

## 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 descreying 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.

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

## SYD1821

SYDNEY GAZETTE, 17/02/1821

Court of Criminal Jurisdiction

Wylde J.A., 23 January 1821(**Hobart** session)

The trial for the murder of **HENRY DUTTON**, from the blow of a spade received on the head, of which wound he died in about a fortnight after, came on for hearing. The prisoner was **JOHN RYAN**.

The first witness called was **PETER DUTTON**, son of the deceased, whose testimony clearly detailed all the facts of the case. This witness stated, that his father was a sawyer, residing in a house at the upper end of the Macquarie-street; and that in consequence of his father hearing a noise about eight o'clock in the evening on the 4th of December last while sitting in his house, made one of the number of spectators looking on at the affray. From ten to twenty persons were present; and the fight was between the prisoner Ryan and a man named **WHEELER**. During the quarrel, Ryan hit his antagonist a foul blow while down on the ground, which occasioned some of the bye-standers to interfere, and to strike the prisoner two or three times for his cowardly behaviour. Upon the prisoner getting up, he ran into a house near the spot, and immediately returned with the weapon in his hand with which he gave the deceased (who happened to be the first man within his reach) the blow that unhappily caused his death. This happened in sight of the son, and of several others who were witnessing the fight. The son told the prisoner to mind what he was doing of when he attempted to strike him also with the remaining part of the spade, which had been broken into two by the first blow, but which the son and another extricated from his hands; he then ran away, and was pursued, receiving some blows from the spade handle: he was not apprehended for several days afterwards, owing to the recovery of the deceased being expected. This witness further deposed, that the deceased had not taken any part whatever in the fight, but merely stood by as a spectator; and that both he and his father were perfect strangers to the prisoner, and had never spoken to him in their life. Ryan did not endeavour to escape from the hands of justice, but always after seemed very sorry for what had happened, and afterwards made many enquiries respecting the health of the deceased, going very early the following morning to offer any recompense in his power.

**WILLIAM THOMAS** deposed, that he saw the prisoner strike the deceased with the spade; and that he had passed several persons previously, who got however out of his way, to his giving him the blow. This witness also proved, that the deceased was not one of the men who had beat the prisoner when he struck Wheeler the foul blow. Another witness gave evidence to the same effect.

Three Gentlemen of the faculty, who had examined the body of the deceased, deposed, that they had not the least doubt but the wound on his head was the immediate cause of his death, and that no medical treatment could have been of service to him.

The prisoner put in a written defence, which acknowledging the criminal act of which he had been proved guilty, stated that he had been on a discovery with a gentleman on the Coast of Africa, where he caught the brain fever, which he never got the better of.

His Honor the Judge Advocate, upon summing up the evidence, observed, in the commencement of his remarks, that there was no crime which harrowed up more of the feelings of man, than the one now for the consideration of the Court; but the law had, in mercy of human infirmities of temper, drawn very nice distinctions in cases of

homicide, between actual murder and manslaughter; to such, the Court would, he was satisfied, pay anxious attention as to the charge now for their judgement. The prisoner there could be, no doubt, had been the death of the unfortunate deceased, and the question would be for the Court to consider how far the prisoner had, under the circumstances of the case, that full possession of his reason and self conduct at the time, which were required in legal principle and decision to raise the crime now laid against him in amount to murder; but if on the contrary, that the prisoner had unlawfully killed the deceased without malice, either express or implied, under sudden heat of passion, it would be but manslaughter. The Judge Advocate then entered into a very full elucidation of these two points, remarking, all killing was held to be murder until satisfactorily proved to the contrary; but that in every case a very principal feature for the Court to have in regard was that malice aforethought must appear to have existed before it could amount to murder. We have not room to enter more fully into the matter of remark made on the occasion.

His Honor then went through the whole of the evidence, with suitable comments; and the court, after a short deliberation, returned a verdict – Manslaughter.

The Honorable the Judge Advocate, in a very impressive manner, pointed out at some length to the prisoner of the narrow escapes is open to him through the merciful Administration of Criminal Justice, which he trusted would make such impression upon his mind during his future life as duly to restrain his passions, and work that contrition for the past, which would best prepare for that awful judgement which yet awaited him in another world. The prisoner then received sentence of five years transportation to Newcastle.

