SYD1840

CJA, 6/436, 01/01/1840
INQUESTS. - On Saturday last, at the house of **ADAM WILSON**, constable, at New Town, on the body of **ROBERT DAY,** who died from the effects of a ruptured blood vessel, produced through intemperance. Verdict accordingly.

On Monday last, at the Cross Keys, corner of King and Kent-streets, on view of the body of **WILLIAM RAGAN [REGAN] [**aged 50]. It appeared in evidence that the deceased retired to rest on the night previous to his demise, apparently in good health; but, that on the following morning, he was found lying on his bed quite dead. Verdict, died by the visitation of God.

SUDDEN DEATH. - We understand that Mr. **TOMPSON,** the butcher, of Market-street, fell off a chair in his own house, yesterday, and instantly expired. Dr. **HOSKING** was called in, but his services were not required, as the fountain of life had ceased to flow.

CJA, 6/438, 08/01/1840.
BIRTH.
On the 6th instant, at the residence of the Rev. **J. SAUNDERS,** Prince street, Mrs. Saunders, of a son, still born.

CJA, 6/443, 25/01/1840
FELIX MONAGHAN was put to the bar, on a charge of murdering one of Mr. **LANG'S** assigned servants, at the Paterson. Mr. **MITCHELL** had received satisfactory intelligence from the authorities in that district, and in order to give time for the necessary witnesses to arrive, the prisoner was remanded to the Gaol for seven days. The following is the manner in which he was captured, as related to us:- Yesterday week, as the supposed murdered was going up George-street, he was met by constable **STENTON**, and recognised as being an old chum, and one of his late companions in an iron-gang. The constable challenged him, and being aware that a warrant had been issued for his apprehension, proceeded to take him into custody; but Monaghan being a powerful man, succeeded in making off. Stenton, nevertheless, dodged him, and in company with another constable, two days afterwards, fell in with, and pursued him; and as they were crying out "stop him" Mr. **CARRICK**, of the "Oxford Arms," succeeded in staying his progress, and Monaghan was lodged in the watchhouse.

CJA, 6/445, 01/02/1840
DETERMINED MURDER. - A few days ago Mr. **FULLER**, overseer to Mr. **THORNE**, of Parramatta, in company with an assigned servant, was returning, both on one horse, from Goulburn, when their discourse caused high words between them, and the servant in a fit of desperation, or rather madness, drew from his pocket a sharp knife, with which he stabbed the overseer in the back, and afterwards cut him across the belly, which caused the wounded man to fall off the horse, and on the spot he was found the following morning a corpse. The perpetrator of this most determined and rash act, we are happy to learn, was apprehended on the day on which the body was found, has been committed to take his trial, and now lies in Sydney Gaol awaiting his certain doom.

SYDNEY HERALD, 03/02/1840

Supreme Court of New South Wales
Dowling C.J., 1 February 1840
SUPREME COURT – (Criminal Side)
Saturday, February 1st – Before the Chief Justice.
THOMAS CHUBB was indicted for shooting at **RICHARD SMITH**, with intent to murder him, at Wallowa Creek on the 20th October, and **FREDERICK KNOWLES** was indicted for being present, aiding and assisting. Other counts laid the intent to be to do some grievous bodily harm, and to prevent the lawful apprehension of their own persons.
The prisoners were both runaway convicts, and on the 29th October went in company with another bushranger named **REES** to the house of Mr. Brown, a settler residing near the Vale of Clywd, which they robbed of a considerable quantity of property. The next day Mr. Brown went to a neighbouring Police station, and Sergeant **SNEYD** and trooper **SMITH** of the mounted Police went with him in pursuit. They went to the house of Mr. Walker who joined them with two native blacks. The blacks traced the bushrangers all day and at night the party came up with them encamped near the head of the Wallowa Creek. By leaving their horses and crawling on their hands and knees they got close to them, and challenged them before they were observed. All three of them ran away and Sergeant Sneyd shot Rees dead, Smith followed Chubb, who turned round and fired at him but luckily missed him. One of the blacks knocked Chubb, down and he was secured; he lamented that he had fired off the pistol before he encountered the blackfellow. In the camp were found, three double barrelled guns, five single barrelled guns, and five pistols. The prisoners had committed a great number of serious outrages. Guilty to be transported to a Penal Settlement for life never to be allowed to return to Sydney. See also Australian, 23 January 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/446, 05/02/1840
An inquest was held on Saturday last, at the *Currency Lass*, Bridge-street, Windsor, on the body of **ELLEN HOLMES**, wife of **JOHN HOLMES**, a shoemaker, residing in that town, who was found drowned in the South Creek, near Howe's Bridge. From the evidence given, it appears that for the last few days, the unfortunate woman had taken to drinking ardent spirits, supposed to be caused by some family dispute and the frequent state of intoxication in which her husband kept himself, and while suffering from the effects of liquor, went and threw herself in the Creek, - her cap and shoes were found on the banks. There are eight small children left to deplore her unhappy fate. Verdict. Destroyed herself while in a fit of temporary derangement, caused by the use of ardent spirits.
THOMAS WETTON [WHITTON] and **BERNARD REYNOLDS** were received into Sydney Gaol yesterday afternoon, under committal for trial on three distinct warrants – one for murder, arson, and robbery; another for murder, and attacking the person of Mr. **GROSVENOR** with intent to kill that gentleman; and the third on a general charge of felony. The above villains have received notice of trial at the present criminal sittings of the Supreme Court. These are they that murdered Mr. **HUME** about a fortnight since; and certainly we cannot but admire the promptness with which the authorities are bringing them to their last account on this side the grave.

SYDNEY HERALD, 07/02/1840

Supreme Court of New South Wales
Willis J., 3 February 1840
ALEXANDER FENTON was indicted for shooting at **CHRISTOPHER TIPLADY**, at Nattai, on the 20th July.
Chalker's public house, near Berrima, was attacked by three bushrangers; knowing that there were some soldiers encamped in the neighbourhood Mr. Chalker ran to them to give the alarm. While he was gone one of the bushrangers, the prisoner, went to the kitchen and told Tiplady, the cook, if he did not come out he would shoot him; Tiplady said, "fire and be___ "; the prisoner then went into the house to get the other two men to assist him to open the kitchen door; Tiplady followed him, and at the door of the house the prisoner fired a pistol at him: the pan was so near to his eyes that the flash blinded him for a short time, but, luckily, the ball missed him; the prisoner then levelled and fired a musket at him, and thirty slugs entered the wall behind him, but none of them hit him. The alarm that the soldiers were approaching was then given, and the bushrangers ran away, taking nothing with them. When called upon for his defence the prisoner said "I don't see that I can say anything." Guilty - To be transported for life. See also Australian, 8 February 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/447, 08/02/1840
INQUEST. - On Sunday last, at the "Bard's Legacy," on **THE FOOT OF A MAN**, which had been found on the beech (sic) at Billy Blue's Point on the preceding day, in a boot, with a portion of shirt, marked with the initials **C.R. No.6.** Verdict - that part of a human foot had been found on the beech (sic), being part of a body unknown, and of the manner of whose death no evidence was before the jury.
SUPREME COURT
CRIMINAL SIDE – Monday, February 3.
Before Mr. Justice Stephen.
JOHN HUNT stood indicted for the wilful murder of **DANIEL MACARTHY**, at Regentville, on the 30th October, by throwing him upon the ground, and beating him. Guilty. Death.
NEBUCHADNEZZAR LANSDOWNE stood indicted for the manslaughter of **HELENA DAVIS**, an old woman, about sixty years of age. It appeared in evidence, given by a boy about twelve years of age, who was on the dray in company with the deceased, on the day of the accident (November 1), that on going down the road leading to Clarke's Creek, the bullocks trotted, and he could not say whether they were made to by the prisoner's cracking the whip (the only way, as observed by one of the jury, by which bullocks attached to a dray are kept from going at a dangerous pace); on arriving at the Creek the dray was upset, and the woman and boy thrown to the ground; the former was left there, but the boy, although injured by the fall, proceeded with the dray, which was going on to Mr. **TOWNSEND'S.** The prisoner said, his motive for leaving the woman behind was with the best intentions, to procure assistance as speedily as possible, as it was impossible to remove her on the loaded dray. Not guilty. His Honor, on discharging the prisoner, cautioned him to be more humane in future.
FRIDAY, February 7.
(Before the Chief Justice)

FELIX MONAGHAN stood indicted for murder, and was found guilty of manslaughter. Sentenced to twelve months in an ironed gang. This prisoner was very ably defended by Mr. Barrister **PURIFOY.**

SYDNEY HERALD, 08/02/1840
Supreme Court of New South Wales
Willis J., 6 February 1840

NABUCADNEZAR LANDSDOWNE was indicted for having, on the lst day of November last, at Clarke's Creek, been the cause of the death of a woman named **ELEANOR DAVIS**, through carelessly driving his dray, by which it was overturned, and the woman was thrown therefrom, and bruised in such a manner as to cause her death.

FREDERICK CROFT, a boy about twelve years old was then put into the witness-box; before being sworn, the Judge examined him strictly as to his knowledge of the nature of an oath, and his answer being satisfactory, his evidence was accordingly taken - he deposed that he knew the woman named Eleanor Davis, and that on the lst of November last, he had been riding on Mr. Townsend's dray, going to that gentlemen's farm, and that she (Eleanor Davis) was likewise on the dray; it was a dray drawn by bullocks; when the dray was crossing the river at Clarke's Creek, it was going very fast; the prisoner was driving, and the bullocks were trotting; as they were crossing the creek, the dray was upset.

The Judge then asked if the slope down to the river was smooth or rough, as he said that was a most important point for the consideration of the Jury.

The witness then continued - The bank were smooth; there were no chains to the wheel.

Mr. Justice Willis then remarked to the Jury, that the great thing in this case for their consideration, was whether the dray was overturned by accident or by carelessness, and expatiated on the necessity of their paying attention to that point, which seemed to him the principal one on which they were to decide whether the prisoner was guilty or not guilty.

The examination of the witness then continued - The dray was going very fast before it came to the slope; there was a watering place for bullocks right below; the bullocks could see it; did not know whether the dray went over Davis or not; she was sober; she was left on the banks, and the dray proceeded on; she was severely hurt in the fall, and was picked up and put on the dray again; they left the woman lying on the banks.

Cross-examined by prisoner. - Did not see him (prisoner) knocked down by the bullocks; he might have been knocked down, but he was so badly hurt himself that he did not pay attention; he was unwell for some time after from the bruises he received.

(The Judge here expatiated for some time on the woman's having been left on the bank; at the same time he told the Jury that that was a point with which they had nothing to do; what they had to decide upon was simply whether the dray had been overturned by accident or otherwise; besides, he thought that if the cattle were thirsty and were accustomed to drink at that particular place, it was very natural to suppose that they would hurry to the spot.)

EDWARD RENZ was then examined. He deposed that he perfectly recollected the 2nd of November last; he was walking on Mr. Correy's farm when he was attracted by the barking of his dog; he found the body of a woman, but was not aware who it was; this was between 11 o'clock and noon; by the conversation he had with her he did not think she had the slightest idea she was going to die; she appeared as if she

had been drinking, and an empty bottle was at her side; he immediately sent a man to take her where she wanted, giving him instructions at the same time to take her first to a doctor.

ROBERT PARK was then examined. It appeared that he was a surgeon, and that he had been called in the beginning of November last to see Eleanor Davis; she was at that time labouring under severe inflammation of the lungs, and likewise had several bruised on different parts of her body; did not think that the inflammation was caused by the bruises alone, but by stopping out all night; he suspected from what she said that one or more of her ribs were broken, and on examination he ascertained it to be a fact.

Cross-examined. - It was quite probable that broken limbs would cause inflammation; he decidedly thought that the wounds had been the cause of her death; she said to him that she was dangerously ill, and that she did not think she would ever get over it; she likewise stated that she had been overturned in a steep place through the carelessness of the driver, who she said was drunk, and that she was so severely hurt, that she could not move; she further stated that she had been greatly abused by those who had charge of the dray; witness first saw her about 4 o'clock in the afternoon of the 20th November last; drinking might have caused the inflammation; he asked her if she had been drinking, but she denied it; deceased was about 60 years of age.

The prisoner being now called on for his defence, said that the whole was merely accidental, and that he was quite sober at the time; he stated that he could not get her on the dray, and as he was forced to be home he thought it best to proceed; he reported the circumstance to his master, Mr. **TOWNSEND**, when he arrived; having no witnesses as to his character, both Dr. Park and Mr. Renz rose from the witness seat, and testified that they had frequently heard Mr. Townsend give him a high character for sobriety, &c.

The Jury without retiring found him not guilty, and he was discharged, with an admonition to be more careful in future. See also Australian, 8 February 1840 and Sydney Herald, 7 February 1840.

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

CJA, e006/447, 12/02/1840.

EDITORIAL.

Mr. **WAKLEY**, the [**WESTMINSTER]** Coroner, has commenced holding inquests on the bodies of females who die in childbirth. This, no doubt, will drive from the medical profession many ignorant pretenders, and make even experienced surgeons more cautious in practice.

CJA, 6/449, 15/02/1840

PATRICK AND **MARY KAIN**, were admitted to bail to appear next sessions, on a charge of manslaughter. **JOHN WILSON** and **FRANCIS KNIGHT** under committal for murder, were ordered to be confined in barracks, till the material witnesses could be found to give evidence.

EDITORIAL COMMENT on the sentencing of **FELIX MONAGHAN** and **JOHN WILLIAMS.**

CJA, 6/450, 19/02/1840

A poor old woman named **ELIZABETH KELLY**, who was a few days ago sent to gaol awaiting a further examination on a charge of robbery, dropped down, and almost instantly expired in Sydney Gaol. She was sixty years of age, and her death was caused, it is supposed, by apoplexy. An inquest was convened, and a verdict returned of "died by the visitation of God."

SUPREME COURT.

Monday, February 10.

ROBERT HARRIS and **JOHN THOMAS HOWARD**, under committal for murder, were remanded in consequence of the case being wrapt in some embarrassment.

NEWCASTLE

(From our own Correspondent)

DEATH BY DROWNING. - An enquiry was yesterday held at the Police Office before Major **CRUMMER**, touching the death of **THOMAS IRVINE**, the carpenter of the ship *Hero*, who met his death by drowning on the 30th ultimo. By the evidence collected from Captain **RYAN** and **ROBERT DICK** the steward of the ship, it appeared that the deceased was caulking the outside of the ship on the day in question, and accidentally fell overboard, the boy it appears was the first person who gave the alarm; he did not see the deceased fall, but his attention was first attracted by the noise of the splashing of the water; every assistance was immediately rendered but without effect. The poor fellow sunk to rise no more. The body was not found until last Tuesday, and although much decomposed, its identity was sufficiently proved by Dick. The Magistrate being satisfied that the cause of the man's death arose from accident, recorded it so accordingly, and issued his order for the interment of the remains which was done at midnight on Thursday.

NEWCASTLE: EDITORIAL re the "Coal Trade". … in a future number we shall have occasion to enquire into the particulars of a prisoner by the name of **JACKSON**, who was killed whilst collecting coal, and why an inquest was not held upon the body …

On Wednesday last, as Mr. **DAWSON** of Newcastle, his overseer and a servant named **CLEEVES** were passing on horseback over the bridge across the Hunter which separates East from West Maitland – the horses of the overseer and Cleeves took fright at a boy, who was floating a barrow across the bridge, it being then some two or three feet under water. The horse of the overseer plunged into the river, and both horse and man were drowned; the horse of Cleeves leaped over to the other side of the bridge, and after kicking and prancing for some time leaped down a precipice nearly sixty feet deep. Happily no material injury occurred either to man or horse, except some very severe bruises, the dead horse has since been found, but not the body of the man; nearly the whole of West Maitland was under water, during this last week, and whole stacks of wheat were seen floating down the river towards Newcastle. - *Correspondent.*

SYDNEY HERALD, 21/02/1840

Supreme Court of New South Wales

Dowling C.J., 21 February 1840

THOMAS WHITTON, was indicted for the wilful murder of **JOHN HAWKER**, by shooting him at Oak Park, on the 19th January. Other counts alleged the murder to have been committed by **BERNARD REYNOLDS**, and some person unknown, and charged Whitton with being present, &c.

The prisoner having no counsel, a learned gentleman, at the request of the Judge, undertook the defence.

The Attorney General, stated the case. He said that the prisoner was indicted for shooting a man named Hawker, and other counts charged him with assisting Reynolds and some unknown person, but it mattered little upon which count the Jury found him guilty, for they were all equally guilty in the eye of the law. If a party of men go out to commit a felony, and one of them commits a murder, they are all equally guilty, and equally punishable. The evidence in the case would be extremely short. The prisoner with three other bushrangers, rode up to Oak Park in the morning, where twelve or thirteen men were reaping in the field, under the superintendance of Mr. **FRANCIS OAKES**, and without any provocation fired at the men who were at work in the field; he believed their determination was to shoot Mr Oakes, but whether that was their intention, or merely to shed blood made no difference. The bushrangers then dismounted, and recklessly fired several shots, from one of which Hawker received his death wound. If a man shoots at one man, and hits another, he is as guilty of murder as if he shot the man he intended to murder. The prisoner and his companions had been for some time pursuing their career with bushrangers, and wherever they went their steps were marked by blood, indeed, happily for the credit of human nature such reckless conduct was seldom exhibited. Even here where bushrangers are by law looked upon as the common enemies of the land, and any man may shoot them if they will not surrender, the records of the court will not show such another case. The prisoner at the bar was the last of the men of the party, indeed it seemed as if the vengeance of heaven had overtaken them sooner than it would have done by the course of law. One of the party was shot when attacking a young gentleman named Fry, a gentleman, who by his bravery has shown himself an honor to the country from which he came, and a credit to the country in which he resides. Another one was shot by the Mounted Police, and the third, Reynolds, who was taken with the prisoner, and had received warning of trial with him, put an end to his existence with an ingenuity which would have baffled every attempt to prevent it, by hanging himself with a blasket and silk handkerchief. The prisoner was therefore the only remaining one of the gang, and the example which had thus been made of the whole gang would he hoped, be a warning to other men who may be inclined to become bushrangers. The prisoner he was confident could not but observe the benign, the merciful law of England under which we live, and which showed much more mercy to the prisoner than he showed to the unfortunate victims, and if the prisoner's heart could be seen, he was confident that he would say he did not deserve the mercy that was shown him.

The following witnesses were then called:-

Mr. Francis Oakes – I live on the Crookwell River, in the country of King; the name of my place is Oak Park, about 180 miles from Sydney; on the 19th January, I was in the wheat field with thirteen men reaping; about four o'clock in the afternoon four armed men rode up; each had a horse; a man named Hawker, assigned to Mr. William Shelley, was in the field; when I saw the four horsemen riding down I knew them to be the bushrangers, and told the men to keep on reaping; two of them dismounted and commenced firing towards us; I ran; I saw Hawker, who was behind me, fall; I did not know he was shot, as most of the men fell in the wheat; I should say from twelve to fifteen rounds were fired, but so quickly that it was impossible to count them; I ran to Long's station about three miles off; I sent word to the Police Magistrate at Goulburn, who came out on Tuesday morning, bringing a policeman and a constable; when I returned I found my house burned to the ground; Hawker died the next morning about

ten o'clock; the ball passed his back bone and lodged under the skin in front; I cannot swear the prisoner was there, for I only just saw the men and ran away; I went with Mr. Stewart in pursuit, and I fell in with them on the Lachlan River; I had parted from Mr. Stewart; Mr. McGuiness, Sergeant Freer, and two of the Mounted Police were with me; I was the first of the party; Whitton was about mounting his horse; there were three of them; they got behind trees, and we galloped up; in crossing a blind creek the two troopers fell from their horses and did not come up; the sergeant dismounted immediately and fired at Russel[sic], who fell, and immediately drew his pistol and blew his own brains out; McGuinness and I galloped to get before them as they were making for some rocks; when we got within thirty yards of them we dismounted; McGuinness was about thirty yards before them and I behind them; they then threw up their arms, and Sergeant Freer handcuffed the men who were Whitton and Reynolds; they had a horse with them which they took from my place; Reynolds had a coat of mine on; I asked them how they came to carry on so at our farm; Whitton said, Oakes, you may thank your good neighbours for it; I asked them how they came to fire on us in the fields, and Reynolds said they were tipsy and were sorry for it; they said the only thing they were ashamed to die for was what they had done at our place.

Cross examined – I cannot identify the prisoner as one of the men.

JOHN BLACKBURN assigned to Mr. **GEORGE OAKES** – I was from forty or fifty yards form the other man, when the bushrangers come up, at first I thought they were the Policemen; the moment they come up they said something about bailing up, and at the moment a shot was fired; all the men ran except three more and myself, the bushrangers called to them to stand or they would shoot them; they fired a good many shots; I saw Hawker fall; I saw others fall; and thought they were shot; I saw Hawker turn around and face the men; I well knew he was shot; he died next morning about seven; I did not see the prisoner in the field to know him, but I saw him at the burning of the house; I saw them at dinner while the house was in flames; I saw four men eating. I don't know how they set fire to the house; I never saw the prisoner before that day; he told me to tell Mr. Oakes – that he was one of the Bathurst mob, and that he would make him give up fire arms, he took from Marshall – Marshall was a bushranger from whom Mr. Oakes had taken fire arms; they spoke to the other men and said among other things they would burn down the barn; as they were speaking so friendly one of us said, burning down the barn would do them no good; they said they would not do it as it would hurt the country, but they would stop about the neighbourhood three or four days, until they shot Mr. Oakes; they said they would make the settlers submit so that if ever one man went with a stick they should not oppose him; they said the bloody tyrants meant to murder a single man, meaning Marshall; when they had done firing, before they went to the house they desired the men to sit down, or they would blow their brains out; I remained for a little time with the wounded man; I heard them say they would set fire to the wheat, and burn all who were in it dead or alive; I told the bushrangers that one of the men was wounded, and one of them a tall man said, why did you not poleaxe him and put him out of his misery; the prisoner said it was hard to see a man in such torture, it was better that he should be killed at once; they remained three or four hours; some held their arms in their hands, and the others laid them close by; they took away a horse with them.

Cross-examined, I cannot exactly detect the prisoner's features as being at the field, but I have no doubt of it; I saw him at the burning; the prisoner told me his name was Whitton; the house is about three quarters of a mile from the field.

Sergeant **ROBERT FREER** of the Mounted Police – I was present at the capture of the prisoner on the 24th January; I had been out three weeks with two troopers; we fell in with the bushrangers about seventy miles from Mr. Oakes's place, near the Lachlan River; as we approached Russell fired at me, I was checking the horse and he reared and caught the ball in his head; the horse whelled and I dismounted and Russel[sic] had his piece levelled at me but I got behind a tree and he fired either at Mr. Oakes or Mr. McGuinnis; as he fired he took a step back and exposed half his body and I fired and he fell; I loaded my gun, mounted my horse and proceeded after the other two; I fired at Reynolds and missed him; I was close to Whitton, who had just fired at Mr. Oakes, and I rushed up to him and told him to thrown down his arms; I picked up the pistol and marched Whitton to the place where Reynolds was standing in charge of Mr. McGidnis and Mr. Oakes and my two troopers; one of the troopers fell from his horse and the other broke his stirrup, and that prevented them from being up so soon as I was; we rolled Russell up and put him on a horse which he claimed; it belonged to Dr. Gibson, the other horses belonged to Mr. Oakes and Mr. Thorn; they had three double barrelled fowling pieces and five pistols; Whitton and Reynolds told me they had been to Mr. Oakes's on account of a man telling them of Mr. Oakes trying to capture a bushranger named Marshall; I did not know a man had been shot until they told me; they said they had intended to shoot Mr. Oakes and his brother.

Cross-examined – When they were apprehended Mr. Oakes made no charge against Whitton.

The prisoner in his defence merely remarked that Blackburn had perjured himself most rascally.

The Judges recapitulated the whole of the evidence and said, that it mattered not whether the prisoner actually fired the shot or not; the only question for the jury was whether or not he was one of the party that rode up to the field at the time.

The jury retired about three minutes and returned a verdict of – Guilty.

The Attorney-General put on the file an information charging the prisoner with the wilful murder of **JOHN KENNEDY HUME**, but it was not his intention to prosecute it. He had also several charges of robbery and other outrages against the prisoner.

The Chief Justice said that the guilty course so long pursued by the prisoner was about to be brought to a final close. For the last two years he had been abroad waging war against the laws of his country and plundering his fellow citizens, but the guilty game was about to be brought to a close, and he was to pay the forfeit by losing his life. He had taken all the chances which the law of his country gave him, and had had the courage to face a Jury of his country. He was not like the unhappy wretch, his comrade, who, although stained with blood, and steeped to the chins in crime, had not had the courage to face a Jury, but had added to his long catalogue of crime that of self murder. It had been truly observed by the Attorney General, that to the honour of the guilty wretches who commit outrages as bushrangers, it seldom happens that blood marks their footsteps. But here four Englishmen, on a Sabbath afternoon, without any provocation, attack thirteen or fourteen men, and fire at them, meditating no doubt to murder the young gentleman to whom the establishment belongs. A more atrocious diabolical history of bloody crime he had never in his long experience heard. The prisoner would have some advantages which his guilty companions had not – he would have some little time to prepare for leaving the world – the law thus shewing him, guilty as he was, more mercy than he had shewn to his unoffending fellow creatures. He was about to leave this world, stigmatised by the law as a cruel blood-thirsty wretch, and he hoped that not the vengeance of the law, but the example that would be made by executing him near the scene of his crime, would have some

effect upon the crowd of guilty wretches who he understood were out plundering about the country. It only remained for him to pass the last sentence of the law upon him, which was, that he be executed at such time and place as His Excellency the Governor might direct. See also Australian, 25 February 1840; Sydney Gazette, 27 February 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/452, 26/02/1840
REYNOLDS THE MURDERER. - On Sunday evening about six o'clock, **BERNARD REYNOLDS**, confined in the Sydney Gaol, for the murder of Mr. **HUME**, committed suicide by hanging himself with a silk handkerchief, which he had fastened to the top of the wooden or inner door of the cell. The precise manner in which he effected his object, we detail as follows. The cell in which the miserable wretch was confined is one of those used as places for prisoners sentenced to solitary confinement; there is a massive wooden door, which when used for the temporary punishment of such prisoners is always kept closed, and no air or light admitted, excepting through small gratings near the roof of the cell; but as this cell was currently used as a place of security for the murderer and suicide Reynolds, pending his trial, this wooden door was opened every morning, which permitted him to have the air as pure as it is within the prison walls, by approaching the outer door or ieon grating which was always kept locked by day as well as night. On the evening in question, shortly after the principal turnkey had gone his rounds to see that all was right, it is supposed Reynolds commenced preparing himself for his awful transition, and from the manner in which he was found suspended must have proceeded in the following manner:- Having cut a strip of his blanket off and made a roll of it, he tied one end of his silk handkerchief tight round the middle; the handkerchief was then passed over the top of the inner cell door, between which and the stone roof of the doorway there is but just room to pass a sheet of paper, at the other end of the handkerchief a noose was made, so that the work of strangulation might be certain and quicker; this being done the door was partially closed, which prevented the handkerchief from slipping, in consequence of the roll of blanket on the outside pressing against the top of the door and the roof of the stone-door frame; he then proceeded to muffle his manacles which he did with the rest of his blanket and shirt, tied round by another handkerchief; this was done no doubt to prevent the clanking of his chains in the agonies of death, which, had they not been so muffled, the sentry who was stationed almost within gun reach of the door, must have heard, and then death by his own hands would not have ensued. The door from which he suspended himself was too lofty for him to reach so as to put his head through the noose; he therefore took his pail and having mounted thereon and affixed the fatal cord, suspended himself by kicking away the bucket, which was found, at the time the deed was first known, upset and close at his feet. It was about an hour after that last visit of the turnkey, that he came to fasten Reynolds up for the night on the chain, and found him suspended; and it was with some difficulty that the blacksmith who accompanied him was able to force the door sufficiently wide to gain admittance; but having succeeded in effecting an entrance, the unhappy wretch was cut down, but it was then too late for life had fled. Thus to his innumerable crimes did he add that of self-destruction, proving at once that he was a bravado rather than a man of sterling courage. On the following morning an inquest was held on his body at the Ship Inn,

opposite the Gaol, and the Jury without the slightest hesitation from the evidence adduced, returned a verdict of *Felo de se.*

SUPREME COURT

CRININAL SIDE – Monday, Feb. 24.

