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.

SYD1841

SYDNEY HERALD, 02/02/1841
Supreme Court of New South Wales
Dowling C.J., 1 February 1841

JOHN LAWLER, assigned to Mrs. Sutton, of Bathurst, was indicted for having, on the 22nd of June last, beat one **THOMAS McNAB**, a servant to Captain Piper, with a hurdle-fork, so as to cause death; and **ZACHARIAH COOPER** was indicted for aiding and abetting, - they both pleaded not guilty. Lawler handed in a written petition to have counsel assigned to him. His Honor requested Mr. **CALLAGHAN**, who was in court, to undertake the defence of Lawler. Mr. Callaghan informed his Honor that the charge was a very serious one, and as he knew nothing of the case, he respectfully begged leave to decline having anything to do with the case. The Attorney-General said he had no wish to prevent parties from getting legal assistance to conduct their defence; but he thought that the court, for its own dignity, ought to require the applications should be made before the parties were placed on their trial. His Honor informed the prisoner that he ought to have made his application sooner.

* * * *

John Lawler and Cornelius Cooper, assigned servants to Mr. Sutton, of Bathurst, were then put on their trial.

The Attorney-General, in opening the case, stated that he was sorry that the present case was one which, like most of the other cases of crime which came before that court, originated in rum. Those gentlemen who would attend to the proceedings of the present session would perceive, when the calendar was gone through, that more than half the cases for trial owed their origin to rum, the principal vice of the colony. He was aware that some of the gentlemen of the jury earned their subsistence by dealing in spirits, which he was sorry to say, was a legalized trade, for which they paid a heavy license; but when such were the effects produced by it, he could not help being sorry that any person could be found willing to embark in such a dreadful trade. The present case was not one in which any publican was concerned; but still that did not alter the evil, as the crime was the same whether the liquor was drunk in a hut or in a public house; and he trusted that the gentlemen at present embarked in the trade would seriously consider the immense mass of crime which originated in the vending of ardent spirits, which appeared to be nothing less than a curse on the colony. He then called a number of witnesses, who proved that, on the day laid in the indictment, the prisoners went to Captain Piper's station, with half a gallon of rum, and were met there by another man named **LACHLAN BYRNE**, who had obtained his liberty twelve days before : he also had a bottle of rum; they then commenced drinking till the whole party became intoxicated, and lay down to sleep. Part of the rum was at this time stolen. When they awoke, Lawler charged the deceased with taking it, and commenced beating him; they were parted, after which Lawler again attacked him, and threw a quantity of burning embers on him, which burned his foot; it was also proved that he had struck him with a hurdle fork, and when the deceased tried to leave the farm to complain to Captain Piper, one of the witnesses, Wm. McWilliams, prevented him, stating that he should not get any one into trouble. The prisoner Cooper was also proved to have taken rum to the station. The deceased died about fourteen days after in the hospital, of an unusual haemorrhage of blood in the lower intestines. Mr. Busby, the surgeon of the Bathurst hospital, stated, that he examined the body of the deceased, and was of opinion that death had been caused by the rupture of some of the larger blood-vessels, but from the time which had intervened,

he was not able to say whether the rupture had been caused by external injury or not; at the same time, had he not heard of the assault, he should have ascribed death to natural causes. In putting the case to the jury, his Honor stated that the only evidence against Cooper was his taking the rum to the station, in company with the other prisoner Lawler, which was a highly culpable act. As to the case against Lawler, the jury was to decide on the evidence of the assaults, as given by those who witnessed them, and that of the medical gentleman who had made the post mortem examination of the body of the deceased, and instructed them, if they had any doubt, to give the prisoners the benefit of it. The jury retired ten minutes and returned a verdict of "not guilty," against each of the prisoners, who were discharged. Previous to their being removed from the dock, His Honor admonished them as to their future conduct, and stated that had they been found guilty they would certainly have been executed, as the Court was determined to make a fearful example of the first case of crime originating in rum, which appeared to be the principal source from which all crime flowed.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University.
See also Sydney Gazette, 4 February 1841; Australian, 2 February 1841.

SYDNEY HERALD, 08/02/1841
Supreme Court of New South Wales
Dowling C.J., 6 February 18
Saturday. – Before the Chief Justice and a Common Jury.
FRANCIS SILVESTER, of Windsor, was indicted for having, on the 26th October last, at Colo River, in a prize-fight, killed one **JAMES BIVEN**; and **MICHAEL LAMB**, **the younger**, **JAMES CULLEN, JAMES HUNTER,** and **JOHN HUXLEY**, were indicted for being present, aiding and abetting the said Francis Silvester. In opening the case, the Attorney General said he was extremely sorry to see so many natives of the colony arraigned at the bar of that court on such a charge, for it was evident from the appearance of the three young men that they were natives of the colony, and he could not help remarking that, although morally, on account of their age, less culpable than the two hoary-headed sinners who were placed in the dock with them, yet they were all equally answerable to the law of the land. He was sorry to say that such brutal scenes were far too common in different part of the colony, and the calendar for the present sessions exhibits another case of a similar description. When such lamentable consequences flowed from such scenes, it became the imperative duty of all who were concerned in the administration of justice to set their faces determinedly against such brutal practices, and to teach those who engaged in them that they should not engage in them with impunity.

From the evidence for the prosecution it appeared that they, John Lamb, brother of the prisoner Michael Lamb, and the prisoner Silvester, went to the residence of the deceased and his brother, when Michael Lam and Silvester told the surviving brother that they were come to fight him; he asked what he had done that he should fight them? when one of them, John Lamb, said that he knew he was no match for John Biven, but he would fight him for a pound, which was declined. After this these two went away; after which Michael Lamb and Silvester made a match to fight the deceased, William Biven, for £5, at eight o'clock on Monday morning, at the Colo River, about eighteen miles by water from Windsor, and the sum of five shillings put down as a deposit. The fight came off at the appointed time and place, in the presence of about twenty-six persons, Oxley and Lamb acting as seconds for Silvester, and two men, named **JOHN ROBINSON** and **WILLIAM ELKIN**, acted as the seconds of

the deceased; **WINTER** was one of the parties who assisted in bringing water to refresh the men, in order to enable them to continue the fight, while Cullen, the oldest of the prisoners, acted as time-keeper, and a person of the name of John Jones, now in the bush, and who was in the habit of going about the country getting up and superintending fights, acted as the keeper of the ring, by threatening to pummel any one who should venture to interfere with the combatants. The fight lasted for about an hour and a-half, during three quarters of an hour of which time, in the language of the Attorney-General, "the deceased could scarcely see his opponent, and of course merely stood up to be pummelled and beaten." The witnesses, however, all proved that there was no unfair play during the fight; it was also proved that Huxley, one of the prisoners, tried to prevent the fight.

Mr. **WINDEYER**, who appeared for Silvester, Lamb, and Huxley, in defence, objected 1st. – That prize-fighting was not illegal by either common or statute law. The only authority on the case was an opinion given by Judge Foster, who says that prize-fighting is not to be encouraged because it leads to idleness and debauchery. 2dly. – He contended that no evidence had been given that the deceased had met his death from the hands of Silvester or from falls caused by them – for aught that appeared to the contrary it might have been a fight at quarter-staff, or any other kind of contest as is usual in such cases. The prisoner's counsel gave a lengthened exordium on boxing as being an old manly British sport, calculated to foster and encourage the manly feelings, such as courage, agility, &c., and concluded by stating, that when the spirit which had dictated the fight for which the prisoner's appeared at the bar should fail, he would have but little hope of his adopted country.

In putting the case to the Jury His Honor said, that in point of law he was bound to tell them that prize-fighting was an unlawful act, and being such, any persons being guilty of it were punishable by the laws of the country, as well as those who were present at such scenes, or who were aiding and abetting to such unlawful act. He hoped from his heart that nothing would ever fall from that or any other bench that had the most remote tendency to put down, or even in the least to abridge the innocent sports of the populace; but whenever these sports and amusements were of such a description as tended to injure the bodies, affect the lives, or corrupt the morals of the people, then such sports and pastimes were unlawful, and those who engaged in them were liable to be punished for engaging in them; even in the case of the lower creation, such was the case as respected cock-fighting, to which some reference had been made during the trial. It had been said that the brutal sports and pastimes had been decreasing in popularity by reason of the prevalence of an erroneous refinement in manners and principles rather than from any real evil that was attached to them or which arose from them; but he was convinced that it was to be attributed to far higher and nobler causes, viz. – to an increase of morality, and as one of the benefits arising from the extension of the principles of christianity. In commenting on the evidence His Honor called the attention of the jury to the fight as being a premeditated one, it was a preconcerted act; and left it to the jury to say whether in common parlance a fight such as had been described was one with the fists or with quarter-staves. He also directed them to consider the evidence of the surgeon which showed that death had been caused by blood flowing on the brain, which had been caused by a fall, and injuries received on the neck. The Jury retired for about five minutes and returned a verdict of manslaughter against Silvester; they also found Lamb, Cullen, Hunter, and Huxley, guilty of being present aiding and abetting, but recommended Huxley to mercy on account of his having endeavoured to prevent the fight. The prisoners were then remanded. His Honor called on Mr. Keck, the principal gaoler, who being sworn,

deposed that all the prisoners had been in gaol since the 1st of December, and that the three young men had conducted themselves during that period remarkably well, and all seemed to feel the condition in which they were placed, particularly the prisoner Silvester. Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 09/02/1841
Supreme Court of New South Wales
Stephen J., 8 February 1841
Before the Mr. Justice Stephen and a Common Jury.
STEPHEN TANCARD, of Sydney, was indicted for the murder of **RICHARD RALPH**, on the 2nd November, in a boxing match at Blackwattle Swamp, and **CHARLES LEONARD** was indicted for being present, aiding and abetting.

The prisoners were defended by Messrs. **WINDEYER** and **a'BECKETT**; the latter for Tancard, and the former for Leonard. The defence of the latter was, that he went to the ground for the purpose of preventing the fight, and there was but one witness who was on the ground who had deposed as to his calling out "time," while that witness had been contradicted by all the others. Tancard's defence was, that the deceased had incited him to fight him by throwing up his hat in Parramatta-street, and offering to fight any man in the street; that after a round or two the prisoner offered to give up the fight, which the deceased refused to do; and that the deceased told him that unless he continued the fight he should polish him off, and therefore he was necessitated to continue the fight in self-defence. Evidence was also given in favour of the character of the prisoners.

In putting the case to the jury, His Honor stated, that notwithstanding the ingenious arguments used by Mr. Windeyer, he was bound to tell them that boxing or fighting was an illegal act, not only according to the opinion of Justice Foster, who was one of the highest authorities that could be quoted on criminal law; but also on the authority of Blackstone, Sir Matthew Hale, Sergeant Hawkins, and on that of East's Pleas of the Crown (page 207). If these authorities were not to be relied on, he did not know what authorities could be quoted in criminal courts of justice. But even the reasonableness of the question must convince every intelligent person that fighting with the fists was a most illegal act. Was it to be endured in any Christian community, that two men were (as in the present case) first to degrade themselves by the use of intoxicating liquors, and then to beat, lame, kill, and murder each other? At the very least, the offence was manslaughter of the most aggravated description; and he would even go further and instruct the jury, that if, in any case of death by boxing, it should be proved that there was malice among the causes which led to such contests, and that the parties wagered on the decision of such quarrels, then the offence became murder. It was of the utmost importance to the welfare of the community that the provisions of the law should be strictly enforced, to suppress such abominable, brutal, and disgusting practices. It had been said by the learned counsel that boxing was a national amusement. But he would put it to the common sense of the jury, what amusement could there be in such illegal acts? Was it to be tolerated for an instant, in such large towns as this, that mobs of disorderly blackguards should be drawn together for the purpose of contemplating a couple of infuriated drunkards shedding each other's blood? He considered it but justice, in the case of the principal Tancard, to state that there were a number of mitigating circumstances in his case, all of which would go in his favor as to mitigating his punishment, should he be found guilty; but all that the jury had to do was to decide on the evidence. The jury retired for about

five minutes, and on their return acquitted the prisoner Leonard, who was discharged; they found Tancard guilty, but strongly recommended him to mercy, on account of his previous good character, the provocation he had received, and his offering to give up the fight. His Honor ordered the prisoner to be remanded till he had an opportunity of consulting His Honor Mr. Stephen, as to his sentence, which should be as mild as consistent with public justice, as the ground on which the jury had recommended him to mercy were such as the Court would pay attention to. See also Sydney Gazette, 11 February 1841; Australian, 11 February 1841.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

TEMPERANCE, 1/19, 10/02/1841
SUPREME COURT – CRIMINAL SIDE
MONDAY, February 2
(Before the Chief Justice)
JOHN LAWLER and **CORNELIUS COOPER** were indicted, the former with beating one **THOMAS M'NAB** with a hurdle fork, and the latter with assisting him, so as to cause death. Not guilty.
SATURDAY, February 6.
(Before the Chief Justice and a Civil Jury)
FRANCIS SILVESTER, of Windsor, was indicted for having on the 26th of October last, at Colo River, in a prize fight, killed one **JAMES BIVER**, and **MICHAEL LAMB,** the younger, **JAMES CULLEN**, **JAMES HUNTER**, and **JOHN HUXLY**, were indicted for being present, aiding and abetting the said Francis Silvester. - The Jury returned a verdict of manslaughter against Silvester; they also found Lamb, Cullen, Hunter and Huxly guilty of being present aiding and abetting, but recommended Huxly to mercy on account of his having endeavoured to prevent the fight.
GEORGE STOCK, late of Penrith, was indicted for the wilful murder of his own son, **WILLIAM STOCK**, aged eight years, by having on the morning of the 4th of November thrown him into the River Nepean, and held him down till he was drowned. Acquitted.
An inquest was held on Saturday on the body of an old man, **NAME NOT ASCERTAINED**, who died the previous day in the Hospital. It appeared, from the evidence of a constable, that on Thursday evening, as he was passing, near the stores of **STEWARD A DONALDSON**, Esq., he found the unfortunate man in a state of insensibility, and removed him immediately to the Hospital. Mr. Surgeon **HARNETT** certified, that death was caused by apoplexy, and a verdict to that effect was returned accordingly.
INQUEST. - Yesterday morning, an inquest was held on the body of an old man, named **JOHN MURRAY**, who expired on the preceding day. Surgeon **CUTHILL** having certified that death had been caused by apoplexy, induced by intemperance, a verdict to that effect was returned.

SYDNEY HERALD, 16/02/1841
Dowling C.J., 15 February 1841
STEPHEN TANCARD, who had been convicted before Judge Stephen of manslaughter, was then placed in the dock, when the Judge before whom he had been convicted informed him that he was happy to say, that, from the evidence adduced on his trial, that it was in his power to say that the case of the prisoner was very different

from the other charges of a similar description which had been tried before his Honor the Chief Justice : the prisoner had received a good character, and the Jury had, in the exercise of their discretion, recommended the prisoner to the merciful consideration of the Court. He had since the conviction, ascertained by enquiry that the prisoner, up to the time when he committed the offence, had been well behaved in the colony, and, therefore, he, as a dispenser of the law was anxious to give full effect to that character; but he could not shut his eyes to the evil effects of prize fighting, which had been so ably exposed by his Honor the Chief Justice, and which he trusted would receive publicity as it deserved, His Honor here gave an outline of the evidence, and sentenced the prisoner to one month in Sydney Gaol, in consideration of the confinement the prisoner had already endured, and intimated that he should also consider it but fair to the prisoner to inform His Excellency that the said outline was a full answer to all the offences charged against the prisoner, and that if he endeavoured in future to keep his character as it appeared before the court at present, that the charge for which the punishment was awarded, should prove no objection to his receiving in due time such indulgencies as he was likely to be a claimant for. See also Sydney Gazette, 18 February 1841; Australian, 16 February 1841.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

SYDNEY HERALD, 16/02/1841
Dowling C.J., 15 February 1841
FRANCIS SILVESTER, who had been convicted of manslaughter in a prize fight, and **MICHAEL LAMB, JOHN HUNTER, JAMES CULLEN,** and **JAMES HUXLEY**, -- You are to receive the sentence of the Court, having been found guilty of feloniously killing and slaying **JAMES BIFFIN** in a prize fight. If it had been made manifest that the practice of prize-fighting were gaining ground in this Colony, it would be imperative on this court to interpose, by a very severe example, the authority of the law, in order to dispel any delusion which may prevail as to its legality. The occasional exposition of the law upon this subject from this Bench has happily checked the frequency of this offence, and has perhaps rendered severity in the present instance unnecessary. It cannot, however, be too deeply impressed upon the minds of all, that this practice is highly criminal, from its tendency to encourage a spirit of idleness, disorder, and debauchery, and to brutalize the human heart. The practice has been denounced in ancient as well as modern times, by the most eminent Judges, as unlawful. Its illegality is not founded in a spirit of false delicacy and feminine refinement, hostile to manly sports, and the vigorous exercise of the gene4rous faculties of our common nature; but it is based on a just regard for the interests of humanity, decency and public decorum. The plea on which it has too frequently been attempted to be justified is based on a gross fallacy. It would be a reflection on our national character, to imagine that money is a legitimate incentive to personal bravery. If it be necessary to cherish the bull-dog spirit of an Englishman by manly diversions of strength skill, and activity, all would deplore that that spirit should be tinged with the ferocity of the bloodhound. Such exhibitions as this case illustrates, inevitably tend to such a consequence. The idea of two civilized men meeting to batter each other to death for a few pounds, is revolting to every right feeling of the heart, and alike opposed to all law, human and divine; this is carrying the vice of gambling to an awful height, not merely money, but life, is at stake. Without any just cause of offence two young men agree, on a Saturday, to fight on the Monday for a wager of £5. Notwithstanding the intervention of the Sabbath, a day for

reflection and for composing the angry passions of the heart, they meet, and after a bloody contest of an hour, one falls, and is suddenly ushered into the awful presence of his Maker, with all his sins upon his head. Whatever may have been the demerits of the deceased, you, Silvester, have much to answer for. You appear, in this instance, to have been the aggressor, although the younger of the two; for you, and the other young men engaged in this unlawful transaction, some allowance may be made; but you, James Cullen and James Hunter, have not the plea of youthful passions and impetuosity of temper to extenuate your offence: old enough to be the fathers of your fellow-prisoners, you were not merely lookers on, but active abettors in the sanguinary conflict. Had you a just sense of your duty befitting your age, you might have prevented the fatal consequences which have ensued. In every point of view you have been more criminal than the younger offenders, and the Court is bound to draw a distinction between your case and theirs. The Court in awarding its sentence has taken all the circumstances of the case into anxious consideration. You, Sylvester, Lamb, and Huxley, have been recommended to mercy by some of your neighbours, on account of your youth, and you have already endured some imprisonment. These topics of mitigation are borne in mind by the Court, but it is necessary by some example to assert the authority of the law, and convince others by your sufferings, that the offence of which you have been found guilty is regarded as most dangerous to the peace and welfare of society. The sentence of this Court is, and this Court doth order and adjudge, that you Francis Sylvester, Michael Lamb, and John Huxley, be severally imprisoned in Her Majesty's Gaol, at Windsor, for two calendar months, and that during that period you and each of you be kept I solitary confinement for one week continuously; and the sentence of the Court upon you, James Cullen and James Hunter, is, that each of you be set to work on the public roads of this Colony in irons for four calendar months. See also Sydney Gazette, 9 February 1841; Australian, 9 February 1841; and Sydney Gazette, 18 February 1841; Australian, 16 February 1841. Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

TEMPERANCE, 1/20, 17/02/1841
SUDDEN DEATH. - On Saturday morning, a young gentleman of the name of **JOHN SMITH**, who was formerly a deposition clerk in the Police Office, was found dead in bed in his lodgings at Borton's London tavern. An inquest was held during the day, when a verdict of Death by delirium tremens was returned.

SYDNEY HERALD, 25/02/1841
Supreme Court of New South Wales
Dowling C.J., February 1841
SUPREME COURT, - Criminal Side.
Before the Chief Justice and the following Jury:- **ROBERT BALL, ---- BROWN, JOHN BURNES, WILLIAM BARKER, JAMES BRIDGE, ROBERT BEST, J.N. BROWNE, CHARLES BLAKEFIELD, JOHN BEESON, J. BYRNES, THOMAS BRAY,** and **S.A. BRYANT.**
JOHN SHEA, convict per *Calcutta*, was indicted for the wilful murder of **JOHN GRAHAM,** by shooting him at St. Alban's, on the 21st December; and **JOHN MARSHALL**, convict per *Clyde*, **JAMES EVERITT**, convict per *Mangles*, **EDWARD DAVIES otherwise WILKINSON**, convict per *Camden*, **ROBERT CHETTY**, convict per *Sophia*, and **RICHARD GLANVILLE** convict per *Lord Lyndoch*, were indicted for being present, aiding, abetting, and assisting in the

commission of the murder. A second count stated the murder to have been committed by some person unknown, and charged all the prisoners as accessaries.
The Attorney-General stated the case. He said that the whole of the prisoners at the bar stood charged with the wilful murder of a young gentleman named Graham. All of the prisoners were convicts assigned to different individuals. Shea was assigned to Mr. Pilcher, Everett was assigned to Mrs. Muir, Marshall was assigned to Mr. Elliott, Davies was assigned to Mr. Sparke, Chetty was assigned to Mr. Chapman, and Glanville was assigned to Mr. Hely. All the prisoners therefore came out to the Colony to be punished for their crimes, and had had extended to them the indulgence of being assigned to individuals, who, by the Government regulations were bound to treat them with a leniency and kindness unknown to the law except in modern times, a leniency and kindness which they had no right to expect. Upon this however the prisoners appeared to have set no value, but showed themselves to be incorrigibly bad, for they had combined together to keep the whole country from the sea coast to Liverpool Plains, in a state of terror and confusion, and excite a degree of fear in the breasts of all Her Majesty's subjects residing in that part of the country. It would be necessary to trace a part of the prisoner's career. He found them at Brisbane Water where they were joined by Glanville who was in Mrs. Hely's service, and what took place there shows that persons of this description could not go through the country unless they were harboured by the assigned servants in the different districts, and others who are regardless of the peace of the country or hope to make a profit by the plundering carried on. Glanville was in a comfortable place; more so than a man in his position had a right to expect, but he took, what in this country has always been considered the first step to the gallows (and in this case he had no doubt Glanville would find it a truism,) he took the bush, and joined the other desperate men. After scouring the country with an audacity that had never been equalled, decorating themselves with ribbons, and when one set of horses was tired, taking another, they, at length arrived at Scone. On Sunday, December 20th the prisoners were all seen together not far from Scone, prosecuting their desperate designs. On the morning of the 21st they entered the town of Scone, or rather the village, for there are very few houses in it: they were all well mounted, and Glanville rode into Mr. Dangar's store yard, with some of the party, and other went to Chivers' public house, which is only separated from the store by a road: the party thus separating, some to rob one house and some the other: they were however still all within call, and within reach of each other, so as to give assistance should there be any resistance likely to frustrate their designs. The person the prisoners were charged with murdering was Mr. Dangar's storekeeper, and was following his occupation when the party came in. The report of the party being out had previously reached there, and from their dress and from Marshall being decorated with ribbands, they at once suspected who they were. Graham took up a pistol, the first thing that came to hand; it was not certain whether he fired it, but whether he did or not made no difference, for when a party of men leave their service, and go out on an expedition of this kind they are beyond the pale of the law, so far as this, that every man is armed with authority to apprehend a bushranger, and to do so has all the authority of an officer of justice. Mr. Graham immediately directed this steps to the lock-up, which was not far distant, it being natural that he should alarm the Police, when, as he was rounding a corner, not far from Mr. Dangar's house, more than one shot was fired at him, but only one hit him near the spine, when he fell down and almost instantly expired. While this was going on the party were robbing Chivers's and Danagar's; the shots were heard and Marshall came in and said the fellow was settled; some one asked if he was dead, and

Marshall replied, yes, he's all right. Mr. Dangar's son was in the store at the time, and it would appear that they had mistaken Graham for him, for one of them inquired whether it was not Mr. Dangar's son that was shot, and upon being told that he was not, Marshall said, "Well, he fired a shot at us, and we fired one at him." The jury would of course take the law upon the matter from the Judge, and they would find it was what common sense would point out that it ought to be. When a number of men go out with the intention of committing a felony, and are armed to the teeth with swords, guns, and pistols, what do they take them for but to use them if they are thwarted in their designs; to take life if it be necessary to resort to their arms in prosecution of their designs. Up to the 21st of December it would appear that no resistance had been offered to the prisoners; they had escaped with impunity, but that only made them more reckless and daring. He would state briefly the proofs of the prisoners' guilt, which he intended to submit to the jury. The prisoners were all together on the evening of the 20th of December before they entered Scone. He would show that seven men rode into Scone, and that some of them went to Dangar's and some to Chiver's, and all the prisoners would be identified except Shea; but immediately afterwards, on the same day, Shea would be identified as committing various robberies with the party, on their way to Page's River, near where their career ended. Mr. **EDWARD DENNEY DAY**, formerly the Police Magistrate of the district, but then Police Magistrate of Maitland, acted on the occasion with activity, zeal, and intrepidity, which will reflect honor on him to the longest day that he lives. Mr. Day, hearing that the party were within a day's ride of him, although he was not in his own district, and it was not strictly his duty to do so, was so zealous that he stepped forward and collected a number of ticket-of-leave and free men together, where assistance was readily given, and went in pursuit. They arrived at Scone shortly after the murder was committed, and hearing of that dreadful circumstance only added to their zeal and more recruits were added to the party. They followed the bushrangers very closely, tracing them by the robberies they committed, until at length they came up with them, when a fire was discharged by all the prisoners, but fortunately with no fatal effects. The prisoners afterwards boasted that they fired fourteen shots at the gallant band. Davis, who was a sort of leader fired two deliberate shots at Mr. Day, whom he knew to be the key-stone of the whole party, but Providence so ordered it, that Mr. Day's life was saved, and Mr. Day's fire wounded Davis. This shows the desperate characters of the pursuers, and puts beyond all praise the courage of the party, to whom the country and society are indebted for the capture of the party, and doubtless for sparing many lives. When the bushrangers' ammunition was exhausted, they were taken with the exception of two, one of whom was captured next day, and the other, if not apprehended before this, he had no doubt will shortly be taken. The indictment in the first place charged Shea with having fired the shot, Shea having told Mr. Day that he did so; he took upon himself the credit of taking the life of this young gentleman, and although others also wished to the have the credit of having sent a fellow creature suddenly out of the world with all his sins upon his head, Shea persisted in stating that he was the man. The second count charged some person to the Attorney-General unknown with having fired the shot, but it mattered not in the eye of the law who did so, for all the aiders and abettors are equally guilty. All persons who go out with a common design to commit an unlawful act, are equally guilty of whatever is done in the prosecution of their common design. When the party rode away after committing the murder, the seventh man who had been watching, joined them, and as he had been keeping guard all the time it shewed the connexion between the parties. It was unnecessary for him to say more upon the law of the case, that they

would learn from His Honour, but they would find that no matter what part they took in the transaction all were equally guilty. The result of the case he hoped would be a further proof that the first step to the gallows is for a convict to become a bushranger and that however long he may escape with impunity, the law is strong enough and is sure eventually to overtake and punish him.

Mr. E. D. Day deposed, I am Police Magistrate of Maitland; shortly before then I was Police Magistrate of Muswellbrook; on the 21st December I was at the latter place on my private business, I do not think there was any Police Magistrate then in Muswellbrook; it was about nine in the evening of the 20th I received the information, and collected a party of ten mounted men, and set out in the direction of Scone, at seven A.M. of the following morning, and as we went along the road, we heard of their robberies; we came up with them at Do boy Hollow, about thirty miles from Scone, and found them about half a mile off the road; we saw some drays, a fire, also some horses teathered and a number of men in their shirt sleeves, making a rush to the opposite side of the Hollow; we galloped in among them, and after a good deal of firing we took five of them; Davis is one; I say him fire, he rushed up the opposite side of the gully in order to cover himself from our fire; I fired and he returned it at me after he got under cover of the tree, he fired again at me, resting the gun on the fork of the tree 20 yards from me. (Mr. Purefoy submitted that this was not evidence of the charge in the indictment. The objection was over ruled,) five of them were taken in five minutes after we came on them; they had ten muskets and a great many pistols; all were taken but Glanville, who was taken next morning; I held out no inducements to them to confess; they were very communicative and kept us awake all night; Davis and Marshall gave me a history of their proceedings, voluntarily, after I had taken down their names. (Mr. Purefoy submitted that what the prisoners said could not be evidence against them unless they were previously cautioned; the objection was overruled.) Shea said he was the person who shot Mr. Graham, and no one else, and it was no use denying it; I heard of the murder before we came up; Davis said he had always opposed the shedding of blood, for he knew if they did so, they would not reign a week; as he said this he looked on the others and said, you see we have not reigned a day; Marshall said he would shoot any man that fired at him, and that Graham was a foolish young man and could expect nothing better for firing among so many armed men; Shea said, he would shoot his father if he fired at him. More than one of them said, that up till that morning they had done nothing to affect their lives; there were eleven guns taken, and upwards of twenty pistols found on the ground; Davis, Shea, Marshall, and Everett, all acknowledged having fired four or five shots each and Chitty acknowledged to having fired one shot; the party who joined me were Edward White, Mr. Richard Dangar, Dr. Gill, Mr. Warran, Mr. Sinken, and Chief constable of Muswell-brook; the following ticket-of-leave men were with me when we took them --- Walker, Dawe, two Evans; Mr. Dangar's ticket-of-leave man, an assigned servant named Donahoe, with a border police man, none of my party was wounded, but Davis, Marshall, and Shea were wounded among the prisoners; when we came on them. Davis was making cartridges, and another was casting balls; they told us they did not expect to be pursued that day; but that they did not expect to be pursued that day; but that they thought the whole country would be up in arms against them next day; they told us that they would rather have shot the two of their party who got away, than their pursuers; they called them their recruits, and not the tried men of the gang; they had some trinkets and between £70 and £80 cash.

Cross-examined – I think I did not say that our party fired first; they saw us half a mile off before we went in upon them; Davis said he always was opposed to the shedding of blood Everett might have said the same thing; they seemed to have made up their minds that they had committed an offence which forfeited their lives, and that there was no use in concealing it; Davis said he had ordered the party not to shed blood.

Cross-examined by Shea – You did not appear to be drunk, you were evidently sober.

Re-examined by Mr. Therry – Davis took deliberate aim at me through the fork of the tree and fired twice at me; their horses were very much jaded; they had seven, and we got four more, which they had changed; Davis set the party a laughing by telling a story that he had failed to break the bell that called him to work we learned from them that the men at the drays, near where we took them, had beat them off; they all said they would rather be hanged than go to Norfolk Island; Mr. Day said the ticket-of-leave holders and the assigned servants had got promises of pardons.

JAMES JEWSHAW examined – I am a saddler in the employ of Mr. Thomas Dangar; I knew John Graham, the store-keeper, he was about [?] years of age; I saw him before seven o'clock on the morning of the 21st December; I saw a man come into the yard on horseback, and about a minute before I saw a number of horsemen pass the gate; the man on horseback called out, "Cook, cook, come out here;" I said to a man working with me, "these are bushrangers," as he gallopped so unceremoniously into the yard; I cannot say if he is among the prisoners; I cannot say if any of them were there; I put down my work and went out the back way to tell the police; I went by the bush road, and I saw Graham on the road, I saw him run and then walk; I heard two shots fired, and saw Graham fall; he had a pistol with him; I went up to him, he said, "saddler, I am shot through, I am a dead man;" after he said this I turned round, and saw a man with a gun who said to me, "come back here or I will blow your brains out;" he was on horseback he had one gun before him and another by his side; I went back with him, he wanted Graham to go back with him, but he told him he was unable to do so; when we got back I saw an armed man on guard at the store door, and another armed man came out with some bracelets[?] in his hand, he threw them on the ground and the other trod on them; the man that [?] me back, said to the others, the man was [?] and there was no time for delay; they then went off; the man who took me back had a f[?] coat on; I was so much frightened I cannot recognise any of them; I was made to stand [?] tree opposite Mr. Dangar's store; they went down to Mr. Chiver's, on the opposite side of the road; people talking loud can hear from one house to the other, they are in sight of each other; he told the man at Dangars that the man was dead; from the time they came till they went away might be about fifteen or twenty minutes; I saw seven men leave Mr. Chiver's house; Mr. & Mrs Danger and their son [?] at home, as I saw them after; Mr. Chivers [?] also at home as soon as they went away [?] up to Graham, he was alive but senseless he died about ten minutes after.

Cross-examined. - The place where Graham was about one hundred rods from Mr. Dangar's door; I did not examine the pistol Graham [?] they did not appear frightened when going [?] they went leasurely.

Re-examined. - When I saw them afterwards at the Police Office none of them had on a f[?] coat; when taken they had ribbons in their [?]

Mrs. **CHIVERS** deposed - My husband is [?] lican in Scone; on the morning of the [?] December I saw three men like gentlemen [?] to Mr. Dangar's, one of them rode into the [?] and the other dismounted; I saw one [?] had ribbons of a light colour in his hat; [?] saw that I thought they were bushrangers [?] on going to the door to see if it

was so [?] them came up and said, well man, what you got here for us; I asked him what he wanted, and he said he wanted money, [?] we had plenty of it and must have it [?] the tall man who said this (Glanville) [?] a piece and several pistols stuck round [?] he told me to get up and get the money [?] had not much time to stop. I got the [?] and put it out to him at the window, there was £30 in £1 notes, and a £10 note, a £2 note, and half a sovereign, with about £20 in silver, there were some orders in the box, but he said it was of no use to take them, he then demanded the watches, and I told him there was none; he then began looking for fire arms, and called out Ruggy, when the short man (Everett) came in, and took up the cash box, and asked me about it, when I told him that the tall man had just taken all he wanted from it; he then took two bullet moulds, an old blunderbuss, and a piece, and afterwards seizing a violin, he called out "Mori, can you play the fiddle?" and one of them answered, "no, but I want a bugle;" I afterwards saw Marshall among the party where the inmates and people in the place were bailed up, among the rest was a border police man, who they told it was a good thing for him that he was an assigned servant; I saw five or six men at the door loading fire arms; they soon after mounted and gallopped off; when a little way off I counted seven; they went off as quick as possible; I saw a man with a blue cap on, one of the gang had three or four men bailed up, he was armed, he went off with the other men; I heard three shots fired apparently near us; I saw Graham alive at sundown on the preceeding night, he was then well and alive; I saw him brought down dead of a gun shot wound near the small of his back; I heard two of the gang talking about something after the shots were fired, when one said what had been done, on which one said he was settled; and it was replied, that it was all right.

Cross-examined. - Davis was at the bar when I came out of my bed room and told me I need not be afraid, as no one should hurt me; while standing at the bar he had ribbons on his hat; I could not recognise Davis at the Police office as he was there bare headed; I knew him when I saw him with his hat on after being at the Police office; Davis was very civil to me he did not offer any violence; they were all very civil, and said they would not hurt any one; they were about half an hour at my place; I do not know who fired the shots I only heard the report, I can say they were all one party, and they must have divided before they came to our house; they all went away together; from the noise of the horses' feet there must have been more than three men; six left my house when they went away, and the man at the tree made seven; Davis might have been in my bar all the time, and when the shots were fired.

Re-examined not above two or three minutes elapsed before the time that I saw the party riding into Mr. Dangar's and the man coming to my bed room for the money.

The court adjourned for ten minutes.