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

SYDNEY GAZETTE, 30/06/1821

Court of Criminal Jurisdiction

Wylde J.A., 15 May 1821 (**Hobart** session)

**HENRY BUTLER** was charged with the wilful murder of one **BENJAMIN DAVIS**, on Monday the 26th day of March last, at the farm of Beames, on Norfolk Plains. The evidence taken in this case extended to a great length. The prisoner and the deceased had been, it appeared, on the farm together for about three weeks or a month, during which time it seemed to be clearly proved, that the most friendly terms had subsisted between them, nor was the slightest difference known to have taken place up to the time of Davis's death. The deceased had been drinking at Beames's, in company with the prisoner and two or three others, during the latter part of the Sunday, and again on the Monday morning, until he became "stupidly drunk;" and all the party were more or less intoxicated. As the deceased was lying on the floor before the fire in this state, the woman of the house requested the prisoner and another to take him out and lay him under the stacks, about 20 or 30 yards distant, where he was accordingly carried, and the men returned into the house. Soon after, the prisoner went out to thrash: and Beame's son, a boy about ten years old, said he would go with him; when the prisoner, in good temper, said, "come along, I'll soon wind you." The mother of the boy followed soon after, within five minutes, as she swore, when she heard the flails go; and on coming to the ground saw the prisoner with the flail in his hand, but not the boy. As she passed the deceased, who was laying under the neatest stack, she observed him to look very pale, and called upon the prisoner to lift him up, and she thought "he was strangling from the liquor." The prisoner held the head of the deceased for an hour or more in his lap; when, in the presence of several people, the

deceased expired without having uttered a word, and without a struggle. The general impression was, as the witnesses all swore, that the deceased had died from the effects of excessive drinking, which remained so till towards the evening of the same day, when the boy stated to his mother and a neighbour, as he swore again at the trial, that he had seen the prisoner run and jump upon the deceased, having, without saying any thing at the time thrown down his flail while thrashing with him; that the deceased had cried out "Oh God!" and turned himself half round, immediately after the violent shock occasioned by the jump. The boy further swore, that one **TIMSON**, who had taken the job of thrashing at the place with the prisoner, was present, and called out to the prisoner "not to touch the deceased." This in every point, however, was contradicted by Timson in Court, who swore that the boy was not by the stacks when he went to get wheat, which he immediately afterwards took to a neighbour's mill to grind. The body of the deceased had been afterwards inspected, under an order of the Magistrates, by two Surgeons, who, at the trial, declared their decided opinion to be, that the deceased had died, not from the effect of suffocation by drinking, but from a rupture of the blood vessel in the thorax, occasioned by great violence of some sort.

Upon this evidence the Court, after the case had been very fully summed up and remarked upon by His Honor the Judge Advocate (Wylde), adjudged a prisoner to be guilty of manslaughter, and that for the offence he be transported to Newcastle for the term of four years.

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

SYDNEY GAZETTE, 11/08/1821

Court of Criminal Jurisdiction

Wylde J.A., 10 August 1821

**JAMES ROBINSON**, a black man and native of Angola, was indicted for the wilful murder of **CHARLES LINTON**. The circumstances were briefly as follows: The prisoner was a harbourer in one of the gangs stationed at Fort Macquarie in the month of March last; and becoming notorious for neglect of duty, and contempt of his overseers orders, the latter one day gave him in charge of barrack constable (the deceased); in order that he should be dealt with accordingly; but the prisoner refusing to obey the constable's instructions and also resisting his authority, the latter went to seize him, when the prisoner drew a knife, and stabbed him in the back, from the effects of which he shortly after died. The case was amply proved, and the sentence of Guilty recorded. The awful sentence of death was immediately pronounced.

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

SYDNEY GAZETTE, 18/08/1821

Execution. Yesterday morning were executed, pursuant to their sentence, William Swift and **JAMES ROBINSON**. These unfortunate men received sentence of condemnation, for murder, on Friday se'nnight. Robinson, who was a native of Angola, during confinement, was perfectly indifferent to the things around him, and appeared insensible as to the least dread of an hereafter. Swift, however, always expressed great abhorrence at the dreadful crime for which he has paid the penalty, and ever manifested feigned contrition: he left the world in peace.

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

## SYD1822

SYDNEY GAZETTE, 15/03/1822

Court of Criminal Jurisdiction

Wylde J.A., 11 March 1822

**LAWRENCE MAY, the younger**, was indicted for feloniously and maliciously shooting at and wounding with intent to kill and murder, on the 11th of December last, **THOMAS SMITH**, a settler at Hawkesbury.

