

SYD1794

Bench of Magistrates, Minutes of Proceedings Feb 1788 – Jan 1792, State Records N.S.W., SZ765

Murder of a Native Boy

Bench of Magistrates

Collins J.A., **17 October 1794**

[375] Examination of the persons supposed to have murdered a Native Boy at the Hawkesbury, and the Evidence against them.

ALEXANDER WILSON says that Robert Forrester informed him that he had shot a native Boy, and that he was induced to it from motives of humanity. The Boy having been previously thrown into the River by the neighbouring settlers, with his hands so tied, that it was impossible he could swim to the opposite side.

ROBERT FORRESTER says that a large party of natives having appeared at the back of his Farm he alarmed his neighbours and went out to observe them. That in the road to the natives they met a Native Boy who they supposed was coming in for the purpose of discovering what arms they had. That they made him a prisoner; tied his hands behind his back [376] and delivered him to **MICHAEL DOYLE** to take to his [?].

That he was soon after alarmed by a cry from Doyles that the boy was escaped and had jumped into the River. That he and **TWYFIELD** immediately ran to the river and saw the boy swimming. That he then was prevailed on to shoot the boy by the importunities and testacies of all around. That the boy should get back to the natives and induce them to an attack by discovering there was no more than one musket in the whole neighbourhood. That the boy was not ill treated with his knowledge in any other manner than he was declared, and that the declaration of Wilson as far as it varies from this is false.

ROGER TWYFIELD corroborates the foregoing.

Parramatta and .. [378] Murder of a Native Boy, 1794[?] 17 Oct

Respecting the Murder Of a Native Boy

Source: Historical Records of N.S.W., Vol. 2

[329] From the Hawkesbury were received accounts which corroborated the opinion that the settlers there merited the attacks which were from time to time made upon them by the natives. It was now said that some of them had seized a native boy, and, after tying him hand and foot, had dragged him several times through a fire, or over a place covered with hot ashes, until his back was dreadfully scorched, and in that state threw him into the river, where they shot at and killed him. Such a report could not be heard without being followed by the closest examination, when it appeared that a boy had actually been shot when in the water, from a conviction of his having been detached as a spy upon the settlers from a large body of natives, and that he was returning to them with an account of their weakness, there being only one musket to be found among several farms. No [330] person appearing to contradict this account, it was admitted as a truth; but many still considered it as a tale invented to cover the true circumstance, that a boy had been cruelly and wantonly murdered by them.

The presence of some person with authority was becoming absolutely necessary among those settlers, who, finding themselves freed from bondage, instantly conceived that they were above all restrictions; and, being without internal regulations, irregularities of the worst kind might be expected to happen.

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

SYD1797

Court of Criminal Jurisdiction Minutes of Proceedings, 1788-1815, State Records
N.S.W, 5/1147B

R. v. Millar

R. v. Bevan

Court of Criminal Jurisdiction

Atkins J.A., **9 or 10 October 1797**

[353] **WILLIAM MILLAR and THOMAS BEVAN:**

Were brought before the Court for that they not having the fear of God before their Eyes but being moved and seduced by the instigation of the desire on or about the sixth day of October in the Thirty fourth year of the Reign of Our Sovereign Lord George the Third now King of Great Britain &c. with force and arms on the North-shore in county aforesaid in and upon a Native commonly known by the name of **TOM ROWLEY** in the peace of God and our said Lord the King then and there being feloniously, willfully and of their malice afore thought did make an assault. And that the said William Millar a certain Gun value 70L then and there charged with Gunpowder and pistol balls of slugs, which given he the said William Millar then and there had and hold to against and upon the said Native then there feloniously, willfully and of his Malice aforethought did shoot and discharge, and that the said Millar with the pistol balls or slugs aforesaid out of the Gun aforesaid then and there by the force of the gunpowder shot and sent forth as aforesaid the afore said Native in and upon the right thigh of him the aforesaid Native then and there with the pistol balls or slugs aforesaid out of the Gun aforesaid by the said William Millar aforesaid shot discharged and sent forth feloniously, willfully and of his malice afore they did strike, penetrate and wound, giving to the said Native one mortal wound , of which wound he languished and languishing did die and that the aforesaid Thomas Bevan then and there [354] feloniously, willfully and of his malice before thought was present aiding, helping aletting, comforting assisting and maintaining the said William Millar the felony and murderer aforesaid in manner and form aforesaid to do and commit against the peace of Out Sovereign Lord the King his Crown and dignity.

Acquitted for want of Evidence.

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

SYD1799

Court of Criminal Jurisdiction Minutes of Proceedings, 1798 - 1800, State Records N.S.W., X905 – 68, 90

R. v. Hewitt

Court of Criminal Jurisdiction

Dore J.A., **1 February 1799**

[68] **THOMAS HEWITT** charged with the wilful murder of **WILLIE CUTHIE** (a native) was put to the Bar and arraigned on the Indictments.

Plea “Not Guilty”.

No Prosecutor appearing and the native widow of the deceased being incapacitated from giving such Testimony as could be admissible in Law to affect the Life of the Prisoner he was by the Court.

Acquitted.

But being further charged with being an incorrigible Rogue and vagabond and pleading Not Guilty.

THOMAS SMYTH, the Provost Marshall being sworn, deposeth that he verily believes the prisoner to be a reputed Rogue and Vagabond and an idle, disorderly Person without any visible way of getting his Living, being frequently at large and found guilty of flagrant cuts of vagrancy in the woods.

EDWARD COLLINS, a District Constable, being also sworn deposeth that he’s well known the Prisoner. That he is frequently at large and wandering abroad in the woods, and inhabiting and associating with the natives, contrary to order and regulations and that he had no visible means of maintenance.

Sentenced to receive 300 Lashes in public and at a time when the greatest number of natives can be assembled together to witness his Punishment after which he is to work in the Gaol gang for the Space of Twelve Calendar Months from this day.

[original notes:]

[90] Thomas Hewitt to the first count of the Indictment charging him with wilful murder. pleaded not Guilty.

The Prosecutor at the hearing and the native widow of the Deceased not being Capacitated to give sufficient Testimony to reach the life of the delinquent or substantiate the Count laid in the said Indictment he was by the Court hereupon – Acquitted.

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., X905, pp 323, 329-362 (and see pages 298-320) [1]

R. v. Powell and others

Court of Criminal Judicature

Dore J.A., **15-16 October 1799**. [1]

[323] His Majesty’s Territory called New South Wales.

At a Court of Criminal Judicature holden at Sydney in and for this Territory by virtue of a Precept under the hand and Seal of His Excellency John Hunter Esquire Captain General and Governor in Chief in and over His Majesty’s Territory Called New South Wales on Monday the fourteenth day of October in the Year of our Lord

One thousand seven hundred and ninety and nine For the Trial of such Offenders as should severally and respectively be brought before the said Court.

Present,

The Judge Advocate

Captain Henry Waterhouse Captain John McArthur

Lieutenant John Shortland Lieutenant Neil McKellar

Lieutenant Matthew Flinders Lieutenant Thomas Davies

The Precept being read and the Court duly Sworn the following Prisoners were put to the Bar and severally and respectively Arraigned on the several Indictments preferred against them Namely –

... Edward Powell, Simon Freebody, James Metcalfe, William Timms, and William Butler, for wantonly killing two of the Natives ... now appear to Traverse–

[329] The King v Powell – Freebody, Metcalf – Timms, and Butler

}For wantonly killing two Native Men of this Territory.

The prisoners being put to the Bar.

Thomas Rickerby, being Sworn, Deposeth that on the 19th day of September last Mary Archer came to him and asked him [330] if he had heard of two Native Boys having been killed. He answered he had not, when she replied that such had been Killed the night before, and enquiring of her if she Knew who had Killed them she answered Yes, That John Pearson had told her that Edward Powell, the Constable, Simon Freebody, James Metcalfe, William Butler, William Timms, Thomas Sanburn and Bishop Thompson were all together when they were killed, but that Sanburn, Thompson and Pearson had nothing to do with the murder. That in Consequence of this Information, the Witness, being Chief Constable at the Hawkesbury, went up to Powell's with two more Constables with him namely David Browne and John Soare. That Powell was from home, but in his house were Metcalf, Thompson and (he believes Timms) and Sanburn making enquiry of them if they knew any thing about the two Boys being Murdered they made answer one and all that that knew nothing about it. But that Sanburn said they were as decently buried as any of the white people that were killed by the Natives. The Witness asked said Sanburn if he would shew him where they were buried, who told him no. That on leaving Powell's house he met with Powell of whom he made the like enquiry about the Murder, who said he knew nothing about it, he had killed none of them nor did he know who had. That Powell refused to inform the Witness where the said bodies were buried but on a Search he discovered and with assistance dug them up and left the Bodies laying on the Ground while he went up to the Commanding Officer at the Hawkesbury, Lieutenant Hobby, who went with Mr. Braithwaite and the witness, and the Bodies were examined when the Hands of both the said Boys were tied behind them and a wound through the Body of the smallest of them as if given by a Cutlass and second wound on or about the hip as if given also by a Cutlass. The other [331] Appeared to have been shot through the body by a Musket Ball and that one side of his head and down his face appeared to have been much Cut by a Cutlass. Powell the Constable being sent for he was examined and in the first instance denied knowing any thing of the matter but on being further Interrogated said Powell informed that he thought it was the Governor's orders to Kill the natives where they found them. That Lieutenant Hobby then told said Powell he had given no such orders nor did he believe the Governor had given any to that effect. Powell then answered that it was done at the request of Sarah Hodgskinson the widow of one Hodgskin who had been Killed by the natives about three weeks before that time. That the Witness went to the said widow and asked if it had been her Request who answered It was. That the Bodies

were then buried and five persons taken into Custody hereupon, when Powell one of the Prisoners asked the witness how many he had apprehended and on being told replied there were eight of them and they would all fare alike.

Questions proposed by the Court to this Witness.

You are Chief Constable at the Hawkesbury.

Yes.

Have you Known the natives to have been troublesome in Committing depredations and murders about the Hawkesbury?

Yes he has heard of such things having been done.

Have you not known that after such Outrages Parties have been sent in pursuit of them.

Yes.

Have not the Parties so sent out often Killed some of the natives they were sent in pursuit of.

He has understood they have.

[332] Have you never known the natives to have been seized after having Committed Robberies or perpetrated murder and sent to Head Quarters.

Yes. I remember one Charles who was so secured.

Do you Know what was done with that native.

Set at liberty. I understand so.

Do you know for what Offence that native was Committed.

Yes. I heard for Spearing one Goodall.

Do you know from your own Knowledge or only from Common Report that Charles was the Native who Speared Goodall.

From Common Report.

Did you not hear from Report likewise that it was not him.

Yes. I heard it was not him but that he was in Company with those who did it.

Did you ever hear of the two [deceased] natives in question having been troublesome in parties Committing depredations or murders.

Has heard the Youngest Boy was detected in stealing Corn and was shot at and wounded, and that the eldest was he heard concerned about Killing a Man upon the Race ground but that he believes the said two natives have since lived in habits of friendly Intercourse with the Settlers.

[333] Do you not know that after the natives have committed depredations and even murders that they have been received into the houses of the Settlers.

Yes they have.

Isabella Ramsay being duly sworn Deposeth that about the time the above natives were killed she believes the Evening of the same day the three natives came into her dwelling house at the Hawkesbury with the musket of Thomas Hodgkinson who had been lately killed by the natives in the woods, and delivered up said Musket. That Freebody and another Person then came into the house of the Witness and questioned the natives as to what manner said Hodgkinson had been killed. They in the best manner they could explained he was killed for the sake of the victuals he had with him and that there were three of them in the Killing of him. That the night preceeding [sic] the murder three other natives slept with him. That they passed part of the next day together and toward the evening made a fire and eat, after which the said Hodgkinson and Wimbolt laid them down under the Covering of Blankets that the said three other natives afterwards secured their two Muskets and ut said Hodgkinson and Wimbolt to death with their Waddys. That said Freebody and his Companiion having left the house the former shortly after returned accompanied by

Powell. That soon after the biggest of the natives got up for a drink of water to whom Powell said you shall have no water here you have Killed a Good fellow and you shall not live long. John Pearson a neighbour then came in when the same native got up a second time for a drink of water, when Freebody gave him some water, and Powell said they should be killed for they have killed a worthy good fellow and it will be a pity to see them go away alive. Butler soon after came in to the house of the witness with a bright Cutlass and asked if the natives were there saying what sentence shall we pass on these blackfellows. I will pass sentence myself. They shall be hanged. Metcalf came into the house of Witness [334] with several others, who said we will not Kill them we will carry them out as the means of finding the natives who Killed Hodgskinson. Powell then enquired of the Witness if she had any Ropes, being answered no, said that it was pity they should escape as he understood it was the Governors and Commanding Officers orders that the natives should be killed whenever they could be met. Said Powell then directed Butler to go to his house and bring some Rope. Who went and returned with one Rope saying he could find no more there. When Powell himself went and brought in two other Ropes, and the hands of all the three of the Natives were tied behind them, and all the people who had by this time assembled at her house in great numbers to look out the said Natives. And in about a quarter of an hour after they had left the house the Witness heard the report of two Muskets being fired.

Question from the Prisoners to this Witness.

Relate to the Court in what manner the natives were armed when they Came to your House.

They had each got a Spear, a Womarroo and a Waddy and Hodgskinson's Firelock. That one of them having a Coat Metcalf's which being pulled off a Tomahawk was thereunder Concealed up his arm.

Question from Prisoner Metcalf.

Did I not tell you when I brought the natives in with Hodgskinson's piece that the said three natives had acknowledged sleeping with Hodgskinson in the woods the night before he was Killed.

I recollect something of your saying that they had slept with him either the night he was Killed or the night before but she was so much frightened that she cannot Recollect.

Did not Jonas Archer inform you that the eldest of the deceased Natives was concerned in the murder of the Man on the Race ground.

Yes I have heard him and several others say the same.

[335] Question by Powell.

When I came in and found you alone with the natives in your house did you not tell me that you was glad to see me for you was in fear for your Life.

Yes I was glad to see you come in with the other man with you for I was in fear for myself and children.

Why did you stand so much in fear of the natives, have you ever sustained any Loss of Injury by them.

We have been Robbed by the natives but from their general Inhuman behavior she was the more afraid of them, and from hearing of the depredations they frequently Committed.

David Browne being Sworn.

Deposeth to have seen the Bodies of the said deceased Natives which appeared to him to have been murdered and he was ordered to take Care of them until they were buried. That the witness lives at the Hawkesbury and the Natives are a very dangerous

set of People and not to be trusted and after a man gives them all he has got they would not scruple to Kill him. That about two Years ago he was bringing water for his stock when one of the natives threw a Spear at him which struck him in the Throat, that in pursuing said native three others came up which rendered it necessary for the witness to return to his home. That the next day a Settler was killed as he was informed. He the witness also Knows of many Robberies and Murders by the natives Committed.

Thomas Lambourne being sworn Deposeth that about Three weeks ago he was at work on the farm of Edward Powell when James Metcalf one of the prisoners came to him with a Firelock on his Shoulder and told him he had been alarmed by three natives on Forrester's farm where he was working, which natives had a [336] musket with them, who delivered the musket to said Metcalf who Carried the same home. That the witness then went to Forrester's house, the selling before described of Isabella Ramsay where the witness found three natives of whom he asked if there were not more of them, who answered there was another Called Major Worgan out upon the Ground. That the witness went down to him and stopped with him about an hour, and returned to Forrester's House about nine or ten in the Evening when the people were coming out of said house with three natives, that hearing a Caution of take Care or you'll be shot, the witness left them. And standing behind a Tree for his own security he heard the Report of two muskets being fired, that he went up to the place from whence said Report came ha saw two natives laying dead being two of the three he had before seen in the hose as abovesaid. That the people talked about Burying them but that he then departed and went about his Business.

Question by the Prisoner Metcalf.

Did not Jonas Archer tell you that the eldest native killed was Concerned in the murder of the Man upon the Race ground.

Yes he did.

By the Court.

What number of Persons do you think were assembled on the above occasion when you saw the two natives dead.

There were more than the Prisoners, there might be Ten, I cannot speak certain.

[337] questions by the Court.

Name any of those that were then present.f

Answer. I cannot.

Where [sic] you not present at the time the two murdered natives were buried.

No I was not.

When you went to the hose of Ramsay and saw the three natives, did you go alone.

Yes I did.

This witness having grossly prevaricated in his Evidence before the Court and having departed from the Examination to which he was Sworn before the Committing Magistrates whereby he connived at being admitted King's Evidence, and verifying no part thereof The Court do Order the said Thomas Lambourne to be taken into Custody and Stand Committed for the next Criminal Court to answer such Charges as shall then be preferred against him.

John Pearson being sworn deposeth That last Wednesday was a month he called in at the house of Isabella Ramsay where he found three natives of whom he made enquiry who had killed Hodgskinson who informed the witness that Terribandy, Major White and others whose names he recollects not. (That Terribandy is the

reputed brother of the eldest native that was Killed) and one of the said natives on being asked by the Witness what they did there said they had brought in the Gun of the deceased Hodgskinson and had given it up to Metcalf. That Freebody and Powell then came in when the Woman expressed herself glad they had come as she was very much [338] Frightened at the natives being there. That the woman and her Children were all at Supper at this time when Timms, Butler and Metcalf with Thompson and he believes Lambourne came to said House. That in the hearing of the Witness Butler (who he thinks had a Cutlass in his hand) Called out "where are these natives, leave them tome I'll soon settle them". Butler then asked for Rope, but none being in the house Powell said if you will go over the way you will find two Ropes upon the Dogs. Butler then went out and returned with some Ropes. The witness went out to Cut some weed and on his return into the house saw the three natives with their hands tied behind them and some Rope round their Necks. That the said Natives were then taken out by several Persons namely Timms, Butler, Metcalf, Freebody, Powell and Thompson. That the witness remained in the house where he was accustomed to sleep and to Keep the woman Company. That about a quarter of an hour afterwards he heard the Report of two Guns fired, soon after which a Person he believes to have been Timms returned to the house and made enquiry for a Spade with which he went away. That the witness retired to rest immediately afterwards as also did the woman and he heard no more of them. The witness further deposes that one of the said Natives in the pulling off a Coat dropt a Tomahawk which had been secreted in the sleeve there up his Arm.

At Three o'Clock the Court adjourned until Tomorrow Morning at Ten in the forenoon.

[339] Wednesday 16th October 1799. The Court met at Ten o'Clock pursuant to Adjournment.

Rex versus Powell and others } Continued

Lieutenant Thomas Hobby New South Wales Corps being duly Sworn deposeth that he was Commanding Officer at the Hawkesbury when Thomas Rickerby Chief Constable there applied to him respecting a murder Committed on teh Body of two Natives, requesting that the witness would go with him to view the Bodies which he accordingly did and in the way to the place where they were the witness met with Mr Roberty Braithwaite who he asked to accompany him and they proceeded together with said Rickerby, and viewed the bodies of two Male Natives on the younger of which they discovered one wound near the left Breast, and another in or about his back which appeared to the Witness to have been wounds made by a Cutlass. On the other Native near the Jaw the head was nearly severed from the Body. That the hands of both said natives were tied behind on the back of each of them.

The witness sent for Powell one of the Prisoners and examined him respecting the said Murders who denied fro some time any knowledge thereof, but said Powell acknowledged he was present but did not Kill the said Natives. That Metcalf was also questioned by the witness who answered him to the like effect as Powell had done. That on the return home of the witness he met Freebody another of the Prisoners who he also examined but does not recollect particularly what he said. The witness further deposeth that Powell told him that he understood it was the Commanding Officers orders also the Governors that all the Natives should be killed. The witness replied he had never given such Orders nor did he believe the Governor had given any to that Effect, and that Powell said it was done at the instigation of the Widow Hodgskinson.

[340] Question by Powell

What orders did you give to a party of Soldiers who went out to bury the Body of Thomas Hodgskinson who had been killed by the Natives.

My orders to the Soldiers were to go out with the Men who were going out to bury the Bodies of Hodgskinson and Wimbolt (who were murdered by the natives about two months since) "That if they fell in with any Natives on the Road either going or returning to fire in upon them." And my reason was that having been morning informed that the said Hodgskinson and Wimbolt had been most inhumanly murdered by being dreadfully beaten and Mangled, and in consequence of Serjeant Goodal being badly speared by the natives directions received from his Excellency Governor Hunter who he consulted on this Occasion at Sydney, he returned to the Hawkesbury with Orders to act discretionally against the Natives. [Alternative version in margin:] of Serjeant Goodals having been badly speared by the natives, he waited on the Governor to receive his directions who desired him to Act discretionally against the Natives, that he then signified to the Governor his Intention that if the Natives should commit any more depredations to send out a Party to kill five or six of them

Question by the Court. What were your Reasons for giving such Orders and by what authority did you give them.

Answer. About two months since or thereabouts I was informed by different people that it was the intention of the natives to Come down in numbers from the Blue mountains to the Hawkesbury and to murder some of the white People and particularly some of the Soldiers. That a day or two after receiving this Information one Smallsalts came to the Witness and informed him that on the day before he had been attacked by the natives on the Road between Parramatta and the Hawkesbury and that had he not been armed with a loaded musket and a Brace of Pistols he should have [341] been murdered as the Natives have one or two Spears at him. The witness then came down to Sydney and waited on the Governor making him acquainted with these circumstances. That the day following Andrew Thompson a Constable from the Hawkesbury came down to Sydney and informed the witness that Serjeant Goodall a Marine settler on the Road between Parramatta and the Hawkesbury who being at work on his own Grounds was attacked by several natives and dreadfully wounded inasmuch that he could not be expected to Live. The witness again waited on the Governor with this Information who appeared much displeased at the Conduct of the natives. The witness who had been subpoenaed down to Sydney on a Trial, then observed to the Governor that the sooner he returned to the Hawkesbury he thought the better. The Governor was of the same opinion. When the witness asked the Governor on what was best to be done if the natives continued to Commit such enormities, who answered that something must be done. On which the witness signified to the Governor his Intention that if the natives should still continue their violent outrages of sending out a Party of the Military to kill five or six of them wherever they were to be found. Whereupon the witness received the Governor's directions to act discretionally against the natives and he left it entirely to the witness. That the next morning he left Sydney and returned to the Hawkesbury where he arrived on the second day. About Ten o'Clock on the Evening of the Day of my arrival there Corporal Farrell called upon him with the Information that he knew where to take the natives that had wounded Serjeant Goodal who was then reported to be Dead. The witness then ordered said Corporal to take a Soldier with him and go in pursuit of them immediately, and desired the natives might not be fired upon unless they made resistance, in which Case to bring them in Dead or alive or words to that Effect. The next morning said Corporal [342] returned bringing with him a Native

called Charley which native the witness sent down under a Guard to the Governor. On the return of said Guard the Corporal and one of the private Soldiers namely Henry Lambe came to the witness and informed him that the said Native was according to Orders taken before the Governor, who expressed himself in the hearing of the Guard of Soldiers that he could not take upon himself to punish the native in Cool blood but that the Commanding Officer at the Hawkesbury should have punished him upon the Spot where he was taken.

By the Court.

Do you know that the native you ordered to be sent into Sydney was concerned in the wounding of Goodall.

I received Information from Corporal Farrell that said Native was concerned. That I then went to the Native who denied wounding Goodall but that he was present and offered to take me or any other person as I would send to the Native, who did, known by the appellation Major White, which I declined from supposing that this offer was made only to afford him an opportunity to make his escape.

Did the settlers make any representation to you on the discharge of the said Charley the native.

Yes, many of them said they were not safe in their Houses neither did they consider the Crops secure upon their Grounds and that said Native was a great Savage and had been concerned in murdering a Person on the Race Ground and supposed to have been concerned in other Murders.

[343] Question. When you sent a Party of Soldiers out in pursuit of the natives were they accompanied by Settlers or any other description of Persons.

Yes they were and I believe by several.

Did you when you gave orders to the Party to go out and shoot any of the natives they should meet with consider these orders extending to the Settlers or others that accompanied the Party.

Yes I did upon that Excursion only.

Are you positive that your orders were so explicit as that the whole Party understood they were only to attack the Natives whilst on that Excursion.

The orders I delivered to the Serjeant were, but it's possible they might be misunderstood.

Do you know that any of the prisoners now arraigned were present on the above Party.

I do not positively know but have reason to suppose they were from a remark made to me by Metcalf that had I seen the bodies of Hodgkinson and Wimbolt that I should have thought nothing of the natives being put to death.

You mention a Resolution of the Natives to come down in numbers and kill several white people, particularly Soldiers. Have you any Knowledge why they formed such a Resolution.

Yes. I have heard it was in consequence of a native woman and Child being put to death by a Soldier called Cooper.

Did you hear by Report or do you Know that said Cooper was the Person who put said Woman and Child to death.

[344] Answer. I heard it from Report by Mr Braithwaite.

Question. Do you know that any violence has ever been offered to the Natives or injury done them by the white men, without previous violence committed by the Natives upon the white People.

No I do not Know of any violence committed on the Natives at the Hawkesbury or elsewhere without provocation being given.

Since you have resided at the Hawkesbury pray how many white people have been Killed by the Natives.

Two killed, one wounded so as to be left for dead, one attacked and repeated Thefts.

How many Natives have been Killed by white People.

Two since my Command at the Hawkesbury, Viz. Two Months.

Robert Braithwaite Gentleman being Sworn deposeth – That on or about the 20th. September last, he accompanied Lieutenant Thomas Hobby and Thomas Rickerby to the bodies of two male natives who had been put to death. That the hands of both were tied behind them. The wounds upon the Younger of them were one about the right Loin and another about the Left Breast which appeared to the witness to have been given by a Cutlass. And upon the other of them a large wound appeared about his Chin and the appearance of a Musket ball wound about his right breast. That being informed Powell one of the Prisoners was Concerned in Killing said Natives the Witness examined him who denied any knowledge thereof, but on being further pressed by the Witness who had Killed the Boy, Powell answered it was so dark he could not see the Person. Being asked the like question as to the death of the other Native said Powell's Reply was the same in effect to the former. The witness observing that it was a very cruel way of Killing them even had they been detected in Committing [345] any Act of Depredation. Powell replied had the witness seen the Bodies of Hodgskinson and Wimbolt how they had been murdered by the Natives that he would not have thought it so inhuman and Powell further informed the Witness that the said natives were killed at the desire of the Widow Hodgskinson.

Question by the Court. How long have you resided at the Hawkesbury.

About Twelve months.

Since your residence there how many white people have been killed by the Natives

I recollect four men to have been killed and Goodall being very desperately wounded by them and that a several of them of the witnesses was attacked by several natives one of which he shot in his own defence after being Robbed of a Kangaroo he had Killed.

Pray how many natives have been killed by New white people since you have lived at the Hawkesbury

About Five including the one killed by my Servant.

What is the state of security or danger of the settlers of the Hawkesbury with respect to the Natives.

I conceive the property of the Sellers on the front farms to be and safely secure in popular situations. Those of the back farms and above the Creek in remote situations are exposed to great danger from the natives and he thinks the persons of the people are insecure both on these farms and when they may be travelling on the Roads and the witness know the several [346] single persons have been attacked on the Road by the natives although such persons have been armed.

David White being Sworn Deposeth That on the Evening: the above two natives in Question were said to be Killed he heard some natives crying out and heard the report of a Musket and in about two thirds of a minute afterwards he heard a second report of a Musket fired that in Consequence thereof he went down to the spot pem whence he heard such shots and calling in all the house of Widow Hodgskinson who was not at home at the time he waited when the said woman came in accompanied by Simon Freebody and Mr Timms when the two latter informed the witness they had that two natives were killed, Simon Freebody told the witness that that Powell had fired at a

native that Butler was holding by a Rope but round his neck but let him escape and that one other native the said Simon Freebody declared to have killed himself by thrusting a Cutlass into him and the third native who was held by Timms Metcalf shot through the Body.

Question by the Prisoner Powell.

Was the witness at home when he heard the Natives Cry out

Yes I was

At Half past Two o'clock the Court adjourned until tomorrow morning Morning Ten o'clock.

[347] Thursday seventeen

October 1799: at Ten o'clock the Court met pursuant to adjournment, and proceeded on the trial of Freebody and others.

Continuation.

Jonas Archer being duly Sworn deposes that about six weeks ago a native called Yellowgowy came to the house of the witness who asked him who of the native had Killed Thomas Hodgskinson and Wimbo when the said native answered a native called Major White had killed him and mentioned the name also of one other native which the witness does not remember and describing the manner in which said murder was Committed said that said White and other native Run their Davel (a sought of spear) into said Hodgskinson and Wimbo the next day the elder of the two natives that were killed (as in Formen Evidence named) came to the witness who told said Native that him who told the said native that said native White the native had got the Gun belonging to deceased Hodgskinson, and desired him to go and get it. That the witness went to the widow of the said Hodgskinson and told her that she would get the Gun in a few days, and the said Native Boy accordingly as the witness Hath been informed brought in the said Gun.

Question by Court. Did you understand from the Native Yellowgowy that the native Major White attended the deceased Hodgskinson and Wimbo as friends in the woods.

Yes.

Yellowgowy said that White met the deceased Hodgskinson and Wimbo in the woods and asked them if they had got any Pheasants being answered No they made a fire and sat and the native made another being Evening about Sundown which the natives invited them to do disclosing [348] they would get Pheasants the next day that in the night the said Natives put them to death as before stated.

What was the reasond you suppose that the said natives put them to death.

Possibly for the sake of their provisions or because Wimbo had the daughter of the Comrade of said White living with him.

Do you mean to say the said natives daughter was forcibly detained by Wimbo.

No.

I know she might have let him had she Choused.

Did you go out with Party who went to Bury the bodies of the deceased Hodgskinson and Wimbo and in what state did you find them.

Yes I did go out, and saw said two Bodies naked covered by wood and both were speared in the Bodies and otherwise mangled their Cloaths provisions and Arms and Blankets were taken from them.

Did you Personally know this native Called Major White.

Yes I knew him well and he was under engagement to accompany me in the woods at the time he killed Hodgskinson and Wimbo.

Did you Know of what tribe the two natives who were killed belonged.

I have often seen them with Major White and he believes one of them did belong to the tribe indeed they have often been together on my farm

[349] Was the deceased Hodgskinson on friendly terms with the Natives.

Yes I think he was he always has seen him treat them kindly by harbouring them and feeding Reece in his House.

Do you know what orders the soldiers had and did you feel yourself authorised to do when out on that the excursion to bury the deceased aforementioned.

I know not what orders the soldiers had in Particular but understood it was to Kill any natives the Party could meet with and that was my Intention.

Did you understand the orders to kill the natives were to be enforced after the above expedition.

Yes I did nor should I have thought myself doing wrong by killing any of the natives afterwards.

What do you know of the Character of the two Natives that were Killed and of the one who ran away.

The one who ran away stole fowls from me and one of the deceased stole Corn from my Barn and that the other being the eldest he has been informed was informed was Concerned in murdering informed the witness that his brother had murdered a man upon the Race ground.

Do you know how many white men have been Killed by the natives during the time that you have lived at the Hawkesbury.

[350] I have five or six Years at the Hawkesbury and to the best of my Recollection Twelve white Persons have been put to death by the natives.

How many natives do you recall being Killed by the White Persons.

About Twenty to the best of my recollection.

Are not the settlers or their Men in the habits of taking the women from the natives and that the native men are presented taking them away through fear of their fire army.

In two Instances I remember lately but cannot say weather they were women were detained by force but they were taken away against the Inclination of their native men and I know that said two women were Comon to the White men from Choice.