WILLIAM DAY, examined - I was cook at Mr. Chiver's on the 21st December last; about 7, A.M., some men came to the place, at first but one or two came, one of them collared me in the stock yard; he had a pistol in each hand and clapped them to my head; Everett was the man; he had on a Manilla hat, with party coloured ribbons in it; I was bailed up, they then went and told another man, the milk man, that they were bushrangers, and if he resisted they would shoot him, and he was also bailed up with me; I saw a shot fired about 100 yards off along the road from Mr. Dangar's house, I saw the party who fired it; it was at Mr. Graham, he was running from Mr. Dangar's; the party who shot at him was about 20 yards from Graham; I thought I heard a shot fired, and then I saw the person who ran after Mr. Graham fire; I thought Mr. Graham was hit as soon as the shot was fired after him, he was running before, but after the shot he writhed his face and slackened his pace; immediately after my attention was called off to Everett; I heard afterwards some parties whom I cannot identify, asking

if the fellow was all right who was told he was; I got clear and ran for the police, where within about three hundred yards of the road, on my return, I saw Everett and six other mounted men getting along the road.
Cross-examined. - I do not know that Mr. Graham had a pistol; I do not know that there were any travellers at Mr. Chiver's house on the night before the morning when Mr. Graham was shot. Two or three went to Mr. Dangar's, and two or three to Mr. Chivers' house; the two houses are not more distant than fifty or sixty yards; one may go the distance in half a minute; but they are so situate, that a circumstance may occur at the one which might not be observed at the other.
Re-examined. - I think the parties were acting in concert together at the two houses, as, when I saw them leaving, they were all in company, and had their arms similarly slung.
JOSEPH CHIVERS, barman to his brother. - I recollect the bushrangers coming to my brother's house; I saw Everett and Davis, who were at the bar door, and the tallest man was also with them; Marshall was also there; it was he that asked if it was all right; I heard the answer - "yes, it is nearly so;" I heard some firing, two or three shots. It was after the firing I heard the question, and the party went off soon after. Everett bailed me up – he found me a seat; Davis was the man who kept me bailed up till the party went off; we can hear a call between the two houses.
Cross-examined. - I believe the party had not been in Dangar's above two or three minutes until I was bailed up; Davis, after taking charge, was over me until the party went off: we can speak from one veranda to the other, and get an answer; it was before I was bailed up that I heard the shots; there were three of them; there is a garden and pailing in front of each house. I am five feet and a half high; I can't say how many times the length of my body is a measure of the distance between the two houses.
THOMAS DANGAR, - I am a store keeper, at St. Alban's adjoining the township of Scone; I was at home on the 21st December, about 7 A.M. I heard a horse enter my yard, and saw it was a grey one; and one of my men was holding it; soon after I herd a person trying to make an entrance into my bed room; when either Mrs. Dangar or myself opened it; and a man entered, the prisoner Marshall; and asked if the deceased was my son; as he had fired at them, and would have his life; I told him he was my storekeeper, he demanded the keys, in order to obtain my cash box; he then took the box which contained orders only, he said they were of no use to him; he then took two watches, and a lot of gilt of bracelets; my little boy was afterwards brought into the same room, and bailed up with me; I know that the deceased was speaking to my boy a few minutes before he was shot, and that he had two loaded pistols, both of which I saw after his death one of them was then discharged; he slept on the counter for the protection of the store.
Cross-examined - I can only identify Marshall he was the man who bailed me up, and put the musket to my breast.
Examined by Marshall - you only demanded money from me; you told me to sit still.
THOMAS DANGAR, 11 years of age, son of the last witness – I was in the kitchen when the bushrangers came to the house; I saw the man Chitty come into the store, he called cook, cook, and gave the horse to the cook to hold; I saw Mr. Graham a few minutes before, he was asking for the key of the shop, he then disappeared; In a few minutes after, I heard a bushranger asking my father who a man was, as he had fired at them, and they would have his life, or shoot him for doing that; Marshall told my father to stand up, and searched his pockets; I heard no shots fired; I saw Mr. Graham

dead about an hour afterwards; the cook was struck by Chitty with the gun to cause him to go to the place he wanted him, which was under the tree, in front of the house.
Mrs. **SARAH DANGAR**, wife of Mr. Thomas Dangar, one of the preceding witnesses, deposed as follows: I heard one shot on the morning, and soon after I heard two others; I soon after saw the prisoner Marshall at my bed-room door; he asked if the man was there who had fired at him, as his life was not worth a straw whoever he was. Before he got into the bed-room I saw the same prisoner, Marshall, bailing-up our cook. The prisoner Marshall demanded the money in the house from Mr. Dangar; he then got the cash-box, and looked it over, and said that the contents were no good; he then insisted that we had more money in the house; I then told him we had another cash-box, which I gave him; he took a one pound note from it, and said he would take it with the watches; he also took a quantity of bracelets from the store, and gave them to another strange man who came in, saying, "why are you so long here? the fellow is down," soon after which they left the place. There were seven men who rode off after the robbery from our house, and amongst them was the prisoner Marshall.
WILLIAM JONES, splitter and fencer, deposed:- I was in the bush on the 20th December last, about two miles from Muswell Brook, and I met seven men in the bush, six of whom are the prisoners at the bar; one of them, the sixth man, Chitty, directed me to go down to the creeks as a prisoner, and I was detained by them till sundown; they took my mate also and a shepherd, and asked us if we heard anything of them as bushrangers, and I told them not much. They had a pack horse and seven saddle horses; they took the beef in the hut and walked off with it; they offered no violence.
After this witness had left the box, the prisoner Everett said, "I hope that you will be the next that is shot and every b----y dog like you."
Mr. **JOHN PATERSON** - I live four miles from Scone; all the prisoners called at my premises about 9 a m., on the 21st December, and robbed me of a horse and pistol, they appeared very much agitated; they took the horse from the door, they compelled my man to saddle the horse, and they took it with them.
James Norrie, I am a settler in the vicinity of Scone, the persons came to my house on the 21st and had their breakfast; they frightened me very much; Davis told me to go in as he would shoot a man I a moment; they had shot one already; they told me to look out and give them warning if I saw any one coming from the same direction they had come from.
Cross examined. I had some knowledge of Davis; I had seen him before; he had had some refreshment before at my house; I have no doubt as to Davis being the man who spoke to me, but I cannot swear as to him. They left a £1 note to pay for what they had; they offered me no violence.
Mr. **RICHARD SOUTH**, Publican, of Page's River; seven men came on horseback to my house about noon, on the 21st December, and bailed us all up, and broke some fire arms I had in the house; Marshall told me he would deal with me before he left the house; he had robbed me three weeks before, when aided by Shea and Davis; I heard a shot fired at Mr. Rundell's store, after a man on horseback, the man showed me his pocket through which the shot had gone without injuring him.
Mr. **ISAAC HAIG**, surgeon, deposed - I was called on the 21st to examine the body of a young man named Graham, who had died from internal hemorrhage, caused by a gun-shot wound, the whole of the left cavity was filled with blood, the ball had passed in at the back about two inches from the spine, and had lodged in the muscles in the chest. I made a post mortem examination of the body of Graham, but did not find the

ball; death had evidently been caused by the gun-shot wound, and medical aid could not have availed.

JOHN NOWLAN, constable, who was of the party who apprehended the gang coroborated the evidence of Mr. Day, and was one of the party who took Glanville on the succeeding day, who afterwards shewed where he had flung his arms; this witness was of opinion that the first shot was fired by the bushrangers, who had their arms with them, and commenced firing on Mr. Day's party as soon as they (the bushrangers) took to the trees.

This closed the case for the Crown. Mr. Purifoy in an able address on behalf of the prisoner Davis, contended that there was no evidence of such of a constructive presence as would warrant the jury in finding his client guilty of being present aiding and abetting; he also submitted that the discripancies between the charges set forth in the information, and those contained in the evidence were fatal. He also insisted on the distance between the houses, as a proof that no such constructive presence had been made out, as was necessary to warrant the jury in finding them guilty of being aiding and abetting in both the felonies, and called on the jury to give the benefit of any doubts they might have respecting the guilt of the prisoner to his client. The prisoner Davis stated that he had subpoenaed a witness named Walker; he was called, but did not appear.

The Attorney-General, said he would restrict his observations in reply to the case of Davis, who was defended by Mr. Purefoy. He had to caution the jury against being led away by any spirit of compassion in his behalf. It was proved that at the time of the murder, he was aiding and abetting, so far as to be acting as a sentry on the parties bailed up in Mr. Chivers' bar when the murder was committed, and but for whom aid might have been extended to the inmates of Mr. Dangar's house. He also reminded the jury that it was a principle of British justice that if parties went out to commit a robbery or any other felony, and there was another perpetrated by one or other of those who went out to commit the first, that unless the others could prove that they had no hand in the perpetration of the second the whole were in the eye of the law legally guilty as accomplices.

His Honor the Chief Justice in putting the case to the jury, remarked that in whatever way the present case was viewed, it was a most serious charge; whether as regarded the prisoners, the public safety, or the maintenance of the laws, it was the most serious case which had been presented to the Court during the present, he might with safety say, during the last three or four criminal sessions. The jury would bear in mind what had been so ably impressed on them by the counsel for the prisoners, viz. – that they were not trying them for being bushrangers, nor for being illegally at large with fire arms in their possession, but for aiding and abetting in the crime of murder; all with the exception of one of the prisoners were indicted for this offence, the renaming one by the first count of the indictment, was charged with being the principal in the commission of the murder. With respect to the legal principle introduced in the case submitted to the jury, he felt it is his duty to inform them that it was a broad principle of the British law, that if any body of persons went out to commit one felony and another takes place, they are then all alike liable to the law for being accessories, His Honor here cited a case in which when he was a young man, nine young men in London went out to commit a burglary on the house of an uncle of one of the burglars, when the nephew went with the rest armed with a blunderbuss, and shot his uncle at the window, and seven out of the nine were executed for the murder, although it was proved that none of them were armed but the nephew. He also called on the jury to dismiss all prejudice from their minds, either in favor of or against the prisoners, he

was the more anxious to impress this principle on the minds of the jury, as it might be that the very case in which they were now called to pronounce a verdict on, was one which had been made a matter of outcry, even by a portion of the public press, in order to impugn the due administration of justice, and solemnly implored them to try the case purely by the evidence adduced in support of the allegations contained in the indictment. He then went over the whole of the evidence commenting on the different parts which contained either direct or inferential evidence, for or against all or any of the prisoners; and remarked that he trusted the government would see the propriety of rewarding in the highest degree, those ticket-of-leave men and assigned servants who had behaved in such a becoming manner, by perilling their lives immediately when called on to put down such a system of rapine and blood as was charged against the prisoners.

The Attorney General informed His Honor, that all the men he referred to had received free pardons.

His Honor said he was most happy to hear that this was the case, as he was of opinion that it was a very judicious mode of teaching assigned and ticket-of-leave convicts to earn good characters for those they had lost, by preserving the lives and properties of the rest of the Colonists. He also pointed out to the jury, that the evidence which had been given of the subsequent proceedings of the party, had been put in for the purpose of enabling them to judge whether or not, the two parties before the attack on Dangar's and Chivers' premises, had not been in league before the said attack, was made which had been planned by the whole gang, and carried simultaneously into effect for the purpose of aiding and assisting each other. He also called the attention of the jury to the evidence given in favor of Glanville, who when taken on the 22nd December, denied being preset at the time when the shot was fired, and knew not of his own knowledge who had shot the deceased. It was also worth while for the jury to consider, whether this circumstance could not enable them to distinguish between the case of Davis and Chitty, and that of Glanville; also whether Marshall, by being present at both houses, was not a sort of link by which they kept up a co-operation between both parties, in order to enable them to aid and assist each other, and informed them that they were all equally concerned in the robbery of both houses, as well as of the other acts, provided the jury were convinced that they had separated themselves into two parties for the purpose of effecting their unlawful purposes. His Honor concluded by informing the jury, that if they entertained any well-grounded doubts of the guilt of any one of the prisoners, that they would give them the benefit of it; at the same they were bound to apply the evidence to the counts charged in the indictment, and if they found that the latter was established by the testimony brought before them, they were bound by theirto find the prisoners guilty.

The jury retired at a quarter past six, and returned at half past seven, with a verdict of guilty against all the prisoners.

After silence had been proclaimed, His Honor the Chief Justice, placed the black cap on his head, and called over the prisoners by name, to which most of them in the most careless manner replied either "here," or "here sir." He then proce[e]ded to inform them that the last scene but one of their guilty career had now arrived; that he was sorry to perceive from the hardened manner in which they had answered even the last interrogatory which was likely to be addressed to them, that they were all so callous and careless of the sentence that the justice of their country through him was to award to their crimes; he could not close his eyes to the fact that their guilty career had been checked by the praiseworthy exertions of a distinguished and praiseworthy magistrate, who, on hearing of their open violations of the laws had at great personal risk, and

with the most commendable activity and exertion, put an end to that course of iniquity which they had so recklessly commenced. He had some reason to doubt that when they had commenced their fearful course of iniquity and crime, whether they had meditated murder, but still such was the end of it, for a most respectable jury had after a long and patient investigation of all the circumstances of the case, not only against them as a body, but also against them individually, found each of them guilty of that awful crime they were charged with as having committed. It was a mournful reflection that such crimes as that which they had been convicted of, were only to be traced to the neglect of the principles of religion and morality; and tended, however, unfounded to bring discredit on the Magistracy and Police of the districts where they occurred. It could be no reflection on the laws of the Colony, that such awful crimes as that which the prisoners had been convicted of were but too common amongst us, as whenever these laws were appealed to, they were invariably found to be strong enough to punish the guilty, as well as afford protection to the innocent, whenever the transgressors were subjected to their influence. It was not to be tolerated that bands of men who had been sent hither for the twofold purpose of enduring the punishment of their crimes in their native lands, and also for the purpose of trying what secondary punishment could do in the way of effecting a reformation of them, and converting them from vicious to virtuous citizens, were to be allowed to roam armed over the country, plundering the homes of the peaceful and well-disposed portion of the inhabitants with impunity, and setting the laws of God and man at defiance, by shedding the blood of those who, as in the present instance, attempted to protect the property of those who entrusted it to their care. The prisoners at the bar had had a long and ample opportunity of reformation afforded them, which by their own deliberate acts they had cut themselves off from in this world, and which acts of theirs had also been the means of numbering their days. He was sorry to see six apparently young men thus cut off, at a time when, by pursuing another line of conduct, they might have been in the fair way to be returned to society with regained characters, as he was happy to say thousands had been before them, with even less means than the prisoners. Although he addressed them as a judge, he could not avoid declaring his feelings as a man, when dooming his fellow creatures, as in the present instance, to an untimely end, which had been caused entirely by their own wicked acts. He felt it to be his duty solemnly to warn them, that there was not a shadow of a reason for any one of them hoping that the awful sentence he was about to pronounce on each of them would be either delayed, mitigated, or changed. From the outrages which had been committed of late by persons like the prisoners, setting the laws at defiance and carrying on the practice of bushranging, it had become necessary whenever the blood of human being was shed, to visit that crime on the heads not only of the principals, but of all who should be convicted of aiding and abetting in the perpetration of such a crime, and therefore as the sincere friend of the individuals at the bar, he solemnly counselled them to make the best use of the brief space of time that would be afforded to each of them on this side the grave, to which their crimes had borne them with such deplorable rapidity, ere they had apparently attained the prime period of manhood. He could solemnly assure them that the light of the day would soon for ever close on each of them; the game of their guilty career was now up, and they would ere long have to stand before the Author of their being, to answer not for one, but for every guilty act which they had committed. It had been said by some of them that they would prefer the doom about to be awarded to them to that of being transported for life to Norfolk Island, and it had been given in evidence that such was their boast to the gentlemen who had been the means of checking their guilty careers; their awful wish he could

assure them should be gratified, in order to make an example of them to deter others from pursuing such a course of guilt and crime as they had plunged into. As their time was short, he would not harrow their feelings (if any they had) with a recapitulation of the enormities they had been guilty of, but trusted that they would employ the few moments which were still granted them to make peace with their Creator, and to show by their contrition (when they made their exit from this world) an example that would be the means of inducing their, as yet undetected fellows in crime, to the belief that no one could act as they had done, and quit the world without earnestly desiring that they had done otherwise. His Honor then passed sentence of death on the prisoners in the usual form.

During the course of the day the prisoners Everett, and Shea, behaved with all but disgusting levity. From the awful manner in which Davis changed his appearance when he heard the foreman of the jury pronounce him guilty, it was evident he had all along anticipated an acquittal. During the time the jury were retired to consider their verdict, these three appeared to be quite unconcerned laughing and chatting to such of their friends and acquaintances, as they recognised among the crowd which was intense during the whole time of the trial. In order to put a check to such unseemly conduct, they were ordered into the cage till the jury returned, when they began quarrelling among themselves, all of them assailing Davis, and charging him not only with being the cause of their ruin, but also with being the means of injuring some parties who had harboured and otherwise assisted them, when Davis heard his sentence he was seen to shed tears, while some of the others observing Mr. Lane the Superintendant in Hyde Park Barracks, in Court, vented their anger in wishing he might break his neck. The whole were removed to the gaol about fifteen minutes after sentence had been passed, each pair being handcuffed between three constables, and some hundreds of person marching along with them. We observed during the day, an unusual number of assigned servants and ticket-of-leave holders intensely listening to the proceedings.

Source: Sydney Herald, 27 February 1841

As a number of the junior members of the profession of the law have expressed a desire to obtain a statement of the points of defence, in the case of the seven bushrangers, by Mr. Purefoy, on Wednesday last, we subjoin the following, which we believe contains the legal points which that gentleman urged.

Mr. Purefoy, on behalf of the prisoner Davis, addressed the jury in an able and powerful speech of considerable length, the learned gentleman contended, first, that all the prisoners were out that day with a two-fold object in view, each distinct from the other, viz: to plunder the houses of Chivers and Dangar; that each had a separate part allotted him previously, and that those engaged in the robbery at Dangar's were in no way whatever, at the time, connected with those engaged in the robbery at Chivers's public house, that, therefore, as the two felonies were perfectly distinct and separate, one from the other, those engaged in the one, could not be said to be actors, or abettors, to those engaged in the other. The learned counsel next contended, that as the houses of Chivers and Dangar were sworn to be upwards of 200 yards apart, and that persons engaged at one, could not be heard or distinctly seen at the other, that there was not such a constructive presence as would render those at Chivers's aiders or abe[t]tors to those at Dangar's, at which latter place the murder was committed; lastly, the learned counsel cited a case from Foster's Crown Law, to shew that where several go out with intent to commit a felony and that one commit murder, the rest will not necessarily be guilty of murder, unless thee be evidence to shew, that all consented to it, or that it was committed in order to carry into effect the common

purpose in which they were all engaged. The learned gentleman concluded his very able and ingenious address to the jury, by informing them, that if they entertained any doubt whatever as to Davis being present at the murder of Graham, that they were bound to give the prisoner the benefit of that doubt, and acquit him of the capital charge. See also Sydney Gazette, 27 February 1841; Australian, 25 February 1841. Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

TEMPERANCE, 1/22, 03/03/1841
INQUEST. - On Thursday, the adjourned inquest on the body of **ANNE SAPWELL**, was resumed, at Mr. Richard Driver's, Three Tuns Tavern. The deceased had, on the preceding Tuesday night, been lodged in the Cumberland-street watch-house, on a charge of being drunk and disorderly, and had on the same night (about midnight) been found dead in the cell where she had been confined, with a ribbon tied round her neck so tightly as to cause death. From the evidence adduced, it appeared that the deceased had destroyed herself while in a state of intoxication. A verdict to that effect was returned.
A private of the 50th Regiment, named **KELLY**, was accidentally drowned non Friday last, whilst bathing near Soldier's Point.
BLACKS. - Three native blacks were brought to Sydney yesterday from Moreton Bay, charged with the murder of Mr. **STAPYLTON**, late Assistant-Surveyor, the full particulars of which were given at the time in the *Herald.*

On Friday evening last, a seaman belonging to the *Ruby* fell over board and was drowned; the officers and seamen were promptly at hand, but were unable to render any assistance for some time, in consequence of not having been able to procure a grapnel. There can be no doubt that liquor was the cause of his death, as he was an excellent swimmer.

TEMPERANCE, 1/23, 10/03/1841
ACCIDENTAL DEATH. - As Mr. **KINSELA**, the Chief Constable, was returning late in the evening in a cart from the Township to his residence, after taking home the nurse who had been attending his wife in her late confinement, on crossing a dry creek or gully, the night being very dark, he kept too high up on the bank, the cart upset over him and killed him on the spot by crushing him underneath it, and breaking his neck; there was a constable with him at the time, who was very much injured, as the cart fell over his chest, broke two or three of his ribs and severely bruised him; he could not disengage himself from it, and remained in this awkward predicament upwards of two hours, when his cries as length brought assistance. His loss will also be felt in this district, where he has proved himself a diligent and efficient officer of the police, and servant of the public. We regret to say, that it has been insinuated by one or two of the parties, that he was intoxicated at the time of the accident, but this is a falsehood, as the depositions taken before the Police Magistrate will prove. The accident occurred entirely from the bad state of the road and the darkness of the night. A verdict of accidental death was returned.

The Hunter's River bush rangers have been informed that their execution is to take place on Tuesday next, the 16th instant. There are six of them.

TEMPERANCE, 1/24, 17/03/1841
EXECUTION OF SIX BUSHRANGERS. - These men who were convicted of the murder of Mr. Dangar's storekeeper, at Scone, last month, yesterday morning paid the

forfeiture of their lives to the outraged laws of the country. The Rev. **W. COWPER** and another clergyman, the Rev. **F. MURPHY**, and Mr. **ISAACS**, of the Jewish persuasion, attended them to the place of execution; they appeared to feel deeply penitent, with the exception of one, whose conduct was not at all in accordance with the awful solemnity of his situation. It was a melancholy sight to see so many men in the prime of their manhood thus hurried into the presence of their Maker, to give an account of all the deeds done in the body.

BOAT ACCIDENT. - Yesterday afternoon a boat, containing two females, four men, and a boy, when just off the ship "Glenswilly," was capsized, and although every exertion was made to save them, two men were lost, and the others taken on board the vessel in a senseless state.

INQUESTS. - On Thursday an inquest was held at Mr. Driver's, Three Tuns Tavern, corner of King and Elizabeth-streets, on the body of **MICHAEL BISHOP**, who had been beat by his brother-in-law, **MICHAEL MOORE**, with an axe handle, on Saturday last. Doctors **STEWART** and **HARNETT** certified that death had been caused by the injuries received. The jury, after a long enquiry, returned a verdict of "wilful murder" against Moore, who has absconded. The coroner issued a warrant for his apprehension.

On Friday an inquest was held at the General Hospital on the body of a new born child, of which the mother, **MARY LEDSHAM**, had been delivered in the Receiving Watch-house, on Wednesday evening, where she had been placed for the purpose of being returned to Government, as being useless in service. Dr. **HARNETT** having certified that the infant was still-born, a verdict to that effect was returned.

Another inquest was afterwards held on the same day, in the Blue Bell public house, on the body of a man named **THOMAS DUPROY**, who, while carrying a child through the street, on Friday morning, had fallen down and instantly expired. Surgeon **LLOYD**, of Market-street, having certified that death had been caused by apoplexy, a verdict to that effect was returned.

BIRTHS.

In Prince-street, on 13th instant, Mrs. **GEORGE SMITH**, of a daughter, still born.

TEMPERANCE, 1/26, 31/03/1841

An inquest was held on Tuesday, on the body of a child aged three years and a half, named **EMMA MCADAM**, whose death was caused by poison from putting into her mouth several Congreve matches. The composition of the matches consists of exymuriate of potash and phosphorous, and a surgeon told the jury a grain of the latter was sufficient to cause the child's death.

SYDNEY HERALD, 14/04/1841

Supreme Court of New South Wales

Burton J., 13 April 1841

GREGORY TABEE, a Malay native of Manilla, was indicted for the wilful murder of **PETER ANDERSON**, on board the ship *Susan*, on the 22nd of March last, she being then on the high seas, off Jarvis Bay, on her passage to this Colony, with emigrants. From the evidence given for the prosecution, it appeared that the prisoner and the deceased were seamen and messmates on board the said ship, and during the voyage it had been a general remark by those on board that the prisoner and the deceased were on very friendly terms, On the night of the 22nd March last the prisoner went below to the berth of the deceased, said "Good bye, chummy," and instantly stabbed him in the belly, of which would the deceased died in seventeen

hours. It also appeared that two others of the ship's crew were seriously wounded about the same time by the prisoner. In defence the prisoner denied all knowledge of having committed the act, and could only account for his having committed it when in a dream, but admitted that he had observed that it was the intention of the passengers to throw him overboard. It was also elicited by the Judge that the prisoner joked and laughed about the affair, that although he appeared sensible that he had done wrong, the only excuse he offered for it was that he was foolish or mad when he wounded the deceased.
In putting the case to the jury. His Honor remarked that the present case was one of the most extraordinary cases that had ever been brought before a jury, as there was no evidence of any exciting cause, nor of any provocation given by the deceased to the prisoner; that the offence being committed on board a British ship, on a British subject, brought the case within the jurisdiction of the Court. With respect to the dream, His Honor called the attention of the jury to the fact, that there was no evidence that the prisoner was under the influence of any delusion, even that of a dream, as it was proved that the prisoner was awake for at least five minutes before he wounded the deceased. He left it to the jury to say, first, whether the prisoner had been guilty of murder or manslaughter. The jury without retiring from the box, returned a verdict of Guilty of murder against the prisoner. Sentence of death was passed upon him. See also Sydney Gazette, 15 April 1841.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

TEMPERANCE, 1/28, 14/04/1841
ANOTHER VICTIM OF RUM. - The Coroner held an inquest on Wednesday last, on the body of a woman named **SARAH DUNN**, the wife of an industrious and sober tradesman, who it is well known used every means to dissuade her from the use of spirits, of which she was in the constant practice of indulging to excess. This was the more to be deplored as she was quite a young woman, and previous to her being led astray by persons of her own sex in the neighbourhood, she was a prudent and steady woman, but owing to association with those of dissipated habits, she became as degraded as they were. Mr. Surgeon **LLOYD** of Market-street, having certified that death was caused by inflammation of the bowels induced by previous habits of intemperance, the jury returned a verdict in accordance with his testimony, although five out of the twelve were publicans.

An inquest was held yesterday on the body of a man named **FRANCIS WALKER**, formerly Clerk to Mr. Armstrong, Veterinary Surgeon; the jury returned a verdict of "Suicide committed under temporary derangement, caused by intoxicating drink."

AUSTRALIAN, 20/04/1841
R. v. Cottington
Supreme Court of New South Wales
Stephen J., 15 April 1841
R. v. Cottington
The next case was one which had occasioned considerable interest in the New Country, on account of the age and respectability of the party accused. The Court was very much crowded during the whole time. The prisoner, Mr. **JAMES COTTINGTON**, of Lake Bathurst, stood charged, first, with shooting at, with the intention of murdering, and, in a second count, with an attempt to do some grievous bodily harm, to **THOMAS DOYLE**. Cottington had been out on bail, and, on his

being called, appeared at the bottom of the table, on the floor of the Court; His Honor, observing this, inquired of the Solicitor-General, how was it that the prisoner was not placed in the dock? as he would never allow any distinction to be made between the poor man and the rich man in any cases of felony which came before him, however, respectable, as in this case, the party might be. Mr. Cottington took his stand immediately at the dock. The Solicitor-General conducted the prosecution, and Mr. Foster and Mr. G. R. Nichols the defence.

The first witness called was Thomas Doyle, who, on being sworn, said he was a ticket-of-leave man, and was in the service of Mr. Cottington on the 13th January last; remembers the day remarkably well. He, with **CONNOLLY, OAKES,** and **DICKS**, had been shearing; they returned just before sun-down, and understanding that their master (the prisoner) had given a glass of grog to the other men, came up to the house to ask for one too. Mr. Cottington was sitting under the verandah, smoking his pipe. They asked him, and he told his overseer to give them a glass each; but he was drunk, and went away without giving them any. Witness and his companions again spoke to their master, and he replied, that when his son John came home, he should give them some. With this assurance they went to the back of the house. When John came home, they all four went round to the front door; one of them knocked several times, but no person answered; seeing it was of no use, they turned to walk away, but while in the act of doing so, Smith, a servant in the house, came out and called out, that the old man was coming with fire-arms. They all set off to run, but in a moment he (witness) felt himself wounded, and heard the report of a gun. He looked round, and seeing his master standing at the corner of the house, with the piece in his hand, felt afraid, as he was not very sober, that he would shoot him again. Witness fell into Oake's arms, who told Cottingham he had wounded one man, and that he had better leave off. The distance he was from the prisoner when the gun went off, was seven or eight yards. Dr. Mould visited him, and examined his wounds.

Cross-examined by Mr. Foster. - It was a quarter of an hour before sundown when they first spoke to their master under the verandah, and a quarter of an hour after sundown when he received his wounds. At the time his master shot, he had on only his drawers, no coat or waistcoat. Thinks the distance was seven or eight yards. Had worked for the prisoner three years and a-half ago; but at the period to which this evidence has reference, he might have been in his employ eight weeks; always found him a good master, and never had a quarrel or misunderstanding with him. Witness admitted, with considerable reluctance, that he might have said, that after being wounded he ran into the kitchen and hid himself under the table. After being wounded was immediately put to bed, and a surgeon attended him; does not know if the prisoner paid the surgeon’s bill; has not himself worked for him since, but his partner has. Examinant was not on horseback within a week from the time of being wounded, for he could not sit up.

William Oakes, a ticket-of-leave man, the next witness, corroborated the evidence given by the prosecutor; but in his cross-examination he said that the master went into the kitchen and ordered them all off, as they had no business there; and that he might not be able to distinguish who they were. Had always found him kind and liberal.

Thomas Connolly, on being sworn, gave similar testimony to the two previous witnesses. In his cross-examination he said he had lived on and off, with the prisoner twelve years, and had always met with kind treatment when he deserved it.

WILLIAM SMITH, sworn. - Is a shoemaker and a ticket-of-leave holder; remembers the 13th of January; heard Mr. Cottington say, “Give me my piece, I’ll

start those fellows from the door; they have no business there." It was neither light nor dark. Soon afterwards witness heard the report of a gun, and Doyle was wounded.

Cross-examined. - Won't swear whether master said he would start or startle those fellows. Jackey Jackey (Westwood) was out, and several ticket-of-leave holders had been pressed to go with the constable in search of him.

GEORGE YOUNG MOLD. - Is a physician, and resides at Goulburn; was called in on the night of the 13th of January last to examine Doyle, at the house of Mr. Cottington; found three flesh wounds in the loins and the lower parts of the back; one was very slight, another was about one inch and-a-half in depth, and in the third the shot had travelled for two inches and-a-half; Doyle complained of being in great pain, and was evidently very weak from loss of blood; at first examinant thought the case a serious one, but in a day or two the serious symptoms passed away; attended him fourteen or fifteen days; the shots were merely slugs.

This closed the case for the prosecution.

Mr. Foster made an admirable defence for the prisoner, and then proceeded to call a number of highly respectable witness to character.

The Solicitor-General having declined to reply.

The Judge summed up with great care and exactness, and at considerable length.

The Jury retired for about twelve minutes, and on their return into Court, delivered a verdict of not guilty.

[1] This trial was held at Berrima.

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

AUSTRALIAN, 20/04/1841
Supreme Court of New South Wales
Stephen J., 16 April 1841

THOMAS LEARY, alias SUTTON, was indicted for the wilful murder of **THOMAS DUNN**.

CASSIDY being sworn said -That on the day named in the indictment, himself and the deceased were looking out for bushrangers, on seeing the prisoner and another man within fifty yards of the hut where witness and deceased stopped; deceased challenged them, on which the prisoner dropt on his knees, and on the deceased desiring him to stand up he did so; prisoner then said to deceased, who was about to handcuff him, "do not hurt my hands," and immediately fired a pistol at the deceased, the ball of which passed into his head over the left eye; witness then fired at the prisoner; whilst running away his hat fell off; the hat produced is the same and has two shot marks in it; I fired at the prisoner at the time his hat fell off; did not see the prisoner again until about five weeks back, when I was informed that a man named Leary was taken up on suspicion of having shot a constable; witness then recognised the prisoner, and now swears he is the man who shot the constable.

By the Jury. - Ward could not have so good an opportunity of knowing the prisoner as myself, in consequence of my having my eye steadily fixed upon him.

By the Judge. - Ward covered the other man, whilst I covered the prisoner; cannot state how far Ward was from me; I swear positively that the prisoner at the bar is the man who shot Dunn.

JOHN WARD. - On the night named in the indictment, myself and the deceased and Cassidy were in a hut of Mr. Tottingham's. Deceased looked out and said, there are two men coming, stop inside till they come nearer. Cassidy and Dunn told the two men to drop on their knees. Dunn asked Cassidy for the handcuffs. Cassidy threw

them on the ground, and on Dunn stooping for them, he received a shot in the head, and fell-down. The man who shot Dunn had a black hat on, at the time Dunn was killed. It was from the smallest man the shot was fired. The tall man had on a Manilla hat, and a fustian shooting coat.

The prisoner being called upon for his defence, denied the charge.

PATRICK McCAULL was constable till the7th March, when he was dismissed. Heard Cassidy declare he would hang the man he had got committed, if he had never hanged a man before.

By the Judge - Cassidy was speaking of the man he had committed for the murder. Verdict, Guilty, accompanied by a recommendation from the Jury for mercy! Death recorded.

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

TEMPERANCE, 1/29, 21/04/1841

BIRTHS.

Yesterday, in King street, the wife of **WILLIAM KENNEDY**, printer, of a son, still born.

TEMPERANCE, 1/30, 28/04/1841

CORONER'S INQUESTS. - A Coroner's Court of Enquiry was convened at a licensed Inn in Argyle-street, on Thursday last, upon view of the body of a Mr. **REYNOLDS**, a blacksmith of that neighbourhood. From the evidence adduced on this occasion, it was evident that the deceased over-night was under the influence of liquor, and in the endeavour to reach home, unluckily stepped on a piece of ground of insecure foundation, and unable to recover his balance, fell: in the shock his neck was fairly broken. The jury expressed themselves fully satisfied with the two evidences, and said they required nothing further. Verdict, accidental death.

CAUTION TO JURORS ON CORONER'S INQUESTS. - At an inquest held by Captain Innes, on Thursday last, the ACTING Coroner took note of one of the jury, a publican, evidently labouring under the influence of liquor; this was at noon. [cont'd]

BIRTHS.

At Watson's Bay, on the 20th instant, the lady of **LAURENTZ CAMPBELL**, of a son, still born.

SYDNEY HERALD, 01/05/1841

Supreme Court of New South Wales

Burton J.