Before his Honor the Chief Justice.

THOMAS WETTON [WHITTON] stood indicted for the wilful murder of **JOHN HAWKER**, at Oak Park, on the 19th January last, by shooting him with a pistol through the back, from which wound he died on the following day.

Long and detailed account; evidence from **FRANCIS OAKES**, of Oak Park; **JOHN BLACKBURN**, assigned to **G. OAKES**; Serjeant **FREER,** Mounted Police.

His Honor having addressed the Jury upon the general points of the case, and of the evidence summed up; and the Jury having retired for about five minutes returned and gave their verdict. Guilty.

The prisoner was asked if he had anything to say, why the sentence of the Court should not be passed upon him; when after a momentary hesitation, replied no.

His Honor then proceeded to pass the last sentence of the law upon the culprit, which the Chief Justice prefaced by a few touching and appropriate remarks, and they were to all appearance thrown away upon the prisoner, who maintained a careless indifference throughout the whole of the trial until the sentence of death was passed upon him. The execution was ordered to take place as near to the spot of his outrages as possible.

CJA, 6/453, 29/02/1840

EDITORIAL. Unnecessary Expence, re place of execution of **WETTON [WHITTON].**

The man in the hospital who gave information to the authorities relative to the murder of **FANNON** some five years back, through a fear he was about to depart this world, will, it is supposed, recover, as he is now much better. There will be a hearing of the case in all probability the commencement of next week.

[BERNARD] REYNOLDS the murderer, bushranger and suicide, who terminated his earthly career on Sunday last, in his cell, was buried within the prison walls, in just the same condition as he was found without a coffin, or his irons being removed from his legs.

WETTON [WHITTON] the murderer, and companion to the above Reynolds, it is supposed will be sent up country to be executed, as near the place where his unlawful career was carried on as practicable. Since the awful sentence has been passed upon him, he has maintained that sullen deportment, which was but too conspicuous on the day of trial not to have been noticed with some degree of disgust by the spectators. He had then what is generally termed in a good character a modest, but in a villain, a "down" look, in fact, during the whole trial he scarcely cast his eyes up from the floor of the dock in which he stood.

CJA, 6/454, 04/03/1840

JOHN RYAN BRENAN, Esquire.

Readers! On Sunday last, Mr. **a'BECKETT**, of Pitt-street, died in his carriage, while he was on the road to Dr. **M'KELLAR'S.** Dr. M'K. was ill; and it has been said that

Mr. a'Beckett died at his door before any one answered the summons at the door of the druggist's shop, at which Dr. M'K. now resides. Be this so or not, suffice it to say, that the deceased was taken to York-street, and from thence to his residence. Those most interested in his temporal welfare followed him, and sent for Mr. **H.K. WHITTLE**, of King-street, to open the body, according to the wishes of the deceased, expressed both verbally and in his will. Dr. Whittle came, but was informed by the friends that Dr. M'Kellar had been sent for, he therefore declined opening the body until he had communicated with Dr. M'K. Dr. M'Kellar stated that he had been so ill on Saturday as not to be able to speak, and was enveloped in bandages about the throat when Dr. Whittle's assistant called, he saw that deceased was dead when he came to his door in the morning, and "that he had no objections to Dr. Whittle's going to the inquest.

Dr. Whittle and his assistant were afterwards informed that Mr. **BRENAN** had an *engagement* at Parramatta – On Sunday, be it remembered! – and that therefore he could not hold the inquest.

The grandfather and the mother of deceased's child both wished Dr. Whittle who had been attending deceased for near twelve months, to operate – and he did so, and this after having spent some three or four hours running after Dr. M'Kellar, who was ill in bed, and while Mr. **J.R. BRENAN**, Third Police Magistrate and Coroner, was at Parramatta or elsewhere, on a party of pleasure. After all, at the urgent request of the friends, Dr. W. opened the body, and was satisfied as to the cause of death, it being the same as he had predicted to deceased before. But Mr. R Ryan Brenan is not satisfied, and intends to prosecute Dr. Whittle for having so proceeded.

We have stated the case, we now leave it to our readers to decide, but shall say something on the *legality* of holding inquests on a Sunday, which Mr. Brenan says are not legal – *when* he wants to neglect this particular duty.

CJA, 6/455, 07/03/1840

EXECUTION OF WHITTON THE MURDERER. - Orders have been issued by the Executive Committee that the re commendation of the Chief Justice should be followed, and therefore the execution of **THOMAS WHITTON** will take place at Goulburn. He will be hanged at that place on Monday next week, and it is supposed that the Sheriff will preside in *propria persona* on the occasion. To guard against surprise or a rescue a very strong guard of mounted police it is expected will accompany the culprit.

ANOTHER EXECUTION. - **HUNT**, the murderer, has been ordered for execution on the 16th instant, at the Sydney Gaol.

INQUESTS. - At the Bunch of Grapes, on Wednesday, on the body of **ANGELIA SOPHIA ASHTON,** servant to Mr. **NOLAN.** It appeared that on Monday last, deceased's apron while she was in the act of placing the kettle on the fire ignited, and she was burnt to that degree before the flames could be extinguished, that she died from the effects in hospital at midnight of the same day. Verdict – accidental death by burning.

At the Hope Tavern, York-street, on Wednesday, on the body of **JAMES BARROW**, of the 50th regiment. It appeared in evidence that the deceased had been fighting a few rounds with a comrade named **TOWNSEND**, who had called deceased a lazy man, which led to words, and finally ended in the death of Barrow, who having thrown himself on his bed, fell therefrom on the floor and expired. Dr. **GRAYDON** stated that he had held a post mortem examination on the body, and found a quantity

of extravasated blood on the brain, which, and not the outward blows, was enough to cause death. Verdict – Accidental death.

CJA, 6/456, 11/03/1840.
EDITORIAL re Executive Committee decision and the 'cavalcade' for **WHITTON.**

A few days ago a serious accident occurred at Cockatoo Island, by the blasting of a rock, in consequence of the charge exploding much quicker than anticipated. Three men were very seriously hurt, and two had their eyes completely destroyed. As there is no boat kept at the Island, it was a long time before the Government boat arrived; and the unfortunate men were removed therein to the shore, and thence to the General Hospital, in a very hopeless condition.
FANNON'S MURDER. - The two creatures in custody for this murder have not yet been heard, in consequence of the principal not having been received by the Sydney authorities, so that the particulars may be made public. We think the up-country Justices very dilatory men.

NOBODY, J.P. &c.&c. v WHITTLE AND OLIVER. - This case, being for the dissection of the body of the late **THOMAS a'BECKETT**, came on before the Police Bench yesterday, and occupied the Court from two to seven o'clock. The official magistrate not being able to define who was the prosecutor in the case, Mr. **BRENAN** and the constable denying that either one or the other were such; the case was accordingly dismissed. Our comments upon this case will appear in our next.
HUNT, the Penrith murderer, was executed yesterday morning at the usual hour. The unhappy man had shown since his condemnation a pleasurable change in his conduct, evidently preparing himself for the awful transit. He was attended in his last moments by a minister of the Wesleyan persuasion; and he audibly prayed to his Maker for forgiveness before the fatal bolt was drawn, and he was ushered into eternity.

CJA, 6/457, 14/03/1840
POLICE I NCIDENTS
TUESDAY, MARCH 10.
(Before Messrs. Windeyer and Sempill)
Messrs. **WHITTLE** (Surgeon), and **OLIVER** (attached to the *Colonist* newspaper offices), appeared on summons to answer a charge of misdemeanour against them, at the instance of Mr. Sapient Coroner **BRENAN**, by a constable named **DAVID SHARPLEY**, who had been placed over the body of the late **THOMAS a'BECKETT,** who died suddenly on the Sunday morning previous. This constable, on being sworn, stated that he was not the prosecutor, and consequently had no charge to make against the parties before the court, but admitted that Dr. Whittle had been requested by the deceased's friends to open the body of a'Beckett at about eleven o'clock, being five hours after his death; the dissection was conducted in a truly military style; during the dissection of the body, a Mr. **HARFORD** came from Dr. **M'KELLAR** and agreed on examination with Messrs. Whittle and Oliver as to the cause of a'Beckett's death, and appeared to be satisfied that all agreed upon that point; Callaghan said to Dr. Whittle that the Coroner was ill, and that the inquest would not be held in consequence till Monday. The Coroner's constable, **CALLAGHAN,** stated that the Coroner had told him Dr. M'Kellar might open the body, but no other person; he also corroborated the testimony of the previous witness;

concluding his evidence by saying that he was not the prosecutor in the case. Mr. **FOSTER**, who appeared as counsel for the defendants, then asked, who was the prosecutor, when the Sapient Coroner Brenan "jumped" up from a seat on the Bench, and said that he was Coroner for Sydney, and would answer any questions touching the subject before the court, although it must be remembered that he did it through courtesy, and not because he was bound to do so!!! Mr. B. was then sworn, and stated that he had been informed of the death of Mr. a'Beckett by constable Callaghan, but he was only bound to attend as Coroner when any sudden death that occurred was reported by the Chief Constable; it being Sunday he directed *his* constable to state to the deceased's doctor (M'Kellar) that the inquest could not be held till Monday, but if he desired to hold a *post mortem* examination upon the body, he could do so at once, if necessary. On Mr. Foster cross-examining this ready witness, he stated that *an inquest on a Sunday was illegal*; and that he did not consider it was irregular to hold the inquest on Monday instead of Sunday. Dr. M'Kellar, on being sworn, stated, that he found the body had been opened when ordered by the Coroner to examine it to ascertain the cause of death; and that he had not authorised, nor could do so, any one to open the body, in consequence of this interference he was of opinion that the "ends of justice" had been frustrated. Mr. Foster contended that no offence had been committed by his clients, the defendants in the case. Mr. **WINDEYER** observed that he could not tell what Mr. Oliver had done in the matter to be brought before the Court, as nothing appeared in evidence against him in any respect touching the charge of misdemeanour; and this worthy magistrate had doubts whether any offence had been committed at al, seeing that the very jury which sat upon the body had returned a verdict to the effect that deceased had come to his death from natural causes; he therefore had no hesitation in dismissing the case. Dismissed accordingly.

CJA, 6/458, 18/03/1840
EDITORIAL re Mr. Coroner Brenan.

WHITTON THE MURDERER; very tall story from up country; pure rumour.

ACCIDENT. - As a dray was passing up Queen's Place yesterday afternoon, being laden with casks, one of them rolled off onto a man who was stooping to place a stone to block one of the wheels. The unfortunate man was seriously injured to all appearance, and was conveyed to Dr. **NEILSON'S**, to be examined as to the extent and nature of the injuries he had sustained.

CJA, 6/459, 21/03/1840
FATAL ACCIDENT. - The unfortunate man, mentioned in our last as having been knocked down and seriously injured by a hogshead falling from a dray, in Queen's Place, last Tuesday, has since expired. At the time he was received into the hospital, no hopes were entertained that he would recover.
FANNON'S MURDER. - **GEORGE HERSON** and **MARY MULCAHENY** now **GORMAN**, have been in custody of the police now for a long period, and have not yet had a hearing, relative to their being concerned in the murder of **FANNON**. This delay we understand is caused through the total indifference shewn by one of the up country benches, to the communications forwarded from Sydney, relative to the principal in the transaction; better than three weeks have elapsed, and no answer to the communications has been received in Sydney as to whether the principal is in custody, or, in fact, anything about the matter. Certainly the Government should take

some notice of this neglect, and require to know, from that upcountry Bench, why it has not communicated with head-quarters upon the subject.

WINDSOR.

On Tuesday, the 25th ult., an inquest was held at the house of Mr. **JOHN GREEN**, Lower Portland Head, on the body of **EDWARD LUNNERGAN**, who was drowned while bathing in the Hawkesbury River. **FRANCIS BOURNE** deposed, about eight o'clock last Sunday morning deceased went to the river to bathe. I saw him swimming; he made one or two strokes, and I then perceived he was sinking, the weeds were over his legs. I am deaf, and did not hear him call out. I went for assistance, but we did not find the body until evening. The deceased was intoxicated the night before; I supplied him with the liquor, he did not pay me for it, but I should have expected payment. John Green, settler, deposed, I remember Bourne bringing liquor to my house on Saturday evening. I am aware that deceased had liquor from Bourne; I left him and the others drinking when I went to bed. The next morning I left home, and afterwards heard deceased was drowned; I made search, but did not find the body until the evening. Verdict – died by suffocation from drowning.

POLICE OFFICE.

Tuesday, March 10. - **JOHN GREEN**, a settler, residing at Lower Portland Head, was summoned to answer an information filed against him for suffering liquor to be sold in his house, he not being licensed according to law. The defendant pleaded guilty and was fined in the sum of £30, and costs 5s. 8d.

FRANCIS BOURNE appeared on summons to answer an information filed against him for selling one half pint of rum to one **EDWARD LUNNERGAN** now deceased, he (Bourne) not being licensed according to the Act of Council in such cases made and provided. The defendant pleaded guilty, and was fined £30, and costs 5s. 8d. Bench allowed him ten days to pay it.

CJA, 6/460, 25/03/1840

EDITORIAL. The late Inquest and the Gazette: More on the a'Beckett case and Mr. Surgeon **WHITTLE.**

WHITTON'S CONFESSION AND EXECUTION. - We have received a correspondence from Goulburn, relative to the last dreadful moments of **WHITTON** the murderer. It appears that the culprit died resigned to his fate, and admitted the justness of his sentence. He addressed a few words to those assembled around the awful drop, to caution them against taking up fire-arms against their fellow creatures, in order to procure unlawful gain, or to seek an unmerited revenge upon their masters and others; he said that he died in peace with all men, and denied that he was ever directly a murderer, but admitted that he was present on several occasions when life was taken from his fellow-man. The inhuman man was born in Manchester, in 1811, he was therefore only twenty-nine years of age when he was ushered into the untimely presence of his Maker. The execution took place at eight o'clock on this morning, preparations were made for the execution, and Lieutenant **CHRISTIE**, with seventeen mounted troopers, arrived at the lock-up, at the rear of which the gallows had been erected, and the culprit's grave dug. About ten o'clock the murderer was marched forth, dressed in white, with his arms pinioned, being accompanied by his religious instructors, and several civil officers. Before ascending the gallows, Whitton knelt down by the side of the clergyman, and appeared to pray fervently. This being ended, he mounted the gallows platform, accompanied by the clergyman and the executioner, and having again prayed, addressed the multitude assembled to

witness his death, to entreat them to take warning from his untimely end, and to lead a peaceful life. The executioner then adjusted the rope, and drew down over his eyes the cap, which hid from his vision all things worldly:- speedily the bolt was drawn, and the unfortunate man was ushered into eternity, after a few struggles.

CJA, 6/461, 28/03/1840

Three aboriginal blacks have been received into Sydney Gaol, under committal to take their trials, two for wilful murder, and the other for killing sheep, by spearing them in the bush.

The supposed murderer of **FANNON** has not yet arrived in Sydney although he was taken into custody at Yass, nearly a fortnight since. Certainly the authorities in that district do not exert themselves very much to expedite the accomplishment of justice. It is absolutely necessary, in many respects, that this man, with his supposed companions in the diabolical act, should be examined touching their guilt; the latter have been in custody for a long period, awaiting the apprehension of the supposed principal, and we think there has been an unnecessary delay.

CJA, 6/462, 01/04/1840

INFANTICIDE

An inquest was held on Monday last at the Cherry Trees public-house, Castlereagh-street, on the body of an infant, supposed to have been smothered in a water-closet shortly after its birth. It appeared in evidence that a servant woman, in the service of Mrs. **SHEA**, named **ANN LLOYD**, had been known to be in a pregnant condition for some time past; and on Thursday last a sudden change was noticed in her appearance, but no further notice was taken of it, or any remark made, until Saturday last, when a fellow-servant, named **ANN NUNAN**, on going into the water-closet for the purpose of sweeping it out and cleaning it, saw something lying on the top of the soil, which at first she thought was some dead animal, but on closer examination she found that it was a dead infant. She immediately gave the alarm relative to her discovery, and the supposed mother, Ann Lloyd, then went to the closet with a stake, and endeavoured to conceal the infant in mire. Doctors **SAVAGE** and **ARNOTT** examined the body of the dead infant, and agreed on the point that it had been born alive, and that it had breathed; there were several wounds on the body, but in consequence of there being no extravasation of blood they must have been made after the death, and no doubt when Ann Lloyd made the blows to immerse the body in the soil. The wretched woman confessed to Dr, Savage that she was the mother of the infant. A verdict of wilful murder was returned against the unnatural woman, and she was fully committed on a Coroner's warrant to take her trial for the murder.

CJA, 6/465, 11/04/1840

There has, as yet, been no inquest upon the bones of the human being found in the ruins of the Royal Hotel last Friday; and supposed to be those of a gentleman, who was residing there, named **JEFFRIES**, and who has not been seen or heard of since the lamentable catastrophe.

The constable, **JOHNSON**, who was acquitted at the inquest, and subsequently by the Bench, of having wilfully killed the man he shot at the Green Hills, has since been taken up and forwarded to Sydney, to take his trial for wilful murder, it is said, by direction of the Attorney General.

CJA, 6/466, 15/04/1840

POLICE INCIDENTS
Saturday, April 11
FANNON'S MURDER. - GEORGE HERSON, MICHAEL FOGHERTY, and the woman **MARY GORMAN,** charged with being concerned in the murder of Fannon, a shoemaker, some five years back, were put to the bar. Long account; witnesses:
GEORGE M'KINNON, MARY STONE, THOMAS HARDAGE, THOMAS CLARKSON, EMILY WOOD, formerly **BOLTON, JOSEPH JENNINGS,** publican [Jury Foreman at inquest on Fannon], **MARGARET FANNON**, widow, and Dr. **NEILSON**, who gave date as 6th of 9th November 1834.
Tuesday, April 14.
THE CONFESSION
It was rumoured last evening, that the woman **GORMAN** had wished to put in a plea of Guilty, in the case of **FANNON's** murder, in order to be admitted the approver, to implicate the actual perpetrators of the foul deed.

It appears that the bones found in the ruins of the Royal Hotel, were not those of the supposed Mr. **JEFFRIES,** for he is in the land of the living and quite well. This gentleman took up his abode on the morning of the fire, at Messrs. Dodds & Davies. It cannot be ascertained who the bones belonged to.

CJA, 4/467, 18/04/1840
DISGRACEFUL STREET FIGHT. … In the heat of the engagement one man took up a large flat stone and pitched it at the champion, but it fortunately missed him and struck his wife in the face, and the blow caused her instantly to fall to the ground as dead.

Wednesday, April 15. **HERSON**, **FOGHERTY**, and **GORMAN**, for **FANNON'S** murder, were again put to the bar, and the evidence of another witness taken. The prisoners were then remanded to Friday the 24th for further evidence, on which day it is supposed several witnesses will be examined, relative to the habits of the woman Gorman for some time after the day of the murder.

CJA, 6/469, 25/04/1840
FANNON'S murder; committed for trial. Also more re **M'KINNON.**

CJA, 6/471, 02/05/1840
SUPREME COURT
The crimes in general are, we are happy to say, are of a lighter character than usual, although there are some few for murder; amongst these are the three persons committed the other day for the murder of **FANNON** in the Domain, some five or six years ago.
The body of a man was found floating near the Botanic Garden a few days since, without a head, and much decomposed. The person who first saw it thought it was the carcase of a dog, but on closer inspection he discovered it to be that of a human being.

AUSTRALIAN, 02/05/1840
Willis J., 1 May 1840
FREDERICK KIRK was indicted for shooting at **WILLIAM GROVENOR** at Gunning, on the 15th January last, with loaded fire arms, with intent to murder him;

and **WILLIAM CLARK** was charged with being present aiding and assisting the first named prisoner to commit the said felony.

The prisoners were a part of the gang associated with **WHITTON**, the bushranger lately executed for murder, and attacked the house of the prosecutor, chiefly, as it appeared, for the purpose of obtaining fire-arms, and also for sake of bravado, in consequence of having heard, while committing a robbery on the same day at Dr. Clayton's in the same neighbourhood, that Mr. Grovenor would take the same robbers, if they attempted to rob his place. Upon hearing this, they threatened to pay his place a visit, and see if he was as game as he pretended to be.

The following evidence was then called:- William Grovenor being sworn, said, I reside at Bunning, and am storekeeper; both the prisoners came to my place about three o'clock in the day, about a month after Christmas last; I am sure they are the men; Clark came in and asked for half a dozen shirts; I handed down the shirts, and when I turned round from doing so, Clark held a pistol to my head, and told me not to speak; while I stood, Kirk came in with a short gun, and said he would blow me to ribbons if I made any resistance; Clark then drove my family into an inner room, and baled them up; three black natives then came in, and he baled them up also; he then went out, and brought in my bricklayer and brickmaker, and baled them up in another room; they both asked me for my arms; I sell arms and gunpowder; I have no license to do so, nor is any required; I had arms loaded in the house, expecting a visit from the bushrangers, as I had been threatened with it; I reached the prisoners down the pistols, and Kirk loaded eight or ten pistols and guns, some with his own ammunition, and some with my gunpowder, a flask of which they took off the shelf; I was attempting to approach the loaded arms on the counter, when Clark told me not to attempt it again, or he would blow my brains out; he looked at me very hard, and said, "is not your name Grovenor? - are you not the b----r that threatened to take two of us?" I said "you must not believe all you hear;" I thought he was going to shoot me, and I said "it would be a cowardly act to shoot a man unarmed;" at this moment, Mr. **MANNING** and another gentleman rode up to the door; Clark tried to cover them with his gun; Kirk was in the next room, and both could see Mr. Manning; Clark said to Kirk, "wait a bit, I'll drop him if he comes by;" Clark went out and returned in, seemingly terrified; I took advantage of the moment, and ran out; I met a man with a gun, who told me it was loaded with duck shot; I asked him for ball, but he had none; I was desperate, in consequence of my family being in the house, so I rammed my penknife into the gun, and then challenged them to come out; they would not do so, but Clark presented my double barrelled gun at me, from behind the shutter; I went a little distance off, and Clark and me exchanged shots, both without effect, but I felt the passage of the ball near my face; I called upon Clark to surrender, but he said he would not - that he never was born to be hanged; Manning went to Mr. Hume's, about two miles off, and brought me some assistance; I would not allow any one to rush into the house, knowing that it would most probably be fatal to any one who should make the attempt; Clark fired several times both at me and the parties who came to my assistance; I told one of my servants to remove the brick work at the end of my house, and a man named Cooper went up the ladder which I caused to be raised, with a pistol in his hand, and just as he had reached the joists of the house, Clark fired, and shot the canister of gunpowder, with which he was priming his pistol, out of his hand; I then went up the ladder, and Clark shot me through the hat, the splinters from the joists, with which the ball came in contact, stunning me in the forehead; about seventeen or eighteen shots were exchanged between me and Clark, and the firing lasted at intervals for about four hours; Kirk was engaged loading the fire-arms for Clark; at

last I got a fair shot at Clark right in front of him; the charge in my gun was a very heavy one, and it lodged in the wall close by the side of Clark's head, knocking the plaster about his ears, and a splinter wounding my sister-in-law in the neck; the men then called out that they would surrender; I told them to let me hear one of the females in the house say so, upon which my sister-in-law called out to me, saying, that they had surrendered. I then went into the house, and with the assistance of the parties, who were with me, secured the prisoners, and sent them into Yass.

Mr. Grovenor was complimented by His Honor on his courageous conduct.

JOHN TOFT, an assigned servant of Dr Clayton's, stated that he was present on the same morning of the outrage by the prisoners at Grovenor's, when they committed a robbery at Dr. Clayton's, and that they left the latter place, saying that they would go to Grovenor's and see whether he was as game as he pretended to be; he afterwards followed in the same direction armed with a gun, and assisted Grovenor in the capture of the prisoners. Mr. Manning, and Richard Robertson driver of the Yass mail, also proved that they passed by Grovenor's during the outrage, and that they witnessed the firing. Mr. Manning as he turned the angle of Grovenor's house was shot at by Clark, but did not receive and injury.

The prisoners made no defence.

His Honor, previous to summing up the evidence, addressed the jury as follows:

Gentlemen of the Jury. - Nothing is more common than to hear those who are in a great measure ignorant of the criminal law of England, charge it with numberless hardships and undistinguished rigour; whereas, all who have studied it minutely, agree that it wants nothing to make it admired for clemency and equity, as well as justice, but to be understood. It is so agreeable to reason, that even those who suffer by it cannot charge it with injustice; so adapted to the common good as to permit no vice to go unpunished which that requires to be restrained; and yet so tender of the infirmities of human nature, as never to refuse an indulgence where the safety of the public will bear it. It gives the sovereign no power but of doing good, and restrains the people from no liberty but of doing evil. The knowledge of this branch of jurisprudence, which teaches the nature, extent, and degree of every crime, and adjusts to it its adequate and necessary penalty, is of the utmost importance to every individual of the state. No rank or elevation in life - no uprightness of heart - no prudence or circumspection of conduct, should tempt a man to conclude that he may not at some time or other be deeply interested in these researchers. The infirmities of the best amongst us - the vices and ungovernable passions of others - the instability of all human affairs - and the numberless unforseen events which the compass of a day may bring forth, will teach us upon a moment's reflection that to know with precision what the laws of our Country have forbidden, and the deplorable consequences to which a wilful disobedience may expose us, is a matter of universal concern. The Criminal Law of England has been supposed to be more nearly advanced to perfection than that of any other country. Crimes are accurately defined, - penalties (so far as they reasonably can be) are fixed and certain - all accusations are public, and trials are in the face of the world - torture is unknown, and every real or supposed delinquent is judged by such of his equals against whom he can form no exception, nor even personal dislike. The object of this law is the protection of our persons and property by the prevention of crime. Hence the principle, (which pervades the whole system of penal jurisprudence) that the facility with which any species of crime is perpetrated, is deemed by the legislature a reason for aggravating the punishment. Great Cities (as all must know who dwell in this place) multiply crimes by presenting easier opportunities, and more incentives to libertinism, which in low life is commonly the

introductory stage to other enormities, by collecting thieves and robbers into the same neighbourhood, which enables them to form communications and considerations that increase their art and courage, as well as strength and wickedness; but principally by the refuge they afford to villainy, in the means of concealment, and of subsisting in secrecy, which crowded towns supply to men of every description. In such places a vigilant magistracy, an accurate police, a proper distribution of force and intelligence, together with due rewards for the discovery and apprehension of malefactors, and promptitude in carrying the laws into execution, seem to be peculiarly requisite. Wherefore, in England, corporations were established, and invested with all requisite powers and jurisdiction for the good government and the preservation of peace in such communities.

