

SYD1819

SYDNEY GAZETTE, 10/04/1819

Court of Criminal Jurisdiction

Wylde J.A., 7 April 1819

This was a day of serious trial for the murder of **WILLIAM COSGROVE**, a settlor and district constable upon the Banks of the South Creek, on the first of the present month; by the discharge of the contents of a musket loaded with slugs into his body, of which wounds he died the following day. The prisoners were **TIMOTHY BUCKLEY** by whom the gun was fired; **DAVID BROWN**, and **TIMOTHY FORD**, all of whom had been in the Colony but six of seven months, and prisoners in the immediate employ of Government, and who unhappily had not renounced those propensities which sooner or later were to lead them to an unhappy end.

The first witness called was **THOMAS COSGROVE**, brother of the deceased, whose testimony was conclusive of the fact. The witness stated, that his murdered brother was a district constable at the South Creek; and that he having seen, and believing the three prisoners at the bar to be bushrangers, requested him, the witness, to joining in pursuit of the suspected persons; all of which was readily complied with, and a pursuit accordingly commenced. This was about one in the afternoon; the deceased went up to the three men (the prisoners at the bar), and found then in conversation with two young men who were brothers of the name of York, one of them a son in law of the deceased. The deceased called to the prisoners at the bar, declaring his willingness to point them out the road to the place they were enquiring for, namely the "Five mile Farm;" but appearing conscious that they were armed bushrangers, he hesitated not to rescue their giving themselves up to him, he being a district constable. This evidence further proved that the prisoners at the bar, were in conversation with two Yorks for many minutes prior to the pursuit which was proposed and persevered in by all the persons who joined in it by the manly boldness of the district constable, who, although a man in good circumstances, had reconciled the apprehension of danger with his manifest line of duty.

This witness, who seemed in his evidence to entertain no sort of feeling that could be construed into a vindictive sentiment, went further on to state, that one of the Yorks, the eldest, had joined in the pursuit; that his murdered brother had repeatedly required the three fugitives to surrender themselves; that Timothy Buckley, who had the musket, turned round repeatedly and levelled at them; that one of the fugitives, Ford, had attempted to rest the piece from him, but did not succeed; that the pursuers behaved themselves with great courage and with the most determined zeal in apprehending these three stout men, one of whom was armed with a gun, and appeared only to await the moment of murder until the difference of celerity in his pursuers should mark the most needful object. Brown, who was the tall and most powerful of the three, turned several times upon Buckley, who had the gun, and told him to keep a good look out on such a man, meaning the man who was closest in pursuit, and this was the deceased; who was armed with a pistol, but did not discharge it until after he had received the contents of a musket into his side, breast, and lungs, the charge consisting of eleven or twelve slugs; his pistol afterwards went off, but hurt nobody. Stricken with death, the poor man then sat down on a bank; was taken home; and lived in anguish until the following day.

This witness declared himself the brother of the deceased; and in the sympathetic feeling of humanity, received from the Judge Advocate the following much to be remembered sentence of condolence. "Witness, you have done your duty to Society;

you have acted well in the performance of that duty, and the world has much to regret that you have paid so dearly for it, in the loss of a brother, and of a good member of Society." **CORNELIUS RYAN** sworn. Witness went to last Thursday to the house of the deceased to get some wheat ground at his steel mill, and prior to any other communication the deceased asked him if he had seen three men of suspicious appearance, whom he considered to be bushrangers; to which he answered affirmatively, and consented to go with the deceased, then he knew to be the constable of the district, in pursuit of the run-aways; that the three men, now the three prisoners at the bar, were enquiring of the two Yorks the right road to the Five mile Farm; and the deceased telling them he would shew them the right path, they all ran off: on their doing which the deceased ordered them to deliver themselves up to him, as he was the district constable; that they nevertheless continued to run; the man (Buckley) who was armed with a gun, repeatedly turning around and presenting it at the nearest of his pursuers; that the deceased was armed with a pistol, which went off on the instant after the explosion of a musket contents of which lodged in his body.