R. v. Davidson

The Jury list having been called over, Mr. Justice Burton said:-

Mr. Solicitor-General, Gentlemen of the Bar, Gentlemen Magistrates, and Gentlemen of the Jury, - We are met together this day to perform a duty which has been imposed upon us by the Local Legislature, by an Act passed on the 16th October last. This, as you are all aware, is a new duty, and we are met together for the first time to perform it. This is the first Circuit Court that has been held in the district. There was, as many of you doubtless recollect, an adjournment of the Supreme Court held in Bathurst some years since upon a special occasion but this is the first time that a Court has met similar to those which we have been accustomed to in the Mother Country, and bearing the same relation to the Supreme Court that the Courts of Assize

in England have to the superior Courts in Westminster. It may therefore be well for us on the first institution of this Court, whether we are here as prosecutors, as witnesses to give evidence, or a judges or juries, to sit in judgment, I say it will be well for us all to pause, as it were, on the threshold of the temple of justice, and consider the nature of the solemn duty we have to perform. The administration of justice should not be entered upon lightly; it is a matter of the highest importance. There are some, I am aware, who look upon it as a mere ordinary affair; but it is my duty to disabuse the minds of those who may have formed that opinion. The administration of justice is not a mere abstract enquiry whether this or that person is guilty of this or that offence, and has thereby incurred a certain penalty; nor is our duty simply the adjustment of the rights or wrongs of our neighbours. Our jurisdiction is of a much higher character, and springs from a much higher source. Human institutions have little authority if they are not founded on divine law. In this view of the case you will see that it is not a mere abstract enquiry, but a religious duty which we have to perform. Justice, the highest attribute of the Supreme Being, is committed into our hands. What an awful situation then is ours, - set apart from the rest of the community to exercise this important duty. We are not to be looked upon as the servants of men, as some suppose, but as the servants of God, whom only we must obey; but if we were the servants of men we must obey our masters. We must obey God. Men's opinion upon our various acts will be freely given, and it is well that it is so, for many will be more guided by fear of the opinions of men than by higher principles. But this is not a lawful incentive; we should not perform our duty according to what men will think of us, but according to that which is right. I said just now, that the duty we have to perform is a religious one; our jurisdiction would fail of its influence and office if it were based on human law only. It may be doubted indeed how far, without divine authority a Legislature could go in inflicting pains and penalties for offences, more particularly the punishment of death. But we know that the National authority for it is derived from the Supreme. Accordingly, we find that in the law of our Christian country, there is nothing that is not based upon divine law. Go through the catalogue of crimes which are punished by law, and you will find that they are all offences against the divine law. Blasphemy and profane swearing, which, as you have just heard from the proclamation that has been read, are forbidden by law, are curses against the law of God. So it is with murder, the highest of crimes both by human and divine; so it is with perjury, theft, and with crimes against chastity of all descriptions. If a man does any wrong to his neighbour, if he perverts the due course of justice, if he molests the widow, or oppresses the fatherless, he offends against the law both of God and man. The same rule applies in civil cases, for no man can defraud his neighbour without offending against the law of God. To do justice is a divine command. A prophet says, "what doth he require of thee, O Man, but to do justice, to love mercy, and to walk humbly with thy God." Shewing that he does require us to do justice. The administration of justice therefore is a human institution, but it is a divine ordinance. What state of mind ought we then to be in who are called on to take part in it. We ought to be thankful that we are in a country where the laws are based on such authority. Imagine the state of a society in which there should be no law; what would be the consequence, why that every one must avenge his own wrongs; that all who are defrauded must retaliate; the strong would always be oppresors, for no one could retaliate upon them. What an awful state of society that would be, where there would be no redress for wrongs except what was to be obtained by personal strength. I am aware that I must be merely eliciting in the minds of many gentlemen, what they had before formed an opinion of, but I must be excused for taking up their time, as there

are doubtless many present whose minds have not turned to the subject, and it may be well on this first occasion of opening this Court to draw their attention to it. I now, gentlemen, come more particularly to the Act of Council under which we are assembled together. The object of this Act is to improve the administration of justice. To render the administration of justice efficient, we must have in the first place good laws, and I must confess that in many of ours there is great room for improvement. If laws are confused, if they are doubtfully worded, if they are scattered over many different acts, so that they are difficult to find or to understand, they are bad. Doubtful laws introduce a species of slavery into a land, they render uncertain what ought to be certain to all. We require an improvement in some of those which relate to the administration of justice; this arises partly from the increasing populousness of the colony, and the immense distances which adventurers go with their sheep and cattle. One improvement has been effected by bringing justice to your doors, by the institution of Circuit Courts. But there are others equally necessary. It would be unreasonable to expect the Judges to go on circuit to such places as Port Phillip, or Port Macquarie, or Port Essington, all of which are within the Governor's commission, and consequently form part of the colony. Some provisions have been made for the administration of justice at Port Phillip; on those provisions some observations might be made, but this is not the place for them. It is necessary, however, that a court should be established at Port Macquarie: probably a Supreme Court may not be necessary, but a court having more extended jurisdiction than Courts of Petty Sessions or Courts of Requests. Promptness in the administration of justice is one of its greatest recommendations; the force of example is also greater, as those who are witnesses of the crime are also witnesses of the punishment. This Act will, I think, be found one of economy, a virtue which it is the duty of all to practice, whether in public or private affairs. The system which has been hitherto pursued has been any thing but one of economy. Some gentlemen present may recollect that, more than five years ago, I said that the roads were crowded with persons going to and from the Courts of Justice, I alluded to the numerous escorts conveying prisoners to and fro. The expense that was thus incurred was enormous; witnesses were brought up and down the country; constables were sent backwards and forwards; prisoners were brought down to Sydney and then remanded back to be tried at Quarter Sessions, and all this at an expense to the country that was almost incalculable. Gentlemen who had an opportunity of seeing these escorts on the road, must know that the expense was enormous. One case, amongst many others, recurs to my memory, which was not tried from the absence of a material witness, the expenses in which were £59. I am satisfied if an account could be formed, combining what is incurred in the escort of prisoners, in the travelling of witnesses, and in serving of summonses by persons who ought to be otherwise employed, the system hitherto would be found most extravagant. The establishment of Circuit Courts will be found to be an economical measure, not only as regards the country, but as regards the suitors, whose expenses used to be very great. But although economy is a great, it is not the best commendation which an institution can have. Some think that cheap justice is a great desideratum, and that cheapness may be taken as the criterion of the work of all institutions. In this remark I mean no reflection upon those gentlemen who so kindly presented me with an address this morning; they did not use the word "cheap" I am persuaded, in the manner I am alluding to; they, I hope, entertain the same idea as myself, that cheapness is not the best recommendation of any measure. That which is best is cheapest; but I deny that that which is cheapest is best. You may disrobe justice of all her dignity, and make the administration of it that affair of heartlessness, that mere abstract enquiry I have

before alluded to. The truth of a fact may indeed be thus determined, but that is not according to the genius of Englishmen. To use a metaphor, we often see truth indeed represented naked, but justice is always clad to the feet. The genius of Englishmen has covered the administration of justice with decency and respect. A man who is a Colonel of Militia on field-days, a Judge on Court-days, and a shopkeeper every day, might administer justice properly, but he could not add much to respect for the law. It is not the cheapness, but the usefulness of an institution that should be the criterion of its worth. The next point to which I will speak is personal to myself and my brother Magistrates, for we are all Magistrates, although of a different degree. The first requisite in the administration of justice is good laws; the second is good Judges and Magistrates. As to who are qualified to be Magistrates, the constitution of England says, that they shall be men of the first consideration in the country, and that the Judges shall be men of the first consideration in their profession, that they shall all be men of piety and learning. We have but to refer to the Royal proclamation, which has just been read, to see that Magistrates must be men of piety, men who will discourage vice and encourage virtue, who will put the law in force against all offenders, who will insist upon a regular attendance upon divine worship, and who will put the laws in force against those who do not attend. By this proclamation I am directed as Judge of Assize, as I do now strictly, to charge you to put the law in force against drunkards, blasphemers, and those who commit lewdness. What manner of men ought those to be, is a natural question, that have this duty to perform? How can they enforce the law against those who break the sabbath, or who commit lewdness, if they commit these offences themselves? I might be over-awed in making these remarks, if I thought any gentleman who now hears me could apply them to himself, but I trust it is not so. I think it, however, my duty to state that no drunkard, no sabbath breaker, no whoremonger, ought to be, or is fit to be, a Magistrate. At the opening of this Court I think it right to make these general observations, and if there are Magistrates to whom they apply, which God forbid, I can only say that they are the persons to whom they ought to be made, and that they should show some sort of remains of decency and honesty by retiring from a situation of honour into private life, or what would be better still, reform themselves and leave off their evil ways. I will now trouble you with a few remarks upon the duty of magistrates. In all cases they should be particular in observing the law in the first stages of a prosecution, for all will be in vain if the first steps are not judiciously taken. The individual duties which you have to perform are heavy and responsible. Some magistrates receive stipends, and some are honorary, but my remarks are applicable to all; neither is more nor less honorable than the other. One of your most important duties is the appointment of constables, and you should take care that this office is never conferred upon low bad men. I may be met with the reply that it is impossible to get proper men to fill the situation. What is the exact remuneration paid to constables I am not at this aware, but I am afraid it is still very low, although it was raised, I believe, during my recent voyage to England. A fair criterion is to compare the remuneration of constables with the wages paid to labourers, and if it is less, and you cannot get good constables for less than you can get good labourers, here is an example where the principle of cheapness fails. If it is necessary, let my brother magistrates apply to the proper quarter to have this remedied. The next point for our consideration is, when the prisoner is brought up for examination. Let the evidence be taken so that it will support the charge, and let the depositions be taken strictly as they are given by the witness. If on the first examination the evidence is not sufficient, the magistrate, if he has reasonable ground, may remand the prisoner for a reasonable time, for further inquiry, -- and here a word

of caution may be necessary, - not without reasonable cause to tamper with the liberty of the subject. If satisfied of his guilt, the next duty of the magistrate is his committal, and here an error has been very generally committed, although there are fewer here than I have seen elsewhere, and none of the cases committed by the Police Magistrate are subject to the remark, magistrates must not commit for a general offence, such as felony, but must state in the warrant the specific offence for which the committal has taken place; if it is theft it must state so, all general committals for felony are illegal, and upon a mandamus being applied for, a magistrate would find himself in an awkward position. There are only three warrants in this district of which I have to complain; two are committals for felony, and the other is not legibly written. The charge is, I believe, horse stealing, and I took it for 'hare shooting,' the next point is, admitting a prisoner to bail, which in cases of felony can only be done by two magistrates. This is a very important matter and one that requires the speedy interference of the Legislature. I have rarely seen a recognizance in this colony which it would not be very hard to enforce. According to the law of the land, every prisoner should be committed for trial at the next Court of Oyer and Terminer, or Quarter Sessions. Now what is the course pursued here. A man is committed until relieved in due course of law, and the recognizances of witnesses are to appear when called upon by the Attorney General. There is thus a fresh summons to be issued for every witness, constables or other persons have to be sent to look for them, and perhaps by keeping out of the way they may entirely defeat the ends of justice, without incurring any risk themselves. There is but one statute upon the subject of commitments and recognizances, and that is inapplicable to this Colony, I allude to 7th Geo. IV. (His Honor here read the clause of the Act of Parliament, which directs that all persons shall be committed for the next Court of Quarter Sessions or Assize, and that all bail bonds and recognizances shall be forwarded to the office of the court to be filed.) In this Colony the practice is not to commit for any particular Court, but generally, a matter of very great importance, for we live here as in England, under the protection of the Habeas Corpus Act, and if one assize passes over, a prisoner can demand to be tried at the next, or at the end of the session he must be discharged. The recognizances are to be returned to the officer of the Court, in order that they may be there filed; and if the witness is not present when called on it may at once be estreated. The depositions are likewise direction by the Act to be returned into court; but in this Colony, while the Attorney-General holds the authority which he now does, it is necessary they should be returned to him. I have thus shown that the only power to commit for trial, to admit to bail, or to take recognizance, depends upon an Act of Parliament, which is inapplicable in many of its parts. Is not this a matter that requires the immediate interference of the Legislature? It may be asked why has this not been attended to before? and here I can exonerate myself from blame, of seven years since I observed the defect and drew, proposed, and recommended, an act to remedy it, and it is rather mortifying to find that nothing has yet been done towards it. We want fresh arrangements entirely; these escorts must be done away with; prisoners must be committed for trial in certain districts; we want goals for the different district, and we must have them – gaols fit for a Christian country, not gaols where all persons are classed together, men for the lightest offences with men for the most heinous crimes; we must have these although they cost more than mud huts, from which prisoners can escape, or are more trouble than ironing men to keep them in safe custody. The next important subject for our consideration is the certainty of punishment. The law, referring again to the Divine law, tempers justice with mercy: the case of a prisoner is considered with mercy by his prosecutor, by the Magistrate, by the Jury, by the Judge,

and finally by the Crown. The Legislature should make such laws as Judges can execute. I fear that in some cases punishment is uncertain. When I left the Colony, transportation to Norfolk Island was very effective; it was a strong and serious punishment, and I must receive more information than I now possess, of what is going on at Norfolk Island, before I abandon my fear that the administration of justice is likely to be weakened by it. I deny that convicts should be treated as sick patients, morally sick, whose reformation is the only object, and who are to be petted, and flattered, and beguiled into reformation, or an appearance of reformation. I deny that the sole end of punishment is the reformation of the criminal; this is a mistaken, and, in my opinion, a mischievous theory. Another object of punishment is to be a terror to evil doers. We are commanded by Divine Law to put murderers out of the land, to cleanse it from abominations. The Jews were thus made executioners of the Divine Law and Divine punishment in the case of the whole nations of transgressors, as if to shew them the heinous nature of those offences for which they were made to punish them, and so warned to avoid such evil example. The judicial duties of magistrates are not less responsible than those of the Judges, although less in degree: they are judges at Quarter Sessions, and have an extensive summary jurisdiction, in which they are not assisted by a jury; they should be men therefore patient, consciencious, and independent. I will now make a few observations to the Gentlemen of the Jury, who have heard the preceding remarks, many of which are applicable to them. You are selected from your fellows to assist in the administration of justice, and what should your qualifications be? not less than those of the Judges and magistrates as regards independence and integrity, On your particular duties I will remark as cases come before us; but a few general observations may be advisable. Judges are the sole judges of the law in all cases except libel, and jurors are judges of the fact, and the judge who should decide upon the facts of a case would outstep his duty as much as a jury who should decide upon the law. Since I left the Colony there has been one improvement in the administration of justice, of which I must express my admiration. Prisoners are now admitted to make their full defence by council. We have both parties before us. The Judges will of course always see that a prisoner is not improperly convicted, and will take points for a prisoner, but an able counsel will take all the points that he can, while a judge will only act impartially. We cannot look upon the calendar of offences which we have to try without very serious reflections; and what a picture of the state of the community does it present. Can we come to the consideration of these cases with apathy, as if it were a mere matter of business, and abstract enquiry, whether John Stiles committed a crime or is to have punishment. We cannot help having some feelings of sympathy for the wretched men who have committed these crimes. We are the executioners of divine justice, and, as we are taught by the record of the Jews of old, if we commit the same offences for which we punish others, must we not stand self-condemned. We should take care of ourselves lest we fall. I know that I may be met with the observation “Am I a dog that I should do such things?” But we should remember that we are all liable to transgression. I once tried a man who went out to rob a hen-roost, and returned a murder. I use this illustration to shew that when a man commits any crime he does not know where he will stop. What is that makes us to differ? I have heard it said that the difference was in simple education, but I deny it. Education may prevent a man from committing a specific crime to which he is not tempted, but he may be guilty of one higher. It is said if a man be educated he will see that it is his interest not to commit crime, as the advantage gained by it bears no comparison with the penalty this is an utilitarian principle, and is not correct. It is divine grace only that makes one man to differ from another. There must be religious

education, not education merely secular. We must all be reminded how important it is that we should seek moral renovation of the country by all the means in our power. It is to the rising generation that we must look. The young have had their hearts hardened by sin, but their minds are susceptible of receiving good impressions. We must not forget that He who was both God and man, said, "Of such is the kingdom of Heaven." I was yesterday much gratified at seeing a number of young persons confirmed. I am happy that my first visit here should happen to be at such an interesting time, when the Bishop of the Diocese is on his tour for the purpose of confirming the young. I know of no object that could have a more softening influence on the human heart, than to see a number of young children ranging round the Bishop to be confirmed. Let that rail be again and again filled, and the work of renovation will go on until it is accomplished. Among those who were confirmed were several adults, whose appearance denoted that they were natives of the Colony, and had had no previous opportunity of receiving this rite. This was, in one sense, a sorrowful sight, as shewing how great has been the spiritual dearth hitherto; but a gratifying one also, as shewing that we have now the blessing of religious means. – We must now proceed to our duty, remembering that we must administer justice with mercy; but we are not to understand by this that we are to disregard justice for the sake of mercy, but we are first to consider justice, and then mercy. We must not convict the innocent; but it is not less our duty to take care that the guilty do not escape. If we do not do this, we commit a sin, and bring a national curse upon the community.

The Solicitor General handed in his commission to prosecute in Circuit Courts, which His Honor directed to be copied and entered upon the record.

DANIEL DAVIDSON, a convict, was indicted for the wilful murder of **PATRICK MAGINNESS** by shooting him at King's Plains, on the 4th February.

The Solicitor-General said, that after the eloquent comprehensive, and instructive address which had just been delivered from the Bench, he should not take up the time of the Court by any lengthy remarks, but he must say that if that address received the attention and consideration which it was entitled to, it would materially lighten the duties of all who had to perform any in the Court. He regretted to say that he appeared before the Court in a twofold character, partly in that of a grand jury, to determine who should be tried, and partly as public prosecutor. He mentioned this in order that the Jury should not give to the evidence they would hear, greater weight than it was entitled to. In England no man can be put in the degrading position of being placed upon his trial for an offence until twenty-three gentlemen have agreed upon the necessity of doing so. Here there is no such course pursued, and the Jury must therefore attach no weight to the mere circumstance of a party being put upon his trial. The character in which he represented the Crown was not one of vengeance, nor was he dispensing of justice, neither was he an advocate in the ordinary sense of the word. It was not his duty to make nice distinctions, nor by subtle arguments to strain a case against a prisoner, but simply to bring it before the jury. In finding their verdict the jury would be guided by the probabilities of a case: they would not acquit a man because there was an improbable possibility that he might be innocent; but if there was such a case against him as satisfied them of his guilt, they would return a verdict of guilty. As Crown Prosecutor, he would always have the right of reply, whether witnesses were called for the prisoner or not, but this was a course which he should always exercise very tenderly. The learned gentleman then concluded by giving a brief outline of the case.

It appeared that the prisoner Davidson was a convict, who sent to Carcoar as a probationary constable, on account of his good character. The deceased Maginness

was sent under similar circumstances, but Major Bowler, the police magistrate, having reason to believe that he was in league with bushrangers, determined upon sending him to Sydney, and directed Davidson to take him to Bathurst. On the day laid in the indictment, Davidson and Maginness, the latter handcuffed, came to the station of a Mr. Cooper, on King's Plains; they were both drunk, Maginness being the most so. Maginness asked Mr. Cooper, who with two servants was at work on the edge of the road, if he thought that Davidson was in a fit state to take him to Bathurst, and declared that he would not go any further until he had seen Major Bowler; both parties had some very high words, and at last Davidson unhandcuffed Maginness, that they might have a fair fight; they fought for a minute or two, when Mr. Cooper interfered. Maginness fell down, and Davidson threw himself upon him and called on Mr. Cooper to assist him to handcuff him, which he did after a scuffle, in which Maginness grasped Davidson by the throat, and Davidson bit Maginness's hand. When Maginness got up he became still more violent, and Mr. Cooper endeavoured to pacify him and to persuade him to go on the road with Davidson. Davidson went about thirty yards, to where his bundle was lying, and took up a pistol, with which he returned close to Maginness, levelled the pistol at him, saying, "I'll blow your brains out," and the pistol went off, and Maginness, who received the ball through his head, fell down lifeless. Davidson immediately said that he had no intention of shooting Maginness, that he only meant to frighten him, that the pistol had gone off at half cock, which it had done before, and if the world was his he would give it recall that shot. Major Bowler, to whom the pistol belonged, said he never knew it to go off on half cock, but on trying it in court, it went off twice without being cocked.

The prisoner's defence was, that he never intended to do more than frighten the deceased, and he had subpoened a witness (who had not arrived) who could prove that once before the pistol went off as he was carrying it, and nearly shot his foot.

His Honor said, that this was an example of what he had alluded to in his address, the evils arising from making improper persons constables. That the death of the deceased was caused by the prisoner there could be no doubt, and the question for the Jury was, whether the prisoner fired the shot deliberately or not, if they were of opinion that the shot was fired wilfully, they must find the prisoner guilty of murder: if he had used a staff and had accidentally caused death, then it might have been a case of manslaughter, but in this case after the deceased was handcuffed, the act of the prisoner was altogether unjustifiable. If, however, the jury thought that the prisoner did not fire deliberately, still he had no right to level a pistol that, according to his own account, he knew went off at half-cock, at the head of the deceased; a pistol should not be used except in the most extreme case, while here the deceased was handcuffed, and Mr. Cooper and two of his men were present, if assistance was necessary.

The Jury retired about five minutes, and returned a verdict of guilty of manslaughter.

His Honor said, he quite concurred in the verdict; he did not think that the prisoner was so wicked as to wish to take away the deceased's life, but still the Court must mark its sense of the prisoner's conduct by sentencing him to be transported for seven years.

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

TEMPERANCE, 1/31, 05/05/1841
BIRTHS.

At Forest Lodge, on the same day [Friday, April 30] Mrs. **AMBROSE FOSS**, of a son, still-born.

TEMPERANCE, 1/32, 12/05/1841
[On Monday morning last (Friday, 7th)] on the same day, at his residence "Seven Stars," Castlereagh-street, Mr. **JOHN MURDOCH**, for some years a Bow-street runner; deceased was in his ordinary health up to mid-day on Monday, and died the same night at ten minutes past ten.

SYDNEY HERALD, 14/05/1841
Supreme Court of New South Wales
Burton J., 13 May 1841
LAW INTELLIGENCE.
SUPREME COURT - CRIMINAL SIDE.

Thursday. – Before Mr. Justice Burton, and a common jury.

MATTHEW LYNCH, free by servitude, was indicted for the murder of **MICHAEL SULLIVAN**, at Illawarra, in the month of July, 1840.

The Attorney General gave an outline of the case, and called,

Mr. **COLIN STEPHENSON**, who deposed – I was superintendent to Mr. **J.T. HUGHES**, at Illawarra, near Wollongong; I know the prisoner, he is a sawyer; I paid him some money in May, 1840; he had been working there for some months before; I paid him £32 odd; he had a mate named **STONE**; I made another contract with the prisoner and Sullivan, which ended on the 18th of July, when Lynch came to me on that day, being on Saturday, to get the sawn timber measured, when I told him that I could not measure it on that day, but would do so on Monday; on the Sunday Lynch took the overseer, **PEARMAN**, and had the work measured by him; I told Lynch I would have the timber measured over again on Monday, which was done by two men, named **WILKINSON** and **BUCKLEY**; the prisoner came repeatedly to me on that day, pressing for the money, alleging that he was in a great hurry, being anxious to get to Sydney; he was then very clean, being dressed in white trowsers; he came in the forenoon, and also in the evening, just before sun-down, and I appointed to pay him on Tuesday morning, at nine o'clock; on Monday night, about seven o'clock, when walking in the avenue, I saw a blaze in the bush, in the direction of the hut, in which the prisoner and Sullivan lodged, and spoke to one of the servants about it, when he gave it as his opinion that it was a fire by the blacks; it burned very fierce for some time; I told him the blacks were not in that direction; on the Tuesday morning, about five o'clock, the prisoner came to me about the money, he had a scar on his forehead and another on his chin, which seemed to have been produced by violence; they had been washed; he then appeared very shabby, and had on blue trousers; I told him to go for Sullivan, and come at nine o'clock, and I would pay him; he went away, saying he would bring him; he came at the end of an hour without him, when I told him I would not pay him; he then went off and returned in the evening; my reason for not paying him was, that Sullivan had sent word to me, by three persons, that I was not to pay the prisoner, as he was afraid of his life; when he came at night I refused to pay him, and told him to go for Sullivan, who, he said, he believed was at the hut; I called Mr. Buckley to witness the settlement, and during the absence of the prisoner I placed the accounts on the table; we sat down about 14 minutes, when the prisoner returned and roared out he had been robbed; I asked of how much, and he said of £37; I asked where it had been taken from him, when he said Sullivan had taken it and his white

trowsers, and had bolted; I said it was a strange thing that Sullivan should do so, as he had £24 coming to him, and refused to pay him till Sullivan was produced; he never gave me to understand before that, he had £37, or indeed any money; he had no means of making money, and I had paid him some money before in May; I am convinced that he had not time to be at the hut during the time he was away, as it wants only about a chain and a half of being a mile distant from my house; I then believed he had been robbed, and directed him to go to Captain **COLLINS** and get a warrant against Sullivan; he returned on the Wednesday morning with a constable and told me he had got a warrant; I asked the constable if he had a warrant, and he told me he had, but had not looked for Sullivan, as he did not know where he was to be found; we then went out and saw **McQUILTY** and a number of other persons coming to the house when McQuilty cried out to **COSTILLO**, the constable, handcuff the scoundrel, he has murdered Sullivan, which was done; I had seen Sullivan a few days before alive and well; I went to the hut on Wednesday or Thursday, and saw part of the hut burned down, and on the next Sunday we found a quantity of ashes about ten yards distant from the hut, and they were covered with branches of trees, and a number of bones were mixed with the ashes; we had before searched the water-holes for the body; I cannot identify the bones; they were found by a man of the name of Doyle and his wife; I saw them in Doyle's house; I saw the axe produced in front of the hut, the handle had been burned out of it, and the iron must have gone through the action of fire; on the following Tuesday we found the prisoner's luggage at a person's house of the name of Barratt, and in it found a pair of white trousers with marks of blood on them; these are the trousers; the marks are still visible on the front of them; they are of the same description as those worn by the prisoner on the 18th of July; I told him, when he reported the robbery, that it was very strange that he should remove all his things to Barratt's, and leave the trousers with the money in the hut; when the axe was found, it appeared to have had blood on it; there were two pieces of bark in the hut, on which there were marks of blood [the sheets of bark were produced in court, and the marks pointed out]; they were the sheets on which Sullivan had been accustomed to sleep; they were first seen by me on the Sunday, when I went to the hut; the marks of the blood were then quite fresh; the prisoner came early on the Tuesday morning for the money, and the steamer left for Sydney between three and four in the afternoon.

Cross-examined by the prisoner. – I met you coming out of my own house; the blacksmith sets to work at six in the morning; it was daylight, but the sun was not up; it was a very bad day; I take breakfast about nine-o'clock; I did not take breakfast for some hours after I saw you; I cannot swear that you were with me from nine to eleven; I do not recollect promising to write to Mr. Hughes to give you a clearing lease; the timber was twice measured, there was about thirty superficial feet of difference between the two measurements; I do not recollect what was the measurement; the axe was not found in the blacksmith's hut; I saw it at the hut first, and afterwards at the blacksmith's; I am not certain that I saw it at the hut, but my impression is that I saw it at the hut; I do not know how many days it was at the blacksmith's shop; I never made any arrangements to defraud Mr. Hughes of 4,000 feet, and to get £10 for it; if you had offered me five millions of money I would still have charged you with the murder; you took the contract from me with Sullivan, and I thought he had as much right to half the money, as he was sawing with you; when the contract was made you engaged to pay off part of Sullivan's debt, which you did; I do not know how much timber you cut with the woman, but the money I paid you in May, was £32 11s. 8d., and on the 18th of April I paid you £5; the £32 11s. 8d., was on your own account, and you was to pay your comrades yourself; I do not know

what part of it Sullivan was to receive; I do not recollect what you said to me at the blacksmith's shop; I believe Sullivan was sick, and had been bled by the doctor; I do not recollect that he was bit by my dog; Pearman was not the party to measure the timber; I never knew that McQuilty made you drunk on the Monday night, in order that he and Sullivan might rob you; I did not understand that it was to McQuilty's hut but your own gunyah that you went to for Sullivan on Tuesday evening; you went in the direction of your hut, that of McQuilty was in a different direction; I thought that you had been robbed; I believe on oath that Sullivan is dead, he being a-missing; it was not a conspiracy against you on the part of those who found the bones; there was no quarrel between you and them, and you were always a quiet and peaceable person. There was a heavy rain on Tuesday night; it was on Monday night I saw the fire in the direction of the hut; when I saw the hut on Wednesday, there was no fire in it; I went for Pearman from the bush on Monday afternoon; I told you on Monday to bring Sullivan; I know he got in debt to me for rations and I told you I would keep Sullivan's debt off the first contract; Sullivan wrought for half the last contract; I do not know that you had Sullivan and Stone hired as labourers for half your earnings; you went to be paid the £48.

The Court remarked that it was a very improper thing not to have paid the prisoner his share of the money.

The witness stated that after the prisoner was in custody it was discovered that the timber was made up by plank ends being put at the extremities of the heaps, so that it measured between eight and nine thousand feet more than it really contained, and that he prisoner gave information of the deceit after he was in custody for the murder.

The cross examination by the prisoner resumed – I never gave away your blankets, and all your things are in the store; I think it is blood that is on the trowsers; I have cut myself when shaving, and have seen people tear themselves by the briars; I cannot say if the blood on the bark is bullock's blood, or blood from the swelling in Sullivan's groin, but I know that if Sullivan was bled it was not in that hut; I had seen the hut before Sullivan was missing; and after that I went there to see the timber; the blacksmith told me the axe had been left at his shop in the same stated that is now in.

By the Court – I did not go to the hut on suspicion of the murder having been committed there. I went to see the timber; but afterwards a number of us went to the hut to search for the body, when one present showed the bark on which Sullivan used to lie; there were two sleeping places in the hut formed of pieces of stick; the stains were dry, but brighter than at present; I do not know that water will stain bark, I have not noticed it; there were no bed-clothes on the bed; I did not observe any stains on the bark in the other bed; the bones and ashes were completely concealed from the eye by the branches of trees, which had not been newly cut; there were a great quantity of branches lying about; we saw no traces of the ashes having been carried to where they were found, nor was there any evidence of a fire having been at the spot where the ashes were found; there were very few ashes in the fire-place.

Cross-examined by the prisoner – The blacks were not in the direction of the hut on the Monday of the fire; they were in another place a mile distant from the hut.

By a Juror – I have been three years in the country; on the Tuesday morning, when the prisoner came to me, it was light, but the sun was not up; I think it was between five and six in the morning; McQuilty's hut is in a different direction from the prisoner's hut; I do not know that tea will stain bark.

CHARLES DOYLE deposed – I agreed to grow tobacco with the last witness; I knew the prisoner as a sawyer, and Sullivan who was his mate. I was with McQuilty when the prisoner was taken into custody; I went to the hut on Wednesday, after

dinner, but we found nothing on that day, except that the fire-place had been burned down; a number of us went again on the Sunday, when we found a fire made up not far from the hut, which had not been lighted up; we went there again after dinner, and, on removing some straw from the bark where Sullivan had slept, found stains of blood on it; on the way home we came on the bones and ashes; they were picked up; they were given to Dr. **O'BRIEN**; some bones were afterwards found at the saw-pit, where the prisoner and Sullivan worked; I saw Sullivan about a month before he was missing.

Cross-examined by the prisoner – I only think that it is blood that is on the bank; I cannot swear that the bones are human; I did not know that you had any money; I do not know what master you work for; I never got blood nor fat from this last witness; I never got a farthing from any one to come here and prosecute you; I do not know how many men McQuilty had taken with him to search for the body; there might have been thirty persons there, including the blacks, to whom the white people offered to make up £5 if they could find the body; they searched for two days, and then gave it up.

By the Court – When the bones were found, there was a wedge of an axe found among them; I was not intimate with Sullivan; when I saw him last he had on a pea jacket.

Francis McQuilty deposed. I am a carpenter living at Illawarra; I was told by Sullivan that he was afraid of the prisoner, who had chased him with a knife, and was requested by Sullivan to make the first witness aware that part of the money belonged to Sullivan; I told Mr. Stephenson, who said he would take care that Sullivan should have part of the money; I recollect being sent with Buckley to measure the sawed stuff cut by the prisoner and Sullivan; they were both present, and appeared to be on friendly terms; I had opportunities of knowing the prisoner's money affairs; I know that he was arrested for £9 or £10 in May last, in consequence of a Court of Requests judgment; he also paid Mr. Barratt between six and seven pounds for rations; he likewise compromised another case for a pound; and he paid me £4 14s. 6d. out of the proceeds of his first contract; he told me that he had spent £4 in treating a woman and her friends at Wollongong; he was not able to meet the Court of Requests' judgment, as he told me had a lump of a waddy in his hut to meet the constable; I never saw Sullivan after the measuring of the timber; he had on a pea jacket, and a very bad pair of shoes; on the morning of Wednesday, Mr. Hughes's store-keeper told me that the prisoner had murdered Sullivan, and that the prisoner pretended that Sullivan had robbed him; I and about twenty others made a search for the body, but did not find it; on the Sunday after we went to the hut, and then saw the pieces of bark now in court, with marks on it, which I solemnly swear to have had the appearance of blood; I have seen an axe at the hut, and know it, as I once borrowed it; this is the axe; I next saw it at the blacksmith's; the prisoner and Sullivan both promised to call on me; the prisoner did so, but I never saw Sullivan after, although all his best clothes were at my house, and he told me he wanted to go to Jamberoo for a pair of shoes, as wheat he had were very bad; he proposed taking his breakfast with me at my house on Tuesday; he had mere rags of clothes on when I saw him, and all his other good clothes were at my house; on the Wednesday a number of us went to the prisoner's hut; and while we were there the prisoner came; he appeared very much surprised at seeing so many of us there; after consulting the others, we followed him to Mr. Stephenson's and I gave him into custody; he then had a cut or bruise over his eye, which had been bleeding; I asked him how he got it and he said it was done by the branches when going to Jamberoo; I afterwards found some bones in a sawpit, which I put into the bag, I now

produce; the wedge of the axe is among the ashes; I also found this night-cap concealed about three yards from where the bones were found; it was concealed under some offal timber; it was damp and had marks of blood on it; I see them yet, but they were much brighter then than they are now; I squeezed something like blood out of it; when the prisoner was taken he said to me, "Ye have made away with the man, and have taken his money;" before that he had got a warrant for Sullivan; the prisoner told me he had some money in the Bank, and also that he had some mares up the country.

Cross-examined by the prisoner – I believe Sullivan is dead, and that you murdered and burned his body; I cannot say if the marks on the bark are marks of bullock's blood, or is the blood of a human being; I swear it is not wine; I cannot swear that the bones are part of Sullivan; I remember that Sullivan was bled at another hut; it was outside the hut he was bled; he was sitting on a tree, and the blood ran on the ground; I cannot say how much timber you cut with my brother-in-law, but I know that you cheated him of £12 or £14; I know that you cut with him about two years ago, and that you cut £5 worth of stuff for Father Rigney also about two years ago; there were some dogs with us looking for the body, and a cake of blood was found by one of the dogs in front of the hut; this was got on the first or second day of the search for the body; the first information that we got of the body having been burned was from the blacks, who brought some clay from the fireplace, and some small bones, and told us that white man's fat was in the clay, and that the bones were those of a white man; we also found a fire prepared for lighting in an apple-tree; on the Monday night after I had measured the timber Sullivan left my house about sundown; I gave neither you nor Sullivan any rum that night; I positively swear that I do not believe that you had £37, as you were not a sawyer, but lived by taking in those who employed you; I never sold grog; if you had given me £1000 I would have given you in charge as a murderer; I have been in this Colony since 1816; I have since my arrival measured a great deal of timber, but never saw such a fraud committed as was done by you, as you made up ten thousand feet, so as to make it measure twenty thousand.

Examined by the Court – I was not privy to the fraud committed by the prisoner and his mate; I do not believe that any one knew of it but Lynch and Sullivan.

By the Attorney-General – I do not recollect whether the prisoner was at my house on the Tuesday after I had measured the timber, nor did my wife tell me he had been there.

By the prisoner – You might have been at the house on Tuesday night.

John Evans deposed – I have known the prisoner before; I met him about the 21st of July, when I was on my way from Jamberoo, with a man named Michael Irwin; the prisoner asked where we came from, and on answering him, he enquired if we had seen a man named Sullivan; we told him we had not; he seemed to doubt our word, and told us that Sullivan had robbed him of £36 or £37; I said it was a hard case for a working man to be robbed of his earnings; he appeared to doubt our not having seen Sullivan; on which Irwin fell on his knees and swore that he had not seen him; the prisoner then said that he was convinced that we had not seen him, and if Sullivan would return his money he would not hurt a hair of his head; we then parted, but before we did so, I asked him where he kept his money, when he said it was kept in his trouser's pocket which he sometimes flung over the door, and at other times on his berth; I afterwards went into an acquaintance's house, who told me that Lynch had been taken into custody on a charge of having murdered Sullivan; I afterwards saw the prisoner in gaol, but he said nothing to me about the affair.

