, and when at a short distance from the Waterloo mills, on the Botany road, they were stopped by four men, who after knocking Smith down rifled his pockets of their contents – a silver watch and 25s. in money. Two of the ruffians then held Smith down, having drawn knives in their hands, threatening his life if he made any noise or offered to rise, while the other two took his wife into the bush and ravished her. Smith has described two of the men as under: one, about five feet ten inches in height, wearing a blue serge shirt, moleskin trousers, and a California hat; the other, about five feet seven inches in height, wearing a dark

shooting coat, dark trousers, and a cabbagetree hat; of the other two he cannot give any description. *Herald, May 29*

MAITLAND MERCURY, 9/723, 07/06/1851

CENTRAL CRIMINAL COURT.

This court opened on Monday, June 2, before Mr. Justice Therry. – Tuesday, June 3.
- Before the Chief Justice.

THOMAS SWAN was acquitted on a charge of indecently assaulting a female child of four years of age.

MAITLAND MERCURY, 9/729, 28/06/1851

ABDUCTION. - On Monday, four parties named **PATRICK MEEHAN, JAMES MATHER, MARY OATES, and MARY RYAN**, appeared before the Police Magistrate charged with having unlawfully taken out of the possession of her father, one **EMILY BLAKE**, an unmarried female under the age of sixteen years. Mr. Nichols appeared for the prosecution, and Mr. Johnson for the defence. The father of the child proved that she was only fourteen years and five months old, and that he was also acquainted with Meehan and his sister Mrs. Oates; they were in the habit of using his house as customers, but Meehan had never paid his addresses to his daughter with his knowledge or consent. Dr. **FULLERTON** deposed to having married the prisoner, Meehan, to **AMELIA BLAKE**; she was represented to him as being the child of a man who had gone to California and left under the care of the woman Ryan, who said that she was seventeen years of age. Several witnesses were examined, and the court having sat two days hearing the case, decided that sufficient testimony had been adduced to warrant the committal of the prisoner. They were admitted to bail. *People's Advocate, June 25*

MAITLAND MERCURY, 9/732, 09/07/1851

ABDUCTION.

ILLEGAL SOLEMNIZATION OF MARRIAGE. - Further evidence in the **BLAKE** abduction case; decision postponed. *Abridged from the Herald*

MAITLAND MERCURY, 9/733, 12/07/1851.

SYDNEY NEWS. - At the Criminal Court today, the Rev. Dr. **FULLERTON** was found guilty of illegally performing the marriage ceremony, knowing that the female [**BLAKE – abduction**] was under age and her father still living. A motion was made for arrest of judgement, which will be argued on Friday.

MAITLAND MERCURY, 9/734, 16/07/1851.

CENTRAL CRIMINAL COURT. - WEDNESDAY, JULY 9, 1851

ILLEGAL SOLEMNIZATION OF MARRIAGE. - A more detailed account of the first trial.

Thursday, July 10.

ABDUCTION. - **MARY OATES, MARY RYAN, and EMMELINE EMMA BLAKE.**

THE QUEEN v. JAMES FULLERTON. JUDGEMENT ON WEDNESDAY.
Editorial note : {We observe from the *Herald's* report of the proceedings in this case, that out of the twelve jurymen who to all appearances unanimously returned a verdict of guilty against the rev. defendant, nine subsequently joined in writing a letter to the

clerk of the court, stating that they intended to have returned a verdict of not guilty. The court said no notice could now be taken of such an extraordinary statement.]

ASSAULT. - Yesterday **CATHERINE PRAIN** appeared before the bench, charged by **MARY GAGGIN** with assaulting her daughter, **MARY ANN GAGGIN**. The little girl, Mary Ann Gaggin, deposed that as she was in Mrs. Stevens's house, nursing Mrs. Stevens's baby, Mrs. Prain came in to her and abused her for breaking her boy's leg, and Mrs. Prain then knocked her down, knocked her head against the wall, and squeezed her throat with her hands until Mrs. Stevens came in and took her off. Mrs. **ELIZABETH STEVENS** and Mrs. **ELIZABETH PITCHFORD** deposed that they ran into the house on hearing the girl's screams, and found Mrs. Prain holding her by the neck, and saw her drag her across the room by the shoulder, and knock her head against the wall; Mrs. Prain said she was punishing her for throwing stones at her boy, and she refused to let her go, but at length Mrs. Stevens got the girl away, and sent her home to her mother for protection. In defence Mrs. Prain said these stories were all false, that she only took the girl by the shoulder, and shook her, telling her never to throw stones at her boy again, but she did not strike her or seize her by the throat. The bench convicted the defendant, fining her 20s. and costs.