Here the Evidence Closed on the part of the Crown.

The prisoners produced a Defence in writing at which the following is a Copy_

 William Fuller the first witness Called on the part of the Prisoners being duly Sworn says that he lives resides at Richmond a free man and lives by his labor about three That sometime before Wimbo the deceased went into the woods the witness lent him a Blanket [351] and one of the Blacks little Jemmy one of the natives the eldest [?] that were Killed with several other native men one women the Gin or wife of said Jemmy had us which woman who severally came to the house of the witness and had wrapped round her a blanket which he well knew to be the same he had lent to the said Wimbo and the witness was desirous of taking the said Blanket which was refused and the woman and other natives all ran away from the house and the Blanket yet remains among the natives.

By the [?]

of the prisoners: Did you see this Blanket in the possession of the natives before the said Hodgskinson and Wimbo two natives were said to have been killed.

Yes I did but I cannot say as to the time but that it was about a fortnight before the said Hodgskinson and Wimbo were known to have been killed by the natives.

Was you with the Party of soldiers and others who went out in pursuit of the natives and to Bury the two Bodies of Hodgkinson and Wimbo.

Yes I was.

Were any of the Prisoners of that Party.

Yes two Metcalf and Freebody.

How far did you Consider yourself at liberty to act against Natives if you met with any.

To shoot them if I could.

[352] suppose any natives should have come into your farm after the above expedition would you have shot them.

If I had seen any I suspected to have been Concerned in the number murder of said Hodges and Wimbo I certainly should.

William Goodall being Sworn. Deposeth that about six weeks ago he was working on his Grounds when a Party of natives about twelve in number came and without the smallest provocation alarmed him by a desperate attack with their spears and also brutally beat him with their waddies after wounding in the breast and in two places on his back with three spears and had not the witness ran from them they would have killed him on the spot. That among their number of natives he knows one who is called Charley. That on the witness making his escape with a spear sticking in his Back the said natives pursued him even to the door of his house. That the said Charley was afterwards apprehended at the Hawkesbury as one of the Prisoners who had thus wantonly attacked the witness and was escorted to Sydney by a Party of soldiers as a prisoner to his Excellency the Governor and when his Excellency (as the witness was informed by the Corpl of the Guard) examined said Charley who was released liberated without any punishment.

Before the prisoners at the Bar were brought to Trial did you think yourself at liberty to retaliate on the natives for the Injury you had received

Yes I did

What is your Opinion now since these prisoners have been put on the Trial.

I wish to be informed after this attack on my life how I am in future to act.

[353] Did you not serve in the detachment at the Hawkesbury as a Sergeant in the Military.

Yes I did upwards of two Years and that I was discharged two years ago last April since which I have lived as a free Settler.

Do you recollect during your Service at the Hawkesbury natives committing any murders Robberies or other outrages

I do several some I particularly well remember

What steps were taken to punish such natives

There were Parties of soldiers frequently sent out to kill the natives but being the senior Sergeant sent there I had the Care of the Stores and did not go out with any detachments myself.

From whom did you receive your orders from time to time at the Hawkesbury

I received my orders in unity from Captain John McArthur at Parramatta, and which were issued in consequence of a number of murders about that time committed by the natives.

Do you not know that the like orders have been after repeated by the Offices Commanding detachments at the Hawkesbury

Yes I do

Was you not Sent to the Hawkesbury for the express purpose of defending the settlers from the attacks of the Natives in consequence of the Representations from the

Settlers that they use they were in danger of being murdered by the natives.
I was

[354] Have you any knowledge of why the Navies attacked you in Plan.

Nine

Peter Farcell Corporal in the New South Wales Corps being duly Sworn Deposeth. That on the 7th day of last month about nine o'clock at night the witness was in the Barracks at the Hawkesbury when Joseph Phelps a settler came in and reported there was a Party of natives near his farm who were known to have been present at the spearing of Goodall and that said Phelps told the witness he came in for the purpose of informing their Commanding Officer there of being under some alarm for his property he requested a Party might be sent out to drive them away. The witness then waited on Sergeant Thomas Hobby the Commanding Officer who told him to take a soldier with him and the said Phelps who was also armed with a Firelock and they went to the house of one John Burne where the witness and his Party apprehended two natives the one called young Charley and the other called Cappy from the Character the witness had heard of the former he just secured him and with the other native bids them both away on our return to the Barracks the native Cappy effected his Escape in which the witness fired at him and has since been informed wounded him. Charley was brought into the Barracks and the next day the witness was ordered to hold himself in readiness escort to a party to Sydney with said Charley with a Party to Sydney by his Commanding with a letter from Lieut Hobby to his Excellency which he also dilated that his Excellency made enquiry of the witness Corporal of the Guard who he [355] Hodges there, the witness answered, that it was a native who was known to have been at the Spearing of Goodall and remitting several other barbarous depredations. Well says the Governor what am I to do with him why did not your own commanding Officer at Hawkesbury do something with him. The witness answered his Excellency he supposed it was from a wish to make a more public example of this Native. The God. replies it was not in his power to give orders for the hanging all the shooting of such Ignorant Crealurey who could not be made sensible of what they might be guilty of therefore could not be treated according to our Laws. The witness then requested to know what was to be done in that Case when the Governor told the witness that immediate relations should be made on the spot or words to that effect as that was the only mode he could think upon. That some Bystanders observed that was impossible for the natives took advantage the time and place. Then replied his Excellency as soon as they can be caught. The Governor then admonished the said native Charley as to his future Conduct and ordered said Native to be discharged and as the witness is informed ordered said Charley to be taken up to Mr Cumming at Parramatta with where he has lived. The witness returned to the Hawkesbury and made report verbally to his Commanding Officer of what had been done which he publicly also repeated among the settlers. The witness further says that the Governor ordered said native under the Care of Mark Flood to be taken up to Mr Cummins with upon he had long lived as said to be further admonished

The Court at Half past Three o'clock

adjourned until ten o'clock tomorrow

Ten o'Clock

[356] Friday 18th October 1799

The met at Ten o'clock pursuant to Adjournment

Rex v Powell &c } Prisoner Defence Continued

John Tarlington being sworn Deposeth _ That within a few days before the man upon the Race ground was killed but he cannot specify the time in Plan the witness who

resides near Toongabbie about two hours walk from the natives resort about the Hawkesbury and the Creek on Sunday morn: two male natives came to his House one of them called little Charley and the other McNamara, the witness welcomed them into his house and the freeman his servant also with his Master shook hands with said Natives who left their Spears outside the house, and asked for Bread which the witness gave them they then asked for meat which the witness said bye bye as it was then dressing. Having suspicion of more natives coming the witness went out to lock and saw four coming toward the house walking two and two abreast one the witness knew to be called Major White and one other Lule Geo: who was the youngest of the two Natives since killed said to be killed by prisoners the other two he knew also to be called Terribandy and Jemmy the latter the elder of the two natives killed as aforesaid. The witness also welcomed the said four natives into his house at which time the meat and cabbage was taking up, which the witness shared among them and gave them more than they could Eat as they left apart. Lule Charley getting up for some water stepped out of the door who the witness followed to see what he was about when he saw more natives twelve of Fifteen approaching toward his house. The witness welcomed them into the house also and they left their Spears at the door same as the others had done [357] His wife and Freeman Servant gave to them the remainder of the meal and victuals that had been left. That three of the former natives namely Geo: Jemy and Charley asked the witness for Melons who took them to the Melon bed leaving the other natives in the house with his wife and freeman and whilst said three natives were eating Melons on the bed in the garden where they grew native Jemmy went some little distance from the melon ground and shooting out something in the native dialect which the witness did not understand about Twenty or Thirty natives thereupon immediately Came out of the Bush and saluted the witness friendly. That the natives then in the house hearing the voices of the Melon bed Came out to join them and the freeman servant to the witness followed them out, when the natives dispersed themselves about the Ground some taking Corn others Melons. The witness hearing a voice saw a white man who came to him and they saluted each other the strange white man asking the witness if his name was not John Tarlington to which he replied yes and your name is Nicholas Redman if I am not mistaken, I suppose continued the witness you want to see Joseph Molony who said yes then said the witness he will be here presently soon after said Joseph Molony came up to the witness before he went to his acquaintance saying to the witness "John what brought all of these natives here". That the natives then asking for more bread and none being in the house the wife of the witness went out to get some accompanied by Charley the native in a few minutes after her leaving the house the native Terribandy threw a spear at the witness freeman Joseph Collins which wounded him so desperately that he died in a few days after they then attacked the witness and wounded him in three places with spears besides beating him with waddies. That he was fortunate [358] enough to escape and saved his life by concealing himself in a loss that the youngest of the natives called Lule Geo: said to be put to death by the prisoners threw a spear wantonly through his arm and a wound he received in his side was given him by Jemy the other native said also to be killed by the prisoners. That Nick Redman was next barbarously murdered and mangled and Joseph Molony was also severely wounded in endeavouring to escape. That the said natives then plundered the house and displacement of his stock and every kind of property he had. That when the witness thought they were gone he came from his concealment and went in quest of his wife who he found had been severely beaten by Charley.

Pty the Court } Were the two natives supposed to be killed by the prisoners concerned in the murder of N Redman

Yes they were

How long is it since the murders happened

About 18 months ago

How old do you suppose the native called Lule Geo: might then be

About the 11 or 12 years of Age but I cannot speak to any certainty they are so deceiving in their age, Jemmy appeared to be 15 or 16 years old.

Have you heard of any other Inquiries committed by said Charley upon the white people since

I heard of Goodall being wounded by said Charley

How did you hear said Charley had wounded Goodall

By Report

[359] Henry Baldwin being duly Sworn

Question by the prisoners

Relate what Inquiries you have received from the two natives said to have been killed by the Prisoners

Answer: I detected them with others stealing my Corn and I have frequently been Robbed by Men and Natives

William Bladey duly Sworn. Depoeth that about six weeks ago he was out Duck shooting and met a native Called Major White and one called the young Jemmy the latter is said to have been killed by the prisoners, and a third native name unknown they all came up to the witness and were armed with Spears. White enquired of him if he had got any Ducks who answered no and asked said White why the natives were angry with the white men who replied that they were angry with the white men and particularly with the Soldiers, when White shewed an intention of throwing a spear at the witness which he poised towards him, who thereupon stepped back and Guarded himself against a Tree, when he discovered another Party of natives making up to him the first of whom he well knew to be called Major Worgan, of whom he asked why the natives why the natives were angry with him the witness. When Worgan Replied they were not angry with him for he was a very good fellow but that the Soldiers were very bad. The foremen Party now joined the latter and they all went off a little distance from the witness seemingly to consult together after which the native Charley returned to the witness and asked him if he was going home who through fear said no, the said natives than all departed together. The witness soon after went home where he was informed by his wife the same natives seventeen in number and many of whom she knew and described to her Husband had Robbed and plundered the house of the witness of every thing and they thought proper to take away with them

Question by the Court} Do you know the reason why the natives are so very angry with the white men and the Soldiers

Ans: No _ accept by Report I have heard of a native woman and child being killed by a Soldier but do not know the reason why they were so killed.

Question proposed by Prisoners to Lieut Neil McKellar one of the members of the Court.

Pray Sir when you Commanded at the Hawkesbury what orders did you issue against the natives for committing depredations on the Settlers

To destroy them wherever they were to be met with after their being guilty of Outrages except such native Children who were domesticated among the Settlers.

Was that Order ever Countermanded since

Not during my Comand at the Hawkesbury not since to the best of my knowledge

By the Co Cap:

McArthur } By what authority did you give those Orders

By verbal orders I received from the Governor. I do not recollect receiving any in writing to that effect

By Lieut Shortland

When you was Relieved at the Hawkesbury did you leave those Orders with the Office who Relieved you

I informed him generally how I conducted the Comand

By Lt Flinders

From your never Contradicting the Orders to destroy the Natives in Form. Did you consider the Orders for the destroying them to continue in force.

Certainly _ otherwise I should have countermanded them, but it was understood the natives were not to be injured except in Retaliation for any Outrage they might have recently committed

[361] John Francis Molloy being duly Sworn _ Depose that there being no regular Surgeon at the Hawkesbury he was appointed to act. There in that capacity and that he knows in the Course of his practice for Four Years and a half Twenty six white people have been killed by the natives and thirteen wounded on the banks of the Hawkesbury and that several of them were killed and wounded when defending their property against the Attacks of the Natives.

The prisoners addressed the Court and stated that they had no other Evidence to call but as such as would tend to Corroborate what had already been produced relating to the general offensive conduct of the Natives they therefore declined troubling the Court with the examination of any further witness although there are many at hand ready to come forward.

The Court being cleared to deliberate on the Verdict and being Reopened the several Prisoners were put to the Bar and informed that the Court disapproving of the killing the Natives Find them severally Guilty sev: y

Of Killing two Natives

But reserve this Case by special Verdict until the sense of his Majesty's Ministries is known upon the subject the prisoners will therefore be enlarged producing two sureties to be bound in one hundred pounds each and themselves individually in £200 each Personally to appear to abide by such Decisions as his Majesties Ministers at home may think fit to make on the Case so Reserved as aforesaid. The Court disapproving the Conduct of Powell as a Constable do order him to be suspended.

At half past Three o'Clock the Court disposed.

[362] Captain Henry Waterhouse That the prisoners are severally Guilty of Murdering two Natives without provocation on the part of the natives. Captain Waterhouse adds that by his opinion he means not to affect their Lives because it is the first instance of such an Offence being brought before a Criminal Court and therefore the prisoners were not aware of the consequences of the Law.

Lieut John Shortland That the prisoners are severally Guilty killing two natives in a deliberate manner without any provocation on the part of the natives at the moment.

Lieut Matthew Flinders That the prisoners are severally Guilty of wilfully and Inhumanly killing two unresisting natives who were not in any Act of Hostility or depredation

Captain John McArthur

Lieut Neil McKellar

Lieut Thomas Davies

The Judge Advocate } That the prisoners are severally Guilty of Killing two Natives
 Opinion as to the Sentence -

The Judge Advocate	The Case Specially Reserved
Captain Henry Waterhouse	Corporal Punishment
Lieut John Shortland	Corporal Punishment
Captain John McArthur	The Case Specially Reserved
Lieut Matthew Flinders	Corporal Punishment
Lieut Neil McKellar	The Case Specially Reserved
Lieut Thomas Davies	The Case Specially Reserved

Note

[1] The record of this case appears in two places in the Minutes of Proceedings, in different handwriting. The version we have chosen contains the full text. The other version omits a large part of the evidence, apparently due to a copying mistake made in 1799. Apart from the omission of some of the evidence in the second version, the two are very similar, with only minor differences of expression. Occasionally we consulted both versions to help in resolving problems in the handwriting. One or two words in brackets are taken from the other text to clarify the meaning of the transcribed text.

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

SYD1804

SYDNEY GAZETTE, II/66, 3 Jun 1804/2c

On Thursday Same day a male infant fell into a well at the upper end of Chapel Row, and was some minutes after taken out lifeless.

3 Jun 1804/3a On Tuesday last a child fifteen Months old was drowned in a duck pond at Parramatta, into which it had accidentally fallen.

On Wednesday another child little better than a twelvemonth old, also fell into a well on the Rocks, but having been providentially seen to fall in, was saved, but with extreme difficulty. **3b Editorial comment on fatal accidents in wells.**

SYDNEY GAZETTE, II/70, 1 Jul 1804/3a

On Wednesday last an infant about two years old was taken to the General Hospital in the most dismal plight that can be imagined, owing to a severe scald. The little creature had to all appearances plunged headlong into a pail or kettle of boiling water, as the head, neck, and breast exhibited a shocking spectacle.

On Wednesday last **STAFFORD LETT**, a carpenter, fell from the roof of a building, and was severely bruised.

1 Jul 1804/3c EXAMINATION BEFORE THE MAGISTRATES: **STAFFORD LETT**, for purloining shingles that belonged to Government was sentenced to the gaol gang till further orders;

SYDNEY GAZETTE, II/72; 15 Jul 1804/2a

MURDER. Early on Sunday Morning last the body of **STEPHEN BOYLIN** [*alias STEPHEN DOYLEN*] [*buried as BOILING* 10 JUL] was found immersed in water in a cavity nearly at the Northern extremity of the Rocks, and when taken out a quantity of blood gushed from an aperture on the right temple, which being examined by JOHN HARRIS, Esq. Surgeon of the New South Wales Corps, was declared to have proceeded from a heavy blow with a pointed instrument. The violence of the stroke had been such as to occasion a fissure on the skull; and which Mr. HARRIS had no doubt had been the cause of the unfortunate man's death. At nine in the evening an Inquest assembled on the body before whom the testimony of a number of witnesses were taken, and at half-past nine at night the Jury found a Verdict - *Wilful Murder* against several persons taken into custody on suspicion. Two weeks before his death, the deceased arrived from Wreck Reef in the Marcia; and it was supposed, had gone in quest of an acquaintance who formerly resided near the spot where the body was found: - It was conveyed to the General Hospital, and interred on Tuesday.

15 Jul 1804/3a,b and c Account of the Trial: Accused, **TIMOTHY REARDON**, **THOMAS LYNCH** and **MARGARET MACKNIGHT**; witnesses, **DANIEL MAKAY**, Gaoler, **JOHN WINTER**, Night Watchman, **WILLIAM BLUE**, a resident, and his co-habitant, **ELIZABETH WILLIAMS**. **THOMAS JAMIESON** appeared as a character witness. All acquitted.

SYDNEY GAZETTE, II/73, 22 Jul 1804/2c & 3a

About a fortnight since a fine boy between two and three years old, strayed from his father's farm at Prospect, and was supposed to have found his way to the house of a neighbouring settler, as he had frequently gone before, in which conjecture the mother of the child remained undistressed until the following day, when being given to

understand the infant had not been seen by anyone, she rushed into the bush attended by several friends and neighbours, and about three miles distant from the house near to a pool of water, found the scattered remains of the boy, whose body had apparently become a prey to native dogs, and was more than half devoured.

SYDNEY GAZETTE, II/75, 5 Aug 1804/3c

The report that prevailed about Parramatta, and by which we were misled, stating that the unfortunate infant that strayed from Prospect had been partly devoured by native dogs, was unfounded; but we are extremely sorry to learn that the only fallability of that account consisted in the circumstances of its death: The body of the little creature having been last week found at the verge of a pond in the neighbourhood of Toongabbee, where it had doubtless perished through want and fatigue.

5 Aug 1804/3b Some days since a child was severely burnt at Parramatta, by the explosion of some gunpowder, which accidentally took fire in a loft in which the infant was diverting itself.

SYDNEY GAZETTE, II/79, 2 Sep 1804/3a

On Wednesday last a labouring man who was employed in falling on Livingston's Hill, near Parramatta, was unfortunately killed by a tree which fell in a direction probably contrary to the poor man's expectation.

SYDNEY GAZETTE, II/80, 9 Sep 1804/2b

NORFOLK ISLAND. A settler of the name of **CHARLES WOOD** was unfortunately killed by the fall of a tree upon his ground, by which he was crushed. He was a young man of extreme good character, and was universally lamented by all who knew him. Being of the Masonic Order, his funeral was one of the most respectful that had been witnessed for a length of time, being followed by a numerous procession of the fraternity.

SYDNEY GAZETTE, II/82, 23 Sep 1804/2a

Infant eaten by a pig; also 2b editorial comment. Child burnt not fatal Parramatta.

SYDNEY GAZETTE, II/85, 14 Oct 1804/4a

The following lamentable circumstance occurred last week in the district of Hawkesbury:- A fine boy, the eldest son of Mr **JOHN HOWORTH** of that place, was employed in tending his father's flock; and in the course of the unfortunate day alluded to was bit in the left arm by a large black snake. Growing sick and faint soon after, the poor little fellow went home, to chill with horror the hearts of his afflicted parents, who had to witness his almost immediate dissolution.

SYDNEY GAZETTE, II/86, 21 Oct 1804/2a

and 3b as above with editorial comments; 3b body in woods. Also: On Monday last a sawyer expired suddenly at the Hawkesbury, while employed in his profession.

SYDNEY GAZETTE, II/87, 28 Oct 1804/2c

Yesterday se'night between the hours of 11 and 12 at noon the dead body of Mrs. **MARY NICHOLLS**, wife of Mr. **ISAAC NICHOLLS**, was perceived floating on the water near *Goat Island*, and picked up by two labourers employed in grass-cutting. She was brought to the Hospital Wharf; was removed to her house, from which she had absented herself about two in the morning; and an inquest was held upon the

body, whose Verdict was, "Accidental Death, by Insanity." - She had visited the house of an intimate acquaintance the preceding evening, when an extravagant conduct left no doubt of a mental derangement. [Buried 22 Oct.]

On Sunday night last the wife [ANN] of **THOMAS BOXLEY**, of the Brickfields, was suddenly seized with violent pain in the stomach, and observing to her husband that she thought she was struck with death, requested his endeavouring to procure medical assistance; but expired in a few minutes after. [Buried 23 Oct.]

SYDNEY GAZETTE, II/93, 9 Dec 1804/2b

ACCIDENT. On Tuesday last a shocking accident happened at the yard of **ISAAC NICHOLLS** near the Hospital Wharf, by which **WILLIAM COLLINS**, a labouring servant of the Crown, was crushed to death. Mr. Nicholl's men being engaged in rolling a log of immense size and weight onto a raised sawpit, and requiring assistance, the deceased voluntarily tendered his aid. - when the piece of timber was raised about breast high, the weight became too excessive to be supported without ropes or parbuckles; these Mr. Nicholls was himself gone into the house to procure, but in the mean time the people were overpowered, and with irresistible force thrown backwards. The above unfortunate man fell at the bottom of the skids, the log resting on his head and breast, the former of which was so dreadfully fractured, as to occasion his instantaneous death. Three others were shockingly bruised; Mr Nicholl's domestic servant having been jammed across the loins and thighs between one of the ends and a stancheon; another, that had fallen beneath the log during its rapid descent, was also excessively hurt; and a third miraculously escaped a fate equally dreadful with that of the deceased; having received a severe contusion on the left eye and the whole side of his face, owing to its rolling exactly over his head, which very fortunately escaped resting, on a small billet that received his neck. [Buried 6 Dec.]

The only relative that Collins ever had in the country was an old man of the name of **CORDUROY**, an uncle, who also met a violent death, having been killed by the natives during one of their former excesses at Mr. Smyth's farm.

1805, Sydney Gazette, Sunday.

II/98:

13 Jan 1805/2a ACCIDENT. A shocking accident happened at Richmond Hill, to Mr. **FAITHFUL**, settler at that place, the consequences of which it is apprehended, will be fatal to him. In examining one of his ricks from which the end of a pitchfork projected, it unfortunately escaped his notice, and he fell upon it, the prongs entering the lower part of the belly, and passing upwards through his right side.

II/100:

27 Jan 1805/3c Last Thursday a child [**MARTHA MAY**] about four years old was so dreadfully burnt at Parramatta, in consequence of her clothes taking fire, as to occasion the death of the unhappy infant, after five hours inconceivable torture.

II/103:

17 Feb 1805/2b **SARAH BIDDLESTONE** [*buried 11 Feb as SARAH BIGGLESTONE*], a poor woman, was on Sunday last delivered of a very fine infant, but unhappily expired shortly after. It was the will of Providence, however, that the infant should survive the melancholy circumstances of its birth; and every necessary attention is paid to the little survivor, who unconscious of its own affliction, prefers a claim to public liberality and protection.

3a mention of a tombstone for the snake bite child.

III/117:

26 May 1805/3a During the night of Wednesday last a fine boy, son of **KATHARINE KENING**, on the Rocks died without previous ailment, having gone to bed apparently in good health.

III/118:

2 Jun 1805/2b & c ACCIDENTAL DEATH. On Wednesday se'night **WM STUBBS**, a settler on the river Hawkesbury, was unfortunately drowned in crossing that river in a canoe; a second person was accompanying him, and when in about the center the vehicle unexpectedly upset, and the above unfortunate man depending on his ability to swim on shore, advised his companion not to quit the boat, as it would be sure to drift on the banks. He did so, and saved his life, and Mr. Stubbs, after very nearly gaining the shore, unfortunately became entangled among a clutter of reeds, from which unable to extricate himself, it was his fate to perish in the presence of his children, who witnessed the melancholy disaster from the bank. The accident is the more afflicting, as the deceased leaves a widow and large family to deplore his untimely fate; the circumstances that led to which still heighten the calamity. The house was the day before surrounded by natives, at which appearance Mrs. Stubbs being excessively alarmed, she fled towards the river side, and would have precipitated herself into the stream, had she not been prevented by assurances from one of the natives that she or her infants should not be harmed. They afterwards gutted the house of its whole contents, and retreated with the plunder, and as soon as the deceased was made acquainted with what had happened, were closely pursued towards the Mountains, but in vain, as no single article of the property was recovered. As not a requisite to comfort remained to the family, Mrs. Stubbs set out that night for Parramatta, in order

to procure a few requisites more immediately wanting; and during her absence the unfortunate event of her husband's death took place.

In addition to the lamentable circumstances that tend to multiply embarrassment upon the above unfortunate family, we have feelingly to mention, that within the space of twelve months they have been four times bitterly distressed by hostile natives, who have at either time stripped them of domestic comforts or "swept their *fields* before them." The poor child who sadly witnessed the dying struggles of an unfortunate parent is a fine boy, nearly eight years old; and eldest of four helpless orphans in the dispensation of the Divine Will left to deplore a father's loss. For poignant afflictions, happy for the fortunate, Heaven still provides by bestowing its bounties upon some among the many, who by the most delightful application give testimony, that all Mankind are not insensible of what they owe Providence, and when distress like this presents her claim to sensibility, generously step forward to discharge the debt.

2 Jun 1805/3b On Monday night last **WM JOHNSON** [*buried as SAMUEL JOHNSON* on 28 May], a seaman belonging to the American ship Favorite, died suddenly on shore, owing to the fracture of a blood-vessel, occasioned by a cough.

2 Jun 1805/4c Yesterday at 12 o'clock an account was received of a dead body being floated up by the tide at Double Bay near Woolloomoolla; in consequence of which the Provost Marshall as Coroner was directed to investigate the causes of death. A Jury was accordingly summoned, and went by water to the spot; when, from the putrid state of the body, which was naked, it was concluded the deceased had perished accidentally, and a Verdict to that effect was accordingly returned.

III/120:

16 Jun 1805/2b & c On Tuesday a Coroner's Inquest was held on the body of **THOMAS DICK**, who had been absent from his house near the burial-ground from some part of Sunday night. The body was found by research in Cockle Bay on Tuesday, owing to a dog belonging to the deceased hovering about the spot where his unfortunate master lay, covered by the tide at low water. Besides several bruises about the body, the deceased had received a blow, apparently with an axe helve or similar implement, on the back of the head by which the skull was laid open. Several persons were examined by the Coroner, and after an investigation of many hours, the Jury returned a Verdict - Wilful Murder, against some person or persons unknown. The poor man got his livelihood by tending horned cattle for several private inhabitants, and being careful of his little earnings was conjectured to be possessed on money, which he carried about him, and which it is concluded stimulated his murderers to the abominable act. [Buried 12 June.]

16 Jun 1805/4a A person (whose name upon so serious an occasion it might at present be considered imprudent to make public) from some circumstances rather interesting, apprehended in consequence of the Murder of Thomas Dick, whose melancholy fate is made mention of in the second page of this paper, was liberated upon the condition of his re-appearing when called upon, Much to the credit of the persons who sat upon the Coroner's Inquest, they have generally and individually exerted themselves in aid of the Police, to bring to light the circumstances attending this horrible transaction, which, though they

at present appear to be enveloped in mystery, will, it is sincerely hoped, be ultimately unravelled to the confusion and ignominy of the perfidious offenders. Horror increases on the reflection, that the unhappy object of their barbarity was old, feeble, and defenceless; a useful member of society because he was industrious, harmless, and inoffensive. A hat, not supposed to belong to the deceased, was found between his residence and the place where the body lay, but no owner to it has yet been traced; he was possessed of a metal watch, which he usually wore, as it was useful to his occupation; and this was taken from him, with every other article of the most trifling value. The body was interred the following day at the expence of a few of his friends in a decent manner; and humble although his circumstances during the latter part of his life had been, yet report declares him to have been of very respectable parents, his friends residing in the City of Edinburgh, of which he was himself a native.

III/124:

14 Jul 1805/4a On Friday last the following distressing accident occurred upon the Rocks; ... a fine boy nearly four years of age, son of **ESTHER SMITH**, was between 8 and 9 in the morning left in the house with another about the same age; and playing near the fire was supposed to have been pushed into it. The screams of the infant brought a passenger to its assistance, who found the whole of its clothes consumed, and the poor child burnt in a most dreadful manner from head to foot. A Medical Gentleman from the General Hospital immediately attending, used every exertion to alleviate its anguish, which the unfortunate little sufferer endured with extraordinary patience until four yesterday morning when its agonies ceased for ever..... Many accidents of this kind have taken place, but never was a more doleful spectacle witnessed than the above; and pity it is but some mode of prevention could be generally adopted; as it is almost miraculous that events of this kind are not still more frequent than they are.

III/125:

21 Jul 1805/2a Last Wednesday a free labourer whose name was [JOHN] GREENWAY fell over Toongabbee Bridge, and was suffocated. He was said to be extremely intoxicated when the accident happened. [Buried 20 July.]

III/127:

4 Aug 1805/2a Last Friday G. BLAXCELL Esq. as Coroner, convened an inquest upon the body of Mr. **HUMPHREY EVANS** Settler of Seven Hills, who died the evening before in consequence of a tree striking him in its fall, The Jury returned a verdict of accidental death. - The deceased leaves a widow and two children to bemoan his unexpected loss, and was universally respected throughout his neighbourhood. On the Inquest it appeared, that at four in the afternoon of the preceding day he had gone out to procure paling for a sty; but not returning when expected, his wife expressed much anxiety, and at dusk dispatched a man in search of him, but he returning without any tidings of his master, his mistress directed him to accompany her, and after a long research discovered the unfortunate object of her anxiety outstretched, and across his breast a heavy oak tree which he himself had fallen. [Buried 3 Aug.]

III/130:

25 Aug 1805/1c On Friday morning **JOHN RANDALL [ALIAS SAMUEL SANDALL]**, a labouring man, was found dead of an apoplexy near Parramatta. Buried 25 Aug.]

25 Aug 1805/2a On Wednesday **SAMUEL BLAKELY** was crushed to death by the wheel of a timber carriage, which overset. The unfortunate man was employed at the carriage; and taken suddenly ill, chose to ride in. When at Goose Farm one of the wheels was stopped suddenly by a stump, and the oxen still going forward the carriage tilted, the poor fellow was thrown out, and the wheel pitched on his head and breast. He lived some minutes after, and then expired in excruciating pain. The same day an Inquest was summoned by G. BLAXCELL Esq. Coroner; and the day following the body was interred by an acquaintance in a manner that reflects credit to his friendship and liberality. The deceased was a native of *Birmingham*, where he left a small family to whom it was his intention shortly to return. His conduct was appropriate and obtained to him respect and confidence. [Buried 23 Aug.]

III/131:

1 Sep 1805/2a On Thursday evening report was made in town that a man named **WM [also JOHN] BRACKEN** lay dead at a farm near town; in consequence of which a Coroner's Inquest was summoned, and took a review of the body between 8 and 9 in the evening; - their Verdict declared the demise to have proceeded from a long bodily illness. The body was directed to be removed to the General Hospital, from whence the interment took place on Friday. The deceased was a free man, and had some time before been employed in the charge of stock; but in consequence of severe illness quitting his situation, at length fell victim to a severe dysentery.