Mr. John Pearman proved that the timber had been falsely stacked by the prisoner and his mate, which was the cause of the witness returning the total contents as being

double what it actually was; and he believed any other person might have been deceived by the mode in which the timber was stacked.

William Buckley, carpenter, corroborated the last witness as to the measurement, and also proved the finding of the burnt bones in the saw-pit, where they had been washed up by the rain.

CHARLES McKENZIE deposed, that he visited the saw-pit in the beginning of November last, and saw the bones produced in Court, which had been burnt; they had been covered with saw-dust, which had been washed of by the rain.

THOMAS FOWLER, keeper of The Wollongong watch-house, where the prisoner was confined, deposed, that a person of the name of **JACK CONNOR** called and wished to see the prisoner, as being a shipmate of his; the prisoner at first refused to see him, but afterwards said he had sent for him to make enquiry of him if he had seen Sullivan at Dapto, when he (Connor) said he had not.

Captain **PATRICK PLUNKETT,** Police Magistrate of Wollongong, deposed to visiting the hut after Sullivan was missing; that he ordered the hut to be taken down, and then saw the marks of blood on it; there were also marks of congealed blood about the fire-place; when he spoke to the prisoner about Sullivan, he told him that Sullivan had robbed him, and gone over the mountain road to Campbelltown; word was sent there, but no account of a man answering Sullivan's description was obtained; he also proved that part of the bones in Court had been brought to him by Doyle and several others, and among these he recognised one bone as being the cap of the knee of a human being.

In cross-examination by the prisoner, this witness deposed that a man of the name of Larkin had been subpoenaed as a witness for the prisoner, who had afterwards told the witness that he knew nothing of the affair, on which he told him that under these circumstances it was optioned for him to attend, and he had not come to Sydney with the other witnesses.

Dr. Bartholomew O'Brien, of Wollongong, proved that he had received some bones from Doyle which were produced in Court, that one of them is a fragment of a bone of the foot of a human being, it had a particular articulating surface, and there is no bone in any animal like it; there was also corroborative evidence obtained from calcining another bone of the same description, which on being burned assumed exactly the same appearance as the bone found by Doyle; there was also another fragment of a bone received from Doyle, which, from its being a segment of much larger curvature than the bones of the cranium of any other animal, was evidently a portion of the cranium of a human being; he also recognized it as a bone belonging to an adult person by the conformation of its sutures; this fragment had been compared with the craniums of the horse, the ox, the pig, the dog, the cat, and such other animals as were likely to have been about the place where it was found, but it was different from all of them, except that of an adult person, with which it agreed exactly; there was also a portion of the knee pan almost complete, there were several other bones found, which were evidently portions of the vertebrae of the back, but whether of a person or an animal from their being so broken, it was impossible to discover; the whole bones had been subjected to the action of fire, but the knee pan less than the others; in his opinion they had been subjected to fire shortly before they were given him for examination.

Examined by the Judge – It was not possible to ascertain the age or sex of the person of whose body the bones had formed a part, neither could he say whether the bones had belonged to a black or a white person.

The witness Fowler was recalled by the prisoner – He recollected that after the prisoner had been in custody, he mentioned in the watch-house that the bones found were those of a black gin.

Dr. Harnett examined the fragments of the bones and identified the knee-pan, the bone of the foot, a portion of a skull, and selected two bones as being those belonging to the fingers of an adult; but had seen some of the bones of animals among the fragments, particularly some of the teeth of an animal of the cow kind.

Doyle was recalled – Had found some buttons among the bones similar to those produced in Court, but whether those he saw were them or not he could not swear.

Trooper **KERSHAW**, of the Mounted Police, proved having been sent to Campbelltown to search for Sullivan with a warrant about the 21st of the month; but although he inquired all along the road he heard nothing of him.

This closed the case for the Crown.

In defence the prisoner asserted that the hut had been robbed by Sullivan in his absence, who had left the place, and that it was a case of spite, on the part of the neighbours, who had got up the charge against him in revenge for not giving £20 to Stephenson and McQuilty, to conceal the fraud about the measurement of the timber; he was of opinion that Sullivan was alive, and that the witnesses knew where he was; he had subpoenaed two witnesses, but they had not attended.

His Honor recalled Doyle, who informed him that the bones were found in fresh ashes, which had been rained on, but had not been thoroughly penetrated by it.

In putting the case to the jury, his Honour informed them that the first thing for them to determine was, that Sullivan had been murdered; and secondly, they must be certain that he had been killed by the prisoner. It was unfortunate in the present case, that it rested entirely on circumstantial evidence, it was not for us, as human beings, to call in question the reasons why divine providence at times allowed such events as the present to be involved in obscurity. Whatever might be the impression on the minds of the jury, they were not to go beyond the evidence, and they were only to credit it, when it was such as was reasonable, and such as would satisfy rational beings. The conduct of the prisoner had certainly been such as to place him under circumstances of great suspicion; and it became an important enquiry for the jury to ascertain whether he was, at the time alleged, in a condition to be robbed, and pointed out the contradiction which the prisoner's unsupported statement, as to his being possessed of £37, had received from several of the witnesses, also that the prisoner before the alleged robbery, had been employed for several days previous in removing his goods and chattels from the hut, and put it to them whether it was likely that in doing so he should leave the trowsers behind him, with such a sum of money in the pockets. They were to determine, not only that a human being had been murdered, but that the individual killed was an adult white male named Sullivan. It was the duty of the jury to judge of the credibility of the evidence. They would also take into account the manner in which the prisoner had endeavoured to assail the credibility of the witnesses, which had not been borne out. The prisoner had made a very ingenious defence, and had embarrassed the case in a very artful manner; but still they were not to regard his having done so as being any thing against the prisoner; it was his right to avail himself of all legitimate means of defence which the law allowed him, and he should like to see every one, whether innocent or guilty, able to conduct their own defence. (He then went over the whole of the evidence and briefly recapitulated the observations he had made at the commencement of his address.) He considered it a strong circumstance against the prisoner, that Sullivan had absconded as alleged by him, and that, too, at a time when £24 was due to him; but it was somewhat mitigated

by another part of the evidence, which showed that £16 of that would have been retained to clear his old account, with the first witness; he also pointed out that there was a variance between the statement made by the prisoner before the magistrate, and that given in the Court; as in the latter statement, he asserted that two regatta shirts, his property, had been carried off by Sullivan; but he had not mentioned these when he applied for the warrant to get him apprehended. He subsequently called their attention to the fire having been seen in the direction of the prisoner's hut so soon after Sullivan had been last seen, and to the scars which had been seen on the prisoner's face on the day after the fire had been observed, together with the adroit manner in which the bones had been concealed immediately after the alleged burning of the body had taken place.

The jury retired at half-past eight and returned in about an hour after, finding the prisoner – Guilty.

On being asked what he had to say in arrest of judgment, the prisoner said "I am a murdered man; I am innocent of the charge of which I have been found guilty."

The usual proclamation having been made, His Honor proceeded to pass sentence on the prisoner, by informing him, that he had been found guilty of a most barbarous and horrible murder; and he was sorry to say, that if it had been possible to add an aggravation to the crime, the prisoner had done so in two ways; in the first place by the means which he had employed to conceal it; and secondly, he had that day set up a defence of the most wicked description. He had asserted he was innocent, and was a murdered man; but he could assure him, that there was one Bar, at which he would have to appear with every one then present, when such an assertion would not avail him, without it was a true one. From all the circumstances of the case, as exposed by the evidence adduced against him, he could not conceive that it had been the first enormous crime of a similar description in which he had been implicated. The conclusion at which he arrived from a survey of the evidence was, that the perpetration of the crime had been the work of one who had well studied the art of concealing such offences. The defence was another gross aggravation of the awful crime of which he had been found guilty, and that was, of charging the principal witnesses against him, with being implicated in the fraud in which he had after his committal confessed himself as being concerned, for the purpose of defrauding his employer, and insinuated that he was the victim of their malice, all which had been most distinctly disproved by the respectable testimony of Mr. Pearman, which the prisoner had not even ventured to impugn. It was not for him to sit in judgment on the verdict of the jury, by which the prisoner had been convicted, he regarded it as the verdict of twelve honest men, and as such he fully concurred in it. It was true that the ingenuity of the prisoner in the mode by which he made arrangements for concealing the remains of his victim, and also by the line of defence which he had that day followed up, had surrounded the case with great legal difficulties; but still he felt it his duty to declare that there was no moral doubt as to the prisoner having been the murderer of Sullivan. He had, during the trial, done what he considered to be his duty, not only in shutting his own eyes and ears against whatever was not strictly legal evidence, but had also endeavoured to keep from the jury whatever was not of this description and yet the prisoner asserted he was innocent. He thought it proper to state that there were two circumstances which had been presented before the Court that day, which had they been established by legal evidence would not have left the prisoner even an excuse for making such an assertion, and these were, connecting the bloody nightcap with the deceased, and identifying the old shoes as belonging to him; he therefore trusted that the prisoner when conveyed to his cell, would devote the

short portion of time allotted him, in repenting of his crimes, and making his peace with his Maker, for he assured him, that the sentence he was about to pass on him, would be carried into effect. He then passed sentence in the usual form.

The prisoner is a native of Ireland, from which he arrived in this colony in 1830, as a convict, per the *James Patterson*, under a sentence of seven years for pig-stealing. In cross-examining the witnesses he exhibited great ingenuity, and did his best to brow-beat them, and in several instances was grossly insulting. During the time his Honor was addressing him, he several times exclaimed, "I am innocent; I am a murdered man; I do not blame your lordship, I leave my blood on the jury and the witnesses." As the prisoner was being removed from the bar, the Attorney-General said that he considered it but due to the jury to state, that had the prisoner been acquitted on the charge of murdering Sullivan, he was prepared to put on his trial for the murder of another man, who had been his mate at Goulburn, and who had disappeared under similar circumstances about three years ago.

The case excited great interest, and the Court was densely crowded during the twelve hours that the trial lasted. See also Sydney Gazette, 15 May 1841; Australian, 15 May 1841.

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

SYDNEY GAZETTE, 18/05/1841
Supreme Court of New South Wales
Burton J., 14 May 1841
(Before Mr. Justice Burton and a Common Jury)

Two aboriginal natives named **MERRIDIO** and **NENGAVIL**, both of Moreton Bay, were indicted for the wilful murder of **WILLIAM TUCK**, by stabbing him in the neck with a sharp instrument at Mount Lindsay, on the 31st of May last. The first count charged Merridio as principal, and Nengavil as accessory; the second Nengavil as principal and Merridio, accessory. The third charged the murder against some person or persons unknown, the prisoners as accessories. The prisoners being called on to plead, Merridio said his name was **MULLAN**; the indictment was accordingly altered, and the prisoners pleaded not guilty.

Mr. **CHEEKE** demanded, under the provision of an Act of Parliament, a Jury de medietate linguae. His Honor refused this application on the grounds that the prisoners were not aliens, as they had been naturalized by a general Act of Parliament, under which they were entitled to all the rights and privileges, as well as subject to all the liabilities of British subjects.

The Attorney General in putting the case to the Jury, said that however distressing it might be to them, as jurors, to see persons so inferior to them in intelligence, placed at the bar to answer for their crimes, it would be more distressing, and more to be regretted, if they were not liable to the same punishment the whites were.

The circumstances of the case were truly distressing. The indictment had been framed in different ways, as it was impossible to say who struck the blow; it would be sufficient for the case if the Jury were satisfied that the prisoners were present aiding and abetting in the commission of the murder. The prisoners were charged with having murdered William Tuck, but in detailing the circumstances connected therewith, it would be impossible to keep out of sight, the fact that another murder had been committed (by the blacks) at the same time. Mr. **STAPYLTON**, assistant surveyor, near Moreton Bay, about 70 miles from the township of Brisbane, had also been killed. On the morning of the day laid in the indictment, he sent a party to make

a bridge over a creek about a mile from the encampment, himself, Tuck, and **DUNLOP** remaining at the camp. On the return of the working party, they found Mr. Stapylton and Tuck dead, and as they supposed, Dunlop dying from wounds inflicted on him by the blacks, who had all fled, carrying with them every article of value, that they could lay their hands upon. Amongst these blacks were the prisoners at the bar. The remainder of Mr. Stapylton's party then returned to Brisbane Town and reported these murders to the commandant, who with commendable zeal, proceeded to the scene of these outrages, and in search after the blacks succeeded in rescuing Dunlop from almost certain destruction. From the state Dunlop was in when left by his comrades, he managed to crawl into the mountains, where he remained in a most exhausted condition, until he was discovered by a constable, who heard his feeble cries for assistance, and under the treatment which he received, he recovered. The reason the prisoners were charged with the murder of Tuck was, that the body of Mr. Stapylton was so dreadfully mutilated, the head being cut off, and the flesh eaten either by the native dogs or the cannibals, so that it was almost impossible to say what caused his death, and made it difficult to identify the body. These were the circumstances of the case, which was one of great atrocity.

In the evidence adduced on this trial, it was fully proved that the prisoners belonged to the tribe that murdered Mr. Stapylton and Tuck; that Merridio was the leader of the tribe, and from the evidence of Dunlop it was evident that the prisoners were guilty of assisting in these murders. So satisfied were the Jury of this that after a short consultation, they returned a verdict of guilty against the prisoners, on the third count, which charged them as accessories.

His Honor then passed sentence of death on the prisoners in the usual form, which when Baker, an interpreter, communicated to them, they broke out by telling him in a most indifferent way, "what of that - let them hang us."

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

TEMPERANCE, 1/33, 19/05/1841

COLONIAL NEWS.

On Sunday the 9th, an inquest was held on the body of **MARY WELLINGTON**, who had been found dead in her bed. A verdict of died by the visitation of God, was returned. A similar verdict was returned on the body of a man named **WILLIAM MARTIN.**

Trooper **RAINBOW**, of the Mounted Police, was drowned on the 26th of last month, while attempting to cross the Goulburn.

TEMPERANCE, 1/34, 26/05/1841

DEATHS.

By the fall of a tree, which had been set fire to, on the 12th instant, when riding with his father, **JOHN ANDREW SUTTOR,** aged nine years and eight months. Mr. Suttor was not aware of any danger till he heard the tree crack, when he saw it falling nearly over him, and had just time to spur his horse out of danger, and saw his poor child coming after him, when in an instant both him and the pony were killed, to the great affliction of his parents.

TEMPERANCE, 1/35, 02/06/1841

FATAL ACCIDENT, on board ship, through intoxication, Captain E Moorman, 50, Victus. Evidence from John Martinell, watchman, Cotton's wharf; fell between ship

and wharf, aggressively drunk; died erisypelas, the result of wounds. Verdict, - Accidental death, the consequence of intoxication."
At Braidwood, May 24th, from an accident occasioned by his horse running away, **JONATHAN [GIBBINGS],** second son of the Rev. **THOMAS GIBBINGS,** Rector of Monkstown, county Cork.

TEMPERANCE, 1/37, 16/06/1841
A man named **JONATHAN WEBSTER**, residing at Port Macquarie, committed suicide on the 22nd May, by swallowing poison; on the inquest it appeared that his wife's conduct was the cause of his committing the rash act.

On Wednesday, an inquest was held on the body of **WILLIAM DOMAIN**, who had drowned himself while labouring under that dreadful disease known among drunkards under the name of *the horrors*; the jury returned a verdict, that the deceased had destroyed himself while labouring under a fit of *delirium tremens.*

TEMPERANCE, 1/38, 23/06/1841
On Friday the 11th instant, **JOHN [JAMIESON]**, the oldest son of Mr. **JOHN JAMIESON**, jun., of Greenwich Park, Argyle, having been thrown from his horse, and only survived a few days, aged fourteen years.

TEMPERANCE, 1/39, 30/06/1841
DOMESTIC INTELLIGENCE. - An inquest was held last week on the body of a female named **RICHARDS,** Dr. **HARNETT** having certified that death had been occasioned by natural causes, a verdict to that effect was returned.

FREE PRESS, 1/52, 03/07/1841.
INQUESTS. – An Inquest was held at the Labour-in-Vain Public House, Harrington-street, on Thursday afternoon last, on the body of a man named **JAMES MOORE**, who expired at an early hour the same morning, from lock-jaw, occasioned by a sever wound in the right hand – verdict accordingly. The deceased was in the employ of Mr. **S.A.BRYANT** of King-street, at the time of his death, and received the wound by which it was occasioned while in the act of rolling or lifting a cask in the stores of that gentleman.

Another inquest was held the same day, at the Blue Lion, on the body of a man named **JOHN SMITH**, who expired suddenly, on the previous day. Dr. **DORSEY [DORSET?]** of King-street, having made a post mortem examination of the body gave it as his opinion, that the deceased had expired in consequence of a disease of the heart, to which he must have been subject for some time previous, and a verdict was accordingly returned to that effect.

FREE PRESS, 1/54, 08/07/1841.
Considerable excitement has prevailed in the neighbourhood of Wollombi, on account of the suicide of Mr. Surveyor **OGILVIE**, who put a period to his existence a short time since, by drinking a quantity of laudanum.

A shoemaker named **WINTERBOTHAM,** committed a murderous assault upon his wife on Monday last, by striking her on the head with a spade, and laying open her skull to the brain. The unfortunate woman is now lying at the hospital in a dangerous state.

FREE PRESS, 1/55, 10/07/1841.

INQUESTS. – An inquest was held on Tuesday, at Balmain, on the body of **WILLIAM BELL**, who died on Monday, in consequence of injuries which he received by an explosion of a blast which he was charging. Dr. **GLENNIE** having certified that death was caused by the injuries received, a verdict of accidental death was returned.

Another inquest was held on Wednesday, at Le Burn's, Parramatta-street, on the body of **THOMAS FRANKLIN**, a bullock driver, assigned to Mr. **HARPER**, OF Botany Bay. It appeared that about a month ago, the deceased was engaged in driving a bullock and cart belonging to his master, when in turning a corner, one of the bullock's horns entered the man's eye, from which an inflammation of the brain had ensued, and caused the man's death; it also appeared that there had been gross negligence on the part of the deceased's master and one of his servants who was a witness in the case, was not forthcoming. The jury returned a verdict in accordance with the evidence, and the Coroner told Mr. Harper that he should recommend his assigned servants to be taken from him, and when the witness was forthcoming, he should revive the investigation of the case.

One day last week, a constable stationed in the vicinity of Campbell Town, observing a man leaving a hut in the bush, in a manner that excited his suspicions, called upon him to stand or he would fire; the man, however, paid no attention to the challenge, and he was shot dead on the spot by the constable. An inquest was then held on the body, the result of which has not reached us.

SUPREME COURT – CRIMINAL SIDE

MONDAY, JULY 12.

BEFORE His Honor the Chief Justice.

ISABELLA M'KENZIE was indicted for the wilful murder of her infant, on the 19th of April last; a second count in the indictment charged her with illegally concealing the birth of the said child.

By the evidence adduced on the behalf of the crown, it appeared that the prisoner was employed as a domestic servant in the house of Mr. **GEORGE BOWMAN**, of Windsor, at the time when the offence was alledged to have been committed, and had previously borne an unimpeachable character. On the day in question a male child was found by Mr. Bowman, embedded in the soil of a water-closet, and on a proper investigation it was ascertained that the prisoner was its mother, although she at first refused to admit the fact. Dr. **DOWE**, by whom the child had been examined, declared his opinion that it had been born alive, and that its death had been caused by suffocation, although he could not swear positively to either of those facts. Upon cross-examination, however, by Mr. **PUREFOY**, who appeared as counsel for the prisoner, he admitted the possibility of its death having been occasioned by a fall into the soil, which might have been the immediate result of premature delivery; instances of sudden labour, he remarked, were of frequent occurrence, and it was even possible, although improbable, that it might have been still-born. His chief reason to believe that it had been born alive was the fact that the lungs had evidently been inflated; and also that upon its being discovered one of the hands were found clenched upon some dirt, while the other was flattened upon a piece of wood which was lying near. The death of the child might also have been caused from an extensive hemorrhage, in consequence of the absence of proper medical assistance.

Mr. Purefoy addressed the jury on behalf of the prisoner, urging that the capital charge had been totally unsupported by the evidence, and quoting several legal authorities in proof of his assertion.

The jury retired for about half an hour, at the close of which time they acquitted the prisoner of the capital change, but found her guilty upon the second charge of concealment, when she was remanded by order of his Honor, in order that some further enquiries might be made relative to her character previous to entering the service of Mr. Bowman. [The above is merely an outline of the case, the more minute details being unfit for publication.]

SUPREME COURT – CRIMINAL SIDE

TUESDAY, JULY 13.

ISABELLA MACKENZIE, who had been found guilty on the previous day of illegally concealing the birth of her child, was brought up for judgement, and sentenced to be imprisoned in the Sydney gaol for twelve calendar months.

MARK DAY was indicted for the wilful murder of one **AMELIA COOK**, on the 26th of May last, by pushing her into a fire, whereby she sustained certain injuries that caused her death.

From the evidence which was adduced on behalf of the crown, it appeared that the prisoner and the deceased had been for some time co-habiting as man and wife, and that on the evening in question, a married woman named **MARIA BRUCE**, who resided within a short distance of the prisoner's house, was alarmed by hearing load groans proceeding from the latter. She went to the door, which was opened by the deceased, who appeared to have been burnt in a very severe manner, and desired Mrs. Bruce to go for a doctor, in pursuance of which request, Dr. **DORSEY**, of King-street, was sent for and her wounds were dressed. In order that better attendance might be procured, she was subsequently removed to the house of her daughter, a Mrs. **JONES**, at which place she died on the 8th of June following. No person having been present when the injuries of the deceased were received, there could be no proof of the alleged assault except her own declaration, and it appeared in evidence she had given several different accounts of the transaction. To the woman by whom she was first visited, she said that she had fallen in the fire while attempting to light her pipe, upon which occasion the prisoner had been present, and shewed the witness that his hands were burnt, which he stated to have occurred in consequence of his exertions to save her from being burnt. To Dr. Dorsey, she said that she had fallen into the fire while endeavouring to light it, and to one or two others she had given different versions of the affair. By the deposition which was taken by Captain **INNES**, four days previous to the death of the deceased, it was stated that she had been pushed on the fire by the prisoner, and it appeared that the latter, who had been present when she made the statement, declined putting any question to her upon it, declaring, at the same time, that it was totally false.

Mr. **FOSTER** addressed the jury at great length on behalf of the prisoner, and called **A.B. SMITH**, Esq., in whose employment he had been for the last four years in the capacity of storekeeper, by whom he received an excellent character, and was said to be a quiet, well-conducted, and humane man.

His Honor read over and commented upon the evidence, and the jury after a short consideration, returned a verdict of not guilty in favour of the prisoner, who was accordingly discharged.

ELIZABETH PATTISON was indicted for causing the death of her infant daughter, **CORDELIA ANN PATTISON**, the first count charging her with starving the deceased, and the second with administering improper and poisonous food.

It appeared in evidence that the prisoner was a married woman, her husband being away at Port Phillip. In the month of May last she resided at Parramatta, at which place she had been living for a long time previous. She had three children, of whom

the deceased was the youngest, being about five months old. The charge of starvation contained in the first count was supported by the evidence of several persons, who deposed that she treated the child very badly, frequently getting drunk and leaving her at home for several hours at a time without food. In support of the second count, it was testified by one witness, that the prisoner in a state of intoxication, had once threatened to poison her child, and it was likewise proved that she often declared her wish that the child would die. The body of the child underwent a *post mortem* examination by Dr. **GWYNNE**, who was of opinion that her death had been caused by starvation, there being no visible appearance of ailment in any part of the intestines, and no symptoms of any other disease which might have occasioned her death.

Mr. **PUREFOY** addressed the jury in behalf of the prisoner, and the evidence was read and commented upon at great length by his Honor the Chief Justice.

The jury, without leaving the box, found the prisoner guilty of manslaughter upon the first count, and she was accordingly sentenced to be imprisoned for two years in the Sydney gaol, his Honor expressing at the same time his regret, owing to the present state of the law in that particular, he was not enabled to inflict upon her the heavier punishment of transportation.

SYDNEY HERALD, 14/07/1841
Supreme Court of New South Wales
Dowling C.J., 13 July 1841

ELIZABETH PAT[T]INSON was then offered her challenge and given in charge to the same jury, charged with the murder of her infant child, **CORDELIA ANN PATTISON**, at Parramatta. The information contained two counts, one charging the death by starvation, the other by the supply of improper and poisonous food.

SOPHIA BUCKLEY, examined by the Attorney-General; I am a married woman living at Parramatta, I know the prisoner, she is the wife of John Pattison, who is now, I believe, at Port Phillip; the prisoner and I were brought up together at Parramatta, she is a native of the Colony, in May last she lived next door to me, she had three children, the youngest was about five months [old] it is now dead, I saw them carrying it out to be buried, I saw it about a week before its death, I saw it frequently at my mother-in-law's, she used to be away from the child a great many hours at night; about three weeks before its death she was absent from it all day till one o'clock in the morning; I do not know how she lives, she used to keep company with men in the evenings; she has said to me that she wished the child dead, she has been frequently drunk; when sober she used to take a little care of it; once I saw her take the child by the frock and carry it with its head down for a few yards when she was drunk; I have had four children but I have none now, I have frequently heard the prisoner say a bad word and that the child would not die; I can't say whether she has left the child all day without food, the child was always very thin, but not sick; it could eat very well.

Cross-examined by Mr. Purefoy – For the last three months it was a very thin child; I don't know whether Cordelia Anne was the child's name; I live with my husband; there was a man living in the house who worked for my husband; there was no woman but me in the house; the prisoner lived at Costillo's when the child died; I am not bad friends with the prisoner; I know Mary Buckley; I don't know how she gets her living; I saw the child five or six days before its death; I never saw the child dead; my children died young; I never heard the child called Cordelia Anne; it was called the baby.

Re-examined – I don't know what was the child's name; the prisoner called it Cornelia Anne at the inquest.

GEORGE BUCKLEY; I know the prisoner for fourteen or fifteen years; saw the child; I saw the prisoner use the child very badly when she was drunk; she used to be away from nine o'clock in the morning till one o'clock; I knew that she was once away from it during that time; I [have] often seen her drunk; I used to say to know how she lives; she used to keep company with men and women drinking; saw the child shortly before its death.

Cross-examined by Mr. Purefoy : My mother used to look after it; when she was sober the prisoner would look after the child well enough; I believe her husband is at Port Phillip; I don't know who has his property at Parramatta; I have often talked with my wife about this case; saw the child a week before it died; never saw the child dead; I keep a nail shop; I had two or three men working for me.

MARY BUCKLEY examined by the Attorney General : I know the prisoner; she lived with me for three weeks; about a fortnight before the child died she took very little care of the child; she neglected it for a day together; when she left me she went next door; I used to say to her how hearty the child used to eat when it got its food; she used to say often she did not want it to eat but to die; she used to say her hands were tied with it, and that she could not maintain it; she used to leave the child in bed from morning till night; she was seldom sober; the prisoner is upwards of twenty years old.

To a Juror – I have often seen the child suckled by the prisoner.

Cross-examined by Mr. Purefoy – The child died about five weeks after the prisoner came from the [Female] Factory; the prisoner's bed was on the floor; the child did not ever look so healthy as other children; it had something the matter with its neck or back; I never saw another child in the same way; I never saw the child dead; the prisoner said herself that it was dead; it was about five months old.

Re-examined – When the child was fed it would feed very heartily.

MARY GRIFFITHS, examined by the Attorney-General – I know the prisoner; she lived next door to me; about a fortnight before the inquest she said that the child was an example, and that she thought she should poison it; she was in liquor at the time; I told her not to say such a thing.

Cross-examined – When the prisoner said this she was drunk; I do not know how she treated the child generally.

GORDON GWYNNE, examined by the Attorney-General – I am a surgeon, of London College, and attended the inquest of a child, called Cordelia Anne Pattison; I examined the body of the child; I had not seen it alive; from the appearance of the child I am of opinion that the child died either from deprivation of food, or from mesenteric disease; on opening the body I found no disease; the stomach was empty and contracted; the intestines were completely empty, even of faetal matter; my opinion is that the child died from starvation or inanition.

Cross-examined by Mr. Purefoy – I examined the child two or three days after its death; if the body had been removed after death the appearances would be likely to be altered; it was extremely emaciated; emaciation generally is a]test of lingering illness; I did not observe the eyes, they were closed; I did not observe the trachea; I examined the stomach and the liver; the lungs were healthy but collapsed; there was very little blood in the veins; the child might have had diarrhoea; the food might have induced diarrhoea, but there was no ulceration in this case; active diarrhoea would not cause ulceration; I did not observe the tongue; there was no peculiar odour from the body in this case, which usually is found in cases of death by starvation.

Re-examined – I saw no symptom of diarrhoea; I believe the child died from starvation. To the Court – The use of ardent spirits would materially injure a woman's milk, in quantity and quality; I did not see any deformity in the child; if it had a deformity of the spine that would be likely to produce emaciation, notwithstanding any food that might be given it.

The Attorney-General having closed the case for the crown.

Mr. Purefoy submitted to the Court that there was no evidence to sustain the charge of manslaughter, but his Honor decided that there was evidence to go to the jury.

Mr. Purefoy then addressed the jury for the prisoner, commenting at some length upon the facts which had been proved and which he should prove.

Dr. **PATRICK HILL** examined by Mr. Purefoy – I am colonial surgeon at Parramatta; the prisoner was in the factory there under my care; she had a child with her; I allowed it arrowroot daily, which she regularly gave the child for about two months; it did not appear to want medicine; the prisoner wanted her own milk; I don't know anything more of the child.

Cross-examined by the Attorney-General – Habits of drinking would tend to make a woman's milk fail.

WILLIAM CORTON examined by Mr. Foster – I am a labouring man; the prisoner lived in my house for about a month at the time of the child's death; I am not a married man; a woman lives with me as my wife; I always saw the prisoner nourish the child with what she had to give it.

Cross-examined by the Attorney-General. – I have lived some months with the woman I live with; the prisoner was her friend; I used to be out often all day.

The Chief Justice charged the jury, and said that certainly this was a most extraordinary case, one a paralel to which either at home or in this country never came within his knowledge. His Honor then read over the whole of the evidence and commented upon it fully and at considerable length. When the Chief Justice had finished his charge, the jury immediately pronounced a verdict of guilty of manslaughter on the first count.

The Attorney-General prayed the judgment of the Court upon the prisoner, and

The Chief Justice having remarked upon the enormity of the crime, for which the present state of the law did not enable him to transport her, sentenced the prisoner to two years imprisonment in Sydney Gaol. See also Sydney Gazette, 15 July 1841.

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

TEMPERANCE, 1/41, 14/07/1841

The Criminal Sessions commenced on Monday, before the Chief Justice and a common jury.

ISABELLA MACKENZIE was found guilty of concealing the birth of a child.

AUSTRALIAN, 15/07/1841

Supreme Court of New South Wales

Dowling C.J., 12 July 1841

TUESDAY, JULY 13 - Before Chief Justice Sir James Dowling.

ISABELLA McKENZIE, convicted on Monday for concealing the birth of her child, was brought up, and sentenced to be imprisoned for twelve months in the Sydney gaol.

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MARK DAY, was arraigned on a charge of murder; the indictment charged him with having pushed one **AMELIA COOK** on a fire, on the 26th of May last, and thereby caused her death.

The Attorney-General opened the case, and after drawing the Jury's attention to various points which would be brought before them in the evidence on the part of the Crown, and stating that the case mainly rested on the evidence of the medical gentleman who attended the deceased, and the deceased's deposition before her death, proceeded to call the first witness.

MARIA BRUCE, deposed that she lived in Clarence-street, near the house occupied by the prisoner and deceased in May last. One night, about the end of May, she heard groans in Day's house, and went in; the deceased opened the door. The deceased shewed witness her arm which was burned, and at her request, went for Doctor Dorset. Deceased had burns on her neck and breast also; she said she had been burnt as she was lighting her pipe, and Day said he was in bed at the time, but that he had put out the fire with water; deceased's clothes were wet at the time. Witness was of opinion at the time that the deceased would have got over the burns and recovered.

The witness was cross-examined by Mr. Foster for the prisoner, and still maintained that deceased has always attributed the burns to her lighting her pipe, and had not in her presence, given any other account of it. Deceased's daughter, who was anxious to get her away from the prisoner, always said that Day had burned her mother, and that he should hang for it.

WILLIAM McTAGGAIT DORSET, Surgeon, practising in Sydney, deposed that the death of deceased was caused by exhaustion consequent on the extent of injury created by the burns. The deceased was an old woman; deceased at first told him that she had been burnt while lighting the fire; again that the prisoner had struck her, and that he had pushed her so that she was burned. The prisoner shewed his hands which were slightly burned; deceased said she wished the prisoner to be punished, but not to be hanged; deceased died about forty-eight hours after her deposition was taken; witness once entertained slight hopes of her recovery, but was apprehensive on account of her age, and informed her of her danger, of which she appeared perfectly sensible.

JOHN LONG INNIS, Superintendent of Sydney Police, deposed that he had attended the deceased one evening in June last, and had taken her deposition; she appeared dangerously ill and seemed to beware of the danger she was in; the prisoner was in custody, and witness sent for him; he declined putting any questions to the deceased, but said her statement was altogether untrue; the deposition was taken on the 4th June, and deceased expired on the 8th.

Cross-examined - Witness did not know the prisoner personally, but had heard that he bore a most excellent character; had he been a bad character witness would have known him.

Other witnesses were called, but did not add any thing material to the evidence for the prosecution.

The deceased's position was to the effect that prisoner struck her a violent blow on the right side, which caused her to fall into the fire, from which she rose with difficulty, and that she had been ill ever since in consequence.

Mr. Forster addressed the Jury for the prisoner and called Mr. **A.B. SMITH** who gave the prisoner a most excellent character.

The Attorney General replied, and afterwards his Honor the Judge went over the evidence at length.

The jury without leaving the box acquitted the prisoner.

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ELIZABETH PATTERSON, arraigned on Monday, was put on her trial for the murder of her child, aged five months; one count in the information charged the prisoner with starving the child, and another with administering improper and poisonous food.

After addressing a few observations to the Jury the Attorney General called the witness for the prosecution.

SOPHIA BUCKLEY deposed that the prisoner and herself were brought up together; that prisoner had had two children, one of which, five months old, was dead; prisoner was given to drinking and to bad company, and frequently neglected the child; she often wished it dead; and on one occasion witness saw the prisoner while drunk carrying it with its head downwards; about three weeks before the child's death, prisoner was from it almost all day; the child was always very thin and would not eat well.

The witness was cross-examined by Mr. Purefoy, but nothing was elicited to shake her evidence.

GEORGE BUCKLEY deposed that he had known the prisoner many years; he also knew the child; prisoner was much given to drinking and bad company, and often neglected the child day and night; witness had often seen her drunk and asked her if the child was dead; she had replied no, but that it soon would be.

This witness was also cross-examined, but without effect.

MARY BUCKLEY, being examined, corroborated the evidence of the previous witness.

MARY GRIFFITHS, deposed that she saw the prisoner drunk, about a fortnight before the child died; prisoner said she would poison it.

Cross-examined - The prisoner was drunk at the time, and witness was not aware how she treated the child in general.

GORDON GWYNNE, Surgeon, described the appearance of the child after death, and gave it as his opinion, that the child died from starvation; the witness also deposed that the excessive use of ardent spirits, would materially injure a woman's milk, both in quantity and quality.