Of these institutions, which first were constructed on the Continent of Europe, the Historian of the Emperor Charles V., says, "Forming cities into communities, corporations, or bodies politic, and granting them the privilege of Municipal Jurisdiction, contributed more, perhaps, than any other cause, to introduce regular government, police and arts, and to diffuse them over Europe." Let me then congratulate you, gentlemen, on the immediate prospect (according to the announcement in the public papers) of the incorporation of this great and flourishing town; and on the hope, in which I trust we may fairly indulge, that the recent Acts or the Imperial Parliament which place the English Municipal Corporations on their present board and popular basis, and secure to them the requisite the jurisdiction for the prevention and punishment of crime, may be adopted in their fullest extent by our Local Legislature. In that event, within the limits of this town at least, criminal justice never need be dormant - a criminal court, empowered to punish nearly every species of offence, may almost constantly be open, and thus may the corrupting influence of incarceration be abridged, examples become immediate, and the terror of punishment increased - following as it would do, closely as the shadow of crime. Let us now proceed to the business we have in hand. To you, gentlemen, with such assistance as I can render you, it belongs to ascertain and to declare by your verdict, the breaches of the law which may have been committed in those cases that may be brought before us. To me it appertains to pronounce the punishment which the law inflicts upon them. Thus, gentlemen, in the discharge of our respective duties, shall we help to secure to our fellow subjects the benefit of those admirable laws which constitute the criminal code - a code made for securing the safety and ensuring the tranquillity of the community.

His Honor then recapitulated the evidence and charged the Jury, who without hesitation returned a verdict of Guilty against both the prisoners. The prisoners were remanded for sentence. See also Sydney Gazette, 5 May 1840; R. v. Whitton, 1840.

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

CJA, 6/472, 06/05/1840

DRUNKEN SURGEONS. - On Saturday last, as will be seen in our reports of the trials on that day at the Supreme Court, two cases were obliged to be adjourned in consequence of the drunkenness of two surgeons, who were witnesses. One of them, we understand, holds, or did at the time, a Government appointment, but has since been discharged.

SUPREME COURT – CRIMINAL SIDE

Saturday, May 2.

Before the Chief Justice.

JOHN BRIGHT stood indicted for inflicting a wound in the right side of a man named **JOHN FULLER**, in January last, of which wound he, the said Fuller, lingered, and shortly afterwards expired. Guilty. Death.
PATRICK and **BRIDGET KEANE** stood indicted for causing the death of their son by ill-usage, cutting, and maiming him. This case was postponed in consequence of one or more of the witnesses being intoxicated, among whom was the medical witness.

SYDNEY HERALD, 06/05/1840
Supreme Court of New South Wales
Dowling C.J., 5 May 1840
ANN LLOYD [or LYNCH] was indicted for having on the 26th of last March murdered her own new born infant, a female child, by thrusting it into a privy on the premises of her mistress, in whose service she had been for two years. A second count charged the prisoner with concealment of pregnancy. The prisoner pleaded not guilty; and was defended by Mr. **PUREFOY**.

The Jury returned a verdict of guilty of concealment. – Remanded. See also Sydney Gazette, 9 May 1840; and see R. v. White, Australian, 8 February 1840 and 19 May 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 06/05/1840
Supreme Court of New South Wales
Dowling C.J., 2 May 1840
PATRICK and BRIDGET KANE [KEANE] were indicted for a misdemeanor in having on the 25th day of December last, while in liquor, neglected their son **JAMES KANER**, an infant of eight months old, and incapable to take care of himself, in consequence of which neglect the clothes of the said James Kane caught fire and he was so seriously burned that he died in the course of the day.

The prisoners pleaded not guilty; and His Honor requested Mr. Callighan to undertake their defence.

In opening the case the Attorney-General stated that the present was another instance of the awful evils which intemperance is inflicting on this otherwise blessed country. Were the importers of these spirits to attend the Supreme Court and hear the history of every gallon they had imported, as revealed in the crimes that came before the Court in charges of murder, of parracide, matricide, and all the crimes that can be conceived, not to mention the robberies it led to, and the number of lashes which it inflicted on the backs of the criminals already under sentence, he was sure they would to a man renounce the trade.

BENJAMIN SPARKE, assigned to **HENRY SHADFORTH**, J.P., being sworn, deposed, that the prisoners lived on Mr. Shadforth's property; they had a boy about eight or nine months old; it was a fine healthy child names James. He was passing their residence about ten a.m. on Christmas and heard the child crying, which was quite unusual. He heard the cries one hundred yards off; went up and saw the child lying on the sill of the door; all its clothes were burnt off but a sleeve of a frock which was on fire. He tore it off and burnt his fingers in so doing; the child was in great agonies. He took it up and went into the first room, and saw no one it; he went into the next room and saw the prisoners lying on the ground; there was no bed in the second room, but there was in the first. They were asleep; he had considerable

trouble to awaken Kane, and when he was awakened witness told him his child was burned Kane woke his wife, and went immediately up to Mr. Shadforth's. There was a log on the fire burning, and the fire appeared to have been raked; there was no fender. Both of them appeared a little in liquor; after she rose she put a cloth round the child, and appeared very sorry; he and the woman immediately went towards Mr. Shadforth's with the child to see the doctor, and saw Mr. Shadforth and the doctor coming. The doctor told the woman to take the child home – it was then alive. The next time he saw the child it was dead. In cross-examination witness stated that the child could crawl about; the fire was very dim; never heard the child cry mamma, mamma. The mother appeared very sorry indeed, and was anxious to get the child conveyed to the doctor, and when she saw the state of the child the sorrow and fright made her sober. The child was outside on the sill lying on its back. The cries of the child were loud enough to have awakened any person that was not drunk.

Mr. Shadforth, - I employed the husband as a labourer; he had served his time in the Colony; they brought but one child; from eight to ten years old, with them; Kane told me he had another son at school at Penrith. On Christmas day, about ten a.m. the prisoner Kane came crying to my house, and told me his child was burned to death; he was not sober; I thought it was grief; after gong to the hut the doctor desired a fire to be made to get some warm water, when Kane refused, saying it was of no use, as his child was dead. The doctor and me got wood and made a fire; the prisoner was very noisy all the time the doctor was examining the child, and in my opinion the riotous conduct of the prisoner was caused partly by grief, and partly by drink. The wife was sober, and held the child while the doctor was dressing it. She had been drinking apparently by her dress; he husband challenged her with being drunk, and she did not deny it; I challenged the husband with [being] drunk, and he replied that he was not, all he had drunk that morning was a glass of wine, which McEwen, a neighbour, had given him. On searching the hut a bottle with about half a glass of rum was found, and a two-gallon keg, empty, which smelled of rum. On the next day Kane acknowledged that on the day before Christmas he had got a gallon of rum from Penrith, and that he and his neighbours drank it; they always appeared very fond of the child, and both were very sorry at its being so severely burned; my men were getting ready at the time of the accident to hear prayers on Christmas day; the Catholics do not attend these prayers, but I take care that they are clean, and those who wish to go are sent to prayers. Cross-examined by the prisoner – I have never seen the husband in liquor, but believe he has been so during the four months he has been in my employ; the wife was drunk one Sunday, she got intoxicated by some relations visiting them; they are not habitual drunkards.

The medical attendant proved that the child was so burned across the chest and bowels, that there was no chance of its surviving; it was dead about two hours after witness first saw it; the husband was in a state of intoxication, the woman was perfectly sober and collected. Witness would know if a person was in liquor. Spirituous liquors predispose a person to heavy sleep; rum would strengthen a woman while nursing if given in the quantity of a wine glass full per day, diluted with water; porter would be better; all stimulants increase the quantity of lacteal fluid, but do not improve the quality. If the mother was in health he would not give her any rum, and if ill, he would prefer other stimulants to rum. The husband was very loud and abusive, saying he had no luck on it. The female is hard of hearing, and the witness had prescribed for her repeatedly, but she might have heard her child cry, even if asleep, provided the sound ear was not next the pillow.

The prisoners stated in their defence that it was Christmas time, and the husband had gone for a drop of rum on the previous evening, which they partook of too freely, and the husband being weakly lay down in the back room, as the heat was very intense owing to their bed standing close to the fire after she had cooked some victuals she went and lay down in the cool room with her child in her arms, gave it the breast, and spoke for a little while to her husband, after which she fell asleep, and did not know how her child left her, but no doubt it had crawled along the floor till it came to the fire, when its clothes had caught the flames.

Mr. **CALLIGHAN** submitted to His Honor whether the precedent on which the indictment had been framed could apply to the case, seeing in that one the parties were indicted for deserting, refusing to clothe and nourish their child, whereas in the present case it appeared in evidence that the parents were very fond of their infant, and had done all the things alleged in the precedent, and the indictment ought to have charged them with an accident occurring through their own neglect, rather than with neglecting the child.

His Honor over-ruled the objection, and in summing up stated, that any neglect or breach of a moral duty which is an outrage on society, was an indictable offence; as it was, should a conviction take place, the objection raised by Mr. Callighan would be brought before the Court. The Jury found a verdict of Not Guilty.

His Honor advised the prisoners to fall down on their knees and thank God for the narrow escape they had had, by the merciful view which the Jury had taken of their case, and who had satisfied there consciences by returning a verdict of Not Guilty. Had a verdict of guilty been returned, added His Honor, he would have felt it his duty to have sent the husband to an ironed-gang for two years, and the wife for the same time to the 3rd class of the Factory. He counselled them in future never to drink anything stronger than water. They were then discharged. See also Sydney Gazette, 5 and 7 May 1840, calling the defendants Keane.

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

SYDNEY HERALD, 06/05/1840

Supreme Court of New South Wales

Willis J., 1 May 1840

FREDERICK KIRK was indicted for shooting at **WILLIAM GROVENOR**, on the 15th January last, at Gunning, with intent to murder him; and **WILLIAM CLARK** was indicted as an accessory, aiding and abetting in the offence. It appeared the prisoners had at one time been connected with the notorious **WHITTON**.[2] While robbing the house of Dr. **CLAYTON**, on the day laid in the indictment, they heard that the prosecutor had declared that if the bushrangers ventured to attack his place he would capture them. They also learned that Mr. Grovenor had fire arms; and therefore, to see if he was game enough to face them, and also to procure the arms, they declared they would pay him a visit. The prosecutor, who is a storekeeper at Gunning, deposed that the prisoners came to his place about 3 o'clock, p.m., about the middle of January last; Clark asked for a half-dozen shirts, they were handed down, and when he turned round from doing so, the prisoner Clark clapt a pistol to his head and told me not to speak. Kirk then came armed with a short gun, and threatened to blow his brains to ribbons if resistance was offered. The family were then forced into an inner room, where they were bailed up; three blacks came in, who were served in the same manner; and a brickmaker and bricklayer were brought in and bailed up also. All the parties were bailed up by Clark. Powder and arms being for sale, they demanded them. Having been threatened with a visit from the bushrangers, some

arms had been loaded to receive them. Mr. Grovenor reached the prisoners down the unloaded pistols, and Kirk loaded eight or ten pistols and guns. When Mr. G. made an attempt to approach the loaded arms on the counter, Clark told him not to do that again or he would blow his brains out, and giving him a hard look, asked if his name was not Grovenor? saying "are you not the b___r that threatened to take the two of us?" to which he replied "you must not believe all you hear." Thinking he was about to be shot, Mr. G. said "it would be a cowardly act to shoot an unarmed man." At this instant Mr. **MANNING** and another gentleman rode up to the door; Clark tried to cover them with his gun. Kirk was in an adjoining room; both could see Mr. Manning. Clark said, "wait a bit, I'll drop him if he comes bye." Clark went out and returned apparently terrified; taking advantage of his apparent confusion, Mr. Grovenor ran out and met a man with a gun, which he said was loaded with buck shot; he asked him for a ball, but he had none; being rendered desperate on account of his family being in the power of the bushrangers, Mr. G. rammed his penknife into the gun, returned and challenged them to come out, but they would not. Clark presented his double-barrelled gun at Mr. G. from behind the shutter, when he withdrew a small distance. Clark and Mr. Grovenor exchanged shots but without effect; the ball passed very near Mr. G.'s face, when he ordered Clark to surrender, but he would not saying he never was born to be hanged. Mr. Manning having returned with assistance from Mr. Hume's, and fearing if a rush were made into the house that some one or more would be shot, it was arranged for a party to get up to the roof and remove the brick work there. A man named Cooper went up with a pistol, but as soon as he had reached the joists he was fired at by Clark. The shot struck the cannister of gunpowder out of his hand while in the act of priming his pistol. Mr. Grovenor then went up when Clark fired and shot him through the hat; the ball struck the joist and splintered it so that he was struck on the forehead and stunned; the ball just grazed his forehead; the firing lasted for about two hours, and seventeen or eighteen shots were exchanged between Clark and Mr. Grovenor. Kirk was employed loading for Clark. At last one of Mr. G.'s shots lodged in the wall close by the side of Clark's head, and a splinter wounding Mr. G.'s sister-in-law in the neck on which they immediately said they would surrender. The party then entered, secured the prisoners, and conveyed them to Yass. His Honor highly praised the courageous conduct of Mr. Grovenor.

JOHN TOFT, assigned to Dr. Clayton, deposed, that on the morning of their capture, the two prisoners robbed Dr. Clayton's house and left that for the prosecutor's, declaring their intentions to be as already stated. After they left his masters premises he got armed went to the Grovenor's, and assisted at the capture of the prisoners. Mr. Manning, junior, and the driver of the Yass mail, also corroborated the prosecutor's evidence. Guilty – To be transported for Life.

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

CJA, 6/473, 09/05/1840

CHARLES WARNER, one of the drunken surgeons, who was committed on Saturday last for contempt of Court, was on Monday last fined £20, and to be confined in gaol for fourteen days.

SUPREME COURT – CRIMINAL SIDE

Monday, May 4.

Before the Chief Justice.

PATRICK and **BRIDGET KEANE**, (who were remanded on Saturday, in consequence of the medical witness being intoxicated); stood indicted for neglecting

and ill-using their won, so that he died, being aged about eight months. It appeared that on the 25th of last December the prisoners were drunk, and consequently they were incapable of taking care of their infant son, who, through their negligence, went too near the fire, and its clothes ignited; the body was burned to that degree that the sufferings occasioned thereby caused its death the same day. The evidence for the defence went to shew that the prisoners were very fond of the child; and it was supposed that it had crawled to the fire while the father was asleep in a back room through the effects of liquor, but that the mother had merely laid down to rest herself, the day being very warm, and fell asleep. The surgeon stated, that when he was called in to attend the suffering infant the husband was much excited, but the mother was quite sober and much distressed. Not Guilty. Discharged.
Tuesday, May 5.
Before the Chief Justice.
ANN LLOYD stood indicted for the wilful murder of her infant. A second count charged her with concealing the birth of her infant. Guilty of the second count.
Wednesday, May 6.
Before the Chief Justice.
At the opening of the Court, **ANN LLOYD**, who had on the previous day been found guilty of concealing the birth of her child (the Jury having taken a truly merciful view of the case), was put to the bar and the sentence of the Court passed upon her – namely, *that she be confined, for* THREE MONTHS *in the House of Correction!!!* [Oh Judge! Thy *Justice* is indeed wrapped in the arms of Mercy!]
JOHN JOHNSON stood indicted for the manslaughter of **RICHARD DARLINGTON,** [33] by shooting him through the back with a pistol while in prisoner's custody, who was then a constable. Guilty. To be transported for seven years.

CJA, 6/474, 13/05/1840
FANNON'S MURDER. Possible postponement of trial: **GORMAN, HERSON, FOGHERTY.**
MELANCHOLY DEATHS. - On Thursday morning last, two young men, named respectively **THOMAS** [38] and **JOHN COULSON** [30], who were lodging at the Freemason's Hotel, York-street, expired within four hours of each other. Inquests were held upon the bodies in the course of the day, when it appeared in both cases that the deceased brothers had for a length of time past been addicted to drinking to excess ardent spirits. The Jury in both cases returned a verdict – Died from the effects of intoxicating liquors, which produced *delirium tremens.* What an excellent article or the Temperance Magazine! We trust the Editor will not forget it.

SYDNEY HERALD, 13/05/1840
Dowling C.J., 6 May 1840
ANN LYNCH [or LLOYD], who had been convicted before his Honor on the preceding day, of concealment of pregnancy, was brought up to receive sentence. His Honor stated, that he had remanded her with the view of enabling him to make inquiry whether there were any extenuating circumstances in her case, that would warrant him in the discharge of his duty, in mitigating the penalty which the law awarded to the crime of which she had been convicted, and also to ascertain whether the reported father of the infant was likely to make any atonement to her for the injury which he had done her. His Honor had done so out of mercy to her, for he could not but believe that it was a sense of shame, more than want of motherly affection, which had led her

to act as she had done, and he was truly sorry to find that the present was not her first departure from the paths of virtue, as he had been credibly informed she had been a mother before, still he did not think she was irretrievably lost, as her mistress, a most respectable lady, had borne testimony that for two years she had behaved well in her service, and but for the circumstances which had brought her as a prisoner to the bar of the Supreme Court, she might have been still in that situation. The offence she had been convicted of, was one which the laws of the land authorised him to punish by not less than two years in the House of Correction, but in the present instance, in the hope that she would see the evil of her ways and return to those paths from which she had swerved, he would not pass such a severe sentence as he otherwise might have done; he therefore ordered her to be confined in the House of Correction for six calender months and kept to hard labour. His Honor subsequently stated, that any of her Majesty's gaols as well as the female factory, came under the designation of the House of Correction, and that it lay with his Excellency the Governor, and the Executive Council, to say in which she was to undergo her sentence. See also Sydney Gazette, 9 May 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 13/05/1840
Supreme Court of New South Wales
Dowling C.J., 6 May 1840
JOHN JOHNSTONE, late constable in the Morpeth Police, was indicted for the wilful murder of **RICHARD DARLINGTON**, at Morpeth, on the 9th of last March. It appeared that on the evening of the day laid in the indictment, the prisoner observing the deceased, who was in liquor, interrupting the people going along the highway, in the exercise of his duty as a constable, took him in charge for the purpose of lodging him in the station-house, and in order to enable him to lodge the deceased there, he obtained the assistance of two other persons connected with the Morpeth Police. When getting him along the prisoner and deceased kept arguing and irritating each other, and the deceased was told by the prisoner that if he did not go on he would shoot him; the prisoner kept urging him on to the station-house, and for the purpose of locking him in, was in the act of reaching out his left arm for the key, from the keeper of the station-house, when the pistol which was in his right hand went off, the shot lodging in the back of the deceased, whose clothes were set on fire by the fire from the pistol, which was about a foot long; the deceased lingered for four days, having previous to his death made a declaration, charging the prisoner with having caused his death. After the death of Darlington, an inquest was held on the body, when the jury under the direction of the Coroner, returned a verdict of Accidental Death. The Attorney-General seeing the depositions, thought that the case ought to be investigated and for that purpose he had brought it before the Supreme Court. It was proved that the prisoner, after the pistol was fired, appeared stunned at what had occurred, remained in a state of stupor for about a quarter of an hour, but afterwards appeared very sorry for the event, and gave himself into custody for having shot the deceased. His Honor, in commenting on the case, condemned the indiscriminate use of fire-arms by the constabulary when on ordinary duty, and pointed out the illegality of their carrying fire-arms when on town duty. The Jury returned a verdict of Guilty of Manslaughter.

His Honor, in passing sentence on the prisoner, adverted to the reckless conduct of the prisoner in taking his pistol from his belt in order to compel the

deceased to go to the watchhouse, at a time when he had other persons belonging to the police to assist him, and also pointed out the harsh manner in which he behaved throughout the whole affair; he called the prisoner's attention to the favorable view which the jury had taken of his conduct, and informed him that had they returned a verdict against him on the first count he would certainly have passed sentence of death on him. As it was he did not see that there were any mitigating circumstances in the prisoner's case which could warrant him in exercising that leniency which, as the administrator of the laws had vested in him. He then sentenced him to be transported for seven years. See also Australian, 9 May 1840; Sydney Gazette, 12 May 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/475, 16/05/1840.
SUPREME COURT
WEDNESDAY, MAY 13.
Before Mr. Justice Stephen.
FANNON CASE. **GORMAN, FOGHERTY, HERSON;** postponed again; adjourned to Saturday the 16th.
THURSDAY, MAY 14.
FOGHERTY, one of the alleged murderers of **FANNON**, put in an affidavit [re a witness]. … The Court then decided, that as it would be impossible to procure these witnesses in time, that the case must stand postponed to the ensuing criminal sessions.

CJA, 6/476, 20/05/1840
On Wednesday last, an inquest was held on the body of a man named **SMITH** [Samuel 47, Charles 64], who had suddenly expired on the previous day, shortly after he had gone to his daily duties as a carter to Mr. **BARKER.** Verdict – Died by the visitation of God.

Another inquest was held the same day on the body of a man named **THOMAS O'NEIL**, who was found dead I n his bed by his wise (sic) on the morning previous. It appeared in evidence that deceased had gone to rest the evening before in perfect health. Verdict – Died by the visitation of God.
INQUEST. - An inquest was held on Thursday last, at Titterton's, on the body of a man named **THOMAS POWER**. It appeared in evidence that the deceased was crossing Brickfield-hill at dusk the evening previous, and was knocked down by coming in contact with a dray, with such force as to rupture a blood vessel. Verdict – Accidental Death.

CJA, 6/477, 23/05/1840
BATHURST. - On Sunday an atrocious murder was committed by bushrangers on a person named **CUNNINGHAM**, residing at Triangle Flat, about forty miles from Bathurst. About dusk in the evening, four armed men went to the station of Messrs Foley & Cunningham, and demanded admittance, after obtaining which, they robbed the premises of anything they wanted, and then shot Cunningham, owing, it is thought, to his having objected to give up his fire-arms; Foley was absent at the time but came into Bathurst on Tuesday to give information, and the Police are in pursuit.

CJA, 6/478, 27/05/1840
EDITORIAL re **J.R. BRENAN,** Coroner.

The Government has offered a reward of £40, to any free man, for the apprehension of two men named **PATRICK CURRAN** and **JAMES BERRY**, the former for a rape, the latter for a suspected murder by him; both prisoners escaped from their escort, near Lake George, on the 8th of February last, and are still at large.

CJA, 6/479, 30/05/1840
MURDER. - An inquest was held yesterday afternoon at the Edinburgh Castle, upon the body of **MARGARET GLENNY,** alias **M'NAMARA**, who was found dead in bed the night previous, lying by the side of her husband, **JOHN GLENNY.** The Court was occupied several hours in investigating this case; and as the evidence is rather lengthy, we are compelled to defer publishing it till our next publication. For the present we therefore give the verdict – Wilful murder against John Glenny.

CJA, 6/480, 03/06/1840
An inquest was held at the Albion Vaults, Parramatta-street, on the body of an aborigine, known by the cognomen of **"JACK"**, on Wednesday last. It appeared that deceased had been apprehended some time ago on a charge of cattle stealing, and in the capture received a gun shot; that he had been discharged at the last Criminal Sessions from custody, and forwarded to the Benevolent Asylum, to be taken care of until he could be forwarded with others to his native haunts; he however lingered and died on the 26th. Verdict accordingly.
EDITORIAL. Another reference to **BRENAN** and Surgeon **RUSSELL.**
It was our intention to have given a fuller account, &c. re **MARGARET GLENNY.** Refer also to 'Omnium Gatherum' on the same page.

CJA, 6/481, 06/06/1840.
INQUEST. - On Wednesday last, and inquest was held at the Brougham Tavern, Pitt-street, on the body of a man named **JAMES LARKINS** [John? Aged 22?], who hung himself on that evening in a privy at the rear of Mr. **KELK'S** premises. It appeared in evidence that deceased, who had during his lifetime, lately, acted in the capacity of cook, had been out of employment for some time, until a few days ago, when Mr. Kelk permitted him to make himself generally useful about his house, for his board, until he could meet with other employment. During these few days he had been looked upon as a man suffering much from a depression of the spirits, but no suspicion was caused thereby that he would commit so rash an act; however, on the morning of Wednesday he was observed to enter the previously described out-house, having on his arm a piece of rope; sometime after, as he did not come out, a man went and forced the door open, and found that although not fastened inside yet there was a resisting body; which, by using a little more force to effect an entrance, and looking, as he did so, to the top of the door, he discovered it to be occasioned by a man suspended to the roof not quite cold but stiff and dead. A surgeon was sent for and succeeded in procuring blood, but to no purpose, for the vital spark had fled for ever. It also appeared in evidence, that although deceased was not a confirmed drunkard, yet for the last week he had been in a stupefied state from the effects of intoxicating liquors. The Jury returned a verdict that deceased hung himself while labouring under a fit of delirium tremens.

CJA, 6/483, 13/06/1840.

EDITORIAL. More about the Edinburgh Castle Inquest and **MARGARET GLENNY.**

CJA, 6/486, 24/06/1840
EDITORIAL, re two men awaiting an order for execution. **MARTIN RYAN, JOHN BRIGHT.**

CJA, 6/487, 27/06/1840
EDITORIAL. THE GAZETTE, THE CORONER, AND THE COMMERCIAL JOURNAL.
An inquest was held on Thursday, at the "Rose and Crown," Castlereagh-street, on the body of Mr. **EDWARD RILEY**, who suddenly expired on the day previous. Verdict – Died of delirium tremens.

On enquiry, we find that the two culprits mentioned in our last as having lain so long in the gaol under sentence of death, have been removed from the condemned cells. The one, **MARTIN RYAN**, having had his sentence commuted to transportation for life to Norfolk Island; and the other, **JOHN BRIGHT**, respited until the pleasure of the Queen be known. So that now only two who are actually under sentence of death in the Gaol, are **THOMAS LOWE**, for the murder of his father-in-law, and **JOHN BRIGHT**, also for murder.

SYDNEY HERALD, 03/07/1840
Supreme Court of New South Wales
Dowling C.J., 3 July 1840[1]
WILLIAM HALL was indicted for having on the 14th of November last, fired at Mr. **COLLYER**, of Collyersleigh, with intent to murder him. It appeared that the prisoner had gone in company with two other bushrangers to Mr. Collyer's residence, and after bailing up five assigned servants, plundered the house, the assigned servants offering no resistance although they had the means of doing so. The Attorney General stated to each of them when examined, that he would take care that they should not receive tickets of leave until by their conduct they had proved that that they were not concerned with Hall and his party in the robbery. The Jury found the prisoner guilty, when His Honor in passing sentence stated, that he was sorry that the late change in the criminal law prevented his making an example of the prisoner, but, as far as the law allowed him to go in punishing the prisoner he would, which was to send him to a penal settlement for life, with a recommendation that he should never receive any mitigation of the sentence. [1] This appears to be an error. The correct date was more likely to have been 3 August.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/492, 15/07/1840
An Inquest was held on the 2nd Instant, at Towns' "Woolpack Inn" North Richmond, on the body of **JOHN Mc'GUIRE** who was killed by falling from his Cart. – Verdict. Accidental Death.