The name of the man mentioned last week to have been found dead of an apoplexy near Parramatta was **SANDAL** not **RANDALL**, as stated in the account. He had in the forenoon gone into the brush for fuel; and in the afternoon was discovered by two persons led thither upon a similar errand, who at going observed a dog attentively stationed at a particular spot; and upon their return again observing the animal, examined and found the body.

III/133:

15 Sep 1805/2a On Friday morning last a Coroner's Inquest was held upon the body of an infant that had died during the night, supposed to be overlaid - verdict Accidental Death. [**ELIZA MITCHELL**, buried 12 Sep.]

III/134:

22 Sep 1805/3a **WILLIAM MILLER** was taken into custody on Wednesday last at Hawkesbury for the Wilful Murder of **BRIDGET HORAN**, by cleaving her head open with a hoe. Shortly after the perpetration of the barbarous act, the prisoner rendered himself to the custody of a constable, was taken before THOMAS ARNDELL, Esq. and by that Gentleman committed to the county gaol, wherein he was lodged on Friday;

.....

BENCH OF MAGISTRATES. Saturday, Sept. 21. **WILLIAM MILLER**, for the wilful murder of **BRIDGET HORAN**, was likewise brought before the Bench, and did not hesitate to declare the fact.

III/135:

29 Sep 1805/2a COURT OF CRIMINAL JURISDICTION. On Friday morning, the Court assembled, and proceeded to the trial of **WILLIAM MILLER**, labourer, for the **WILFUL MURDER** of **BRIDGET KEAN**, in the afternoon of the 18th of September, at Hawkesbury. When commanded to

plead to the indictment the prisoner answered "Not guilty of the crime wilfully;" and evidence was then called.

SIMON LUDDITT deposed, that about 2 in the afternoon of the above day he observed the prisoner running towards him in great haste; that he asked him if any thing was amiss? & was answered "*Yes: I have killed Bidly, & am going to deliver myself up;*" that the deponent offered to and did accompany him to the Green Hills, where he declared his crime to Mr. Andrew Thompson, chief constable who, joined by the residentiary Magistrate, went to the place where the deceased lay, and sought in vain for the body until the prisoner, then in charge, arrived and instantly put a period to the search by discovery with its unfortunate object, a spectacle the most shocking; that upon approaching the body, a hoe was found within a few inches of the head, fragments of which were then adhering to it, and the dreadful instrument much stained with blood, the prisoner having previously confessed that he had buried the eye of the hoe within the head. The deponent to an interrogatory further said, that he was by trade a smith, and that he had himself made the implement for the prisoner and knew it to be his property.

Other evidence corroborating the foregoing being gone through, the prisoner was called upon for whatsoever he might have to advance in his defence; but contented himself with saying, that what he had done proceeded not from malevolent pre-intention, but from an unbridled momentary rage.

The Court cleared, and after a short deliberation returned a Verdict *Guilty*. The JUDGE ADVOCATE expatiated on the heinous and barbarous nature of the offence, and enjoined the criminal to devote the little interval allowed him for repentance to the only hope that remained him - of suing for remission of his transgressions when arrived at that great Tribunal, before which, even upon his own acknowledgement, he had iniquitously sent an unfortunate fellow-creature, from her sex naturally helpless and incapable of resisting an inhuman assault for which not even the smallest provocation had appeared, with all her crimes on her head! The Sentence of Condemnation was then passed: and the prisoner returned to close confinement.

III/136:

6 Oct 1805/2a On Monday morning the sentence of the law was executed on the criminal condemned the Friday before for the detestible crime of murder, and after the body had remained the usual time suspended, it was given for dissection. The unhappy criminal had from the instant of resigning himself to justice behaved in a manner becoming his situation, and in his latter moments appeared to have sincerely benefitted from a true repentance. It would appear also, that from the fatal moment which consigned him to the terrible reproach of conscience, he entertained no other wish than to atone for his offence by yielding blood for blood: the emotion that choaked his utterance at the bar of justice; his acquiescence and passive acknowledgment of the facts upon which he was condemned, and his resignation at the approach of the awful crisis that was to usher him into eternity, were combined in testimony that life was no longer desirable, and no more to be endured when the pious duties of the Minister were ended, he ascended the vehicle placed to receive him, and without speaking, was launched off. However by an unbridled and horrible impulse this unfortunate man may have been hurried into the blackest of crimes, yet his conduct prior to the event was fair and uniformly commendable;

his age was 23 years; and by his account of himself he was a native of Derbyshire, and of honest and reputable parentage.

III/140:

3 Nov 1805/2b A fine boy seven years of age, son [**THOMAS**] of **CHAS. COOPER**, was drowned on Tuesday at Parramatta while bathing. [Buried 30 Oct.]

III/141:

10 Nov 1805/1c A fine boy 18 months old, son of **CATHARINE BRANNAN** of Parramatta, was on Thursday last so dreadfully scalded, that the life of the little unfortunate was utterly despaired of, notwithstanding every aid afforded by the resident Medical Gentleman. The accident was in consequence of a large culinary vessel of boiling water being left on the floor uncovered, into which the ill-fated infant unhappily stumbled. [Possibly **BARNABY BRANNON** buried 16 Feb 1806.]

10 Nov 1805/2a On Tuesday evening a small boat in which four men imprudently attempted to cross George's River, sunk in about the center, and two of the people named **DELL** and **RACEY** were unfortunately drowned.

III/143:

24 Nov 1805/1c Confession, later retracted, of the murder of **THOS DICK** by a **MATTHEW LEE**.

24 Nov 1805/2a On Wednesday the infant son of **CATHARINE BRANNAN** died in extreme anguish at Parramatta, owing to a severe scald of which we before unfortunately had occasion to take notice.

III/145:

8 Dec 1805/1b A fine boy between three and four years old died on Sunday night last, in consequence of his getting access to a bottle of spirits unperceived, of which he drank so great a quantity as to throw him into immediate stupor, which was succeeded by violent convulsions; and after continuing in this doleful condition upwards of two days, fell a victim to the imprudence of those who permitted the liquor to remain within his reach.

8 Dec 1895/1c On Thursday a Coroner's Inquest assembled at Hawkesbury on the body of **WILLIAM YARDLEY**, a settler down the river, whose death was occasioned by the following melancholy circumstances: A considerable time after himself and family were in bed on Wednesday night, the house took fire, and burned with such rapidity as to render their escape difficult: he succeeded nevertheless, with his wife's assistance, in snatching his children from the flames, and then unhappily returned to save some little cloathing, but the roof falling in, he perished in the attempt. The body of the deceased presented a ghastly spectacle to the jurors, whose verdict was appropriate to the event.

III/147:

22 Dec 1805/2b An infant 9 months old was on Thursday scalded in a dreadful manner in the Back Row East, owing to a large vessel of boiling water being set by its cradle, into which the little creature unhappily pitched headforemost.

1806, Sydney Gazette, Sunday

III/147:

19 Jan 1806/ ?? Discovery of the skeleton of **JAMES HUGHES** (absconded 15 Feb 1803); "Hughes was an able active man; well known in *Ireland* for his abominable depravities; and it is hoped, etc."

III/152:

2 Feb 1806/2b On the afternoon of Thursday 23d ult. the youngest son [JOHN] of **WM WALL** was taken lifeless out of a hole of water in the stream leading to the tanks between Serjt. Major's and Pitt's Row; all the resident Medical Gentlemen immediately attended, and adopted the mode prescribed by the Humane Society with an earnestness that reflects honor to their feelings, but unhappily without success. Mr M'MILLAN Surgeon of His Majesty's ship Buffalo, assisted in the general endeavour to produce resuscitation, and continued his labours until a late hour, but respiration was irrecoverably lost. [Buried 24 Jan.]

III/153:

16 Feb 1806/?? St Philips Br. Child, fa and mo June last & three orphans? 5 skeletons found at Combe Down, Bristol. From the UK papers. !!!!!!!!!!!!!!!!!!!!!

III/154:

23 Feb 1806/2b On Friday se'nnight **JOHN MILLER**, a labouring man, dropped dead suddenly on a farm at Richmond Hill.

III/156:

9 Mar 1806/2a From the observations of persons resident in the neighbourhood of the late unfortunate **W YARDLEY**, who was supposed to have perished in the flames by which his habitation was consumed, a suspicion arose that he was destroyed by human hands, and the house afterwards set on fire intentionally to conceal the wilful murder. On the first disclosures of the suspicion every probable means of determining it were promptly resorted to by Thomas Arndell, Esq. Magistrate at the Green Hills: who with the active aid and perseverance of Mr Thompson, chief constable for the district, collected such information as at the present juncture to justify the strong presumption of his inhuman murder: in which we are shocked to state his wife was implicated on strong suspicion, and after undergoing a long examination before Mr Arndell, was committed to the county gaol yesterday se'nnight A Bench of Magistrates was yesterday convened, before whom a further investigation of this lamentable affair took place; when one principal circumstance in establishing the fact upon evidence appeared, that when the mutilated remains of the deceased were found among the ruins, the head alone remained uninjured by the flames; that the appearance of blood was at that time visible about the lower part of the face, which was very reasonably attributed to a violent blow from a part of the building falling in upon him: but that in consequence of the subsequent suspicion, the interred remains were taken up and more minutely examined; when a handkerchief tied firmly about the head being unbound, discovered to the astonished spectators a large and ghastly aperture in the skull, which might indeed have been attributed to the above cause, did not the cavity appear to have been filled with cloths, and covered with a bandage, as was also the hair of the deceased, which was very much stained with blood - A man

servant to the deceased, also in custody, pleaded an *alibi*; but was, with the woman, remanded for further examination.

III/157:

16 Mar 1806/4b **MARY YARDLEY** and her servant **HENRY MURRAY** underwent another examination for the suspected murder of the late unfortunate **WILLIAM YARDLEY**.

JOHN CAMPBELL, a settler at the next farm to that of the deceased, appeared to answer to the Bench such interrogatories relative to this unfortunate transaction as should be thought necessary. His deposition comprehended a narrative of all the circumstances attending it; the deponent was the first that rendered assistance in extinguishing the fire; he had, at the hazard of his own life, attempted to get the deceased out of the house, hoping that he might yet be saved; but upon the first touch found the body almost consumed, and desisted from any further attempt; he was afterwards present at the Inquest taken on the body, and saw the handkerchief round the head, which he proposed taking off, owing to some little curiosity being excited by the appearance of blood under the nose: but was vehemently opposed by all his brother jurors, who concluded that to gratify so idle a curiosity could have no other end than to increase the horror of the spectacle. His evidence with respect to Murray principally went to prove a dislike to his master; and on being questioned as to the conduct and general deportment of Mary Yardley during the time, he said he conceived it becoming, and that she appeared sensibly affected. The Medical Gentlemen correspond in the opinion of its being a premeditated and deliberate murder; and the Magistracy take every possible pains to discover its authors. - Both prisoners were remanded.

IV/158:

23 Mar 1806/2b ACCIDENTS. A Coroner's Inquest assembled on Thursday last on the body of an infant daughter [**LAETITIA**] of **WM O'NEAL** on the Rocks, whose death was occasioned by her falling into a well the night before, behind her father's house. The child was five years old, and in the frequent habit of taking water from the well by means of several steps descending into it; from which it is supposed she slipped in by some grievous accident, and never afterwards recovered sufficient breath to give the slightest alarm. She was a remarkably fine and promising child; the admiration of the neighbours, and the delight of her inconsolable parents, whose XXXXXXXX are inconceivably heightened by the recollection, that timely consideration might have removed the danger, and saved the little cherub from an untimely destiny. [Buried 21 Mar.]

A young lad about 15 years of age, who arrived a prisoner in the Tillicherry, was last Wednesday drowned at Parramatta while bathing.

IV/159:

30 Mar 1806/2 a,b & c HAWKESBURY [Floods] Mar. 27.

Five persons are known at present to have lost their lives: one of whom was a labourer at Richmond; the others at Chalker's farm, viz. **WALTER SCOTT**, a shoemaker, who has left a large family to deplore his destiny, & **JAMES BURNS**, with two woman, one the wife of **BENJAMIN COOLEN**, the other the wife of **J COWAN**. Three of these unfortunate persons had taken shelter at Chalker's house, there hoping safety but alas! the highest & the lowest

situations seemed alike devoted, and security was nowhere to be found. **CHALKER** was in turn compelled to fly for safety; and taking to his boat with a boy five years of age, and the above three, by fatal accident the boat upset, and they instantly perished. The child was the first object of Chalker's care, as an endeavour to save either of the others must have failed, and been at the same time fatal to himself, as the distance he had to swim was little short of a mile. The child at his desire threw his arms about his neck, and instead of giving way to horror endeavoured to embarrass his preserver as little as possible and occasionally to cheer him with the assurance, that *they were almost out of danger.*

IV/160:

6 Apr 1806/2a Accounts were received on Thursday of the death of **JOHN CHAPMAN MORRIS** and **WILLIAM GREEN**, the former a settler and the latter a carpenter; who were drowned owing to a small boat upsetting in which they were rowing about the river in hopes of discerning some of their own and their neighbours lost property that might have sunk. - Several persons who were spectators of their toil anxiously enquired if they could swim, as no confidence could be placed in their wretched vehicle; - to which, in the event they owed their untimely dissolution.

6 Apr 1806/2b On Monday last an inquest was taken on the body of **ROBERT KENCH**, a marine on board His Majesty's ship Buffalo, drowned in consequence of his having accidentally fallen overboard the Tuesday night preceding; the body not floating until Sunday last, when it appeared along side, nearly perpendicularly to the spot where he went down. - Verdict *Accidental Death.*

6 Apr 1806/3a Long report of drowning **JOHN CHAPMAN MORRIS** and **WILLIAM GREEN.**

6 Apr 1806/4a & b **MARY YARDLEY**, who was confined and underwent many examinations in consequence of some inexplicable circumstances that attended the death of her late unfortunate husband, was liberated by order of the Bench, as from the strictest enquiry no proof had been adduced to constitute grounds of prosecution.

IV/161:

13 Apr 1806/2c Last Sunday se'nnight the remains of the late unfortunate **WILLIAM GREEN** and **JOHN CHAPMAN MORRIS** were interred at the Green Hills. The body of the latter was found the preceding evening near the spot he went down at, clinging to the branch that had occasioned the disaster which had terminated in his death:- the body of Green was on Sunday morning found by his brother near the same spot, whither he was lead by a strong suspicion that they might not have been separated to any very considerable distance.

IV/162:

20 Apr 1806/2c A report prevailed on Monday of the death of a man of the name of **THOMAS JONES**, who was said to have been drowned between Hawkesbury and Toongabbee. - This report was without foundation.

20 Apr 1806/4c Advert: Letters of Administration in estate of John Chapman Morris.

IV/163:

27 Apr 1806/3b Re William Green's family.

Yesterday se'nnight the body of **GEO. ROW** was found in a pond of water at the Race Course, where it was supposed to have lain eight days, which had elapsed since the departure of the deceased from one of the lower farms on the River Hawkesbury: he set out on horseback in the morning, and the same day the horse returned without him.

On Friday **W[ILLIAM] LANE**, clerk to the Deputy Commissary at Parramatta, was seized with an apoplexy, and died suddenly. [Buried 27 Apr.]

IV/164:

4 May 1806/1a & b On Friday **ANTHONY SIZE** [buried 4 May], stock keeper at Prospect, was found barbarously murdered, but by whom has not yet been ascertained. The only accounts we are yet in possession of state that two men passing near his hut with a cart, heard the groans of the unfortunate man, and proceeding towards the place from whence they issued, found him still alive, with his head leaning on a stump, and weltering in his own blood. They endeavoured to get from him some information that might lead to the detection of the horrible atrocity; but could obtain no other answer than that it was a white man. They placed him in the cart, and took him into Parramatta, where he was received into the General Hospital; but he had long since breathed his last. The body was examined by Mr Wentworth and Mr Mileham; who found the head dreadfully mangled, and the skull fractured in many places. He had to all appearance received several blows on the head with the edge of an axe, which had penetrated several inches; both the jaw bones were broke, as if with the eye of an axe, and a blow of the same kind between the eyes had occasioned the ghastly and fatal fracture. He presented one of the most distressing spectacles that can be conceived; and ly a considerable time before persons who were well acquainted with the deceased while living, could recognise the body. The poor man's hut was stripped of every article of bedding, and wearing apparel, and all the provisions he was at the time possessed of: - the body was interred yesterday; and every means will be taken to bring the perpetrators of this horrible murder to condign punishment.

What could be the inducement to the commission of the crime no person can conceive, as the unfortunate man was in possession of nought that could excite the envy of the most humbly circumstanced in life; and was remarkable at the same time for the harmlessness of his disposition and meekness of his manners. It was supposed, from the consideration of the combined circumstances, more probable that the deceased unhappily perished by the hands of natives, than that any white man however vitiated in his mind or depraved in courses, would thus wantonly embue his hands in the blood of a poor and unoffending fellow creature.

4 May 1806/3c On Friday night **ELIZABETH HAYLAND**, a poor woman who laboured under one of the severest dispensations of providence, the loss of sight, was burnt in a most dreadful manner by her clothes taking fire as she sat alone by the fire side. The unfortunate woman receives every assistance from the General Hospital that can be afforded her; but little hope can be entertained of her long surviving the dreadful accident.

4 May 1806/4a Shortly before the Estramina left the River Derwent, two men unfortunately perished by a whale boat upsetting in which they were

transporting four valuable kangaroo dogs to the opposite side, neither of which ever reached the shore.

IV/165:

11 May 1806/3b **ELIZABETH HAYLAND**, the poor blind woman who was last week shockingly burnt in consequence of her cloaths taking fire, departed this life on Sunday morning, after enduring for many hours the most excruciating torture.

The murder of **ANTHONY SIZE**, the stockman at Prospect, there is much reason to believe was effected by the natives, from the circumstances of several spears and a cap or two worn by them being found in his hut.

IV/166:

18 May 1806/2b The names of the two men who on the Estramina's arrival from Hobart Town were stated to have been lost in crossing the river in a boat, were **CHARLES STAPLES** and **JAMES FREDERICK**, both free-men from this city.

IV/173:

6 Jul 1806/3a Last week an Inquest was taken at Hawkesbury on the body of **WILLIAM JOYCE**, labourer to Mr A Thompson, of that settlement, whose fate it was to be killed by the fall of a piece of timber from a timber carriage.

IV/174:

12 Jul 1806/2b & c On Monday last **SAMUEL PERKINS** [aged 33; buried 9 Jul.], a private in the New South Wales Corps, died suddenly in one of the passage boats, in a few minutes after quitting the Parramatta wharf. The deceased had that morning complained of an ailment in the breast and on stepping into the boat threw himself upon one of the thwarts, keeping his right hand closely pressed against the part he complained of. One of the boatmen requested him to go aft; but receiving no answer, looked intently upon the poor man, whose face was covered with a violent perspiration, which alarming the boatman and passengers, they all went to his assistance, but found him breathless.

IV/175:

20 Jul 1806/3c Yesterday se'nnight a fine boy, son of **I MORGAN**, settler at Concord, was unfortunately drowned, owing to a canoe upsetting in which he was crossing an arm of the Parramatta River. A man who was in the canoe at the same time, saved his own life with difficulty. An Inquest was taken on the body the day following: whose verdict was dictated by the unfortunate event.

IV/178:

10 Aug 1806/2b MURDER.- On Sunday morning last the body of **DAVID FREIGHT** [buried 5 Aug.], servant to Mr Skinner of Pitt's Row, was found by the side of the road near Duck River Bridge in a dreadfully mangled state, with a bundle, which he carried from Sydney the evening before, cinched under his arm, and a knife laying by his side, which from its appearance had been instrumental to the murder. The unfortunate man was so totally disfigured by the wounds he received on the head and face, as not to be recognised until Monday; when from a description of the clothes the body wore, he was identified by his master.

On Tuesday evening last **WILLIAM M'CRELY**, a private in the New South Wales Corps, shot himself through the head and shortly after expired.

10 Aug 1806/2c Two men were last week apprehended at *Parramatta* on suspicion of the inhuman murder of *David Freight* on Saturday night or Sunday morning last. On Wednesday morning they underwent an Examination before the Magistrates; in the course of which nothing appeared that could pointedly tend to criminate either of the parties. - They were however remanded for another Examination.

IV/180:

24 Aug 1806/6b **FRANCIS BARK** [**@ BURKE**], late from Norfolk Island, was last week duly committed from *Parramatta* on suspicion of the wilful murder of the late unfortunate **DAVID FREIGHT**, who was some days since found barbarously murdered near Duck River Bridge.

IV/181:

31 Aug 1806/2b On Monday last at noon an Inquest was taken (under the direction of Wm GORE, Esq. Coroner), on the body of **SARAH ARMSTRONG** [buried 26 Aug.], a poor woman, who having some weeks before laboured under a severe dysentery, died that morning in the open street, on her way homeward. - Verdict, *Death by the Visitation of God*.

31 Aug 1806/3b & c SATURDAY, AUG. 30. MURDER. **FRANCIS BURKE** was indicted for the murder of **DAVID FREIGHT** on the *Parramatta* road, on the evening of the 2d of August instant, near to Duck River Bridge.

Mr Surgeon MILEHAM gave testimony, that on the 3d of the month he was called upon to examine the body of the deceased; and found two sever incisions on the head, which had to all appearance been made with an axe or similar implement; and that the jaw bone was fractured apparently by the blow of a club; which several wounds he pronounced without hesitation to have been the cause of death.

31 Aug 1806/4c On Wednesday evening **THOMAS DERRY** dropped down suddenly, while grinding a little wheat for his own use at a steel mill, and in a very short time expired. - Verdict *Death by the Visitation of God*. [Buried 30 Aug.]

IV/183:

14 Sep 1806/2b & c Last Tuesday se'nnight the following very melancholy circumstance occurred at Portland Head. - A servant of **JAMES DUNN**, being employed in falling timber close to his master's house, a tree of immense size fell upon it, and renting it asunder, killed two fine children as they lay in bed, besides maiming the mother in a most dreadful manner as she sat by the bedside. Dunn had himself providentially got out of bed an instant before, or must have inevitably shared the fate of his unfortunate children, one of whom was a girl aged ten years, and the other a boy of seven. - An Inquest was taken on the bodies, and under some peculiar circumstances **RICHARD MORGAN**, the servant, was committed to custody.

On Thursday a Bench of Magistrates was convened, before whom the above *Richard Morgan* was accused by his master, James Dunn, with having acted in all respects contrary to his orders in cutting down the tree whereby the death of his ill fated children had been occasioned. From his testimony it appeared, that in consequence of some improper conduct he had been necessitated to lodge a

complaint against his said servant, who under false pretences had quitted his employ while in arrear of work seven weeks, and was therefore ordered to return; that the evening previous to the melancholy circumstances above recited he had instructed him to cut an ealf in *that* and several other trees, and the he himself would assist in felling them; but that before day-light he had, expressly contrary to his orders, felled a tree, by the direction of which nothing less could have been imagined that the more than probable extirpation of which whole family at such a time in the morning. - The testimony of others who witnessed the distressing spectacle shortly after the event had taken place expressed a thorough disapprobation of a man, whose neglect of his master's orders, if such only it could be termed, might nevertheless be censured as proceeding from a malignity of disposition from whence the most disastrous consequences had followed. - The Bench, taking all the circumstances into consideration, thought it incumbent upon them to order a heavy corporal punishment to be inflicted on the offender; who was therefore sentenced to receive 500 lashes, one half to be inflicted at Sydney, and the remainder at Hawkesbury; and afterwards to be sent to another settlement.

IV/184:

21 Sep 1806/2c On Monday last a Coroner's Inquest assembled on board the Alexander, on the body of **JOHN LUKER**, mariner, whose death was in consequence of his having gone below and there fallen asleep during a fumigation for the purpose of destroying vermin. Another of the ship's company who had been equally incautious, was at the point of death, but providentially saved.

On Thursday morning the body of a seaman [**JOHN COLE bur 16th or JOHN STEVENSON bur 19th**] belonging to the Albion, who had been some days missing, was discovered floating alongside. - The same day an Inquest was taken on the body; whose Verdict, as in the foregoing case also, was *Accidental Death*.

IV/191:

9 Nov 1806/1c On Tuesday last the wife of **THOMAS BROWN**, in Chapel Row, fell into the fire in a hysteric fit and was burnt in a most dreadfully shocking manner. The unfortunate woman was rescued from immediate death by the return of her husband, and aid that has reserved for her an accumulation of torture which must paralise the imagination of the spectator, without affording any hope of her long surviving the disaster.

9 Nov 1806/1a During the night of yesterday se'nnight a man of the name of [**T**] **WHITTINGTON** was shot by a centinel at Parramatta, while endeavouring to cross the river. He had been hailed repeatedly, and before fired at; but persevering in his resolution to escape, met with his fate. - A Coroner's Inquest was taken on the body, whose verdict was Justifiable Homicide. [Bur 3 Nov.]

9 Nov 1806/2a The unfortunate woman [**BROWN**] mentioned in the first page to have been so severely burnt expired this morning between 12 and 1. In so doleful a case the mind finds some relief in the reflection that her tortures have not been very much protracted; and no less so in the hope that her state of corporeal insensibility was such as in a great measure to favour the idea, that her sufferings were much less acute than might have been conjectured.

IV/193:

23 Nov 1806/2b DEATHS. On Thursday night **CHARLOTTE WALKER** [Bur 24 Nov.] died in the Brickfields of an apoplexy: but in consequence of unpleasant rumours being circulated relative to the circumstances of her death, her husband was apprehended and kept in custody until yesterday liberated by the verdict of a Coroner's Inquest.

Between 5 and 6 yesterday evening two fine boys, belonging to **THOMAS EVESTAFF** in *Pitt's Row*, were taken lifeless out of a neighbouring well, the length of time they had remained in which was indeterminate. The ill-fated infants, the eldest of whom [**JOHN**] was above 3 years, & the youngest [**WILLIAM**] about two years old, had found their way unperceived into the yard in which the well was, & the cover being unhinged and decayed, yielding to the slightest pressure, unhappily presented to the unconscious babes a fatal and untimely vortex. The sensation produced by the melancholy event was recorded in the countenances of all that visited the scene of anguish, with the kind balsam of condolence to render less insupportable the distresses of the parents on so severe a trial.

IV/194:

30 Nov 1806/2a **EDWARD MUNDAY**, [bur 30 Nov] a private in the New South Wales Corps, was indicted for killing **T WHITTINGTON**, while the prisoner was sentinel on the Terrace at Parramatta Barracks, on the night of November 1, when upon the evidence it appeared that what he did was in the execution of his duty, and he was acquitted accordingly.

JOHN GRIFFITHS, watchman at the stock farm of **JOHN M'ARTHUR**, Esq. was tried for killing **SIMEON DONELLY**, also a watchman (the particulars of which were before detailed) and acquitted. [192 1c & 2a]

IV/195:

7 Dec 1806/2a On Friday last a fine boy, 6 years of age, was unfortunately found drowned in the Hawkesbury River, opposite to the house of David Brown, settler on the banks. He was the son of **J M'DONALD**, and was left in a decked boat moored off, while the boatmen went on shore; but returning shortly after, found the child's cloaths upon the deck, and himself unfortunately missing.

Last Monday a fine infant two years old, belonging to **THOMAS HUSSEY**, Settler at the Branch, unfortunately fell into a tub of boiling wort, and was scalded to death.

On Friday a blacksmith named **WALSALL** [Bur as **WARSELL** @ 35 on 7 Dec.] was seized with an apoplexy at Parramatta, and died suddenly.

The European belonging to the Atlantic whose destiny it was to fall by lightning some days since, was by birth an Englishman; his name was **GEORGE MITCHELL**, and was of parents highly reputable in London.

IV/198:

28 Dec 1806/2b On Sunday last **WILLIAM DONOVAN** [also buried as **DENNIS DONNOVAN**, convict, on 23 Dec.] was unfortunately drowned in the Cove, in diving there after an iron pot lost from one of the vessels, for which piece of service he was to have received 5 s. The body was got up the same day, and an inquest taken, whose verdict was accidental death.

SYD1807

SYDNEY GAZETTE, IV/201, 18 Jan 1807/1b

On Sunday last the body of an unfortunate woman that had been barbarously murdered was found in a ditch at Parramatta, with a sheet nearly covering her. From the appearance of the body it was evident that the perpetrators had endeavoured to conceal their guilt by attempting to consume the unhappy object of their depravity; but failing therein, were afterwards instigated by an avenging spirit thus to dispose of the corps that the foul crime of murder might not go unpunished. Upon surgical inspection several wounds were discovered on the head; while the attempt to consume the body had so totally disfigured it that it could not be recognized for many hours; till at length it proved to be that of **MARY SMITH** a decent inoffensive woman who had followed the avocation of an instructress on the Brickfield Hill, and had been induced the day before to visit Parramatta in the hope of recovering a property she had been robbed of some months before, without recourse to legal measures. - **JOHN KENNY** was the same day apprehended on suspicion; and being fully committed by the Coroner's Inquest, was received in the county gaol on Tuesday.

18 Jan 1807/2a Court of Criminal Conviction: Notice of trial: **JOHN KENNY**.

SYDNEY GAZETTE, IV/202, 25 Jan 1807/ 2a,b & c.

Long account of the trial; Pursuant to his sentence the culprit was executed yesterday; and the body having remained the usual time suspended, was sent to Parramatta to be hung in chains.

SYDNEY GAZETTE, IV/210, 21 Mar 1807/1c

On Tuesday an infant daughter of **SARAH THOMAS** unfortunately fell into the water at Lane Cove, and was drowned. - The day after an Inquest was taken on the body, whose verdict was *Accidental Death*.

On Friday the infant son of Mr. **SHELLY** was scalded in so dreadful a manner as to endanger the life of the unfortunate little creature, now about three years old.

SYDNEY GAZETTE, IV/212, 5 Apr 1807/2a

On Sunday last an affray took place at Prospect, in which **JAMES CORE** received a fatal blow on the head with a stick. Several persons were apprehended in consequence, and committed to the gaol at Parramatta.

SYDNEY GAZETTE, IV/214, 19 Apr 1807/2b

On Monday Mr. **BROWN**, a midshipman on board the *Cornwallis*, shot himself through the head in a fit of insanity, and immediately expired. An inquest was the same day held on the body, whose verdict was descriptive of the unhappy state of mind under which the young Gentleman unfortunately laboured.

On Thursday a labouring man who was employed in a brick ground at the Green Hills, Hawkesbury, was smothered by a quantity of earth unfortunately falling on him; and a servant of Mr. PALMER'S was yesterday drowned in the South Creek.

SYDNEY GAZETTE, V/215, 7 Jun 1807/2a, b & c

Long account trial for murder of James Core.

SYDNEY GAZETTE, V/216, 14 Jun 1807/1c

On the night of Tuesday last **GEORGE LEGG** was unfortunately drowned off Howe's Point near the heads, in consequence of his boat upsetting, in which were several natives, who the next morning came in with the tidings of the melancholy event. From their account it appeared, that the weather being very boisterous, the boat's sail jibed unexpectedly, and that the unfortunate man wearing two great coats at the time, was thereby prevented from saving himself by swimming.