This was the case for the prosecution.

Mr. Purefoy submitted that there was no evidence to support the charge of manslaughter, but his honor the Judge was of opinion that there was evidence sufficient to send the case to a jury.

Mr. Purefoy then commented at some length upon the evidence, and called Dr. Hill, Colonial Surgeon, at Parramatta.

Dr. **HILL**, deposed that the prisoner was under his care for two months in the factory with the child, and during that time, the child was properly attended to; this was all he knew of the matter.

WILLIAM COSTON, deposed that he knew the prisoner, and had seen her always give the child what she had to give it.

The Judge then summed up the case to the jury, who found the prisoner guilty of manslaughter on the first count.

The prisoner was sentenced to be imprisoned for two years in H. M. gaol, Sydney, his Honor remarking that the present state of the law did not allow him to transport her, notwithstanding the enormity of the crime she had been convicted of.

See also Sydney Gazette, 15 June 1841. On 13 July 1841, she was sentenced to imprisonment for 12 months in the Sydney Gaol: Sydney Gazette, 15 July 1841.

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

TEMPERANCE, 1/42, 21/07/1841
Wednesday
His Honor then called the attention of the meeting to the case of the woman, who had been tried on the preceding day [Tuesday, 13th], before Sir James Dowling, for having caused the death of her own child by deliberately maltreating it, and depriving it of suitable nourishment to support life.

FREE PRESS, 1/60, 27/07/1841.
A boat containing three persons who were proceeding to the immigrant ship *Helen*, on Thursday last, was unfortunately capsized, and one of the men named **THOMAS HOBSON**, by trade a brick-layer, was drowned. By the prompt exertion, however, of a waterman named **JOHNSON**, who happened to be on the spot, the other two were safely brought to land. [see 1/64 and 1/81 below.]
NEWS AND RUMOURS OF THE DAY
A Coroner's Inquest was held at Driver's public-house, corner of King and Elizabeth-streets, on the body of a government man, named **SAMUEL HELY**, attached to the Bradley's Head stockade, who died from a rupture in the intestines on the previous day; verdict accordingly.

Another was held on Friday, at the Hope and Anchor, Parramatta-street, on the body of a female named **ANN MATTHEWS**, who had been found dead in a ditch on the Botany road, at an early hour the same morning, where she had fallen while in a state of helpless intoxication.

A third Inquest was held at the same place immediately after the foregoing one, upon the body of a woman, named **NORAH MOORE**, who died in consequence of certain injuries which she had received by reason of her clothes taking fire while she was in a state of intoxication; verdict accordingly.

TEMPERANCE, 1/43, 28/07/1841
The two blacks, for the murder of Mr. **STAPYLTON**, were executed at Moreton Bay, in the presence of about a hundred aborigines.

On Monday, July 20, an inquest was held at Mr. Winterup's public house, the Sir Walter Scott, corner of Bathurst and Sussex-streets, on the body of a ticket-of-leave holder, named **WILLIAM STANMORE**, aged 38 years. **JOHN CLAYTON**, at whose house the man had lodged, deposed that he was a man of intemperate habits, his usual drinks were brandy and porter, he had for a long time complained of a shooting pain in his head, he drank daily till he was dismissed from his employment, for being harsh to his employer's horse in the street. Surgeon **ARMSTRONG** deposed that the cause of death of the deceased was apoplexy, induced by intemperance. The jury returned a verdict, that the deceased came to his death by apoplexy, induced by previous habits of intemperance.

On the same day, an inquest was held on the body of Mr. **W. MULLER**, the tailor, George-street. It was proved that the deceased was a man of intemperate habits. On Saturday, he sent out for a pint of brandy, of which he drank, and while under the influence of liquor, swallowed a quantity of laudanum, which caused his death. The jury returned a verdict, that the deceased had destroyed himself while in a fit of insanity, caused by depression of mind.

An inquest was held on Friday last, at the Hope and Anchor Tavern, Parramatta-street, on the body of a female named **ANN MATTHEWS**, who had just come out of the cells where she had been confined for 168 hours, for drunkenness, and had been found early on that morning lying dead in a ditch on the Botany road, within a quarter of a mile of her residence. From the evidence given before the jury, it appeared that she had been seen on the previous evening going home in a beastly state of intoxication, being scarcely able to stand. Dr. **CUTHILL** certified that death had been caused by suffocation. The jury returned a verdict of – Died by suffocation, while in a state of intoxication.

Immediately after the above, another inquest was held in the same house on the body of **NORAH MOORE**, who had died in the Benevolent Asylum between sun-set on Thursday and sun-rise on next day. By the evidence detailed before the court, it was proved that the deceased had on the Tuesday previous, while in a state of helplessness, by drinking ardent spirits, set fire to her clothes, by which she had been so severely burned that, according to the evidence of Dr. **CUTHILL**, death had ensued. The jury returned a verdict of death being caused by the deceased being accidentally burned while in a state of intoxication.

An inquest was held yesterday, on the body of **JAMES QUIN**, livery stable keeper, Pitt-street. The jury returned a verdict of died of *delirium tremens.*

FREE PRESS, 1/61, 29/07/1841.

A man named **TIMOTHY LADEN** was killed on Wednesday, the 14th instant, while employed in falling a cabbage tree near Wollongong, by the end of the tree falling on his shoulder. No one was with him at the time, and when he was found in the course of the day he was quite dead.

FREE PRESS, 1/62, 31/07/1841

NEWS AND RUMOURS OF THE DAY

An inquest was held, on Tuesday last, at the Wheat Sheaf public-house, on the body of a female named **ELIZABETH BENRIG**, who had expired in the Benevolent Asylum on the previous day from exhaustion, occasioned by her delivery of a still-born child about three weeks before. Verdict accordingly.

Another inquest was held, the same day, at Hill's public-house, Pitt-street, on the body of **JAMES QUIN**, who died, on Monday afternoon, in an attack of delirium tremens, occasioned by his long continued habits of intemperance. Verdict accordingly.

FREE PRESS, 1/63, 03/08/1841.

INQUEST. – a Coroner's Inquest was held on Saturday afternoon last, at the Australian Inn, corner of Kent and Market-street, on the body of a man named **SAMUEL FILLEY**, who expired suddenly in a fit on the previous day, at his residence in Market-street; verdict, died by the visitation of God.

Another inquest was held the same day at the Blue Bell public-house, in Erskine-street, on the body of an elderly man named **MARTIN WILSON**, who had formerly been an officer attached to Sydney gaol, who expired at his own house the same morning, after an illness of three days. From the evidence which was adduced, it appeared that the deceased had arrived from Moreton Bay in the *Piscator* on Sunday last, and had been in a constant state of intoxication from that time until he was taken ill on Wednesday, he was also stated to have been a confirmed drunkard for the last

twenty years of his life; verdict, death from natural causes induced by previous habits of intemperance.

TEMPERANCE, 1/44, 04/08/1841
TOTAL ABSTINENCE SOCIETY.
One of these was the number of inquests which had been held within the last few days; in the "Temperance Advocate" of the preceding day no fewer than five inquests were reported, in which the deaths had arisen from intemperance. On one (That on the body of Mr. **JAMES QUIN**) he had himself been a juror. The surgeon who had attended him deposed, that he had told him on a previous occasion, if he should again give way to his appetite, it would in all probability cause his death; he had gone to the publicans in the area and warned them against supplying him with liquor. It was proved also that the deceased had been confined to his bed for three weeks previous to his death, and that he had been supplied, up to the day of his decease, with a pint of rum daily! Language failed him to designate, as it deserved, the conduct of those who supplied him with the liquid poison under such circumstances.
DEATHS.
At his residence, on the 17th ult., after a short illness, Mr. **JAMES QUIN**, of Pitt-street.

FREE PRESS, 1/64, 05/08/1841.
INQUESTS. – An inquest was held on Monday afternoon, at Mr. Driver's public house, corner of King and Elizabeth-streets, on the body of a man named **JAMES DUNN**, who died that morning in the General Hospital. It appeared that the deceased had been received into the hospital about two months ago, being ill of an inflammation of the lungs, from which he had, however, quite recovered; and on Monday morning Dr. Stewart told him that he might go out, as he was sufficiently strong to earn his own bread. The deceased said he was glad to go out of the hospital, and would go and look for a place, and turned round to go away, when he fell down and immediately expired. Dr. Stewart having certified that death was produced by natural causes, a verdict of died by the visitation of God was returned.

Another inquest was held on Tuesday, upon the body of **THOMAS HOBSON**, who had been drowned while attempting to board the *Helen*, on the 22nd ultimo, respecting which accident, a paragraph has appeared in a former number of this paper. A verdict was returned of accidentally drowned. [See 1/64 and 1/81.]

FREE PRESS, 1/65, 07/08/1841.
NEWS AND RUMOURS OF THE DAY
An inquest was held at Parramatta on Tuesday last, on the body of an infant named **WILLIAM HAYES**, who had been burnt on Monday night last, so severely as to cause death. From the evidence of the mother, who was the only witness examined, it appeared that she had been reading, and had fallen asleep, while in the meantime the child had crawled out of bed, which was on the floor, got to the candle and set fire to his clothes. Verdict accidental death.

FREE PRESS, 1/69, 17/08/1841
DOMESTIC INTELLIGENCE
The country in this part was all quiet until the 9th, when intelligence reached us that six *out and out rascals* had robbed the Berrima mail on its way from Marulan to Sydney, and were then plundering every human being that passed the road; three of

them had firearms, the other three had sticks like bludgeons. One of the six, it is believed, is a man that only a few weeks ago had been sent down under an escort of mounted police from Braidwood, being committed to take his trial for, it is said, a rape on the body of a young girl, the daughter of an emigrant in the service of Dr. Wilson; and since the perpetration of the offence the girl has been missing, and although the strictest search has been made for her yet is has been without success. The man alluded to has, I understand, been also committed on suspicion of her murder, as circumstances have been made known which lead to a supposition that, in order to prevent the unfortunate victim from giving evidence against him, he made away with her, and burnt her body afterwards. The above are the outlines of this report as related to me by one of the constables of a party that has been despatched in quest of these ruffians. [see 1/72]

INQUESTS. - A Coroner's inquest was held at the Blue Bell public-house, in Erskine-street, on Saturday, on the body of a woman named **ELIZABETH GEARING**, who died suddenly, at an early hour the same day, in a fit of delirium tremens, produced by her previous habits of intemperance. Verdict accordingly.
Another inquest was held yesterday at the Flower Pot public-house, on the body of a hair-dresser named **HUGH RICHMOND**, residing in Market-street, who expired about half-past twelve o'clock on Sunday morning, in a fit of exhaustion, produced by his previous habits of intemperance. It appeared from the evidence that the deceased had been continuously intoxicated for the last three weeks, and had been in a state of utter insensibility from Thursday evening until the time of his death. Verdict – Died by delirium tremens, produced by habits of previous intemperance.

FREE PRESS, 1/71, 21/08/1841.
INQUEST. - A coroner's inquest was held on Wednesday afternoon last, at Board's public-house, Sussex-street, on the body of a man named **TIMOTHY DINEEN**, who died at an early hour the same day, in consequence of a fish bone having stuck in his throat, in extracting which the pipe had been so severely torn as to occasion death. Verdict accordingly.

FREE PRESS, 1/72, 24/08/1841.
COUNTRY INTELLIGENCE – ARGYLE
… that the man committed from Braidwood was not guilty of rape as well as murder, and that he is still in Berrima gaol awaiting his trial for the latter offence. [see 1/69]
INQUESTS. - A Coroner's Inquest was held on Saturday last at the Red Lion, public house, corner of Goulburn and Parramatta-streets, on the body of a man named **JAMES KENNY**, who expired suddenly in his bed, on the previous night. – Verdict, died by the visitation of God.

Another Inquest was held the same day, at Mr. Driver's public-house, corner of King and Elizabeth-streets, upon the body of a man named **JAMES SCALLION**, who expired in a fit at the Hospital, on Friday night. – Verdict, accordingly.

TEMPERANCE, 1/47, 25/08/1841
INQUESTS. - An inquest was held in Richard Driver's, Three Tuns tavern, corner of King and Elizabeth-streets, on the body of a man named **JAMES SCALLION**, who had arrived in the colony as mate of a vessel, and had since been chiefly employed as master of some small craft engaged in the coasting trade. It appeared that latterly he was in the habit of drinking to excess, which had rendered him subject to fits: having

been seized with one of these, he was taken to the hospital, where he expired shortly after his admission. It having been certified that death was the result of natural causes, a verdict to that effect was recorded.

Another inquest was held the same day, on the body of **JAMES KEARNEY**, in the Red Lion public-house, corner of Pitt and Goulburn-streets, who had laid down on his couch in his usual health, and was found dead on the morning of the inquest. It appeared he had been almost incessantly drunk for some weeks previous, and had just begun to recover from the effects of his debauch. It having been certified that he had died from natural causes, induced from intemperance, a verdict in accordance with this evidence was returned.

FREE PRESS, 1/75, 31/08/1841.
INQUEST. – A coroner's inquest was held on Saturday last, at the Sir Walter Scott public house, corner of Bathurst and Sussex-streets, on the body of Mr. **WILLIAM ROBINSON,** whose accidental death by drowning was recorded in a former number of the FREE PRESS. The body of the deceased was found on Friday evening floating on the water a little above the Market Wharf, and not far from the spot where the unfortunate accident occurred. Verdict, death from drowning.

TEMPERANCE, 1/48, 01/09/1841
DOMESTIC INTELLIGENCE
An inquest was held, on Monday, on the body of a woman named **FIELD**, who had died from the effects of intemperance in the house of a man named **NIMO**, in Sussex-street. After the usual verdict had been returned, one of the Jury suggested that the house should be placed under the surveillance of the Police. The Coroner stated that it was so already, and that this was the second death and inquest arising from intemperance which had occurred in the same house within ten days.

FREE PRESS, 1/76, 02/09/1841
NEWS AND RUMOURS OF THE DAY
On Monday last, an inquest was held at the Patent Slip public house, upon the body of a man named **PARKER**, formerly second engineer on board the *Seahorse* steamer, who came in contact with the engine on Friday last, while employed at his duty. Verdict, accidental death.

An information has been exhibited against **LAWRENCE DWYER**, one of the immigrants per *Forth*, BY THE Captain of that vessel … to be concluded.

FREE PRESS, 1/77, 04/09/1841
INQUEST. – A Coroner's Inquest was held on Thursday last, at Mr. Gannon's public house, in Phillip-street, on the body of a man named **DANIEL KEENAN**, belonging to the Cockatoo Island Stockade, who died in the hospital, between two and three o'clock in the preceding day. Verdict accordingly.
NEWS AND RUMOURS OF THE DAY
An inquest was held on Tuesday last, at the Blue Bell public-house, Erskine-street, on the body of a man named **JOSEPH KING**, who had died suddenly on the preceding day from natural causes. Verdict accordingly.

Another inquest was held on the following day at Hooper's public-house, Argyle-street, on the body of a boy named **WILLIAM HAIG,** who died of scarlet fever. A verdict of died by the visitation of God was returned.

FREE PRESS, 1/79, 09/09/1841.
NEWS AND RUMOURS OF THE DAY
The notorious bushranger, **CURRUN**, was on Monday sent to Berrima, escorted by three mounted policemen, to answer for the many crimes which he had for so long a time committed with impunity. There were no less than two charges of murder and two of rape against him.
MAITLAND CIRCUIT COURT.
Besides the above cases, there were upon the calendar, three cases of murder, one of attempting to shoot with intent to murder, one attempt to rob, one infanticide, etc.

SYDNEY HERALD, 11/09/1841
Supreme Court of New South Wales
Stephen J., 8 September 1841
MURDER.
JOHN KELLY, holding a ticket of leave, was given in charge to a jury for the murder of **JACK SMITH**, on the 13th of June last, at Stroud, by firing at him a loaded musket.
Mr. **CHEEKE** appeared for the prisoner.
The Attorney General in stating the case, entreated the jury not pay it the less attention because the unfortunate deceased was an aboriginal native.
WILLIAM MACDONALD examined by the Attorney-General. - I am in the Agricultural Company's service at Port Stephens; the prisoner was a fellow-servant of mine, and lived with me in the same hut; on Sunday, the 13th June, the prisoner came into the hut about half an hour after sundown, and said that there was a large tribe of blacks coming with a bad intention; he told me to get a waddy to defend myself; he took a musket himself and loaded it with duck-shot; in the morning he had told me that he would get some shot from Mr **DARBY**; the prisoner brought three black fellows to the hut; one of them said that he did not want to harm the prisoner, but that he only wanted his gin or wife; he said part of this in his native language; I only saw three blacks there; the prisoner himself brought the blacks to the hut; he told them to come in and satisfy themselves that the black gin was not there; when they went in he said if they came out he would shoot them; he was then outside the hut; he said that they came to steal corn and not for the gin; there was no corn in the hut then; I was at the door; the blacks were not two minutes in the hut; they rushed out, and when they got to the end of the hut the gun went off; I saw the smoke and fire, and the prisoner's hand moved; I cannot swear that the prisoner pulled the trigger; the gun was pointed to the blacks; they were seven or eight yards off at the time; the prisoner stood at the door; he loaded the gun again; I did not see any of the blacks fall; I ran to the farm and told Mr. Darby about the matter; I stayed with him all night; the blacks had boomerangs with them; they did not offer us any violence; I saw no one of the blacks dead; I don't know who owned the musket; it was for shooting at cockatoos.
Cross-examined by Mr. Cheeke. - I have been two years in the Company's employ; the prisoner and I lived together for a week; he had the gun for some time before to keep the cockatoos from the maize; I used to fire at the cockatoos; I don't know whether I fired off the gun that day; it was dusk when the Blacks came to the hut; I could see about a quarter of a mile off at the time; the prisoner brought the gun from the hut; the day before the prisoner fired the gun at the Blacks it was fired off at the cockatoos by the prisoner; sometimes the gun was loaded; it was not loaded on the Saturday night; I did not see the prisoner load the gun that night; I saw him put up the

gun that night, and it was not then loaded; the gun had an iron ramrod; the prisoner was not many minutes loading the gun; I saw him loading it; he was then about fifteen yards from me; he was standing still at the time; I was so frightened I did not see him prime the gun; I was frightened with the noise; the three blacks had boomerangs; I only saw three, but I heard the noise of two or three more; they were hooting; I told Mr. Darby that there was a lot of blacks at the hut with boomerangs; I never saw or knew the blacks to steal corn; but the prisoner the day before shewed me the marks of a foot near the store; when the blacks were in the hut the prisoner said something to me about going to Mr. Darby, about a constable or about reporting the matter, but it is so long since I don't recollect what he then said; I did not know the blacks or any of them; the words of the blacks might have meant ``me do you no harm;'' I looked at Kelly when the blacks were running away, because I was frightened; I did not hear the gun cocked, but it was pointed against the blacks when they rushed out of the hut; I did not see the prisoner present the gun at all; I did not see the prisoner change his place, but when the gun went off it was pointed at the blacks; I did see the prisoner turn round when the blacks rushed out of the hut; when the prisoner turned round the gun went off immediately; I remained all night at Mr. Darby's, and would not go back again to the hut.

To a Juror. - The musket was an old one; but I do not know whether it went off at half-cock; the prisoner was in a horrid passion when the gun went off. The witness described the prisoner's position when the gun went off, and from his description, it appeared, that when the gun went off its position was nearly the same as it had been while the blacks had been in the hut, and that they ran in the direction to which the gun was first pointed.

To a Juror. - I never saw any gin with Kelly at the hut.

To Mr. Justice Stephen. - The blacks came quietly into the hut, and were brought there by Kelly; I think he told them that they had come to steal corn; the door remained open all the time; while the prisoner was speaking to me the blacks rushed out.

JAMES CHARLES WHITE examined by the Attorney General - I saw the prisoner in June last one morning; I was looking out for a constable, but he came to me himself; I asked him how he came to shoot the blackfellow; he said what was I to do when the boomerangs was flying about me; the prisoner said he came to tell me of the circumstance as I was superintendant; he said he had been too sharp for the blacks, and that he up with his musket and let fly at them; I ordered him into custody, and he said he did not want to run away; Macdonald did not tell me that the prisoner had fired at a black; he only said he thought there would be a row about a black gin; when I went to the black camp I saw Jack Smith; he was lying before the fire in great pain; he had been a very quiet lad; he was wounded in the back and complained of a pain in his abdomen; he seemed to have been wounded by shot; I brought him medical attendance; he died that day; I know nothing about the prisoner's having had a gin with him; I put Macdonald into custody with the prisoner; the prisoner had been about four years with the Company; the blacks are always at Stroud, and the prisoner must have seen the deceased who could speak English very well; the Company give the blacks a feast at Christmas; I think the prisoner must have known the deceased.

The Attorney-General was about enquiring as to what the deceased said when lying before the fire, but Mr. Creeke objected to any such evidence, and Mr. Justice Stephen said, that the evidence was inadmissible, unless it were shown that the deceased was conscious he was dying, and believed in the existence of a future state.

Cross-examined by Mr. Cheeke. - The prisoner came to me early in the morning of his own accord; I went them to the Camp and saw Jacky Smith; the family of the deceased consisted of three persons; one of them was called **GAMMONING SMITH**, and the other **JEMMY SMITH**; the deceased was called Jacky or Jacky Smith; he was called after his master's name; the father and sister of the deceased are great thieves; I have heard that the blacks have stolen corn from [t]he hut where it is kept; the prisoner was always a well behaved man.
To a Juror. - The prisoner had charge of the corn.
To the Judge. - I never heard of another black being wounded; I would trust the prisoner with any thing; but I think he is a bad tempered man, though no complaint was ever made to me against him.
JOHN POWER examined by the Attorney General. - I am a Constable at Stroud; I know the prisoner; I knew Jack Smith well; I live half a mile from the prisoner's hut; at sun-down on Sunday, Smith and another black told me they were going to the prisoner's hut; I did not see any thing with them; on the Monday after I saw Smith at the Black camp, and I saw him dead on Tuesday, I apprehended the prisoner near the lock up on Tuesday; he had a musket with him; the deceased was a very nice young lad, and was never troublesome or offensive; the prisoner said, when I took him in custody on Tuesday, and told him that Smith was dead, that he was sorry for the deed.
Cross-examined by Mr. Cheeke. - I remember what passed very well; the prisoner made no resistance to me when I took him into custody; the musket goes off at half-cock; it has a bad flint, and never throws open the pan; I only saw two blacks on the Sunday night, but there were a good many about the place; they used to call the deceased Jack Smith; the Europeans used to call him John; Jack Smith was the common name for him, and I'll stick to that name; it is usual to c[a]ll the blacks by a Christian name o[n]ly.
JAMES PRICE examined by the Attorney-General. - I have known the prisoner for some time; but I did not know Jack Smith, though I have been at Stroud for 15 years.
Cross-examined by Mr. Cheeke. - I never knew any black of the name of Jack Smith; the blacks are generally called Jacky, or Harry, or some such name.
ROBERT MACKINTOSH examined by the Attorney General - I am a surgeon living at Stroud; I examined an aboriginal native who went by the name of Jacky Smith; I saw him after death at the black camp; he died from a gun shot wound in the back; the wound was on the hip; I found no shot in the body, but I found the intestines lacerated by some foreign matter; I think that the shot had not scattered, and that the deceased was about four or five yards from the person who wounded him.
Cross-examined by Mr. Cheeke - I saw Jacky Smith the morning after his death; the man I saw was called Jacky Smith; I saw him on the 14th June; I saw Smith twice; once I saw him in Company with White; I always thought Smith was in danger.
To the Judge - The shot ran in various directions; the deceased was a young man above the middle stature, and a little beyond the age of puberty; he might have been shot by a gun held at the shoulder by the party who fired it, but I cannot say whether the gun was held as high as the shoulder or not.
The witness applied for remuneration for his attendance as a professional man, but Mr. Justice Stephen said, that he had no power to allow the witness any compensation beyond the ordinary payment of a witness's expenses, though he thought professional men were well entitled to some remuneration beyond their mere travelling expenses.
Power recalled by the Attorney General. - The Jack Smith I saw going to the prisoner's on Sunday, was the Jack Smith I afterwards saw dead, and examined by Mr. McIntosh.

McDonald recalled by the Attorney-General. - I did not tell Mr. White that the prisoner had fired at the blacks, because Mr. White ordered me away; I had a quarrel with the prisoner a week before the black was shot.
Cross-examined by Mr. Cheeke. - I cannot say how long I was at Mr. White's, but I had time to say that the prisoner had frightened the blacks, thought I did not say that he had fired at them.
To a Juror. - When we quarrelled, Kelly struck me with a waddy, and the doctor said my arm was broken or splintered.
The Attorney-General closed his case with this evidence.
Mr. Creeke submitted, that there was no evidence that the man who was proved to be deceased was shot by the prisoner, or that that man was called Jack Smith.
Mr. Justice Stephen held, that there was evidence upon these points to go to the jury.
Mr. Creeke then addressed the jury for the prisoner, and called
WILLIAM DARBY. - I am bailiff of the Agricultural Company; I know the prisoner and McDonald; on Sunday evening, soon after sundown, McDonald came to me and said to me that a number of blacks came near the hut, and that three came to the door and demanded a black gin; that Kelly admitted them into the hut, and told them to stay there till McDonald went for a constable; McDonald told me that the blacks had boomerangs, spears, and waddies; he said that he did not see Kelly lift the gun when he shot the blacks, and that he believed Kelly did not shoot them intentionally; McDonald is a thorough liar; and I have known him for about twelve months; the blacks have stolen maize, and are a nuisance to the settlement; I have never known Kelly injury [sic] the blacks; he for some time maintained a black man with him, and paid for his maintenance.
Cross-examined by the Attorney-General. - I cannot say that Kelly is a good-tempered man; I do not know whether Kelly ever had a black woman with him; I cannot mention any instance of McDonald's lying; McDonald said to me that he did not think the firing was intentional by Kelly; he told me, too that Kelly had not raised the gun to his shoulder when he fired it.
To Mr. Justice Stephen. - I cannot say that I would not believe McDonald on his oath.
McDonald recalled by the Attorney-General. - I don't recollect having told Mr. Darby that the blacks had spears; I know that they had no spears; I don't remember having told Mr. Darby that Kelly had fired unintentionally at the blacks.
The Attorney-General addressed the Jury in reply.
Mr. Justice Stephen charged the Jury. The learned Judge read over the whole of the evidence, and commented upon it at great length. The Jury retired for about a quarter of an hour, and upon their return to Court, delivered a verdict of Guilty, but strongly recommended the prisoner to mercy, on account of his good character.
In answer to Mr. Justice Stephen, the Jury stated that they believed that the prisoner had fired the gun intentionally, and with the design of hitting some of the blacks.
The Attorney-General prayed judgment against the prisoner, and Mr. Justice Stephen (having remarked upon the ability with which the prisoner had been defended, and upon the probability arising from the whole of the evidence, that the unhappy murder had been committed in a moment of bad temper) sentenced the prisoner to death; but promised that, though he could hold out no hopes of mercy to the prisoner, he would lay the whole case before his Excellency the Governor, who alone had the power here of commuting the sentence of death.

FREE PRESS, 1/80, 11/09/1841.
INQUESTS. – A Coroner's Inquest was held on Thursday last, at Hill's Public-house, Parramatta-street, on the body of a man named **JAMES MURPHY**, who died suddenly in an apoplectic fit, at Blackwattle Swamp, on the previous day. Verdict accordingly.

Another inquest was held the same afternoon at the Wheatsheaf Public-house, on the body of a man named **JOHN WALLACE**, who had expired suddenly at an early hour the same morning, while being conveyed in a dray to the Asylum. Verdict – Death from natural causes.

A CHILD LOST. - About a fortnight ago, a child about three years of age, belonging to a man named **PATRICK TAIGH (TIGH)** [ADVERTS later], an Irishman in the employ of Sir John Jamison at the Namoi River, wandered from the Station into the Bush, and has not since been found or heard of, though the most timely and persevering search has been made after it in all directions. It is to be feared that the child has either been carried off by hostile natives, or, more probably, that it has been devoured by the native dogs. This is a very lamentable accident, and as it has proved a source of great distress to the parents, it ought to operate as a warning to other parents in the Interior, to guard against their children wandering from their house into the Bush.

MYSTERIOUS CASE. - The body of a man [**GEORGE POTTER**] was discovered on Thursday afternoon, at the hut of a ticket-of-leave holder, residing on the Liverpool-road, a considerable distance from Sydney, and from the appearance of bruises and violence which it presented, great suspicion was entertained that the deceased had not come to his end in the due course of natural events. Two constables of the Sydney police were, therefore, despatched at an early hour yesterday morning to take charge of the body, and adopt other measures preparatory to an inquest and investigation of the matter.

FREE PRESS, 1/81, 14/09/1841.
MURDER. - An inquest was held on Saturday afternoon last, at the "Wheat Sheaf", Public-house Parramatta-street, on the body of a man named **GEORGE POTTER**, who had died on the previous Thursday, at the house of a ticket-of-leave holder, on the Liverpool road. Mr. **CUTHILL**, the house-surgeon of the Benevolent Asylum, made a *post mortem* examination of the deceased, and found that he had received two hurts, one of them on the eye, and another on the side, by which several of the ribs had been broken, apparently by the wheel of a dray or cart having passed over his body. - It appeared from the evidence that the deceased had been coming to Sydney with a dray, in company with a man named **MURPHY**, by whom the dray was driven and a woman named **BRIDGET FOREY**, with whom he (the deceased) had been for some time co-habiting; but respecting the manner, and occasion of his death, nothing further was known than that he was found wounded on the Liverpool road, while Murphy and the woman were in a state of drunkenness close to him. – The Jury after some deliberation, returned a verdict of wilful murder against some person or persons unknown, and both the man and women were retained in custody on that charge. The latter was brought before the Sydney Police bench yesterday, but remanded to the Gaol for seven days, in order that further enquiries might be made into the matter.
CASE OF DISTRESS. An advert. re **THOMAS HOBSON;** distress of widow and child. [See 1/64 and 1/60.]

TEMPERANCE, 1/50, 15/09/1841

THE SUPPOSED MURDER. - On Saturday last an inquest was held at the Wheat Sheaf public-house, on the body of the man **POTTER**, which had been brought in from the Liverpool-road on the preceding day, when it appeared that the death of the deceased had been caused by a dray being driven over him, while in a state of inebriety. A verdict of wilful murder was given against some person or persons unknown.

ACCIDENT. - On Saturday last, an inquest was held at Vinegar Hill, Parramatta Road, on the body of **ELIZABETH COLLINS** or **FRANKLIN.** It seems that the unfortunate woman had mounted a loaded dray when in a state of intoxication, from which she fell, the wheel passed over her, and causing almost instantaneous death. A verdict of 'accidental death' was accordingly returned.

FREE PRESS, 1/82, 16/09/1841.

MAITLAND CRIMINAL CIRCUIT.

WILLIAM SHEARMAN, a prisoner of the Crown, was indicted for the wilful murder of **GEORGE CLARK**, by shooting him with a pistol during a drunken brawl; verdict, not guilty.

HANNAH HAMPTON, was indicted for the wilful murder of her child shortly after its birth; verdict, not guilty.

CIRCUIT COURTS.

The sittings of the Berrima Court commenced yesterday before Mr. Justice Burton.

JOHN WRIGHT, murder.

FIRST REPORT OF **ROBERT HUTCHSON, HACKLE @ HUGGLY.** To be completed.

FREE PRESS, 1/83, 18/09/1841.

NEWS AND RUMOURS OF THE DAY.

An inquest was held at Port Macquarie Hospital, on Monday last, on the body of an old man named **PEEBLES**, who came to his death by falling down the hoper of a mill on the previous day. Verdict accordingly.

THE LIVERPOOL ROAD MURDER. - A man named **JOHN GALWAY**, has been apprehended on the charge of being concerned in the above crime, but has not as yet been brought up for examination. It appears from what we can learn, that the unfortunate man (Potter) was knocked off the dray on which he was seated, by **MARY FOX**, the woman who is now in custody, and that the wheel of the vehicle passed over his side thereby occasioning the injuries which terminated in his death. The prisoners will be brought up for examination on Wednesday next.

THE LATE MURDEROUS ASSAULT. – Another Government man, named **JAMES M'CANE [M'KEAN]**, attached to the General Hospital, has been apprehended on the suspicion of having been concerned in the late inhuman attack on **DEAN WEST.** The unfortunate man himself has since undergone an operation by which a considerable portion of the skull has been removed, and he now appears to be in a much better state than before, although he still remains in a state of perfect insensibility and his recovery is despaired of. It has not as yet been ascertained what were the causes of so barbarous an attack.

INQUEST. – A Coroner's Inquest was held on Thursday last at the Whaler's public-house, Windmill-street, on the body of an old man named **WILLIAM BERGEN**, who died suddenly the preceding evening. From the evidence of the medical witness it appeared that the deceased had come to his death rather from the effects of old age than of any disorder under which he laboured, having been so old and infirm that it

had been judged advisable to procure him admission to the Benevolent Asylum, and measures had already been adopted for that purpose, when they were rendered unnecessary by the death of the object. A verdict of "death from natural causes" was returned.

THE LATE MURDER AT THE GENERAL HOSPITAL. - A Coroner's Inquest was held yesterday, at Mr. Driver's, Three Tuns Tavern, corner of King and Elizabeth-streets, before **J.R. BRENNAN**, Esq., coroner, on the body of **DEAN CHINNERY WEST,** who expired at the General Hospital on the previous Saturday from the effects of certain injuries which had been inflicted upon him in the manner afterwards shewn by the enquiry. **ROBERT HUDSON**, who was accused of having inflicted the injuries alluded to was brought up, in order to await the result of the investigation.

The Coroner, in opening the proceedings, briefly referred to the circumstances of the case, and entreated the jury to disabuse themselves from any report which they might have heard out of doors relative to the particulars of the case.

WILLIAM NEARY, having been duly sworn, deposed, that he was a baker by trade, and had been in the constant habit of serving bread at the quarters of Mr. Croft, in the general Hospital; on the morning of Wednesday last he went, according to his usual custom, into the room of the deceased in order to leave a loaf upon the table, when his attention was called to some blood on the floor, and upon further examination he discovered that West, who was lying on the bed, was covered with blood flowing from a wound of great severity on the head, he then went upstairs to Mr. Croft's room, who, with his eldest son instantly came down to the quarters of the deceased, and he (the witness) then went away; he did not see any person about the premises except at the quarters of Mr. Croft.

JONATHAN CROFT, deputy purveyor and apothecary to the forces, deposed that his quarters were situated at the south wing of the General Hospital, and that the deceased and prisoner were both assigned to him for the purposes of the establishment, the former being employed as a clerk and a distributor of medicine under his (the witness's) direction, and the latter as a gatekeeper; a prisoner of the crown named **SAMUEL HUGGLE** was also assigned to the witness, and employed in the general business of the establishment. On the morning of Wednesday last the baker came to him and said that one of the men was lying covered with blood, upon which, when he (the witness) went immediately to West's room, accompanied by his son, and found the deceased lying on the bed with his face towards the wall, and a severe contused wound on the left side of the head a little above the ear. Witness immediately sent for a constable and instituted a strict search about the premises in order to discover some clue which might lead to the detection of the offender, and some time after this he found an axe in the kitchen, the pole of which was covered with blood and had one hair adhering to it (an axe was then produced), the axe then produced was the one which he had found and appeared likely to have caused such a wound as that which the deceased had received; **JAMES M'LEAN** was present at this time and assisted in searching for the weapon, and missing the prisoner, he (the witness) asked M'Lean whether he had seen him, when the latter replied he had not, but that the prisoner had previously complained to him of the deceased having said that he (the prisoner) was sent to this colony on the charge of murder; upon hearing this, witness cautioned him to say no more at that time and the subject was dropped; Huggle was present and assisted in their proceedings, but made no remark. [A long examination was entered into respecting a towel and a cloth bearing slight marks of blood, but as it could not be connected with any leading point of the case we purposely omit it.] The prisoner did not agree well with any of the men, and witness

had known some slight differences to exist between him and the deceased, but he never looked upon them as tending to any serious result. The prisoner had complained to witness that he was annoyed by the deceased coming home late at night, and witness was aware that the latter had been absent the whole of the day previous to his being wounded, in consequence of which he meant either to have severely reprimanded or punished him, and ordered Hudson to inform him the moment he (deceased) returned. About four o'clock on Tuesday, witness was going out of the gate when he saw the prisoner and M'Lean sitting together in the sentry-box, upon which he immediately ordered them to separate, which they did. After the discovery of the deceased, witness did not see the prisoner until he perceived him in custody, he having absented himself from his post contrary to his duty.