Another Inquest was held on the same day at Byrnes' "King's Head" Public House, Windsor, on the body of **HONORA MANSFIELD**, who fell dead in the Street. It appears that she had been in a very sickly state for some time past, and living upon the charity of the inhabitants. - Verdict. Died by the Visitation of God.

CJA, 4/495, 25/07/1840
CRIMINAL SESSIONS. - The Supreme Court opens this day week for the trial of criminal cases. The list is not a very heavy one, and the only one of particular interest, is that of the alleged murderers of **FANNON** in the Domain, about six years ago.

CJA, 6/496, 29/07/1840
On Sunday morning a respectably attired female was observed to fall from off Street's Wharf, by a seaman attached to the *Will Watch*, who was close by at the time; he immediately, on seeing the accident, plunged into the water but could not save her. The body of the unfortunate woman, whose name is **MARY ELDER** [aged 31?], was found on Sunday, and an inquest held upon it on Monday, and the Jury returned a verdict of accident tally drowned.
ACCIDENT. - The papers have on several occasions drawn the attention of the Government to the dangers of Church Hill in the immediate vicinity of Kent-street, but still no railing is placed to prevent the dangers which weekly occur to parties mistaking in the dark the precise place where the crudely constructed steps lead from thence to Kent-street below. On Saturday night last, during the pelting rain, a person named **ROSE** fell down near these steps, and was found dead. At the inquest such a Verdict as the following ought to have been returned – "Killed through the want of proper precaution on the part of the Government." It is truly surprising that there are not more accidents and deaths occasioned by such neglect.
An inquest was held on Wednesday last, at the Daniel O'Connell Public-house, Thompson's-square, Windsor, on the body of an old man, named **JOHN IZZARD**, who was found dead in a boat, with his head and part of body in the river. It appeared that the deceased, who is puntman at the Windsor Punt, on Tuesday evening last, put a man and his team across in the punt, and after doing so, went to the public-house, partook of a glass of rum, and then returned to his punt; it is supposed, that after he had put his punt in the stream, which is the usual thing at night, he got into his boat for the purpose of returning home across the river, and that while in the act of pushing his boat away from the punt, he must have over-balanced himself; his head and part of his body falling into the river, and not being perfectly sober at the time, he was unable to draw himself back into the boat. Verdict – Found drowned. - *Correspondent.*

CJA, 6/497, 01/08/1840
SUPREME COURT. This Court for Criminal Cases opens today. The list which is rather a heavy one, contains nothing of extraordinary interest, excepting, perhaps, that of the murderers of **FANNON.**

AUSTRALIAN, 04/08/1840
Supreme Court of New South Wales
Dowling C.J., Willis and Stephen JJ, 1 August 1840
CATHERINE WAPSHAW was indicted for the wilful murder of **CATHERINE PHILLIPS**, at Singleton, by thrusting her into a fire, on the fifth day of April last, whereby she was burned in various parts of her body: from the effects of which she lingered until the 18th of the same month, and then died. The prisoner pleaded not guilty.

CJA, 6/498, 05/08/1840

An Inquest was held on Monday, the 24th ult., at South Creek, on the body of **JOHN CARELESS**, overseer to Mr. **HASSALL**, who was killed by a fall from his horse, when returning home from Windsor on the Saturday previous; he has left a young child to deplore his loss. Verdict, Accidental Death.

An Inquest was held on the 24th ult., at the house of **JOHN HAND**, at Cornwallis, on the body of an aged woman, named **ROSE CALLAGHAN**, who fell dead in a paddock. Verdict, died by the visitation of God.

HORRIBLE DEATH THROUGH INTEMPERANCE, AND CAUTION TO DRAM-DRINKERS. - An Inquest was held on Thursday, the 30th ult., at the Cricketer's Arms Public House, Fitzgerald-street, Windsor, on the body of a woman named **ELIZABETH BURTON**. It appears that on the previous day, (Wednesday) this unfortunate woman and her paramour, a tailor, named **NIXON**, went to bed in a state of beastly intoxication; the daughter after seeing them to bed, went out and shut up the house; it is supposed that after the daughter had left them, the deceased got up and went to the fire to light her pipe, as a broken pipe and a small piece of wood were found lying on the hearth, and that at the time of lighting her pipe, the clothes which she had on caught fire; it is also believed that after her clothes became ignited, she returned to the bed-room for the purpose of arousing her paramour to extinguish the flames but being unable to do so, from the beastly state he was in, and her own incapacity, she sat down by the bed and there remained burning until some persons attracted to the house by smoke issuing from it, went in and found her in that position. The persons who first discovered it, say, that when they entered the house the bed-clothes and some wearing apparel hanging upon the bedstead were then lighting, and the house full of smoke; there is not doubt but for the promptness which they used, that the man must also have perished. The woman was a most horrid spectacle, every particle of her clothes was burnt off, and her body literally roasted; there was not a hair on her head, and the sinews of her legs visible; it is said that she was pregnant. This unfortunate woman had an infant scalded to death about twelve months since [??], caused through the pernicious habit of rum drinking. Verdict, accidentally burned to death while under a state of extreme intoxication.

SYDNEY HERALD, 07/08/1840

Supreme Court of New South Wales

Stephen J., 4 August 1840

PETER POWER, a boy of thirteen years of age, a native of Infinnan, country of Roscommon, Ireland, who arrived in the Colony with his widow mother **BRIDGET POWER**, per *Crusader*, about the beginning of the present year, was indicted for having on the 27th June last; attempted to administer a quantity of arsenic to Mr. **GEORGE COMMINGS**, the chemist and druggist of King-street, with intent to murder him. From the evidence for the prosecution, it appeared that the prisoner had been apprenticed. Mr. Commings in the beginning of last June; that after having been in his employ a short time he left his service, and was beaten for it, and that afterwards, in consequence of information which Mr. Commings received, he considered it his duty to ask the prisoner about a syringe, that had been taken from the shop, which the prisoner denied all knowledge of, but on searching his box, the syringe in question was found there, together with a quantity of tea and sugar; for the possession of which the prisoner accounted by saying that he had received the tea and sugar from a woman in the Orphan School, Parramatta, for the purpose of being given to some man confined in Hyde Park Barracks. On finding these things in the

prisoner's box Mr. Commings told his servant to keep the prisoner on the premises, and, at the same time told him that as he (the prosecutor) was going to Parramatta that evening, he would lay the prisoner's conduct before his mother. Before Mr. Commings returned from Parramatta the prisoner absconded, and on the morning of the 26th of June, was returned to the service of his mother, who had come from the Orphan School with him, and when she returned him to his employer, she requested and obtained (according to her statement) a promise that he should not be sent to the watch-house; at the same time she requested the prosecutor to punish him in any other way he thought proper, and which was agreed on, but that after the mother had returned to Parramatta, Mr. Commings sent him to the watch-house on a charge of absconding, and on the following morning, the 29th June, he was reprimanded by Captain Innes and at his master's request returned to service. On returning to Mr. Commings residence, he went into the kitchen and warmed himself, and about dinner time was set to work to clean the show bottles on the shelves in the shop. His conduct it appeared was narrowly watched by the cook, whom he had repeatedly offended by grinning at him and otherwise giving him annoyance; about five o'clock on the evening of the 27th June, the prisoner went again from the shop into the kitchen, when Davis, the cook already referred to, fearing the prisoner had again run away by the back door of the kitchen, went from the shop through the parlour into the kitchen, where he saw him at the fire with the lid of the kettle in one hand, and a white paper in the other, from which he was sprinkling something on the fire and also putting it into the kettle. On perceiving the cook, the prisoner immediately threw the paper and its contents into the fire and placed the lid on the kettle; the cook immediately went up to him and asked what he was doing, when the prisoner said he had only been putting some lime on the fire; not satisfied with this answer the cook took off the lid of the kettle, and seeing some white substance floating on the top of the water, he took the kettle from the fire and carried it to Mr. Coming's shopman and told him what he had seen; the shopman then took the prisoner and gave him a beating, when he said that he had been putting something into the kettle that he had taken from one of the bottles on the shop shelves, and on being interrogated as to which bottle he had taken it from, he pointed out the bottle labelled as containing Oxide of Zinc, a deadly poison. A short time after Mr. Commings, who had been out on business, returned to the shop; he was informed of the affair and the kettle with its contents shown him, in which he observed a white substance floating on the top of the water. This he skimmed off with a tea spoon and placed in a graduated measure glass, and was of opinion from its sparkling appearance that it was not Oxide of Zinc but Arsenic – he then poured off the water, and found a sediment in the bottom of the kettle, which he collected as well as he could, and placed in the graduated glass with the white substance that he had collected by skimming the top of the water in the kettle; he then went to Dr. Nicholson, who tested a small portion of the contents of the graduated glass, by lifting it on the point of a pen-knife and holding it in the flame of a candle, when the garlic smell enabled him to conclude that it was Arsenic. He afterwards returned the glass to Mr. Commings, and appointed a meeting to take place at the School of Arts Theatre on the following day, in order to analize the matter in such a way as to ascertain beyond doubt what was the real character of the substance. As the next day was Sunday the examination of the contents of he graduated glass did not take place until Monday, but in the interim Mr. Commings and another medical friend took a portion of the matter, and having analized it as well as their apparatus would enable them, they found that it showed all the characteristics of arsenic, which had been described by Professor Chrisistan in his work on Poisons. On the Monday, Dr. Nicholson

examined the remainder at the Theatre of the School of Arts, and found that after testing it in every way, excepting by subliming it and reducing it to a metallic state, the contents was arsenic. The reason why it had not been submitted to this test was that it was a tedious process, as considerable time would be required in order to evaporate the water, independent of the operations that would have been necessary after the flux had been added – besides which Dr. Nicholson was satisfied that the various processes of testing had sufficiently proved the substance to be arsenic, he also informed the court that it was not in his power to determine by experiment how much of the poison had been originally put into the kettle, as if the water was warm it would dissolve about a seventieth part of its own weight of arsenic, but if cold, it would not dissolve more than about a three-hundreth part of its own weight of the poison: arsenic being much more soluble in warm than in cold water. Besides, after the water had dissolved all that it could, a considerable portion of the poison would be suspended in the water by the motion occasioned by the action of the heat, and when the water was poured off would be, although undissolved, carried off by the water. As it was there could not be less than one hundred and twenty grains of the poison in the graduated glass measure, of which he had analized the contents – In his opinion from one to two grains of arsenic was sufficient to destroy the life of any person, and therefore, if, as the cook had stated, the kettle contained a gallon of water, even if that had been cold there must have been not less than one three-hundredth part of the whole, or several ounces of arsenic in it; a quantity of poison sufficient to have destroyed the lives of five or six hundred human beings. It also appeared from the evidence for the prosecution, that after the prisoner had returned from being reprimanded by Captain Innes, he had been cleaning the show bottles on the shelves where the arsenic bottle was, that he might have taken out some of the contents of that bottle without being observed, and that on the evening when the offence was committed, himself and five other persons would have drank tea infused in the poisoned water.

The prisoner's Counsel, Mr. **PUREFOY**, endeavoured by a rigid cross-examination of the witnesses for the prosecution, to show that the prisoner was the victim of the cook (Davis) a freed man, who had endured most of his sentence in the service of medical men, and who by having been longer in the prosecutor's employ than the prisoner, was better acquainted with the contents of the bottles in the shop than the prisoner; also, that there was an ill feeling on the part of this witness against the prisoner; that Davis had put the arsenic into the kettle in order to get the prisoner put out of the employ. 2nd – That the poison, if not put into the kettle by Davis, it had been put in after the kettle had been removed from the kitchen to the shop, by some persons unknown. 3rd – That the witness Davis was not worthy of credence, as since he had got his freedom he had been charged with felony, and was at present on bail on his own recognizance. 4th – That as the prisoner was remarkable for his shrewdness and intelligence, it was not likely when he got his tea from the prosecutor's table, that he would have put poison into the kettle in order to poison himself together with the rest of this family. 5th – That the crime charged was of such a diabolical, description that it was impossible for the jury to believe that so young a boy could have attempted its perpetration. 6th – He also endeavoured in the cross-examination to get the witnesses to contradict each other to such an extent as to render the whole of the case improbable, and 7th – when addressing the jury he contended, that it was necessary before they could arrive at the fact of its having been arsenic, which was analised by Dr. Nicholson, that it should have been produced before them in its metallic form, which he asserted was the only indisputable evidence of the sediment being metallic.

He also contended, that even if undissolved it was improbable that arsenic would float to the top, it being specifically heavier than water, and of course, when thrown into it as alleged, although undissolved, it would sink to the bottom.

His Honor in putting the case to the jury, went minutely over all the material points of the evidence, and left it to them to determine whether the contradictions were such as might be regarded as minute or essential, observing that it seldom happened when a number of witnesses spoke to the same fact that they agreed in every word they uttered; but so long as these little discrepancies did not materially destroy the general contour of a case, they were to be regarded as proofs of the truth rather than of the erroneousness of the whole. At the same time he instructed them, that if they thought that the one witness had materially contradicted the other the prisoner was entitled to the benefit of the contradiction. It was certainly lamentable to see a boy of such tender years standing at the bar on such a charge, but although the age of the prisoner might be in his favor, as regards the feelings it could have no weight against the evidence; the jury would therefore dismiss every thing from before them but the evidence and the circumstances as sworn to. With respect to the cook, who had declined saying what he had been transported from Swansea for, that did not materially affect his credibility, as he was not bound to answer the question, and it had not been shown either by himself or by the prosecutor that his credibility had been impaired since he arrived in the colony. If the jury had any conscientious doubt respecting the facts and circumstances detailed before them, it was their duty to give the prisoner the benefit of that doubt; but they must remember that in forming their verdict they owed a duty to their country, to themselves, and their families, as well as to the prisoner. He also told them to form their verdict irrespective of what might be the consequence of either acquitting or convicting the prisoner, as it was their peculiar province to deal with the matter so as to acquit their consciences before God and their country. If they should find the prisoner innocent, it would give him, and he doubted not every one present, pleasure to ascertain that a jury had consciously arrived at such a conclusion, and if on the other hand, the prisoner had committed the crime charged against him, were he to escape the punishment which it deserved, the safety of the community would be endangered.

The Jury retired for about half an hour and returned a verdict of Guilty; at the same time recommending the prisoner to mercy on account of his youth.

His Honor ordered the prisoner to be remanded until he should consult his brother Judges as to the mode most proper to be pursued in punishing him; as, if he had been older he should have sent him to a penal settlement for life, and most probably to have undergone his sentence in irons, as he never heard of a more diabolical attempt; he also told the prisoner that if he had any feeling, it was his duty to thank Almighty God that his intentions had been frustrated, as had but one of his intended victims perished by the poison, he should have felt it to be his duty to have ordered him for execution, even though he had been younger than he was. He was then removed from the dock.

The trial lasted from ten in the morning till about half-past seven at night, and from the enormity of the offence, coupled with the tender years of the prisoner, excited great interest. He appeared to pay great attention to the proceedings, and on several occasions availed himself of the privilege of communicating with his counsel through the attorney, in order to have the cross-examination of the witnesses properly carried out for his defence; at several stages of the trial he was observed to shed tears, particularly when the Attorney-General was opening the case, when his mother was spoken of as being a widow and when the Jury returned their verdict; he has a remarkably fine countenance, but is small for his age, and has received a common

education, being capable of reading and writing. See also Australian, 4 and 6 August 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 07/08/1840
Stephen J., 6 August 1840
The prisoner was ordered to be brought up to day at ten o'clock, to receive sentence, as was also the boy Power, who had been convicted of attempting to administer poison. Mr. Purefoy stated that he wished to be heard in arrest of judgment in behalf of Power, as to the defect in the evidence respecting his being aware of the deleterious nature of the arsenic, and also because he was of opinion, that an act which makes a new felony, does not extend to infants under fourteen years of age; besides there was a medical gentleman who had came out in the same vessel with Power, who could speak as to the state of the prisoner's mind. His Honor said that he had heard of that, and should examine that medical gentleman in chambers, and on the adjournment of the court withdrew for that purpose. See also Australian, 8 August 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 07/08/1840
Supreme Court of New South Wales
Willis J., 5 August 1840
JAMES GLENNIE, a freed man was indicted for having at Sydney, on the first day of June last, murdered one **MARY GLENNIE alias MARY MACNAMARA**, by beating her with a blunt instrument on the head and body in consequence of which she expired. From the evidence it appeared that the deceased cohabited with the prisoner, her husband being in the interior; that on the day charged in the indictment, during the absence of the prisoner, the deceased became intoxicated and when he returned, he commenced illusing her by throwing several pails full of cold water about her until the neighbours interfered, when both of them went into their skillion, the female being in a very weak state. She was laid down and the prisoner lay down with her, being then himself intoxicated. After it became dark some of the neighbours went in, and enquired how the woman was, and were told by the prisoner, that she was doing well enough, she being asleep in is arms. A short time after some of them again went in, and found that she was dead. On examining the body of the deceased, it appeared that there were some scratches, together with something like finger marks about the throat, and on examining her head two incisions were found on the upper part of the back which Mr. **ARTHUR a'BECKETT** certified had been the cause of death, as they had caused compression on the brain. This evidence Mr. a'Beckett was also corroborated by Mr. **McKELLER** and both agreed as to the debilitated state of the deceased induced by intemperate habits. For the defence Mr. Surgeon Russell who had, in consequence of a dispute with the coroner at the inquest, been rejected as the Medical witness, gave evidence of such a character to that supplied by the other two witnesses, that His Honor, in summing up remarked, that if Mr. Russell had come to give his testimony in order to forward the ends of public justice he was entitled to commendation, but if he had come forward from any sinister motive arising out of his dispute with the Coroner, his conduct appeared in a very different light. His Honor also pointed out those parts of the other evidence which corroborated the evidence of Mr. a'Beckett, whose testimony he thought was entitled to all credence from the Jury.

The prisoner's witnesses proved that the marks on the throat had been observed before the time the prisoner was seen illusing her on the day when she died. It also appeared that the cuts on the head, might have been produced by falling on an iron pot, which was the only instrument in the house, capable of inflicting such wounds, but the axe was found lying in the adjoining shed. His Honor summed up and commented at considerable length on the law of circumstantial evidence, and told the Jury that it was not necessary to prove previous malice, in order to constitute murder. The Jury retired for about half an hour, and returned a verdict of guilty of manslaughter. His Honor sentenced the prisoner to transportation for life, with a recommendation that no commutation should ever be granted. See also Australian, 4 and 8 August 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/499, 08/08/1840.
SUPREME COURT.
Wednesday, August 5.
Before His Honor, Mr Justice Willis.
JOHN GLENNIE stood indicted for the wilful murder of his wife **MARY GLENNIE** in May last, by beating and otherwise ill-using her. The particulars of this case were given in our journal, in the report of the inquest, held at the *Edinburgh Castle* upon the unfortunate woman, it is therefore unnecessary to republish the evidence which was exactly the same as on the present trial. The Jury having retired about twenty minutes, returned and found the prisoner guilty of manslaughter, and the Judge sentenced him to be transported for the term of his natural life to Norfolk Island.
PATRICK BYRNES stood indicted for furiously driving a dray, which caused the death of a woman. Guilty. Two years in irons.

AUSTRALIAN, 08/08/1840
Dowling C.J., Willis and Stephen JJ., 7 August 1840
PETER POWER, aged thirteen years, who was tried on Tuesday and found guilty of attempting to administer two ounces of arsenic, with intent to poison his master Mr. **GEORGE CUMMINS** of King street, druggist, and family, was brought up for judgment.

Mr. **PUREFOY,** as counsel for the prisoner addressed the Court in arrest of judgment upon the ground, that the evidence on the trial failed to sustain the charge of attempting to administer the poison, and be further contended that a new felony could not apply to an infant under the age of fourteen years, which was the standard of distortion established by law and laid down by all the old authorities, in support of his arguments he quoted several cases reported by various authorities.
The Attorney General opposed the motion, contending that in all the old authorities the age of fourteen years was mentioned merely, as the common standard and not intending to exempt them from doli capax. He cited numerous cases in which infants under that age had been executed for murder, arsons, poisonings and similar crimes of which children under the age of fourteen were quite capable. Some children were as precocious at seven as others at fourteen, and in this colony children generally were remarkable for their precociousness. It was also hereditary in some families. If it were known that children could commit such crimes with impunity, others could instigate

them to crime with perfect safety, and their would be no existing in society with any degree of security. The consequences would be fearful.

Mr. Purefoy replied - he said all the cases cited by the Attorney General related to common law, but, in his arguments, he had not touched the abstract question of law he had raised in the prisoners favor. But if the point he contended for was laid, he presumed, (however grievous the consequence of inducing others to instigate children to such heinous crimes, with which he had nothing to do, although he should deplore it as much as the Attorney General the court would give the prisoner the benefit of it.

The Chief Justice delivered the judgment of the Court. He said in doing so the Court took no recognizance of the merits of the case, but simply pronounced his opinion on a point of law. Mr. Purefoy had very ably and ingeniously argued the case, but the Court saw no sustainable argument in the boy's favour. He commented upon each objection separately, and gave reasons for overruling them. The only question then was, whether the boy was doli capax or not, and it turned out that no standard of disaction was fixed at fourteen years of age. The true question, however, was whether the boy was conscious of the turpitude of the crime he was committing, and was actuated by that malignity of purpose which was supposed to induce the commission of such an offence, and all the circumstances were fully gone into at the trial. Some boys were remarkably precocious at seven yeas. It was proved he had put arsenic into the kettle, and having been punished by his master, it might naturally be supposed that his intention was to poison.

The Attorney General prayed the judgment of the Court.

Mr. Justice Stephen passed sentence upon the prisoner. He said every thing upon his trial proved him to be a bad, wicked, and depraved boy, and his brother Judges had concurred with him in passing upon him a punishment which would have the effect of reclaiming him by keeping it in his recollection. He had, however, been recommended to mercy by the Jury in consideration of his young years, and that had also been considered. The sentence of the Court was, that he be imprisoned in the Sydney gaol for twelve months, and kept in solitary confinement one week in each month, to give him time for reflection; and care would be taken that the other three weeks of each month should be passed apart from the other prisoners, and the means of religious instruction afforded him, that nothing should be omitted which was likely to reclaim him. Remember, boy, (said his Honor) you have a mother, and sisters, and brothers, whose hearts you must not break. (Here the boy held down his head, and wept). At the same time this punishment will not last always, it will have an end, and I hope at the end of twelve months you will come out a better boy, and that your punishment will have the effect of reclaiming you.

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

SYDNEY HERALD, 12/08/1840
Supreme Court of New South Wales
Stephen J., 12 August 1840

TALLBOY, alias JACKEY, an aboriginal native, was placed in dock, and an interpreter, named **WILLIAM JONES**, sworn, who deposed that he had lived at Mr James Walker's station, at the Myall Creek, district of Cassilis, beyond the Wurrambungi Mountains, where he had become acquainted with the prisoner, who could converse in four different languages, with one of which the interpreter was acquainted, and could make himself understood through it, by the prisoner. The indictment was then read, which charged the prisoner with having, on the 19th June,

1837, at Narang, on the Namoi, in Cassilis, murdered one **FREDERICK HARRINGTON**, a stockkeeper in the employ of the late Rev. S. Marsden, by inflicting several deadly wounds on his head, by striking him with a tomahawk. Another count charged him with having been present at the said murder, and aiding and abetting others in the perpetration of it, with a blunt instrument unknown to the Attorney General. The indictment having been read, and explained to the prisoner, he informed the Court - through the interpreter - that he did not do the deed, but that it was done by two other black-fellows, when he (the prisoner), was at Wang, and that the two black-fellows who did it were since dead. The interpreter stated, that Wang was about fifteen miles from Narang. The Court then enquired if the prisoner understood that he must plead either guilty or not guilty; when the interpreter said, he denied that he had done it, for it was done by two other black fellows when he was near Murramong, which is about ten miles from Narang, and five miles from Wang. The prisoner was then told, that the Jury who were then in the box, were the persons who were to try him, and as they were sworn, he might object to them; he was also informed that the counsel, Mr. Callaghan, would speak for him, as he was alone; on which the prisoner appeared to be satisfied.

In opening the case to the jury Mr. Therry stated, that the present was only one of many outrages that had been committed on the whites by the aborigines in that distant part of the colony, and that it was necessary for the safety of society, that the aboriginies[sic] should be made responsible to the laws for such improper acts of outrage as they were guilty of; it was a well-know fact that not only the property of the settlers in the distant parts of the colony had been assailed by them, carried of[sic], and wantonly destroyed, but a number of whites had from time to time fallen victims to the savage fury of the blacks. It was only twelve months since, not less than seven white men had been tried for, convicted, and executed for having been concerned in an outrage on the blacks, and that too, in what in his opinion, was less direct evidence than that which he was about to offer. He had to lament that after all the pains that had been taken to obtain the testimony of the hut-keeper who, it was alleged, had been present at the outrage, the officers for the Crown had not been able to discover him, but then the evidence which he had to present, although merely circumstantial, was, in his opinion, such as would fix the crime charged in the indictment. It was true there was no coroner's inquest held on the body of deceased, but that was impossible in the distant part of the Colony where the transaction took place: he had also to caution the Jury against being led away by the popular error, that, it was not right in a Jury to convict on circumstantial evidence. Were this the case it would hardly be possible to get a conviction against a single murderer in the colony, as it seldom happened that any one saw the blow struck; he also reminded the Jury of their duty to themselves, and their fellow colonists, as it was for the purpose of protecting their lives and property, that they were called on to give their time and their talents to the consideration of such cases as the present, and he trusted that they would carefully attend to, and weigh the whole of the evidence, both for and against the prisoner.