On Wednesday evening the murder of a male infant was discovered in the following manner:- A young man in charge of a gentleman's house had the day before perceived what he considered to be the shell of an egg floating in the privy; and the day following his attention was more minutely attracted by a second appearance of the same kind, which induced him from mere motives of curiosity to inspect more closely into the reality of what he saw; when dreadful to relate, these appearances proved to be the little naked elbows of an unfortunate innocent, whom he naturally conjectured to have been devoted at the very moment of its birth to a short existence, by one whose duty it was to have cherished and preserved it. The little body being taken from the loathsome place of its concealment, an Inquest was summoned on Thursday morning, whose verdict was wilful murder against the mother of the babe. At this very period a young woman whose name is **SERMON**, was at the house on a friendly visit, and in a dangerous state of illness. On her suspicion fell. - Several Gentlemen of the Faculty inspected the body; and declared that the child, which had every appearance of having been a fine infant, was born alive. The suspected woman was then visited by one of the Gentlemen, in whose presence she acknowledged herself the wretched parent, and made a confession of her guilt: but such was her dangerous state of illness as to prevent her immediate removal to prison; wherefore it was determined that she should remain where she was until sufficiently recovered to undergo the necessary forms essential to the ones of justice.

From her incautious conduct it would scarcely be thought she had any wish to preserve her own life; the morning after her delivery, which had taken place between 7 and 8 in the evening, she rose at an early hour, and went bare headed and thinly clothed to a surgeon, from whom she received some medicine, saying she laboured under a severe dysentery. - From this she contracted a cold, and was confined to a bed of anguish, in which the excruciating pang of bodily affliction must have been slight when compared with the dreadful sensation which her mind endured from conscious guilt of the most abominable of crimes, the dread of detection, and the fear not only of the punishment, but of the infamy and detestation that must forever accompany her memory. In this state she continued until two o'clock yesterday morning; when she expired.

The remains of this depraved woman who confessed herself the murderess of a poor infant, were interred last night at the place of execution, amid the shouts and revilings of a number of spectators who expressed a regret that she had not survived to atone for her monstrous offence by a public execution. - From the first institution of the Colony to the present moment such a crime has never before disgraced humanity; and may so fatal and horrible a resolution never more be inspired in the female bosom.

SYDNEY GAZETTE, V/217, 21 Jun 1807/2b

On Sunday last a human hand was found in the belly of a shark which was taken near the place at which the late unfortunate **GEORGE LEGG** was drowned a few days before.

SYDNEY GAZETTE, V/219, 5 Jul 1807/2b

Last Friday se'nnight a labouring man [**HENRY ABBOTT**] was killed at Hawkesbury by discharging a damaged musket; the breech of which flew, and dreadfully shattered his head.

SYDNEY GAZETTE, V/220, 12 Jul 1807/2b

The name of the man who was unhappily killed some days since at Hawkesbury by the breech of a musket which he himself discharged, was **HENRY ABBOTT**, and was servant to Mr. Crostley at Richmond. The accident was no less shocking than remarkable. He took up the piece to fire at a crow, and was seen to fall as soon as the explosion was made. A messenger was dispatched to the Green Hills for surgical assistance; and Mr. Surgeon Mason arrived with wonderful dispatch. The head of the unfortunate man was dreadfully shattered; the breech penetrated the *pericraneum* and lodged in the brain; where it lay buried for upwards of two hours, during which the poor man was never heard to utter a groan: but as soon as it was extracted he spoke collectedly, and enquired *whether there was any hope?* but his case admitted none. He spoke several times after with much precision; then rapidly recited the greater part of the multiplication table; and at the expiration of four hours expired.

SYDNEY GAZETTE, V/221, 19 July 1807/2b

The natives report their having seen the body of a man amongst the shoals in Botany Bay, about 12 feet under water, supposed to be the body of the late **GEORGE LEGG**, who was unfortunately drowned near that place a few weeks since.

SYDNEY GAZETTE, V/222, 26 July 1807/2b

On Thursday last such of the remains of the late **GEORGE LEGG** as could be found, were interred at the place of burial, his widow having employed persons to search for the body at and about the place where the deceased was unfortunately drowned.

SYDNEY GAZETTE, V/223, 2 Aug 1807/2b

On Friday morning died of the adder poison, **FRANCIS M'NAMARA**, Servant to Mr. **SPARROW** on the Rocks; the circumstances attending which are very remarkable. The poor man went into the woods with a boy on Wednesday to procure a load of wood; and while cutting a tree the boy observed a small snake between the feet of the deceased, who did not appear alarmed at the circumstance, and was soon after seized with a dimness of sight and swimming in the head, which however, soon went off again. Upon his return home he complained not; but supped and went to bed, saying he was much fatigued. Early on Thursday morning, his master being alarmed by the boy coming out of the room in which the deceased slept, went thither, and beheld him in a state of speechless stupor, beating alternately his head and right heel, upon which was distinctly visible the puncture occasioned by the fang teeth, upon opening which nothing particular was observable. He remained until nearly daybreak on Friday morning, when his speech indistinctly returned to him, and shortly afterwards he expired.

SYDNEY GAZETTE, V/224, 9 Aug 1807/2a

The unfortunate man who last week died from the bite of a snake was buried by his master in a style of decency which argued the worth of the deceased, of whose fidelity too much cannot be said. The reptile that had inflicted the mortal wound had been killed on the spot, and was afterwards brought in by the boy. It was a white viper, not exceeding 18 inches in length; one of the fangs appeared relaxed, the other firm, from

which it is supposed, as only a single puncture had appeared in the heel of the deceased, that the latter still retained its undiminished deadly charge.

2a **WILLIAM PARKHURST**, unreadable.

SYD1808

SYDNEY GAZETTE, VI/229, 22 May 1808/1b

On Tuesday morning about 8 o'clock, an infant daughter of **THOMAS MORLEY [OR MOTLEY]**, who keeps the sign of the Cornwallis frigate, in Pitt's Row, was unhappily burnt with such extreme severity, as to occasion the death of the little sufferer after enduring the most excruciating agony until Friday morning between 12 and 1, when it was the pleasure of the Divine Will to put a period to its worldly torments. The unfortunate child, which was nearly 6 years old, met with the dreadful accident at a neighbouring house, by falling from a chair into the kitchen fire, when alone; by which means her cloaths taking fire, she ran into the front part of the house in a perfect blaze. The mistress of the house ran immediately to her assistance, and was herself much burnt in endeavouring the extinguish the flames; which had however already so shockingly scorched the infant, as to render ineffectual every attention that parental fondness, assisted by every exertion of skill an humanity, could possibly afford. The little sufferer in its last hours talked with much composure, and intermingled its little collected observations a strength of infant reasoning which could not fail of attracting admiration, and adding, if possible, to the [emotion]? endured by every one who witnessed the distressing spectacle.

SYDNEY GAZETTE, VI/230, 29 May 1808/1c

JOHN BROWN: charges of Wilful Murder against Privates **JOHN CURRY, ROBERT GRINDLESTON, JAMES DANIELS,** also **RICHARD SCANDLING,** a prisoner.

SYDNEY GAZETTE, VI/231, 5 June 1808

as above

SYDNEY GAZETTE, VI/233, 19 June 1808/2b

On Tuesday se'nnight an infant of **JOHN HOPKINS,** a labouring man on the Rocks, was scalded in a shocking manner, owing to the skirts of its frock getting entangled with the spout of a tea kettle then on the fire with boiling water; - in consequence of which melancholy accident the little sufferer departed this life on the morning of Friday.

SYDNEY GAZETTE, VI/235, 3 July 1808/1c

A few days ago a fine boy, about 12 years of age, hung himself on a farm at Hawkesbury, and was found lifeless, though his feet were on the ground, his knees half bent. He had fastened the rope to the rafter of an outhouse, placed a looking glass before him, and was supposed to have thrown himself from a height of between two and three feet, and that he could not recover from the violence of the fall.

VI/240:

7 Aug 1808/2b On Sunday last the Brig Fox was got afloat, after remaining under water since the night of Wednesday the 20th ult. when she was discovered to be on fire between decks, a little after 7 in the evening; but being scuttled, she filled and went down before ten. In the confusion that prevailed a young man was drowned, whose body was found floating on Friday last much decayed. The deceased [proved to be **GEORGE WILLIAM SNAPE,** a deserving young man, aged 24 years, who was in Mr. Campbell's employ. An Inquest was the same day held on the body of the

unfortunate youth; whose verdict was descriptive of the melancholy accident; and in the evening the interment took place, which was respectably attended.

SYDNEY GAZETTE, VI/243, 28 Aug 1808/2a

On Tuesday night **JOHN BRAZIL**, a free servant of Mr Thompson, at Hawkesbury, was found murdered by the contents of a musket being lodged in his belly. The circumstances attending this murder are of a singular nature. - It was suspected that the deceased had gone in company with some other person or persons to rob the pig sty of **ROBERT RICHIE**, on the *South Creek*; and being separated from his accomplices was by them mistaken for one of the servants of the house, and shot dead upon the spot. The day following a representation was made to **ARCHIBALD BELL**, Esq. who by virtue of a special appointment performed the duty of Coroner, and took an Inquest on the body of the deceased. In the course of the enquiry it was represented to the jury, that the deceased lodged in a hut of Mr. **A THOMPSON**'s, in company with two other men, *Robert Rope and Mark Eivers*, who were brought forward; when it appeared that Rope was in the continual habit of carrying a musket, for the protection of his master's property; upon examining which it appeared to have been recently discharged. On the investigation some circumstances appeared, which induced the jury to commit both the above persons for the murder.

On Thursday the 18th instant an inquest was held on the body of **ELIZABETH MURRAY** who was servant to **HENRY BALDWIN** and was taken dead out of the River Hawkesbury, into which she had accidentally fallen. - Verdict - *Accidental Death*.

SYDNEY GAZETTE, VI/247, 25 Sep 1808/2a

On Friday se'night a fine boy about twelve years of age was taken lifeless out of the Hawkesbury river, near to Cornwallis Place. His name was *John Bowman*, an orphan, and was in the service of **MR WILLIAM BAKER** when the melancholy event took place.

SYDNEY GAZETTE, VI/248, 2 Oct 1808/2b

Trial of **ROBERT ROPE AND MARC EIVERS** for Wilful Murder of **JOHN BRAZELL**. Both acquitted.

2c The last trial was that of **ELIZABETH CONNOR** for the suspected murder of her own child; but it appearing from satisfactory testimony that the prisoner was not guilty of the dreadful crime laid to her charge, she was acquitted.

SYDNEY GAZETTE, VI/251, 23 Oct 1808/2a

On Monday afternoon **JOHN HOWARTH**, Settler on the Banks of the Hawkesbury, was unfortunately drowned in crossing the River with a bullock in his boat; which sunk in an instant by the creature's treading on the stern. We do not hear that the body has yet been found. The fatality that has attended the family of the deceased for some time past affords a matter of serious contemplation. On the 8th of October, 1804, his eldest son, a fine boy 11 years old, lost his life from the bite of a snake, while tending a small stock upon his father's farm; the poor little fellow had thrust his arm into the aperture of a hollow tree; and immediately complained of the bite, which he survived but a few hours. - In the month of October, 1806, the wife of Howarth, and mother of the ill-fated child, suddenly disappeared by night, and was never heard of more. She was conjectured to have perished in the River somewhere about the spot that has now proved fatal to her husband. - And what renders the

fatality the more remarkable is, that the unfortunate child fell a victim to accident in the month of *October*, 1804; the mother, to accident in *October*, 1806; and the father in *October*, 1808; leaving an interval of two years between the loss of each.

SYDNEY GAZETTE, VI/252, 30 Oct 1808/2b

On Tuesday last the body of the late **JOHN HOWARTH** was picked up in the Hawkesbury River, about 100 yards from the place at which he was unfortunately drowned; and the same day was interred.

On Wednesday morning, between the hours of 10 and 11, **ELIZABETH FORD**, formerly resident with **JOHN CHAPMAN MORRIS**, who was drowned in the River Hawkesbury, died suddenly in the house of **JEAN WILD**, in Back Row past. The same afternoon a Coroner's Inquest assembled; by the evidence given before whom it appeared that the deceased had for some time past laboured under a depression of spirits, by which her health as well as her mental faculties were much impaired. - On the morning of her death she appeared in tolerable spirits; and conversed with Mrs. Wild and other persons immediately prior to her dissolution, with unusual levity; when falling backwards in her chair, she expired without a struggle. - Verdict - *Death by Visitation of God*. The deceased was in her 32d year, and had been 18 years in this Colony.

SYDNEY GAZETTE, VI/254, 13 Nov 1808/1c

Yesterday afternoon **GEORGE STACY**, a servant of JOHN PALMER, Esq. fell out of a cart near the Tanks, and one of the wheels passing over his head, he remained some time to all appearances lifeless. - Surgical assistance being immediately procured, his state proves happily to be less dangerous than could possibly have been expected.

SYDNEY GAZETTE, VI/255, 20 Nov 1808/2a

WILLIAM NASH, a fine boy about 13 years of age, died a few days since at the Nepean in consequence of the bite of a snake, which was almost immediately succeeded by a lethargy, in which state he lived several hours.

Last week, a son of **MR LAWRENCE MAY**, at Hawkesbury, unfortunately fell into a saw-pit, which had been filled by the rains, and perished unperceived.

SYD1809

SYDNEY GAZETTE, VI/261, 1 Jan 1809/1b

On Friday the 23d ult. a fine boy unfortunately fell into a well at Hawkesbury and was got out with some remains of life, but expired shortly after.

SYDNEY GAZETTE, VI/262, 8 Jan 1809/1c

On Sunday last **ANN BUTTON** fell out of a boat in Cockle Bay, and was unfortunately drowned. - The body was found the same afternoon; and on Monday an Inquest was taken. - Verdict Accidental Death.

SYDNEY GAZETTE, VII/276, 16 Apr 1809/2a

On Wednesday last **Mrs. MASON**, wife of **Mr. WILLIAM MASON**, of the Green Hills, was unfortunately thrown from a chaise near MacKellar's Creek, and expired in about half an hour. - The deceased was that morning desirous of taking an excursion to Richmond for the benefit of her health; and requested **Mr KABLE** to accompany her thither in the chaise with her eldest daughter; to which he consented with some reluctance, as he was desirous of returning that day to Sydney. - Taking the road by the river-side, one of the wheels struck violently against a stump that was concealed by grass, and Mr. Kable unfortunately fell out. The deceased and her daughter both screamed at the instant, and the horse taking fright, they were likewise thrown from the vehicle, which Mr. Kable had endeavoured to overtake as soon as he sufficiently recovered; the daughter was severely bruised; but was able to accompany Mr. Kable to render assistance to her mother; who complained that one of the wheels had passed over her back, and declared herself a dying woman. - Mr. Surgeon **MILEHAM** was sent for, with every possible expedition, but Mrs. Mason had expired in her daughter's arms before that Gentleman could reach the spot. Mr. and Mrs. **BADGERY** and Mr. **FAITHFUL** arrived at the place about ten minutes after the melancholy accident, and were very attentive to the offices of humanity. A Coroner's Inquest was taken at 5 o'clock the same evening, whose verdict was *Accidental Death*; after which the body was taken home, and interred on Thursday evening. - The funeral was numerously and respectably attended, many persons travelling ten to twenty miles to pay this last tribute of respect to a departed much lamented friend, whose kindness of disposition and obliging manners have ever been the admiration of all who were acquainted with her; as a mother and a wife her conduct was exemplary; and her loss will for ever be sincerely regretted by a disconsolate husband and a family of six children.

SYDNEY GAZETTE, VII/277, 23 Apr 1809/1c

On board the *Unity*, a Coroner's Inquest assembled on Friday, on the body of **Mr. CHARLES HOOPER**, the chief officer of that vessel, who was found dead in the morning of that day, in his own birth, to which he had the previous evening retired in apparent good health. - The Verdict of the Inquest was Death by the visitation of God; - and yesterday his body was interred on shore; - the event much regretted by all persons who were acquainted with the deceased, who was about 30 years of age, and particularly lamented by Captain **COOPER**, by whom he was much esteemed.

SYDNEY GAZETTE, VII/282, 28 May 1809/1c

On Wednesday morning the lifeless body of *John Driver*, who had been many years a stockman in the neighbourhood of Sydney, was found hanging on a tree upon Mr.

MOORE's farm, on the Parramatta road; and as soon as the melancholy circumstances was reported an Inquest was by Precept from HIS HONOR THE LIEUTENANT GOVERNOR, convened, to sit upon the body. The first idea entertained was, that the deceased had been robbed, and afterwards murdered by the perpetrators, in order if possible to conceal one crime by the commission of a greater; and this conception was considerably strengthened by the circumstance of both the dead man's hands being to all appearance bound behind with a band of stringy bark, but on closer inspection, only one of the hands was found bound, and the other insinuated within an open noose from which it might easily have been withdrawn. This and other concurrent circumstances led to a conjecture that the deceased had put a period to his own existence, and upon the examination taken by the Coroner, this supposition was confirmed. The body was suspended from a bough, with a thick rope, and without any exterior marks of violence or any symptom of resistance, which could not possibly have been the case had he perished by the hands of others; neither could he have called for assistance unheeded, as the fatal tree stood within 100 yards of an inhabited house. All the circumstances being duly weighed, the Jury were unanimously of opinion, that the unhappy man had deliberately put an end to his own life, and therefore returned a Verdict - *Suicide!* The deceased was about *seventy* years of age, and by a penurious mode of living was supposed to have saved a little money, which he never carried about with him: but the causes which had so powerfully operated on his mind as to provoke the horrible determination no one can form the least conception of. The body was interred on Friday near the place where the act was committed, and a stake driven through it.

SYDNEY GAZETTE, VII/292, 6 Aug 1809/2b

FLOOD AT HAWKESBURY. At the farm of **Mr. S TERRY** nine persons, viz. **COOLY**, of Toongabbie; **MUNSEY**, of Hawkesbury; **HODGES**, servant to a gentleman of Sydney; **MAHOMED** an Asiatic, his wife and two children, and two black men - had endeavoured to secure themselves on top of the barn, which fell in about 5 on the Monday evening; but as there was no other resource left, they continued upon the roof for about two hours after, when the wife of Mahomed fell through the thatch with one of her children in her arms, and was no more seen. - Cooley endeavouring to save the other child, which clung to Mahomed, the father, slipped off with the infant, and in like manner disappeared; as did Munsey also. Mahomed and the two black men saved themselves in trees, and Hodges swimming about in the dark at length got into the stream, by which he was carried between 5 and 6 miles before any impediment opposed his rapid course; when happily he found safety among the branches of a tree; from whence he was at length taken by a boat, and conveyed to a place of safety

SYDNEY GAZETTE, VII/297, 10 Sep 1809/1c

On Monday last died an infant son [James, bur 5 Sep] of **THOMAS BREACH**, of the Brickfields, at the age of three years and two months, in consequence of a violent burn received by its clothes taking fire 22 days before, while playing near the stump of a tree that had been set fire to. The agony to which the little sufferer was unhappily a prey for so great a length of time can scarcely be conceived; nor can we give a more interesting picture of its tortures, than by stating they were such as to render its afflicted parents anxious for its dissolution, as no other hope remained of a termination to its most dreadful sufferings.

Editorial comment.

SYDNEY GAZETTE, VII/300, 1 Oct 1809/2a

Last week a fine boy fell off a plank in the Hawkesbury River, and was unfortunately drowned. [Possibly George Dowling?]

SYDNEY GAZETTE, VII/301, 8 Oct 1809/2b

On Wednesday last a Coroner's Inquest sat on the body of **WILLIAM STRANGE**, [35] a seaman belonging to the *Perseverance*, who suddenly dropped dead at a house on the Rocks. - Verdict, *Died by the Visitation of GOD*.

SYDNEY GAZETTE, VII/302, 15 Oct 1809/2b

On the evening of Thursday last **GEORGE PADHILL**, a settler at Kissing Point, put an end to his own existence by strangling himself with a handkerchief, one end of which he tied fast about his neck, and the other to a branch of a tree not of sufficient height to prevent his knees from almost touching the ground. - a Coroner's Inquest, summoned from Parramatta, sat on the body on Friday, who returned a Verdict - *Suicide!* - The deceased was an old man, supposed to be in tolerable circumstances; but it is conjectured to have been tempted to commit the rash act by a temporary embarrassment of a pecuniary nature.

SYDNEY GAZETTE, VII/303, 22 Oct 1809/2a

Last week a fine boy about 11 years old, the son of **WILLIAM CHESHIRE**, settler at Nepean, was unfortunately bit by a snake which had entwined round his ankle, and survived the melancholy accident but a few hours.

SYDNEY GAZETTE, VII/304, 29 Oct 1809/2a

On Monday night a Portuguese mulatto, who was servant to **Captain Dundas**, put a period to his existence with a pistol, the contents of which were lodged in the stomach, after which he lived about half an hour. The day following an Inquest was taken on the body; who returned a Verdict *Lunacy*.

SYDNEY GAZETTE, VII/305, 5 Nov 1809/2b

DIED. On Sunday night last, **Mrs. Ann KEARNS**, of Pitt's Row, after a long and painful illness. The day following a Coroner's Inquest was convened, whose Verdict was - *Death by the Visitation of God*.

Yesterday a Coroner's Inquest sat on the body of **THOMAS JONES**, [bur 10 Nov, a Prisoner] a labouring servant of the Crown, whose body was found drowned at Lane Cove on Thursday last. Verdict - ACCIDENTAL DEATH.

SYSNEY GAZETTE, VII/313, 31 Dec 1809/2c

On Thursday last, between 11 and 12 at noon, **JOHN GRAHAM**, [bur 30 Dec] formerly of Parramatta, fell into a fainting fit at a house in Chapel Row, and expired in a few minutes. A Coroner's Inquest was the same day convened, whose Verdict was - *Death by the Visitation of GOD*.

SYD1811

SYDNEY GAZETTE, IX/366, 5 Jan 1811/3b

Patrick Hursley and Patrick Hand were this evening lodged in the county goal at Sydney, charged with the wilful murder of **ISAAC CORNWALL** [bur 3 Jan 1811 @ 37], at Richmond Hill, on the night of Wednesday last - the day following which an Inquest was held on the body, on whose verdict the above persons were committed.

SYDNEY GAZETTE, IX/367, 12 Jan 1811/2a

On Wednesday last **PHILIP SHANNAGHAN** [bur as Shanagan, a prisoner, @ 34], a labourer long in the Employ of the late ANDREW THOMPSON, Esq. died suddenly at Hawkesbury, in a state of extreme intoxication, to which his death was attributed.

SYDNEY GAZETTE, IX/372, 16 Feb 1811/2a

COURT OF CRIMINAL JURISDICTION. Wednesday. *Patrick Hurley and Patrick Hurn [Hand]* were indicted for the wilful murder of **ISAAC CORNWALL**, on the night of the 1st of January last, at Richmond Hill, and both were acquitted. The circumstances of the case, as appeared from the evidence, were, that the prisoner *Hurley* was in company with the deceased and several others at the house of the prisoner *Hand*, from dusk in the evening till about 9 at night. That the company were for the most part much intoxicated; that the deceased had in the course of the evening applied to purchase a pint of spirits from *Hurley*, who had declined letting him have it; that the deceased left *Hand's* house, and in his passage towards a neighbouring cottage met *Hurley* who had left before, and tried to quarrel with him; which the latter endeavoured to shun; but that afterwards all the parties re-assembled at the house of *Hand*, upon whom and *Hurley* a dreadful attack was made by the deceased and one *Thomas Ward*, who had joined him. That both the prisoners sought shelter from their violence in the house of the prisoner *Hand*, they having received many severe wounds from their assailants, who were then shut out; that the deceased armed himself with an axe, and endeavoured to make his way through the door, which was bolted within, but which he broke in several places, at the same time uttering the most dreadful threats and imprecations: That a musket or pistol was fired by some person of which no account could be given, and that immediately after the prisoner *Hurley* levelled a gun through an aperture in the outer door which deceased was endeavouring to force open, and shot him dead upon the spot; at which time *Hand* was not in the house at all. It also appeared in evidence that no malice whatever had subsisted between the deceased and the prisoners, who were peaceable men at all times, whereas the deceased was when intoxicated a very violent and dangerous character, and that the act of shooting was in self-defence.

SYDNEY GAZETTE, IX/376, 16 Mar 1811/2c

An extraordinary development of a murder six weeks since committed on *Thomas Conroy*, a stockman to D'ARCY WENTWORTH, Esq. is, fortunately for the ends of Justice and Humanity, now more than likely to take place. *Martin Egan and Thomas Clough*, both fellow servants to the deceased, are in custody on the charge; and as far as the enquiry at present extends, the suspected crime appears to have been

accompanied with circumstances of extreme hardihood. In the course of the ensuing week it is expected a public investigation of the facts will take place, as the whole of the evidence will then be concentrated; and then, upon certain grounds of authority the lamentable particulars will be laid before the Public.

SYDNEY GAZETTE, IX/377, 23 Mar 1811/2a

On Wednesday *Thomas Clough and Martin Evans [Egan]* underwent an examination before D'ARCY WENTWORTH, Esq. Superintendent of Police, charged on suspicion with the wilful murder of **THOMAS CONROY**. The circumstances of the case were, that the deceased and the prisoners were stockmen on a farm of Mr. Wentworth's; and was suddenly missed by the hut-keeper, who upon enquiry was informed by the prisoners that he had gone to Sydney for the purpose of attempting to effect his escape from the Colony; that the same night one of them was particularly attentive to the burning of a fire near the hut, for which he gave no reasonable account than that he was desirous of burning down a tree that stood there; that some days after the hut-keeper found the shoes, a knife, and some other things that had belonged to the deceased, at the place where the fire had been; that they both left the farm, and one afterwards called for the cloaths left by the deceased; and that a suspicion being excited in the hut-keeper's mind by the various observations he had made, he searched about, and found in a hole under a pile of stones many burnt fragments of bone, which prove to have been those of a human being. The guilt or innocence of the prisoners will therefore become a subject of investigation before a Criminal Court.

On Wednesday last a Coroner's Inquest assembled at a house in Hunter Street, on the body of **ELIZABETH MASSEY**, [ex Mary Ann 1797 @ 50] who by the report of a Surgeon had died in consequence of a stab; and after a strict investigation of several hours, the following special Verdict was returned; "That Elizabeth Massey came to her death by means of a mortal wound inflicted by **JOHN JONES**, in a quarrel that took place between them on Sunday the 19th Instant; but whether feloniously or intentionally, from the evidence adduced they are unable to say." John Jones was in consequence fully committed to take his trial before a Court of Criminal Jurisdiction.

SYDNEY GAZETTE, IX/378, 30 Mar 1811/3a

On Saturday evening the 23d ultimo, the water was much discoloured, and began to rise; as it continued to do the whole of that and the following day, when it was supposed to have attained the height of the flood **at the beginning of 1801, which proved fatal to Mr Stogdell.** [Possibly John Stockdale bur 5 Mar?]

Court of Criminal Jurisdiction, Minutes of Proceedings, 1810 to 1811, State Records N.S.W., 5/1119

R. v. Jones

Court of Criminal Jurisdiction

Bent J.A., **8 May 1811**

[150] The Court met pursuant to adjournment; and proceeded to the trial of the following persons.

JOHN JONES, charged by the Judge Advocates Information, with the wilful and felonious murder of **ELIZABETH MASSEY** on the 18th day of March 1811 at Sydney in this territory.

Plea Not Guilty

JOSEPH SMITH, sworn, saith, I live in Philip Street. I have known the prisoner John Jones many years. I was acquainted with the deceased Elizabeth Massey. She cohabited and lived with the prisoner. They lived in Phillip Street very near me. About the middle of the day on Sunday the 17th of March I heard a noise at the prisoners. I suppose it was him and the deceased quarrelling. They used to quarrel a good deal. The deceased a passionate abuseful kind of woman, very agitating with her tongue. I never knew the prisoner any ways spiteful and malicious. He is often passionate but it is soon over. Shortly after the noise I saw the deceased come around to my door. Her hand was upon the lower part of her belly. She asked my woman, [?] Poll, where's Poll ? My answer was out of the house and I went and brought her [?]. I came back with her the deceased was in my larder. I could not perceive that the deceased had been drinking. I went away, and saw John Jones in the street near his house. I did not speak to him.

MARY BROWN. Sworn, says I lived with the first witness. I know the deceased very well. On Sunday [151] the 17th March I recollect being brought home by Joseph Smith. When I came home I saw the deceased lying down on a sofa in my house. She complained of her stomach. She afterwards laid down on my bed, and asked me for some water which I gave her. She [?] a good deal. She stayed on the bed until towards the night. I had no conversation with her, nor had the least suspicion in the world that she was wounded. About sun down I went to her house and made her bed. Jones was not there. Intervened and told her and she got up by herself and went home. I went to her shortly afterwards; she was sitting on the bedside and she asked me to put her slipp on which I did. She complained only of her stomach. John Jones was then at the door but I had no conversation with him. She was very sick and what came from her stomach smelt strong of liquor. I observed that her clothes were bloody as I undressed. I did not observe it to her as I thought she was unwell. I saw her the next morning before breakfast. She complained of her stomach and still asked for water. She never told me she was wounded at all, nor did I suspect it. At her desire I went for Mr Evans. I saw Jones this morning in the room with her. He was very attentive. I had no conversation with him. The deceased never discloses to one and all that she is wounded. John Jones and the deceased were in the habit of quarrelling especially lately. The deceased was passionate and abusive especially when she had a drop of liquor. She was in the habit of being tipsy.

MARY BARKER sworn says, I live in Philip Street next door to the prisoners house. I recollect hearing a little noise at his house on Sunday the 17th March. I heard that it proceeded from the [?] of the prisoner and the deceased. On Monday evening the 18th March I was called into the Prisoners house. The prisoner was not then there. The deceased was there. She was lying in the bed. She appeared [152] to me to be in a dying state. She was quite sore. At her request I tended the bed clothes and examined her body. I saw a kind of a scratch at the bottom part of her belly. I supposed it to be a scratch. I asked her the reason she did not send for any body. She asked me if I discharged. I said no. She said He , was gone for the doctor, and she said also this is what He did. She appeared to me to be sensible that she was dying. She never gave me any further account of the cause of the wound. It was Joseph Dransfield who called me into the prisoner's house. The prisoner was not present during the time I had the above communication with her.

JOSEPH DRANSFIELD sworn says I lodged in the house with the prisoner and the deceased. On Sunday the 17th March I went out at about the time when the people go into church. The deceased was then beginning work on the dinner. I did not return to my house that night. The prisoner and the deceased had not been quarrelling that

morning. I believe the deceased had had a glass. I did not see the deceased until about an hour before sun down on the Monday. She was there in bed. I asked her what was the matter. She said she had a pain in her stomach. I did not know that she was [?]. I did not know she was wounded until the doctor came. The prisoner and the deceased quarrelled occasionally. Sometimes they had some words. She was a woman that was often intoxicated in liquor. She was very quarrelsome and abrasive at that time. I never saw Jones ill treat her. Jones is a very reasonable and quiet man.

ELIZABETH LEGS sworn says I live in Philip Street about thirty yards from prisoners house. I had no acquaintance with the deceased. On Sunday the 17th March last I heard the prisoner and deceased quarrelling betwixt eleven and twelve o'clock. I could not distinguish what they said; but they appeared [153] to be quarrelling violently. Shortly after I heard the deceased call Poll Smith I directly looked , and then saw the deceased out of her house with her [?] upon the lower part of her body. She went into Mrs Smiths house and I saw her no more. I saw Jones come out and look at her but he did not follow her. She was considered to be a woman of a very violent disposition and much adapted to liquor. Jones bears the character of a quiet man. The deceased and the prisoner were in the habit of falling out a great deal and when in liquor she made use of very spiteful language.