JAMES M'LEAN, a prisoner of the crown, attached to the Hospital, corroborated the evidence of the last witness as to finding of the deceased in the state described, but differed from him in some details of minor importance, by which, however, the case was not materially affected. He also stated that the prisoner had complained to him on Tuesday, the day before the murder, of the deceased having told some female servants at the house of the clergyman opposite, that he (prisoner) had been sent out for the murder of his wife, in consequence of which these females were in the habit of taxing him with that crime whenever they met him in the street. The prisoner, he said, appeared to be much affected while speaking of this and shed tears, but did not make use of any threats of revenge; he also expressed his uneasiness of mind at a late hour the same evening, by replying to some jesting remarks which were made to him "God forbid that you should be under the same trouble that I am now." The witness had heard high words between the deceased and the prisoner, but he was never aware of any serious enmity existing. The prisoner was quite sober on the evening alluded to.

JANE SMITH and **MARY ANN JACKSON** stated that they had formerly been in the service of the Rev. Mr. **ALLWOOD**, whose residence was facing the Hospital; the gate and yard were visible from the windows, but neither of them were acquainted with any person belonging to the establishment; they did not know either the prisoner or the deceased, and no statements had ever been made to them respecting the c rime for which the former had been sent out.

Captain **INNES** then deposed, that he had gone to the prisoner on Sunday last in consequence of some information which he had previously received, and having seen a document which purported to be a confession taken by a clerk from the prisoner's own mouth, he gave the latter a strict caution that the making of such a confession would not operate in his favour, and finding him still determined to persist in the acknowledgement of his guilt, he (Captain Innes) immediately took down the following statement himself from the prisoner, following as near as possible his own words:

"Confession of Robert Hudson, per ship John 1839, who states:- Dean, West, and I, have often had words; and I have told him that he had better not exposing my crime about the place like this, and he has told me that a man like me had no business being about the place. On Wednesday the 15th of September, I got up a little after 6 o'clock in the morning, and went into West's bed-room, he was awake but I did not speak to him. I left the bed room and went down to the kitchen, Samuel Huggly was in his room over the kitchen, he asked me what o'clock it was; I told him a little after six; he told me to strike a light, and I told him that I would go and get a match from West's place. I left the kitchen, taking the axe which was used for cutting wood with me; I went to West's bed-room, but left the axe on a chest outside the door. I went in and got a match, I then went and took hold of the axe, advanced to the bed-room, and struck West one blow I think, on the head; he was lying with his face from me towards the wall; he exclaimed "Oh!" I left the room, and left the axe lying on the chest outside. I went

back to the kitchen, when Huggly asked me if I had got the light, I told him no. I then went out of the gate, and went down King-street, and along George-street, and walked about until about ten o'clock, when a constable took me. Huggly was the person who generally cut the wood at the house. I was driven to the act I committed, from West's continually repeating things of me.

ROBERT HUDSON.

Confessed before me, and taken down in my own handwriting in Hyde Park Barracks, this 19th day of September, 1841.

J. LONG INNES, J.P.

Present Mr.James Lane, Thos. McDonnell, William Butler.

Dr. **HARNETT**, the Colonial Surgeon, deposed as to the nature of the injuries sustained by the deceased, which he declared to be a severe and extensive fracture of the skull, such an one as the axe with which the crime was supposed to have been committed; he had not the slightest doubt that the fracture alluded to was the cause of death.

JONATHAN WATSON, a constable, stated that he apprehended the prisoner in George-street, between 10 and 11 o'clock on Wednesday morning.

The Coroner made a brief review of the case, for the information and guidance of the jury; remarking that his intention in brining so much evidence before them, was in order that the prisoner might, if he pleased, have the advantage of retracting the confession he had previously made, but that in consequence of the confession being persisted in, there could be no reasonable doubt as to the nature of the verdict which the jury would return. The evidence indeed would probably of itself have been deemed sufficient for the purpose, being strongly inferential of the prisoner's guilt; but it would still have been an enquiry of great difficulty; and would have involved Huggly in the same dilemma as the prisoner; it being however clear, both from the confession of the prisoner and the evidence of the witnesses, that Huggly was innocent of the transaction, he should order both him and the witness McLean to be at once discharged. The prisoner appeared to have been labouring under the effects of a strong delusion, in supposing that the deceased had calumniated his character, for it was clear from the evidence of the females that the alledged report of his former crime had never reached them, nor had they therefore ever taunted him with it. The Coroner also commented with considerable force on the evidence, and the general features of the enquiry, and concluded by a remark that under the circumstances, he could see but one course for the Jury to adopt, authenticated as the guilt of the prisoner was, not only by the evidence, but by his own confession.

The Jury after a few moments consideration, returned a verdict of wilful murder against the prisoner, who was immediately committed to take his trial upon that charge.

INQUEST. - A Coroner's Inquest was held on Saturday last at Bollard's public house, on the body of a female infant named **AMELIA ELLIS**, aged eighteen months, who was killed on the preceding evening by the wheel of a chaise driven by Mr. **BURT**, baker, having passed over her head. It appeared by the evidence that no blame could be attached to Mr. Burt, who drew up as soon as he ascertained the danger of the child, but not in time to save her from destruction – verdict, accidental death.

NEWS AND RUMOURS OF THE DAY

On Tuesday evening last, a youth of the name of **GROUNDS**, whose parents reside at Parramatta was entrusted with a high spirited horse, which he mounted, when it immediately ran off, threw him, and his foot being entangled in the stirrup, he was dragged along the street till he came in contact with a post, which so severely injured

his head that he died on Friday. An inquest was held on the body on Friday, and a verdict of accidental death was returned.

PORT PHILLIP PATRIOT, 20/09/1841
Supreme Court of New South Wales
Willis J., 16 September 1841, Melbourne
R. v. Bonjon
Willis J. I will now continued His Honor state my views on the subject, at the same time I may say, that I do not consider myself bound by the opinion of either Mr. Chief Justice Forbes, Mr. Justice Burton, or Mr. Chief Justice Dowling in the present case. I have to thank Mr. Barry for the very able manner in which he has argued the case for the prisoner; the whole of his argument shows a considerable deal of talent, industry and research; he having kindly undertaking the defence of the prisoner at my suggestion. I have also to thank the Crown Prosecutor for the able manner in which he supported the rights of the Crown. The case appears to me to be this, **BONJON**, an aboriginal within the District of Port Phillip, was committed to gaol on the twenty-fifth of August 1841, by N. A. Fenwick, Esquire, the Police Magistrate of Geelong, and **E.B. ADDIS**, and **FOSTER FYANS**, Esquires, Justices of the Peace for the Territory of New South Wales, for the alleged murder (on or about the 14th of last July), of **YAMMOWING**, also an aboriginal within this district. An information has been filed by Mr. **CROKE**, the Crown Prosecutor for the district, against the prisoner for this offence, and the question now is, whether the Supreme Court in a case like this has any jurisdiction? Are in fact the aborigines (except with reference to aggressions on their part against the colonists, and with regard to that protection from the aggressions of the colonists which the aborigines are indisputably entitled to), subject to the law of England as it prevails in this Colony? With regard to such aggressions as I have mentioned they are entitled to be considered and treated, in my opinion, as if they were British subjects. The recent case of the two aboriginals, **MERRIDIO** and **NEGARIL** recently tried before Mr. Justice Burton, at Sydney, and executed for the murder of **WILLIAM TUCK**; and the case of **CHARLES KILMAISTER**, and six other colonists, also tried before Mr. Justice Burton, at Sydney, in December 1838, and executed, for the murder of two aboriginal children and an adult aboriginal named **CHARLEY**, show how the English law has been applied in criminal cases between the colonists and the aborigines. I am aware, however, that Mr. **MONTGOMERY MARTIN**, in his history of this colony (chap. 6) thus mentions the case of an aboriginal black Tommy who was hanged for murder at Sydney, in 1827. "The circumstances, he says, connected with this execution were very singular,and deserve publicity. From the statement previously made to me, I believed the man to be innocent, and I therefore attended his trial to aid in the defence of a man who knew not a word of our language, and owed no obedience to our laws." Mr. Martin, though an author, is not legal authority. The point however for decision in the case now before me, is a very different one. I repeat that it is not with reference to any aggressions between the black and white population, but simply whether the English law can be legally applied; or rather, sworn as I am to administer the law of England as it prevails in this colony, can I legally exercise any jurisdiction, with reference to any crimes committed by the aborigines against each other? This, and this alone is the question; and it is a question, affecting as it does a vast and hitherto neglected, oppressed, and deeply injured multitude of the human race, more worthy of the judicature of a Roman Senate than of an obscure and single colonial Judge; but it is my consolation, that should I err in judgment, that error may speedily be corrected,

and complete justice provided, not indeed by a Roman Senate, but by the surpassing wisdom and humanity of the Imperial Parliament. The undue assumption of legal jurisdiction darkens the annals of our country with the crime of Regicide; it hurried to the grave an unfortunate Missionary in the colony whence I came, but there sprang from his ashes a society which having extinguished slavery, now directs its views to the protection of the aborigines within the British settlements. I believe it to be the duty of a judge fearlessly and honestly, yet with all due care and circumspection, to extend to its utmost verge his judicial authority when occasion shall require; but I believe it equally to be his duty to abstain from its exercise when any reasonable doubt can be entertained of his jurisdiction. The fair and lovely face of justice, if urged beyond her legal boundary, assumes the loathsome and distorted features of tyranny and guilt.

"Est modus in rebus, sunt certi denique fines,
Quos ultra citraque nequit consistere rectum."

The address of the British House of Commons to the late King, passed unanimously, July, 1834, (and set forth in the Report of the Select Committee of the House of Commons on the Aborigines where British settlements are made, and to which I shall have frequent occasion to refer), states that his "faithful Commons in Parliament assembled are deeply impressed with the duty of acting upon the principles of justice and humanity in the intercourse and relation of this country (the United Kingdom) with the native inhabitants of its Colonial settlements – of affording them protection in the enjoyment of their civil rights, and of imparting to them that degree of civilization, and that religion with which Providence has blessed this nation; and it humbly prays, that his Majesty will take such measures and give such directions to the Governors and Officers of his Majesty's settlements and plantations, as shall secure to the natives the due observance, and the protection of their rights – promote the spread of civilization among them, and lead them to the peaceful and voluntary reception of the Christian religion." "This address, (says the Report) as the Chancellor of the Exchequer observed; so far from being the expression of any new principle, only embodies and recognises principles on which the British Government has for a considerable time been disposed to act." The Report further states, "It might be presumed that the native inhabitants of any land, have an incontrovertible right to their own soil; it is a plain and sacred right which seems not to have been understood. Europeans have entered their borders uninvited, and when there, have not only acted as if they were the undoubted lords of the soil, but have punished the natives as aggressors if they have evinced a disposition to live in their own country. If they have been found upon their own property (and this is said with reference to the Australian Aborigines) they have been hunted as theives and robbers – they have been driven back into the interior as if they were dogs or kangaroos." To elucidate so far as I am able the point for decision, I will first briefly trace the history of this colony and of the settlement of this district, at the same time remarking on the character which has been given of the Aborigines; and in the second place, state so much of the acknowledged law of nations and the manner it has been acted upon with regard to Aborigines, as seems to me to bear on the subject, adding a few notices of the manner in which uncivilized tribes have been treated with in other British Colonies, and the steps taken in Colonies where English law was in force. I will premise that the policy, or impolicy of an existing system can avail nothing in the present instance. I am here as a Judge to declare the right, and not to have recourse to the expedient. I can never permit the end to justify any undue means for its accomplishment. This may be

policy and wisdom in a statesman, but it is little less than treason in a Judge. He must not
"Wrest the law to his authority,
Or do a great right, through a little wrong."
But to proceed with the history of the colony: whatever may be the claims of others to the discovery of the vast island of New Holland, there can be no doubt that our English navigator, Captain Cook, sailing from Plymouth in August 1768, on his well known scientific voyage, after having observed at Mattavai in Otaheite, the transit of Venus over the Sun, in June 1769, in due form, and with great advantage, and discovered the Society islands; sailed to New Zealand, and thence to New Holland; the eastern coast of which, unexamined before, he explored with attentive diligence for the space of 1800 miles; affixing to this part of the country the name of New South Wales, he took possession of it in the name of his sovereign. Early in the year 1785, owing to the previous revolution and then recent declaration of the independence of the British Colonies, (now United States of America) the attention of the British Government was naturally directed to the state of the convicts formerly transported to those possessions. In the House of Commons Mr. Burke asked what was to be done with the unhappy persons sentenced to transportation? This gave rise to the Colonial scheme, adopted during the administration of Mr. Pitt to clear the prisons, with an eye to the eventual benefits derivable from new possessions. The King ordered a considerable embarkation for Botany Bay, in New South Wales. The number of convicts amounted to 584 men, and 242 women; guarded by 212 marines. Capt. Arthur Phillip, a naval officer, was invested with the chief command of the squadron, and destined to be the first governor of the eventual colony.
"Finibus expulsi patriis nova regna petentes."
they sailed from England in the early part of the year 1787, and arrived in Botany Bay in January 1788. On the shore appeared a body of savages, armed with spears, which, however, they threw down as soon as they found the strangers had no hostile intention; they had not the least particle of clothing, yet they did not seem surprised at the sight of well clad persons, or impressed with a sense of shame. Finding the bay to be inconvenient, Port Jackson was fixed upon, as a more desirable spot; and at one of the coves of this harbour, named from Lord Sydney, an orderly disembarkation took place. While the majority of the men were clearing the ground of the trees and underwood with which it was encumbered, a hasty encampment afforded temporary shelter; and at a meeting of the whole colony, formal possession was taken of that part of New Holland which extends from York Cape to the South-eastern Cape, and from the coast to the 135° of east longitude; a country, to which was given the denomination of New South Wales, much more extensive than all the British dominions in Europe. The Governor, in various excursions, endeavoured to conciliate the natives, but they long continued to be shy and jealous; they appeared to belong to the numerous race dispersed over the South Sea Islands; they had made little progress in the arts, their canoes were wretchedly formed, their huts were very slight and incommodious; and, they could not secure themselves against the frequent visitations of famine. The progress of the colony, to a regular establishment, was slow: supplies of delinquents were occasionally sent; but such articles of subsistence as the colonists could not obtain from the land which they inhabited, did not always arrive from other countries so soon as they were required, and the scarcity sometime bordered on famine. And here I cannot but agree with what is said by Lord Bacon – "I like a plantation in a pure soil, that is, where people are not displanted to the end to plant in others; for else it is rather an extirpation, than a plantation." "It is a shameful thing,"

he adds, "to take the scum of the people, and wretched condemned men, to be the people with whom you plant." Yet such was the plantation of New South Wales. With regard to the character of the Aborigines of the colony, it was said by those who first visited New Holland, "that the people who inhabit the various parts of it, appear to be of one race. They are evidently ruder than most of the Americans, and have made still less progress in improvement and the arts of life. There is not the least appearance of cultivation in any part of this vast region; the inhabitants are extremely few, so that the country appears to be almost desolate. Their tribes are still more inconsiderable than those of America. They depend for subsistence almost entirely on fishing; they do not settle in one place, but roam about in quest of food. Both sexes go stark naked. Their habitations, utensils, &c., are more simple and rude than those of the Americans." Subsequent observation has shown the incorrectness of much of this statement, which, doubtless, may formerly have had weight with the British Government. The Lord Bishop of Australia, previously the Archdeacon, Dr. Broughton, (in his evidence before the Committee of the House of Commons,) although he says, "that the Aborigines are in a state of extreme degradation and ignorance," yet adds, "that he does not ascribe their present barbarism to any unconquerable dulness of intellect, but merely to their love of erratic liberty; and thinks their intellect, when it is exercised, is very acute upon subjects that they choose to apply it to." His Lordship states, "that the consequence of our settlement at Sydney, was to drive away the Aborigines from possessions which they had previously occupied." "They still haunt," he says, "and continue in their natural places; they return to it, and linger about it; but they have no settled place, properly so called – it is all occupied by the Europeans." His Lordship also stated his opinion as to their numbers, which certainly does not seem to be very inconsiderable. Mr. **SAXE BANNISTER**, formerly Attorney-General of this colony, in his evidence before the same Committee (on the 31st August, 1835,) after complaining, that, in his time in New South Wales, an interpreter (between the Aborigines and colonists) could not be found to come into any court of justice, says, "we ought forthwith to begin, at least, to reduce the laws and usages of the Aboriginal tribes to language, print them, and direct our courts of justice to respect those laws in proper cases." Hence, it is evident, according to Mr. Bannister's testimony, that the Aborigines of this colony have laws and usages of their own. Mr. Bannister also handed a paper to Mr. T. F. Buxton, chairman of the Committee, dated the 19th August, 1835, in which (under the head of "Measures affecting the Swan River and other New Australian Colonies,") he says, "Make treaties with the natives before proceeding farther." The Rev. **JOHN DUNMORE LANG**, the head, I believe, of the Presbyterian Church in this colony, in a letter to Mr. T. F. Buxton, of the 10th June, 1834, appended to Minutes of Evidence before the Committee I have mentioned, writes as follows:– "They (the Aborigines of New South Wales) are divided into an infinity of tribes, speaking an infinity of barbarous tongues; subsisting on whatever the rivers or the forests produce spontaneously – without clothing – without houses – equally ignorant of manufactures and of agriculture – but generally in a state of warfare with each other. * * *

They are neither devoid of intelligence, however, nor destitute of capacity; and in their native wilds, and especially in seasons when game is easily procurable, they are by no means strangers to a certain species of enjoyment. Their songs are artless, but agreeably melodious, and sometimes even poetical; their dances are an accurate imitation of the motions of the inferior animals that inhabit their native forests; and their mock fights are a still more accurate representation of real warfare than an

European review." I find that in a letter from a Mr. John Batman, inclosed by Governor Arthur, from Van Diemen's Land of 4th July, 1835, to the Right. Honorable T. Spring Rice, (now Lord Monteagle,) then Her Majesty's Colonial Secretary of State; that Mr. Batman states "the chiefs (that is, the chiefs of the aboriginal tribes at Port Phillip,) "to manifest their friendly feelings towards me, insisted upon my receiving from them two native cloaks, and several baskets, made by the women, and also some of their implements of defence. The women generally are clothed with cloaks of a description somewhat similar, and they certainly appear to me to be of a superior race to any natives which I have ever seen." Thus, according to these statements respecting the aborigines, it appears that they are by no means devoid of capacity – that they have laws and usages of their own – that treaties should be made with them – and that they have been driven away, from Sydney at least, by the settlement of the colonists, but still linger about their native haunts. That they do so linger in this district – that those who are termed by Mr. Batman, in aid of his views, and those of other speculative adventurers, "a superior race," still linger about this town of Melbourne, once in their actual occupation, is seen by their frequent assemblies in the immediate vicinity, and the multitude of them so congregated at this very moment. The scenes of drunkenness of individuals belonging to this unfortunate race daily witnessed by all in the streets of Melbourne will account for that decay, – for their seeming to wear out (as the Lord Bishop justly says) and diminish in numbers wherever Europeans meet with them. Rochefort tells us that an Aboriginal of a different country, an old Charib, many years since thus addressed a West Indian planter, "Our people are become almost as bad as yours, we are so much altered since you came among us, that we hardly know ourselves, and we think it is owing to so melancholy a change, that hurricanes are more frequent than they were formerly. It is the evil spirit that has done all this – who has taken our best lands from us, and given us up to the dominion of Christians." It appears by the Parliamentary Report I have so frequently referred to, that "From the prevalence of infanticide, from intemperance, and European diseases; the number of the Aborigines is evidently and rapidly diminishing in all the older settlements of the colony, and that in the neighbourhood of Sydney especially, they present merely the shadow of what once were numerous tribes – yet even now it is supposed that their number within the limits of the colony of New South Wales cannot be less than 10,000; an indication of what must once have been the population, and what the destruction." But why I would ask if the Aborigines be deemed to all intents and purposes to be British subjects and amenable to British laws – as it is now contended that they are; Why have not the Magistracy? aye! and why not the Executive directed the Magistracy if negligent in their duty, to put forth the protecting arm of legal authority to save these wretched beings from these crimes – the crimes of infanticide and drunkenness – to save them from themselves, and from the effects of the innoculation of European vice? The settlement of this district of Port Phillip, took place under the circumstances detailed in a very able despatch of Governor Sir Richard Bourke on the 10th of October 1835, to the Right Hon. Lord Glenelg, then Secretary of State, which with other documents relative to an illegal attempt of the Mr. Batman who has been mentioned, and his co-adventurers, to treat with the chiefs of the native tribes for the purchase of no less than 600,000 acres of land in the immediate vicinity of this town, in consideration of a few blankets, knives, and tomahawks, four suits of clothes, fifty pounds of flour, and an annual tribute of some blankets, knives, tomahawks, scissors, looking glasses, slop clothing, and two tons of flour." Yes, such was proposed as the liberal consideration for 600,000 acres of land, an attempted bargain surpassed only by some more recent

proceedings of a somewhat similar description in New Zealand. The whole of these documents are printed and may be seen in the appendix to the Report of the Parliamentary Committee on the disposal of waste lands in the British Colonies dated the 1st of August, 1836. This scheme was happily frustrated. It is to be regretted, however, that previously to the settlement of Port Phillip by the Government no treaty was made with the Aborigines – no terms defined for their internal government, civilization, and protection. Sir Richard Bourke indeed well deserved the glowing eulogy for what he has done, though I cannot but lament that with regard to the Aborigines he did not do more, in the address to him from the inhabitants of the colony of New South Wales, when on his return to Europe, (published in the Government Gazette of New South Wales, of 13th December, 1837;) it alludes to Port Phillip in the following terms, "We beg leave, sir, to acknowledge, that to your promptitude and decision, we are mainly indebted for having secured to New South Wales the noble domain, millions of fertile acres, which encompass the waters of Port Phillip. Impartial history will yet record with what vigilance you watched over those, who under the pretence of fictitious sales and artful representations, endeavoured, on terms injurious to the rights and interests of the colony, to make a monopoly of those green and boundless plains, which at no distant period are destined to be covered with our multitudinous flocks and herds." The immigrant now journeys to the spot thus freed from the trammels of these tainted transactions, like Æneas on his approach to Carthage

"Miratur portas, strepitumque et strata viarum,
Instant ardentes homines; pars ducere muros,
Molirique arcem, et manibus subvolvere saxa:
Pars aptare locum tecto, et concludere sulco,
Hîc Portus alii effodiunt; hîc alta theatris
Fundamenta locant alii, immanesque columnas
Rupibus excidunt, scenis decora alta futuris."

But though the city may spring up and flourish; though the smoke is seen to curl from many a domestic hearth; where is the sacred spire pointing to Heaven, and telling the distant traveller, that he is approaching the abode of Christians, as well as of civilized men? – of Christians mindful of their duty to the helpless race whose possessions they have usurped. According to the commission whereby this colony is governed, the Sovereignty of the Crown is asserted over the whole of the territory comprised within the limits it defines – limits always including a large portion of the Northern Island of New Zealand; that part in fact between which and New South Wales any intercourse existed – limits which by a Commission of so late a date as the 15th of June, 1840, were further extended so as to comprise that group of islands in the Pacific commonly called New Zealand. There does not appear to be any specific recognition in this Commission of the claims of the aborigines, either as the sovereigns or proprietors of the soil; although it is in the recollection of many living men that every part of this territory was the undisputed property of the aborigines. Whether the sovereignty thus asserted within the limits defined by the Commission of His Excellency the Governor legally excludes the aborigines, according to the law of nations, as acknowledged and acted upon by the British Government, from the rightful sovereignty and occupancy of a reasonable portion of the soil, and destroys their existence as self governing communities, so entirely as to place them, with regard to the prevalence of our law among themselves, in the unqualified condition of British subjects; or whether it has merely reduced them to the state of dependent allies, still retaining their own laws and usages, subject only to such restraints and qualified control as the safety of the

colonists and the protection of the aborigines required, (subject to that right of pre-emption of their lands, which is undoubted) is the point upon which the present question mainly rests. Much will depend on the manner in which this colony is considered to have been acquired, and this brings me in the second place to advert to the law of nations as acknowledged by the British Government, with regard to Colonial possessions. Colonies, says Mr. Clark, in his summary of the Colonial Law, and stated at the bar by Mr. Barry, are acquired by conquest; by cession under treaty; or by occupancy. By occupancy where an uninhabited country is discovered by British subjects, and is upon such discovery adopted or recognised by the British Crown as part of its possessions. In case a colony be acquired by occupancy, (he adds) the law of England then in being, is immediately and ipso facto in force in the new settlement. He further states, New South Wales and Van Diemen's Land, were acquired by discovery or simple occupation. New South Wales was not however unoccupied, as we have seen, at the time it was taken possession of by the colonists, for "a body of the aborigines appeared on the shore, armed with spears, which they threw down as soon as they found the strangers had no hostile intention." This being the case, it does not appear there was any conquest, and it is admitted there has hitherto been no cession under treaty. Protectors indeed have recently been appointed and certain lands set apart by order of Government within this district, for the location of the aborigines; but no more. This colony then stands on a different footing from some others for it was neither an unoccupied place, nor was it obtained by right of conquest and driving out the natives, nor by treaties. Indeed, as M. Vattel very justly says, "whoever agrees that robbery is a crime, and that we are not allowed to take forcible possession of our neighbour's property, will acknowledge without any other proof, that no nation has a right to expel another people from the country they inhabit in order to settle in it herself." But in a preceding page the same author declares, in the passage quoted by the learned Crown Prosecutor, "that those who pursue an erratic life, and live by hunting rather than cultivate their lands, usurp more extensive territories than with a reasonable share of labour they would have occasion for, and have, therefore, no reason to complain if other nations, more industrious, and too closely confined come to take possession of a part of those lands. Thus, though the conquest of the civilised empires of Peru and Mexico was a notorious usurpation the establishment of many colonies on the continent of North America, might, on their confining themselves within just bounds, be extremely lawful. The people of those extensive tracts rather ranged through, than inhabited them." And, again, he says, as was quoted by the counsel on both sides at the bar, "It is asked if a nation may lawfully take possession of a part of a vast country in which there are none but erratic nations whose scanty population is incapable of occupying the whole? We have already observed, in establishing the obligation to cultivate the earth, that those nations cannot exclusively appropriate to themselves more land than they have occasion for, or more than they are able to settle and cultivate. Their removing their habitations through these immense regions cannot be accounted true and legal possession; and the people of Europe, too closely pent up at home, finding land of which savages stood in no particular need, and of which they made no actual and constant use, were lawfully entitled to take possession of it, and settle it with colonies. The earth, as we have already said, belongs to mankind in general, and was designed to furnish them with subsistence: if each nation had from the beginning resolved to appropriate to itself a vast country, that the people might live only by hunting and fishing and wild fruits, our globe would not be sufficient to maintain a tenth part of its present inhabitants. We do not, therefore, deviate from the views of nature in

confining the Indians within narrower limits." M. Vattel proceeds, but this has not been quoted at the bar:– "However, we cannot help praising the moderation of the English Puritans who settled in New England; who, notwithstanding their being furnished with a charter from their Sovereign, purchased of the Indians the land of which they intended to take possession. This laudable example was followed by William Penn and the colony of Quakers, which he conducted to Pennsylvania." It was, then, upon the above principle, I think, and not by mere occupancy of a desert spot, by conquest, or by cession, that this colony was acquired, though the good example of the English Puritans and of Wm. Penn has hitherto been neglected. The former, in 1640, being desirous of planting churches "after a Godly sort," and to traffic with the Indians along the Delaware Bay, made a purchase of soil for 30l. sterling from the Indians, "and based their claims on their actual purchase from the Indian sovereigns, of whom they alleged they acquired their titles." With regard to Penn, Fishbourne, in his narrative, says, "the first and principal care of the proprietor (Penn) was to promote peace with all, accordingly he established a friendly correspondence by way of treaty with the Indians, at least twice a year, and strictly enjoined the inhabitants and surveyors not to settle any land to which the Indians had claim, until he had first, at his own cost, satisfied and paid them for the same." Here, then, we find the Indians treated as Sovereigns of the soil by the Puritans, and treaties entered into with them by the chartered governor, Penn. Penn's right as representing his Sovereign, was discovery coupled with possession; and yet, having the sovereignty by virtue of the royal charter, the Indians were not reduced to subjects, but treaties were made with them whereby they became dependent states, and placed themselves under his protection. "A state," says M. Vattell, "that has put herself under the protection of another has not on that account forfeited her character of sovereignty;" and this was the case with the Indian tribes. A state, I think, may be considered under the above circumstances as placing itself under the protection of the more powerful colonists, although no specific treaty has been made; and the passages from Kent's Commentaries that I shall cite hereafter, will, in my opinion, warrant this inference. But, it may be said, that if a nation that is protected, or has placed itself under a certain state of subjection, does not resist the encroachments of the superior power – if it makes no opposition to them – if it preserves a profound silence when it may and ought to speak – its patient acquiescence becomes, in length of time, a tacit consent that legitimates the right of the usurper. It must be observed, however, that silence, in order to show consent, ought to be voluntary. If the inferior nation proves, or if it be evident from its position and circumstances, that violence and fear, or ignorance, prevented its giving testimonies of opposition, nothing can be concluded from its silence which then gives no right to the usurper. Therefore, if this colony were acquired by occupying such lands as were uncultivated and unoccupied by the natives, and within the limits of the sovereignty asserted under the commission, the aborigines would have remained unconquered and free, but dependent tribes, dependent on the colonists as their superiors for protection; their rights as a distinct people cannot, from their peculiar situation, be considered to have been tacitly surrendered. But the frequent conflicts that have occurred between the colonists and the Aborigines within the limits of the colony of New South Wales, make it, I think, sufficiently manifest that the Aboriginal tribes are neither a conquered people, nor have tacitly acquiesced in the supremacy of the settlers. The rights of the Aborigines of this district if the testimony which has been adduced as to the civilization and capacity be true, cannot, I should imagine, differ from those of other Aboriginal tribes within the limits of the same government. We find in the Government Gazette of