The first witness called was **JAMES NOBBS**, Stockeeper. In June 1837, he was in the employ of the Rev. Samuel Marsden, at his station, on the Namoi. On the 17th of June, 1837, five or six aborigines came to the hut in which the witness, a hut-keeper named "Big Bill," and the deceased lodged, where the blacks received some food, &c. from the inmates; they continued hanging about the place till the third day after, when about nine in the morning, the witness, having to go several miles to another station, took the saddle and bridle down, and asked the deceased to go with him to where the horse was, and help him to get the horse ready; he left "Big Bill" and a black or two in

the hut; after witness had got on the horse he rode off and the deceased returned in the direction of the hut; and the last time the witness saw him alive was when he was within a rod or two of the hut door. The witness returned about two hours and a-half after, on horseback, and when he came in sight of the hut, he saw two or three black fellows at a fire, with a pan roasting some meat; when he was seen by them, one of the blacks at the fire went into the hut, and came out again, followed by two or three others, among whom was the prisoner, who had on an oppossum cloak. The prisoner came up to within a yard of where the witness was sitting on the horse - he had his spear in his right hand; the other one was under his cloak, which happening to open, and the witness saw the back of the hand under the cloak; it was covered with blood, and in it he held a pistol belonging to the witness, which he had left in the hut about two hours and a-half previously. The witness immediately suspected that something was wrong, and the prisoner, observing him looking at his left hand, immediately stepped back about a yard, and suddenly wounded him in the right temple; he immediately spurred his horse and afterwards broke off the shaft of the spear, which was still sticking in his temple. He got to another station, to which "Big Bill," the hut-keeper, had got before him; but although they had arms there, they had no ammunition. He then proceeded to another station, where the witness was obliged to remain, from weakness caused by loss of blood, and also to get the wound dressed. On the following day, a party having been collected, they repaired to the hut where the outrage had been committed, and found the deceased lying dead and covered with blood; and, on examining his head, they discovered four or five wounds which had apparently been inflicted with some sort of a blunt instrument, such as a tomahawk which had been in the hut up till that day. On examining the wounds, they appeared clean cuts, and very severe, one of them having gone right through the skull; they also found that all the rations, clothing, and, in fact, whatever was moveable, had been carried off, but none of the blacks were to be seen. This witness recollected, distinctly, the prisoner being among the blacks on the morning in question, as before he mounted, he asked him to take the others with him, and each get him a sheet of bark, which he promised to do. They buried Harrington on the same day that they discovered his remains, and he had never seen the prisoner from the 19th of June, 1837, until about six months ago, when he was called on to identify him at Cassilis. The prisoner remarked when the testimony of this witness was being interpreted respecting his hand being bloody; that the witness told a lie; he also said respecting his being employed to get the bark, that he then went off to get it. The witness said that there were two others among the blacks, particularly Goodmorning and Chattie, but he had never seen them since.

JOHN MILLAR, a stockman, who resided about thirty miles from where the murder took place, deposed that on the day after, the prisoner and five or six other blacks came to his place, when he saw the prisoner with a clasp knife in his hair[sic], which he immediately recognised as being the property of the deceased, he having frequently seen him with it, and the last time, only a few days previous to his being murdered; another of the blacks, named Millbellow, was also dressed in a pair of trowsers and a jacket, which he recognised as being the clothing of Nobbs, the preceding witness; he also recollected Goodmorning being among the others; he suspected what they had been after, and for his own safety, got away from them as soon as possible, and heard nothing of any of them since; and it was only in February that he again saw the prisoner; he was then in custody of the police at Cassilis, when the witness identified him; he knew him perfectly well, as he had before then frequently visited and stopped at the station on which the prisoner was; they used to

speak together; the prisoner not being altogether ignorant of the terms used in the English language, the way in which they conversed, was in broken English.

Mr. **CALLAGHAN**, through the interpreter, cautioned the prisoner as to saying anything when called on for his defence, to which he replied that he would be still; he was next asked if he would like any one to speak for him, when he stated he did not want any one to speak for him. Mr. Callaghan said he would respectfully submit that there was a variance between the mode alledged in the information, in which the murder had been committed, and that proved by the witness. For ought that had appeared, it might be that the deceased died a natural death, and the wound sinflicted [sic] after death, or it might have been, that the deceased was murdered by another tribe, and, therefore, as the case had not been proved against the prisoner he was entitled to the benefit of the doubt. His Honor said he would take a note of the objection, should Mr. Callaghan deem it necessary at a future period to bring it before the court. He also remarked, that as the prisoner had declined saying anything in his behalf, he thought the safe plan for Mr. Callaghan to pursue in regard to his client, was to leave the evidence as it at present stood, to the jury.

Mr. Therry said if Mr. Callaghan made any observations on the case, he should for the prosecution, claim the right of reply, on which the prisoner's counsel said, he would not press the matter.

His Honor then summed up and complimented the counsel on both sides for the way in which they had conducted the case, at the same time he considered it his duty to caution the jury against being led away by anything that had fallen from Mr. Therry about seven white men having been executed for an outrage, of which it had been stated they had been guilty against the blacks. If such had been the case he had no doubt but that the parties who had suffered had been properly convicted - there was but one law for the black man as well as the white, and he considered it as much for the benefit of the blacks as for the whites that the laws should be strictly enforced in punishing them, when guilty of outrages against the white portion of the inhabitants - as, unless this were done, it might be that the sufferers would, by not knowing that justice was done, become influenced by the spirit of revenge, and thus go on from crime to crime. He then briefly went over the principal points of the evidence, and left it to the jury to find whether the deceased had come by his death in consequence of the wounds described on his head; it was not necessary for the jury to find that the wounds had been inflicted by any particular instrument, as a murder might be committed as well by a stick, as by an axe or a tomahawk. - He also left it to the Jury to find whether the deceased had not been murdered by the prisoner, he having been seen shortly after with blood on his hand, and also with three deadly weapons in his hands; and what he had been engaged in might, to a certain extent, be inferred from the attack which he made on Nobbs, after his return. The Jury were also instructed, that if the deceased came to his death by the prisoner or any of those with him when they were about to perpetrate an unlawful act, still, although they had not originally designed to go the length of committing murder, yet, in the eye of the law, the taking away of human life in such circumstances, amounted to murder. He also stated, that it was the province of the jury to find whether or not the prisoner had struck the blows, or any of them, and also whether they had been struck in his presence.

The Jury retired for about half an hour, and returned a verdict of not guilty on the first count, but guilty of the second count, which charged him with being present aiding and abetting.

His Honor desired the prisoner to be remanded until he should consult with the other judges, as to whether sentence of death should be passed on the prisoner, or merely

sentence of death be recorded;[2]as, in either case, it would depend upon the representations that might subsequently be made to the Governor, whether the prisoner's life was spared or not.

The crown prosecutor said, the prisoner would again be put on his trial for attempting to kill and murder the witness Nobbs, if sentence of death was not passed on him, when His Honor ordered him to be brought up to day. The Court then adjourned till to-day, when there are but two cases ready for trial.

[See also Australian, 13 August 1840: "Tall-boy, alias Jackey Jackey, an aboriginal native, was indicted for the murder of Frederick Haldane, in the year 1837. A second count charged him as accessory to the fact. The prisoner pleaded not guilty, through a sworn interpreter, and Mr Callaghan, at the request of the court, undertook his defence. He was found guilty on the second count, and remanded for sentence."

This was one of the precipitating events in what Roger Milliss calls the Australia Day Massacre of Aborigines at Waterloo Creek, by a military party. See R. Milliss, Waterloo Creek: The Australia Day Massacre of 1838, George Gipps and the British Conquest of New South Wales, McPhee Gribble, Ringwood, 1992, chap. 6.

The Sydney Herald, 20 May, 1840 also noted the following concerning three Aborigines: "Three Aborigines, who had been committed by Mr. Bingham for slaughtering cattle, but against whom there was not sufficient evidence to carry a conviction, were, on the suggestion of the Attorney-General, recommended by His Honor to be admitted to the Benevolent Asylum till they could be returned to their tribe in the district of Yass, they having been in custody since last January.]

[[2] Death recorded meant a formal sentence of death, without an intention that the sentence would be carried out. Under (1823) 4 Geo. IV c. 48, s. 1, except in cases of murder, the judge had considerable discretion where an offender was convicted of a felony punishable by death. If the judge thought that the circumstances made the offender fit for the exercise of Royal mercy, then instead of sentencing the offender to death, he could order that judgment of death be recorded. The effect was the same as if judgment of death had been ordered, and the offender reprieved (s. 2).]

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

SYDNEY HERALD, 12/08/1840
Supreme Court of New South Wales
Dowling C.J., 10 August 1840

MARY ANN ATKIN, free, of Melbourne, was indicted for the wilful murder of her illegitimate child. From the evidence for the prosecution, it appeared that the prisoner was a servant in the family of a medical gentleman residing at Melbourne, and had been several times impeached with being pregnant, but had always denied it; that on the 5th of April last she was unwell, and shortly after, a dog, belonging to Mrs. Brown, a midwife residing at Melbourne, brought the lacerated body of a new born female child and laid it at his master's door. An enquiry was set on foot, when it was discovered that the dog had got the body from a hole which had been dug by some fencers near the prisoner's place of residence, in order to set a post. A number of the neighbours, and, among the rest, the prisoner, looked at the body, when she said "whoever had done the deed ought to be hanged for doing so." Suspicion, however, attached to her, when she was lodged in custody, but denied all knowledge of the transaction until the midwife and the surgeon, who were employed by the authorities to ascertain whether she had been pregnant or not, were convinced that she had recently given birth to a child, which they urged upon her to confess. The prisoner

then told them she had been pregnant, and no person had assisted her in her labour. From the testimony of the surgeon, it appeared that the body which the dog had brought to Mrs. Brown's door was a new-born strong healthy infant, which exhibited on applying the proper tests, the usual appearance of having been born alive, and that it was probable, from the wounds inflicted on the head, its death had been a violent one. These wounds appeared to have been inflicted by some blunt instrument, such as a piece of wood. It also appeared that the body had been torn by the dog previous to its being conveyed to Mrs. Brown's door. Mr. Foster submitted that no conviction could take place, as the prisoner had been induced to confess after she had been taken into custody. The Chief Justice said, it was to lamented that the inducement had been held out to the prisoner to confess, as in consequence of that he must direct the jury to acquit the prisoner. A verdict of Not Guilty was then returned, and after being admonished by the Chief Justice the prisoner was discharged. See also Australian, 13 August 1840, describing Mrs Amelia Brown as a quakeress and a midwife.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/500, 12/08/1840
SUPREME COURT
Monday, August 10
Before the Chief Justice
MARY ANN ATKINS stood indicted for the wilful murder of her infant child, at Melbourne, on the 5th April. As the prisoner had been induced to confess the committal of the crime through threats, the Attorney General declined proceeding against her, and she was accordingly discharged.
Before Mr. Justice Stephen.
JOHN ROBERTS stood indicted for the wilful murder of **THOMAS LARKINS**, at Black Swamp, on the 9th March. Not guilty. Discharged.
Tuesday, August 11.
Before Mr. Justice Stephen.
TALL BOY, alias **JACKY JACKY**, an aboriginal native, stood indicted for the wilful murder of an old man, in June 1837; a second count charged the prisoner with being an accessory before and after the fact to murder on the second count. Remanded for other charges, and for sentence.

SYDNEY HERALD, 14/08/1840
Stephen J., 12 August 1840
TALLBOY, alias JACKEY, who had been convicted on the preceding day of having been present on the 9th of June, 1837, aiding and abetting in the murder of **FREDERICK HARRINGTON** at Narang, and against whom there is another charge of attempting to murder **JAMES NOBBS**, at the same place, on the same day, by spearing him in the right temple, was brought up to receive sentence when his Honor addressed him as follows:-

Prisoner! you have been found guilty of the crime of murder - of assisting in taking the life of a fellow creature, not only without excuse, but apparently without provocation. Of your guilt I entertain, in my own mind, as strong a persuasion as did the jury who tried you. The only ground for doubt in your case has reference to a point of law. Should the point to which I refer not eventually be removed it is probable that your life may yet be mercifully spared. But, in the meantime, I earnestly warn you that you prepare yourself to die. I trust, and I have no doubt every

means will be taken to enlighten your mind, and to lead you to repent and make your peace with God. If mercy in this world shall really be extended to you, yet the remainder of your days will be passed in a state of punishment. This at least, considering the facts which appeared in evidence against you, is necessary as an example to others, and as a measure of protection to those who are exposed to similar attacks; for you and your countrymen may be assured of this, that whilst the law will sternly visit those who cruelly, or otherwise than in strict self defence, injure you, it will most severely punish as is just, every native who shall wantonly, or for plunder or other bad purposes, commit an outrage against the persons or property of the whites. As often as any such case shall come before this court and be proved by testimony admitting of no reasonable doubt in the case of an European, an aboriginal inhabitant will most certainly be dealt with as the European would be. The sentence of this court is, that you, Tallboy, alias Jackey, be taken to the place whence you came and from thence to such place of execution, at such time as the Governor shall appoint, there to be hanged by the neck until you are dead, and may God have mercy on your soul."

This being interpreted to the prisoner, he remarked that he had been falsely accused, and that he was not present at the murder. When that part of the Judge's address which said that the blacks would be punished as well as the whites was interpreted to him, he said that he did not know what it was that bit the black men to make them kill the whites.

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CJA, 6/501, 15/08/1840

MURDER. - On Tuesday night last, s seaman named **PERRY [PARRY?]**, of the *Ulswater*, laying at Moore's Wharf, was, during a quarrel, stabbed in the left side close under the region of the heart, by the second officer of that vessel, named **SKEWES.** The surgeon of the *Coromandel*, which vessel was moored close by, and with the assistance of two other medical gentlemen, dressed the wound, and bled the patient to prevent mortification. The unfortunate man growing worse it was deemed advisable to remove him to the General Hospital, into which he was received as early as four o'clock the following morning. In the mean time, between the fatal assault and the removal of Perry, Skewes the second officer was given into the custody of the Police; and on Wednesday he was brought up before the Police Bench, and remanded until the fate of the wounded man was decided. This was not long, for on that evening, Perry breathed his last, and was removed from the ward of the sick but the living to the dead vault, in order that an inquest might be held upon the body; which was convened for yesterday morning at eight o'clock. At the Inquest held at Driver's yesterday, it appeared in evidence that the prisoner **THOMAS WILLIAM SKEWES**, the second officer of the *Ullswater*, while in the act of beating an apprentice boy named **WILLIAM GEORGE**, the deceased **JOHN PERRY** ran from on board crying out "what's the matter George," whereupon the prisoner rushed at deceased and thrust a case knife into his left side; it also appeared in evidence that deceased had a clasp knife in his hand at the time of his being stabbed, with which he had been eating his supper, but the witness to whom it was given after deceased was stabbed, stated that he did not, nor could not have had time to use it before the prisoner struck the blow. The Foreman after the Jury had retired for several minutes, returned a verdict of manslaughter; but Mr. **GANNON** stating that such was not his decision, strangers were ordered to withdraw for the jury to re-consider their verdict, and they finally determined upon returning a verdict of "Wilful Murder."

SUPREME COURT, Wednesday, August 12.
Before Mr. Justice Stephen.
TALL-BOY, alias **JACKY JACKY**, who had been found guilty the day previous of aiding and abetting in the murder of a white man in June, 1837, was brought up for sentence. Through the interpreter, the prisoner was given to understand that the sentence of death was passed upon him; when he remarked that he was falsely accused, for he was not present at the said murder. The Court then adjourned to this day, Saturday.

SYDNEY HERALD, 17/08/1840
Supreme Court of New South Wales
Dowling C.J., 15 August 1840
In the case of **JOHN CAIN**, who had been committed for trial on a charge of murder by the bench at Melbourne, the Attorney-General had not deemed it his duty to proceed to trial, as there were such a great number of material witnesses in the case that he had no hopes of being able to get above one half of them brought together to Sydney, besides, he was in hopes that before next session there would be a court established at Melbourne to try the present and similar cases, and if that was not done, a commission must be applied for, as the expenses and delays and confusion caused by the cases from Port Phillip being tried in Sydney, were enormous.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 18/08/1840
Dowling C.J., Willis and Stephen JJ, 15 August 1840
CATHERINE WAPSHAW, charged with putting another woman on the fire with the intent to burn her to death, was discharged on bail of one surety in £100.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/502, 19/08/1840
AN AWFUL END. - As the *James Watt* steamer was rounding Bradley's Head on Monday night, having on board a number of prisoners from Newcastle, one of them heavily ironed, jumped overboard, and made towards the shore. A boat was lowered in order to rescue the desperate man who, it is said, had received at the Maitland Quarter Sessions a ten years' sentence of transportation; he however, it is believed, sunk when near the point, as he was suddenly lost to the view of those in the boat. Yesterday, after a diligent search, the body was found and brought up to the Queen's Wharf last evening.
SUPREME COURT – CRIMINAL SIDE
Saturday, August 15, 1840 – *Gaol Delivery*
Before the Chief Justice
MARY GORMAN, GEORGE HEARSON, and **MICHAEL FOGARTY**, charged with having murdered **FANNON** five years ago, were brought before the court, when the Attorney General stated that he had not sufficient evidence to proceed against them and therefore consented that Gorman and Hearson should be discharged on their own recognizances of £500 each and that Fogarty should be returned to his district.

CATHERINE WAPSHUT, charged with having cast a female on a fire and thereby caused her death, was ordered to be discharged on her finding one surety of £100 to appear when called on.

The four convicts from Gammon Plains, charged with murder. Trial postponed till next session.

CJA, 6/504, 26/08/1840
INQUEST. - At Tunk's public-house, corner of Bathurst and Castlereagh-streets, on the body of a man named **THOMAS BULGER**, who dropped dead the afternoon previous in Mr. Montgomery's shop, while procuring medicine. Verdict – Died by the visitation of God.

CJA, 6/507, 05/09/1840
SKELETON FOUND. - The skeletons of human bodies were reported at the police yesterday, as having been found on the evening previous in a cave just above high water mark, in the vicinity of the habitation of the hermit, a little to the northward of Vaucluse, and on the eastern shore facing Shark Island. At first it was conjectured that a murderous deed had some time ago been committed by some unknown hand, but it, on more mature consideration, is far more likely that the skeletons are those of bodies who had met with a watery grave, and but for harrowing up the feelings of those to whom by relationship of otherwise, they might have been connected, there is no doubt but the true names which they bore in life could be set down; for this reason we feel a delicacy in alluding to the circumstances further.

CJA, 6/509, 16/09/1840
On Thursday last when the turnkey, placed over the cells at the New Gaol, went his morning's rounds, he found a woman, named **JOHNSON**, suspended by a handkerchief to the gratings over the cell door, and quite dead when cut down. She had been sentenced to twenty-four hours in a cell at the Police-office for drunkenness. An inquest was held upon her in the course of the day, and a verdict of suicide was returned.

Another inquest was held the same day at the Edinburgh Castle, Pitt-street, on the body of **ELIZABETH DAVIES**, who was found dead on Wednesday in a house close by. It appeared in evidence that the woman had been seen the previous day in a desponding condition, and from the sitting position in which she was found, it was thought she had died from suffocation. - Verdict recorded to that effect.

CJA, 6/510, 16/09/1840
MURDERED INFANT. - A bundle was picked up in Harington-street yesterday morning, and on kits being opened, it was found to contain the body of an infant with its legs cut off, and no doubt it had been murdered by some inhuman mother. The corpse was conveyed to the hospital to be examined prior to an inquest being held upon it. [see 6/511]
SUICIDE AND INQUEST. - On Saturday afternoon last, a late resident in Goulburn-street, named **CHARLES ARCHER**, left his house in a desponding condition, and having reached the North Shore in the neighbourhood of Mrs. **BUNN'S** house, put an end to his existence by hanging himself. An inquest was held upon his body the following evening, when a verdict of *felo-de-se* was returned.

CJA, 6/511, 19/09/1840
INQUEST. - An inquest was held on Thursday upon the infant found dead and sewed up in a woman's pocket in Harrington-street, on Tuesday last. The medical

witness stated in evidence that the infant had lived, and the jury returned a verdict of wilful murder against some person unknown. [see 6/510]

CJA, 6/514, 30/09/1840
INQUEST. - A Coroner's inquest was held on Monday afternoon, at Mr. Wood's public house, Kent-street, on the body of a woman, named **MARY ROONEY**, who expired suddenly, at a late hour on the previous evening. From the evidence brought forward, it appeared that the deceased, who was a woman of notoriously bad character, had been in a state of intoxication the whole of Sunday, and at three o'clock in the afternoon had quarrelled with a man named **LEVI**, from whom she received a blow in the face; this blow had been reported to have hastened her death, and Levi together with a man named **RUSHTON**, with whom she was at that time cohabiting, were forthwith taken into custody, but as her decease was clearly shewn upon the inquest to have been produced by an extravasation of blood on the brain, occasioned by her long habits of intemperance. The Jury returned a verdict accordingly, and the prisoners were immediately discharged. During the inquest we observed that one of the Jurors was in so complete a state of intoxication as to be totally unfit for the duty he had sworn to perform – surely, more care should be taken to exclude characters of that description on such an occasion.

CJA, 6/515, 03/10/1840
FATAL ACCIDENT. - A youth, about eight years of age, was killed on the Canterbury road on Thursday afternoon last, by the wheel of a dray passing over his body. The unfortunate lad was sitting on the shaft, and it was in consequence of a fall from that position that he came by his death. His parents were walking by the side of the dray at the same time, but were unable to render him any assistance.
DESPERATE ATTEMPT AT SELF-DESTRUCTION. - A man named **WEST,** employed as a foreman in the yard of Mr. **RUSSELL**, ship-wright, Darling Harbour, made two attempts to put a period to his existence on Wednesday evening last, but fortunately without success. The unhappy man had for some time back been labouring under a great degree of mental depression, in consequence of his long-continued habits of intemperance, and returned from his work in the evening in one of those depressing humours with which persons labouring under that description of disorder are so frequently possessed. After he had taken his supper he retired to an inner room, and inflicted a severe wound in his throat with a case knife, but the alarm having been given, and assistance procured, he was secured and conveyed to the Hospital under the direction of the District Inspector of Police, who happened to be going the rounds at the same time; but, in his way thither, he made another attempt to destroy himself by running with his head against a wall, but was prevented from doing so, and is now in a fair way of recovery. We understand that this wretched man has made several previous attempts at suicide.

CJA, 6/517, 10/10/1840
DEATHS FROM INTEMPERANCE. - Two inquests were held on Monday last, one one the body of a female named **CURRIE**; and the other on that of an elderly man, named **LAURIE**, by trade a blacksmith, both of whom died from the effects of their long-continued habits of intemperance. The number of deaths which have lately happened from this cause are truly alarming, and are of themselves sufficient proof of the necessity of adopting rigorous measures for the suppression of this evil.

CJA, 6/517, 14/10/1840; numbering error
INQUEST. - An inquest was held on Friday last, at Murdock's public-house, Castlereagh-street, on the body of a well sinker named **ANDREW BYRNES**, who died suddenly a short time previous in consequence of having ruptured a blood vessel. Verdict accordingly.

TEMPERANCE, 1/2, 14/10/1840
DEATHS FROM DRUNKNENESS. - Two deaths from drunkenness occurred last week – one was **BRIDGET CARNIE [CARNEY],** who had long been a hard drinker, and the other a **WILLIAM LAWRIE**, a blacksmith, who died from disease, superinduced by Intemperance. There were inquests held in both cases.

CJA, 6/517, 17/10/1840; numbering error
INQUESTS. - A Coroner's inquest was held on Wednesday last, at the Plymouth Arms public house, on the body of a female named **ANN STILES**, who expired suddenly the same morning at an early hour in an apoplectic fit, brought on by her previous habits of intemperance. Verdict accordingly.

Another inquest was held on the same day at Leburn's public house, Parramatta-street, on the body of an old man named **FRANCIS DIGNUM**, who had been found dead in his bed the same morning. Dr. **HARNETT** made a post mortem examination of the body, and having given his opinion that the deceased had expired from natural causes, the Jury returned a verdict accordingly.

TEMPERANCE, 1/3, 21/10/1840
DEATH THROUGH DRUNKENNESS. - At the Plymouth Arms, on Thursday last, an inquest was held on the body of a woman named **ANN STILES** who, it appeared, had died suddenly the previous night. Mr. Surgeon **HARNETT** having made a post mortem examination, was of opinion that she died in a fir of apoplexy, induced by habits of intemperance; and the jury returned a verdict accordingly.
PARRAMATTA. - An inquest was held here a short time ago on the body of **WILLIAM LEND [LANE]**, who had cut his throat frightfully in a temporary fit of insanity, caused by Intemperance; **W. LAWSON**, Esq., his master stated that when sober, Lend was an excellent servant, and that he had used every means and persuasion to reform him but without effect. So strong was Mr. Lawson's attachment and pity for his old servant, that at his dying request he sent him a sum of money to discharge his debts.

Another Inquest was held on the 11th instant on the body of **FREDRICK CLAYTON,** servant to Messrs. I. and W. Edison. The deceased was a fine young man in appearance; but he had given way to the Colonial curse, and chose the best day of the week to go and hang himself while in a temporary fit of insanity, from the effects of intemperance. Surely this case forms an exception to the old saying, "The better the day the better the deed."

CJA, 6/521, 24/10/1840
INQUESTS. - A Coroner's Inquest was held on Tuesday last, at the Commercial Hotel, Sussex-street, on the body of a man named **WILLIAM BENTLEY**, who was killed by falling into the hold of the *Sophia Jane*, schooner, between twelve and one o'clock the same morning, while in a state of intoxication. Verdict accordingly.

Another inquest was held, on the afternoon of the same day, at Mr. Murphy's public-house, Queen's Wharf, on the body of the carpenter belonging to the schr.

Emma, who was capsized in a boat along with another young man, while attempting to reach the vessel on the previous evening; the companion escaped by swimming, but the deceased being in a high state of intoxication, almost immediately sunk. - Verdict accordingly.

A third inquest was held on Wednesday at the "Leather Bottle," Castlereagh-street, on the body of an infant of five years of age, which had died suddenly in convulsions, about four o'clock the same evening. Verdict accordingly.

INQUEST AT WINDSOR. - On Monday last an inquest was held at the Cricketer's Arms Tavern, Windsor, before Mr. **DUNCAN**, coroner, on the body of a man named **WILLIAM MANSFIELD**, who put a period to his existence on the previous day, by inflicting severe wounds on his throat, with a razor. Verdict – suicide, while labouring under temporary insanity.

TEMPERANCE, 1/4, 28/10/1840

WEEKLY SUMMARY

A groom of Mr. **ATKINSON'S** of Patrick's Plains has been murdered by a blacksmith, an assigned servant of Mr. **LARNACH'S.**

A young girl, fourteen years of age, in the service of Mr. **LUMLEY** of Singleton, attempted to destroy herself by hanging, but providentially was discovered and cut down in time to save her life; insanity, it is said, caused the rash act.

CJA, 6/522, 28/10/1840

INQUESTS. - A coroner's inquest was held at Mr. Driver's public-house, King-street, on Saturday last, on the body of **JOHN DELANEY**, who died suddenly in hospital on the previous day, I n consequence of the rupture of a blood vessel. Verdict – Died by the visitation of God.

Another inquest was held, at the same time and place, on the body of a painter named **GEORGE PEGG**, who was killed by falling from a stage in front of Messrs. Montefiore and Co. in O'Connell-street. - Verdict accordingly.

CJA, 6/523, 31/10/1840

INQUESTS. - An inquest was held on Tuesday last, at Mr. Murphy's public house, Queen's Wharf, on the body of a young woman named **ANN WHITE**, who recently held a ticket of leave for the district of Sydney, and who put a period to her existence, by drowning herself on the previous day. The body was found floating near Lady Macquarie's Chair in the Government Domain; but it appears that the deceased had contemplated the act for some time previous, and had taken farewell of her husband with that view on the morning when she committed the fatal act. Verdict, found drowned.

Another inquest was held on the same day on the body of a blacksmith named **JOHN FORD**, residing at Pitt-street, who met his death by falling down a well on the previous evening, in the yard adjoining to the premises in which he resided. The deceased was at the time of the accident, in a state of helpless intoxication, and was saved from drowning by the praiseworthy exertions of a Mr. **SAVAGE**, one of those persons usually known by the designation of Bearded Prophets. The injuries which he had sustained in the fall, however, were fatal, and he expired shortly afterwards. – Verdict accordingly.