Other witnesses gave evidence to the same effect, proving the murder in the clearest possible manner; and also that the whole three of the prisoners at the bar were actuated by the self same spirit of hostility determining on the taking of life rather than surrendering themselves to justice.

The evidence being too clear to admit of a defence the prisoners when called upon acknowledged being together on the unhappy occasion. Brown and Ford making no further observation than that the gun was in the hands of Berkeley, from whom Ford would have wrenched it, as appeared by the testimony of Thomas Cosgrove; but no conception could be entertained that his endeavour so to wrest it was well intentioned; and with respect to Brown, every witness had sworn that when the three were running from their pursuers, he said repeatedly to Buckley, "don't fire until there is occasion." He stated upon the contrary that his expression had not been until there is occasion, but that his actual expression had been, "do not fire, for there is no occasion." Every witness had distinctly sworn to the expression with which he had been challenged, "do not fire until there is occasion for it;" and he became of course a principal in the murder.

TIMOTHY FORD, a very young man, apparently not exceeding two or three in 20 years of age, was placed on the right hand of Buckley, who was in the centre; and from every appearance seemed to have reconciled himself to an unavoidable destiny. The hour of trial and the hour of death are so closely connected in the case of murder, that this unhappy creature had death precisely in his view and as much as animated nature would afford, he might be esteemed the appearance of a moving corpse. The unhappy man upon, each side of him decided themselves upon the principle that they could not prevent the firing; but why they, would the voice of reason say, associate with a man whom they could not control, bind, or manage armed with a loaded gun, and conscious of a punishment resulting to all connected with him for any crime he should himself commit.

The only doubt, His Honor observed was whether the Court was in the possibility of discerning between the unfortunate men at the bar any difference or distinction of crime. That there was only one musket was an established fact; and that this one musket was the identically presumed defence of all, not mattering in whose particular hand it was, circumstances had sufficiently shewn. The only point upon which the Court could doubt of an equal criminality was, whether there might not have been in the course of the transaction a forbearance, a kindness which even in the criminal world be looked at by his judges with regard; but here nothing of the kind appeared.

The man who fired the gun there could be no doubt respecting; but it was the entire wish of the Court to discover if possible a difference in the degree of guilt between the prisoners. One man endeavoured to wrest the musket out of the hands of the actual murderer; and it is only presumable that if he had got possession of it, he would have committed identically the murder committed by his companion. The man, Brown, had repeatedly desired Buckley, by whom the piece was eventually discharged, not to fire until it was necessary. In the terms until it was necessary there was a tendency to murder.

The investigation had been long and patient; and for what reason? Not to pass a verdict for a murder which was clear in its proof, but to consider whether either or both of the accompanying persons were guilty as principals or as merely accessories, the Court considering that its judgement would be final, and establishing its verdict upon proofs which left no doubt behind them. Men meeting and combining in an illegal pursuit, what mattered it of what cast or colour their pursuit might be, they were all equally liable to every danger that might accrue therefrom; and here were three men, escapers from their Government employ, travelling from place to place with a loaded gun; a gun loaded with the eleven or twelve slugs; the whole of which were deposited in the body of a man whose duty it was to apprehend them, and who in the mild performance of his duty was horribly murdered. Brown had said that his words were not "do not fire until there is occasion, but that his expression was, "do not fire, for there is no occasion." In this turn of expression there is a strong difference; but the entire weight of evidence is against him. The Court has been particular upon the point, and every witness has sworn particularly to the expression which brings this prisoner to the crime of murder as its immediate instrument and adviser. You heard the unhappy man who was murdered among you say that he was a district constable; you also heard him require you to give yourselves up to him; you, Brown and Ford, it is melancholy to remark, saw repeatedly the prisoner Buckley turning around and levelling his piece at his prisoners; and at length you heard the explosion; one of you, that is Timothy Ford, having repeatedly told the actual murderer Buckley to keep a strict eye upon his nearest prisoners; having also endeavoured to wrest the gun away from the man who had it, how was it possible to say for what purpose; the whole of his conduct was against the slightest sentiment in favour of him. His Honor the Judge of the Court went to considerable lengths in the retrospection of an evidence which admitted not of contradiction; and performed the painful duty of passing sentence of condemnation with that degree of energetic sympathy which has ever distinguished him as a Gentleman of feeling.