New South Wales, of July 8, 1840, a Proclamation by Captain Hobson, the Lieutenant-Governor of New Zealand, reciting that a treaty had been made and entered into by him and certain chiefs of the northern island, (the greater part of which it will be remembered has always been within the limits defined in the commission under which this colony is governed), declaring that by virtue of such treaty, the full sovereignty of the northern island of New Zealand vests in Her Majesty Queen Victoria for ever, a clear and distinct recognition of these chiefs as a separate and independent people. Now, if this cession were according to general and established principles of national law, what is there, I would ask, to prevent His Honor the Superintendent of this district entering into a similar treaty with the chiefs of the aborigines of this district, and thus acknowledging them to be as distinct a people as the New Zealanders? I fully agree with His Excellency the Governor, Sir Geo. Gipps, that Mr. Busby's declaration of independence of the New Zealanders, "was a silly as well as unauthorised act," wherefore no argument in favor of the treaty entered into with them by Governor Hobson, can be built on that ground; in fact I am quite at a loss to discover how the aborigines of New Zealand can be considered in a different light to those of Australia Felix. But I now come to what, perhaps, is higher and more conclusive authority for considering the aborigines as a distinct though dependent people, and entitled to be regarded as self-governing communities. On the 9th of July, 1840, His Excellency Governor Sir George Gipps, in his speech in the legislative council of this colony, (a speech which would have done honour to any senate,) on the Bill respecting claims to grants of land in New Zealand, made, among other, the following quotations in support of his argument, quotations which I know to be correct. The first passages read by His Excellency were extracts from Storey's Commentaries on the Constitution of the United States, c. 1, sec. 6, 7, and 8; but the 7th section is sufficient for my present purpose – it is as follows: "It may be asked what was the effect of this principle of discovery with regard to the natives themselves. In the view of the Europeans, it created a peculiar relation between themselves and the aboriginal inhabitants. The latter were admitted to possess a present right of occupancy, or use of the soil, which was subordinate to the ultimate dominion of the discoverer. They were admitted to be rightful occupants of the soil with a legal and just claim to retain possession of it; and to use it according to their own discretion. In a certain sense they were permitted to exercise rights of sovereignty over it. They might sell or transfer it to the sovereign who discovered it, but they were denied the authority to dispose of it to any other person; and until such a sale or transfer they were generally permitted to occupy it as sovereigns de facto." His Excellency then read several extracts from Kent's commentaries on the American law, and among others the following passage, a passage also quoted by counsel on behalf of the prisoner in his arguments in this case. "The Indian tribes placed themselves under the protection of the whites, and they were cherished as dependent allies." This does not appear to have been in consequence of any express treaty; "but subject to such restraints and qualified control in their national capacity, as was considered by the whites to be indispensable to their own safety, and requisite to discharge the duty of protection." And again, "They (the New England Puritans) always negotiated with the Indian nations as distinct and independent persons; and neither the right of preemption, which was uniformly claimed and exercised, nor the state of the dependence and pupilage under which the Indian tribes within their territorial limits were necessarily placed, were carried so far as to destroy the existence of the Indians as self-governed communities." His Excellency also read a passage from Robertson's History of America, with regard to the internal regulations

of the Indians, of which the following is an extract: (this passage has also been urged at the bar to show that the Court ought not to entertain jurisdiction. "The first step towards establishing a public jurisdiction has not been taken in those rude societies. The right of revenge is left in private hands. If violence is committed or blood is shed the community does not assume the power either of inflicting or moderating the punishment. It belongs to the family and friends of the person injured or slain, to avenge the wrong, or to accept the reparation offered by the aggressor." A lawyer at once perceives the similarity of this rude custom to the appeals of murder which within my recollection formed part of the English code. I believe the passages so aptly quoted by His Excellency the Governor to be equally applicable to the aborigines throughout the colony as to those of New Zealand. The American colonies were acquired precisely in the same manner as this has been, by discovery and occupancy of such lands as were not in the actual occupation of the natives. Some of those colonies also were receptacles for convicted offenders. If it be urged, notwithstanding what I have stated, that this is a conquered colony, I say and so most certainly was Jamaica, a colony in which, as in this, the English law prevails, and yet we find that in the year 1738, a treaty was concluded under the sanction of the crown, not with the aborigines indeed, but with an equally rude and untutored race, the Maroons of Trelawney Town, on the 1st March in that year; by the eighth article it is stipulated "that if any white man shall do any manner of injury to Capt. Cudjoe, his successors, or any of his people, they shall apply to any commanding officer, or magistrate in the neighbourhood for justice; and in case Captain Cudjoe, or any of his people shall do any injury to any white person, he shall submit himself, or deliver up such offenders to justice." – And by the 12th article, "That Capt. Cudjoe during his life time, and the Captains succeeding him, shall have full power to inflict any punishment they think proper on their men, death only excepted, in which case if the Captain thinks they deserve death, he shall be obliged to bring them before any Justice of the Peace, who shall order proceedings on their trial equal to those of other free negroes." A pretty strong acknowledgement of a rude and dependent community being permitted to govern itself by its own laws in a British colony. The island of St. Vincent, of which says Edwards, the Charibs were the rightful possessors, was by the 9th article of the peace of Paris, 10th Feb. 1763, ceded by the French in full and perpetual sovereignty to Great Britain, "the Charibs not once being mentioned in the whole transaction as if no such people existed." The Charibs indeed uniformly and absolutely denied any right in any of the Sovereigns of Europe to their allegiance. They were a rude and savage race certainly nor greatly superior, from Mr. Edwards' account of them, to the aborigines as described by Mr. Batman in Australia Felix. Notwithstanding the cession of the Island to the British Crown in full sovereignty, Government deemed it expedient to enter into a treaty of peace and friendship with them, concluded on the 17th of February, 1773, by the 3rd article of which they stipulate, "to submit themselves to the laws and obedience of His Majestys Government, and the Governor shall have power to enact further regulations for the public advantage as shall be convenient, (this article only respects their transactions with H. M.'s subjects, not being Indians, their intercourse and customs with each other in the quarters allotted to them not being affected by it) and all new regulations are to receive H. M.'s Governor's approbation before carried into execution." More convincing proofs than these cases in Jamaica and St. Vincent of the recognition of the self government, as dependent allies, of a rude people within the British dominions in a colony where English law prevails cannot I think be found, or one that more clearly refutes the argument of the learned Crown Prosecutor, that all persons in

a British colony are subject to the British law. Why then I would ask if this principle has been acknowledged in this colony with regard to the Aborigines of New Zealand – in Jamaica with respect to the Maroons – in St. Vincent with reference to the Charibs, and fully recognised and acted upon as national law in America. Why is it not to be acted upon here? Our East Indian possessions, whatever they may have been originally, are certainly now claimed by us by conquest; yet there, even, after conquest, the unchristian practice of Suttees and the barbarous rites of Jughernaut were permitted to prevail: the British Legislature, however, has, by the Stat. 3 & 4, Wm. IV., cap. 85, expressly given "the Governor-General in Council power to repeal or alter any laws or regulations then or thereafter to be in force in those territories, and to make laws for all persons, British or Native, foreigners or others, and for all courts of justice, whether established by H. M.'s charter or otherwise." There is no express law, that I am aware of, that makes the Aborigines subject to our colonial code: the stat. 9, Geo. IV., cap. 83, sec. 24, declares that the laws of England shall be applied in the administration of justice so far as circumstances will admit; but this, I think, is very different from declaring that the Aborigines shall, as among themselves, be amenable to British law. The only acts of legislation with regard to the Aborigines, that I remember, are the local ordinances to prevent their being supplied with sprits, and to prevent them bearing firearms; but it has never been attempted to deprive them of their weapons. These laws are perfectly consistent, I think, with the character of the Aborigines, as dependent allies, and necessary for the protection and due regulation of intercourse between the Aborigines and colonists. After the conquest of Ireland by Henry II., the laws of England were received and sworn to by the Irish nation, assembled at the Council of Lismore. But the Irish still adhering to their old Brehon law, after repeated injunctions, which they disregarded, that they should be governed by the law of England, the Brehon law was formally abolished by an Act of Irish Parliament in the 40th year of Edward III. Had any legislative enactment abolished the laws and customs of the aborigines, or declared that they should be governed by the law of the colony then this point could never have arisen. This is not a question of foreigners in a country where the sovereign has the entire sway. In such a case there can be no doubt that the foreigners are amenable to the laws of the place they come to. But even with regard to foreigners it is said by M. Vattel, to be the safest course not to permit those foreigners to reside together in the same part of the country, there to keep up the form of a separate nation. In this instance however the colonists and not the aborigines are the foreigners; the former are exotics, the latter indigenous, the latter the native sovereigns of the soil, the former uninvited intruders. It seems then that although infanticide prevails, and scenes of drunkenness are daily witnessed among the unfortunate aborigines in our streets, that no attempt has hitherto been made, to my knowledge at least, to repress these crimes by the interposition of our English or colonial law. To grasp the subject with sufficient strength, I have been induced to narrate at some length, the circumstances under which this colony was acquired and this district settled; to state the law of nations as applied not only in what was British America, but in New Zealand as forming a part of this colony, and to allude to the treaties made with the Maroons in Jamaica, and the Charibs in St. Vincent, (the one a colony obtained by conquest in its strictest sense, and the other acquired by the full and unconditional cession of a Foreign State,) in both of which colonies the law of England, so far as it can advantageously be applied, is recognised and prevails. Nor have I omitted to glance at the permissive countenance of the laws and customs of the natives of Hindostan, in that portion of it which has been conquered and subjected to British rule; though such customs included the cruel

practice of Suttees, and the disgusting heathen and barbarous rites of Jughernaut. I repeat that I am not aware of any express enactment or treaty subjecting the Aborigines of this colony to the English colonial law, and I have shown that the Aborigines cannot be considered as Foreigners in a Kingdom which is their own. From these premises rapidly indeed collected, I am at present strongly led to infer that the Aborigines must be considered and dealt with, until some further provision be made, as distinct, though dependent tribes governed among themselves by their own rude laws and customs. If this be so, I strongly doubt the propriety of my assuming the exercise of jurisdiction in the case before me. But it is too momentous a question to be thus hastily decided, it demands and it must receive much more anxious consideration, unless the counsel on each side go on with this case, on the express understanding that neither the prisoner nor the Court consider the question waived by any subsequent proceeding, and the reservation of all such benefit to the prisoner as he would have received in case I had now given a definite decision. I must for the present adjourn this matter for future judgment, reserving to myself as I do to the fullest extent the right so alter or abandon my present impression, should I be hereafter convinced that it is in any wise erroneous. But though I pause, I trust by doing so, I shall not subject the British name to the reproach cast on the Spaniards by the Peruvian Rolla. "I pause, indeed, in unfeigned amity, that affliction may not mourn my progress." I desire to see the state of the Aborigines of Australia improved, I desire to see them freed from the yoke of error; to see the duties of humanity amply and practically fulfilled; to see all due protection extended to this unhappy race – the protection of their rights by laws adapted to their capacity and suited to their wants – the protection of all equal and all powerful justice.

It was then agreed that the prisoner should plead to the information and take his trial, subject however to the express reservation of the right of jurisdiction, which His Honor would take further time to consider.

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

TEMPERANCE, 1/51, 22/09/1841

HUDSON, who was in custody on suspicion of the murder in Macquarie-street, has confessed the crime.

FREE PRESS, 1/85, 23/09/1841

NEWS AND RUMOURS OF THE DAY

Intelligence has been received in Sydney, of a most atrocious murder, at the Station of **CHARLES THOMPSON**, Esq., on the Murrumbidgee. The circumstances of the case have not as yet transpired, but it appears that the body of a man has been found in the Murrumidgee River, with his head cut open by a tomahawk, the temple bones knocked into the brains, and the legs tied together. Mr. Commissioner **BINGHAM** has been very busy in investigating the matter, and it is said, he has obtained such a clue, as will lead to the discovery of the murderers.

BRIDGET NEWMAN, the woman who was detained in the custody of the Police on suspicion of being concerned in the recent murder on the Liverpool Road, was discharged on Tuesday last, in consequence of the insufficiency of evidence.

A man, named **STROUD,** residing at Concord, has been committed by the Parramatta Bench to take his trial for the wilful murder of his wife, by beating her about the head with a knotted stick in the most brutal manner.

FREE PRESS, 1/86, 25/09/1841
BERRIMA CIRCUIT COURT
MONDAY, SEPTEMBER 20.

JAMES JACKSON, late of Queanbeyan, labourer, was indicted for the wilful murder of **MICHAEL MORAN**, at Maneroo, on the 10th day of October, 1840, by striking him on the head with a blunt instrument, and a second count charged the prisoner with casting and throwing him to the ground.

The Jury, after a quarter of an hour's consideration, found the prisoner guilty of manslaughter, and recommended him to mercy. After the verdict was delivered, the Judge ordered the deposition of the surgeon, Mr. **PARRY CULLEN,** to be read, (he not being in attendance), and remarked that the absence of this witness was very fortunate for the prisoner as the case would have assumed a very different aspect. Sentenced to three year's hard labour in Sydney-Gaol, and the recognizances of the surgeon were ordered to be escheated.

ADVERTISMENT: dated 1 September, re the disappearance of the child TIGH on 7th August from Namoi. Published by father, **Patrick TIGH**, Overseer. £50 reward for the recovery of the child or £5 for its remains.

FREE PRESS, 1/87, 28/09/1841.

INQUESTS. - A Coroner's Inquest was held at Le Burn's Public House, on Saturday last, on view of the body of a female named **MATILDA CUTHBERT**, aged twenty years, who expired at the Benevolent Asylum on the previous evening, to which Institution she had been admitted on the day before. – Verdict, death from natural causes.

Another Inquest was held yesterday at the Wheat Sheaf public-house, Parramatta-street, on the body of a man named **STEPHEN LEONARD**, recently employed as a lime-burner at Cook's River, who put a period to his existence on Saturday last, by hanging himself to a tree near the place where he was at work. By the evidence produced on the enquiry it appears that the deceased had been of intemperate habits for a long time previous to his death, and was often subject to those fits of despondency, or, as they are commonly called, "blue devils", to which all drunkards are liable. The Jury therefore returned a verdict that the deceased had destroyed himself while labouring under a state of temporary insanity.

TEMPERANCE, 1/52, 29/09/1841

INQUESTS

More fearful inquests have taken place this week: one at Liverpool is absolutely horrifying. We have received the following account:

Liverpool, September 23, 1841

From the evidence, it appeared that on Monday the 20th instant, the deceased, **J. MAGUIRE**, with three others, were out drinking all day. They came home to their lodgings in the kitchen of a shoemaker about nine o'clock; shortly after one of them went and threw himself upon the bed, and they suppose it might be about eleven o'clock; two more did the same, but such was the insensibility of the whole of them,

that they hardly knew anything about it – leaving the deceased sitting by the fire, of which they knew not whether there was little or much. About three, or a quarter past, two of them were aroused by the deceased's being enveloped in flame, which they partly extinguished by wrapping him in a rug; but he broke free from them, and rushed into the yard, which rekindled the blaze, and once more he was enveloped thereby. So stupid was the third, he continued sleeping, amidst the whole confusion, and knew nothing of it until he was dragged out of bed; nor could he for some time be aroused to anything like sensibility.

When the poor wretch was taken to the hospital, he was one mass of sore, from the crown of his head to below his hips. His clothes were all burned off, except the lower part of his trousers. In this condition he languished until about 12 o'clock on Tuesday, and then expired, - an awful warning to the intemperate. A verdict was returned accordingly.

ANOTHER INQUEST was held at the Benevolent Asylum on the 27th, on the body of **STEPHEN LEONARD**, aged about 50; he was a tippler, and had been drinking for two or three days, and then went out and hung himself on the forenoon of Friday. Verdict – 'Hung himself under temporary derangement, brought on by habits of intemperance.'

BIRTHS.

At Raymond Terrace, on the 22nd instant, the Lady of **T. DIGBY MILLER**, Esq., of a son, still born.

FREE PRESS, 1/89, 02/10/1841.

An Inquest was holden on Thursday last at the Angel Inn, on the Liverpool road, before **CHARLES BETHEL LYONS**, Esq., Coroner for the District, on the body of one **SAMUEL HOLMES**, an old veteran, who suddenly dropped down dead. From the evidence adduced it appeared the deceased had for some time previous complained of debility, and the jury after hearing the evidence of Dr. **BROWN** returned a verdict of "died by the visitation of God."

BERRIMA CIRCUIT COURT.

The first trial proceeded with was that of **JOHN WRIGHT,** charged with the wilful murder of one **THOMAS CUNNINGHAM**, by shooting him at the Long Swamp, in the district of Bathurst, on the 17th of May 1840, but its result is not yet known.

ACCIDENTAL DEATH. - A man named **JOHN MUNRO**, residing at Onion's farm, on the North Shore, was drowned by the upsetting of a boat, in which he was proceeding to his employment on Thursday last. The body was found the same evening within a short distance of the place where the accident occurred; but the parties who found it, instead of coming to Sydney, proceeded with it direct to Lane Cove, where it now remains. It will, however, be brought into Sydney, and an inquest held upon it at twelve o'clock on Monday next.

FREE PRESS, 1/90, 05/10/1841.

BATHURST CIRCUIT COURT – CRIMINAL SIDE

MONDAY, SEPTEMBER 27.

BEFORE His Honor the Chief Justice.

JOHN WRIGHT, was indicted for the murder of one **THOMAS CUNNINGHAM**, at the Long Swamp, in the District of Bathurst, on the 17th of May, 1840, by shooting him with a gun, thereby inflicting a wound of which he then died.

The evidence of the Crown in this case was very conclusive in bringing home the circumstances of the offence, but there was a slight discrepancy in the fact that each of the witnesses concurred in stating that the man by whom the crime was committed wore a very black and bushy whiskers, while the prisoner's face appeared to be totally free from any feature of that kind. Upon examination, however, the Jury were of opinion that he was a man likely to have had whiskers of the kind alluded to at the time when the murder was committed, which he might since then have shaved off. A verdict of guilty was therefore returned, and sentence of death passed upon the prisoner by his Honor, accompanied with a very solemn and imperative address.

INQUEST. – A Coroner's Inquest was held yesterday afternoon at Winterup's public-house, the Sir Walter Scott, corner of Bathurst and Sussex-streets, on the body of a man named **JOHN MUNRO**, who had been accidentally drowned while proceeding to the North Shore on the previous Thursday, verdict accordingly.

INQUEST. – SUICIDE. – A coroner's inquest was held on Friday last, at the Brougham Tavern, corner of Pitt-street and Brougham Place, on the body of a man named **GEORGE WOODFORD**, formerly residing at No. 6 in the last named place, who put a period to his existence on the previous Wednesday evening or Thursday morning. The following were the circumstances of the case. The deceased was an upholsterer by trade, and had been for a long time past very much addicted to drinking, which had had the effect of subjecting him to occasional fits of delirium tremens, or temporary aberration of intellect. During the whole of Wednesday last he had been labouring under the effects of one of these fits, and had talked in a very incoherent manner, but towards the evening he appeared to become more composed, and at night retired to his room and locked himself in, which being his usual practice, did not excite any particular observation from the other persons residing in the house. During the whole of the following day he was not seen, but towards the evening, Mr. Lane, the landlord of the house, becoming somewhat surprised at his unaccountable absence, went to the window of his room, and looked in, when he perceived that the deceased was lying dead on his back in the bed, with a deep gash in his throat. Upon this, he instantly went to the nearest station house, and brought down a constable who forced open the door, and found the body of the deceased in the state described by Mr. Lane, with a razor covered with blood lying on the table beside him, being evidently the instrument with which the tragic act had been effected. Blood was lying congealed in large quantities, both upon the person of the deceased and on the floor by his bed-side, rendering it probable that he had lain there for some time on his side after the infliction of the wound, and had subsequently turned on his back in the agonies of death. On the table, near him, the words, "I am innocent", were written in chalk, probably a short time before the commission of the fatal act, but part of the letters were nearly obliterated by some splashes of blood which had got on them. It appeared, on enquiry, that the delusion under which the deceased was then labouring had led him to imagine that he was suffering under some criminal prosecution, and had probably led to the commission of the rash act by which his life was terminated.

Dr. **STEWART**, of the Colonial Medical Staff, gave evidence on the inquest, as to the cause of the deceased's death, which he stated had been undoubtedly occasioned by the wound in his throat, and he had no doubt that this wound was self-inflicted by the instrument produced. The immediate cause of death, was the extensive hemorrhage which had been occasioned by the wound, the jugular and larens having been completely divided by the stroke of the razor. The jury returned a verdict, that

the deceased had put a period to his existence in a fit of temporary insanity occasioned by his intemperate habits. [Then above paragraph was in type from last publication, but was omitted from press of matter.]
FREE PRESS, 1/91, 07/10/1841.
NEWS AND RUMOURS OF THE DAY.

INQUEST. – A Coroner's Inquest was held, on Tuesday last, at Mr. Clugstone's Commercial Hotel, corner of King and Sussex-streets, on the body of a man named **WILLIAM NASH**, formerly cook of the steamer *Sophia Jane*, who had met his death on the previous evening, under the following circumstances. It appeared he had been on shore during the afternoon, and had returned considerably under the influence of liquor, in which state he was sitting on deck, when he suddenly fell through the hatchway, which was then open, and the back of his head coming in contact with a large piece of coal, receiving an immediate and extensive fracture. No time was lost by the seamen getting him on deck, where the attendance of Dr. **HARPER** was immediately procured, but the unfortunate man had expired before the arrival of the surgeon. Verdict, accidental death.

TEMPERANCE, 2/1, 06/10/1841
MELANCHOLY EFFECTS OF INTEMPERANCE. - An inquest was held on Friday the 1st October, on the body of **GEORGE WOODFORD**, residing in Brougham-place. The deceased was seen on Wednesday night, about ten o'clock, standing at the door of the house where he lodged; a short time afterwards he went into his room. About half past five o'clock on Tuesday afternoon a person called to see him: the master of the house tried to open the door, but found it locked; he went round to the window, and looked into the room, when he saw him lying on the bed covered with blood. Information was given at the station-house, and upon the police forcing the door, he was found with his throat cut, and a razor lying on the chest by the side of the bed. There was also a piece of chalk, with which he had written the word "Innocence!" He was addicted to habits of intemperance: on Wednesday he talked in a very incoherent manner. The jury returned a verdict – 'That the deceased had committed suicide while suffering from *delirium tremens*, occasioned by intemperance.' – Deceased, who has been many years in the colony, was a superior workman, and has been long distinguished for his intemperate habits. He was in the prime of life.

FREE PRESS, 1/93, 12/10/1841.
SUPREME COURT – CRIMINAL SIDE
MONDAY, OCTOBER 11
BEFORE His Honor the Chief Justice.
MARY LAMB was indicted for the wilful murder of her male child at the North Shore near Sydney, on the 25th of February last. The evidence adduced in this case was of a nature unfit for publication, but the charge appeared to rest on a supposition that the death of the infant had been caused by a blow on the head, or by a compression of the neck with the fingers. The prisoner was defended by Mr. **PUREFOY**, who made a lengthened and very able address to the jury on her behalf, and contended that the injuries which caused the death of this child, had been accidentally caused by the suddenness of her delivery, and the greatness of her pain.

The Chief Justice in summing up, stated, that although the jury might deem fit to acquit her of the capital charge, they were still at liberty to find her guilty of

concealing the birth of her child. From the nature of the evidence it would appear that there was four points for the consideration of the jury. First, whether the child had actually been born alive; second, whether if born alive its death had been caused by violence; third, whether those injuries were inflicted by the prisoner; and fourth, whether if she did inflict those injuries, it was done under such circumstances as to render her liable to a charge of wilful murder. If, however, any reasonable doubt should arise upon the matter, he would entreat them to give the full benefit of the doubt to the prisoner.

The jury after a few minutes consultation, brought in their verdict that the prisoner was not guilty of the crime laid to her charge, but convicted her of attempting to conceal the birth.

Mr. Purefoy submitted that this verdict was, in point of fact, a full acquittal, and cited the case of King v. Turner, 8 Carrington & Payne, [English Reports, Nisi Prius, (Carrington & Payne 7-9) page 704, or Regina v Harriett Turner] to prove that the actual concealment of the child's body was necessary, which in this instance had not been the case. The learned gentleman also alluded to the case of The Queen v. Hannah Hanson, which had been formerly tried at Maitland before Mr. Justice Stephen, when he (Mr. Purefoy) had made the same application upon the verdict, and the prisoner had been acquitted.

His Honor said that the objection which had just been made by the learned gentleman was one of great importance, and he would reserve it for further consideration. The prisoner was then remanded. [see 1/98; acquitted]

AUSTRALIAN, 12/10/1841
Supreme Court of New South Wales
Dowling C.J., 11 October 1841

MARY LAMB was indicted for the wilful murder of a female infant on the 25th February last.

The Attorney General conducted the prosecution, and Mr. **PUREFOY** appeared to defend the prisoner.

The details of the case are such as would not bear publication except in a medical work. Mr. Purefoy quoted at some length from works on Medical jurisprudence, to shew that the death alledged to have been caused by the prisoner might have been purely accidental, and further addressed the jury at considerable length in her favour.

The Chief Justice summed up very minutely, and the jury after some deliberation returned a verdict of not guilty of murder, but guilty of endeavouring to conceal birth.

Mr. Purefoy submitted that this was a virtual acquittal, and quoted authorities in support of his objection to the record; the ground of the objection was, that nothing was done after the death of the child to conceal it. The same objection had been made by the learned Counsel in Circuit, before Mr. Justice Stephen, and he apprehended it was absolute and decisive.

The Chief Justice said he would take time to consider the point, and remanded the prisoner.

Sydney Herald, 22/10/1841

Mary Lamb. – You were indicted for the wilful murder of your female illegitimate child by strangulation. Beyond all doubt you destroyed the life of your infant by violence; but whether wilfully and of purpose, is a question between you and your conscience. The favourable view which the jury took of your case led them. (doubtless from conscientious motives). to pronounce you not guilty of murder. Had their verdict been adverse to you, it would have been my painful task to award that

sentence which the law denounces against child murder, and it would have been my duty to forbear interposing any obstacle between sentence and execution: for however the mind revolts against the possibility that a mother could wilfully destroy her own offspring, yet as there is too much reason to fear, that there are heartless and unnatural women, so utterly lost to the dictates of nature, as to hide the living evidence of profligacy by murder, the justice of the country would have required the expiation of your guilt by the forfeiture of life. If you did not contemplate the death of the innocent being of which you were the mother, it is difficult to conceive why you denied to your master when taxed with it, the apparent prospect of maternity, -why you made no preparation for the dress and care of the infant – why you kept concealed from your fellow-servants the situation in which you were – and why you selected a retired loft for the struggles of parturition. These circumstances were no doubt duly weighed by the jury, but whilst they were relieved from the pain of finding you guilty of murder, they were satisfied that you had endeavoured as far as in you lay, to conceal the birth of your child – an offence, which, though liable to severe punishment, yet one considerably short of death; and they found you guilty accordingly of the minor offence. After the verdict was recorded, your learned counsel took an objection, that in point of law, the facts proved did not warrant the verdict inasmuch as, whatever your ultimate intentions might have been yet, you had not in the language of the Act of Parliament, "endeavoured to conceal the birth, by secret burying or otherwise disposing of the dead body." Fortunately for you I am constrained to yield to the validity of the objection, and consequently on this occasion you will go hence free from any other punishment, than the exposure and degradation to which this prosecution has subjected you, and which if you are not utterly abandoned to all sense of shame, will I trust, be sufficient to awaken in your breast, a proper sense of the misery which awaits every lapse from the paths of virtue. If you are indeed the victim of deliberate and heartless seduction, your situation is pitiable, and I trust that the author of your sorrows will, notwithstanding what has passed, make, if he can lawfully, the only amends which can save you from irretrievable ruin. The prisoner was then removed from the dock and liberated. See also Australian, 23 October 1841.
Decisions of the Superior Courts of New South Wales, 1788-1899; Published by the Division of Law Macquarie University

TEMPERANCE, 2/2, 13/10/1841
SUPREME COURT.
The Supreme Court was adjourned yesterday morning, in consequence of information having been reached town that the High Sheriff, **T. MACQUOID**, esq., had put an end to his existence. Pecuniary embarrassment is assigned as the cause.

FREE PRESS, 1/94, 14/10/1841.
NEWS AND RUMOURS OF THE DAY.
INQUEST. – A Coroner's Inquest was held on Monday last at the "Labour in Vain", Public-house, Harrington-street, on the body of a man named **WILLIAM CLARKE**, in the employ of the landlord of that house (Mr. **Duncan.).** It appeared from the evidence, that the deceased who had heretofore enjoyed a good state of health, had gone to bed as well as usual on Sunday evening, and on the following morning had been found lying dead. Dr. **STEWART**, by whom a *post mortem* examination of the body had been made, gave it as his opinion, that death had been occasioned by natural causes, and a verdict was accordingly returned to that effect.
SUPREME COURT – CRIMINAL SIDE

WEDNESDAY, OCTOBER 13.
BEFORE His Honor the Chief Justice.

GEORGE STROUD was indicted for the wilful murder of his wife **SARAH STROUD**, at Concord, on the 13th of September last.

It appeared from the evidence that the wife of the prisoner was of very intemperate habits, and that on the day in question a quarrel had by some means arisen between them, in consequence of which he beat her so severely that she was forced to take refuge from his fury in the house of a neighbour, at which time she was very much bruised and cut, but not so as to produce the apprehension of any serious consequences. Some time after this he came to the house and fetched her away, giving "his word as a man" that if she came home he would neither beat her or otherwise hurt her, so that they quitted the house with every appearance of a perfect reconciliation. In the course of the same night, however, he came to the residence of another neighbour and stated that his wife was dying, requesting that they would come to her assistance, which they accordingly did, and upon their arrival found the deceased lying in a ditch, near her own house, in a state of insensibility, quite naked, with her face and person disfigured by blows and blood in the most dreadful and disgusting manner. By their aid she was conveyed to her own house and laid upon the bed, after which she came to a little, and asked several times for water, which was given her; she also spoke once to the prisoner, requesting him to turn her on her side, which he accordingly did. The prisoner after sitting up for some time went to bed and laid down by the side of the deceased, where he continued to sleep even after her death (which happened in a few hours after) until he was taken into custody by the constable who had been sent for by the woman who had rendered her assistance as above stated. After having secured the prisoner in safe custody, the ditch where the woman had first been discovered was strictly searched, and a knotted stick was found within three yards of the spot where she had lain, which was stained greatly with blood, and had a quantity of hair adhering to it which precisely corresponded in colour to that of the deceased. The Surgeon (Dr. **BROWN**), by whom a post mortem examination of the body had been made, stated, that her body was literally covered with contused wounds, which had been the sole cause of her death, and appeared to him as likely to have been caused with the stick produced, which indeed he had found upon the examination of the body to correspond exactly with some of the wounds.

Mr. **PUREFOY**, who appeared in behalf of the prisoner, defended him in a very able and judicious manner, making in his favour, a most eloquent and impressive address to the jury. The learned gentleman contended that the injury which had been the most immediate cause of the deceased's dissolution, was the fall, which being in a state of intoxication she had accidentally received, and called Mr. **ALLEN**, the Solicitor, to testify as to the previous good character of the prisoner, and the usually contrary behaviour of his deceased wife.

His Honor in summing up, went at great length into the circumstances of the case, and the evidence which had been brought before the Court. There were three questions (he remarked) for the consideration of the jury, namely – first, whether the death of the prisoner's wife had been actually caused by blows or violence, instead of by accidental hurts – secondly, whether if her death had been so caused, the violence alluded to had been committed by the prisoner - and thirdly, whether if such was the case the prisoner had committed the violence in question under such circumstances as might lead to a supposition that he intended the murder of the deceased; he felt bound, however, to inform them that, according to the British law, the plea of drunkenness could be of no avail in shielding a culprit from the charge of murder.

The jury, after a few minutes consultation, found the prisoner guilty of wilful murder, and he was accordingly remanded for sentence.
THE SUICIDE OF THE HIGH SHERIFF. To be completed.

FREE PRESS, 1/95, 16/10/1841.
SUPREME COURT – CRIMINAL SIDE.
THURSDAY, OCTOBER 14.
BEFORE Mr. Justice Burton.
ROBERT HUDSON, was indicted for the wilful murder of **DEAN CHANNING WEST**, at the General Hospital, Sydney, on the 15th of September last, by striking him with an axe on the left side of the head, thereby inflicting a wound, of which he died in three days afterwards.

The prisoner pleaded not guilty, and the evidence on the part of the crown was proceeded with, which we purposely omit, as it was precisely the same as appeared in the *Free Press*, of September 21. When called upon for his defence, the prisoner declined saying anything, and His Honor in summing up, directed the particular attention of the jury to ascertain whether by the nature of the evidence they would be justified in believing the prisoner to be insane at the time when he committed the crime. The jury after a few minutes consideration, returned a verdict of guilty.

His Honor then proceeded to pass sentence of death upon the prisoner, accompanied with a short but most imperative address, by which the prisoner appeared much affected, and even shed tears towards its close.
LAWRENCE DWYER, who had been detained in custody for manslaughter on the High Seas, was discharged upon the Attorney-General declining to prosecute, conceiving that the depositions were totally insufficient to lead to an inference that the crime of manslaughter had been committed by the prisoner, inasmuch as the blow which he had struck the deceased, was a very light one with the open hand, and being an old man, his death had most probably been caused by the excitement which followed.
NEWS AND RUMOURS OF THE DAY.
A prisoner of the Crown was killed at Windsor by the lightning, during the late storm on Monday last, the electric fluid was attracted by the irons which he had on, but a child who was sitting on his knees at the time of the accident, escaped unhurt. [Untrue; see 1/96 following.]

FREE PRESS, 1/96, 19/10/1841.
NEWS AND RUMOURS OF THE DAY.
A waterman named **LIHR**, had his license cancelled at the Water Police Court on Saturday last, for insolent behaviour to a gentleman who applied to him to be taken to one of the vessels in the harbour.

TEMPERANCE, 2/3, 20/10/1841
DOMESTIC INTELLIGENCE
A young man, **[JAMES NELSON]** well connected in the Colony, was drowned during the storm on Wednesday evening, it is supposed by slipping off the wharf, to which he had gone in order to return to his vessel, the 'Globe.' He was sober, and anxious to get on board in good time. Strange to say, the body rose on Friday close by the ship's boat as it just put in, when his features were recognized before they change, which they did almost immediately.

FREE PRESS, 1/97, 21/10/1841.
THE LATE RIOTS – INQUEST. 2-3 columns, to be completed.
INQUESTS. - A Coroner's inquest was held on Monday last at the Wheat Sheaf, public house, lower George-street, on the body of an old man named **RICHARD HYDE**, who had died at the Benevolent Asylum on the previous day. It appeared by the evidence that the deceased had been found lying insensible in an open space adjoining the Parramatta Road, and had been removed to the Asylum in a bullock cart, when he almost immediately afterwards expired. Dr. **CUTHILL**, the house surgeon of the Benevolent Asylum, made a post mortem examination of the body and discovered that death had been occasioned by inflammation of the lungs arising from the severe effect of external cold, which the deceased had probably experienced in his exposure *to the open air*. A verdict of died from natural causes was therefore returned.

Another inquest was held the same day at the Three Tuns tavern, corner of King and Elizabeth-streets, on the body of a man named **JAMES NELSON** which had been floating in the vicinity of the Government wharf on Saturday afternoon. The deceased was a seaman belonging to the ship *Globe*, and had procured a pass to come on shore for the previous Wednesday, since which time no intelligence had been received of him, and he was supposed to have deserted, until the finding of his body elucidated the mystery. No evidence could be procured as to how he had met with the accident which had terminated in his death, and a verdict of found drowned was therefore returned.

DEATH BY LIGHTNING. - The report of a Government man having been killed by lightning at Windsor is without foundation. [see 1/96 above.]
NEWS AND RUMOURS OF THE DAY.
The body of an infant, apparently new born, was found floating in the water near the Market Wharf on Monday last.
THE WATERMAN'S WHARF. - The late melancholy accident at the New Wharf (whereby a youth of most respectable connections lost his life) it is hoped will be the means of suggesting to the Government the necessity of placing a lamp, or running a chain along the wharf, for the protection of sailors and others whose occupations may call them on board a ship after dark. We have heard of several parties who narrowly escaped the same fate as the unfortunate **JAMES NELSON** last week; and if men in their sober senses are liable to such accidents, what will be the fate of the unfortunate sailors who take "a drop too much", and naturally steers their course to this dangerous landing place, either in search of their boats or to hail their vessels.

FREE PRESS, 1/98, 23/10/1841.
SUPREME COURT – CRIMINAL SIDE.
THURSDAY, OCTOBER 12.
BEFORE His Honor the Chief Justice.
GEORGE STROUD, who had been found guilty on a former day of the wilful murder of his wife, at Concord, on the 13th of September, and … were severally placed at the bar and received sentence of death, accompanied with an imperative address from His Honor.
MARY LAMB, who had been previously tried for the murder of her own infant, and convicted merely of an attempt to conceal its birth, was placed at the bar, and having been informed that the objection taken by her counsel to the above verdict had been

deemed a valid one, was discharged, with an admonitory address from His Honor as to her future conduct. [See 1/93.]
INQUEST. – A coroner's inquest was held on Wednesday afternoon, before **CHARLES BETHEL LYONS,** Esq., on the body of **SAMUEL STEWART**, son of Mr. **JOHN STEWART**, tailor, residing in Church-street. It appeared that the deceased (eighteen months old) had been playing with his sister outside the door, who left him alone while she went into the house. Shortly afterwards the mother, becoming anxious about her absent child, went outside, and saw the clothes of the deceased hanging out of a washing tub. Dr. **RUTTER**, who was passing at the time, afforded all the assistance in his power to restore life, but without avail. The Jury returned a verdict of accidental death by drowning.
REPORT of the remains of murderers **COMMORFORD** and **REYNOLDS** (who hanged himself) disinterred at old Sydney Gaol and removed to Darlinghurst Gaol.
EXECUTIONS. - The prisoners **STROUD** and **HUDSON**, the former of whom was convicted of murdering his wife, and the latter of the murder of **DEAN WEST** at the General Hospital, Sydney, the particulars of which outrage must be still fresh in the memory of our readers, have been ordered for execution on Friday next, and a number of men are already employed in the erection of a gibbet at Darlinghurst gaol for this purpose.

FREE PRESS, 1/99, 26/10/1841.
EXECUTION OF CURRAN. - This notorious bushranger suffered the penalty of his numerous crimes at Berrima on Thursday morning last. He was attended to the field of execution by the Rev. Mr. **GOULD**, of Campbelltown, and the Rev. Mr. **M'GRATH**, of Goulburn, and conducted himself in a decent and penitential manner, having to all appearances repented of his crimes and prepared to suffer with calmness and resignation the fate which awaited him. Previous to his death he acknowledge that he had been guilty of the murder of Mr. **FULLER**, for which a person named **BRIGHT** had been tried, convicted, and transported for life.
INQUESTS. – An inquest was held on Saturday last, at the Cockatoo Inn, Surry Hills, on the body of a man named **MICHAEL HAYES**, who had died suddenly on the previous day, from the effects of an apoplectic attack. Verdict – Death from natural causes.

Another inquest was held yesterday, at the Lighthouse public house, in Sussex-street, on the body of a female named **MURPHY**, the wife of a general dealer residing in the vicinity. It appeared from the evidence, that the deceased had been previously of somewhat intemperate habits, but that on the night previous to her death she had gone to bed perfectly sober, and without any appearance of ill-health, but had expired suddenly before the morning. Her death was subsequently ascertained to have been caused by apoplexy, and a verdict was returned to that effect.

A third inquest was also held yesterday at the Three Tuns tavern, corner of King and Elizabeth-streets, on the body of a man named **WILLIAM ALFORD**, formerly a cook at the Cricketers' Arms public-house in Pitt-street, who had died suddenly in the Hospital on Saturday forenoon, to which place he had been taken on the previous evening from the house of his employer. Verdict – Death from natural causes.

TEMPERANCE, 2/4, 17/10/1841
DOMESTIC INTELLIGENCE
The Jury of the inquest on **CLAUDE BARRON** the shoemaker, who was shot during the riot the week before last, returned a verdict of accidental death. As the shots were

fired into the air it is probable the ball struck the railing and glanced downward upon the unfortunate man.

An awful instance of drunkenness with loss of life, occurred last week. A schooner, manned by drunkards, ran down a boat in the harbour, whereby one of the party perished.