An inquest was held on the 28th instant at Portland Head, before **D. DUNCOMBE**, Esq., coroner, on the body of a settler named **JAMES BIFFIN**, who was killed in a fight on Monday, the 26th instant. Four men (the principal, one of the seconds, the

timekeeper, and bottle holder) have been committed to take their trial at the Supreme Court for the manslaughter of the unfortunate man. The other second, and three others concerned in the fight, have absconded. Warrants have been issued for them, and we trust they will be taken, and the whole of them made an example of, for being the cause of a fellow-creature's death in such a brutal manner. It is said that, although he wished several times to give in, they would not let him, but urged him on till nature was exhausted.

SYDNEY HERALD, 03/11/1840
Supreme Court of New South Wales
Dowling C.J., 1 September 1840

THOMAS SKEWES, late second mate of the "*Ullswater*", was indicted for the wilful murder of **JOHN PERRY alias FERRY**, at Sydney, on the 11th August last. The circumstances of the were[sic] as follow. On the night laid in the indictment, it appeared that the prisoner was in liquor and was quarrelling with the crew, in the forecastle, when the chief officer went forward and quelled the disturbance, after which the chief mate went to bed, and was aroused about eleven o'clock at night by loud cries of murder, and on going on deck to see what was the cause of the noise, he saw the prisoner in the custody of men, who took a case-knife from him and charged him with stabbing the deceased, who lingered till about 11 o'clock on the following day, when he expired. From the evidence for the prosecution it appeared that a boy of the name of **WILLIAM GEORGE**, belonging to the "*Ullswater*," had been ashore with the deceased and had gone a-board a short time before Perry was stabbed; the boy George gave the deceased his supper, and while he was eating it, George took down the ship's lamp, placed it on the forecastle deck, and commenced filling his pipe, when the prisoner came to him and asked what he was doing with a light there, and told him he had better put it out; to which the boy replied that he would put it out when he got his pipe lighted. The prisoner replied "give us none of your cheek," to which the boy rejoined, "that is no cheek to light a pipe," when the prisoner struck him, and forced him out of the forecastle; the boy George then challenged the prisoner to fight him, when the prisoner beat the boy and chased him along the gangway to the wharf, where he knocked him down, and was on the top of him, when his cries brought Perry and another man from the ship; the other man named **SAUNDERS** pulled the prisoner off the boy, when the deceased and the boy George began struggling with the prisoner, after which they separated; when the prisoner had got about five yards from the deceased, he suddenly stabbed at him with a case knife, which he was seen to pull from the waistband of his trousers. The prisoner was secured, but before doing so, had returned the knife to the waistband of his trousers – a constable was sent for, and the prisoner given in charge; while he was being conveyed to the watch house the prisoner said he had murdered one man, referring to the deceased, and was willing to die for it, and if he could get his hands clear he would do for three or four others; he was then excited and under the influence of liquor.

Mr. **PUREFOY** for the defence, endeavoured from the cross-examination of the witnesses to prove that the prisoner had slain the deceased in self-defence, and in a long address urged that at most their verdict could only amount to manslaughter, and called the Captain of the vessel, who gave the prisoner an excellent character for honesty, sobriety, and attention to his duty as the second officer of the ship; at the same time he swore that the deceased was a drunken quarrelsome man, and had for several days previous to his being stabbed been in a drunken state, and would neither

do his duty nor keep from quarrelling; he also deposed that the boy William George, about whom the quarrel had begun, was a thorough blackguard, having been just released from the stocks to come and give his evidence.

The Attorney-General cross-examined this witness as to the daily allowance of grog which he gave to his crew, and was informed that at sea in ordinary circumstance he [sic] them one glass a day, but in the Port of Sydney he was compelled to give an allowance of three glasses of grog per day; while in some ports the allowance was only two. In the West Indies the allowance was four, and in Quebec five glasses per day. He would be very happy to get the custom changed; but it was useless to attempt it by himself.

The Chief Justice, in putting the case to the jury, said it was to be lamented that such was the state of affairs in Sydney, that seamen had to be bribed with liquor to do their duty. He sincerely trusted that the time was not far distant when no such thing as Port allowances would be given in New South Wales, and when even on the high seas the use of ardent spirits would be dispensed with. With regard to the case of the prisoner before the court, he informed the jury that in order to constitute murder, it was not necessary to prove premeditation or malice aforethought; as, if no provocation was given, and one person took away the life of another, the law regarded the deed as amounting to murder; and even in the case of slight provocation, where individuals had lost their lives, the law held that it was tantamount to murder. So absolutely necessary to prove provocation to warrant a jury in arriving at such a verdict. There were therefore four questions for the jury to exercise their judgment upon: 1st, Had the deceased come to his death by violence? 2nd, Had that violence been premeditated by the prisoner? 3rd, Had provocation amounting to manslaughter been given to the prisoner by the deceased? 4th, Had the prisoner been placed in such jeopardy that he slew the deceased in order to protect his own life? His Honor adverted in severe terms to the conduct of the boy William George, not only for disobeying the regulations of the vessel respecting the forecastle light, but his impudent answer to his officer, and his challenging him to fight – the animus with which he gave his testimony and his habit of drinking, and regarded him as the cause of deceased's death; and instructed the Jury that the excellent character given to the prisoner could not affect his guilt or innocence, but at a future period, if convicted, it would tend materially to mitigate the severity of his sentence. The Jury retired for about a quarter of an hour, and returned a verdict of guilty of manslaughter, and the prisoner was remanded. [See also Australian, 3 November 1840. On the same day, the Supreme Court gave bail to a number of seamen who had been charged with mutiny by Captain Bunker, who had since left Sydney.]

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

TEMPERANCE, 1/5, 04/11/1840

A verdict of manslaughter was found against **SKEWES,** the second mate of the 'Ullswater,' for the murder of **JOHN PERRY**; sentence deferred.

A woman named **CATHERINE WAPSHAW**, was yesterday convicted in the Supreme Court of killing one **CATHERINE PHILLIPS** by pushing her on the fire, where she was so much injured that she died in a few days. Both parties were drunk when the occurrence took place.

SYDNEY HERALD, 04/11/1840

Supreme Court of New South Wales

Willis J., 1 November 1840
Before Mr. Justice Willis and a common jury.
DANIEL CUTLER, of Maitland, was indicted for shooting at **MARY LYNCH**, with intent to kill and murder her; a second count charged him with shooting at the prosecutrix with intent to do her some bodily harm. The offence was laid as having been committed on the 2nd of August. From the evidence of the prosecutrix it appeared that on the day named in the indictment, she went to the prisoner's house on a visit to his servant woman, about mid day they had three or four glasses of porter, the servant of the prisoner made an attempt to get into the prisoner's room, but he refused her admission, the prosecutrix went to try to open the door, which suddenly opened, and she sank on her knees wounded on the right shoulder by a shot from a pistol; the prisoner immediately said, "Oh Mary I did not intend to shoot you;" an alarm had however, been given, and the prisoner was taken to the watchhouse, in opposition to the wish of the prosecutrix, who ascribed the whole to accident, as he always was kind and frank to her, never having had occasion to threaten her or owe her any grudge.

The jury without retiring from the box, acquitted the prisoner, who was admonished and discharged.

There being reason to believe that the prisoner was in liquor at the time his Honor ordered the pistols to be retained, as any person who was in the habit of getting drunk was not a proper person to be trusted with fire arms. Cutler informed his Honor that for three months past he had been a practical teetotaller, on which his Honor instructed the court keeper to retain the pistols for three months more, when if Cutler proved that he was still a teetotaller, he should have the pistols as a premium for abstaining from what did harm to him and endangered the lives of others.

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

SYDNEY HERALD, 04/11/1840
Dowling C.J., 3 November 1840
CATHARINE WAPSHAW, late of Patrick's Plains, was indicted for having, on the 5th of April last, at Patrick's Plains, been guilty of killing and slaying one **CATHARINE PHILLIPS**.

From the evidence given in this case, it appeared that the deceased was a convict per *Ann and Amelia*, assigned to her husband; that on Sunday the 5th of April, the deceased, the prisoner, and the prisoner's husband, had been drinking, when the prisoner struck one of the deceased's children which was crying, on which the deceased ran into the room and struck the prisoner, who immediately seized the deceased Catharine Phillips by the clothes and pushed her on to the fire, by which the clothes of the deceased caught fire, and when she endeavoured to get up, the prisoner, who was in liquor, again thrust her back into the fire. She afterwards got out of the fire-place and rushed, with her clothes on fire, to a water cask and plunged into it; in her agony she rushed out to go to a neighbouring house to obtain help; she was that evening conveyed to her husband's residence, where she lingered for twelve days and died from the effects of the burning.

From the testimony of Mr. **GLENNIE**, the surgeon who attended the deceased while alive, it appeared that she was a woman of intemperate habits, and the mother of three children. The whole of her body, from the pit of the stomach downwards, was one burned mass, the cuticle being actually charred; there were also superficial burnings on the arms, face, chest, back, and shoulders; and Mr. Glennie was of

opinion that so extensive was the burning that no human being could have survived it, and said it was matter of surprise to him that she had lingered so long. Two days after the burning the deceased was waited on by the police magistrate of the district and made a deposition of the facts of the case, which was given in evidence. From the testimony of the husband of the deceased, it appeared that on the evening of the day charged in the indictment, the prisoner's husband come to this witness and told him that the deceased had got herself burned, when he immediately went in search of her and found her sitting under a bush about twenty or thirty rod from the prisoner's residence in a state of nudity; when she told him that the prisoner had pushed her into the fire, and that she had then turned her out of doors; he also stated that she had left her home on the preceding day.

Mr. **PUREFOY** for the defence, lamented the prevalence of drunkenness, and argued that there was no evidence of intent, nor was it proved that the defendant had done more than pushed the deceased towards the fire, and contended that the deceased met her death by accidentally falling into the fire.

His Honor, in putting the case to the Jury, laid down the law respecting manslaughter, and stated that even if in consequence of the pushing the deceased had fallen into the fire and been burned so as to cause death, still the crime amounted to manslaughter.

The Jury retired for about ten minutes, and returned a verdict of guilty. Remanded.
See also Australian, 5 November 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/524, 04/11/1840
SUPREME COURT – CIVIL SIDE
Friday, October 30, 1840. Brenan v Jones, the full account.
Witnesses:
John Ryan Brenan, Coroner, Plaintiff
William Jones, Proprietor of the CJA, Defendant
William Charles Greville, Clerk, Colonial Secretary's Office
Mr. Yarnton
SUPREME COURT – CRIMINAL SIDE.
Monday, November 2, 1840.
Before His Honor the Chief Justice.
JOHN PERRY [PARRY], seaman *Ullswater, deceased.*
THOMAS SKEWES, Second Officer, *Ullswater*
WILLIAM SAVAGE, First Officer, *Ullswater*
WILLIAM GEORGE, Apprentice, *Ullswater* [Of Bristol; 3 years at sea]
JAMES FITZGERALD, District Constable Sydney
JOSEPH NOBLE, Iron moulder Sydney
JAMES SAUNDERS, Seaman *Ullswater*
ATKIN GIBSON, Captain *Ullswater*
… The Jury then retired, and after about a quarter of an hour's consultation found the prisoner guilty of wilful murder. The prisoner [Thomas Skewes] was then remanded for sentence.

SYDNEY HERALD, 05/11/1840
Supreme Court of New South Wales
Dowling C.J., 4 November 1840

BILLY, alias NEVILLE'S BILLY, a native black from the Lachlan, was placed at the bar, when **WILLIAM JONES**, a holder of a ticket of leave, an umbrella maker residing in Sussex-street, was sworn in as interpreter, who deposed that the language of the prisoner was the same as that spoken on the banks of the Castlereagh river, about three hundred miles from Sydney, where he had been about eight years, and had learned the language.

The substance of the charge was then read over by his Honor as follows. Billy, you are charged with killing a white man named **JOHN DILLON** at Ullabalong, by spearing him, on the 29th of February last; which being interpreted to him, he pleaded not guilty, and asserted that it was other blacks who killed Dillon. He was then told of his right of challenge but said he had no objection to any of the Jury.

The Attorney General then suggested the propriety of assigning counsel to the prisoner, which his Honor acceded to, when Mr. **BROADHURST** was sent for to conduct the prisoner's defence, and Mr. **GEORGE ALLEN** assigned as Attorney.

After the Jury had been sworn in, and the indictment had been read, laying the murder as having been committed on the 29th of February, and on the 1st of March.

The Attorney General opened the case, by stating there were no cases of a more painful description than those against the aborigines, who, from their ignorance of our language, manners and customs, as well as of our laws, could only take their trial at a disadvantage, as the state of the law prevented them from calling on others of their tribe to give evidence in their defence. It also frequently happened in cases of aggression by the Aborigines, that the first offence was given by the whites, by their carrying off the gins of these blacks and otherwise annoying them; but in the present instance he was extremely happy that no such excuse could be set up; on the contrary, it would be given in evidence that the deceased had been remarkably kind to the blacks and in particular to the prisoner, to whom he had given bread and milk for breakfast on the same morning, just before he speared him, and it would also be shown, that there was particular kindness shown to the prisoner by another of the white people, as he had got his name of Neville's Billy from some clothing having been given to him by a white man.

Wm. JACKSON, of the border police, sworn. - I live at Bennalong, with Mr. **COSBY**, Commissioner of Crown Lands, about 24 miles south from Yass; I have been 16 months in the border police, and have had much intercourse with the blacks; I can neither speak nor understand their language. I apprehended the prisoner as Neville's Billy on the 5th of April, at Ullabulong, about 240 miles from Sydney, and beyond the boundaries. On the 29th of February I was at Yarrabendri, Mr. Oakes's station, when I was told that a man had been speared at Ullabulong; I went there, and found a wounded man in a skillion; he was bleeding, but able to speak; he was John Dillon, hut-keeper to Mr. Armstrong of Parramatta. I had been at that station about a fortnight before, and saw about 100 natives at that place. Mr. Cosby was then present; we knew that they were wild blacks, and when Captain Ovens' men were bringing the cattle up the river they were accused of rushing the cattle. When I saw the deceased he was perfectly sensible, and told me in the presence of several persons that he was done for, and showed me a wound bleeding under his left armpit. It was about eleven inches deep from the portion of the spear which had been in it, and it was so severe that whatever water he drank ran out at the wound. The deceased told me the prisoner came to the hut about eight, a.m., and asked for bread and milk, which was given him, and the prisoner eat[sic] it, after which another black came up and demanded more bread and milk, on which the deceased told him there was no more in the hut, and while he was latching the hut door, the prisoner speared him

through the window of the hut under the arm-pit of the left arm, and then the person who speared him looked in through the window and said, “ah, ah!” I believe he said it was Neville’s Billy who speared him; that he was the black whom Jackey Neville, a settler near Bathurst, had given a shirt to; after telling the circumstances of the spearing, the deceased made his will, and left £12, one half to the priest, and one half to the poor; the man died on the following day, when I and another border policeman, with about six or seven stockmen, went in search of the prisoner, with two tame blacks, and were out for ten days but got no intelligence of him; an old tame black named Old Ben offered to bring him in on the 5th April; the prisoner was pointed out to me; I took the spear and going up to him, said, “you Neville’s Billy?” he said yes; I said, showing him the spear, “first time you make light of this spear?” but he gave no answer; a stockman who was present then put the same question, on which the prisoner acknowledged that he had seen it before; when I asked him his name, he said Neville’s Billy; all the people present seemed to know him, and he to know them, as he spoke to them, and they gave him bread and milk; he was taken about two hundred and forty miles from Yass, at Mr. White’s station; the prisoner had a large sticking knife, which he concealed in some cloth about six miles from the station; I saw him laugh, and thinking it strange I looked at him and saw the knife in his hands; he was handcuffed and had managed to get it while we were saddling our horses; I took the knife from him, and was told at Tomanbilly, by an old servant of Mr. White, that it was the butcher’s knife used at Mr. White’s station. When the party first set out after the funeral, the two same blacks told us that he had trailed a bush after him, which prevented them from tracing his footsteps. When taking the prisoner to Yass, at Mr. Shepherd’s station, I said to prisoner, “what for you tumble down Waddy Monday?” (the black name given the deceased from his having a wooden leg) when he said that Billy, Paddy, Puckamulloi, Woagli, and Pialla, told him to kill the deceased. When he asked the prisoner why he had killed Dillon, he told him he had better tell the truth; that was the only incitement held out to him to tell me what I have stated.

Cross examined - The deceased was about 31 years of age; the nearest medical aid that could be obtained was from Bathurst; it was about ten in the forenoon of the 29th February, when I saw Dillon wounded; I saw him several times during the day; he was in great agony, was swelling very much, and was turning black. The deceased, after he was speared, heard the blacks get up on the roof of the skillion, but some horsemen arriving a few minutes after, he said that he thought the blacks had seen the dust, and they accordingly made off. The deceased told me that the feathers had broken in his side when pulling out the spear. Old Ben told me he did not know the other black. I do not know of my own knowledge that the prisoner is Neville’s Billy.

(The prisoner said that this witness had told lies of him.)

WILLIAM POWER, another Border Police-man, corroborated the previous witness, and stated that the deceased told him he had only been six weeks at the station, and never had quarrelled with the blacks; this witness stated that the prisoner could speak English pretty well, and had told the witness he had been to Bathurst some years ago, and had seen some men hanged, and wanted to know if he (Billy) would be hanged in the same way. The window was on the same side of the hut in which Dillon was speared, and the window was about fourteen inches square and about eight feet from the door; the prisoner was apprehended about seven miles from the hut where Dillon was speared; the deceased was a free man.

The Attorney-General stated that there was another witness but he had not been able to get a summons served on him; he therefore closed his case.

Mr. Broadhurst for the defence, complimented the Attorney-General on the feeling manner in which he had opened the case, and adverted to the strong feeling which was known to exist in the Colony against the blacks; he also read that part of the indictment which stated that the prisoner had been excited and moved by the instigation of the devil, a being whom the aborigines have no more knowledge of than they have of the existence of the true God. He also objected to the verbal recital of the dying man's declaration being received in evidence, which he contended ought to have been produced in writing, and taken before a magistrate, who ought to have sworn the deceased to the truth of it. He also contended that the discrepancy between the testimony of the two witnesses, as to the one swearing that the deceased had said there was but one black with the prisoner at the time of the spearing; whereas, the other swore that he had said there were several others returned with the prisoner; he also mentioned that the deceased had not seen the prisoner spear him, as that was impossible from the position of the door and window, and the position in which the deceased was when speared; he also alleged that the deceased had been speared by one of the strange blacks, as the prisoner had received acts of kindness from Dillon which had been refused to the others; he denied that the prisoner had ever conceded that the spear was his, all he had been asked was if he had ever seen the spear, and he had told them that he believed he had, and it was probable that he had seen it in the hands of some of the rest of his tribe, and concluded by calling on the Jury to try the case dispassionately and without prejudice.

His Honor, in putting the case to the jury, said, that they were a jury of intelligent, British subjects, called on to administer justice to a savage, who was ignorant of the language, laws, and customs of civilized life; and called on them to mark the situation in which the prisoner and the judges were placed in such trials; by a fiction of law he was amenable to British law. He was accused of the murder of a British subject, a white man, one of a race of men who had seized on his native land; he was by fiction of law, a British subject, and as such was entitled to be tried by his peers, his equals; were the jury his equals? Did they know his language, his habits, or his customs? He took his trial under many disadvantages, so much so, that he was not in a situation to conduct his own defence - he could not even instruct his counsel; he might have witnesses, but they, by a legal technicality, not being christians, would not be admitted to give evidence, and therefore it was that he said the prisoner took his trial under great disadvantages; it was in fact a one-sided trial, and therefore, he called upon the jurors, as Britons and Christians, to lay aside all prejudices, and give every attention to the evidence, which was not of that king usually brought to support such cases; it depended entirely on the frail memory of two illiterate men, who had, to a certain extent, given different details of the same transactions - which fact alone was sufficient cause for the jury giving their utmost attention to the evidence by which they were to decide the guilt or innocence of the prisoner. In reading over the evidence, His Honor lamented that the witness **FITZGERALD** had not been found, which was no fault of the Crown prosecutor; he also observed, that some of the stockmen, who were in the hut when the deceased made his statements, if brought forward in evidence, might have placed some part of the case clearer before the court. The evidence respecting the prisoner owning the spear was dark, and there was no proof of a satisfactory description that the prisoner was the man whom the deceased called Neville's Billy; he also warned the Jury against receiving any unfavourable impression from the prisoner, after being apprehended, taking the butcher's knife, at Mrs. White's; also that they were to receive the prisoner's statement, about his being told by the five other Aborigines, with discrimination to see whether it had been made

of his own free will, or extracted from him by the fear of punishment or the hope of reward; as in case it had not been voluntarily given, it could not be used in evidence against him; His Honor called on the jury to give a fair interpretation to the words "it will be better for you to tell the truth." It was not a proof of murder, that a man was seen with a bloody sword in his hand - it was merely a circumstance which might raise suspicion; he also told the jury to give the prisoner full credit for his statement, as far as it went, that he knew a little English, and that a great deal of what had been said by the first witness was not true. His Honor remarked it was a singular circumstance that the witness Power, a man who had been only 23 months in the Colony, under sentence, should be employed in the Border Police: and put it to the jury whether the deceased might not have been in such agony at the time the witnesses examined him, and so stupified by their questions, that he did not know what they were saying or what he answered them. And cautioned the Jury against giving credence to testimony which was at variance. He had felt it his duty to make these observations to the Jury, not to influence them in their verdict, but to lead them cautiously to examine and scrutinize the evidence. If the case had been that of a white man, it would have assumed an entirely different appearance. He however left it to the Jury to say whether they had had a full and fair account of the confession of the deceased, and whether the identity of the prisoner had been made out, and whether there was proof that the prisoner was the person who had thrown the spear; and expressed a hope that if they had any reasonable doubt as to the evidence they would, from the circumstances of the case, give the prisoner the benefit, as he had been brought to trial under circumstances which were peculiarly disadvantageous to him, while at the same time the evidence was not of that description which is usually adduced even where the dying declaration of the deceased is put in evidence, to support the charge. If the Jury had any reasonable doubt on the evidence, from the peculiar circumstances under which the prisoner had been put on his trial, and the loose kind of evidence which had been given against him, they would of course give him the benefit thereof.

The Jury retired for about half an hour, and returned a verdict of guilty.

The prisoner was remanded.

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

Supreme Court of New South Wales

Dowling C.J., 3 November 1840

ANN CARROLL, alias BLAKE, was indicted for a violent assault, with intent to murder **JAMES HOYLE** at Campbell Town by striking him on the head with a blunt instrument, so that his life was despaired of on the 20th of June last. A second count charged the prisoner with an assault with intent to do some grievous bodily harm.

The prisoner, on being called on to plead to the indictment, said she was guilty of striking the man in her own defence, and a plea of Not Guilty was therefore recorded. The prisoner had no counsel.

The Attorney General briefly stated the case as follows:- It appeared that this woman was living at the Robin Hood public house, near Campbell Town, in June last. She owed a grudge to the prosecutor, who is an old man in the service of Mr. **KEMP**, of Campbellfield in consequence of a charge made against one **HUMPHRIES**, in which the old man was concerned. He went into the public house when the prisoner began abusing him in a shameful manner. There was a person named **LYONS** there, who has since died, and who, fearing the prisoner might do him some injury on the road home, he accompanied him. When half way some persons jumped out from behind a

bush and struck him on the head and knocked him down. The prisoner's person and voice were distinctly recognised among them, and she was heard to say she would murder the old man making use of an expression which would be filthy out of any Christian's mouth, much more from the lips of a woman which showed what a violent tempered woman she was and how much forgetful of the decencies which belonged to her sex.

James Hoyle deposed that he was overseer to Mr. Kemp. On the day in question he came down to see some cattle; went into the Robin Hood public house to get a little grog to take home; met a friend named Lyons there who had since died; had two glasses of rum there. The woman began to abuse him about getting her fancy man Mr. Kemp's stockman, punished. Lyons told him not to mind what the woman said and showed him out the back way. He had not proceeded more than three hundred yards when he was tripped up; his head fell in the prisoner's lap, and he received a blow on the head which stunned him, and he knew nothing afterwards until he found himself, at five o'clock the following morning, with his head covered with blood, and he remembered what he happened. He knew the woman because she took the bottle from him and said she would murder him for an old ____; he could not identify the two men that were with her, but they were more to blame than the woman, and he wished the Court to take that into consideration. He then returned to the Robin Hood public house, and when the landlord got up he told him the whole circumstance, and he sent for a constable and sent him up to the magistrate. He would not swear whether the woman said she would murder him or the men said it; his recollection was going away fast but he would not swear anything wrong for any one if he knew it. Lyons dies nearly three months ago. This witness was committed to the gaol for fourteen days for appearing before the court intoxicated.

William Sheehan, publican, deposed that he knew Lyons well that he attended his funeral several weeks ago, that he saw him dead, he was about seventy years of age when he died; Lyons was in good health in June last when he gave his deposition, saw him in the stable next morning covered with blood; sent for a constable; Hoyle seemed to have been much beaten.

Cross-examined by the prisoner - James Hoyle did not come drunk to witnesses house and offer her £5 not to come against her, but a shoemaker offered Hoyle £5 not to go against her. The prisoner passes as a married woman; her husband sent witness £9 for the prisoner, which he handed to her.

Mr. **BURKE**, the clerk to the bench at Campbell Town, was called to prove the depositions of the deceased woman **PHILLIPS**, and the man **LYONS**.

Dr. **KENNY** was called to speak of the injuries the prosecutor had received; the wounds had an ugly appearance although they were not dangerous, the after consequences might prove dangerous; he considered Hoyle in some danger when he first saw him; he appeared in a very low and exhausted state; some of the wounds were not healed for three weeks.

This was the case for the prosecution.

The prisoner said in her defence, that the prosecutor was going to take another woman's glass of spirits and she told him not to do so, and he said he would give her a slap across the face; a man there said he should not; Mr. Lyons called him into the parlour; next day she was going out of town to pay a little money, and was met on the road by the prosecutor who attempted to take some improper familiarities with her, and offered her some rum out of a bottle; that she threw the bottle away and broke it; the prosecutor struck her; she struck again; a struggle ensued, and they both fell in the mud, when she kicked him with her foot in the head.