The unhappy men were yesterday executed.

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

SYDNEY GAZETTE, 04/12/1819

Court of Criminal Jurisdiction

Wylde J.A., 3 December 1819

WILLIAM SMITH and JOHN PAGAN were indicted for the wilful murder of **JAMES WHITE**, at Newcastle, on the 11th of October last.

CHARLES POWELL, the first witness called, deposed that the prisoners at the bar, the deceased, and himself worked at the lime kilns, which are distant from the settlement of Newcastle 7 miles; that on the morning of the murder he saw the prisoner Pagan about 500 yards distant from the gaol in a stooping posture among the scrub, with a stick in his hand; and upon proceeding outward a little way his ears were

arrested via plaintive cry; he made towards the spot from whence it proceeded, and saw the prisoner William Smith striking the deceased; upon which witness exclaimed, "you rascal, what are you at?" When he made off, throwing the stick or bludgeoned from him. He, the witness, approached the deceased, who died in 15 minutes after. Upon examination of the head of the deceased it was discovered he had received seven wounds, which were proved to have been the occasion of his death. An immediate alarm was given; the prisoners were secured; and the body conveyed to Newcastle. An inquest was held upon the occasion, and the prisoners at the bar were committed to take their trial for the offence. This witness further deposed, that the prisoner Smith had in his hearing repeatedly avowed himself the murderer.

ROBERT SHAKESPEARE deposed, that he also belonged to the lime-kilns; that the prisoners at the bar, the deceased, and himself had made an agreement to escape into the woods some short time before; that they left their employments on Monday (Sept. 20), with the injection of carrying their plan into execution; that the prisoners Smith and the deceased walked first near the beach, and the prisoner Pagan and himself followed; and during the way Pagan disclosed to him, the witness, their intention to kill the deceased, James White; observing that in case of a discovery the prisoner Smith was to be named the perpetrator, who had a fractured skull, and which was to be the plea for his having committed the murder. Becoming thus accidentally acquainted with this their dreadful intention, he declared he would have no hand in it, and immediately turned back towards the lime-kilns, but was intercepted by the prisoner at the bar, Pagan, who denounced vengeance against him if he revealed what had been told him; in consequence of which threat he made no disclosure for some days afterwards, as he at length did to Dr Evans in the hospital at Newcastle, to which he had been removed on account of illness. This witness (Robert Shakespeare) positively swore that the prisoner Pagan struck the deceased a severe blow on the head with a stick or bludgeoned.

WILLIAM LEE and **THOMAS HOLLAND**, privates in the 48th Regiment, deposed, that the prisoner William Smith repeatedly acknowledged himself to be the perpetrator of the crime.

[A confession, made by the prisoner William Smith before the Commandant at Newcastle, was now read in Court, wear it was stated that the murder was contemplated three weeks before it unhappily occurred, by himself and the other prisoner at the bar; and that he Smith, was to be considered as the principal, entertaining the notion that in the case of his being placed on his trial for the crime, he would doubtless be acquitted on the plea of insanity, the skull being in an injured state.]

The prosecution here closed; and the prisoners were put on their defence, when the prisoner Smith, as he had done in the whole stage of a melancholy transaction, acknowledged himself guilty of the offence, exculpating Pagan from all participation in the crime; who denied his having had any criminal part in the transactions. The Court retired; and after half an hour's deliberation returned a verdict of Guilty against both the prisoners. His Honor the Judge Advocate pathetically exhorted the unhappy men to prepare for that awful change which would shortly take place: – His Excellency the Governor may think proper to direct; and their bodies to be dissected and anatomized.