CHARGE OF THREATENING. - On Saturday **MARY GUNNING** and **MARGARET CAMPBELL** appeared before the bench, charged by **ANN PHILLIPS** with threatening her. The evidence of Mrs. Phillips having been taken, to the effect that both defendants threatened her as she was passing their houses, the case was withdrawn, on the promise of the defendants not to repeat the offence.

SYDNEY NEWS.

PATRICK MEEHAN was this day found guilty of abduction, and sentenced to three years' imprisonment in Sydney gaol.

The two females, **OATES** and **RYAN**, have their bail enlarged till Wednesday next, on which day the point reserved at their trial will be argued.

MAITLAND MERCURY, 9/735, 19/07/1851

SYDNEY NEWS.

The sentence passed on the Rev. Dr. **FULLERTON** was this day set aside at the Supreme Court on account of some illegal technicality in the information charging him with the offence for which he was convicted. The prosecutor is, however, at liberty to move for a new trial, or rather to proceed on a fresh information.

MAITLAND MERCURY, 9/736, 23/07/1851

THE ABDUCTION CASE. - The case of Dr. **FULLERTON** was fully argued on Saturday last before the three Judges, and the decision was postponed till Wednesday. On that day the Chief Justice said that it was the opinion of the Court that judgement should be arrested. His Honor accounted for the decision by saying that the two acts relating to marriage in this colony should be construed as if they were only one enactment. By these two acts no clergyman can marry without the consent of the father if living in the colony, and if he be dead or absent, without the consent of the guardians regularly appointed. In this case the words "an in the colony" were omitted, and also no mention of the fact that the consent of the mother or guardian was not obtained. The other judges agreed in this opinion, and the reverend defendant was discharged.

On Friday the two women, **OATES** and **RYAN**, were brought up for judgement, and the points reserved in their favour having been over-ruled, they were each sentenced to two years' imprisonment. *People's Advocate, July 19*

MAITLAND MERCURY, 9/739, 02/08/1851

SYDNEY NEWS. - **ARTHUR HUFFINGTON** was also committed, after three or four days' examination, for assaulting one **ANN SMITH, alias MURPHY**, with intent to commit a rape.

MAITLAND MERCURY, 9/740, 06/08/1851

ASSAULT WITH INTENT TO COMMIT A CAPITAL OFFENCE.

REGINA v. **ARTHUR HUFFINGTON**, gent. - The investigation of this case, which was instituted at the instance of Mrs. **ANN MURPHY, alias SMITH**, against Arthur Huffington, a medical gentleman, residing in Botany-street, Surry Hills, occupied the Court during part of Friday last, and Monday and Tuesday, and was terminated by the magisterial decision yesterday. His Worship (Mr. **FLOOD**) gave his decision as follows:- "I find, after looking carefully through the whole evidence for the prosecution in this case, that Mrs. Murphy, alias Smith, charges the defendant with having assaulted her with criminal intention on Saturday, the 19th instant, in the drawing-room of his own house. She escaped and fled to the dining-room, where he again assaulted her. She ultimately effected her escape by jumping over the fence of the verandah. Prosecutrix also states that she would not have brought the charge against the defendant if he had paid the wages due to her, and the person Smith represented as her husband, and suffered them to quit his house and service on the following Monday. On the Wednesday following, the prosecutrix states that she was subjected to another assault by the defendant, whereupon she made a complaint to an officer of the police establishment. Great stress has been laid by the advocate for the defence on the discrepancies in the prosecutrix's evidence, but those discrepancies do not at all affect the charge in question. I see nothing to justify me in omitting to send this case before a jury. The defendant is committed for trial, at the ensuing sessions of the Central Criminal Court." Prisoner was allowed bail; himself in £100, and two sureties in £50 each.