Mr **JOHN REDMAN** Chief Constable sworn says, in consequence of the information I received I went to the house of John Jones on Monday evening the 18th March. The deceased was then dead. Jones the Prisoner was standing outside of the dorm. I brought him in and Mr Wentworth in my presence questioned him about the death. The prisoner said that the day before in the middle of the day, the deceased and he had been quarrelling about family matters: and that she had a smoothing Iron in her hand, and was coming up to him with intent to shide him with it. That he had a knife in his hand . Whether it was in keeping her off or how it was he could not tell, but in so doing he had given her the wound. He supposed it must have been that way but he could not tell how. I then showed him a small pointed knife, and asked him if that was it. He said he did not know. There were several others about the house. I then took him in charge.

Mr **WILLIAM EVANS** sworn, says I am one of the Colonial Assistant Surgeons . Between 8 and 9 o'clock on Monday morning the 18th March, I visited the deceased. She had received a wound in the lower part of the left side of her belly which I examined. I then told her that in 12 hours after that time she would be a Corpse. It appeared to have been made with a knife which had penetrated one of the smaller intestines, and I was [154] concerned it would prove mortal. She begged of me to endeavour to cure her privately otherwise Jack might get into trouble. I said that was impossible for I was ordered to proceed to Newcastle. And did not wish to undertake the responsibility. She begged of me again to endeavour to cure her privately for, she said, we were quarrelling yesterday and I was undergoing to strike him with the Iron when he gave me the blow but I do not think that he meant to hurt me. I desired her to send to Mr **MOUNTFORD** or Mr **REDFERN**. First she said cure me privately for I do not think he knew he had hurt me. On Tuesday morning I was present when the body of the deceased was opened. There was a wound in one of the small intestines nearly three quarters of an inch in length. She certainly died of that wound. I have reason to know that she was much addicted to liquor.

Mr. **WILLIAM REDFERN** sworn says I am one of the Colonial Surgeons. I saw the body of the deceased. There was a wound in one of the small intestines three quarters of an inch in length which I have no doubt was the cause of the death.

The prisoner in his defence states that the accident was the result of a sudden quarrel and the impulse of the moment.

THOMAS HORTON I was acquainted with the prisoner and the deceased and lived at the next door. At about or nearly one o'Clock on Sunday the 17th March I was sitting by my fire. I heard a door and got up. I went to the cage of the railing next prisoners garden. I heard deceased quarrelling and making use of very bad expressions calling him rogue and rascal and other opprobrious terms. Some time after I heard the prisoner say are you going to kill me with the Iron. I heard nothing further. The deceased was very quarrelsome and also apt to get on liquor. And I have heard her several times give the prisoner very bad language.

[155] **JAMES TAYLOR** sworn says I knew the prisoner and the deceased. I am Constable and was upon duty at which time and was passing by their house. I went in. The prisoner and deceased were together, and appeared to me upon very good terms. John Carter, sworn, says I know the prisoner and the deceased. I had some conversation with the deceased on the day of her death. She was there in bed. I asked her what was the matter. She said she had hurt herself and asked me if I had seen John. I said not. She sent me for him. I returned with him.

The Court, after having had mature deliberation, do adjudge that the said John Jones is not guilty of murdering this said Elizabeth Massey but they further adjudge that he the said John Jones is Guilty of feloniously killing and slaying the said Elizabeth Massey, and that for the said offence he the said John Jones be imprisoned in his Majesties Guard at Sydney for the space of Six Months and pay a fine of Five Pounds and be further imprisoned until the same be paid.

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

SYDNEY GAZETTE, IX/384, 11 May 1811/2a

Trials for Murder. **Thomas Jones** was put to the bar and indicted for the wilful murder of **Elizabeth Massey**, on Sunday the 18th day of March last, at Sydney. The following is a summary of the evidence produced in support of the charge:- The prisoner and the deceased had co-habited for many years; she was a very intemperate woman, the prisoner a man of opposite character. About noon on the above named day a quarrel took place between them, while she was employed in ironing linen; the deceased struck at him with an iron; he took up a knife to defend himself, and she received a wound in the abdomen, in consequence of which she died the next evening; shortly previous to which she had made a voluntary declaration that Jack (meaning the prisoner) had inflicted the wound; but she was certain it was without design, and she felt convinced that he did not know that he had hurt her at the time. From the general circumstances of the case the Court thought proper to acquit the prisoner of the charge of murder; but to find him *Guilty* of manslaughter; for which he was sentenced to be imprisoned six months, and to pay a fine of L.5 to the King.

2 a&b Trial of; witnesses **James Pender**, stockman, and **John Kennedy**, overseer. Egan executed but made statement and Clough respited; further proceedings not traced.

SYDNEY GAZETTE, IX/386, 25 May 1811/1c

SHIP NEWS. On Sunday last arrived the schooner Mercury, Mr Tait master, with a cargo of pork from Otaheita, *via* Norfolk Island. She left the Island of *Bola Bola* the 17th of March last, and arrived at Norfolk Island the 13th of April; and from thence sailed on her return to this port the 19th. She brings from Norfolk Island a number of

passengers, among whom is Mr. Superintendent Best, and is the conveyer hither also of a person charged with the wilful murder of **WILLIAM MARR** [**MAHAR**]; the name of the accused is *John Shay*; and among the passengers are the witnesses subpoenaed on the melancholy occasion.

SYDNEY GAZETTE, IX/387, 1 Jun 1811/2 a,b & c

Trial of **JOHN SHAY** for the murder of **WILLIAM MAHAR** [**MARR**]. Witnesses **WILLIAM PATERSON**, Pte 73rd Foot; **JAMES FERGUSON** and **JAMES MORRIS**, Constable Norfolk Island.

SYD1813

Government and General After Orders
Military Department

Head Quarters, Sydney,

Saturday, **17th July, 1813.**

It is with the deepest and most heartfelt Regret, that the Governor and Commander in Chief commands the most serious Attention of the Troops under his Command, whilst he conveys to them his Sentiments on the late deplorable Event of the Loss of a Fellow Creature to Society in the Death of William Holness, by the intemperate and disgraceful Conduct of Lieutenants Archibald McNaughton, and Philip Connor, the first Battalion of the 73rd Regiment.

In lamenting that Men, who ought to be the prompt and steady Supporters of the Laws of their Country, should thus become the Violators of their, and the Terror of that Society which their Duty to their Sovereign imperiously demands of them to uphold, He feels it the more incumbent on him, uninfluenced by Partiality or Prejudice, and solely actuated by that paramount Service of Public Duty, with no Consideration of Rank or Profession in the delinquents shall ever induce him to swear from, to express his most decided Reprobation of all the Circumstances leading to the melancholy Catastrophe now under Consideration, and which must necessarily remain on the Records of the Criminal Court, to a lasting Disgrace of the Perpetrators of that foul Deed.

But whilst the Clemency of the Court, supported by the General Tendency of the Laws of the Side of Mercy, has pronounced the lenient Sentence of Manslaughter, and adjudged Six Months Imprisonment with a fine of One Shilling each to the Perpetrators of this Outrage, it rests with the Governor and Commander in Chief to mark, in the strongest Terms, his indignation at an Occurrence so disgraceful to the Military Character; and he trusts, with Confidence, that the high Sense of Honor which so eminently characterises the British Army in every Quarter of the World in which the 73rd Regiment in particular has possessed a most flattering Portion, will induce them to look to this lamentable Event as a Beacon set up to guard them against the fatal Consequences attendant on a life of Drunkenness, Debauchery, and Riot, which inevitably tends to the Debasement and Degradation of the upright and manly Character of a British Soldier and necessarily induces the Contempt and Indignation of all brave and honorable Men.

It having been proved on the Trial of Lieutenants McNaughton and Connor, that they were in Disguise, and dressed in Coloured Clothes, on the melancholy and disgraceful Occasion alluded to; from which Circumstances alone, it is reasonable to conclude, they went out from their Quarters with no good Design; the Commander of the Forces positively orders and directs, that Officer or Soldier (excepting such Soldiers as are Servants of Offices), shall ever appear in future, in any Part of the Town or Garrison of Sydney, in any other dress than their Regimental Uniforms. However painful it may be to his own Feelings so to do, Brigadier General Macquarie considers it to be his indisputable Duty to report to His Royal Highness the Commander in Chief, the Conduct of Lieutenants McNaughton and Connor, on the Occasion now adverted to, and to submit to the Consideration of His Royal Highness the propriety of allowing Persons who have so far disgraced the Military Character, to remain any longer in His Majesty's Service.

The Commander of the Forces directs, that the foregoing General Orders shall be read at the Head of the 73rd Regiment, under Arms, at the two next ensuing parades of that Corps.

Lachlan Macquarie.

By Command of His Excellency

The Governor and Commander of the Forces,

H.C. Antill, Major of Brigade.

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

SYDNEY GAZETTE, 18/08/1813

R. v. McNaughton and Connor

Court of Criminal Jurisdiction

Bent J.A., 16-17 July 1813

See also: Court of Criminal Jurisdiction, Minutes of Proceedings, May. 1813 to July 1815, State Records N.S.W., 5/1121 – 38.

At ten the Court assembled, and the usual forms being gone through, proceeded to the trial of Mr **ARCHIBALD McNAUGHTON** and Mr **PHILIP CONNOR**r, for the wilful murder of **WILLIAM HOLNESS**, on the evening of the 30th ultimo, in Pitt-street.

The first witness called for the prosecution, was Mrs **ANN HOLNESS**, the widow of the deceased, who being sworn, deposed as follows: That about dusk on the evening set forth, her husband was out, and a young woman named **ELIZABETH WINCH**, who was employed by the witness as a seamstress, and lived in the house with her, was walking about her door with one John Brown, a painter; that Elizabeth Winch suddenly entered, and said a Gentleman had insulted her, and struck Brown with a stick; that witness then heard Brown altercation with someone; Elizabeth Winch went back to the door, and told the person to whom Brown was speaking she knew him to be Mr McNaughton, and an officer, although he was disguised in coloured clothing. The witness desired Brown and Elizabeth Winch to go in, which they accordingly did, and witness shut the door. She saw the prisoner, Mr McNaughton there; and the shutter of the window being open, saw the prisoner, Mr Connor, look in, he brandishing a stick or club at the time. That Mr Connor struck the door with his stick several times, and insisting that it should be opened, pushed against it with so much force, that it required every exertion of Brown, Elizabeth Winch, and herself to prevent its being forced in. That the deceased coming to the door at the instant, asked the two gentlemen (now prisoners at the bar) what they wanted there and they replied, that they wanted the two women out of the house, meaning the witness and E Winch; to which the deceased replied, that one of the women was his wife, and the other her assistant, that the prisoners at the bar made use of very improper language to the deceased with respect to Elizabeth Winch and the witness, who at that moment hearing a blow, opened the door, and was going out, but receded, owing to a second blow, which was intended for her husband or herself, but whom she did not know. She then went out, and saw both the prisoners at the bar close to the door, from which the deceased attempted to push them away, and they repeated their blows until the deceased fell, which was in a channel between the foot path and high road, near his own door; that the witness was close to him when he fell; he fell at her feet; and she exclaimed, "but you've murdered my husband!" That after he fell, they repeated their blows, and going Mr Meutant's paling, which was immediately contiguous to the house of the deceased, began to tear it down; and the

witness expected to be laid a corpse beside her husband; that Mr McNaughton, hearing her say her husband was dead, said, "If he is dead let him die and be d --- d"; that Mr Connor said, "What have I done!" and walked away up the street; that Mr McNaughton walks after him as far as Michael Byrne's which is two doors above the house of the Deceased, and shortly returned, came close to the deceased, whose head the witness was then supporting on her knee, and asked for his hat, which some one gave to him, and he walked away. That the deceased never spoke after he fell; and was about ten minutes afterwards taken into the house, quite dead; that she did not see the deceased strike either of the prisoners, and he had nothing to strike them with.

Cross-examined, says, "I cannot say whether he might have struck either of the prisoners or not before I opened the door, but he had nothing in his hand. I cannot say where they struck the deceased, but there were several blows: I did not see any one strike the prisoners at all. After he fell I saw McNaughton tear down Mr Meurant's paling. The deceased had better health lately than he had for some years before. I have been 17 years his wife, and never knew him a day on a sick bed."

JOEL JOSEPHS sworn: says, he resides in Pitt-street, two doors from the house of the deceased; and sitting at his own door about seven in the evening of the day set forth, saw Elizabeth Winch and John Brown walking about together on the foot way; saw two Gentlemen come up to them much intoxicated, one of whom took hold of the young woman: one of them, whom he afterwards knew to be Mr McNaughton, took hold of her; she begged he would not take any liberties with her, and went to the door of the deceased house, where she lived. Brown, as they followed her, interposed between them and the young woman, and said, "Gentlemen, this young woman has no call to you." Can't say whether any other words passed; but saw Mr McNaughton lay hold of Brown, who at the same time received a blow on the neck. Brown then followed Elizabeth Winch into the house, and the two Gentlemen remained on the outside, knocking at the door with sticks. The deceased then came up, and asked what they wanted there? and requested they would go about their business, as nobody there wished to offend them. They then made use of indecent language relative to his wife and Elizabeth Winch; which was in similar phrases replied to by the deceased. Some words then passed between Mr McNaughton and the deceased. The deceased then received from Mr McNaughton a blow across the back with a stick, which was broken by the blow. The door of the deceased then opened, and thinks the deceased had a switch or piece of stick in his hand; he then ran into the road, and received from Mr McNaughton another blow, with a stick or pale across loins. Cannot say whether the deceased struck Mr McNaughton or not; but near to Mr Meurant's paling he received a blow on the back on the neck from Mr Connor, which killed him; but cannot say whether it was given with a stick or paling. The deceased fell as he received a blow; and the witness went and raised one of his arms, which dropped in an instant. About a minute and a half after he had fallen, Mrs Holness (wife of the deceased) came out of her house, went and raised his head, and immediately exclaimed that he was killed. Brown then also came out, and a soldier from an opposite house likewise came up. Mr McNaughton was going to strike at the deceased again; and the witness observing this, said, "It is of no use hitting the man, for he is dead." Witness picked up one of the prisoners' hats, and gave it to another person; and afterwards perceived another disturbance at Mr Holmes's door; and is certain no one came out of the house of the deceased for a minute after he lay on the ground, and that Mr Connor only struck him once.

Cross-examined. Did you see the deceased run towards the Gentlemen on trial from his own door into the road?

Answer: I saw him run to the end of Mr Meurant's paling. I saw Mr McNaughton strike the deceased before the latter had a stick, which stick was given to him out of his own house: it was a short stick, and cannot say he gave it to him. He fell about a yard from his own door.

Elizabeth Winch sworn; says, that she was walking with Brown, as stated by the last evidence; that the Gentlemen at the bar came up to her, Mr McNaughton habited in a great coat, Mr Connor in a coatee. Perceiving they were advancing towards her, she went towards the door of the deceased, to go in: they ran after her, and Brown interposed between them. Mr Connor struck him with a stick, and went a little distance up the street. Mr McNaughton stopped at the door, talking to Brown. The deceased was absent, having gone to Michael Byrne's with the skin of a curious fish; she told Mr McNaughton she knew him, and that he was an officer in disguise. Brown said to Mr McNaughton, that the man who struck him, meaning Mr Connor, was an insolent scoundrel, and he would report him in the morning. Mr McNaughton replied, that he was no scoundrel, and a Gentleman; to which Brown returned, that whether gentle or simple he would not be offended by him; Mrs Holness and Elizabeth Winch then called him in, and he went in, and Mrs Holness shut the door. Mr Connor came back, looked in at the window, and knocked at the door. The witness asked what he wanted? and he replied that he wanted the woman and the girl, using the same time an indecent expression respecting them. The deceased then came to the door with the fish skin in his hand, and ask Mr Connor what he wanted? in reply to which he, Mr Connor, said he wanted the girl and woman, and repeated the same indecent words, which were returned by the deceased; who also added, that it was his house, and his wife, and requested they would go about their business. They had pushed violently against the door. The witness then heard a blow given with a stick; the door was opened of, and the deceased threw in the skin, but did not come in himself. As soon as the first blow was given, Mrs Holness went out leaving the witness and Brown in the house, where was also a man of the name of Williams. Soon after she heard Mrs Holness give the alarm of murder. The witness then went out, and saw Mrs Holness kneeling, and supporting her husband's head on her knee. Mr McNaughton then came up, and asked for his hat.

Cross-examined, says, "I did not hear the deceased ask for a stick nor see any stick given him. I do not know his reason for not coming in when the door was open, further than he was talking to Mr Connor; and never heard him complain of illness."

JOHN BROWN, a painter, sworn; says, the deceased was a very quiet man; that between 6 and 7 on the evening named in the information, he went to his house, and was walking about the door with the last witness; that when at the door of Joel Josephs and one **MARY DONOVAN**, two homes distant from that of the deceased, two gentlemen advanced towards them, apparently in liquor; that Elizabeth Winch ran homewards, and one of the persons, whom he afterwards knew to be Mr Connor, one of the prisoners at the bar, ran after her; that he went up, and what walks between the Gentlemen and Elizabeth Winch, to prevent her being offended by them, and received a blow on the neck from Mr Connor, of which he, the witness, took no notice, but followed Elizabeth Winch; but when he got to the door of the deceased, where Elizabeth Winch lived; Mr Connor also came up, and the witness asked what they wanted? to which Mr Connor replied, that "he wanted a girl out." The witness then bade him be gone for a scoundrel (not knowing who he was at the time), for no one had offended him. He was called in while Mr McNaughton was talking with him, and Elizabeth Winch coming to the door, said, "Mr McNaughton, I know you, you are an officer in disguise," on hearing which, the witness said, "Mr McNaughton, I did not

address myself to you"; and added, that he would report the other person's conduct next morning. The witness on a second request, went into the house, and the door was closed and locked by one of the women; Mr Connor continued on the outside, knocking with a stick, and endeavouring to push the door open, which was opposed by himself, Mrs Holness, and Elizabeth Winch, pressing against it from within. Meanwhile the deceased who was out, came up knocked at the door, and asked what the persons on the outside wanted there? Mr Connor replied, that they wanted the woman out; and the deceased told him that she was his wife. The door was opened by Mrs Holness to let her husband in, and Mr Connor repeated the indecent language to him relative to the two women, which the deceased returned, and put his hand on Mr Connor's breast to push him from the door. Mr Connor then struck at the deceased with his stick, but the witness could not say whether he received the blow or not; Mr Connor struck again, and the end came in contact with the door facing. The deceased then went into the street with the two Gentlemen [?] and the witness remained with the two women in the house. Mrs Holness then also went out and closed the door behind her; and in a few minutes gave the alarm of murder; on hearing which the witness immediately went out, and saw Mrs Holness with the deceased in that position already described. Near the spot where the body lay, several people were upon the ground, and Mr McNaughton amongst them, uppermost. He asked for his hat: There were the at this time about twelve persons intermingled, most of whom appeared to have sticks in their hand; Mrs Holness requested surgical assistance to be called, and Mr Ross, Surgeon of the Fortune, being near the place, heard the affair, and conveyed the summons.

The witness upon his cross-examination said, that the deceased never entered the house; he saw no stick given to him, though he might have asked for one, and such might have been given to him without the knowledge of the witness; he did not see him strike at either of the Gentleman at the bar. Mr Connor had a stick when the witness first saw him; the deceased had some time before complained of a pain in his side.

Question from the Prisoners at the bar. Did you strike the deceased that night?

Answer. Never. I might in sport have done so at other times, but that night I did not.

Question from the Court. Did you strike either of the prisoners at the bar that night?

Answer: No, I did not; I was not out of doors from the time of my first going in till Mrs Holness, and her husband was killed.

Mary Donovan, sworn; says she lived within two doors of the deceased, whom she had known some years, and was a quiet inoffensive man. She corroborated the testimony of the preceding witnesses, with regard to the Gentlemen advancing towards Brown and Elizabeth Winch and the latter's addressing Mrs McNaughton by name and saying that she knew him to be an officer in disguise. After this had passed, witness went into her own home; and coming out again shortly after, heard a dispute near the door of the deceased, at which she saw one of the gentleman at the bar, with a stick in his hand, and the other knocking at the door; the man was Mr McNaughton. Mr Connor was walking to and from the other side. She again returned into her own house; and soon coming out again, heard Joel Joseph, with whom she cohabited calling for assistance. Mr McNaughton was then striking the deceased in front; and the other going up, struck him on the back of the neck with a stick or paling, upon which he fell. Mr Connor struck him twice. She did not see the deceased strike either of them; he had nothing in his hand. The witness went to the watch house to summon assistance, and on her return saw Mrs Holness with her husband in the posture before

described. She did not see Mrs Holness out of doors before her husband fell; she was within doors, and the door shut.

Cross-examined says; if Mrs Holness had been out before the deceased fell she must have seen her. She did not see the deceased make any blow at either of the Gentlemen; saw no scuffle between them, and was in her own house at the commencement of the dispute with the deceased. The witness on further cross-examination, said it was Mr McNaughton that struck the deceased on the back of the neck; and that she was not acquainted with their names; that she never had seen the deceased in a passion.

HECTOR PEISLY, private in the 73rd Regiment, sworn, says, he was in an opposite house when the affray took place, and repaired to the spot from which the noise proceeded, where he found Mr McNaughton and the deceased engaged in a struggle; that the witness took hold of Mr McNaughton, and Mr Connor coming up at the instant, struck at the witness, as he conceived, with a pale, but stopping his head to avoid the blow, it missed him, and striking the deceased on the neck, he fell. Mr McNaughton asked for his hat, saying he had no wish to occasion any disturbance in the streets, and both then went away.

D. WENTWORTH, Esquire, Principal Surgeon, being called upon, stated to the Court, that he had seen the body of the deceased on the night of his death; and with other Gentlemen of the faculty had attended the next day, when it was open, and examined with every care and attention possible; that no external marks of violence appeared whatever, but a trifling hurt upon one of the elbows; that on examining the head, there was no fracture in the skull, nor any mark or injury to the brain, which was in a sound and perfect state; the cavities of the abdomen and thorax were also free and clear; but on examining the lungs, a very considerable effusion of blood was observant, issued from both lobes, which effusion was sufficient to occasion instant death.

Question by the Court. As a medical man, Sir, to what can you attribute the effusion of blood you perceived to have issued from the lungs?

Answer: I cannot say.

Question: Is it possible that such a blow should be given as to occasion death, without leaving some external mark of violence?

Answer: I never saw an instance of it myself; Mr Wentworth stated in addition, but as Superintendent of Police, he had seen a part of a paling found near the spot, and with which the mortal blow was suspected to have been inflicted; but was of opinion, that if such had been the case, the weight of the paling was such, that it was more than probable there would have been external marks of violence discernible. There were cases on record, of persons dying suddenly from excessive agitations of the wind; and he would not venture to say it was impossible death might proceed from a blow without leaving external marks, but he had never himself now in any case of the kind.

Mr **MARTIN**, Assistant Surgeon of the 73rd Regiment, who assisted in examining the body, corresponded in testimony with Mr Wentworth; further stating it as a matter of opinion, that he did not conceive it at all probable that a blow so violent as to occasion death should leave no mark whatever visible; so violent a blow on the back of the neck must, as he considered, had injured the spine, which was not at all the case; he had never known an instance of the kind; and such was his idea of its improbability, that he really could not credit such an occurrence, unless it should come within his personal observation; and he should in the present case incline to attribute death to a spasmodic affection of the heart, produced by violent passion, rather than to any other cause.

Mr **ROSS**, Surgeon of the Fortune, who was also present at the examination of the body, coincided generally in the opinions of the former Gentlemen; stating, in addition, that he considered it utterly impossible for a blow to be capable of causing so great an infusion of blood in the lungs, to be inflicted without laying evident marks of violence.

Mr **LUTTREL**, Assistant Surgeon of Parramatta, coincided in opinion generally with the other Gentlemen; and cited a case at some length where sudden passion had produced sudden death; and here the evidence for the prosecution closed; and

The prisoners at the bar being called upon, proceeded to their defence.

Mr **McNAUGHTON** stated, that going up Pitt-street, in company with Mr Connor on the evening set forth in the information, they saw Brown and the young woman; that upon mildly accosting the latter, Brown rudely desired them to be off, and so rudely thrusting his hand against Mr Connor's breast, that Gentleman fell; that the deceased came up at the instant with a large stick in his hand, and struck Mr Connor; that Brown knocked him (Mr McNaughton) down; that he, Mr McNaughton, had no stick with him, and suffered much ill-treatment from Brown and the deceased, any act that could in any wise occasion the death of whom he utterly disavowed.

Mr **CONNOR**'s defence was in its narrative nearly similar, with this additional circumstance, that he had no stick, but a part of one that he had himself been first struck with. In support of their defence, John Delany, being sworn, deposed, that he was present during the whole transaction, which was as follows: He was on the roadside between Mr Holmes's house and that of the deceased, and saw Brown and Elizabeth Winch walking together; and saw two Gentlemen passing by the door of the deceased; saw Mr Connor speak to Elizabeth Winch, at which Brown took offence, and taking her by the arm, put her into the house, telling Mr Connor he was no Gentlemen, and shutting the door in his face. Mr Connor put his cane against it to push it open. The deceased then came up, and by his order the door was reopened. He asked what was the matter; Mrs Holness told him what they wanted. He immediately made a very rude and indecent exclamation, and threatened violence if they did not instantly depart. Mr Connor stepped aside, and made a blow at the deceased, and struck the facing of the door. The deceased went into the house a little way, and in a rage brought out a stick, or some other weapon, and opposed himself to Mr Connor into the street. Brown followed him, and struck at Mr Connor, whose stick flew out of his hand, or was broke by the violence of the blow made at him. Having lost his stick, he endeavoured to take hold of the deceased, but was by him and Brown together knocked down. Mr McNaughton, seeing two men berating him, went to his assistance, and he, Mr McNaughton and the deceased, attacked each other. Mr Connor recovered himself, and went away, and Mr McNaughton was then knocked down by a blow of the stick which the deceased had. They collar'd each other and Mr McNaughton received another blow on the head from Brown. A number of persons were at this time collected, and dealt out several blows on both sides. A phrase passed among them, namely, "Don't strike him, this is the man," meaning Mr McNaughton, as the witness imagined. Several soldiers then came up, and no alarm being given that the man was dead, most of the persons engaged ran away. He afterwards saw Mr Connor by Holmes's paling; he never saw Mr Connor strike a blow, but heard him exclaim, "Don't kill me."

Cross-examined by the Court; says, he is a free man, and he is employed at the General Hospital; that he related the circumstances next morning to a person, whom he named. That he went out before the Coroner's Inquest, and did not know of its assembling till the day after its sitting; that he lived quite close to the house of the

deceased, and was afterwards told the Inquest had been held at Mr Inch's which he said was four or five hundred yards from his own dwelling; knew none of the persons who were present during the affray, but Brown and the deceased, whom he only knew by sight (one Murray excepted) who was with him at the time.

Here an evidence was called to prove that the Murray above alluded to had next day affirmed being present at the affray in company with the foregoing witness.

JOHN MURRAY, called and sworn; says, that he was with Delany, and saw one of the gentlemen at the bar accost Elizabeth Winch, on which Brown the painter, who was with her, made an unmannerly remark, from which the dispute originated; that he then rapt the door to with violence in the face of the Gentleman, who said if he had him out he would cane him, and made several pushes at the door with his stick; after which he was going away, that the deceased then came up, and knocked at his own door, which being opened, he went in. One of the Gentlemen then returned, and said if he had him out, meaning Brown, he would cane him. The deceased made use of some very vulgar expressions to the Gentleman, upon which Mr Connor struck at him, but only struck the top of the door case. That the deceased went in, and quickly returned with a stick in his hand; that he followed Mr Connor into the middle of the road, fighting; that Mr Connor's stick was either broke, or knocked out of his hand, upon which he closed in with the deceased, who getting Mr Connor down, some blows took place; that Mr McNaughton advanced to the place where they were engaged, and struck the deceased; that Mr Connor got up, and went away, but shortly returned to Mr McNaughton, and from thence went to get a paling from Mr Holmes's, but witness did not see him use it. The witness further stated, that he picked up Mr McNaughton's hat, and gave it to a soldier, and heard afterwards that man was killed. That he saw Brown there at the latter end of the affray, with a stick in his hand; he came out of the house while the deceased was fighting, and before he was killed; that he related these circumstances to an acquaintance the day after; and was at the Inquest, but could not get in, nor did he like to busy himself in it; think Brown struck Mr McNaughton, but did not let him strike Mr Connor; only saw Mr McNaughton's hat knocked off, and did not see the deceased knock Mr McNaughton down.

THOMAS BROWN deposed, that hearing the riot, he went to the place, accompanied by two others, namely, **WILLIAM BAUGH** and **JOHN PRICHETT**; la going up saw a man give a severe blow, and on a near approach saw two more blows given, one of the blows was given by Brown the painter, with a stick, the witness readily knew Mr McNaughton; the witness collar'd Brown, when his stick was in full swing; the deceased was not then dead; witness said to Brown "how dare you strike an officer!" and took the stick from him without resistance, Brown then went into the house; the deceased was at this time struggling with Mr McNaughton, and both fell together; Mr McNaughton got up, and was advised by the witness to go home to which he replied that he would go if he could get his hat, saying also, "this is pretty usage for Gentlemen to get from such scoundrels." Witness sent Pritchett to look for his hat, which being found, he wished witness a good night; and said he would go home. The deceased was then lying at the deponent's feet, and his were supporting his head; and deponent afterwards heard he was dead. The stick he took from Brown he had kept, and was now in possession of one Bryce, a constable.

JOHN PRITCHARD, a private soldier, sworn; says he was in company with the last witness and William Baugh, on the night named, and in going to the spot with them, heard and saw the blows given; that he saw Mr McNaughton and the deceased scuffling in the road; that the deceased had a stick, Mr McNaughton had not; that Brown, the painter, came out, and struck Mr McNaughton twice or thrice across the

head, and he and the deceased fell; Mr McNaughton got up again but deceased did not: that Mr McNaughton appeared stunned by the blows he had received from Brown. Witness told Brown the soldier to take away his stick, which he did, asking him at the same time how he dared to strike an officer; saw Mr Connor with a stick for his own protection, but never saw him make use of it; he saw Mr McNaughton receive two blows on the head; he did not see the deceased knock down either of the prisoners; when Mr McNaughton was closed with the deceased, it appeared to witness that he, Mr McNaughton was only endeavouring to confine his arms to prevent his striking him with the stick he had, and a stick which Thomas Brown had sworn he took from Brown the painter was here produced, and the witness believe it to be the same.

William Baugh sworn; says, he was in company with the two last witnesses at the affray, and corroborate their testimony in all particulars, yet with this difference, as Mr McNaughton and the deceased were closed when Brown the painter struck at the former, he could not say which he struck, for it was dark, and he was as liable to strike one as the other.

WILLIAM McINTOSH sworn, says, that seeing a crowd, he went to the place, and on a close approach saw two or three men about Mr Connor, whom he did not know at first; that Mr Connor fell into a drain near Holmes's, and they fell upon him to prevent his rising: that when Mr Connor did get out, he went as far as Meurant's, and got a paling, which he prevailed on him to throw away; and his accompanying him homeward, when he suddenly asked where Mr McNaughton was? That he owed his life to him, and could not go and leave him; that they met Mr McNaughton going down the street bare-headed, but his hat being given to him, he accompanied both the Gentlemen to their quarters; that Mr McNaughton complained of violent bruises on the head, which at his request deponent examined with his hand, and found two conclusions, apparently the effect of blows, from one of which there seemed to have been an issue of blood.