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

SYD1818

SYDNEY GAZETTE, 05/12/1818

Court of Criminal Jurisdiction

Wylde J.A., 5 December 1818

HARRIET MARKS was indicted for the wilful murder of her new born male infant on or about the 20th of September, at Parramatta. It appeared in evidence upon the trial, that upon the 22nd of September, about 10 in the forenoon.

MARY SURTHERLAND, the first witness called, was alarmed by the report of some children, that a dead infant was lying in a ditch, about 15 feet in depth; and on examination no external marks of violence were found upon it, except a small bruise on one of the temples, which by the Medical Gentleman who had examined the body, was pronounced to be insufficient to have occasioned death.

By the testimony of Mr **OAKES**, Chief Constable, it appeared that the state of the infant was reported to him in the forenoon of the 22nd of September; he repaired immediately to the cavity wherein it was found, which he described as leading into a barrel drain that crosses Phillip street, Mr Oakes reported it to the Resident Assistant Surgeon, Mr **WEST**; and having entertained a previous suspicion of the prisoner at the bar concealing a situation which had probably led to this melancholy catastrophe, he had made his suspicion known to her, she being a servant under his official authority, but she denied it to be the case. Induced by this suspicion, he went to the house in which the prisoner at the bar lodged, which was but at a small distance from the cavity wherein the infant's body was found, and the evidence against her becoming manifest, she was confined on vehement suspicion, and was fully committed by the Inquest.

It appeared by the testimony of a man in whose house she lived, that from its dimensions and other considerations it was nearly impossible the incident could have been born alive; but it was evident also that she had cautiously endeavoured to conceal her situation, and had persisted in its denial to her most intimate acquaintances; but shortly after she was taken into custody acknowledged herself the unhappy mother, also making admissions, which connected with the whole tenor of her conduct, left it more than doubtful whether it had not been uniformly her design to perpetrate the crime which there was no living evidence of her having actually committed.

The evidence against the prisoner concluding, she presented a written statement, which the Court was pleased to admit, and it was read accordingly. The contents went to a declaration of innocence as it affected the perpetration of the act of murder, to acknowledge the concealment, pleading in extenuation of this proved, as admitted fact, the dread of the second instance of imprudence becoming public against her, as she already had an illegitimate child of three years of age in the colony, to whom she had always carefully attended.

The reading of the defence being ended, the Court retired to the chamber of deliberation, and in half an hour returned to the Bench; when His Honor the Judge of the Court addressed the prisoner at considerable length, in a language so truly impressive as to affect her almost to a state of convulsion. Did the room of our columns, the space of time before us, and above all, were we happy in the capacity of affording to our readers even an outline of the observations which proceeded from the Learned Judge upon the occasion, we should exult, not in the unhappy duty of exposing to public odium the wretchedness of a fallen creature, but in the occasion it would afford of placing before the many who might be capable of involving

themselves in crime without reflexion, a polished mirror which could not fail in reflecting upon the least inconsiderate mind a sense of duty to society from which the happiest effects might be expected to result.

His Honor, in the course of his address, recapitulated all the points of the evidence that had been adduced in support of prosecution; animadverted upon each in order – denouncing the crime with which the prisoner had been charged as of all others the most direful of offences in every part of the world. It was an offence, which, weighed and considered in all or any of its relative enormities, had been always esteemed as most horrible and unnatural. It was a crime against the public policy and the political advantages of the country; and, as it affected the duties of Religion and reality it exceeded every human power to suggest how it could be possible that such an offence as infant murder by a mother could have ever been committed; the mother to her incident was its natural protectress ; it was a charge consigned to her most tender care and regard; and in the betraying of the solemn trust she must ever evince a depravity which unfitted her for every future purpose in society. From the evidence taken upon the trial there might considerable apprehensions be entertained as to her inducement for the long and continued concealment of a situation which the very act of concealment had by a former law, which His Honor cited, been punished with death, unless a child could by a witness be proved to have been dead-born: by a subsequent act, passed in the 43d of His present Majesty, which strongly discriminated between the death of an infant arising, from the concealing of pregnancy, and its actual murder, although the punishment of death was removed from the offender, yet a punishment was by law provided, which the Court, from all the circumstances of the case, conceded it their duty to enforce. It was therefore the judgement of the Court that she be acquitted of the murder, as there was no proof the child had been born alive, but that for the felonious concealing she should be committed for the term of two years to the gaol of Parramatta.