Lyon's deposition was then put in and read.
His Honor told the jury, he thought, after hearing the evidence of Dr. Kenny, on the nature of the wounds, he would dismiss from their minds the count in the indictment, charging the offence as with intent to deprive of life. He adverted to the audacity of the prosecutor coming into court and invoking God's holy name, half drunk, to state things affecting a person's life and liberty, and doubtful evidence in such cases ought not to be received, and by his own account he was an old man of profligate habits. His Honor then read over the evidence.
The jury retired for a few minutes, and returned with a verdict of guilty on the second count. The prisoner was then remanded. See also Sydney Herald, 4 November 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 06/11/1840
Supreme Court of New South Wales
Stephen J., 5 November 1840
ENOCH BRADLEY, late of Yass, was indicted for the murder of **GEORGE WOODMAN**, at Gunderoo on the 7th September last, by shooting him with a pistol in the left side. It appeared that the deceased was the landlord of the "Travellers Home" public house at Gunderoo and on the day laid in the indictment, the prisoner who was returning from his master's sheep station about three miles from the "Travellers Home," met with an acquaintance, and they both went into the deceased's house and had some drink, when the prisoner asked Woodman to give him some dinner, which the deceased refused, telling him that he ought to go home and get his dinner, as the house was not far off. The prisoner said he was at the sheep station, and it was a far way to go, on which the deceased told the prisoner to go about his business, as he did not want to have any thing to say to him, as he was a government man, but he subsequently gave him some dinner; after the prisoner had partaken of it, he said to the deceased, "so you refused me my dinner did you," the deceased said "Yes I did refuse you," upon which the prisoner replied "well I hope the Devil will refuse your soul in hell" and kept walking up and down for sometime, and about ten minutes after uttering the above expression he went up to the deceased, stooped a little, put his hand into his breast, pulled out a pistol and shot the deceased in the left side; he instantly fell on the ground and called out "oh Bradley, Bradley what have I done that you have shot me," he was then carried to his bed and expired in about a couple of hours; as soon as the prisoner had shot him he threw the pistol from him and said I have shot the man and I am willing to die for him; he shortly after asked to have the pistol returned, in order that he might load it to shoot himself, and then left the place.

In the examination of this witness in this case it appeared that when the case was enquired into before the magistrates at Yass, that there was a general inclination among all the witnesses to screen the prisoner, and it was not until the magistrates had threatened to cancel the tickets-of-leave held by the principal witnesses, that they could be induced to speak the truth. The prisoner in defence denied all knowledge of the murder, and alledged that the first account he heard of it was from his master, who sent for him from the sheep run, and accused him of having shot the deceased. The Jury found the prisoner guilty.

Mr. **CARTER** prayed the judgment of the court on the prisoner, who on being called on for what he had to say why judgment should not be passed upon him, in an

impudent manner said, all I've to say is, that that I am innocent and its a made up job against me by three of the witnesses.

His Honor in feeling and impressive address commented on the enormity of the crime, committed by the prisoner, which was, he was sorry to say perpetrated by him under the influence of liquor, but this instead of being a mitigating circumstance, was in the eye of religion, reason, and the law, an aggravation of the offence and as he was convinced the act of which the prisoner had been found guilty was a cool-blooded deliberate and atrocious murder he should certainly represent it as such to the Governor, he then admonished the prisoner to prepare for a future state as he could hold out no hopes of mercy to him on this side the grave. He then passed sentence of death on in the usual form. The prisoner heard his sentence unmoved and after turning to enter the case he turned round again and pointing to the witness-box exclaimed these are the men that did the murder.

His Honor called on two of the witnesses named **JACKSON** and **MASON**, both ticket-of-leave holders, and stated to them that as they had that day in his opinion [not] spoken the truth he would to punish them for their conduct before the magistrate order their tickets to be cancelled for twelve months respectively.

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

CJA, 6/525, 07/11/1840

FATAL ACCIDENT. - On Saturday last, a person of the name of **CARR**, a carpenter, who was employed at Brownhill Creek fencing, while cutting down a tree, unfortunately met with an accident which proved fatal to him. It appears that a branch had somehow been disengaged from the body of the tree in falling, which struck Carr on the leg; and while stooping to bind up his wound, the tree fell and crushed him under it. He has left a wife and two young children. His remains were interred yesterday by the Rachabites, of which society he was a member.

SYDNEY HERALD, 09/11/1840

Dowling C.J., 7 November 1840

At the opening of the Court the prisoners convicted before the Chief Justice, and re-remanded during the week, were brought up for judgment, when his Honor addressed them as follows:-

CATHERINE WAPSHOT, you have been found guilty of feloniously destroying the life of one **CATHERINE PHILIPS**, by casting her into a fire.

The bare mention of such a death when arising merely from accident, fills the mind with anguish; but, when it is the result of criminal design, the heart sickens with horror. It may be that you possess the form and feature of woman – but no more! The soul that dictated such an act, could never have been intended for so chosen a vessel. Nothing but the Tempter of Hell could prompt your mind to such enormity. Again and again, has this Evil One appeared in the palpable shape of Rum to vanguish and overcome the humanity of his followers. Is this country never to purged from the stain of drunkenness? Session after session, the calendar teems with tales of blood from this cause only. In vain does the rigour of the law put forth its denunciations – in vain does public scorn mark the sinner for contempt – in vain are efforts made by society to rouse the drunkard to consciousness of the awful peril which awaits his direful prospensity. I fear that this generation must pass away before any hope can be entertained that the degrading and brutalizing habit will be eradicated from the land. In the auspicious dawn which now opens upon the country, we may indulge the

persuasion that whilst the country is emancipated from its penal character, the latent dispositions to good in the human heart, and the diffusion of religious feeling, will effect a moral regeneration, and New South Wales shall no longer be held up to the world in odious colours. Degraded woman! there is this aggravation in your offence – that it was committed on the Sabbath: a day, when even the heart of the vicious is, if not amenable to its religious impulses, at least open to repose from the rugged cares and excitements of this life. Finding no mitigating circumstances in your case, the Court is constrained to award the severest punishment which the law now ordains in the case of female criminals: which is, that you, Catherine Wapshot, be imprisoned and kept to hard labour in the female factory[*] at Parramatta, for three years. See also Australian, 10 November 1840.

[*] The reference is to the Female Factory, which was simultaneously a prison, a barracks for female convicts, a factory, and a marriage bureau. See A. Salt, These Outcast Women: the Parramatta Female Factory 1821-1848, Hale and Iremonger, Sydney, 1984. On the management of the factory, see Historical Records of Australia, Series 1, Vol. 12, pp 524-528.

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

SYDNEY HERALD, 09/11/1840

Dowling C.J., 7 November 1840

THOMAS SKEWS, you have been convicted of feloniously killing and slaying **JOHN PARRY [PERRY]**, a seaman on board the brig *Ullswater*, by stabbing him with a knife.

The Jury who tried you took a most favourable view of your case, for it had all the characteristics of a heart bent upon wilful murder. You were acquitted of that dreadful offence, and the court is relieved from the pain of awarding to you an ignominious death. In vain I have sought for mitigating circumstances in your case. It is that of an officer of a ship, suffering himself to get drunk, and upon very slight provocation giving way to the impulse of what, I fear, is naturally a sanguinary temperament. The violence committed was wholly disproportioned to the occasion. In utter disregard of discipline and of your own position as second officer, you accepted a challenge to fight an insolent apprentice on shore, and the deceased coming to his assistance you plunged your knife into his body. To the fearful indulgence in spirituous liquors may be ascribed this melancholy catastrophe. This is another horrible item in the catalogue of crime this session from that one besetting sin. The time is now arrived when it behoves every man who takes an interest in the welfare of society, or who even acknowledges himself to be of the human race, to bestir himself, either individually or collectively, with his neighbours, to put down this hideous propensity. Whatever may be the assumed necessity for stimulating to exertion, in the vicissitudes of seafaring life, by the administration of spirits, that necessity at all events ceases when in port, where a wholesome beverage can be obtained for moderate refreshment, and the sustentation of the human frame can be effected, without prostrating God's creatures to the level of brutes. It is earnestly to be hoped that merchants, ship-owners, and mariners will seriously take to heart the frightful consequences of the noxious use of ardent spirits in the prosecution of those adventures in which their own fortunes, the character of the British seamen, and the lives of their fellow creatures are so deeply involved. This, and innumerable other examples of the like kind, are sufficient to arouse them to a sense of public and private duty. It is necessary that an example should be made of you, to awaken others

to their liability for the consequences of their self-degradation. The laws of the land must be vindicated by bodily suffering, if men will not obey the dictates of moral propriety. The sentence of this court is, that your, Thomas Skews, be transported out of this Colony for 14 years. See also Australian, 7 November 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 09/11/1840
Dowling C.J., 7 November 1840
BILLY, otherwise NEVILLE'S BILLY, you, a wild aboriginal native of New South Wales, having been convicted by a jury of civilized Englishmen of the crime of wilfully murdering one of their countrymen, are now to receive the judgment of the white-man's law for your offence. I cannot persuade myself that you distinctly understand one word of what I am now addressing to you; but, I go through the forms prescribed by our Courts of Justice on solemn occasions like the present, rather that your peculiar anomalous position may be fully appreciated and duly considered by those who are finally to determine on your fate, than from any idea that it can have any effect on your benighted mind. One of the wild children of the woods, and brought from a district where the country is just in the same state as it came from the hands of nature, you, not having the fear of God before your eyes, but being moved and seduced by the instigation of the devil, did, of your malice afore-thought, feloniously murder **JOHN DILLON**, a white man, by piercing him with a spear. It would be idle to suppose that this technical language of the Englishman's law could be intelligible to the mind of an untutored wandering savage, who "sees God only in clouds," and "hears him only in the winds." That you destroyed the life of John Dillon is a fact which, I think, is beyond all moral doubt; but whether the deed was committed under that sense of religious and legal responsibility to which your white brethren are amenable, is a question which I persuade myself may be truly answered in the negative. Ignorant however as your are of revealed religion, and uninformed of the conventional laws of civilized man, still you must be regarded as an accountable being for acts which are contrary to the law of nature - that first principle which enters into the very existence of all sentient beings. The love of life must be implanted in your own breast, and you must be sensible of its value in the estimation of your fellow creatures. So long, therefore, as you are to be regarded as a rational creature, so long must you be held accountable for the invasion of a right imparted to all men by the God of nature. It was made manifest on your trial, that you were an intelligent person, and endued with reasoning faculties; otherwise I could not have submitted you to the responsibility of the law under which you have been convicted. The principle on which this Court has acted in the embarrassing collisions which have too frequently arisen between the aborigines and the white Europeans, has been one of reciprocity and mutual protection. On the one hand, the white man (when detected, which I fear seldom happens) has been justly visited with the rigour of the law, for aggressions on the helpless savage; and on the other, the latter has been held accountable for outrages upon his white brethren. As between the aborigines themselves, the Courts have never interfered, for obvious reasons. Doubtless, in applying the law of a civilized nation to the condition of a wild savage, innumerable difficulties must occur. The distance in the scale of humanity between the wandering, houseless man of the woods, and the civilized European, is immeasurable! For protection, and for responsibility in his relation to the white man, the black is regarded as a British subject. In theory, this sounds just and reasonable; but in practice, how

incongruous becomes its application! As a British subject he is presumed to know the laws, for the infraction of which he is held accountable, and yet he is shut out the advantage of its protection when brought to the test of responsibility. As a British subject he is entitled to be tried by his peers. Who are the peers of the black man? Are these, of whose laws, customs, language, and religion, he is wholly ignorant - nay, whose very complexion is at variance with his own - his peers? He is tried in his native land by a race new to him, and by laws of which he knows nothing. Had you, unhappy man! had the good fortune to be born a Frenchman, or had been a native of any other country than your own, the law of England would have allowed you to demand a trial by half foreigners and half Englishmen. But, by your lot being the lowest, as is assumed, in the scale of humanity, you are inevitably placed on a footing of fearful odds, when brought into the sacred temple of British justice. Without a jury of your own country men - without the power of making adequate defence by speech or by witness - you are to stand the pressure of everything that can be alleged against you, and your only chance of escape is, not the strength of your own, but the weakness of your adversary's case. Surrounded as your trial was with difficulties, every thing I believe, was done, that could be done, to place your case in a proper light before the jury. They have come to a conclusion satisfactory, no doubt, to their consciences. Whatever might be the disadvantages under which you laboured, they were convinced, as I am, that you destroyed the life of Dillon; and as there was nothing proved to rebut the presumption of English law, arising from the fact of a homicide being committed by you, they were constrained to find you guilty of murder. There may have been circumstances, if they could have been proved, which would have given a different complexion to the case from that of the dying declaration of the deceased, communicated to the Court through the frail memory of two witnesses, who varied in their relation of his account of the transaction. This declaration, so taken, was to be regarded as if made on oath, face to face with your accuser - and, although you had not the opportunity of being present at it, and of cross-examining the dying man, yet, by law, it was receivable against you. Doubtless, there were other circumstances in your own subsequent conduct, which (assuming that they were proved in so satisfactory a manner as to be, beyond all doubt, true) tended to confirm the dying man's statement. Your recognition of the broken spear as being your own - your assertion that you committed the act, at the instigation of some of your tribe - your subsequently arming yourself with a knife - your allusion to the fate of some white men who were executed at Bathurst some years since - and the proof that you could speak and understand more of the English language than you chose to admit, were circumstances which must have weighed against you in the minds of the jury. They having, therefore, pronounced you guilty, I have no alternative but to award the sentence of the law. Your case will come under the anxious review of the Executive Authorities, and your fate, whatever it may be, will be influenced by a careful consideration of what the interests of public justice imperatively demands. The sentence of the law is, that you, Billy, otherwise Neville's Billy, be taken hence to the prison from whence you came this morning, and that you be taken thence to the place of public execution, on such day as His Excellency the Governor shall direct and appoint, and that you be there hanged by the neck until your body be dead - and may God Almighty have mercy on your immortal Spirit! See also Australian, 10 November 1840: "Billy alias Neville's Billy (an aboriginal native), found guilty of the willful murder of John Dillon, was next placed at the bar to receive sentence, which was passed upon him through the medium of an interpreter. The prisoner said he had nothing to say why sentence of death should not

be passed upon him, when asked. Proclamation was then made and His Honor passed upon the prisoner the sentence of death."
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

AUSTRALIAN, 10/11/1840
Dowling C.J., 7 November 1840
ANN CARROLL alias BLAKE, convicted of an assault with intent to do some grievous bodily harm, was sentenced to transportation to a penal settlement for fifteen years. The prisoner pertly thanked His Honor on leaving the bar.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

TEMPERANCE, 1/7, 18/11/1840
We have much pleasure in directing public attention to the address of his Honor the Chief Justice, in passing sentence upon the woman **WAPSHOT**, and **SKEWES**, second mate of the "Ullswater." It will be perceived that Sir James is thoroughly alive to the erroneous evils of intoxicating drinks. In his touching and feeling remarks, his Honor speaks of the "auspicious dawn which now opens on the country;" referring, no doubt, to the rapid advance of the principles of Temperance in various parts of the Colony, and the good which it is fair to argue will be the result of the present movement. He said:
CATHERINE WAPSHOT, you have been found guilty of feloniously destroying the life of one **CATHERINE PHILLIPS**, by casting her into a fire.
The bare mention of such a death when arising merely from accident, fills the mind with anguish; but, when it is the result of criminal designs, the heart sickens with horror. It may be that you possess the form and feature of *woman* – but no more! The soul that dictated such an act, could never have been intended for so chosen a vessel. Nothing but the Tempter of Hell could prompt your mind to such enormity. Again and again has the Evil One appeared in the palpable shape of Rum to vanquish and overcome the humanity of his followers. Is this country never to be purged from the stains of drunkenness? Session after session, the calendar teems with tales of blood from this cause only. In vain does the rigour of the law put forth its contempt – in vain does public scorn mark the sinner for contempt – in vain are efforts made by society to rouse the drunkard to consciousness of the awful peril which awaits his direful propensity. In fear that this generation must pass away before any hope can be entertained that the degrading and brutalizing habit will be eradicated from this land. In the auspicious dawn which now opens upon the country, we may indulge the persuasion that whilst the country is emancipated from its penal character, the latent disposition to good in the human heart, and the diffusion of religious feeling, will effect a moral regeneration, and New South Wales shall no longer be held up to the world in odious colours. Degraded woman! There is this aggravation in your offence – that it was committed on the Sabbath; a day, when even the heart of the vicious is, if not amenable to its religious impulses, at least open to repose from the rugged cares and excitements of this life. Finding no mitigating circumstances in your case, the Court is constrained to award the severest punishment which the law now ordains in the case of female criminals; which is, that you, Catherine Wapshot, be imprisoned and kept to hard labour in the female factory at Parramatta, for three years.

THOMAS SKEWES, you have been convicted of feloniously killing and slaying **JOHN PARRY [PERRY]**, a seaman on board the "Ullswater," by stabbing him with a knife.
The Jury who tried you took a most favourable view of your case, for it had all the characteristics of a heart bent on wilful murder. You were acquitted of that dreadful offence, and the court is relieved of the pain of awarding you to an ignominious death. In vain have I sought for mitigating circumstances in your case. It is that of an officer of a ship, suffering himself to get drunk, and, upon the very slight provocation, giving way to the impulse of what, I fear, is naturally a sanguinary temperament. The violence committed was wholly disproportionate to the occasion. In utter disregard of discipline and of your own position as second officer, you accepted a challenge to fight an insolent apprentice on shore, and the deceased coming to his assistance you plunged your knife into his body. To the fearful indulgence in spirituous liquors may be ascribed this melancholy catastrophe. This is another horrible item in the catalogue of crime this session from that one besetting sin. The time is now arrived when it behoves every man who takes an interest in the welfare of society, or who even acknowledges himself to be one of the human race, to bestir himself, either individually or collectively, with his neighbours, to put down this hideous propensity. Whatever may be the assumed necessity for stimulating to exertion in the vicissitudes of seafaring life, by the administration of spirits, that necessity at all events ceases when in port, when a wholesome beverage can be obtained for moderate refreshment, and the sustentation of the human frame can be effected without prostrating God's creatures to the level of brutes. It is earnestly to be hoped that merchants, ship-owners, and mariners, will seriously take to heart the frightful consequences of the noxious use of ardent spirits in the prosecution of those adventures in which their own fortunes, the character of the British seamen, and the lives of their fellow-creatures are so deeply involved. This, and innumerable examples of the like kind, are sufficient to arouse them to a sense of public and private duty. It is necessary that an example should be made of you to awaken others to their liability for the consequences of their self-degradation. The laws of the land must be vindicated by bodily suffering, if men will not obey the dictates of moral propriety. The sentence of this Court is, that you Thomas Skewes, be transported out of this Colony for fourteen years.

TEMPERANCE, 1/7, 18/11/1840
The following is a list of the murders, &c. tried during the sessions:-
CATHERINE WAPSHOT, for killing and slaying **CATHERINE PHILLIPS**, at Patrick's Plains, on the 5th of April last. Guilty. To be imprisoned and kept to hard labour in the Female Factory at Parramatta, for three years. Both the prisoner and the deceased were intoxicated when this melancholy affair happened.
NEVILLE BILLY, an aboriginal black, for killing **JOHN DILLON**, at Ullabalang – Guilty. Death.
THOMAS HOLMES, for the murder of **PATRICK HANNON**, at West Maitland. – Guilty. Death.
WILLIAM NEWMAN, for the murder of **HENRY HOGSON**, at Patrick's Plains, on the 15th October last. – Guilty. Death.
JOHN MARTIN, late of Gammon, was indicted for the wilful murder of one **JOHN JOHNSTON**, at Gammon on the 24th March last; **JAMES MASON** and **JOHN WALKER** were indicted for aiding and abetting; and **JAMES HOWARD** and **ROBERT RANSOM** were indicted as accessories after the fact, by harbouring the

prisoners after the felony had been committed. Martin, Wilson and walker, Guilty. Death. Rawson and Howard acquitted.
MICHAEL MONAGHAN, for the murder of **ROBERT ARCHER**, on the 2nd of August, 1839, at Glendon, and afterwards burning the body – Guilty. Death.
WEEKLY SUMMARY
LYNCH, the man who is in custody, and whose trial is put off till next sessions, for the murder of **SULLIVAN**, is supposed to have murdered another man, named **GORDON**, about two years ago; it would appear that he afterwards burned the bodies of the unfortunate men.
On the same day [Friday] an inquest was held on the Rocks, on the body of **MARY DUNCAN**, the wife of **ALEXANDER DUNCAN**, publican, who had died in the forenoon of Wednesday. Surgeon **M'KELLER** having certified that death was caused by apoplexy induced by intemperance, the jury returned a verdict accordingly.
DEATH FROM INTEMPERANCE. - On Friday morning last, an inquest was held at Bolton's public-house, the 'Black Dog,' in Gloucester-street, on the body of Mrs. **MARY DUNCAN**, who died the night previously. The Coroner, after the jury had been sworn, proceeded with them to examine the body, and after their return to the house the witnesses were examined; from their statements it appeared that the deceased had been greatly addicted to the intemperate use of ardent spirits. Verdict – Apoplexy, accelerated by the too frequent use of spirituous liquors.

CJA, 6/525, 07/11/1840
FATAL ACCIDENT. - On Saturday last, a person of the name of **CARR**, a carpenter, who was employed at Brownhill Creek fencing, while cutting down a tree, unfortunately met with an accident which proved fatal to him. It appears that a branch had somehow been disengaged from the body of the tree in falling, which struck Carr on the leg; and while stooping to bind up his wound, the tree fell and crushed him under it. He has left a wife and two young children. His remains were interred yesterday by the Rachabites, of which society he was a member.

SYDNEY HERALD, 09/11/1840
Supreme Court of New South Wales
Dowling C.J., 7 November 1840
JOHN MARTIN, late of Gammon, was indicted for the wilful murder of one **JOHN JOHNSTON**, at the Gammon on the 24th of March last; **JAMES MASON** and **JOHN WALKER** were indicted for aiding and abetting; and **JAMES HOWARD** and **ROBERT RAWSON** were indicted as accessaries after the fact, by harbouring the prisoners after the felony had been committed.

The Attorney-General commenced the proceedings by giving an outline of the case, and stated, that two of the prisoners were assigned to Mr. **BLAXLAND**, while the others were the assigned servants of Mr. **BETTINGTON**; and called

Mr. **HENRY PELHAM DUTTON**, who deposed – I am a settler; in March last I lived on Gammon Plains; on the 24th of that month an attack was made on my house by some men, about half an hour after sundown; Mrs. Dillon and three of my children were in the bed room; I was going though the passage to the hall when I heard a loud crash, and was surprised to be met by two men with masks on. One of them presented a gun at me and threatened to blow out my brains if I did not go to the upper end of the room; I asked them if they intended to use any unnecessary violence, and they said they did not; they then brought Mrs. Dutton and the children into the same room, with three female servants, and two children belonging to one of the females; shortly after

two of my men servants were brought in; I saw four men at different times, all of them in smock frocks; they had masks on which covered the whole of their heads to the shoulders; one of them searched my pockets, but found nothing; about three quarters of an hour after they came, I heard two shots fired in the hall, on which the man who was standing over me, sprang out of the French window by which they had entered; soon after another of the men came from the hall evidently expecting to be attacked, and also passed out of the window; soon after this one of my servants named Burrows, came in with a gun in his hand, and told Mrs. Dutton not to be afraid as they were all there. I was then shown the deceased, who was wounded on the right side of the head, which was bleeding very profusely; he died about three quarters of an hour afterwards. One of them who stood over us appeared to be the shortest of the four; another of them appeared to be very active on his feet; they spoke frequently, and appeared to be Englishmen; they used a very threatening manner to me about my fire arms; I told them they were in possession of the house, and could satisfy themselves; my little son, five years old, told them how many guns and pistols I had in the possession of the carpenter, Johnstone, the deceased; the window was secured in a temporary way by a bolt, as it had been only paced there two days before; it could not be pushed open without violence; there were a great many panes of glass broken; I missed a good deal of my wearing apparel and a number of Mrs Dutton's trinkets.

Martin asked the witness in what part of the house Johnstone was shot? Witness – I should suppose it was in a little parlour from the marks of the blood; when I entered the room it was filled with the smoke of gunpowder; I could not see what took place in the hall.

THOMAS GIEVER deposed – I an Irishman from the Country of Mayo; I have been four years in the Colony named Christmas; I came in the "Bengal Merchant"; I came from Sheerness; I was a pedlar, and was tried at Newcastle, for stealing a watch; I was sent here from the assize for seven years; I have been punished four times; twice for losing sheep, once for leaving my station without a pass, and once for refusing to carry the rations fifteen miles; my punishments were fifty, one hundred, twenty-five and fifty lashes; I was assigned to Mr. Bettington three weeks after I arrived; I was last at Boggybrine, a station about three miles from Mr. Dutton's, and eight miles from the head station; Mason and I took the bush on the 9th March, and got over the Liverpool-range; Walker and Howard were at the same station; Mason Green and I did not one robbery while Mason Green and Dailly did another; Green was assigned to Mr. Blaxland, and Dailly to Mr. Bettington; James Martin, James Mason, and James Walker, and I, did the robbery at Mr. Dutton's on the 24th March; we were then stopping with Howard, and did not determine on whether we would rob Mr. Dutton, or Dr. Macartney, until Walker joined us on the Spring Creek; when Mason and Walker joined us we determined to go to Mr. Dutton's, and set out about an hour and a half before sun down; the only arms that we had were a cut down musket and a fowling piece, and all the ammunition we had was what was in the guns; we had all masks on, made of cloth, two of which were made of new print, and the other two were made of an old shirt with holes cut in them to see through; when we went to Mr. Dutton's; we stood for a little to see that all was quiet, after which Martin burst in the door, and I followed him; Mr. Dutton then came in, and Martin seized him, and told me to put him up in the corner of the room and to shoot him if he moved. I had the cut down musket, Walker had to the gun, and the remaining two had sticks which they had cut before we went into the house; the others then went and brought Mrs. Dutton and the children, and the female servants; after about half an hour I saw one of Mr. Dutton's servants enter the room with a pistol in each hand, and told Walker to stand,

on which he rose the fowling piece, and told him to stand, when the man fired and wounded Walker on the breast, on which Martin seized the pistol out of the servant's hand and shot him in the head. I immediately ran out and made for Martin's station, and found him there with Green and Henry Beaverson; Martin told me that he had left Walker at his own station, and about half an hour after Martin overhauled the plunder; there were a good number of things three or four sovereigns and some orders, two pair of Wellington boots, a number of gold rings, and ink stand, a cruet stand, and several other things; Martin had charge of the things; he told me and Mason that the best thing we could do, was to leave the station for some days; we then went to several stations, but only stopped for refreshment. One of the stations, I have heard, belonged to Mr. Jones; we returned to Martin's about ten days after, and found he had moved to another. We went to him, and he told us he would get us some money and passes, so that we might pass for immigrants; Martin and Beaverson drew us our rations regularly. Beaverson is dead; I struck him with a tomahawk, which he had struck me with. On the Wednesday morning they brought us beef and milk, he poured out the milk, and it was so bitter I could not drink it; Martin and Mason tasted it, and sent Beaverson for more milk; he was away about twenty minutes, and when he returned he took the tomahawk in his hand, saying he would go and look for an oppossum, and just as I was going to eat I received a severe blow on the back of the head which stunned me; I got two other strokes on the front of the head, the skin on the back of my head and part of the flesh were hanging down; I ran five or six yards and fell hurting my shin; I got up and ran again, when Beaverson pursued me about half a mile with the tomahawk; I cast off my jacket and waistcoat and ran till I got to the road between Bow Plains and Cockabill, when I fell down in consequence of loss of blood; I lost the use of my limbs, on which Martin seized me and Beaverson came up, and was going to strike me again, but Martin would not allow him, as it was too near the road; they then took hold of my arms and led me back; I begged hard for my life, particularly of Martin, but he told me it was no use, and said he wanted none of my preaching; he said, when I was apprehended in a day or two, I would tell of his shooting Mr. Dutton's man, and they could not spare me; I then asked him to shoot me, but he refused to do that as the report would make an alarm; I then asked him to give me the laudanum bottle I knew him to have, and I would drink it sooner than be again struck by the tomahawk; Beaverson then went and got the two quart kettle, and the laudanum bottle, and poured in about an inch and a half into the lid of the kettle; I was not willing to drink it but they told me if I refused they would be worse to me; I then drank about half a glass full of the laudanum at two gulps, and they took me and set me under a large tree, and sat down about a quarter of an hour with me, and seeing that I was not going to sleep, they then gave me the rest of it, and about a quarter of an hour after they made a bed for me with an opossum cloak, and told me I must lie down; I refused; they told me I must do so, as the more I refused the worse punishment they would put me to; I laid down, and Martin said he would go and look after Beverson's sheep and he went away; about ten minutes after I said to Beverson I would sleep better if I had my boots off, when taking them off I sprang to the tomahawk and seized it; he sprang at me I got it, and he and me had a wrestle, we fell when I got clear and struck him two blows on the temple with the tomahawk, which knocked him down; I then made my way to one of Mr. Lesslie's stations, about seven miles off; after I had gone off I saw him rise and lean against a box sapling; when making my way to Mr. Lesslie's I threw up the laudanum in froth; when I got there I drank tea and water and throw it off my stomach, I was then sent to the head station; Martin told me he intended to kill me because I had seen him shoot Mr. Dutton's

man; Mason was sitting beside me when I was first struck, Martin told me that Walker had been wounded in the breast; I gave information to the constables, and on the Saturday, while I and the constables were looking for Mason, we saw the body of Beaverson about a quarter of a miles from where I struck him. I afterwards showed Mr. Sayers of the Mounted Police where I had been struck by Beaverson and Mr Sayers by the help of Green, recovered part of the stolen property. I have not seen Walker till then, till I saw him in Sydney; Howard was at the same station with me; Rawson was assigned to Mr. Bettington; Mason went for Walker on the night of the robbery.