It appeared, by the testimony of Thomas Smith, that the prisoner and himself had long been friendly neighbours, their farms being adjoining; but a trifling dispute arose as to the proprietorship of part of the land which had been located to Smith by the Deputy Surveyor; and, in consequence, cultivated by the latter. Smith, on the evening previous to the unhappy transaction, told the prisoner he should send his men in the morning, and reap the wheat; whereupon he (the prisoner) declared he would shoot the person that would make the attempt. Accordingly, two of the servants of Smith went on the 11th to reap; when they were commanded by the prisoner to desist, upon pain of being shot. This was reported to the prosecutor, who proceeded to the spot at which the prisoner was, and began to reap himself. The prisoner (May) then retired somewhere about 20 yards, and fired at the prosecutor, who immediately fell, being wounded in several places. These are the key features of this transaction, at once so lamentable and so much to be deplored. Smith was dangerously ill for some days, but has now sufficiently recovered to walk about with a good deal of exertion.

**WILLIAM DEAN**, a servant to the prosecutor, deposed to the above facts, but said he did not see the prisoner level the muskets; and, that after his master fell wounded the prisoner began and continued reaping.

**NICHOLAS DUKES** also bore testimony to the events before stated; adding also, that he saw the prisoner actually level the musket; and, after he discharged its contents, commenced reaping.

**HENRY BACH** corroborated the evidence of the above witnesses; and here the prosecution ended.

Respectable persons were called on behalf of the prisoner as to the mildness and nature of his general character; which went to say, that he had been considered as a humane and inoffensive young man. As to evidence being called to rebut a serious charge, none was forthcoming. The Court retired for a few minutes; and, upon the Members resuming their seats, the verdict of Guilty was returned. Remanded.

...

The following remanded prisoners that had been convicted received sentence as follow:... Lawrence May... life, to such part of the territory as His Excellency the Governor may think proper and direct.

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

SYDNEY GAZETTE, 22/03/1822

Court of Criminal Jurisdiction

Wylde J.A., 18 March 1822

**MARY ANN LYONS** was indicted for the wilful murder of **THOMAS CLARK**. From the evidence it appeared, that the prisoner at the bar had cohabited with the deceased for five years past; that, on the 6th of January last, in the evening, some words occurred between them, an event far from being unusual, when the prisoner

seized the opportunity, wilfully and deliberately, and evidently with malice aforethought, of striking the deceased, her miserable associates, with a hammer on the head, which, in six days after, terminated his earthly career. It was clearly proved, that the blow was not given in the moment when excuse might have been offered for exasperation, but after passion should have long subsided. Circumstances also came out on the trial that evinced the ill-fated woman had an eye to the property of the deceased, with whom she was then criminally living. The case was made out to the satisfaction of the Court, and the prisoner was pronounced Guilty of Murder, and immediately received sentence of death.

It would be a departure from justice were we to omit affording publicity to the following circumstance, which came out of the above trial: Mr **WILLIAM WALKER**, who stated himself to be a professional man, was called upon to inform the Court (having been with Thomas Clark before and after his death) as to the actual cause of the demise of the deceased. He affirmed that it had wholly arisen from intensity of drinking, which had produced internal inflammation; and that the blow, supposed by him to have been given by the hammer, was not the cause, neither could such a blow occasion death. Well did it happen for the ends of public justice, and highly to the credit of **WILLIAM HOWE**, Esquire the Magistrate for Upper Minto, that the body was sent from that neighbourhood down to Liverpool, the nearest place where proper surgical experience (upon which alone depended the issue of a most critical investigation) could be obtained. The body was examined by Dr **HILL**, R. N. Assistant Colonial Surgeon. This Gentleman was enabled satisfactorily to state to the anxious Court, that the wound occasioned by the hammer was sufficient to produce death – the skull having thereby been seriously fractured; and that he (Dr Hill) could have no hesitation in saying, that it was his decided opinion the deceased had just met with his death. William Walker, who was a professional man, practising in this Colony for the last twelve years, and had passed through (or by, probably ) the Colleges of Edinburgh, London, Paris, &c. upon the contrary, said, that it was only a small wound quite unimportant, had not affected the skull, and could not have been followed by death. Dr Hill also declared, that the life of the man would most certainly have been saved, had proper treatment been timely administered; it only required the bone depressed by the violence of the blow, to have been elevated, whereby prompt relief would have naturally ensued, and that the deceased had now been in existence. This circumstance is mentioned for the express purpose of preventing persons from being egregiously, and perhaps fatally deceived, by such impudent and wretched professionalists.