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

SYD1820

SYDNEY GAZETTE, 02/12/1820

Court of Criminal Jurisdiction

Wylde J.A., 29 November 1820

JAMES CLENSEY, JAMES WALL, and NICHOLAS COOK, were indicted for forcibly and feloniously entering the farmhouse of **JAMES SAVILLE**, within a mile of Parramatta, on the Windsor side, and after committing many violent outrages, stealing sundry articles therefrom.

BENJAMIN RATTY, a constable, deposed, that seeing the three prisoners passing through the town after eight at night, he hailed them, but instead of stopping, they answered civilly, yet did not stop: they were advanced upon, and refusing to stop, assaulted the constables with stones, one of which wounded **DILLON**, another constable, severely on the face, and knocked him down.

More aid was quickly obtained, and Cook was taken after a vigorous resistance. Wall ran towards Mrs Reid's fence, and he was likewise apprehended. A shawl, now produced, was found close to the spot where they were first challenged, with a mask close to it, formed of a part of a blanket, with three holes in it for the eyes and nostrils. **EDWARD DILLON** deposed to his having joined in their pursuit. He saw the men run towards the Court house, and saw one raise his hand, as if he had thrown something over the palisade. Cook, deponent stated to be the man who had struck him with a stone on the face. He and Wall were taken to the watch-house, and some silver was taken from Cook. They were all close to Mrs Reid's fence when accosted. Witness produced a stone, broke into 3 pieces by the violence it had been thrown with, which was polished, and rounded with a bead; and was evidently a fragment of the 17 mile stone, which is broke into small pieces, and lies between Parramatta and the house robbed. The deponent had ascertained the morning after, that the three prisoners belonged to Farris's gang, employed on the Sydney Road, 8 miles from Parramatta. Deponent was sensible this was the stone thrown by Cook, as he had picked it up immediately after.

EDWARD WHITE, constable, deposed, that he saw Wall and Cook at the watch-house, where half a pound of soap was taken out of Cook's pocket; also, five dumps, one half crown, and 2s. in copper coins; and a quarter dollar.

MAXWELL, a constable at Fairhurst's gang, at Longbottom, eight miles from Sydney, to which the three prisoners belonged, but were absent from one o'clock on the day he named, being Sunday, and when not returned to the eight o'clock muster at night. At seven in the morning he saw Clensey, who in consequence of the Parramatta information was apprehended, when he immediately enquired what had become of Wall. [Note. From this enquiry after Wall, the idea that struck many of the authority was, that as Cook was the first taken, he was already acquitted with what had become of him, and therefore confined his enquiry to Wall, of whose fate he was uncertain]

G. FAIRHURST, overseer at Longbottom, deposed to the same effect; and particularly to Clensey's enquiry after Wall.

WILLIAM SEVILLE deposed. He is a farmer a mile out of Parramatta. Upon that evening three men rushed into his house after twilight. **LUCY RAINER** and her child were with him, a boy between 7 and 8. As soon as they rushed in they said they were bush-rangers and wanted food. They were disguised with such masks of blanket as