MAITLAND MERCURY, 9/748, 03/09/1851

MAITLAND CIRCUIT COURT. - TUESDAY, SEPTEMBER 2, 1851.

RAPE

MICHAEL COHILLANE was indicted for assaulting and ravishing **ANNE MILSOM**, against her will, at Aberdeen, on the 10th May, 1851.

Mr. Purefoy appeared for the defence; attorney, Mr. Baker.

The witnesses called were Anne Milsom, **CHARLES MILSOM, MARY WALDRON, and RICHARD BODDILY**.

Mrs. Milsom is a married woman, wife of Charles Milsom, who resides about seven miles from Scone; on the 10th May she went to Scone pound to release some cattle, leaving home early in the morning; her husband came after her, and a little before sundown they left Scone with the cattle, twelve head; one of the cows got sick on the road, and about three miles from Scone got unable to proceed; after some delay Milsom went home with the remaining cattle, leaving Mrs. Milsom with the cow; it was moonlight, but rather cloudy at intervals; in case the cow remained ill Milsom was to return, and they were to pass the night there, so Mrs. Milsom got some wood together; she heard a man riding up galloping, and she drew on one side under the shade of a tree; prisoner, who was the man, and was known to her by the name of **Mickey Bad English**, called out "where are you, Mrs. Milsom"; after he had so called her twice she stepped out, thinking her husband had perhaps sent him to assist her;

some conversation followed, and she went towards the cow, when prisoner, who had got off his horse, seized her by the shoulders, and threw her with great force to the ground, and kept her down with his foot while he looked round. The witness then related what followed; she struggled and got away from him, and screamed murder, holding by a fence to protect herself, but he threw her down again, and effected his purpose, in spite of her continued resistance. Prisoner subsequently offered witness a money order, begging her to say nothing about it; she did not take the order, and made no reply except to beg him to go away; he refused to go unless she swore she'd not say one word, or he would kill her; she swore as he desired, and he then went away, threatening to kill both her and her husband if she did say anything; prisoner was there altogether about twenty minutes. The prisoner rode off in the direction of Scone, and some time after she heard a horse galloping up from that direction, and heard prisoner speaking in Irish to his horse; she got away from the spot, and prisoner passed; witness's husband returned to her some short time after, and witness immediately told him all that had occurred; the paper produced was one that she found on the ground on gathering up her things afterwards. - Cross-examined: witness had had only half a tumbler of colonial beer to drink that day; the nearest house was three-quarters of a mile from the spot where the prisoner committed the outrage on her; that was Mr. **WILLIAM DANGAR'S** house; the time might be between eight and nine o'clock in the evening. The witness was closely cross-examined as to the exact circumstances under which the offence was committed, and her deposition at the Scone police-office was put in and read, in which there were some differences on minor points, but the main facts were described in the same way. - Charles Milsom corroborated his wife's evidence up to the time he left her with the sick cow; witness rode on homewards, and saw the prisoner standing at the door of his neighbour, **MARY ANN WALDRON**; Mrs. Waldron asked witness where his wife was; witness told how and where he left her, and said he was going home, and then to return with some refreshments for his wife, as she might have to stay all night with the cow; that was about half-past seven o'clock; witness rode home, got some tea ready, and then returned to his wife on horseback, slowly, with some tea in a bottle; the moon had then gone down; on reaching the spot where he left his wife he had to call twice for his wife, who then appeared and told him that she had been nearly murdered, and that a rape had been committed upon her; she told witness who the man was and the particulars; she appeared very weak and much frightened, and could scarcely be got home; witness did not see prisoner again that night after seeing him at Mrs. Waldron's door, where he heard what passed between Mrs. Waldron and witness. - Mrs. Waldron remembered Milsom calling at her place that evening; prisoner was within hearing of all that Milsom said to witness; prisoner left her house shortly afterwards, going in the direction of his master's house, Mr. Hall, which was a contrary direction to the Scone road; there was no fence between the roads, only the bush; some considerable time afterwards, after witness had gone to bed, Milsom brought his wife to witness's house, and Mrs. Milsom remained there the night; Mrs. Milsom was greatly frightened and very weak, and told witness what had happened. - Chief constable Boddily knew prisoner as Michael Cohillane, a ticket of leave holder, in the service of Mr. Hall; witness apprehended prisoner on a charge of rape on Sunday, the 11th May; prisoner made no remark except that he had never seen the woman; prisoner was commonly called Mickey Bad English.