Cross-examined, says, that he must have gone up at the end of the affray, as he saw no blows struck by any persons whatever.

Surgeon Martin re-sworn, state, that he visited Mr Connor soon after the affray, when he found one of his arms much bruised, and he complained of severe blows all over his body. With regard to Brown (here called the painter) he came to this country in the same vessel with him, and he had formed a very bad opinion of him from his general character.

The Reverend Mr Marsden, whose servant Brown had been on his passage to this country about four years since, stated that he had discharged him from his service in consequence of his general bad character, but had known nothing of him since his arrival here.

The prisoners here close their defence; and the Judge Advocate, in laying down his charge, address the Court nearly in the following terms:

"Gentlemen,

The important considerations connected with the investigation of the charge before you, and which have for so many hours occupied the most serious attention of this Court, regarding as well the situation of the prisoners at the bar, as public justice, induced me to offer in public such observations as I wish to suggest in this case. The evidence that has been adduced in support of the prosecution, and that which has been brought forward in behalf of the prisoners, is now fully before us; and I shall leave the whole of your discretion, with such directions as may assist you to judge of the law applicable to the facts in proof; but we will first read over the whole of the evidence in

presence of the prisoners, that if any objections arise as to the correctness of the minutes, that prisoners may not be deprived of the benefit of them. They stand at the bar of this Court, charged with the crime of wilful murder; and while I feel that your minds must be much fatigued from the length of time and very strict attention that this trial has already demanded, yet I confidently bespeak your continuance and patient attention to the observations which I have now to offer.

"Murder is the killing of a fellow creature, wilfully and with malice aforethought; the omission of which terms in the Verdict returned by the Coroner's Jury rendered it in point of Law merely a verdict of manslaughter. Malice aforethought is an essential character in every charge of murder, and is of two kinds; malice in fact where it is clearly proved that the mind has fostered long previous hatred, has brooded over plans of revenge, and where those plans have been deliberately executed; and malice in point of Law, which is inferred from general circumstances, as if a man were to fire off a pistol in the midst of a crowd of persons, and kill one whom he had never seen before; this would be held to be malice, though no particular person had been made its object, as from the act itself nothing short of fatal consequences could have been expected to ensue, and being deliberately adopted would amount to murder, wilful and of malice aforethought.

The prisoners now at the bar charged jointly, because they were both together; both at the same time engaged in one affray; into which they went together, and came out together; and therefore, were it made out in the most satisfactory manner possible, that in point of fact one only gave the mortal blow, yet in point of law the blow of one would be considered the blow of both, as they were mutually aiding and assisting one another when the blow was given.

In adverting to a part of the defence of the prisoners, on which some stress has been laid, and the testimony brought forward in support of it, I must here observe, that if it had been perfectly established that the deceased was in a debilitated state of body to the contrary of which, however, there is a preponderating testimony, yet I do not consider such a fact of much importance in the case, for I have no hesitation in saying, that where the death of any person is prematurely hastened, and can be distinctly traced to acts of violence on the part of any rational agent, it would amount to homicide; so that, if death of the deceased is, in the opinion of the Court distinctly proved to have been hastened by the violence of the prisoners at the bar, they must be responsible for it. The point that seemed to weigh most strongly against the prisoners at the bar are these: they are stated by the witness for the protection to have been seen in coloured clothes in Pitt-street, at a late hour of the evening; they accost a young woman, whose wish it is to shun them, and to do this goes into the house where she resided; they follow her, strike the man with whom she is walking, and endeavour to enter the house before, using language extremely indecent as well with respect to this young woman, as to the wife of the deceased. The deceased, the owner of the house, comes up, the same language is repeated, and the circumstances take place which terminate in the deaths of the deceased. If, then, from a review of the whole evidence, it should be thought that the prisoners began this violent breach of the peace, and that in the progress obvious they shewed a determination to resist all opposition to their improper design, the whole consequences that have ensued they are responsible for, and the death of the deceased, if clearly and decidedly traced to them, must constitute the crime of wilful murder; but if, on the contrary, the evidence of the prosecution shall be considered to have been effectively remitted by the evidence brought in support of the prisoners defence, and the whole be supposed to be a sudden affray, in which the parties concerned were engaged on equal terms, the killing would then

amount only to manslaughter; but the Court must be satisfied, that death was occasioned either mediately or immediately by a blow or blows inflicted by one or both the prisoners upon the deceased; and if any rational doubt shall arise in your minds on this head, I am convinced you will acquiesce in the mild and benevolent principles of the British Law, and giving to the prisoners the advantage of that doubt, acquit them altogether. Several Gentlemen of the Faculty have been called upon to give their opinions on the case of the deceased; and they have all declared, that upon the most minute examination of the body, shortly after death, no external marks of violence were visible; they attribute the death to an effusion of blood in the lungs; but all are at a loss to conjecture what occasioned that effusion; yet in the absence of any external marks of violence, all seem inclined to attribute it rather to some spasmodic action of the heart, created by violent agitation, then to the immediate effects of a blow. If, in your opinion, such violent agitation were occasioned by the conduct of the prisoners, and by blows received from them, the case will amount to homicide, the particular character of which will depend upon the other circumstances in proof; the Court will consider, that the deceased died instantly; that he is proved by two witnesses to have been in sound health just before his death, by several, that he was a mild and quiet man; if, then, it appears, that at one moment he was in perfect health, and at the next moment a dead man, it would perhaps be too much to infer, considering every part of the case, that his death could be attributed to any thing else than the circumstances of the affray; whether this will amount to murder or not on the part of the prisoners, must nevertheless as I have already said, depend upon other facts. If, from the evidence produced on behalf of the prisoners, the Court shall be of opinion that a whole was a sudden quarrel, in which the parties were engaged on equal terms, and in which the deceased met his death mediately or immediately from the acts of the prisoners, they would be guilty only of manslaughter; but if on the contrary it is considered that they went to the house of the deceased with fixed determination to act as improperly as has been stated in some part of the evidence, and to resent all defensive opposition that might be offered to them, and ensued by their means; in this case, even though struck by the deceased, the prisoners in the eye of the law would be guilty of murder, but if the death of the deceased cannot be clearly and distinctly traced, either mediately or immediately to the conduct of the prisoners as charged in the information, it would be the duty of the Court to acquit hem altogether of this charge."

In addition to the observation he had already offered, it was incumbent on him to make some remarks upon the nature of the evidence upon which the Court was to decide. That the evidence brought in support of the defence was in [?] opposition to that given on the side of the prosecution which was unhappily too evident, all the witnesses had been examined with equal care and precision; and whether this manifest variant could proceed from mistake, or some frailty incidental to human nature, the Court had no other means of determining than from the opinion it had formed of the evidence as it was delivered: whether the parties seemed to labour under apprehension or constraint; whether there were any apparent reluctance that might be considered to arise from prejudice or partiality; or whether the evidence delivered was open free and devoid of all suspicious symptoms. Here the Judge Advocate took a comparative review of the whole of the evidence, which he afterwards read over in open Court; and the Gentlemen who composed it, and then retired, and after a deliberation that occupied nearly two hours, returned a Verdict Guilty of Manslaughter. The prisoners were therefore sentenced to pay a fine to Our Lord the King, of one shilling each: and

to be imprisoned in His Majesty's Gaol, at Parramatta, for the space of 6 or the the calendar months.

This very interesting and highly important trial commenced at 10 o'clock on Friday morning, and lasted till one o'clock this morning.

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

SYD1814

Court of Criminal Jurisdiction Minutes of Proceedings, 1813-1815, State Records N.S.W, 5/1121- 408

R. v. Donovan

R. v. Broderick

Court of Criminal Jurisdiction

Bent J.A., **1 July 1814**

[408] The Court met pursuant to adjournment

Present

The Judge Advocate; [Members:]

Captain Glenholme 73rd Regiment

Captain I M Gill 46th

Lieutenant Thms Miller 46th

Lieutenant Alex Campbell 46th

Lieutenant H Morrison 46th

Ensign J.B. Bicknell 73rd

DENNIS DONOVAN, and THOMAS BRODERICK are put to the Bar to answer a Criminal information duly exhibited by the Judge Advocate against them and one **PATRICK COLLINS** charging the said Dennis Donovan with feloniously wilfully and of his malice aforethought killing and murdering one **WILLIAM ALDER** with an axe on the 16th day of March last at Murry Man's Creek in this territory and the said Patrick Collins (not yet taken nor answerable to Justice) with feloniously wilfully and of his malice aforethought being present aiding and assisting the said Dennis Donovan to commit the said murder and that the said Thomas Broderick did feloniously receive harbour and maintain them, well knowing them to have committed the said murder at Lane Cove on the 16th March 1814.

To this Charge said Dennis Donovan and Thomas Broderick plead Not Guilty.

JOHN WINCH sworn and examined for the Prosecution says: I have been some time past employed by Mr Ivory in burning lime at Murry Man's Creek on the Hawkesbury. I was employed in that way there in March last. **JAMES STOKES, GEORGE COOKE, and JOHN MULLER** were working with [409] me. I knew the deceased William Alder. I knew Thomas White. I knew **ALICE CULLEN** by the name of **Carrotty Charlotte**. She lived with the deceased White. They had a sloop called the Revenge, in which they used to trade on the Hawkesbury River. On Monday night the 14th of March they came in the sloop to Murry Man's Creek. Thomas White called to me from the sloop as it was passing by. White and Alder spoke to Stokes in my hearing relative to some lime. Next day, that was on the Tuesday in the afternoon of the 15th, Stokes sent to them for some sugar. We were out of sugar at that time. The little boy whom we sent returned with the Sugar directly. The boat lay a very short distance from us near the shore. Next day we went to work. In the evening of this day (Wednesday) the natives came to us, and we heard that there were not any people on board of Alder's Boat. We were alarmed. Stokes and two natives there went to the sloop to see where Alder and White were. It was then dark. Stokes returned in less than half an hour and told us that Alder and White were murdered and lying dead in their bed places in the sloop one apart and the other forward; and that he could not see the woman. Stokes and I and the rest of us immediately gave information to the other lime burners in the Creek and then went up the river to Joseph Mauns and told him and from thence we went to Windsor. Mauns is about 50 or 60 miles by water from Murray Man's Creek.

JOSEPH MAUN, sworn and examined for the Prosecution says: I live at the Hawkesbury near to the first Branch of the Hawkesbury River as you go down from Windsor. On St Patrick's Day last James Stokes came to my place about five o'clock in the evening and told me Alder and White were murdered in their Boat in Murray Man's Creek and that he did not know where the woman was. I knew Alder and White very well. Alder lived along with me for fifteen years past till.. some months before xmas last. I had some interest in the Boat. I gave a joint note for one half of it. In the course of three hours I went down [410] in a Boat to Murray Man's Creek. Me, five natives and a little boy just turned thirteen years of age. Between nine and ten next morning we got to Alder's Boat. I went on board the sloop opening the fore hatch way I saw Alder lay dead. It seemed to me that his skull had been broke by an axe; the axe was lying close by the fore hatchway all blood. I then went to the after hatch way and there I saw Thomas White lying with his throat cut. They were both dead. I could not get the boat off. She lay up on a rock. In a short time I went with some natives in search of the woman. I found her at the place where the boat had been made fast. On the [?] side of the boat next to the land where they had intended to make their kiln of lime at low water mark with nothing on but her shift. She appeared to have had two blows on the back part of her head and was terribly beat in different places of her body. The papers were lying all about the boat and the boat appeared to me to have been plundered. I returned with the dead bodies to my own farm which I reached on the Saturday. I buried the bodies by the direction of the Magistrates on the following morning. The weather was middling hot. It rained a good deal of the time. I know a place called Cuppy creek It is called by that name as I have been informed because of those who were from the Coal River when they have crossed the North East arm, make Cuppy [?]. The natives call all who run away from the coal River Cuppies. I dare say Cuppy creek is fifteen miles from Murray Man's Creek. (a pair of blue trousers, and a striped yellow waistcoat and watch key are shewn to the witness).

Alder had a pair of blue trousers just like these, and also a waistcoat of the same pattern. I cannot swear that these are the same. I believe they are. He had also a watch key very like this [411] but I cannot swear it to be the same. Alder had a silver watch which he told me he had from Robert Thomson. I paid Robert Thompson for it. Alder had also a blue jacket with the kind of yellow buttons. Mick Lamb, Taylor and his wife were in my house with Alder. Alder held up his blue jacket and said to Lamb, can you put a piece under the arm of my jacket. Lamb said where is the bit to do it with. Alder says have you got here a bit. He says no. Alder then says you must cut a bit of out of the inside lining to put under the arm: which Mick Lamb or his wife took it out of my house. (a knife is shewn to the witness) White always brought a knife like this to my place when he used to come up. It is a common knife. I cannot swear to those being the same knife.

MICHAEL LAMB, sworn and examined for the Prosecution says: I live on the Hawkesbury nearly opposite Maun's. I am a Tailor. I know the deceased Alder. Formally I was employed by Alder as a Tailor. I recollect repairing a blue jacket for him. The jacket was torn in the arm, he asked me to mend it. I cut a piece of the inside and the covering of the pocket and put it to the body of the jacket and under the arm where it joins the sleeve. I put a piece of grey cloth in the [?] of the piece I cut off the inside of the covering of the pocket. Small brass buttons were on the jacket.

A blue jacket, some buttons, and the above mentioned yellow striped waistcoat are shewn to the witness who says

I cannot swear to this jacket. It is the same it has been reduced in size. It is not now so big. The button shewn me are of the same pattern as were on the jacket when I

repaired it. I made the jacket I speak of. I repaired it in the way I have mentioned in December last. I saw Alder with a waistcoat of this pattern and made in December last the cloth of the jacket now shewn me is of the same quality [412] as that of the jacket repaired for Alder. The quality of the waistcoat is the same.

GEORGE ATKINSON sworn and examined for the Prosecution says: I knew the deceased William Alder and Thomas White. They purchased the sloop Revenge from me. They sailed last from Sydney about the 12th of March last. As near as I can guess. I was on board the sloop the evening before they sailed from Sydney.

(Two tin pots are shewn to the witness)

This tinpot I had in my own possession ten months before I sold it to Alder. I can swear to it. I know it because it was always stained and had a blister in the inside which never could be got out. I know it also by the handle which I lent on purpose to put it into my own scuttle cask. I see the same marks about it now. The evening before they sailed they forced me down to the sloop to drink with them. I went on board and I said if I do drink I'll drink out of my own old pot. I accordingly drank out of the pot I am speaking of: I cannot swear to be other tinpot. I left on board the sloop a mariners compass. It was a brass one. There was a brass cover to it. It was the size of a good large box_ not so big as the Crown of my hat. It was fit to have use either by land or sea. It was formally Mr Andrew Thompson's. I saw it the very evening I was on board. I saw Carrotty Charlotte on board that evening. She lived with White. I recollect this woman Charlotte buying some stuff exactly like this petticoat from Mr Maun and being employed in making it up in this vessel. But this was before I sold the vessel to Alder and White.

A piece of Canvas marked with the letters IU is shewn to the witness who says

I left a canvas bag on board the sloop when I told her to Alder marked I.U. It had [413] belonged to Mr Underwood. I had sewed it at one of the seams backward with a piece of Bengal twine. I saw it with some rubbish in it on board the Sloop the day before Alder sailed in her. This piece of canvas is of the very same quality as the bag I speak of. The smallest of these tinpots is like the one I saw with White the evening before the vessel sailed.

MARY ANDERSON sworn and examined for the Prosecution says: I live at the Kings Wharf Sydney. I know a woman of the name of Charlotte who lived with the deceased White. I recollect seeing her the evening before she sailed last from Sydney. I then received from her one piece of print with another piece inside of it. It continued in my possession about an hour. When she was going on board I delivered it to her and she took it with her.

A piece of print is shewn to the witness who says:

I cannot swear this is the piece but is very like it. It is of the same pattern colour and quality.

ROBERT THOMPSON sworn and examined for the prosecution,

A watch is shewn to the witness. The same as was before shewn to Joseph Maun the witness says:

I recollect receiving a watch, a silver watch like this from one **BENJAMIN HATCH** a soldier of the 102nd regiment about three years ago. He gave it to me to sell for him at the Hawkesbury. I took it up there and sold it to one Joseph Osborne for about four pounds. I swapped it. I afterwards heard that it was sold by him to Smith now dead. He was servant to me Mason at Scotland Island. About thirteen or [414] fourteen months ago, this Mason owed me a little money and Mason told me I have got a watch that was yours and I will give it to you in part payment. I took it from Mason. I believe but cannot swear it was the same watch I got from Hatch. I

fetches it to Sydney and then I sold it to William Alder the deceased. The locking spring of the watch came through the dial plate. A sharp little point. I do not recollect the number or the maker's name. I believe it to be the same watch as sold to Alder. I believe it from a crack in the outside case of the watch. It was there worn quite thin. And I think this must be the same watch on that account. I am sure that the dial plate of this watch is not the same as that which I sold to Alder.

JOSEPH TUZO sworn and examined for the Prosecution says: I am a constable of Sydney. I knew the deceased William Alder. I sold him three new striped cotton shirts on the ninth of March last. They were as nigh as possible like this striped cotton shirt now shewn me. They were of the same quality and pattern as this.

GEORGE GRAY, sworn and examined for the prosecution says: I live in Sydney. I knew the deceased William Alder. I sold him a watch chain and a voyage or two before he met with this accident. It was like this now shewn to me. It was made of the same materials, the same pattern and of the same quality as this. I had several of the same kind by me. I believe this to be the same chain as I sold but that I cannot swear to it.

[415] **JOHN COFFEY** sworn and examined for the Prosecution says: I am a prisoner. I live in Cumberland St No 4. I know the prisoner Dennis Donovan.

The above mentioned silver watch is shewn to the witness who says:

I know this watch. About three months ago a man named William Farrell came up to my place he had this watch with him; he handed it to my woman, Ann Kinsela, and asked if she knew any person that would buy it. She asked him the price. He said fifty shillings. On her saying it was too much money, he brought it up in a piece of rag and put it into his hat again. He called several times after that and he had always this watch with him. About a week afterwards William Farrell and the prisoner Dennis Donovan came together to my house: another man named John Crook was with them. Farrell said Donovan was shy of coming where Crook was. Donovan came up and had a soldiering coat on with their skirts cut off. He and Farrell stopped at my place three days and nights. It was a long time after St Patrick's Day. The third day Donovan called me into his bedroom. He was lying on his bed. Farrell was sitting on the bedside. Donovan held up this watch by the chain and said Johnny I am under a great complement to you, and if you will give one thirty shillings you shall have this watch. I asked him to shew it to me, and I went out into the other room and shewed it to the Crooks. I then sent Crooks to Betty Cassidy for two pounds she owed to me. I told Donovan then I would take the watch. Crook returned with the money and when he came back went into Donovan and gave him a ten shilling bill in part payment and a five shilling bill. He put the ten shilling bill in his pocket and said to Farrell he wanted that for what he owed and he sent me out with the other bill for some bread. The watch has not now the same dial plate as it had then. Just at the catch of the watch there was a little hole in the dial plate and the catch went up thru the dial plate. After dinner that day Farrell told me I must be very cautious [416] about this watch. Donovan said yes you must be very cautious. Sell it to somebody going to the Southward. I said I did not know anyone going to the Southward. Farrell made answer can't you get the name and number altered. Donovan told me not to go to the old man on the rocks. Farrell says you know a little [?], paired fellow of the name of Merritt. Go to him and he'll do it for you. I went to Merritt and showed him the watch and desired him to put a new dial plate to it. Merritt kept the watch two days and put a new dial place to it and he fixed the catch so that it did not come out through the dial plate as before. I then shewed it to Farrell who said Merritt had made a very good job of it, and he told me to keep it until Donovan had seen it. Donovan and Farrell came

up to my house the same night. I then shewed it to Donovan. He opened it and looked inside of it and then said I did not alter the name or the number. I said he did. He said he did not; and made some remark about the tail of the number. He then told me to be very careful and to send it to the Southward unless I got the name and number altered. I one day asked Donovan where he got the watch. He never gave me any satisfactory answer about but told me to be very careful and to send it to the Southward if I could. Afterwards I sent my woman with the watch to Merittt to get him to alter the name and number. She went there on four times before he would do it at least Merritt did alter the name and number. I shewed the watch to Donovan afterwards and he said that would do very well. But he still wished me to send it to Southward. I told him I was going to sell it to a man of the name of Coffeey who works at the new hospital. Donovan said he was going to Lane Cove she would call in the course of a week. He went away and did not see him afterwards. I sold the watch to [147] Coffey for three pounds. He never gave me more than a pound. I afterwards heard that Donovan was suspected of this murder, and that some watches were lost out of the Boat. I then began to think that this might be one of them and I went to Mr Jones and told him about it. By his desire I attended at Mr Wentworths next morning. The watch was at this time in pledge with a watchmaker on the rocks for a pound and I went and got it and gave it to Mr Wentworth. Mr Wentworth gave me the money to get it. One night as Donovan was sitting in the house he asked me if I knew of any one that would buy a compass at that time I did not purposely know what sort of a thing a compass was. I asked him what sort of thing it was. He said you know it stands in a vessel. It is what ships go by. It is much like a watch and taking off his hat he said it was not so big as the crown of his hat. He said he had sent Farrell to the log boatswain to see if he would bring it and that he would but Donovan said he was afraid of hurting Farrell; that he had something in plant in the bush before, and that after he went away Farrell to whom he had shewn them took them up. He told me that he had a compass in plant in the bush but he did not mention where. I offered to go for a long boatswain, but he said that would not do but that he was going to Lane Cove he would call coming back.

CHARLES MERRITT sworn in and examined for the prosecution says: I am a watchmaker. I live in Charlotte Square.

The said watch is shewn to the witness who says:

I know this watch. It was brought to me by John Coffey on the 2nd April last. The dial plate was quite disfigured and broke. The catch which we call the locking spring opens thro' the dial plate. There were no hands to it. I agreed to put the present dial plate to it and hands for [418] twenty shillings. I did so. I was obliged to alter the catch so that it should not open through the dial plate. He brought it on the Saturday and fetched it away on the Monday. The woman who lives with Coffey brought it to again on the 9th, 10th or 11th of April. She told me to put another name and number to it as the person she was going to sell it to did not like the name and number. I told her I was not an engraver and could not do it. This was the first time she came she came again every day until the 14th of April and then I altered it while she was sitting down. The original name and number were "Comans No 1040". I altered one part of the (m) to an (a) and the other part to an (r) and I made the (a) into a (d). I altered the first (1) in the number into a (7) the (0) into a (9) and the following (0) into another (9). The name and number one after the alterations "Coradns No 7949". The woman took the watch away with her I positively swear this is the watch I received from Coffey.

WILLIAM FARRELL sworn an examined for the Prosecution says, I am a prisoner. I am acquainted with the prisoner Dennis Donovan. About nine or ten days

before the General Hewitt sailed I met the Prisoner Donovan at the back of the Windmill near Charlotte Square; I expected to meet him there. We were talking about different things and at last he asked me if I could sell him a watch. I told him yes. He took me down towards Cockle Bay and turned towards the waterside and from under a store he took up two watches which he had planted there. He shewed them to me and we came back together and slept in an old stable at the back of Mr Murchans house. One of the watches was an old-fashioned one and the other [419] a fashionable one. The one now shewn me is like the old-fashioned one. I asked the prisoner how he came by these watches and he told me that was one thing he would tell no one. He gave me one of the watches to sell. I offered it to Coffey for sale for fifty shillings; Coffey refused it and told me he had sold a better one for less money. It was the old-fashioned one I offered to Coffey. I returned it to Donovan again upon this. He then gave me the fashionable watch and I told him I would sell it to a Lascar. I did not as Lascar had not the money. I returned it to Donovan. A little time after Donovan Coffey, Crooks and myself met at the back of the Barrack Wall. We came home together to Johnny Coffey's: we took supper and Donovan and I stopped there that night. We stopped at Coffeys two or three days. Donovan during this time sold the watch to Coffey for thirty shillings as he told him he was under a compliment to him. Donovan or me then said send it to the Southward and get the name and the number altered. We were all talking together. Coffey took it to a watchmaker and got a new dial plate put to it he then shewed it again to Donovan and that Donovan observed the name and the number were not altered. I can neither read nor write. I do not recollect Coffey shewing me the watch after that to say that the name and number was altered. I afterwards asked Donovan for the other watch again as the Lascar had got the money. Donovan told me that he had made Tom Dillon a present of it being under a compliment to him. To this he told me that he had a compass in plant at Lane Cove and asked me if I would go with him for it we accordingly took a boat from Cockle Bay and landed above Balls head on the North Shore. We walked on thro' the bush and thro Mr Gore's farm and up to Lane Cove. In going along we met Mick McGrath looking for his stock. We had some conversation with him and asked him who was at home. He said no one but his wife. We parted with him then I went on to Mr McGrath's house and had our breakfast there. Mr McGrath came home [420] in the course of the day and had something to eat. He went out again in the course of the day, and returned in the afternoon. Roger Farrell I believe came with him. I am not sure as we were in the back room; at one of this a tiring Donovan and McGrath went out and returned with a compass unrapped up in a piece of cloth. They took a hoc with them in going out. They were not out many minutes. I don't know whether it was Donovan or McGrath brought in the compass. Donovan then shewed me the compass. They took the compass into the inner room where Donovan and I had been staying. No person was in the room when Donovan shewed me the compass. It was a little round brass compass. I don't know whether there was any cover to it the card was covered. There was a glass over it. I did not stay at McGraths that night. I went with Roger Farrell to the Matthews Farm and slept there. I left Donovan at the McGraths. Broderick was not there at that time. Next morning Donovan came after me to Mr Matthew's farm. We were at breakfast. He had a musquet with him. He had not the compass with him. Roger Farrell and I walked towards the McGrath's. Donovan stopped behind to talk to a man of the name of Waller and overtook us on the road to McGraths. Roger Farrell then left us and Donovan and I went to McGraths together. We stayed there till Donovan took breakfast and then he and I went off together to Pennant Hills and took the Gun and compass with us. We went to the house of a man

called the Gunner. I don't know his name. He then gave the compass to the Gunner's wife. We remained there from Tuesday ~Thursday evening. I left Donovan there and went to Kissing Point. I did not see the compass after that to my knowledge. I gave myself up to Mr Fulton about three weeks ago.

[421] **MICHAEL McGRATH** sworn an examined for the Prosecution says: I am a Government Stockkeeper. I live at Lane Cove. I know the prisoner Donovan. I know the prisoner Broderick. He lived at Lane Cove. He is a shingle splitter in the employ of Government. He lived in my hut. I recollect seeing Donovan at Lane Cove sometime back. The first time I saw him was on the 16th March. I was drinking at one Weeks's at Lane Cove on that day when the prisoner Broderick called me out less than an hour after dusk. I went outside to him. He told me that Dennis Donovan was in at John Campbell's hut. I went with him immediately to John Campbell's hut. Campbell's hut is about a dozen yards from Weeks's. I saw at Campbells, Dennis Donovan Patrick Collins and John Campbell. They were in a dark room. They were at supper. I stopped till they [?] their supper. I then went to Weeks and got a gallon of Cyder. Campbell and me brought the cyder into Campbells in a Bucket. The prisoner Donovan, Patrick Collins the prisoner Broderick me and John Campbell drank the Cyder together. After they had drank the cyder Donovan and Collins said they were very tired and would wish to go to bed. They said they had been several days in the bush, had nothing to eat and had been stripped by the natives. They said they had come from the Coal River, that they had met with some friends what given them both [?] and clothes. At that time I did not see anything with them. I left them there that night and went home to my own place; about half a mile from this. It was about half an hour after dusk when I first saw Donovan. Next morning I went about sunrise to the same hut - Jack Campbells, they, Dennis Donovan and Patrick Collins were just getting up. Directly after they were dressed Broderick Donovan Collins and myself left the hut. I went after my cattle and Broderick took Donovan and Collins to my hut. I returned to my own hut about nine or ten o'clock. Donovan and Collins each took a bag containing something or other from Campbells to my hut. I found Donovan Collins and Broderick [422] at my hut on my return. They stopped there that day and night I did not see what they had in their bags per day. On the next day (the 18th) Collins produced a piece of print about 5 yards for sale at five shillings a yard. I bought it and gave him a pair of fustian pantaloons for thirty shillings. He returned me the difference in tea. He then produced a striped cotton shirt for ten shillings. He said he had but the one.

I gave him a duch frock for six shillings and got the shirt. He made me a present of the difference with some tea along with it. I had no other dealings with Collins. I got from Donovan the same day a pair of nankin trowsers, a pair of blue cloth trowsers, a blue jacket with yellow buttons and also a canvas bag. I gave my wife directions to fix up the jacket and unmake it. To take off buttons and put them on one side. There was a piece of Grey cloth Indian side of the jacket and a small blue bit under one arm. There were the letters Ill in the canvas bag. I cut the bag up. The piece of canvas produced is part of the bag and I mended my trowsers with the rest.

The blue cloth trowsers, nankin trowsers blue cloth jacket and piece of canvas and buttons are shewn the witness who says:

I got all these from Dennis Donovan on the 18th March. A part of one of the seems of a canvas bag was sewn with white trim. It was not sewn the same way as the rest of the bag. It appeared as if it had been burst. I saw Donovan take these things out of the Bag.