were now shewn to him. Their persons he described, and the description barely corresponded with the persons of the prisoners at the bar. They had bludgeoned, one of which was pushed violently into deponent's face, with menaces and a command to silence. Two of them forced deponent and the woman into the bedroom. The child was worse treated by the third, who unfeelingly dashed his little scrap out of his hand, and then inhumanly threw the little unoffending creature on the fire, which, had it been a cold month, and burning fiercely, must have burnt him to death; but it had been happily marked September in the Calendar of Fate, and the fire was sufficiently low to permit the little otherwise devoted innocent to crawl off with very little hurt; yet trembling beneath the dreadful menaces of the miscreant, still threatening to cut his throat, as soon as he should extricate himself from the scorching embers. The same man broke open two boxes, one having been broken open before, and took out a shawl, the property of one at **MARY BARTMAN**; he then searched the woman's pockets present, and took her money, 5 dumps a quarter of a dollar, one half crown, and some copper coin. Having effected their purpose, and eat and drank in the house, they went away, taking with them the fragments; ordered them to shut up the house and go to bed: but had scarcely quitted the door, when one proposed to go back and murder them; which horrible proposition was opposed by a second, who exclaimed " O no, we'll do no murder."

LUCY WAIN, the woman in the house when the robbery took place, deposed to the money being taken out of her pocket.

MARY HARTMAN deposed to the shawl being taken out of her box, at Seville's, on the night of the robbery.

The little boy was desired by the Court to be brought forward. Mr Beale, keeper of the Parramatta gaol, had recounted surprising instances of the recollection this child had of two of the robbers, whom he had secreted repeatedly from among a number, notwithstanding many a change of position. The child was desired to point out the person who had treated him violently, and he unhesitatingly pointed at Clensey, as he had always persisted in doing, with innocent confidence.

His Honor the Judge Advocate summed up the evidence, and dwelt with much energy upon the facts that chiefly militated against the prisoners at the bar.

Three masks of old blankets found where the prisoners were first challenged had been produced in Court, and were the same as those worn by the robbers; the stone with which the prisoner Cook had wounded Dillon the constable, was proved to be a fragment of the backen mile stone; the shawl that had been beyond doubt cast away by one of the persons was sworn to by Mary Hartman; the money was of the same amount and description as that taken out of the pocket of Lucy Wade, and three prisoners at the bar left their gang together on Sunday noon, and were the only persons absent from it all night; two were taken nearly upon the spot; and Clensey and another had been selected repeatedly from a number by an innocent child who had had frequent opportunities of seeing part of their faces, not withstanding their loose disguise, before he was acquainted with any of the foregoing circumstances relative to them; and yet one of the prisoners, Clensey, had brought in a man, his brother, to swear he was elsewhere; but his voluntary testimony perished in the early stage of his examination.

The competency of **JOHN WAIN (the little boy)** to be made an evidence was a question of consideration to the Court, who would have discerned at whether there was sufficient reason in the child to remember and to relate what he had seen and experienced: he did not appear to have been daunted; and he was unacquainted with deeds of cruelty, and was fearless of that of which he had as yet formed no

conception; and on account of his youth the robbers were perhaps heedless of his looking at them. The causes that had induced so young a child, bound to humanity by all the tender ties of natural affection, so strenuously to persist in this declaration, rested with God: – his competency he as an evidence remained with the Court. His Honor could not help adverting to and contrast in the expressions the two persons who had disagreed on the horrible proposition of returning to murder all the people they had robbed. God, he fervently hoped, would look down with compassion upon the errors of him, who in the midst of crime, had still shewn that he was not dispossessed of the common feelings of humanity. – His Honor having concluded this impressive retrospect of evidence, the Court without retiring returned a verdict – All Guilty. Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY GAZETTE, 16/12/1820

Court of Criminal Jurisdiction

Wylde, J.A., 14 December 1820

JOHN KIRBY and JOHN THOMPSON were indicted for the wilful murder of **BURRAGONG, alias KING JACK**, a native chief at Newcastle, on the 27th of October; and the first witness called in support of the prosecution:

ISAAC ELLIOT, a superintendent at that settlement who deposed that the two prisoners charged were employed in the blacksmith's shop there; that Kirby had been removed thither from hence, two years ago, under sentence of the Criminal Court; and that Thompson was also sent thither, for endeavouring to effect an escape from the Colony; that on the 26th of November they were absent from their work, and he discovered that they had both run from the settlement; which being reported to the Commandant, he immediately dispatched a military party, attended by two constables, in quest of them. In ten minutes after the party had left a black woman arrived with information to deponent of two men being taken up by some natives, who were conducting them into the town: the... party were in consequence recalled from their adopted route and joined by deponent, went out to meet the natives with their prisoners; and shortly met a number of natives (accompanied by the two prisoners), all armed with spears and other weapons, the murdered chief guarding Kirby: both the prisoners very soon desecrating deponent and the pursuing party: immediately whereupon the natives set up a yell and shout, and clearly articulated the words "Croppy make big Jack boeoy" by which was to be comprehended that one of the white men had killed Jack their chief; whom the prisoner Kirby was seen to raise his arm to seize upon, but fell himself from a blow by a waddy.

Witness further deposed, that no blow was struck by the natives until the murderous act had been committed by the prisoner Kirby. The other prisoner at the bar had only

endeavoured to effect his escape, but was secured by one of the constables, as was Kirby also, who had risen, and endeavoured to run off. Deponent saw the deceased in a wounded state, by some sharp instrument, in the belly, and bound him round: had him conveyed into the town; had a search made for the destructive implement, which could not be found. After ten days survival, the deceased went to deponent with an order from the worthy Officer that commands the settlement, to receive a suit of clothing, and then said he was murry bujjery, meaning that he was much recovered; but in five days after, deponent heard that this kind, useful, and intelligent elder had breathed his last. The fatal wound was given on the 27th of October, and he painfully languished till the 7th of November ultimo.

JAMES WILLS, one of the constables who attended the party, corroborated the foregoing evidence; and particularly to the fact that no blow was struck by any native before he saw Kirby stretch out his arm towards the wounded man, and heard the yells and shouts of the natives; and that while in the act of hand-cuffing the two prisoners, the prisoner Kirby expressed his regret at not having killed the deceased outright. He saw the deceased a few days after in the woods, and he then expressed a complaint of much illness, owing to his wound, and in a few days after he was dead.

The other Constable of the party, **MENCELO**, corroborated the foregoing testimony.

Mr. **FENTON**, assistant surgeon of the 48th Regiment, gave testimony of the deceased having been brought into the settlement wounded, and was attended to with every care, in his own quarters; where he would not continue after the third day, though every persuasion was used to detain him, he being desirous of restoring to the expedients practised by themselves in wounded cases. Dr Fenton described the wound to have been received in the abdomen, and extremely dangerous. In five days after he is quieting, he returned, and Dr Fenton dressed his wound, he then appearing in a convalescent state; but he soon after heard of his death. Dr Fenton had no doubt of the death ensuing from an internal mortification in the abdomen, occasioned by the wound proved to have been inflicted by the prisoner John Kirby; against whom a verdict was returned of Wilful Murder; and sentence of Death was immediately pronounced upon him – his body directed to be dissected and anatomized. John Thompson was acquitted.

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

SYDNEY GAZETTE, 16/12/1820

Court of Criminal Jurisdiction

Wylde J.A., 11 December 1820

WILLIAM BELCHER, indicted for wilfully and maliciously firing at his master, **THOMAS SILVESTER**, with intent to kill him and whereby he was severely wounded, upon Wednesday the first day of November last, pleaded not guilty: and evidence for the prosecution being called the following appeared the circumstances of this extraordinary case:

The prosecutor is a settler on a farm a few miles from Sydney in the vicinity of King's Grove, and was called to town on business a few days before the crime took place leaving the prisoner at the bar, who was his Government servant, in charge of a temporary residence he had erected, and all it contained, having had no cause to suspect his honesty. He left on the farm a [?] foal and in the cottage, amongst other property a musket (unloaded) with ammunition, such as slugs, powder &c. The prosecutor returned in four days, and perceiving that the mare had not been tethered at