Cross examined by Martin:- You supplied us with fire-arms on the day of Mr. Dutton's robbery, you lent us the arms before, when we went to rob one of Mr, Jones' station, you also lent us the arms when we robbed Mrs. Howards, and also when we robbed Mr. Wentworths station, there was no water in the laudanum when I took the first dose; I swear that I saw you shoot and murder Mr. Dutton's man: I swear that I saw you on the night after the robbery, I never told any one that Dailly supplied me with the fire arms.

JOSEPH BRENAN was objected to by Martin, as having been in court during the examination of the last witness. Brenan denied on oath that he had been in court, and deposed that he was overseer to Mr. Dutton, and on the night of the robbery was about half a mile off, when being told of the attack, I, the deceased and two other of Mr. Dutton's servants, got armed and made arrangements for taking bush rangers, when the deceased left the party and got in before the others, and I heard two shots fired; I ran up and saw a man making off; he called out shoot the b—r, I fired at him, when he dropped a bundle, which we found contained some property belonging to Mr. Dutton, and was covered with blood: I only saw two of the bushrangers, we recovered the pistols principally through voluntary information given by Walker; when we went into the house we found the family all in confusion, and the deceased was walking about deranged with his brains hanging out; he died about three quarters of an hour afterwards; after Walker mentioned the pistol I sked[sic] him where it was, and he told me it was forgotten by Roper alias Martin, where Mr. Dutton's black boy found it; the pistols were loaded with gunpowder and duck shot; after the bushrangers went away, we found two strange hats in the parlour, one of which is that produced in court; Johnson only called for his master and wanted to speak to him; I saw the shot extracted from Johnstone's head, it was similar to that with which the pistol was loaded.

Cross examined by Martin. – I do not know [i]n what room of the house Johnstone was shot.

Lieutenant **SAYERS** of the 80th Regiment who had command of the mounted-police in the district of Gammon at the time of the robbery; got information of the murder and robbery about the 27th of the month, and immediately turned out his party, when they kept beating about for information. When the approver Gievers gave information that induced him to take the party into custody, and found that the statement of Gievers was corroborated by the loculiity[sic] of the place where Reverson had been murdered; on searching he found tracks of the Opposum cloak having spread on it and a piece of damper and crumbs of bread, as if some person had been eating there. The marks of the cloak were by the grass having, been beaten down the reason Lieutenant Sayers went so particularly about the information given by Grieves was that it was of such an extraordinary character that they could scarcely believe. Approver then took the party to a new made grave, about half a mile off, where there was a large pool of blood, and where Beaverson was buried. Sayers was

surprised on looking at the distance between the Curryjong tree where the scuffle took place between Gievers and Beaverson, and was of opinion that the latter had not met his death under the tree. He found traces under the tree of a scuffle having taken place between white men; the traces consisted of marks of the feet of white men; afterwards took Howard and Rawson into custody for harbouring and for being accessories after the fact, when they admitted having taken care of Walker's sheep on the night of the robbery and murder at Mr. Dutton's; on the whole Mr. Sayers corroborated the statement made by Gievers; he also proved the finding of the cut musket and the fowling piece in such a way as to commit the prisoners with the circumstances, they being found concealed in the vicinity of the stations where the prisoners were assigned; he also subsequently discovered that the fowling piece had been stolen from Mr. Jones' station some time previous to Mr. Dutton's robbery. It was also proved by Mr. Sayers that on the day after the robbery Martin was seen with a white shirt on.

In cross-examination by Martin, Mr. Sayers stated that the approved informed him that he was sure that he (Martin) had put aside one of the prisoners Masons, and also that when the deposition was made by the approver, he stated that Martin gave him the first draught of laudanum, and mixed it with water, and before giving him the second draught said d—m him he has got as much laudanum as would have killed a hyrse[sic], and it has not put him asleep yet.

Mr. **ARTHUR BLAXLAND**, a Magistrate of the Territory, proved Walker's making a voluntary confession, after being in custody at the Gammon lock-up; after his wound had been examined and dressed by Dr. McCarty, he told Walker that it was a bad case for him, but if he would confess all, the Magistrates would consider his case. The prisoner then paused for some time and then made the confession. The prisoner Walker after being told that he was one of the parties at the robbery, and that it would be better to confess, said to the Magistrates, yes I was one of them, and I know I shall be hanged for it.

Dr. **McCARTHY** proved that the wounds on Walker's brest and arms were gun-shot wounds, with shot such as the pistol had been charged with when Johnstone fired it.

James [JOHN] Martin, in defence, stated that the case had been made up between Green and Gievers, to save themselves as had not been in any way connected with the robbery; the other three prisoners stated that they had nothing to say, and Rawson denied that he had any knowledge of the robbery and the murder until he was told of it when he was getting rations. Martin stated that he had subpaened his overseer, at the time of the murder, in order to prove that at the time of the murder, he had a sore foot, and that it was impossible for him to travel nine or ten miles to do the robbery; he also stated that as the approvers Green and Gievers had been in custody six or seven months, they had plenty of time in order to get the story concocted; he also insinuated that the account given before the Court, had varied materially from that given by the witnesses before the Magistrates. The depositions were then read at the request of Martin. From that of Green appeared that Martin had been in the bush with Oppossum Jack, whom it was generally supposed Martin had put aside as the knife, tinder-box, and pistols of Oppossum Jack, had been seen in the possession of Martin, and since then, Oppossum Jack had never been seen since he was also accused by several of the Government men of the neighbourhood, of having killed Oppossum Jack on which he, being then in liquor, fell a crying.

The Chief Justice, in putting the case to the jury stated, that the case was one of considerable importance, not only from the interest which this case had excited out of

doors, on account of the place in which the murder and robbery had been committed, as being in a lonesome part of the Colony, where there was but slight means of protecting the lives of the inhabitants, but also, because it involved the lives of three of the prisoners. He also adverted to the law of the case, as respects those present when the murder was committed; and also adverted to the necessity that exists for admitting approvers the whole of whose evidence it was not necessary to corroborate, but merely to see that the gaps and chasms in it were filled up, and that the whole body of the evidence was consistent in all its parts, and called the attention of the jury to the cross-examination of Mr. Dutton, in which the prisoner Martin showed such a knowledge of the circumstances that had occurred at the house of Mr. Dutton, as could only have been obtained by his being present at the murder; he also pointed out to the jury the close corroboration which Giever's testimony had received from Mr. Sayers, Mr. Dutton, and several other unimpeached witnesses; and stated that the jury were first to make up their minds respecting Martin, Mason, and Walker, and if they were guilty, then they were to enquire whether Howard and Rawson had been guilty of harbouring and abetting them; at the same time he considered the evidence against the latter as of a slight description. After the summing up the prisoner Martin said, the way in which he had come to the knowledge of the bushrangers having threatened the life of Mr. Chiesly, by saying at Dutton's that they would have his life and would swim in his blood, was, that he heard the prisoner Walker tell it to the Magistrates; that was also the way in which he became acquainted with the fact that coarse language had been used by the bushrangers. The Jury retired for about ten minutes, and returned a verdict of guilty of wilful murder against Martin, Mason, and Walker, and a verdict of not guilty against Rawson and Howard.

The Jury, before returning their verdict, wished to be informed what Mr. Dutton had to say in favour of the prisoner Walker; when Mr. Dutton said, that Walker had shown great civility to Mrs. Dutton, the children, and the females not having ill-used them in any way, and when he bailed them up he behaved with becoming respect to them.

His Honor said, it could not affect the prisoner's guilt.

Proclamation being made, his Honor in a feeling and impressive address commented on the mass of crime which the trial had brought into view as connected with Martin, which he regarded as being unparalelled[sic] in the history of the colony, as there was good reason for believing that he had frequently inbrued his hands in the blood of his fellow creatures. From the details given on this trial there were strong reasons for believing that his old confederate, Oppossum Jack, who had been the scourge and terror of the Colony, had been destroyed by him. It was also clearly proved that he had shot the deceased man, Johnstone, while his attempts to deprive his accomplice Gievers of life was such as to strike terror to the heart of every one who heard the details given by that individual. His Honor also stated that the blood of Mason and Walker, the youths who stood with him at the bar, was also chargeable on his head; and after having admonished each of them to prepare for a future state, he passed sentence of death on all of them in the usual form. The prisoners heard their awful sentence unmoved, and appeared unaffected by what had been said to them. See also Australian, 10 November 1840.

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

TEMPERANCE, 1/6, 11/11/1840
EDITORIAL re CORONERS' INQUESTS AND DRUNKENNESS.
Quotes examples from Parramatta:-

1st Case. - On the 3rd of October, the deceased, a fine boy, aged eight years, named **EDWARD [EDWIN] ASHDOWN**, was returning with his father from the country, and was riding on the dray. The father became intoxicated on the road, and neglected the child, who fell off, and was killed by the wheel passing over his body. The parent was so drunk that, after getting down from the dray, he could not stand, or render the least assistance.
2nd Case. – **WILLIAM LANE**, a butler, who had given way to intemperate habits, while labouring under a fit of temporary derangement produced from drink, hung himself.
3rd Case. – **FREDERICK CLAYTON**, carrier, a man of intemperate habits, and was labouring under temporary insanity produced by drink, cut his throat.
4th Case. – **JAMES HARRISON**, it was proved in evidence, had been a hard liver, and been cautioned by the medical men to refrain from drink some short time before his death. He was taken suddenly ill in the night, and died almost immediately, from organic disease in the heart, produced by the too frequent use of ardent spirits.
5th Case.- **MARY LOUIS**, who lived near the Lunatic Asylum, and was much addicted to drunkenness, was taken ill on Sunday, the 19th October, and died almost immediately. The cause of death was disease of the heart produced by previous intemperance.
6th Case. - **JOHN GAMBLE,** A CARTER TO Messrs. Newnham and Tooth, was in the habit of drinking. He was found dead under the wheel of his dray, on the road to the Cowpastures. It was stated in evidence he had taken two glasses and a pint of ale. He fell off the dray, and was taken up quite dead.
7th Case. - **JOHN ROBERTS** was on his way o see his son, near Liverpool, when he and the person in whose cart he was riding, had, it appeared, at different places on the road, drank twelve glasses *each* of spirits, and half and half, and on arriving at their destination, the deceased was found suffocated, lying on the bottom of the cart.
CJA, 6/526, 11/11/1840
SUPREME COURT – CRIMINAL SIDE
Saturday, Nov. 7
(Before the Chief Justice)
CATHERINE WAPSHOT, who had previously been found guilty of destroying the life of **CATHERINE PHILLIPS**, by pushing her into a fire, was sentenced to be imprisoned and kept to hard labour for three years in the female factory at Parramatta.
THOMAS SKEWES, who had previously been found guilty of the manslaughter of **JOHN PERRY [PARRY]**, a seaman on board the brig Ullswater, by stabbing him in the abdomen with a knife, was sentenced to be transported for fourteen years.
BILLY alias **NEVILLIS BILLY**, who had been previously convicted for the wilful murder of **[JOHN] DILLON** was sentenced to death.
JOHN GEORGE MARTIN was found guilty of the wilful murder of **JOHN JOHNSTON**, at Gammon, on the 24th March last, and **JAMES MASON** and **JOHN WALKER** were also found guilty of aiding and abetting the same, sentence – death.
(Before Mr. Justice Stephen)
MICHAEL MONAGHAN was found guilty of the wilful murder of **ROBERT ARCHER**, at Glendon, on the 2nd of August, 1838, by beating him with a stick. Sentence – death.
ATTEMPT AT SUICIDE. - A female residing in Sussex-street attempted to put a period to her existence on Friday evening inst, by swallowing a quantity of sugar of lead which she had purchased at Dr. **LLOYD'S** during the course of the day. As soon as the fact of her having made the attempt was ascertained, a number of surgeons

were sent for, and the stomach pump was applied, in consequence of which the fatal effects of the poison was totally counteracted, and she was pronounced entirely out of danger at an early hour on Saturday evening. It is said that she was induced to the commission of this act by the fatal influence of the green-eyed monster.

SYDNEY HERALD, 17/11/1840
Dowling C.J., Stephen, Willis JJ., 16 November 1840
JOHN HOWARD and **ROBERT RAWSDON**; who had been tried and acquitted as accessories after the fact, in a case of murder, were ordered to be returned to Hyde Park Barracks, and not to be assigned in the quarter of the colony where the murder had been committed. See also Australian, 10 November 1840.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

CJA, 6/528, 18/11/1840
INQUESTS. - An inquest was held on Friday last, at the Labour in Vain public-house, on the body of **MARY DUNCAN**, the wife of **ALEXANDER DUNCAN**, the landlord of that house, who died suddenly in an apoplectic fit, on Wednesday last, produced by habits of intemperance. Verdict accordingly.

Another inquest was held on Saturday, at the Scotch Thistle public house, corner of Bathurst and Kent-streets, on the body of a woman named **SARAH SHARP**, who died suddenly on the previous night from natural causes. Verdict accordingly.

A third inquest was held on the same day, at the Blue Bell, corner of Erskine and Sussex-streets, on the body of a man named **PRITCHARD**, who died suddenly at his work on the previous day in an apoplectic fit. Verdict accordingly.

LETTER to the Coroner, JR Brenan, re his damages in Brenan v. Jones.

CJA, 6/529, 21/11/1840
On Thursday an inquest was held at Mr. Le Burn's public-house, Parramatta-street, on the body of a female, named **THERESA HALVIE**, who expired suddenly in the Benevolent Asylum, on the previous day, in consequence of a disease of the heart. Verdict – Died by the visitation of God.

Another enquiry was made, the same day, at Mr. Tunk's public-house, corner of Castlereagh and Bathurst-streets, respecting the death of an infant, only three months old, who had expired suddenly in convulsive fits. – Verdict accordingly.

CJA, 6/530, 25/11/1840
On Wednesday evening a man named **FRASER**, who had been discharged two or three days ago from the *Bolina*, leaped from the deck of the *Coromandel* schooner into the water, and was instantly drowned, there being no boat at hand to pick him up.
INQUEST. - An inquest was held on Monday last, upon the body of a convict named **SAMUEL THOMAS**, who had been sent to Sydney from Norfolk Island, for the benefit of his health, and who expired suddenly in the Hospital in an apoplectic fit on the previous Saturday. Verdict – died by the visitation of God.

EDITORIAL re Brenan v. Jones – costs and damages.

CJA, 6/531, 28/11/1840

CRIMINALS. - The following prisoners have been ordered for execution by his Excellency the Governor and Executive Council, which met on Monday last for the express purpose:
MARTIN, MASON and **NEWMAN**, for wilful murder, to be executed at Sydney Gaol on 8th December; **BRADLEY** and **MAUNAGHAN [MONAGHAN]** for murder, and **LEGGE** for rape, to be executed at the same place on the 11th December; and **BILLY** alias **NEVILLES BILLY**, the aborigine native who was convicted or murder, will be executed on the spot where the offence was committed in the Wellington district.
MELANCHOLY OCCURRENCE. - We had in our last number, the painful duty to record an injury inflicted upon a poor man which ultimately led to the amputation of the shattered limb. We have since heard of a more serious accident, attendant with the loss of human life. The particulars are as follows. On Thursday last a man named **DESMOND**, a hired servant of Messrs. Anderson and Watson, was assisting another person to yoke a young bullock which was very untractable, several attempts were made to effect the desired purpose, but without success; at length the animal rendered furious by the means which were adopted to yoke him, suddenly broke loose and rushed at Desmond, who was unable to get out of the way, and gored him in the body; the unfortunate man fell backwards and immediately expired. The depositions of the witnesses, embodying the above facts, were taken by Mr. **SIMPSON** on Saturday morning. – *Herald.*
INQUEST. - On Friday last a Coroner's inquest was held at the Garrick's Head public house, Pitt-street, on the body of **JOHN GILL**, an infant under a year and a half old, who had been accidentally drowned while on a visit to his grandfather at Botany; verdict accordingly.
RESPITE. – The sentence of death passed upon **JOHN WALKER**, who was found guilty of murder before the supreme court, on the 7th ultimo, has been commuted to transportation for life to Norfolk Island.

CJA, 6/533, 05/12/1840
FATAL PUGILISTIC CONTEST. - A quarrel took place on Monday last, between two men named **STEPHEN RALPH** and **STEPHEN TANCARD**, which the contending parties agreed to settle by a pugilistic encounter. This they immediately proceeded to do, and the result was, that Tancard died shortly after the termination of the conflict, while the life of his opponent is still despaired of. An inquest has since set upon the deceased, but was adjourned till Monday next, in consequence of the absence of the necessary witnesses.
INQUESTS. - A coroner's inquest was held at the Royal Oaks public house, a few days since, on the body of a youth named **THOMAS MANN**, who met his death by falling down into the hold of the *James Laing*, a vessel at present lying in Sydney Cove. Verdict - accidental death.
Another inquest was held on the same day, at Le Burn's public house, on the body of a man named **BOULDY**, who had died in the Benevolent Asylum on the previous day, from natural causes. Verdict accordingly.
ATTEMPTED SUICIDE by a **STONE**, an eating house keeper x 2. Dr. **SECCOMBE.**

TEMPERANCE, 1/10, 09/12/1840
WEEKLY SUMMARY

A few days ago, a fight took place between two men, whose names were **STEPHEN RALPH** and **STEPHE N TANCARD;** the former was killed. They had been drinking, which led first to quarrelling and then to fighting.

CJA, 6/534, 09/12/1840
CORONER'S INQUESTS. - On Monday morning, an inquest was held at the Red Lion public-house, corner of Pitt and Goulburn-streets, on view of the body of Mrs. **MARGARET EMERSON**, who came by her death in consequence of injuries sustained by a fall down stairs, on Thursday last. The deceased was attended by Dr. **RUSSELL**, who certified that death was caused by apoplexy produced by injuries on the head, and the jury returned their verdict accordingly.
EXECUTION. - The three unhappy men, **JAMES MARTIN, JAMES NEWMAN,** and **THOS. MASON,** convicted of murder at the last criminal court, expiated their crimes upon the scaffold yesterday morning, in the presence of a large concourse of persons assembled to witness their execution. They were attended by their several religious pastors, to whose exhortations they seemed to listen with deep attention, and after they had left them, they murmured their supplications in apparently sincere earnestness, until the fatal bolt was withdrawn, and they were heard no more.

CJA, 6/535, 12/12/1840
SUSPECTED MURDER. - A man named **BRADLEY**, residing in Cumberland-street, near Bullivant's public-house, is in custody on suspicion of murdering his wife on Monday last. It appears that the prisoner, deceased, and two lodgers had been drinking together during the whole of the previous week, and on Monday he ran out and raised the alarm that deceased was dead. On discovery of the fact he was taken in charge until an inquest decided upon the means by which she came to her death.
ADJOURNED CORONER'S INQUEST. - The adjourned inquest on the body of **RICHARD** RALPH **[or STEPHEN],** who was killed in a pugilistic encounter with **STEPHEN TANKARD** on Monday week, was held at Stewart's public house, in Parramatta-street, on Monday last. The jury returned a verdict of manslaughter against Tankard as principal and against three other men, named **LEONARD, M'CLEAR** and **M'GUIGAN**, as accessories. Tankard and Leonard were committed on the coroner's warrant, and active pursuit is being made for M'Clear, and M'Guigan**,** who have absconded. Copies of the proceedings were applied for by the prisoners' solicitor for the purpose of applying to the Supreme Court to admit the parties to bail, which was ordered.
BRUTAL ASSAULT. - A ruffian named **JAMES CONNOR**, a plasterer, residing in the notorious Fowler's-lane, off Sussex-street, is in custody, waiting the recovery of a female named **HUDDERSFIELD**, in consequence of brutal treatment received from the prisoner. He underwent his first examination at the police office, on Wednesday, during which the unfortunate woman's screams, as she struggled in continuous fits in an adjoining cell, were dreadful.
MYSTERIOUS CIRCUMSTANCE. - A skeleton was found buried between two rocks, by the men employed in digging the foundation of the fortification to be erected on Pinchgut Island, a few days back. A surgeon who examined the remains, which had evidently been concealed there for many years, stated that he found slugs buried in the skull. No investigation has taken place on it – we presume it is considered needless.

DISGUSTING DETAILS = refers to Herald, yesterday??

TEMPERANCE, 1/11, 16/12/1840
WEEKLY SUMMARY
A young man, named **MILLER**, late Chief Officer of the 'Volix', was killed on Thursday last by the bursting of his gun, on the Parramatta road.

JOHN LEGGE for rape, aged 60; **ENOCH BRADLEY**, and **MICHAEL MONEY**, for murder, underwent the extreme penalty of the law on Friday last.
DEATHS.
On the 1st instant, caused by incautiously swimming in the Murray River, **LUKE WILLIAM REDDALL,** deeply lamented by his family, and all who knew him. The young men of Australia, esteemed him greatly, and the senior members admired his moral line of conduct; he was in his twenty-eighth year.

CJA, 6/537, 19/12/1840
Editorial by **ROBERT S. M'EACHERN**, the new owner, with **JAMES M'EACHERN** as the new editor, with effect from 1841.

CJA, 6/538, 23/12/1840
EDITORIAL - Farewell from **WILLIAM JONES,** previous owner.
COORONER'S INQUESTS. - An inquest was held at the Star public house, at the corner of Phillip and Hunter-streets, on the body of a young woman named **MARY ANN SMITH**, who was a servant in the employ of Mr. **QUINN**, of Pitt-street, and who was killed by the falling in of the brickwork of the gateway upon her, with Mr. Quinn's child in her arms on last Saturday week, while passing through a young man residing in the yard, being alarmed by his wife, who saw a cloud of dust arise, ran to the spot and rescued (assisted by six or seven other men who were passing) the young woman from her perilous situation. They found her lying on the child (belonging to her master) to protect it; and she received such injuries on the loins and small of her back in doing so, that she was carried to the Hospital, where she expired on Thursday night. One of the Jurors on the inquest expressed in strong terms of censure the conduct of Mr. Quinn, to whom he stated two months before the dangerous state of the brickwork, which was then overhanging nine inches, and he (the Juror) felt the greatest apprehension for his own children in driving through it. The Coroner explained the law of *deodands* being placed on inanimate objects, by which sudden death was produced, and observed that, according to existing laws (which was to be deplored) no remedy could be obtained against Mr. Quinn, because the side of his house could not be removed to pay the forfeit of the *deodand* (if lawfully returned) by the Jury. The Jury, under the direction of the Coroner, returned a verdict of "accidental death." But we think Mr. **BUCHANAN**, the Town Surveyor of Buildings, could deal, under the act, with Mr. Quinn, so as to protect the lives of her Majesty's liege subjects from similar cases of peril. We hope he will look it in this instance.

On Monday last there were three inquests held as follows:- one on a skull found in the neighbourhood of Harrington-street. A medical gentleman certified that, in his opinion, it was the skull of a while person, but there being no evidence to account for its discovery, the Jury returned a verdict of "skull found."

The same day another inquest was held at the Three Tuns (Driver's), King and Elizabeth-streets, on the body of a man named **CHARLES BARTLEY**, who was found dead in an out-office at Woolloomooloo, in premises where he had been

employed the day previously. Dr. **HURNELL** certified that he (the deceased) came to his death by natural causes, and the Jury found their verdict accordingly.

Another inquest was held the same day on the body of a little girl named **MARGARET STRINGER**, whose death was caused by convulsions produced by worms. On a *post mortem* by Mr. **DAY**, surgeon, of Hunter-street, at the desire of the Jury, the stomach of the deceased presented an animated spectacle which would hardly be credited. Verdict – "Visitation of God."

CJA, 6/539, 26/12/1840
REMARKABLE DEATH. - On Tuesday last, a little boy named **JOHN LOCKHART,** when running along the wall of the old burial ground with an open pen-knife in his hand, missed his footing and fell inside the wall upon the hand in which was the open knife, which cut his throat. He was afterwards discovered with the pen-knife lying near him stained with blood and the wound freshly bleeding and conveyed across the street to Mr. **CAMPBELL**'s medical establishment, but life was found to be extinct. An inquest was held upon the body at Simpson's public house on the following day, and Doctor **SAVAGE** having certified to the above extraordinary circumstances, the jury returned a verdict of accidental death.
MELANCHOLY LOSS OF LIFE THROUGH DRUNKENNESS. - Accounts from the Hawkesbury state, that a boat containing six souls – two men, two women, and two young children (the youngest only two months old) was upset on that water on Monday last and, melancholy to relate, the whole party perished. It appears that they had gone to Windsor to purchase fruits, groceries, and spirits for their Christmas festivities and became intoxicated on their return, which occasioned the fatal accident. The body of one of the children had been found.

TEMPERANCE, 1/13, 30/12/1840.
WEEKLY SUMMARY.
Six persons, viz. two men, two woman, and two children were drowned in the lower Hawkesbury, last week. It seems they had been to Windsor to purchase supplies for the Christmas festivities; they became intoxicated, and the issue was fatal to all.

CJA, 6/540, 30/12/1840
EDITORIAL. Farewell address.
OUR FRIEND MR. BRENAN – a last blast at the Coroner.

FROM 1841 TO BE THE FREE PRESS AND COMMERCIAL JOURNAL.