The piece of print and the striped cotton shirt are shewn to the witness who says:

I got these from Patrick Collins on the same day. Before Donovan went away he gave me something to put by for him. It was rolled up in an old piece of check apron. He told [423] me to put it in the ground for him. I did put it in the ground down below the garden. Broderick was not sleeping in my house at the present time. Donovan and Collins left my house on the forenoon of the 18th March. Donovan before he went away on the 18th gave my wife two tin pint pots and a petticoat and eight [?] Petticoat and a knife the tin pots, petticoat and knife now shewn me are the same he gave my wife. I did not see any other striped cotton shirts with there. I have not seen Collins since. Shortly after this Donovan came again to my house. He came by himself. He asked me to bring him the compass. I brought it to him. He untied it in my presence. I believe my wife was in my house. Broderick was not there Donovan turned his back to me and went to the fire, seemingly to dig it. I asked him to let me see what it was. He told me it had guided him from the Coal River: He told me it was a compass. He gave it to me again and told me to wrap it up in a piece of cloth which I did. He then told me to put it in keep. He stayed all night. Next morning he started about day break. He shook hands with me and told me to let nobody see the compass. He then went away. Some few days after this on a Monday morning I met Donovan and William Farrell within 3 miles of my own place. They had drawn towards my place. They said they were going to my place: they did not ask me who was there. The same time in the day I returned home and found Donovan and Farrell in their house before me. When I came in and they had got some nourishment Donovan asked me to bring the compass. I brought it and gave it to him. I brought it myself. We did not go together for it. Donovan opened it and took it out of my hand. Farrell was present. It was made of brass. Both the outside and cover. Donovan remained there that night. At William Farrell's desire I called at Mr Matthews and brought Roger Farrell to my house. The two Farrell's did not stay at my house at night. They went [424] away together. Donovan stopped. Broderick was at my house at this time and slept in the same bed with Donovan. Next morning I had to go out after my cattle. I left Donovan in my house. I returned home at about 12 o'clock. I did not see him any more that day. Donovan took the compass with him. It was in Donovan's possession all the night before. Very shortly after Donovan came to my hut again. It was the evening of the day the lottery was done in Pennant Hills, he brought the compass back with him. He told me for to put it in keep. He stayed at my house that night. The next morning as he was going away he shook hands with me and told me to put the compass in keep, and if he never returned no one was to see it. He then went away. I did not see him again till the Friday after Whitsunday. He came a day by himself. He came some time before day. He asked me for the compass. I went and brought it to him. I gave it him he did not stop breakfast but left me before daylight and took the compass with him. He returned on the same night without the compass. He came to the house. He touched Broderick's head thro' a window that had no shutter to it as he lay asleep. Broderick woke me. I got up and saw him. He stood talking to me and said he did not know which way he could get from Sydney. That was all that passed. He did not come into the house but went away immediately. I did not see him afterwards till he was taken up. I know this yellow striped waistcoat. It belonged to Thomas Broderick. He got it from Patrick Collins in exchange. Broderick told me Collins had given it to him. He gave it to him on the 18th March. I often heard Broderick say he was going to part with his good waistcoat for it. He often said he suspects [425] the people did not come by it honestly. That he was in dread to wear it. Broderick never told me whom he thought it belonged to. Broderick was living at Campbell's hut when first Donovan and Collins came to Lane Cove. He continued to live there for a few days after. He

then left Campbell's and came to my place. He lived there till I was taken up. Last Sunday was a fortnight since I was taken up. On the Friday after I disclosed this business, that same day I went with two constables Green and Beddowe to my place for the articles, I first, searched my chest and my wifes and did not find any thing there. The constables were present; I then went to Lane Cove saw pits with the Constables and also with Foster the district constable. I first saw Broderick, he then told me these articles were in plant, Broderick went with me to the place where they were in plant and he found them himself under a dead tree about 100 yards from my hut, they were all in a Bag. I went with the bag down to Fosters the district constable's and opened the bag in the presence of the constable's Foster, Green, and Beddowe. These different articles were in the bag. Broderick was not then taken up. I heard Donovan and Collins say they had watches. I do not know the distance from my hut at Lane Cove to Murry Man's Creek. I was never there.

ELIZABETH McGRATH sworn and examined for the Prosecution says: I am the wife of Michael McGrath. I recollect the first time Donovan and Collins came to our place at Lane Cove. It was the day before St Patrick's Day. I know this blue jacket. Donovan sold it to my husband. It was not in the same state then. It has since been altered. Mary Foster altered it. I unripped by my husband's desire I told him to turn it and unmake it and made it a little larger in the sleeves. There are small star metal buttons on it when I first had it [426] but there was a piece of blue cloth under the arm and a piece of grey cloth on the inside of a pocket when I unripped. I burned the grey piece. I don't know what became of the other piece. Collins gave this here yellow striped waistcoat to Broderick for another waistcoat and a pair of shoes. I know it. I have washed it twice. The first time I was washing it they made the exchange and by Collins's desire I gave it to Broderick.

The Black Petticoat, the two tinpots and the knife spoken to by the former witness are shewn to this witness who says:

Donovan gave me this Black petticoat and one of these tinpots. I took the binding of the petticoat and a piece out of the breadth to mend it. When Donovan came to our house after the first time, he and Broderick and one Davis slept in one Bed. I recollect my husband being taken up. The same night I put a number of articles and this yellow striped waistcoat into a bag and I gave them to Broderick to plant. The tinpots were not put in the bag, nor the petticoat, nor the blue jacket nor the knife nor the blue trowsers nor the piece of print. The piece of print I had with me at Sydney. I was not present when the other things were found. I did not put the things my husband received from Donovan and Collins into the Bag. My husband was taken up on the Sunday and I went to Sydney on the Sunday. I put some of these things into my husband's box and some in my own. I locked my own but did not lock my husband's. I thought I had. I took the key of my box with me and locked up the key of my husband's in my box. This is the striped cotton shirt my husband bought Collins. There were three of the striped cotton shirts in possession of Donovan and [427] Collins when they first came. I believe they took away the other two. All the three shirts were alike. I saw Donovan with a watch. I believe it was a silver one. I did not take particular notice of it.

Cross-examined for the Prisoner Broderick says: Broderick told me that Donovan was a ship mate of my husbands. I believe he told me that if we received him he should be all put in Gaol.

MARY FOSTER, sworn and examined for the Prosecutions says: I live at Lane Cove. I am the wife of the district constable of Lane Cove. I recollect receiving the pieces of a Blue jacket to remake from Elizabeth McGrath. It was a few days after St

Patrick's Day last. There was a piece wasting against the pocket on the inside. There was also a small bit under the arm wasting. I asked Mrs McGrath for them: she said she did not know where they were. I then put an old piece of blue cloth of my own in the room of that piece wasting near the pocket and I did without the other piece under the arm by putting a gathering on the shoulder. I put on covered buttons. I found the stuff Elizabeth McGrath brought me the moulds. I am sure this jacket is the very one I remade by Mrs McGraths desire. I took a piece from the button of the jacket and lengthened the sleeves with it.

JOHN CAMPBELL; sworn and examined for the prosecution says: I live at Lane Cove. I know the prisoner Donovan he and Patrick Collins came to my house the night before St Patrick's Day last. I was stooping down frying some meat when they came and I cannot say whether they brought anything with them or not but in the morning I saw the canvas bag. I did not see the prisoners take it away. I went to my work before they went away. Broderick was fetching some bread out of the room when they first came. McGrath came this night: we all five eat our supper together and drank a Gallon of cyder which McGrath [428] sent to Weeks's for.

ROGER FARRELL, sworn and examined for the prosecution says: I live at Mr Matthews farm at Lane Cove. The latter end of April or some time in the beginning of May I went to McGraths hut by his desire about sundown. I saw there McGrath, his wife the prisoner Donovan, a man named Davis, and William Farrell. Mr Farrell asked me if I knew any person that would like to buy a compass. I told him I did not. He asked me what I thought would be the value of one. He did not tell me what kind of one it was nor did I see. Mrs Farrell went with me to my own place that night and then slept. Donovan came next morning to my place. Farrell, Joseph Walker and Nicholas Hatfield were there. I stopped while Donovan was there 10 or 15 minutes. I then left the hut with Farrell. I went to shew him some timber and after that we were overtaken by Donovan. I walked a little way in company with them and then I parted with them.

JONATHAN GREEN sworn and examined for the Prosecution says: I am one of the Sydney Constables. I went with Thomas Beddowe and McGrath from Sydney to McGraths hut at Lane Cove on the 17th June in the night. We reached his place about one o'clock in the morning of the 18th. We went to William Fosters house first. The district constables. McGrath there searched two boxes and his bedding we did not find any of these things there. Foster then went with us there to McGraths hut. No person was there. We searched that. We found nothing but a lamp there. We went from there to the Government huts, to John Campbells and then we saw Broderick. McGrath called him [429] out and had some private conversation with us. Broderick then came back with us, Foster Beddown me and McGrath, to the McGraths hut. McGrath gave me to understand to stop in the hut where we were. He and Broderick went out of the back door into the grounds. They were away together some little time and then returned with the canvas bag. We took it down to Fosters and then examined it. We then found in the bag the pair of blue trousers, a yellow striped waistcoat, the knife, the nankin trousers, that piece of canvas bag marked I.U. and the two tinpots all which are now in Court. Other articles were in the Bag. McGrath had the cotton shirt on his back. He pulled it off and put on another. We left Fosters the same morning came direct to Sydney with the property. We brought McGrath back with us but not Broderick.

JAMES STOBY sworn and examined for the prosecution says: I was at Murry Man's creek in March last burning lime with Winch. I know Alder and White the deceased. They traded on the Hawkesbury with the sloop called the Revenge. They

came to the mouth of the creek in that sloop on Monday evening 14th March. I went to them alongside but not on board. Mr Alder, Thomas White and Carrotty Charlotte were on board. I had some conversation with them. The next day they sent a little black boy to them for a mug of sugar. He brought me back the sugar. On Wednesday the 16th of March at sundown I left off work it was ten minutes after six. I heard there from some natives that there were no persons on board Alders sloop. I then went by myself in a small boat to the sloop. I found the sloop in a contrary place to where she ought to have been. A black man and woman were sitting on shore close to the stern of the sloop. I got the black man to go with me on board the sloop. I lifted up the after scuttle and went down. I found the man's legs and they were cold. I got up, took the black fellow and went on shore and got a grass tree to make a light. I returned on board with the light and found a man dead. Down [430] the after scuttle. That was Thomas White. He was cut across the lower part of the jaw apparently with an axe. I felt the blood in his face and it was very stiff. Some few papers were strewed about the place. I got up there and pulled the scuttle lid over shutting it down as I found it. I then went to the fore scuttle and lifted that up. I then found William Alder lying with his head low and his heels much higher than his head with a part of his jaw cut upwards with an axe as I thought. I shut the scuttle head over. I then knocked down the main hold to see if I could find the woman. There was no woman there. On the main deck I saw a quantity of blood. Turning my eye to the right I saw an axe. I took it in my hand and it was blood from one end of the helm of the axe to the eye of the axe edge, blade and [?]. I told the black to go forward and let go the anchor. He went forward and there was no anchor to her. I then left the boat. The sloop had the appearance of having been plundered. I did not see or look for any compass. I looked for nothing whatever. I returned and told my comrades what I had seen. We then went to Windsor to give information to the Magistrates and on the way informed Joseph Maun. I can't tell how far Murry Man's creek is from Lane Cove. If I knew that way I should have come it. There is too much scrub and rocks in the way. I imagine it is a bad road. I rather think the cable was slipped.

THOMAS DILLON sworn and examined for the Prosecution says: I have travelled from Murray Man creek to Lane Cove by Land. It is a very bad road. The bush is very thick in some places. I was about thirty hours going. I slept in the bush. I dare say it is about thirty miles. I lost myself, you must keep on the ridges otherwise it could not be travelled at all.

[431] The Evidence for the Prosecution closed.

The Prisoners simply deny the charge against them and do not call any witnesses.

The Court after having had mature deliberations doth adjudge that the said Dennis Donovan is guilty of the Felony and Murder in the manner and form as the same is by the said Information charged against him and that the said Thomas Broderick is Not Guilty of the Felony where we stands charged. And this Court doth further adjudge that for the said Felony and Murder he the said Dennis Donovan butcher from hence to the prison whence he last came and thence to the place of Execution on such day as his Excellency the Governor shall be pleased to appoint, and that there he shall be hanged by the Neck until his body be dead and that his body when dead shall be cut down and be dissected and anatomized.

Ellis Bent J.A.

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

SYD1816

SYDNEY GAZETTE, 03/02/1816

R. v. McGee, Laycock and Dawson

Court of Criminal Jurisdiction

Garling A.J.A., 2 February 1816

[1]

On Friday **PHILIP McGEE, HENRY LAYCOCK, and PATRICK DAWSON** were placed at the bar, and indicted for the wilful Murder of Mr **EDWARD PUGH**, a settler of Richmond, on the night of the 9th of January, 1815.

The chief witness on this melancholy trial was **ANDREW CALLAGHAN**, who had been necessarily admitted an approver for the Crown.

This witness stated, that on the night set forth he had accompanied the three prisoners at the bar to the house of the deceased, who was a very old and feeble man, with a design of robbing him of a quantity of dollars which he was reported to have had and which formed their chief inducement, they knowing also that he was in possession of a silver watch, and some other property; that on their arrival at the house, the prisoner Dawson it was agreed should remain without doors as a guard against surprise, while the witness and the other two approached and knocked at the door, which was shortly after opened by the deceased: who was immediately attacked by McGee with a waddy, and knocked down, without any effort to resist upon his part; and the blows were repeated by the same prisoner until it was certain the deceased was incapable of resistance or alarm: - McGee then through a blanket over the deceased, and they jointly proceeded to search the house for plunder; that by the light of the fire, near to which the deceased lay, he was observed to stir; upon which McGee was proceeding again to beat him, but was prevented by himself (the witness), who begged he would not murder him: - That McGee drew the bed from under the deceased, and ripping one of its seems, emptied out the contents: That the prisoner Laycock observing at this time that the deceased moved, struck him on the right shoulder with the butt of a musket, the stock of which was broken by the violence of the blow: - they then left the house, and on the division of their spoil, the bed tick made part of the share taken by McGee.- That in consequence of the dreadful circumstances of the murder and occasioning considerable alarm, the witness through a coat, which had been taken from the deceased, into the River, and also saw the prisoner Laycock bury a quart pot, which had likewise made part of the spoil; that McGee afterwards exchanged a jacket with one James Gibbons, servant to W. Cox, Esq and also exchanged with him (the witness) a counterpane for a pair of nankeen trowsers; which trowsers were found in Laycock's possession when apprehended, and proved to be the same.

Assistant Surgeon **MILEHAM** being now called, deposed to the death of the unfortunate man being in consequence of the violent treatment he had received upon the night stated in the indictment.

Mr **AINSLEY McGRATH** deposed, that the prisoner Dawson was his servant; and he conceived had had a knowledge of the deceased being possessed of a sum of money. The witness swore to a knife found by the side of the deceased the morning after the murder to be his property.

JOSEPH MAUN, in whose service Laycock was at the time, deposed, that on the evening of the murder he saw Callaghan and Laycock in company, at which time they had a gun, which he supposed they intended going with to a neighbouring stockyard;

that they returned to his house at midnight, and made tea for themselves; that Callaghan, a few days after, brought to his house a tin pot and canister, when witness, having some suspicion that they might have had a knowledge of the murder, desired that nothing of the kind should be brought to his house; he saw Callaghan altering a pair of nankeen trowsers, where he said belong to Laycock, and heard Callaghan say he had thrown a coat into the river.

JOHN MILLER deposed, that the jacket produced in Court very much resembled one that he had left at the house of the deceased shortly prior to the murder; and which had been found in possession of Callaghan.

Mrs **PENTONEY** who had lived in the house with the deceased five years, and had left his habitation the very day twelvemonth upon the night of which the murder was committed, swore positively to the bed tick, which had been found in McGee's possession, and also to the nankeen trowsers that are found in possession of Laycock, as they were both of her own making.

Wm. COX, Esq, Magistrate, was now sworn, and stated to the Court that on the first implication of McGee in this charge he went to his house at Richmond, and there found the bed tick stated by Callaghan to have been taken from the house of the deceased by McGee, and sworn by Mrs Pentoney to have been the property of the deceased. The trowsers sworn also to have been the property of the deceased were worn by Laycock when he was apprehended, and a jacket produced in Court, making part of the plunder, had been found in possession of Callaghan, who said he had it to altar.

Mr **JOHN HOWE**, Chief Constable at Windsor, deposed to his being present when Callaghan took from its concealment a pot, proved to have been part of the stolen property.

The evidence for the prosecution here closed, and the prisoners at the bar were called on for their defence; which went generally to a denial of the facts, and to prove that several articles found in their possession came through the channel of Callaghan, the Crown approver; in order to depreciate whose testimony, several witnesses were called, two of whom fell severely under the censure of the Court; and one of them was directed to be kept in custody for prevarication in his evidence.

McGee endeavoured to prove an alibi, in support of which **GEORGE COFFER**, servant to Mr Cox, of Clarendon, deposed in evidence, that on the night of the murder he supped in company with McGee, and went to bed at eight o'clock, the latter sitting up alone; which however did not in point of distance preclude the possibility of his being present at the murder; nor could it intend against the weight of evidence presumptive of his guilt.

The whole of the evidence being gone through the Court cleared between six and seven in the evening, for the purpose of considering their verdict; and resuming their seats after an absence of nearly an hour, all the prisoners were pronounced Guilty.

The **JUDGE ADVOCATE**, before he passed the lawful sentence of the Law, expatiated with peculiar energy on the extreme depravity that had manifested itself in the preparation of the horrible offence, of which they had been found guilty after a long, patient, an impartial investigation of the testimony that had been adduced, as well for them as against them. The crime of murder was in itself abominable; in all ages, and in all countries it had uniformly been punished with death, as the most heinous offence that man could possibly commit against his fellow creature; and in the present case, the learned Gentleman had most sensibly to regret that the crime was marked with a depravity that doubtless must preclude the hope of mercy to either of the prisoners then standing at the bar. It therefore became their last and only duty to

supplicate that pardon from their offended Maker, which they had no hope to be extended to them on earth. Heinous was the crime for which they were doomed by human laws to suffer, and in proportion to the weight of their offences should be their solitude for their remission in the world to come. Having solemnly and pathetically admonished the unhappy men to lose no single moment of the short period that might be allowed to them for the duties of repentance, which he hoped would be sincere and unreserved, he proceeded to pronounce the sentence of the law, which condemned them to be executed on such day and place as His Excellency the GOVERNOR should be pleased to appoint, and their bodies afterwards delivered up to be dissected and anatomized.

Note

[1] Under (1752) 25 Geo. II c. 37, s. 5 (An Act for Better Preventing the Horrid Crime of Murder), the judge was empowered to order that the body of the murderer be hanged in chains. If he did not order that, then the Act required that the body was to be anatomised, that is, dissected by surgeons, before burial. The most influential contemporary justification for capital punishment was that of William Paley, *The Principles of Moral and Political Philosophy*, 1785, reprinted, Garland Publishing, New York, 1978, Book 6, chap. 9. He argued that the purpose of criminal punishment was deterrence, not retribution. As Linebaugh shows, the legislature's aim in providing for anatomising was to add to the deterrent effect of capital punishment. In England, this led to riots against the surgeons: Peter Linebaugh, "The Tyburn Riot against the Surgeons", in Hay et al. (eds), *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, Penguin, London, 1977.

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SYDNEY GAZETTE, 22/06/1816

R. v. Anderson

R. v. Stock

R. v. Rawlins

Court of Criminal Jurisdiction

Garling A.J.A., 17 June 1816

The Court re-assembled on Monday morning, and proceeded to the trial of **ELIZABETH ANDERSON, JAMES STOCK, and JOHN RAWLINS**, for the wilful murder of **JOHN ANDERSON**, a settler, at Pitt Town, on the evening of the 26th of February last.

The first witness called in support of the accused.

RALPH MELKINS, who deposed, that two days previous to the death of the deceased he had entered into his employ as a farm servant; that upon the evening of the murder the deceased went early to bed apparently indisposed; that he, the witness, went from the farm about seven in the evening, and returning without loss of time, he saw his mistress and the two other prisoners at the bar in company; that the two male prisoners at the bar soon afterwards went away, saying that they were going to bed, and witness did the same, leaving Mrs Anderson at the door of her bedroom seated; that he, the witness, did not find Stock in his apartment (in which they used to sleep together), and which was between 20 and 30 yards distant from their masters dwelling; and that the witness went to bed, and was in about half an hour afterwards disturbed by Mrs Anderson, who said she had been alarmed by some person who had attempted to break into the house; to which the witness replied, it could be no stranger otherwise the dogs, which were several in number, and all furious, would have made a

noise. That she then went to the prisoner Rawlins, and to the like declaration received a similar answer; that she then went away, and returning in a quarter of an hour, declared she had been robbed, and desired the prisoner Rawlins to go with her to the house, with which he immediately complied, witness following them; that they found the prisoner Stock near the house without any hat, whom Mrs Anderson immediately accused of having robbed her; that they all went into the bedroom, in which was a light family burning; the witness saw a watch on a table, and secured it, as he had lent it to the deceased, and believing the alarm about the robbery of a house to be true, was glad to find it had escaped. The ears of the witness were now assailed by a loud declaration from the prisoner Rawlins, that his master had been murdered: To which Mrs Anderson replied, "that she hoped they would not suppose she had murdered her husband." The witness, seeing that his master was not in bed, and considering his own safety as precarious, secured a musket, which he loaded unperceived, as Stock and Rawlins were employed in searching for their master Stock in a very short time called out, informing that he had found the body of his master, which upon examination was still a little warm, but without any symptom of remaining life. It lay extended on the back, with an apron about the head, and a rope passed doubly round the neck. The witness dispatched Rawlins with information of the fact to Thomas Arndell, Esq. who presided half a mile distant, whilst he, being armed, remained on the alert to prevent any persons escaping until assistance should arrive. Stock requested to be allowed to wash his hands, which were stained with blood and this appearing highly suspicious to the witness, he demanded the cause, and was answered that the stains came from the apron which he had taken off the head of the deceased. The prisoner Rawlins exhibited no symptom of embarrassment, but appeared upon the contrary to be sensibly affected by the horrible event: Stock, upon the contrary, betrayed a degree of apprehension which the witness could not avoid remarking; and at length, begging that he would not shoot him, proffered a voluntary declaration of his own guilt, at the same time implicating his mistress as a principal in the murder, by a declaration that she had killed him, and promised to give him 30l. for removing the body - which declaration was made by Stock in Mrs Anderson's hearing. In less than half an hour assistance arrived, and the witness resigned his charge to a peace officer and his attendants, with whose assistance he examined the house, and found that the alarm about the premises being robbed must have been an invention to give a colouring to the murder that had been perpetrated. The witness during the time of the examination of the premises picked up a hat in the space between the house and the spot where the body was found. This hat was quite flattened and exhibited every appearance of having been recently ill used, which the witness attributed to the body of his master passing over it when the murderers, whoever they might be, were dragging him from his bedroom: the direction that he had been drawn in led towards a creek. It was Stock's hat, who immediately claimed it. A quantity of blood was found by her bedroom door which appeared to have flowed from a wound under the right ear, occasioning a small incision; and the witness knew the ropes that had entwined his master's neck to be part of a tether rope which he had the same evening seen in the kitchen, adjoining the premises, when getting his supper.

JOHN TROWELL, a man employed on a farm contiguous to that of the deceased, deposed to his knowledge of him and the prisoner, Elizabeth Anderson, who, he stated, did not live together upon good terms; but on the contrary, that he had himself interposed a few months before the demise of the husband, **to prevent the woman from stabbing him with a knife**. The witness further stated that he was one of the persons who went to the house immediately after the murder was made known by

Rawlins to Mr Arndell, and described the situation of the body, as already done in the foregoing testimony. The prisoner, Elizabeth Anderson, at that time accused Stock of the murder - and the latter retorted the accusation. Stock then also said, that his absence from the farm on the previous part of the evening had been occasioned by his going to one Crabtree's, a neighbouring settler, to receive some money, and that upon his return he met the first witness (Melkin) and the prisoner at the bar, Rawlins (both his fellow servants), near the house; the witness described the dogs as being very furious, and was clear that if any stranger had been about the house it would have occasioned a great alarm, whereas no such alarm was made, or must have heard it.

JAMES MILEHAM, Esq. Magistrate, and resident Assistant Surgeon at Windsor, gave evidence to his examination of the body of the deceased on the morning after his death; an incision appeared under the right ear, which he had no doubt was the effect of a blow; but he was clearly of opinion that strangulation was the cause of death.

W. DOUGLAS, a district Constable resident at Pitt Town, deposed to his having gone with others to the farm of the deceased on the night of the murder: whence he dispatched the prisoner Rawlins to Windsor to render information of the circumstances to the Magistrates; but that he was there detained on suspicion of his being in some way concerned in the barbarous transaction. The evidence also described the state of the body when found.

THOMAS WHITE deposed, that he went to the house on the night of the murder with the Constable and others, conducted by the prisoner Rawlins; and that but for the protection afforded by the presence of the latter, he considered the dogs would have torn him piecemeal, for they were so extremely furious that he considered it impossible any stranger should approach the place without the most imminent danger.

THOMAS ARNDELL, Esquire gave evidence, but from the immediate contiguity of he's resistance with that of the deceased, it was not possible that any noise or alarm could have escaped his hearing the more especially as the night was very serene and fine. He had often heard the deceased and his wife, Elizabeth Anderson, quarrelling; and had heard her call out murder, but on that night he heard no noise whatever.

The evidence for the prosecution here closed; and the prisoners were put upon their defence; which consisted chiefly in calling witnesses to character: Here concluding, the Court retired between four and five in the afternoon; and after an hour's absence returned a verdict - Guilty, against Elizabeth Anderson and James Stock; John Rawlins acquitted, and discharged.

Sentence of death was accordingly pronounced on Elizabeth Anderson and James Stock, who were thereby doomed to be executed on such day and place as should be appointed by His Excellency the Governor and Commander in Chief; and their bodies to be afterwards given up to be dissected and anatomized.

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SYDNEY GAZETTE, 02/11/1816

R. v. Hunter

R. v. Ryan

R. v. Dooley

Court of Criminal Jurisdiction

Wylde J.A., 1 November 1816

[1]

This day the Court met at 12 o'clock, and proceeded to the arraignment of **COLIN HUNTER, MICHAEL RYAN, and THOMAS DOOLEY**, for the wilful murder of

JOHN MILLER, on the evening of the 30th of September last, by shooting him with a gun. The indictment contains several counts; the first of which charged Colin Hunter as principal in the murder, and the other two, as accessories, being present, aiding, and abetting the crime, together with one George Fuller, (who has admitted Evidence for the Crown). The second count, charging the three prisoners at the bar with burglarious entry into the house, made all equally guilty in the eye of the law, and left no shadow of difference in the dispensation of its penalties between the person who committed the fatal act, and those who were immediate accomplices. The admission of their being present, under such circumstances, amounted to a plea of guilty to the whole of the felonies charged in the indictment; and in elucidation of the fact, His Honor here went into a very ample explanation of the law on the subject, in the course of which he cited many important and interesting cases deduced from the ablest authorities. Under all the circumstances of the case, His Honor then observed, that the confession of the prisoners would have been sufficient to justify the Court in proceeding to judgement without examining any evidence; yet, as it was its wish that its proceedings should all times manifest an anxiety for the preservation of a most perfect regularity, he would waive the plea set up by the prisoners, he might possibly have deceived themselves in the presumption that an admission in part of the serious and heavy charges exhibited against them, went only to implicate them in a secondary degree; - and on the plea set up by the prisoner Hunter, that the murder was upon his part accidental, implying thereby that the firing off of the gun by which the deceased was killed was unintentional, His Honor observed, that the Court was under no necessity to enter into any discussion of what his intention might have been, as it was evident he had gone thither for the purpose of committing one felony, and had committed another of a more heinous nature. His plea was in fact to only tantamount to the admission of a homicide by misadventure; to constitute which a man must be doing a lawful act, and have no intention to harm or injure the person whom he accidentally kills; for if the act he was concerned in be not lawful, then the offence of course is murder: he should therefore call evidence to the facts, and proceed in the trial without regard to the plea they had severally set up.

Mrs. **JANE MILLER**, widow of the deceased, deposed that her residence was at a farm called Bunker's Farm, about 4 miles distant from Sydney; that upon the evening of the 30th of September last, between seven and eight o'clock, when her husband was sitting at the fireside, with four children in the room, the family consisting of seven, the door was suddenly forced open, and four men rushed in upon them, nearly together, all of whom appeared to have their faces covered, that two of the intruders were armed with guns, one of which was fired off at her husband, who appeared to be rising from his seat as they entered, but fell at the instant the musket was discharged, and immediately expired; that as soon as her husband had fallen, one of the ruffians presented muskets at her, and demanded money; that they afterwards entered the bed room, and plundered the house of 3 or 4 pounds in money, and all the movables they could find, among which were their children's clothing, together with a small trunk, which latter article she found next morning in a place where the robbers must have left it, about 10 yards from the house.

GEORGE FULLER, **King's evidence**, being first seriously exhorted from the Bench to keep in mind the considerations of his being admitted a witness against the prisoners at the bar, deposed to his having formed a design with Colin Hunter to rob the house of John Miller, the deceased, and fixed upon the night of Saturday the 28th of September for the purpose, but changed their time to the night of the 30th; in the evening of which day they went to a farm called Redmond's farm, in their way to that

of the deceased, and proposed to the prisoners Ryan and Dooley to accompany them, to which they both readily consented, and did accordingly accompany them, all the party having taken the precaution to cover their faces, as they might not be visible; that Colin Hunter had a fowling piece, and one of the others a musket; that the moon shone brightly, which obliged them to be cautious in approaching the house; into which Hunter at length entered by forcing open the door, at which instant they all rushed in, the explosion of a musket took place, and he saw the deceased lying on the floor; that he, the witness, immediately went out of the house, and shortly afterwards Colin Hunter went out to him, saying, "George, that murdering villain (meaning Dooley) has shot the man."

Dooley came out shortly after, and accused Hunter of the act of shooting; and upon examination of Hunter's piece, it appeared to have been that which had been discharged. Ryan continued in the house; into which they all returned, and proceeded to plunder. On their going in, the wife of the deceased exclaimed in an agony of surprise and horror, "Oh, heavens, you've murdered the father of my poor dear children!" The parties persisting in their original design of robbery, then commenced pillaging the house, and the witness took out the trunk which the prosecutrix had deposed to finding the next morning within 10 yards of the house.

[It is here proper to mention, that during the examination of Mrs Miller, the prisoner Ryan admitted his assisting in plundering the house after the perpetration of the murder, stating at the saying that he only saw 15 or 16 shillings in money taken away.]

The witness proceeding, stated that the remaining property was taken by them all to Redmond's farm, and there partly divided, and partly secreted in various places of concealment, some of which had assisted Hunter to conceal.

The testimony of the King's evidence was strongly corroborated by that of the constable to whom he had discovered the concealed property after his surrender; and Mrs Miller identified a watch, and many other articles, as making part of those of which her house had been robbed; - and from the testimony of Mr LEWIN, Coroner, it appeared that the charge of a musket, consisting of two large slugs, had entered together under the breast of the deceased, and passing through the body, had struck the wall of the room, and thence rebounding, were afterwards found close to the place where the deceased had fallen.

The prisoners being now called on for their defence, only stated that they had no intention of murder when they went to the house of the deceased; and the Court, after a very short consultation returned a verdict, All Guilty.

The Judge Advocate, previous to passing Sentence of Death upon the prisoners, descanted at some length upon the general abomination of a crime of which they had been convicted, and dwelt with considerable emphasis upon the circumstances which had distinguished their case with the most marked atrocity. That they had proceeded to the house of the unfortunate man who had fallen a victim to their depravity, with intention of committing a robbery, they had each of them admitted, while they endeavoured at the same time to shelter themselves from the abhorrence which attends upon this blackest of crimes.

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SYDNEY GAZETTE, 09/11/1816

On Monday morning last the three unhappy criminals who had been condemned to death on the preceding Friday for wilful murder of the late unfortunate John Miller,

underwent their sentence at the usual place of execution, and after remaining an hour suspended, their bodies were given up for dissection. Their deportment on this melancholy occasion was becoming their conditions; **MICHAEL RYAN**, on the way to the place of execution, read prayers to the unhappy companions [**COLIN HUNTER & THOMAS DOOLEY**] of his destiny, both of whom joined in his essential duty with becoming further, and however ill they might have lived, yet in the close of their temporal existence they evinced a true and undisguised contrition, which will, it is most earnestly to be desired, obtained a remission of their offences in an everlasting state as a servant who delayeth his coming even unto the twelfth hour, may yet find grace and merciful acceptance. From their earthly destiny, it is no less to be desired, that many who from their criminal ways of life have deserved that the vengeance of the laws should equally overtake and crush them in a miserable career of sinfulness, may from the dreadful example set before their eyes take warning, ere it be too late, and by a timely renunciation of a life of crime, avoid the horrors of a mind overtaken by the certainty of a premature, and ignominious, and a frightful death. Surely, no thinking being who could for a moment turn his thoughts upon the condition of the condemned felon would persist in acts that were likely to bring equal calamity upon himself! Death is in itself appalling; and the very best of us look towards it with anxious doubting; and when from the common course of nature or events its approach is evident, then conscience will pre-dominate - will seize upon its ascendant power in the mind, and give an earnest, while yet we lived, of what we are to apprehend when dead. Unhappy is the man who suppresses the dictates of a conscience, the precious gift of his Creator, to admonish and direct him, and to warn him against evil: his life is a life of self disapprobation; and his death is a death of hopelessness; as a poisonous weed he grows only to be rooted up, and when he is gone his evil deeds are all of him that remain to memory.