the place he had given directions for, but on a bare spot, divested all of herbage and finding no person about the farm, he proceeded to that part of the ground where the prisoner ought to have been at work; but he was not to be found, and all work had been neglected by him. Thence strongly suspecting something improper had taken place, he proceeded towards the barn, calling around for the prisoner, whom he at length perceived advancing from the brush with a fire brand in his hand, and apparently unwell. The prosecutor enquired at his ailment, and was answered that he had been robbed by bush – rangers of his provisions. The prosecutor then asked if they had taken the musket, and the prisoner replied that it was safe in the hut; then commiserating the condition of the prisoner, from the supposition of long being without food, he directed him to provide a meal, while he went in to see after the musket ; but not finding it described, he challenged the prisoner with the assertion of an untruth; whereupon the latter, in contradiction of the first report respecting it, affirmed positively that he had already informed him the bushrangers had taken that away likewise. He described the persons of the bush-rangers; and said that one **SPARKES**, residing half a mile distant, knew them very well.

The prosecutor much dissatisfied at the whole account, went to Sparke's, leaving the prisoner cooking: and on his return found him on his knees, behind the stump of a tree, and supposed he was collecting firewood; but on his approach within seven yards, he saw him rise deliberately upon one foot, and then on the other, levelling a gun at him; which he immediately fired, and lodged the contents, of slugs, in the left side of his face: he fell senseless; but gradually recovering sufficiently to hear a noise at his feet, he rose on his knees, and perceived the prisoner was in the act of reloading the gun: he begged his life might be spared; but feeling assured that personal exertion was needful to its preservation, he arose thoroughly, and ran for the hut, the door of which was so secured as to require more loss of time than his danger would admit, and he made for King's Grove, half a mile distant; as he gained and entered the gates of which, he sunk exhausted, but had sufficiently sounded the alarm to find ready assistance, and one of the people, **NETICK EFFIRNAN**, went off immediately and secured the prisoner on the prosecutor's premises; but he denied being the man that fired, though the fact had been established against him in terms indubitable as incontrovertible.

The prosecutor spoke highly of the prisoner's previous character and demeanour; but related some expressions that had before dropped from him in common conversation; the one of which he remarked to him that he had heard a bad character of him as a master to his Government servants, and that rather than submit to such himself, he would do something that should affect his life: at another similar conversation he enquired of him, the prosecutor, at what distance slugs would kill, and was told at about 8 yards.

The Court exerted its usual circumspection in the examination of evidence. The prosecutor swore again and again to his person, in which he could not be mistaken. The gun had been removed from its place, and not found, therefore was not to be produced; and Effirnan swore that the prisoner had told him it was on the spot where the mare had been tethered; but which no one was acquitted with.

The evidence of Silvester, the prisoner's master, now his prosecutor, was decidedly corroborated by the testimony of Effirnan and other witnesses, as regarded the point that had come under their connoissance; and the case for the prosecution concluding, the prisoner was put upon his defence, which was comprised in a declaration of his innocent; and a verdict – Guilty was returned after a short deliberation.

His Honor the Judge Advocate having announced the awful verdict, explained at much length and with corresponding energy, on the extraordinary and almost incredible circumstances that had been developed upon this trial. For the credit of human nature, he entertained the hope that so flagitious an act, however clear and indubitable the proofs under which it had been established, the world would feel disposed, as the Court had been, to pause upon the possibility, while they shuddered at the enormity, of the crime. His Honor, after embarking upon the relative conditions of the prosecutor, and the prisoner at the time of his committing the dreadful crime that had brought him to the bar, expressed his regret that the human character should have been so debased, as in this he hoped unparalleled instance of depravity it had unhappily been.

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

SYDNEY GAZETTE, 23/12/1820

Executions .. on Friday [22 December 1820]

For the robbery of a house near Parramatta, and highway robbery, **JAMES CLENCY**, ... and **NICHOLAS COOK**.

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

SYDNEY GAZETTE, 23/12/1820

EXECUTIONS. On Monday last [18 December 1820] **JOHN KIRBY**, who was found guilty of the late Criminal Court for murder, was executed pursuant to his sentence.

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