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

SYDNEY GAZETTE, 14/06/1822

Court of Criminal Jurisdiction

Wylde J.A., 10 June 1822

**SETH HAWKER** was indicted for the wilful murder of a **black native woman** at Illawarra, or the Five Islands, on the 15th April last. The principal features attending this case are as follow: The prisoner was an overseer upon an estate at Illawarra, belonging to Captain Brooks (the Magistrate that had committed the prisoner to take his trial for the offence with which he now stood charged before the Court); and, upon the night of the 15th, was alarmed by the violent barking of the dogs upon the farm. The prisoner was induced to arise, and in company with others proceeded, without hesitation, in the direction to which the watchful animals conducted them. The

prisoner was lost sight of for a few moments by his companions, in which interim the discharge of the musket was heard, which he had seized in the house upon the first alarm. When he returned, the prisoner said he thought he had shot something, or somebody. He was desired to return to the dwelling with his companion, and reload the piece; and again went in pursuit, the dogs continuing to bark. The prisoner, with another man, proceeded through a corn field, which was enclosed, and just as they had quitted it, on the offside, a figure was beheld in the act of endeavouring to effect its flight. The prisoner fired and the poor object fell, which (to be brief) turned out to be an unfortunate black native woman. The poor thing, it is supposed, was shot dead, as the body was found the next morning much mangled by the dogs. Two nets, such as the natives carry their food in, were found containing shelled maize, one of which was full and held about a peck. The prisoner was properly advised, by a brother overseer in the same concern, to hasten to the district constable with all speed, and inform him of the unhappy circumstance, so that the nearest Magistrate might become acquainted with the fact, and proceed accordingly. It was proved by the constable that the prisoner followed the directions given him, and hence became committed. From the whole of the evidence on the part of the prosecution it was easily observable, that no murderous intention had existed in the mind of the prisoner; nor did any circumstance transpire, during the arduous examination of the witness by His Honor the Judge Advocate, to enfix even the most remote degree of manslaughter upon the prisoner. As was the case in former times and not many years since well to be remembered, no consequence of the decisive measures that were resorted to by the Government for the protection of the settler, and his family, the natives are excessively troublesome and annoying in the neighbourhood of the Five Islands, during the corn season. This last season that had been remarkably active in committing depredations; in the space of one night 100 or two of them would take the liberty of clearing a field of every corn and thus ruin the hopes of a poor hard-working man's family. This species of bitter robbery had been on repeated, and the natives became worse daily, purloining every thing that came in their way. One man, of the name of **GRAHAM**, who has a wife and large family, was near being killed in the act of pursuing those sable robbers. One night a party had stripped his field and its produce; and in the morning himself, and eldest son, went in pursuit. They fell in with five of the natives, who had two nets full of the preceding nights spoil. He required them to surrender the corn, when they made off. Graham then fired at the legs of one of the natives who had a net; when one of them, armed with a bundle of spears, was preparing to throw at Graham who lost no time in making up to him, and with the butt end of his musket broke all the spears, which would have been immediately discharged at him, had not one of the other natives, who had flown, taken the wommerah with him; to which circumstance Graham and his son, may doubtless owe their lives. The native then took from his girdle a tomahawk, with which he endeavoured to cleave the head of Graham, when the latter, at the same instant, seized from the hand of his son a sword, with which he cut off the hand of the native that held the tomahawk, when the Black immediately made off, with the loss of his limb. This circumstance came out, among others, upon the trial, which shewed that the prisoner was only endeavouring to protect that property that was confided to his care though it was to be lamented that a life (in such a case) had been untimely destroyed. His Honor the Judge Advocate wished it to be properly and lastingly impressed upon the minds of all, that the aboriginal natives have as much right to expect justice at the hand of the British Law, as Europeans; and that such ever would be the case; in this instance it was exemplified. The prisoner was acquitted; but previous to being liberated from custody, received that pathetic and

energetic admonition, which, it is to be anxiously hoped, will ever remain indelibly and profitably stamped upon his conscience.