Mr. Purefoy addressed the jury for the defence. After commenting on the importance of the case before them, as affecting the life of the prisoner, he noticed that the evidence as to the alleged offence was solely that of the prosecutrix, Mrs.

Milsom, whose evidence must therefore be closely examined. Rape was a charge easy to make, as needing only the evidence of one person, and was on that account the more difficult to be rebutted by the accused person. His only dependence therefore must be that the jury would jealously scrutinise the evidence of that one witness, and see if it was consistent in all its parts, now, and with her previous deposition. Was Mrs. Milsom's evidence so clear and so consistent as to stand this examination? He contended that it was not, and that even if the jury believed the prisoner was with her at all on that evening there was so much doubt about what really occurred, whether with her consent or without it, that at the utmost it would merely be a charge of assault, which was a verdict the jury could deliver if they chose. The learned counsel then closely commented on the discrepancies between the prosecutrix's evidence at Scone and that given that day, and on the improbability of the prisoner committing such an act of violence on the high road, at such an early hour of the evening. Mr. Purefoy called chief constable **CHARLES FOX**, of Muswellbrook, who had known prisoner by sight several years, and had not heard anything against his character.

His Honor, in summing up told the jury they must satisfy themselves whether or not the prisoner did commit a rape upon the person of Anne Milsom, and against her consent. His Honor then read through the evidence, commenting on it as he proceeded. That the prisoner did commit the offence was clear, if the jury believed Mrs. Milsom's evidence; but there still remained the question whether it was against her consent, and they must form their opinion on this most material question from all the circumstances, as well as from Mrs. Milsom's direct replies to the queries bearing on that point. As testing her evidence in this respect his Honor read over her evidence at the Scone Police-office, pointing out the extent and nature of the discrepancies between her statements then and now. So far as her direct replies went, the case was completely made out against the prisoner, if the jury thought that her remaining evidence was consistent with this conclusion, and that the discrepancies pointed out did not affect her credibility. If they were not satisfied beyond any reasonable doubt that the offence was completed, and against the consent of the prosecutrix, they would acquit the prisoner. If they thought he had assaulted and ill-used her, without completing the offence, they would acquit him of the felony, and find him guilty of assault. But if they found themselves satisfied beyond any reasonable doubt that the prisoner did complete the offence, and against her consent, then their duty would be to find him guilty of the offence as charged.

The jury retired for a few minutes, and returned with a verdict of guilty.

The sentence of the court having been prayed,

His Honor impressively addressed the prisoner. The prisoner, Michael Cohillane, had been convicted by an intelligent jury of the crime of rape, and he must say that he was perfectly satisfied with their verdict, and he thought all persons who had heard the evidence must be so also. From an early period in the history of the law in England the crime of rape had been punished with death. Recently, the legislature in England had seen fit to abolish that punishment, although it was at the time remarked by that eminent statesman, Sir Robert Peel, that he was afraid the time might come when the legislature would have to retrace its steps. And he (his Honor) had heard and believed that the crime of rape had been committed much more frequently than before in England. A proposition was also made to the legislature of this colony to abolish the punishment of death for rape, but the legislature, taking into account the difference in the circumstances of this colony and England, and the numerous cases in which women were necessarily left alone, in lonely situations, refused to make the change. Subsequently a prisoner was convicted of rape, and sentenced to death, and a

question was submitted to the Supreme Court by a learned counsel whether it was not illegal to pass such a sentence in the colony, inasmuch as in England the legislature had abolished the punishment of death for rape. The whole of the Judges, however, held that the sentence was perfectly legal. If he now, therefore, was to take the course of ordering sentence of death to be simply recorded, it would be taking on himself to reverse the decision of the legislature, unless there were circumstances of mitigation to justify him. He could not, however, see in the present case any such circumstances of mitigation. On the contrary the crime was marked by unusual features of atrocity. It could not be pleaded here that the prisoner was excited by sudden passion, or that he came suddenly on the unfortunate woman, in such a position as to offer unexpected temptation; on the contrary, he had evidently ridden to the spot, on hearing from her husband on the unprotected position she was left in, and had then, under circumstances of great violence, committed the great outrage she had detailed in evidence. He could not, therefore, hold out any hope of mercy to the prisoner, and could only urge him to use the short time left him in this world to make his peace with God, and to prepare himself for another world. He now sentenced the prisoner to be taken from hence to the place from whence he came, thence to be taken on a day to be hereafter fixed to the place of execution, and there to be hanged by the neck until he was dead; and might God have mercy on his immortal soul.