Note

[1] Under (1752) 25 Geo. II c. 37, s. 5 (An Act for Better Preventing the Horrid Crime of Murder), the judge was empowered to order that the body of the murderer be hanged in chains. If he did not order that, then the Act required that the body was to be anatomised, that is, dissected by surgeons, before burial. The most influential contemporary justification for capital punishment was that of William Paley, *The Principles of Moral and Political Philosophy*, 1785, reprinted, Garland Publishing, New York, 1978, Book 6, chap. 9. He argued that the purpose of criminal punishment was deterrence, not retribution. As Linebaugh shows, the legislature's aim in providing for anatomising was to add to the deterrent effect of capital punishment. In England, this led to riots against the surgeons: Peter Linebaugh, "The Tyburn Riot against the Surgeons", in Hay et al. (eds), *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, Penguin, London, 1977.

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

SYD1817

SYDNEY GAZETTE, 30/09/1817

R. v. Samuel Smith

R. v. James

R. v. Thomas Smith

R. v. Edward Harwood

Court of Criminal Jurisdiction

Wylde J.A., 30 September 1817

Trial for Murder. This day the Court opened at ten, and proceeded to the trial of **SAMUEL SMITH**, a prisoner; **THOMAS JAMES**, a private of the 46th, then on duty at George Town, **THOMAS SMITH and EDWARD HARWOOD**, both prisoners, all late of Port Dalrymple, for the wilful murder of John Randall, on the evening of the 3d of July last, **at George Town (a settlement lately formed 50 miles distant from Launceston)**; by the infliction of sundry cuts and bruises, and other mortal wounds on and about the head. By other counts in the indictment the prisoner Samuel Smith stood charged as principal, and the three other prisoners at the bar with having aided and abetted, assisted and maintained him, in end after the perpetration of the crime.

By the testimony of **WILLIAM CROWTHER** it appeared, that the deceased was chief constable at the settlement of George Town; and on the evening of the 3d of July (that also of the murder) had proceeded from the house in which witnessed lived, towards the dwellings occupied by the government boats' crews, to give orders for the hauling up and proper securing of the Government boats; from which period he never afterwards saw him alive;— that the prisoners at the bar, Thomas James and Thomas Smith, arrived at the same house after the deceased had left it, and demanding and receiving a pint of rum in his name, afterwards called for and drank another pint and a half after which they became riotous; and the prisoner James inveighed against all constables because more rum was refused them. Smith also said many horrible imprecations against the constables, saying he had suffered enough by them.

A constable of the name of **BARNET** was knocked down by James, and treated with such violence as to threaten danger to his life, but for the interference of the witness, who also threatened to be killed, and the candle was extinguished— both these prisoners behaving on the occasion with extraordinary violence: however, Barnet was saved, and the witness escape personal injury. The deceased not returning to his home that night, gave considerable alarm; and the next day at noon the witness was among the number who beheld the body of the murdered man shortly after it had been found. It had been evidently underwater; a large stone was fastened to the right arm by a piece of rope of 6 yards, which had been unstranded, and appeared as so many distinct yards:— a wound on the back of the head extended latitudinally from the left to the right ear, near to which ear were the marks of two distinct wounds, which had separated for cartilage above and below; and on the concave of the forehead, at the commencement of the nasal projection, a violent blow appeared to have been inflicted, which had blackened and frightfully discoloured the upper part of the visage. A shoe found near the hut he swore to be one of the shoes worn by the deceased on the day he was killed; and a handkerchief, afterwards picked up in a line leading towards the waterside, he also considered, from its pattern, to belong to the deceased.

CHARLES MACDONALD, a prisoner fourteen years of age, sworn. He was servant to Mr. Leith, Superintendent of the Settlement of George Town. In the

evening of the 3d he went to Mr. Leith's orders to direct the prisoner Samuel Smith (the coxswain) to call hands and get the boats properly secured for the night; to which the other replied that he had no hands to get boats up, and as for Tommy Randall, meaning the deceased, if he should come he would take a stick and beat him out of the house; which expressions he several times repeated. They went together to the boats' crew hut, where the three other prisoners at the bar then were, and they all seemed rather intoxicated. He had once before conveyed Mr. Leith's orders to the coxswain in the course of the same evening; and on the latter occasion, when witness was in the hut with all the four prisoners, the deceased entered, and in his capacity of chief constable civilly required that they would see and get the boats up, as he should be compelled to report such as refused to comply with the order; immediately whereupon Samuel Smith seized upon an axe, and raising himself on a log of wood, striking him a violent blow on the forehead: the deceased fell on his back, and witness, fearing that he might share a similar treatment, ran out of the house towards that of his master; and when at a short distance from the hut, saw the deceased run out towards his own habitation, but fell on his face after preceding 9 or 10 yards, exclaiming, "oh, dear! oh, dear!" which was also in the direction of Filcham's well. Witness saw the prisoner James follow the deceased, and lay his hand on him after he had fallen, but not with any appearance of violence; another of the prisoners at the bar followed James, but witness could not say which it was. The witness then went home, and did not report what had happened until after the body of the deceased had been found the day following. He had no doubt whatever that all the persons present notice the blow given in the hut by Samuel Smith; and which Harwood fruitlessly expressed a wish to have prevented, as he exclaimed at the instant, "oh, don't hit the man; don't hit the man!" The next morning the settlement was filled with surprise and consternation at the total disappearance of the deceased; and the witness meeting with Samuel Smith, was by him desired not to mention the affair of the blow he had given him, for he did not know what could have become of him.

CHARLES CLARKE, a boy of 13, also a prisoner under Mr Leight's orders, sworn. He slept at the boats' crew hut, which contained two rooms below, and a loft in which he slept, over the room called the parlour. There had been much drinking among the hands of the settlement during the 3d of July, and he had been prevailed on to drink in the fore part of the day at another house, but having slipped away the effects of his intemperance, returned to his own home at dusk and went to bed; saw all the prisoners at the fire in the entrance room through which he passed, and between 8 and 9 was called down to supper by the prisoners, who appeared to have been drinking rather freely; but he at that time drank nothing: he went to bed again, and falling asleep, was awakened about two, as he concluded from the cocks crowing usually at that hour, by the noise of persons getting in at the parlour window; which attracting his more minute attention, he heard the prisoner Harwood audibly say, "did you tie a rope about his neck?" but heard no reply, nor any further talking, not so much as a whisper. He thought the circumstance strange, and conjectured that something was amiss, but did not offer to rise. About 9 in the morning he went down to breakfast, and found all the prisoners together in the fire room. He was afraid of making any enquiry concerning the foregoing circumstance; but taking up an axe to cut up a part of a kangaroo, he perceived the blade to be much stained with blood; and laying it down again, took another up. He had already heard of the unaccountable absence of the deceased, and this latter observation, added to what he had before heard, filled his mind with doubt and apprehension. Having divided the meat with the second axe, one of the party, who it would appear had observed him lay aside the first,

desired him to stay, should he be questioned, that he had cut the kangaroo with that axe, in order, doubtless, that the stains of blood might have been so accounted for.

Being in this part of his evidence interrogated by the Court whether he had sufficiently noticed the stained axe to know it again at this distance of time, the youthful witness confidently replied that he most assuredly should, from some remarkable notches on the edge. Four axes were in turn shewn to him, and each in turn rejected; but upon production of the fifth, he pronounced that to be the one, as was identically the case. Near to his bed, in the loft he occupied, he had all along until that morning noticed a piece of untwisted rope, the yarns having been unravelled. In the course of the forenoon (4th of July) Mr Leith entered the hut, and examined the stained axe, which was immediately claimed by Harwood as belonging to him; Mr Leith took it away with him; and shortly after his retiring several constables entered, and on search found and took away the rope also which the witness had described.

Mr. **WILLIAM LEITH**, sworn. He performed the duties of Inspector of Public Works and Principal Superintendent of Convicts at the recent establishment of George Town, at which 50 prisoners were stationed under a military guard of 12 men, of which number was the prisoner James. Samuel Smith was coxswain of one boat, and Thomas Smith and Edward Harwood were of the boats crew. Samuel Smith did not live in the same hut with the others, but in one nearly adjacent. Mr Leith had described the incident of the morning on which the deceased was missing. No intelligence had reached him to awaken probable conjecture; but he was nevertheless, disposed to the belief that some circumstances fatal to him must have occurred. He was watchful of every movement around him, and directed a diligent search to be made about the settlement and shore, in the possible supposition that some discovery of moment might take place, and at all events from a consciousness that in so doing he was acquitting himself of a necessary duty. He had seen the deceased in the course of the afternoon of the 3d, and had afterwards communicated to him, by the witness Charles Macdonald, his instructions to have the boats that you would buy their crews; he knew him to be a diligent and attentive man in his situation, and his sudden absence had therefore produced the strongest of sensations in his mind. The finding of the dead body was reported to him at about 12 at noon of the 4th, and he immediately proceeded to the spot. It was extended on a plane at a lower extremity of a shelving rock, where it had evidently been abandoned by the tide; one foot was without a shoe, and there was no handkerchief on the neck; a large stone was fastened to the arm by a piece of unstranded rope, consisting of six yarns; there appeared to have been two wounds inflicted on the head; the right ear was separated in two places; on the neck appeared several incisions, apparently made by some blunt knife or similar instrument; and the nose and forehead exhibited a ghastly appearance of contusion. Then it was that the witness Macdonald communicated to him the assault upon the deceased on the previous evening; which induced Mr Leith to go in immediate quest of the axe, though from his general bad opinion of the people who inhabited the hut, theirs would have been the first point to which he would have directed his enquiry. On taking up the axe, which retained its marks of blood, it was owned by Harwood, who was eating at the time, and approached it with his knife in his hand, though witness could not declare that his gesture was menacing: however he was himself upon his guard, and took the axe away. The mention made of the rope by the younger witness, Clarke, corresponding with the description of rope which bound the stone to the arm of the deceased, Mr Leith sent Constable shortly after to the hut, and there a piece of rope was found of the same quality, it being unstranded, and containing six yarns; and both the fragments being sent up under seal of the Coroner, were exhibited and sworn

to the same in identity, as they were specifically in appearance, which left no doubt of the one having been a part of the other. The four prisoners at the bar were at this time in custody, and were with the dead body and witnesses removed to Launceston, to await the enquiry of the Inquest whose verdict had sent the prisoners to the bar of this Honorable Court. After several days detention at Launceston, Mr Leith returned to George Town, and proceeding in search of further testimonials with which the recent examinations had acquainted him, directed his attention towards the spot on which the deceased fell, on his running out of the hut; and upon the 9th, to his great surprise, found there a pile of saplings which were newly cut, beneath which the absent shoe of the deceased was found to have been concealed. About 20 yards further from the hut, and in a direction from the place where the shoe was found, extending in a line towards the banks of the river (Tamur) whereat the body had been discovered, was found also a handkerchief, which several witnesses had on its production declared to entirely correspond in appearance with that worn by the deceased on the day of the murder; about this spot a quantity of blood was visible, as was also the impression of a man's head and body on the sand and grass, the head directed towards the river, and the feet towards the hut. Mr Leith further deposed, that in the forenoon of the 4th he observed a stain of blood on the hinder part of Samuel Smith's trousers, a little above the ankle.

THOMAS KEMP, Constable at George Town, sworn. After corroborating such of the foregoing facts as had fallen under his personal observation, the witness stated in addition, that upon the night of the 3d, at 9 o'clock, being at his own home, Thomas Harwood, whose voice he knew well, knocked at the door, and affecting the voice of the deceased Thomas Randall, seemed desirous of admission. On enquiry who he was, he answered "Tommy Randall," but that the deception being evident, he was then called on by his own proper name, and replied in a voice no longer feigned, but declining a wish of admittance, walked away. Thomas Tilmouse and James Lightfoot were in the house with witness at the time, as they all lived together. A few minutes after this, the barking of a dog was heard, and they all went out to examine the cause: when the witness observing a man near the fence, detained and found him to be Harwood; who demanded what the witness intended doing with him? The other informed him that he should give him up to Randall, the Chief Constable; and was quickly answered by Harwood that "Tommy Randall was not at home, and he would be dead if he would be at home that night." Harwood was immediately joined by the three other prisoners at the bar, one of whom, James wanted to fight the witness, but which Harwood interfering and preventing, he was permitted to go away.

JAMES LIGHTFOOT, Constable, corroborated such part of the previous evidence as had fallen under his knowledge, and described the place where the body was discovered to be about 300 yards from that where the handkerchief was found. He was in the house with Kemp who Harwood had ineffectually feigned the voice of the deceased, and afterwards declared himself; he had also gone out on the barking of the dog, and found Harwood, who had previously dropped a bundle under detention by Kemp. Some place had been robbed that night. He spoke also to the three other prisoners joining Harwood, and the determination shewn by James to fight the witness Kemp, which had however been prevented.

JACOB MOUNTGARRETT, Esq, Colonial Surgeon at the Settlement of Launceston, sworn. This Gentleman was called on to inspect the body on the 6th of July, during the Inquest, and professionally described the wounds that had been inflicted on the head of the deceased. The blow upon the lower part of the forehead had been given with such violence as to fracture and reduce to splinters the os

frontalis, and had occasioned so violent a concussion of the brain as must have produced death, though not perhaps immediately; the deceased might have survived that injury for several days.

Questioned by the Court. Do you consider, Sir, that after receiving so violent an injury, the deceased could have left the house, and run eight or ten yards? Ans. Most certainly; he might have run so many yards, whereas it is by no means probable that he would have been able to walk steadily. The blow had been evidently inflicted with some weighty instrument, as the contusion was altogether central, and was by no means likely to have been occasioned by any other than a weighty instrument. There were several slight incisions about the neck, none of which could be considered of mortal tendency; but the wounds on the back of the head could not possibly fail of producing instantaneous death.

He terminated the examinations for the prosecution; and the prisoners being called on for their defence, severally declared their innocence, and called no witness.

The Judge Advocate and Members of the Honorable Court now retired to consider of their verdict; and after an absence of nearly 3 hours, resumed their seats.

His Honor the Judge Advocate, in a long and elaborate address to the prisoners, reverted to the various points of evidence which most materially affected the case of each one severally, or of the whole conjointly.— It had become no less the arduous than the painful duty of Court, from the obligation of conscience, to determine on the fate of four persons, and the circumstances of a very complicated nature; inasmuch as that it was possible the crime for which they had been called to answer might have been committed by one person only; while from some of the circumstances that attended it, it was more probable that two at least had been concerned in its perpetration; and it was also possible that all had been assistant to it; though the presumption of actual guilt had appeared to the Court, after a patient and delicate consideration of the whole of the circumstances connected with the melancholy transaction, to prevail more against two than against any other number. One of these persons there arose no difficulty in ascertaining; for it had been clearly established that the deceased had received from the hand of the prisoner Samuel Smith a contusion on the forehead which must of itself have occasioned death, if no other wound had been inflicted; but who his immediate associate in the subsequent transactions of that dreadful evening might have been, it was impossible for the Court to determine; that secret remained only with themselves, and with that Being from whose all searching eye the crimes of men can never be concealed. Without longer holding in a painful condition of suspense the minds of those who might not have been accessory to the killing, His Honor here thought proper to pronounce the Verdict Guilty against Samuel Smith only; the other three Acquitted.

His Honor then proceeded to observe, that although a verdict of acquittal had been returned in favour of three of the prisoners at the bar, yet it could not be considered that they were all in ignorance of the deceased having been foully made away with, even before the body had been found; they were all present when the first fatal blow had been given by their unhappy companion: but it was not in evidence that they were either of them present with any other blow was given, and that their presence was not sufficient to constitute a charge of being accessory either before or to the act of murder; they must not only have been present, aiding, abetting, or counselling the principle in the commission of the crime: which one among them had by his expressions shewn a willingness to have prevented. The only certain evidence was against Samuel Smith, and him alone; and no instrument had been produced that the only weighty instrument which he had in the first instance used against the person of

the deceased; nor could it be doubted, that the same ill will which had instigated him to the first act of violence, might have further instigated him to follow up his bloody purpose. Another of the parties had used language with respect to the deceased, at a time when he was not present, which seemed to imply an ill will towards him; but these were loose and vague expressions, which were not followed by any violence from the party by whom uttered, and were therefore of no weight in the present solemn investigation. The criminal Samuel Smith, had also used expressions representing the deceased; from which, when connected with the assault, here arose sufficient proof of premeditated violence and of a malice expressed, though the killing without provocation would have constituted an offence of equal enormity, as proceeding from a malice implied; and if any consideration could be urged to add to that enormity, it would be found in the relative situation of the deceased and his murderer. The one was known to be a public officer, requiring of the other an obedience to the commands of his superior; and was discharging the duties of a public trust at the moment when the hands of the assassin was upreared, to sink him to the grave. The conveying of the body in the direction denoted by the shoe and handkerchief, the Court were also at a loss to account for, as it was not probable that one person could have easily effected it; and if assisted, it was impossible for the Court to determine, from the evidence, by whom such assistance had been rendered. It had also appeared that they were together at ten at night; evening a disposition to riot, and always ready to assist and protect each other; the quality of the rope fastening the stone to the arm of the deceased had proved exactly similar to that afterwards found in the hut of the prisoners; yet if one of the fragments had been actually cut that night from the other, still this night have been the act of one only, and there was no evidence to the contrary.

The testimony of Clarke, the younger witness, which related to an expression he said he had overheard when awakened by a noise of persons getting in at the parlour window, the Court had not inclined to attend to. [On this part of the evidence it must be remarked, that as all the prisoners at the bar had free access by the door, there could be no occasion for their entering at the window. The words he declared to have been mentioned loud enough to be heard by him were, "did you tie a rope about his neck?" to which no answer followed, nor a single whisper more; and although the witness declared the voice he heard to be that of Harwood, yet he could not ascertain which of the persons it was who at 9 in the morning desired him to state, if question, that he had the kangaroo with the stained axe. These were circumstances both of equal weight; and yet the recollection of the witness did not apply to the matter in which he might have been certain, whereas it did apply to that of the voice, in which he might have been deceived. These disagreements, though by no means tending to impeach the intentions of the youthful witness, were nevertheless such as to render necessary that his testimony should be received with every caution upon an investigation of such vital importance to the four persons at the bar.]

His Honor proceeded. Under all the circumstances, therefore, that had been made known to the Court, it was evident that against one person only the charge had been established; for with respect to any other, whatever doubts may have arisen from the deportment of the whole upon the night of the 3d of July, yet all was uncertainty, and where doubt was admissible, the benign maxims of the British law required that it should be thrown into the scale of mercy, and operate favourably to the persons under trial. As far as respected the prisoner whose guilt had been declared, the very nature of the weapon with which he had effected his sanguinary purpose was of sufficient evidence that his design was nothing short of murder; and had his violence proceeded

from a sudden cause of irritation, and not from personal malice and intention to kill, he would have used some lighter weapon, and have been at this time in a condition very different to that in which his crimes had placed him.

The acquitted persons were now directed to be taken from the bar; and His Honor, addressing himself to Samuel Smith in a pathetic strain of admonition, called his attention to his awful and unhappy condition. The offence of which he had been convicted was of a description by far too heinous to permit a hope of clemency in this life; it was the awful crime of murder, which in all ages, and by all human institutions, had been branded with infamy and abhorrence; and as far as this crime had in his fatal example admitted of aggravation, that aggravation had been added by his perfect knowledge of the unhappy victim of his atrocity being a public servant in the performance of his duty at the instant of his barbarous assassination. Obedience had been his (the criminal's) entire duty, nor was the task required of him fatiguing, or angrily enjoined; on the contrary, no colour had been given for the slightest irritability of temper, even admitting for a moment that such could have been received in extenuation of so gross a violation of public order. The unfortunate man had merely in the course of duty communicated to him the orders of his superior, and was himself responsible for their being carried into effect; his language was that of expostulation and intreaty; he had no suspicion of the violence intended him; but, basely surprised when of his guard, had fallen prostrate beneath the arm of unrelenting treachery and remorseless cruelty. The incident that had occupied him upon that fatal evening after the first violence, he was himself the best acquainted with; but as the aggression had been proved against him, and him alone, the presumption naturally followed that he was the most likely among the number to complete the catastrophe he had set out upon. The only judgment that could be safely formed by the Court was against himself, and only him. It would be well for the persons who had been the companions of his crimes, were they know to include their views intently upon him, and timely reflecting upon the doleful change of his condition, thereby profit by the melancholy warning set before them, and avoid hereafter the dissipation that too frequently pervades throughout the labouring orders in these settlements. With him, all soon would be at an end in this life; and it was solemnly recorded, that whoso sheddeth man's blood, by man shall his blood be shed. With an eloquent and persuasive exhortation to prayer and repentance, the Judge Advocate concluded his admonition; and thence proceeded to the annunciation of the awful sentence; which doomed the criminal to suffer death at such a time and place as His Excellency the Governor should think proper to direct, the body to be afterwards given for dissection.

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

SYDNEY GAZETTE, 01/11/1817

Court of Criminal Jurisdiction

Wylde J.A., 29 October 1817

RICHARD COLLYER, was indicted for the wilful murder of **CHARLES CARLYLE**, at or near the settlement of **New Norfolk, on Van Diemen's Land**, on the 24th of April, 1815. The facts stated in evidence against the prisoner minutely correspond with the accounts published in this Paper on the 20th of May 1815, detailing the melancholy particulars of an expedition composed of eight persons, of whose number was Mr **DENNIS McCARTHY**, proceeding against a collective body of bush rangers who were committing outrages at the settlement of New Norfolk, and who, being all armed with muskets and pistols, engaged the party, killed Mr Charles

Carlisle, and wounded all the rest; Mr. **JAMES O'BERNE**, one of the wounded persons, died a few days after in consequence of his wound. The assassins, there were 8 or 9 in number, besides a native black woman, were securely posted behind trees, and thereby rendered the fire of their opponents ineffectual. The prisoner at the bar was indicted as being present at and aiding in the affray, and as a principal in the murder for which he was now arraigned.

Mr. **JERMOTT**, of Hobart Town, being called on as an evidence, deposed to his being of the party who had proceeded in quest of the bandits, and was one who was wounded by them. He narrated the circumstances of the unfortunate contest, but could not swear the prisoner was among the assailants.

PATRICK FLAHERTY, who lived as a servant with the deceased at the time of his death, deposed, that on the morning of the 25th of April the gang of bushrangers, by whom his master was murdered, had previously robbed his house, and were soon after pursued by the party which his master accompanied to check their enormities, but that he never returned to his home alive. The prisoner at the bar he swore to positively as being one of the assailants.

GEORGE KING deposed, that he was the same morning pursued by a gang of bushrangers, and was made prisoner by them after being thrice fired at, and that the prisoner at the bar, Richard Collyer, was one of the men who fired at him; he remained their captive, and was compelled to obey such orders as they chose to impose on him. They had in the morning robbed the house of the deceased; and a few hours after, the party who had ventured to oppose them made their appearance; the witness was left with the booty they had then in possession, and the gang proceeded to the encounter; witness saw five of the unfortunate persons fall, and the others discontinuing a further fruitless opposition to superior numbers, who were much better armed than themselves, effected a retreat. The witness made his escape during the affray; and among the party of the bushrangers engaged in work, **MICHAEL HOWE, PETER GEARY, JOHN JONES, JOHN WHITEHEAD**, and the prisoner at the bar.

No further evidence being called, the prisoner was called on for his defence; which consisted in a brief denial of his guilt, alleging also that he was ten miles distant when the encounter had taken place; but the contrary fact was decidedly clear, and he was pronounced Guilty.

His Honor the Judge Advocate now proceeded to the denunciation of the awful sentence, endeavouring to awaken in his mind a proper sense of his condition, which imperiously demanded an earnest and unrestrained solicitude for the forgiveness of his crimes, and the future destiny of his now fleeting spirit in a world which was eternal. His lawless courses had in these colonies unfortunately been of long continuance. He had of his own accord withdrawn himself from the duties of his condition in society, and had abandoned its intercourses for a life of wild irregularity and enormity. He had been long a terror to the peaceful inhabitants of the country in which his destinies had placed him, and to mind inured to crime as his had been, the magnitude of each defence depended upon chance, and murder was itself resorted to, when unhappily needful to the perfection of his guilty projects. The avenging arm of justice had at length determined his career, while the enormity of his offences had cut him off from every hope of earthly clemency: but there was another life to come, which now demanded his entire care. A long eternity awaited him, and he wished for mercy there, so would he endeavour to deserve the promised boon, by true repentance, and by constant fervent prayer. Sentence of death was then pronounced, to

be carried into execution on such a day as His Excellency the Governor should think proper to a point, and the body to be after given for dissection.

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

SYDNEY GAZETTE, 03/11/1817

R. v. Witham

Court of Criminal Jurisdiction

Wylde J.A., 31 October 1817

JAMES WITHAM was next indicted on suspicion of the murder of a boy of 13, named **DELL**, whom we mentioned in a paper of October last to have been missing from a farm near Parramatta since Saturday the 4th of that month. The leading circumstances of the case were, that the boy was sent from the house of a man who had brought him up from infancy, situated in the direction of the Red Bank; from whence he set out towards Howell's Mill, to get a peck of corn ground, and has never been seen since. The prisoner had himself taken a like complement of corn to be ground at the mill on Sunday morning the 5th of October, and had never taken any thither before; he was also a very poor man, and could not in any period of his subsequent confinement give a satisfactory account of the mode in which he became possessed of that corn. The body of the boy, if murdered, had been sought after by almost the whole of Parramatta, and not found; and consequently from a maxim of law which seems to require that the death of the person supposed to be murdered should be clearly ascertained before the recording of a verdict against a party accused of the offence, the prisoner was acquitted and discharged. Before he was taken from the bar, however, His Honor the Judge Advocate expatiated with much energy on the mysterious circumstances of the case; which though unfathomable to human investigation, could not escape the knowledge of an avenging God!

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SYDNEY GAZETTE, 03/11/1817

Court of Criminal Jurisdiction

Wylde J.A., 31 October 1817

WILLIAM BURBRIDGE, a private in the 48th Regt. was indicted for a wilful murder of --- **HAYES**, of the same regiment on the evening of the 23d of October last, at **Launceston, Port Dalrymple**, by shooting him with his musket, in the barracks. The evidence upon the trial stated, that the prisoner at the bar had that evening received a musket from his serjeant, for the purpose of getting it into order for attending the monthly inspection on the following day; that he took it into the barrack (where many of his comrades were at the time, and among others the deceased, sitting on a chest going to supper), and was shewing it about and praising it, saying that the piece was in fine order, and he could hazard his life upon it: that he rested the piece across a hammock, which was slung very low, and the muzzle falling into a direction with another soldier who was sitting near to the deceased, the former knocked it aside, and remarked to him on the danger of sporting with a musket, without knowing whether it was charged or not; in reply to which the prisoner at the bar said, it was not charged; and at that instant the deceased, under the latter impression, threw open his arms, and presenting his breast, jocosely desired him to fire at him; the peace instantly exploded, and the contents lodging in his breast, he fell and almost instantly expired.

All the witnesses agreed in the material facts of a general good understanding having uniformly subsisted between the prisoner and the deceased, nor was there the slightest circumstances from which a previous malice could have been presumed.

It was stated also, that as soon as the unfortunate man fell the prisoner appeared to undergo considerable agony of mind, and from the whole of the circumstances attending the melancholy transaction there remain no doubt that however rash and unthinking might have been the conduct of the prisoner in sporting among his fellow soldiers with a gun without being conscious of its being unloaded, yet this was unaccompanied by any feature that could stamp the impression of moral turpitude and guilt; and the prisoner was accordingly acquitted.

His unhappiness during his confinement had marked the pain of his reflections on the unhappy catastrophe; and with a serious and pathetic admonition from the Bench, he withdrew from the bar, and was shortly afterwards liberated.

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

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SYDNEY GAZETTE, 11/10/1817

R. v. Walker

R. v. Ralph Pearson

R. v. Elizabeth Pearson

Court of Criminal Jurisdiction

Wylde J.A., 10 October 1817

JOHN WALKER, RALPH PEARSON, and ELIZABETH PEARSON (his wife) were next put to the bar and indicted for the wilful murder of **JOHN SUDDIS**, a settler at Wilberforce, with a gun or musket, on the evening of the 12th of July last.

Mrs **ISABELLA SUDDIS**, widow of the deceased, deposed that on the evening of the 12th of July, during the twilight, three men rushed in upon her family, when at tea, and presenting a musket towards them, commanded all in the house to throw themselves on the floor and remain quiet, on pain of instant death. All the persons present, consisting of another woman and four men exclusive of her husband, were terrified into compliance with the command. Her deceased husband, on the contrary, immediately ran to a window, and in passing through it, a musket was fired at him by one of the robbers, at the desire of the other two, and the unfortunate man fell with a groan on the outside. He survived the wound in extreme agony for 15 days, and expired on the 27th of the same month. They then proceeded to plunder the house of everything they considered of value, and took away among other property a chest of hyson-tea, into which some shingle nails had fallen and become dispersed. The persons of the robbers she described to be, one a big man; another of middling stature; and the third a smaller man; the first had a musket, and was the man by whom it was fired; the second was armed with a brush hook, with which he struck the witness, and had long shaggy hair; and the third was armed with a pistol. On their entrance they called out, "come in Fitzgerald;" but no other person entered. The musket she had had time to observe and to describe during their continuance in the house, which was nearly an hour; their faces were too much concealed or disguised to be recognized by her; but the two male prisoners, together with another man (**SAMUEL GILBERT**), who had been since admitted as an Evidence for the Crown, being some weeks after the robbery and murder taking for examination before the Bench of Magistrates at

Windsor, she there saw them, and had no doubt that they were the persons; Pearson she positively swore to from his remarkable head of hair.

JAMES TRACEY, servant of the deceased, corroborated Mrs Suddis's testimony, and described the situation of the deceased, whom he found bleeding in the yard, after the robbers had departed.

WILLIAM COANE spoke to the same effect.

SARAH CONNOLLY of Windsor, deposed, that soon after the robbery, the approver Gilbert (which the prisoner at the bar, Walker), hired a horse and cart of her for two days.

Mr **CARVER**, district constable at Windsor, sworn. Witness took Samuel Gilbert into custody soon after Suddis's death, when selling tea to the settlers, among which were shingle nails mixed. He took him before a Magistrate; to whom Gilbert detailed all the circumstances of the fatal evening, and the prisoners at the bar were taken into custody accordingly. It appeared from Mr Carver's testimony, followed by that of Mr Howe, chief constable of Windsor, that the prisoner Pearson was desirous when taken to become an evidence for the Crown.

SAMUEL GILBERT, King's Evidence, was now sworn, and gave a testimony which when compared and joined to the facts the Court were already in possession of, left no doubt of the guilt of both the male prisoners: the female was acquitted; as the only evidence that went to incriminate her was that of Gilbert; which stated, that on the evening of the robbery they were all assembled at her house, and that she, knowing the gun was loaded, and that her husband was going with them to commit a robbery somewhere or another, had lent a pin to prick the touch-hole. Sentence was passed on the criminals, which condemned them to be executed, and both hung in chains.

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