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

SYDNEY GAZETTE, 04/10/1822

Court of Criminal Jurisdiction

Wylde J.A., 26 September 1822

ATTEMPT AT ASSASSINATION

**WILLIAM DAVIDSON**, otherwise **JOHN DAVIDSON**, was next indicted for attempting to murder Mr **ROBERT HOWELL**, on the evening of the 15th of June last. The case was open, on the part of the Crown, by Mr Solicitor Norton, in the absence of Mr Solicitor Moon (Crown Solicitor). Mr Solicitor Rowe conducted the defence.

Mr **HOWE** being the first witness called, deposed that, as he was proceeding homeward from the Mission house in Prince street, about 15 minutes past nine of the evening named, he was violently assaulted and dangerously wounded by some individual, in the left breast. Being about 60 yards distant from Mr Scott's, he made the best of his way thither, giving the alarm of "murder;" and that he was enabled to reach the house of his friend in an apparently dying state, where he threw himself on a sofa till surgical aid was procured. It was then found he had been stabbed with an old rusty bayonet, which had penetrated about four inches. Of the unfeeling perpetrator of the horrid deed, the Deponent stated he had not the least knowledge; and, as to the prisoner at the bar being the wretched creature he would have been as ready to suspect the greatest stranger in the Colony, as well from his non-intimacy, as from positive consciousness of never having most a distantly injured him. In addition to the above, Mr Howe conceived it incumbent on here on him to inform the Court of the following circumstance, which had been strongly impressed on his mind: About three weeks prior to the 15th of June, the deponent was proceeding to Macquarie-street Chapel in the evening when his attention was arrested by the circumstance of seeing a man upon the outside of the Chapel, perched under one of the north windows, sustained by a stick and looking into the Chapel. Curiosity prompted Mr Howe to see who the individual was, and upon approach, found it to be the prisoner at the bar, Davidson: that, seeing the deponent, he left his curious situation, and retired from the building.

Mr **F.E. FORBES** deposed as to the fact taking place and also, that he, with others, went in search of the instrument which were said by Mr Howe to be in the street: that an old rusty bayonet, fixed upon a native waddy, was found in the centre of the road, about 15 yards from Mr Scott's, and that Mr Howe's hat was picked up in the drain near the pathway, about 15 yards further distant. Mr Forbes further said that the point of the weapon was imbrued with blood.

**JAMES BOWMAN**, Esquire Principal Surgeon of the Territory, who kindly visited the sufferer under his affliction occasionally at the request of Dr. **BLAND**, deposed, that he considered Mr Howe to be in imminent danger.

Dr **MITCHELL**, of the 48th Regiment who first attended upon the unfortunate event, in company with Dr Stevenson, of the same Regiment also deposed, that it was his opinion, upon examining the wound externally, that death would very likely soon be the consequence.

**JOSEPH McKINLAY**, a resident near the Market-wharf in Cockle bay, deposed, that he had been absent on the 18th of June up the Parramatta River, on business that had prolonged his return till about a quarter past nine; that he had scarcely been in the

house three minutes before the prisoner Davidson, who had lodged at his house for 7 or 8 years past, tapped at the door, and begged that his lamp might be lighted; that the prisoner was undressed, and did not seem in the least way agitated; that upon the contrary he made enquiry how the witness had disposed of his business, and then retired. McKinlay further said, that the demeanour of the prisoner, for so many years, had been peaceable to an almost extraordinary degree; that he was a steady harmless creature; that he was certain the occurrence referred to, in his testimony, occurred on the 15th June, as the following day he heard, from various quarters, of the accident that had befallen Mr Howe. This witness also said, that he never heard the prisoner mention the name of Mr Howe, directly or indirectly. The bayonet being handed to him for inspection, he recollected having a similar instrument in his possession about his premises for some years, but that he had not seen it for nine months past, at least. The one produced he could not identify to be the same with that which was now absent, but it had something of its general appearance, for it was an old rusty bayonet. Several native waddies, too, were in the house; two were before the Court, one of which he remembered to have seen in the room occupied by the prisoner, but the one to which the bayonet could alone be conveniently fixed, he could not, and therefore would not, swear to.