The prisoner, who appeared little moved, was then taken away.

MAITLAND MERCURY, 9/755, 27/09/1851

EXTRAORDINARY CHARGE. - **JOHN VALENTINE**, a little boy apparently about thirteen years of age, but whose father stated he was between fourteen and fifteen, was charged with violating the person of **MARIANNE DAVIS**, aged seven years, at Linden-lane, Parramatta-street. The case was not fully gone into, as the unhappy little prisoner fainted during the examination, and had to be carried out into the open air. The offence was charged with having been committed about four weeks ago, and such portion of the evidence as was heard yesterday, is of a nature to render it unfit for publication. The further hearing of the case was adjourned until to-day, the father entering into a recognizance for the appearance of his son. *Empire*, Sept 22. - The father of the boy, John Valentine, (who fainted during his examination on Monday) informed the bench that his son was at home very unwell, and unable to attend. The bench adjourned the further hearing of the case until Friday. *Empire*, Sept. 24

MAITLAND MERCURY, 9/756, 01/10/1851

THE CONDEMNED PRISONER, MICHAEL COHILLANE. - Tomorrow (Thursday), at nine o'clock, Michael Cohillane, who was convicted at the late assizes of a rape on **ANNE MILSOM**, is to be hung at the gaol, East Maitland. We understand that exertions have been made to get his sentence commuted, and that Mrs. Milsom joined in signing a petition to the Executive to that effect, but without avail.

A LAD CHARGED WITH A CAPITAL OFFENCE. - **JOHN VALENTINE**, aged between thirteen and fourteen, who was remanded in the early part of the week, for having committed a capital offence on the person of a little girl under seven years of age, named **JANE DAVIS**, was brought up by his father for final examination. The boy groaned with horror at his dangerous and shameful position during the entire time occupied by the hearing of the case. The evidence of Dr. **RUSSELL** tended materially to exonerate the youthful delinquent from the capital charge, and the other evidence being that of mere children, and of a conflicting nature, the Police

Magistrate said he had come to the conclusion that it would be inadvisable to send the case before the Attorney-General; taking into consideration the extreme youth of the accused, and also of the girl and her sister, he did not suppose that the Attorney-General would put him before a jury, and even in the event of a public trial, the exposure of the facts of the case would be more likely to have a demoralising than a beneficial effect upon the children of own age. His Worship commented strongly on the misconduct of the parents of the accused and the child Davis. It was testified that the girl's mother was an ill-conducted woman, as she was in the habit of getting drunk and neglecting her children, suffering them to remain to late hours of the night on the pavement. His Worship recommended Mrs. Davis to be more careful of her children for the future, and also expressed a hope that the lad's father would properly correct his son, as there had evidently been some very improper conduct on his part. The father promised to do so, and the lad was discharged from custody. *Empire, Sept.*
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MAITLAND MERCURY, 9/757, 04/10/1851

EXECUTION OF MICHAEL COHILLANE. - On Thursday morning **MICHAEL COHILLANE**, who was convicted at the Circuit Court of committing a rape on **ANN MILSOM**, was executed, at Maitland gaol, in the presence of three or four hundred persons. We understand that Cohillane has ever since his trial been most assiduous in his religious duties, and quiet, appearing very penitent. When Cohillane was brought on the drop, the Rev. Dean Lynch, who has attended him throughout, and was with him to the last, briefly addressed the spectators, saying he was desired by the unfortunate man to state that he confessed having committed the crime of which he was convicted, for which he was deeply penitent, and desired the prayers of all present. We have not learnt that any general exertion to save Cohillane's life was made, but Mrs. Milsom, with a highly creditable spirit, waited upon the Rev. Dean Lynch, and addressed through him a memorial to the Governor General, praying that Cohillane's life should be spared, to which Mr. Lynch appended a similar prayer. The answer returned was that the Executive Council saw nothing in the case which could prevent them from letting the law take its course.