**HENRY DURBAN** next sworn, deposed, that he was rightly acquainted with the prisoner at the bar; that the early part of June, he was in the house of Mr Bullivant, in Cumberland street, and there met with the prisoner, that the latter and Mr Bullivant were in the act of conversing what he was engaged reading, and that he heard very distinctly, the following words: "This would be of service to Mr Howe:" the prisoner Davidson holding a dirk or dagger in his hand; which the deponent said had been produced by Mr Bullivant. Mr **CHARLES JAMES BULLIVANT** confirmed the statement of the last witness, with some small variation. He said that the dirk or dagger was suspended in the ceiling or rafters of the room in which the prisoner and himself were discoursing upon various topics; that the instrument accidentally catching the eye of the prisoner, he took into his hands, and lovingly said, that "Mr Howe deserves a portion of this". This witness informed the Court, that he had been accused of pilfering a book by Mr Howe, which circumstance had come to the knowledge of Davidson, and upon that account he supposed the prisoner conceived he (Mr Howe) delivered some such chastisement; but still he, Bullivant, believed Davidson, from his laughing mood, to be only sporting.

[ It is as well just to mention here, that Mr Howe, in the onset of the trial, acquainted the Court that he, of the moment, suspected Mr Bullivant to have been the individual who had stabbed him; being conscious that he had, a few days before, innocently accused him of a crime from which he, (Mr Bullivant) had been satisfactorily exonerated. That in consequence Mr B. was taken into custody for a short time on suspicion, as well as a man named Johnstone; both of whom appearing to be unconnected with the horrid offence, were consequently discharged.]

Mr **CHARLES GRAY** deposed, that in a casual conversation with the prisoner on Friday evening, the 14th of June, at his gate in York-street, he expressed it as his opinion, that Mr Howe had severely injured him. This assertion induced the witness to make further enquiry, and it appeared that the prisoner was aggrieved at the circumstance of a Mr John Davidson being advertised to depart the Colony, saying that the Printer was sporting with his feelings, as he was a prisoner of the Crown. The witness then endeavoured to explain away the mist that covered over the mind of the prisoner, and told him that the advertisement alluded to was intended for a gentleman of the name of Davidson, who was supercargo of the Medway, and therefore was not

meant for war. The prisoner had a waddy in his hand, one of those before the Court seemed to be it, and asked Mr Bray whereever it would not knock a man down? to which the latter replied in the affirmative. The prisoner had then said that he would be revenged and went away. Upon Sunday morning following, the circumstance that had taken place being reported to the witness, he immediately went in quest of the prisoner; you found him in the course of a few minutes, and then said to him, that he hoped that he (Davidson) had not any hand in the attack on Mr Howe; he replied, "No! That it was no more than he deserved at my hands, if it had been so."

**JOHN FORSTER**, constable, deposed, are between six and seven on the evening of Thursday, the 13th of June, he, in company with others of the police, was walking up George-street, and met the prisoner Davidson opposite the new building intended for the police office; that his intention was attracted, it being a fine starlight night, by the prisoner being armed with a waddy; that he stopped him, and upon examining the waddy found a bayonet turned down, to use his own words, upon it; that the prisoner was questioned as to the motive for carrying such a weapon, when he replied it was to protect him from the dogs, as he had been violently attacked a short time before by those belonging to Smithers. Forster then handled the weapon, and drew it through his hands several times; but it was a very rusty bayonet, and a heavy and rather rough waddy. Upon being desired to examine one of the waddies and bayonet before the Court, he stated that it much resembled that in the possession of the prisoner. The other waddy was then attempted to be enfixed in the bayonet, but was found not fit. This active police officer added further, that the prisoner told him he was then going to Church. Next morning the prisoner spoke to the witness Forster, as well as those that were with him on the preceding evening, and asked him if the bayonet had been found, as he supposed the constables must have seen him secrete the same under some rubbish near the new police office; but the witness replied in the negative. That upon the Tuesday morning, the third day after the attempted assassination, he went to the prisoner's lodgings; that he was met at the door by the prisoner, who had been once or twice apprehended and discharged on suspicion; that he had a waddy in his hand, and said that was the waddy he had with him on Thursday night. This waddy was before the Court also; and the witness Forster solemnly averred that was not the waddy, but that the other one much resembled that which the prisoner had, both in point of weight, size, and roughness.

**JOHN MATTHEWS**, another constable, confirmed the former part of the last evidence, and also said, that the bayonet was a dark looking rusty bayonet.

Mr **THOMAS WILLIAM PARR**, deposed, that upon suspicion being first attached to the prisoner, from a long knowledge of his person, and an acquaintance with his general mild character, he felt disposed to befriend him; that upon the second or third time of his apprehension on the horrid charge, the prisoner sent for him into the back room of the present police office; he then asked him (Mr Parr) if he was still inclined to serve him; to which the witness replied in the affirmative, so long as innocence was the garment he wore; that the prisoner then requested him to procure a bayonet, instead of that which was missing (for the immediate recovery of which Mr Parr had strenuously advised the prisoner to offer a reward), and have it placed in the spot which the prisoner said his bayonet had been secreted by his own hands, but which appeared now to have been unfortunately removed; that the witness then shook his head, said he would have nothing to do with the affair, and left him. Upon the point being strongly urged by His Honor the Judge Advocate, on the recollection of Mr Parr as to the request of procuring another bayonet, he further affirmed, that the

prisoner said, in that case, viz. on the obtainment of the bayonet, "the matter would be hushed, and it would do away that the business." The prosecution here closed.

The prisoner being called upon for his defence, informed the Court that he left it entirely to his Solicitor Mr Rowe. A sensibly written address to the Honorable Members of the Court was recited by His Honor: it went to say, the prisoner had been an active and brave officer in the army in former days; that he had comported himself with every possible decency and good conduct since his arrival in this Colony; and that the preparation of such an outrage upon society, as that with which he then stood charged, was as opposite to his nature, as it was abhorrent and disgusting to the dictates of humanity.

Two witnesses, who were in the boat with McKinlay upon his return from up the river, corroborated the testimony of McKinlay, so far as related to the circumstance of having returned by a quarter past nine, more or less.

**JOHN THOMAS CAMPBELL**, Esquire, Provost Marshal, being called upon as to the character of the prisoner since his knowledge of him, deposed, that, for the last nine years, his quiet, orderly, and apparently meritorious conduct had impressed him with the most favourable views; and that he should have believed the prisoner to be one of the last persons that could be capable of perpetrating so truly diabolic an act.

His Honor the Judge Advocate proceeded to sum up the evidence, in the performance of which important and involvement task, His Honor remarked upon the nature of the evidence that had been presented to the Court upon this occasion; that it was wholly circumstantial; and that not a single fact had been alleged against the prisoner that could possibly criminate him as the perpetrator of the crime with which he was now awaiting the judgement of the Court. It was a case of that peculiar complexion, which demanded the most jealous attention, and should therefore be narrowly watched. His Honor said, that it was a chain of circumstances that required to be traced link by link, and if but one link should be found wanting, which gave birth to a doubt, that that doubt should most unquestionably be thrown into the scale of mercy, and weigh on the side of the prisoner, however guilty he might be; thus leaving him to the vengeance of Him, who hath wisely pronounced that "vengeance is mine!" But, upon the other hand, should there be found a sufficiency of evidence to establish the crime against the prisoner, in that case, His Honor said, it would be unnecessary for him to remark as to what punishment would visit such an offender. The Court retired, and in about five minutes return with a verdict of Guilty. Remanded.

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

SYDNEY GAZETTE, 11/10/1822

Court of Criminal Jurisdiction

Wylde J.A., 3 October 1822

**WILLIAM BAXTER, JAMES GARDNER** were indicted for feloniously entering the dwelling house of Mr **WILLIAM WHITFIELD**, at a place called the Dog-traps, on the 23rd of July last; and the former prisoner was also charged with firing at and wounding, with a loaded gun, one **ROBERT HAWKINS**, with intent to kill and murder. Baxter pleaded Guilty three several times; in order, he said, to exculpate his fellow prisoner, whose innocence he strongly asserted; but His Honor the Judge Advocate, strenuously enforcing upon the mind of the miserable man that such a plea neither would save the alleged innocent prisoner, nor be available to himself, he retired his former plea, and pleaded Not Guilty. It appeared that the prisoners entered

the dwelling-house at the hour of midnight and that the prisoner Baxter immediately fired at the poor man (Robert Hawkins), who is slowly recovering from the effects of a dreadful wound, and that they then rifled the dwelling of all that could be found worth taking, and shortly after decamped. The evidence in support of the crime was too indubitable to admit of much hesitation as to the Guilt of the prisoners, to which effect the verdict was returned.

The two last prisoners were again indicted for the perpetration of divers robberies; and **THOMAS KELLY, JAMES MADDOCK, JAMES HAGGERTY, and PATRICK MULLATON**, were arraigned as accessories after the fact. Baxter was found Guilty. Gardener, Acquitted. The other prisoners were all declared Guilty, 7 years transportation.

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