INDECENT ASSAULT. - A man named **JERMAIN**, apparently of about fifty years of age, was yesterday committed to take his trial at the Central Criminal Court, for an indecent assault upon a girl under twelve years of age. He was admitted to bail - himself in £80, with two sureties in £40 each. *Herald, Sept. 30*

MAITLAND MERCURY, 9/758, 08/10/1851

EDITORIAL re "THE PUNISHMENT OF DEATH FOR RAPE. - Refers to the Cohillane case, and general attitudes.

LETTER TO THE EDITOR, re death penalty for rape. *Justicia, Maitland, Oct. 3.*

MAITLAND MERCURY, 9/759, 11/10/1851

CENTRAL CRIMINAL COURT. - TUESDAY, OCTOBER 7.

INDECENT ASSAULT

JOHN MURPHY was indicted for having, on the 15th September last, indecently assaulted **MATILDA JAMES**, a girl twelve years of age, with intent to violate her person.

The case was clearly established by the evidence not only of the girl herself, but of two other witnesses, who saw the prisoner assault the girl with the intention, apparently, of committing a capital offence.

Guilty; two years imprisonment, with hard labour, and to find sureties for his good behaviour for two years more.

INDECENT ASSAULT

FRANCIS JERMAINE was indicted for having, on the 27th of September last, indecently assaulted one **EMMA RILEY**, a girl of eleven years of age.

It appeared from the evidence that the prisoner was in the habit of working near where the girl and her parents resided, and the girl went to ask him for paper, in order to curl her hair, when the man caught hold of her and proceeded to take improper liberties with her. The girl's mother, however, saw him through the half closed door, and the child was rescued.

The jury found the prisoner guilty, and he was sentenced to be kept to hard labour on the roads for the space of two years.

MAITLAND MERCURY, 9/771, 22/11/1851

SYDNEY NEWS.

COMMITTAL. - **WILLIAM LANGRIDGE**, mate of the schooner *Rose of Eden*, was this day committed for trial on a charge of rape. The prosecutrix, **MARY POWER**, about 16 years of age, had been engaged from the female depot to proceed to the M'Leay River, and had been put on board the *Rose of Eden* to be conveyed thither. During the night the alleged offence was committed.

MAITLAND MERCURY, 9/775, 06/12/1851

INDECENT ASSAULT. - **FREDERICK BATCHES**, a man of color, was indicted for having assaulted, with intent, &c., **SARAH ANN BIDDLE**, a child only seven years of age.

This case, which had been postponed from the last Circuit Court for the proper instructions of the little girl as to the nature and obligations of an oath, was proceeded with to some extent now, the evidence being unfit to report, but was ultimately abandoned, the girl proving not able to be examined on oath.

The jury expressed their regret at being compelled to acquit the prisoner, after the evidence given by the girl's parents. The court then adjourned.

MAITLAND MERCURY, 9/777, 13/12/1851

ASSAULT, WITH INTENT. - On the 5th instant a man named **THOMAS CLARKE** was brought before the bench, having been apprehended early that morning by constable **JOHN QUINLAN** on a charge of having, some time since, committed a rape upon a Mrs. **JOHNSON**, who it was stated was rendered too ill by the outrage to come into town and take out a warrant for him. On a subsequent day Mrs. Johnson's evidence was taken, but it did not sustain the charge of rape, and Clarke was committed for trial on a charge of assault, with intent.

MAITLAND MERCURY, 9/777, 13/12/1851

RAPE. - On Friday last a rape was committed on the person of a little girl named **BROOKS**, about nine years of age, upon Mr. Nelson Lawson's establishment, by a ruffian whose name did not transpire. Singular to say, no attempt was made by the people about the place to detain the culprit, although the disgusting transaction was generally known; and it was not until the circumstance was reported at the police-office in Mudgee that he took himself off. Every effort was made by the constabulary upon receipt of the information, but without success. The perpetration of the crime

was accompanied by considerable cruelty, from the effects of which the girl is now suffering severely. *Bathurst Free Press, Dec. 6*