CURRAN, the bushranger, has been executed. --- **STROUD**, for the murder of his wife, and **HUDSON** for the murder of his comrade, are to be executed on Friday, at the New Gaol.

An inquest was held on Monday on **HANNAH MURPHY**. Verdict, apoplexy, induced by intemperance.

SUDDEN DEATHS. - Two persons have died from apoplexy, caused by drunkenness, since Saturday last. – *Herald.*

SENTENCE ON STROUD

Passed by his Honor Sir **J. DOWLING**, *Chief Justice, October 21*. Which is not only an appeal to the people to become Temperate, but a call on Temperance Societies for renewed exertions.

GEORGE STROUD, - After a patient and anxious investigation of all the circumstances of your case, the Jury of your country have been compelled by the irresistible weight of the evidence on your trial to find you, upon their oaths, guilty of wilful murder. The bitterness of an ignominious death, is the necessary consequence, by the laws of God and man, of such a verdict. I earnestly trust, that since the fatal night of 13th September, you have endeavoured to make suitable preparation for the fate which is now impending, because when your guilt was discovered, you then expressed your anticipation of that doom which it is now my painful duty to pronounce. The heavy burden upon your conscience must indeed be intolerable, if you reflect upon the time, the place, the circumstances, and the victim of your blood guiltiness. In the dead hour of night, in your own house, and whilst in a state of drunkenness, you destroyed, with brutal and atrocious violence, the life of her, whom, at the altar of God, you had plighted your troth to love, comfort, honour, and keep, in sickness and in health. All the endearing and tender emotions with which the tie of marriage imbues the human heart, yielded in yours, to the direful potency of a habit, which infallibly carried with it desecration of the sentient faculties. Yours is, indeed, another fearful example amongst the too many by which we are surrounded, of the prostration of reason to the baleful influence of inebriety. Both yourself and your ill-fated partner, were described to be, when sober, decent, quiet, and industrious people; but when in liquor, to manifest in your behaviour the demoniacal propensities which are always engendered by rioting and drunkenness. Shortly before the horrible transaction for which you are now to suffer, you were solemnly warned by your kind and worthy master of the peril which awaited a continuance of your propensities. His prophecy has now been too fatally fulfilled. It is painful to have it recorded by that master, that the neighbourhood, in which this dreadful atrocity was committed, was notorious for *awful drunkenness.* If this be a true description of the district of Concord (so inappropriately named) no hope of reformation can be indulged, if the frightful example of your fate does not awaken these worshippers of Satan to a sense of their gross idolatry. I earnestly trust, however, that in these and other places where the hateful habits of intoxication prevail, the awful warning, which your fate exhibits, will arouse a desire of conversion to those principles which are now happily struggling for ascendancy, through the instrumentality of our Temperance Societies. Unhappy man! I am not in a condition to hold out any hope of human mercy. Your earthly career is irrevocably defined. In a few short days you will be ushered into the

awful presence of your Maker. Let me conjure you to make suitable preparations for eternity, and in order thereto, avail yourself of such religious consolation, as will be afforded you to the last moment of your existence. The dreadful sentence of the law is, That you George Stroud be taken hence to the prison from whence you came, and that you be taken thence to a place of execution, on such day as shall be appointed by His Excellency the Governor, and that you be then and there hanged by the neck until your body be dead, and may God Almighty have mercy on your immortal soul. – *Herald.*

FREE PRESS, 1/100, 28/10/1841.
ERRATUM. - We have been requested to state that the female named **MURPHY**, whose sudden death was reported in our paper of Tuesday [1/99] was not the wife of a dealer of that name who resided opposite the Light House in Sussex-street, but a woman of the same name who lived in that neighbourhood.
INQUEST. – A Coroner's Inquest was held on Tuesday last at the "Wheat Sheaf" Public-house, Parramatta-street, on the body of a man named **CHARLES BRADY**, who had suddenly expired at the Five Dock Farm on the previous day; Dr. **CUTHILL**, by whom a *post mortem* examination of the body had been made, deposed that the death of the deceased had proceeded from natural causes, and a verdict to that effect was accordingly returned.

FREE PRESS, 1/101, 30/10/1841.
EXECUTIONS. – The murderers **STROUD** and **HUDSON** suffered the extreme penalty of the law yesterday morning, at the new gaol, Darlinghurst, before a numerous assemblage of spectators. The scaffold was erected in the gaol yard, and all male spectators were admitted to witness the execution, but the woman and children were very properly excluded. The unfortunate culprits were each accompanied by a clergyman, and appeared to be in a very resigned and repentant state of mind, joining in prayer with great devoutness of their mortal career. Hudson appeared very much cast down, but Stroud bore himself with great apparent firmness, and the Rev. Mr. **ELDER**, by whom he was attended, addressed at his request, a few words to the assembled spectators, cautioning them to abstain from Sabbath-breaking and intemperance, the indulgence in which evil propensities, had been the means of bringing him to the untimely fate which then awaited him. Both the unfortunate men expired without a struggle.
CASE OF SUSPECTED MURDER. - A man named **RALL**, recently employed in the Sugar-refining factory belonging to Mr. **CHILD**, at Canterbury, Cook's River, has been missing for some days and owing to some circumstances which have transpired, it is feared that he has been murdered. The following are the particulars upon which this conjecture is founded: It appears that Rall on the day when he was missed had invited a man named **JAMES EASTON**, residing in that vicinity, and exercising the trade of brick-maker, for the purpose of assisting the latter in the construction of a kiln. Easton had a woman named **SOPHIA LEVEY** residing with him, who passed for his wife, and while Rall was drinking in Easton's hut, he was observed to become very gracious with this woman, and shortly after went out with her, after they had been absent some time, Easton followed them, and as nothing has been heard of Rall since that time, it is supposed that the other had, under the combined influence of jealousy, liquor, and anger, destroyed him. This supposition has been particularly confirmed by some expressions made use of by the woman, and by the confused and irregular statements of Easton, the whole party, consisting of Easton and the woman,

and two government men, named **SAMUEL HILL** and **JOSEPH ALLAN**, who were seen running from Easton's hut on the day when Rall was missed, have been apprehended by the Police, who are now employed in the strict investigation of the affair.

SALE OF WIFE. - REPORT of the sale of **SUSANNAH ANN BARRETT,** aged 17, by her husband, purchased by a **JOHN LANE.**

FREE PRESS, 1/102, 02/11/1841.
ATTEMPT AT SUICIDE. - A man named **DARK**, residing in Bathurst-street, and exercising the calling of a pipe-maker, attempted to put a period to his existence on Sunday evening, by cutting his throat, but fortunately without inflicting a mortal wound on himself. It is not known what could have induced him to make the above attempt at self-destruction.

DEATHS BY LIGHTNING. - Three children were killed by lightning on Tuesday last, at the Catholic Orphans School, Waverley Terrace. This awful accident occurred about five o'clock P.M., at which time our Sydney readers will remember the thunderstorm was at its height. The electric fluid entered at the windows of the home and passed onward effecting considerable damage to the building, killing the three unfortunate children above alluded to, and throwing down several others, none of whom however received any other injury than what was occasioned by the force of the shock. One of the children named **ELLEN BERESFORD**, was discovered sitting in her chair after the shock had passed over, and appeared so calm that it was not at first supposed she had been injured, until a closer inspection convinced them that the unfortunate girl had ceased to exist. Another child, being a boy named **FRANCIS STRANEY**, was struck by the fluid in a passage or hall of the building, and the third named **JOHN FOX**, was discovered lying dead in a small hut or out building attached to the institution. Upon perceiving the fatal extent of the calamity, messengers were immediately despatched for the nearest medical assistance, and Dr. **HARNETT** attended promptly on the spot, but the sufferers were beyond the reach of mortal aid. Many others (as before stated) were thrown down by the lightning without experiencing any serious injury; but the nurse was slightly, although by no means dangerously hurt, and one of the servants attached to the establishment, had the soles of her shoes torn off, while herself escaped unarmed. [sic] A Coroner's inquest was held yesterday afternoon upon the bodies of the above named children, and a verdict of natural death by lightning was returned. During the forepart of yesterday the report that several children had been killed by lightning on the previous day was generally current, but no further particulars could be obtained with any degree of accuracy, and the School of Industry, and several other buildings of a similar nature, were successively pitched on as the scene of the melancholy catastrophe. We are happy however to state that, with the exception of the above disastrous occurrence, no further accident has arisen from the storm.

FREE PRESS, 1/106, 11/11/1841.
INQUESTS. - A Coroner's Inquest was held yesterday afternoon in the Swan with Two Necks, corner of George and Pitt-streets, on the body of a man named **ROBERT GRIFFIN**, who had come to his death under the following circumstances. On Tuesday week, the deceased, who followed the calling of a seaman embarked on board the schooner *Sisters* for the purpose of proceeding in that vessel to Newcastle,

and while the vessel was proceeding down the harbour he accidentally fell overboard, but was almost immediately rescued and taken on board. The deceased although evidently suffering from the effects of the accident did not appear to be in anything like a dangerous state and he was therefore taken on in the schooner to Newcastle; and remained on board until she returned again to Sydney on Saturday, when he went to his own house in Park-street, in a bad state of health and remained there until nine o'clock on Monday evening, when he expired. Dr. **DUIGAN**, by whom the deceased had been attended, deposed that he (the deceased) was labouring at the time he visited him under an effusion of the chest, being the last stage of a chronic disease or decline which had affected him for some years. He was therefore of opinion that although the dipping might have accelerated the fate of the deceased, he could not have long survived, even if the accident had not happened. Under these circumstances therefore a verdict of died by the visitation of God was returned.

Another Inquest was held shortly afterwards at Mr. Driver's, Three Tuns tavern, corner of King and Elizabeth-streets, on the body of **a government man**, under the following circumstances. From the evidence of **EDWARD GEOHEGAN**, the dispenser at Cockatoo Island depot, it appeared that the deceased who was to all appearance a sound and healthy man, had complained of having suffered from occasional fits ever since he had been placed in confinement, and during the night of Monday the 8th instant, had been seized with an apoplectic attack, which terminated in his death. Dr. **STEWART**, the Assistant Colonial Surgeon, expressed himself of similar opinion as to the cause of the deceased's death, and a verdict of death from natural causes was returned.

FATAL ACCIDENT. - Between four and five o'clock on Tuesday afternoon, a boy named **WILLIAM GRAHAM**, was riding on a Timor poney along Elizabeth-street, when he slipped out of the saddle, and endeavoured, without success, to recover his position by seizing the mane of the horse; this, however, he was unable to do, and his feet being fast in the stirrup-leather he fell to the ground, entangled in the harness of the horse. The animal immediately took fright and dashed off at full gallop, notwithstanding the efforts of the bystanders to stop his career, and continued his speed until he came to the bottom of Hunter-street, where he was stopped by a gang of Government men who happened at that time to be passing along George-street, and were called to the rescue by Dr. **STEWART**, who was passing at the time. The unfortunate lad was then extricated and carried to the shop of a neighbouring apothecary, where it was found upon examination that the injuries he had received were of so shocking a nature as to render his recovery almost impossible, and he was ordered to be conveyed immediately to the hospital, where he very shortly expired. An inquest was held yesterday upon the body, when Dr. Stewart deposed that several injuries which he had received were individually sufficient to have caused his dissolution, inasmuch as the skull had been fractured in several places, and the body severely lacerated and injured. A verdict of accidental death was therefore returned.

The above melancholy occurrence should operate as a warning to all parents and other persons entrusted with the care of youth, to be more cautious in permitting their juvenile dependants to ride along the streets of Sydney where accidents are so likely to occur, either by a sudden fright of the animal, or the incompetency of the rider to manage and control him in a proper manner. Considering the number of boys (some very young) whom we have of late seen galloping about on Timor ponies, and even upon high-backed horses, we are surprised that accidents of the above description to not occur oftener than they have done.

FREE PRESS, 1/107, 13/11/1841.
INQUEST. – A coroner's inquest was held yesterday afternoon, at the Wheat Sheaf public-house, Parramatta-street, on the body of a man named **JOHN IZZARD**, who expired suddenly at the Benevolent Asylum on the previous day. Verdict – Died by the visitation of God.

FREE PRESS, 1/108, 16/11/1841.
PORT MACQUARIE SPECIAL PETTY SESSIONS.
TUESDAY, NOVEMBER 9, 1841.
BEFORE **William Nairn Gray,** Esq., Chairman, Colonel **GRAY,** Captain **DITMAS**, captain **EVANS, WILLIAM BELL CARLYLE** and **WILLIAM TIDD TAYLOR**, Esqrs.
JOHN DILLON, Solicitor, was brought before the bench, charged with being an accessory after the fact, to the murder of **THOMAS LONG.** To be completed.

INQUESTS. - A Coroner's Inquest was held yesterday at the Quarantine Ground, Spring Cove, on the body of **JOHN SANDON**, formerly Superintendent of that Station, who put a period to his existence on the previous Saturday, under the following circumstances:- It appeared that the deceased had been of late in the occasional habit of drinking to excess, in consequence of which he was subjected to frequent paroxisms of rage, and on the above melancholy occasion, had been quarrelling with his wife while under the influence of one of these abstractive moods, and having provided himself with a loaded pistol, he ran some distance from his habitation, and crying out that "he was not ashamed of what he was going to do, and would not care if all the world saw him do it" succeeded in lodging the contents of the weapon in his brain before any of those who were approaching him could prevent the deed. It appeared by the evidence, that he had before attempted to destroy himself in a similar manner, but had been prevented by the kindly interference of a bystander. Under these circumstances, the Jury returned a verdict to the effect, that the deceased put a period to his existence while labouring under gthe effects of delusion caused by intemperance.

Another inquest was held the same afternoon, at the "Rain-bow" public-house, corner of Clyde-street, Darling Harbour, on the body of a man named **JOHN DEADWORTH**, lately residing at that place; who drowned himself on the previous day, by springing into the water, at the end of that street, where he perished before assistance could be procured to get him out. The deceased was seen by a Mrs. **BLACK** to commit the fatal act, and it appeared by the evidence, that he was at that time labouring under a fit of which is technically termed the *horrors*, occasioned by his previous intoxication. A verdict to that effect was accordingly returned.

TEMPERANCE, 2/7, 17/11/1841
DOMESTIC INTELLIGENCE
The news from the Quarantine ground is painful. Mr. **SANDSOM**, the superintendent, has shot himself.

We hear that a child was taken to the Hospital under symptoms of having taken poison, and that she has since died; we hope an inquest will ascertain the cause of her death.
DEATHS.
On Wednesday, the 10th instant, at the Lunatic Asylum, Tarban Creek, aged 45 years, **JOHN ALGAR**, late livery-stable keeper, Pitt-street, Sydney.

FREE PRESS, 1/109, 18/11/1841.
INQUEST. - A Coroner's inquest was held on Tuesday last, at the Three Tuns tavern, corner of King and Elizabeth-streets, on the body of a girl named **MARGARET MAHON**, who had been employed for some months past as a servant in Cavenagh's public house, Pitt-street. It appeared from the evidence that the deceased had been complaining of a pain in her stomach, for some time past, in consequence of which she was removed to the Hospital on Sunday evening where she shortly afterwards expired. Dr. **HARNETT** declared his opinion, that the death in this case had been produced by a severe inflammation of the stomach, and a verdict of death from natural causes was accordingly returned.

FREE PRESS, 1/110, 20/11/1841.
PARRAMATTA, NOVEMBER 17. On Tuesday last, an Inquest was held in this town, before **CHARLES BETHEL LYONS**, Esq., Coroner, upon view of the body of a woman named **JANE CASTELLO.** It appeared that the deceased had always been a habitual drunkard, and that when labouring under the effects of her dreadful propensity, she was subject to fits, and was at such times totally unconscious of her acts; she had been confined in the Factory for a month previous, and had hardly been liberated a day, when she returned to her old habits. The excessive use of raw rum, added to the heat of the weather, and the circumstances of her having been deprived of all stimulants for a month, entirely deprived her of reason, and proved conducive to turn her mental faculties so far, as to lead her to plunge herself into the river close to the town. **HORSEBROOK,** a private in the 80th Regt., stationed at Parramatta, saw her commit the rash act, and used every praiseworthy exertion to save her, but without effect. His conduct deserves a favourable notice from his superiors. The Jury were satisfied that the deceased met with no ill-treatment, but was acting under a temporary deprivation of reason, and returned a verdict accordingly.

On the same day an Inquest was held within this district, upon the body of one **JOHN CARRINGTON**, aged 80 years, who had been lately in the Hospital, but preferred seeking his subsistence out of doors, rather than subject himself to the discipline and confinement of that excellent, and well conducted institution – the Benevolent Asylum. He had been ill for years, and confined to his bed a fortnight previous to his death, at the expiration of which time, he was found lying dead, by a man who was in the habit of taking provisions to him. It was satisfactory to know that the neighbours had attended to the old man's wants, which were by no means unreasonable, and that his death had not therefore been caused by any neglect, or the want of common necessaries, as might otherwise have been supposed. The Jury returned a verdict, of death from natural causes.

SELF-DESTRUCTION. - A young woman named **ELIZA GOODWIN**, who came out as an immigrant by the barque *Trinidad*, now lying in the Cove, put a period to her existence a kittle after ten o'clock on Thursday evening, by jumping overboard – a Mr. **STEPHENSON**, who came out as a cabin passenger by the same vessel, was on deck at the time this occurred, and immediately sprang overboard to her assistance, but notwithstanding the praiseworthy exertions of this gentleman, and the prompt assistance by others on board, the unfortunate female sank to the bottom before their efforts to save her could prove effectual. – The body has not yet been recovered.

INQUESTS. - A Coroner's Inquest was held on Thursday afternoon, at the "Flower Pot" public house, corner of York and Market-streets, on the body of a man named **LEWIS HART**, who had been for some time previous employed by Mr. **LEVY**,

corner of George and Market-streets, in the capacity of a salesman. It appeared by the evidence, that the deceased had been found at an early hour the same morning, suspended to the banisters in Mr. Levy's house, where from the appearance of the body, he must have been hanging for some time, it was also shown that the deceased had been subject to frequent fits of melancholy and despondency, and had been heard several times to declare an intention of destroying himself. A verdict of self destruction while labouring under the influence of temporary insanity was therefore returned.

Another Inquest was held yesterday on the body of a **prisoner of the Crown,** who expired suddenly on the previous day, without any previous indisposition of apparently dangerous tendency, and his death having been proved from medical testimony to have resulted from natural causes, a verdict to that effect was returned.

FREE PRESS, 1/111, 20/11/1841.

BOAT ACCIDENT. – On Sunday afternoon, Colonel **GIBBES**, the Collector of Customs, accompanied by his two sons and a servant named **THOMAS LONG**, were proceeding along the harbour in a small sailing yacht, and were just on the point of entering Middle Harbour, when a sudden squall blew off the shore and struck the vessel on the beam with such force, as instantly to capsize and sink her, fortunately the force of this shock was so great as to break asunder a rope by which a dingie was towing astern of the larger boat; and the former vessel therefore remained afloat, enabling Colonel Gibbes and his sons to reach the shore by her means, which they otherwise have been totally unable to do. The poor servant however was less fortunate, for his leg was caught by a rope belonging to the tackle of the sinking boat, and he was dragged under before any assistance could be rendered him; the body is not yet recovered.

INQUEST. - A coroner's inquest was held yesterday morning, at the Wheat Sheaf public house, George-street south, on the body of a man named **JOHN BARWELL**, who had been lately employed at the Darling Nursery, on the Surry Hills. It appeared from the evidence, that the deceased had gone to bed on Friday last in a good state of health, but in the course of that night, or early the following evening, he had been attacked with a fir of apoplexy, in which he expired and was found dead when his fellow labourers came to call him in the morning. Under the circumstances, the jury returned a verdict of Died by the Visitation of God.

TEMPERANCE, 2/8, 24/11/1841

SUDDEN DEATHS. - There has been in the last few days, five sudden deaths from intemperance, in three of these, the parties put an end to their existence. 1st. Dr. **SANDON**, the Superintendent at the Quarantine ground. 2nd. **JANE COSTELLO**, who drowned herself in the Parramatta River. 3rd. **A SAILOR**, while labouring under *delirium tremens*, threw himself into the water, near Clyde-street, and was drowned. 4th. **JAMES WARBURTON**, an old pensioner. The Jury in this case returned a verdict of suffocation caused by intemperance. 5th. **JOHN CALLAGHAN**, whose death may be traced to indulgence in ardent spirits.

DOMESTIC INTELLIGENCE

In three inquests at Parramatta, two of the deaths arose from the use of spirits, and the other remotely.

FREE PRESS, 1/112, 25/11/1841

INQUEST. - WILFUL MURDER. - A Coroner's Inquest was held yesterday at Mr. Driver's, Three Tuns Tavern, corner of King and Elizabeth-streets, on the body of a man named **JOHN CONNELL**, who came to his death under the following circumstances:- Between four and five o'clock on the previous evening, the deceased, who was a constable in the Sydney Police, was on duty in Campbell-street near the Hay-Market, when a man named **PATRICK NEAL** commenced an uproar in the street, by striking another person with whom he had been previously quarrelling in Mr. Cunningham's public-house, in consequence of some disagreement arising out of a game called "puffing the dart", at which they had been playing; which consists in propelling a small dart by means of the breath through a tube, so as to make it strike a board placed opposite, on which certain figures are marked. Neal was very riotous, but his opponent (**GEORGE GALLOGLY** a turnkey in the Debtor's Yard) was more peaceably inclined; and the attack having been commenced by the former, the deceased interfered to prevent a further breach of the peace, and taking hold of Neal by the collar, was proceeding to convey him to the watch-house; the latter soon succeeded in effecting his escape, and ran away, pursued by the constable, by whom he was very shortly overtaken; a scuffle then ensued, and Neal struck the deceased several blows on the face, by one of which he fell to the earth. Not content with this, he wrested the staff from the hands of the unfortunate man and struck him a severe blow with it on the side of the head, when he again decamped, having first flung away the weapon which he had thus made use of, and succeeded in getting clear off.

The deceased rose from the ground and did not at the first appear to be seriously injured by the blow, but he almost immediately became insensible, and was by the orders of Dr. **CUTHILL**, who attended promptly on the occasion, conveyed to the General Hospital, where he soon afterwards expired. A number of persons were present when this murderous assault was committed, but none offered to lend any assistance, and some of them even went so far as to call out to Neal to "strike him", (meaning the deceased) before he did so. They were also either unable or unwilling to give any information to Constable Ward, who arrived immediately after the affray, ass to who the prisoner was; and had it not been for Mr. **WRIGHT** of Campbell-street, who gave him the requisite information, there might have been some difficulty in finding him. Immediately on ascertaining the name of the delinquent, Ward went to his house in Castlereagh-street, and apprehended him with a bundle of clean linen in his hand, evidently prepared for a start to avoid a punishment for the crime which he knew he had committed. The above facts were clearly proved by the evidence adduced on the inquest, and the opinion of Dr. **HARNETT** was taken, which went to show that the death of the deceased had been caused by the extravascation of blood upon the brain, produced by a fracture of the temporal bone with a blow from a blunt instrument, such as the staff alluded to. The Jury remained for a considerable time in consultation, when twelve of their number (there being fifteen empanelled in all) brought in a verdict of wilful murder against the prisoner Neal, who was immediately committed to take his trial for that offence. The remaining three of the Jury were disposed to reduce their verdict to the charge of manslaughter. The Coroner expressed considerable regret that the parties who encouraged the prisoner in his brutal conduct, by calling upon him to strike the constable, could not be forthcoming; and stated his determination to deal with them in the most rigorous manner as soon as he should obtain evidence of their identity.

FREE PRESS, 1/113, 27/11/1841.

On Wednesday last, and inquest was held before **C.B.LYONS**, Esq., coroner, on view of the body of one **THOMAS CARPENTER**, a child four years of age, residing at Kissing Point. It appeared that the deceased was in the habit of playing with a tub on a pond eight feet depth, and on his mother missing him yesterday, every diligent search was made, and he was at length found in the pond quite dead. Verdict, accidental death.

INQUEST. - A Coroner's Inquest was held on Thursday afternoon at the Fortune of War public-house, Lower George-street, on the body of a female named **ELIZABETH GOODWIN**, who put a period to her existence on Thursday the 18th instant, by leaping overboard from the barque *Trinidad*, in which vessel she had come out as an emigrant. It appeared by the evidence, that the deceased had gone to a place of service in Sydney soon after the arrival of the vessel, but on the morning previous to her death had again returned, stating that the situation was much too hard for her. The surgeon superintendent then gave her a written recommendation but she failed in so doing and again returned to the vessel, when the captain told her she might remain on board until she could obtain an engagement. During the whole of the day she was observed to be strangely agitated, and would burst out in alternate fits of melancholy and merriment, at one time crying and at another singing. On the same night between the hours of ten and eleven, a gentleman named **STEPHENSON**, who also came out in the *Trinidad* as a cabin passenger, saw the deceased spring overboard from the gangway, just as he was coming on deck; he immediately jumped overboard after her and soon succeeded in grasping her, but owing to the darkness of the night and the strength of the tide, he was ultimately obliged to quit his hold, in order to save his own life – soon after which he was picked up by the ship's boat which had been lowered and manned at the first alarm, after securing the safety of Mr. Stephenson, the boat's crew made a strict search for the body without success, and it was not discovered until Thursday last when it was found floating by a waterman near the North Shore. Under these circumstances the Jury returned a verdict that the deceased had put a period to her existence while labouring under temporary insanity.

FREE PRESS, 1/114, 30/11/1841.

INQUEST. - A Coroner's Inquest was held on Saturday last, at the Cockatoo Inn, Surry Hills, on the body of a boy named **ROBERT LUCAS**, only nine years of age, who had been drowned on the previous day while bathing in a pond near Nobb's garden, - Verdict accidental death.

SUDDEN DEATH. - Mr. **W.H.TYRER**, of Fort-street, who formerly carried on business as a silk mercer in George-street, expired suddenly while bathing in Darling Harbour on Sunday afternoon last. Dr. **SMITH**, the surgeon of the *Lascar*, and Dr. **NICHOLSON** of Jamison-street, were in prompt attendance upon the unfortunate man, and used every effort to recover him, but without success.

A Coroner's inquest was held upon the body yesterday afternoon, at the Young Princess public-house, in Fort-street, when Dr. **STEWART** having made a post mortem examination of the body, certified that death had been caused by suffocation, produced by the intemperance of the deceased. It appeared by the evidence that Mr. Tyrer had of late been greatly addicted to drinking, and the probability was that the cooling operation of the water acting on his frame had driven the fumes of the liquor into his head, and produced an apoplectic attack, under which, and the suffocating effects of the water, he had expired. A verdict of accidental death from drowning, occasioned by the intemperance of the deceased was therefore returned. [see 1/115]

TEMPERANCE, 2/9, 01/12/1841
DOMESTIC INTELLIGENCE
An inquest was held on Wednesday, on the body of **JOHN CONNELL**, a constable in the Sydney Police. It appeared that a man named **PATRICK O'NEAL**, a drayman, and one of the turnkeys in the Debtors' Prison, had been playing together in the Bee Hive public house, in Campbell-street. O'Neil was the loser, and being excited by liquor, wanted the other to fight, which he refused. The landlord having refused to give him any more gin without the money, he became noisy, and got turned out. The man who had won several games from him now came out of the house, O'Neil again attacked and struck him. The constable who had seen the blow given, took O'Neil into custody, and was conveying him to the watchhouse, when he attempted to escape, and struck the constable several blows; one of these knocked him down. When he fell, O'Neil caught hold of his baton, and struck him a severe blow across the head, from the effects of which the unfortunate man died the same night. Verdict, Wilful Murder. O'Neil, who was in custody, was committed on the coroner's warrant to take his trial. The prisoner is a powerful man, he seemed much affected. This is the second time he has been charged before a jury with a similar offence during this year. He is described by those who are acquainted with him as being a quiet inoffensive man, when not under the influence of liquor.

The cook of the barque 'Fame,' fell down the hold on Tuesday, being in a state of intoxication, several of his ribs were broken. There is little hope of his recovery.

Mr. **W.H. TYRER,** formerly silk mercer, of George-street, suddenly expired while bathing in Darling Harbour, it is supposed that he was attacked by an apoplectic fit. An inquest was held at fair's public house, on the body on Monday. The Jury returned a verdict that the deceased had come by his death while bathing under the influence of intoxicating liquor.
DEATHS.
On Sunday, the 28th instant, while bathing in Darling Harbour, supposed of an apoplectic fit, Mr. **W.H. TYRER**, regretted by numerous friends.

FREE PRESS, 1/115, 02/12/1841.
DR. STEWART. – We have been requested to state, that in the surgical opinion given by this gentleman at the inquest holden upon the late **T.W.TYRER**, no assertion was made that the death of that person was occasioned by previous intemperance. The certificate of Dr. Stewart having been simply to the effect, that death had been caused by an apoplectic attack.

PORT PHILLIP PATRIOT, 06/12/1841
Supreme Court of New South Wales
Willis J., 2 December, 1841
R. v. Bolden
Before His Honor the Resident Judge, and the following Jury:– **D.C. M'ARTHUR**, (Foreman) **D. M'LAUGHLAN, JAMES MALCOM, GEORGE PORTER, FRANCIS NODIN, ROBERT OMOND, J.J. PEERS, LEWIS PEDRANNA, JAMES PURVES, JOHN MANTON,** and **J.H. PATTERSON**.

Mr. **BARRY** having exercised his right of challenge, said, he had an application to make relative to the production of a correspondence, which had taken place between Mr. **SEIVEWRIGHT** and the Government, the reason he called for that correspondence was, because it was not privileged.

Judge Willis thought there would be no difficulty, because the letter in question had been sent to him with the depositions, he always adopted the practice of the Judges in England in reading the depositions before he came into Court; as it had been mentioned as a material point of the case it could be read and all parties have the benefit of it.

SANDFORD GEORGE BOLDEN, late of Layton, in the district of Port Phillip, settler, was indicted, for feloniously firing a pistol loaded with ball at an aboriginal native, named **TALKIER**, with intent to kill, at Layton, on the 26th of November. The second count in the information charged the prisoner with firing the pistol with attempt to kill, which pistol was loaded with shot; and the third count charged him with committing the offence with a pistol loaded with destructive materials. The prisoner in a firm voice pleaded not guilty.

The Crown Prosecutor then stated the case as follows:– Gentlemen of the Jury, the prisoner at the bar, he is a very respectable settler, is charged with shooting an aboriginal native with intent to murder. This prosecution has been instituted at the instance of the Assistant Protector for the district in which the prisoner resides. The warrant of committal was made out by the committing magistrate who subsequently admitted the prisoner to bail, to appear and take his trial for the offence at this present Criminal Sessions–

Judge Willis. How could a magistrate receive bail for the appearance of a prisoner to take his trial on a charge of murder. No magistrate has the power to take bail on a charge of murder, but a judge has. I make this observation because gentlemen in the country holding the commission of the peace have not the same opportunity of becoming acquainted with the law as the magistrates in England. By the information it does not appear that the prisoner is charged with murder, for which offence if found guilty, his life would be forfeited. I can only repeat that magistrates should be very cautious how they take bail, particularly on such a serious charge.

The Crown Prosecutor continued – Having made these preliminary observations, it will be my duty to state the facts of the case. On the 27th of October last, the prisoner with his brother Mr. **SAMUEL BOLDEN**, and two of his servants, named **PETER CARNEY** and **WILLIAM KEARNAN**, went into the bust to muster some cattle, having proceeded about two miles in the bush, they met three natives, a man, a woman, and a boy. The prisoner when he saw the natives, rashly in my opinion, took alarm at their appearance, and considered (whether right or wrong, I shall not say) that these aboriginal natives intended to commit some depredations on his cattle, and to that end ordered them to leave the run. The native it appeared did not instantly obey this order, but ran to an open flat which was close at hand, pursued by the prisoner, who was on horseback; the black finding the pursuit two (sic) hot for him, turned round and attempted to strike the prisoner with one of his weapons, in return, the prisoner fired a pistol at the native and wounded him in the stomach; the native then ran to a water hole close by and jumped into the water for protection as was supposed by the prisoner who did not understand the ways of the native very well; the prisoner then left his two men at the water hole with instructions to take the native into custody when he came out of the water, whilst the prisoner returned to his house for more ammunition. During the time the prisoner was absent, the native came out of the water, but the moment he saw the prisoner returning, he again took to the water hole, and while standing on a decayed tree in the water hole, the prisoner again fired at him and he fell into the water. Such, gentlemen, are the facts of the case which I shall bring before you, I have not embellished nor underrated the case, for the purpose of

prejudicing the minds of the Jury, neither will I do so, as long as I have the honor to hold the situation which I now fill.

The following witnesses were then called:–

Peter Carney sworn and examined by the Crown Prosecutor. I reside with the prisoner, I am in his service in the capacity of stockman. I remember the 27th October, I saw the prisoner that day, I went with him, and William Kearnan and Samuel Bolden to muster the cattle, I did not see any aboriginals on the run until we had been a good while out, we all took separate roads, if any of us heard the whips crack we were to return. I heard the whips crack and returned; when I was coming I saw some blacks, when they saw me they parted; one man separated from a woman and a grown up boy, and ran onto the flat, the prisoner was on the flat at the time on horseback, the native rushed from the hill to the flat, and the prisoner called out gigo ; the black stood with his left foot foremost and fixed his eyes on the prisoner, at the same time he drew a heavy formidable weapon which would cut a horse's head off, he was standing near the prisoner, and made a stroke at him with the weapon, Mr. Bolden was quite passive, but slewed himself on the saddle and escaped the blow, and again called gigo to the black. I don't think the prisoner saw the native until he rushed down from the rising ground.

Mr. **CROKE**. – Did you ever swear that Mr. Bolden rushed towards the native.

Mr. Barry contended that before the witness answered that question he must first say whether he swore that in the presence of the prisoner.

Judge Willis agreed and examined the witness on that point, deciding that the depositions had been properly taken by the Court. I made my depositions before a magistrate, Mr. Seivewright, not before Capt. **WEBSTER**; I was not sworn first in the presence of Capt. Webster. The prisoner to the best of my opinion was present at my first examination, I can't say whether Mr. Seivewright read over the depositions to me, but I think he did so to Mr. Bolden in my presence, and I put my mark to it; if the prisoner wished to have asked me any questions he should have done so.

By the Crown Prosecutor.– The prisoner did not, previous to the blow being made at him by the native, make any rush at him with his horse, the native made a second blow, when I called out to the prisoner to “take care or the native would unhorse him,” when the native repeated the second stroke, the prisoner reined his horse round to the left and fired a pistol at the native, I cannot say that he struck him, he was about three yards from him. The pistol was a double barrelled pistol; when it was fired the native stood and clapped his hand on his belly, grinned his teeth at the prisoner, called him a white —, and then ran about 100, or 150 yards to a water hole, the native was naked at the time, I saw no blood, I saw the native go into one water hole, come out and go into another. I did not see the pistol loaded that morning, it was a percussion lock. I saw smoke from the pistol, no wound or blood. The native stopped in the first water hole a quarter of an hour or twenty minutes; during the time the native was in the water hole he kept singing out “ gigo , plenty more blacks; gigo after them.” I think he meant for me to go after them. I cannot say Mr. Seivewright asked me one of these questions; when the native said so, the prisoner told me to keep him a prisoner until he returned, the prisoner then went away, he said he was going home, he had only the double barrelled pistol, he told me to keep the native a prisoner until he returned with more fire arms. In the prisoner's absence the other stockman, William Kearnan, came up, he had not been up long before the native came out of the water hole, he still had his hand on his belly, and ran into the other water hole, where he stopped for a short time, and then came out and struck at the stockman; I was holding the two horses when Kearnan went round to take the native as he came out of the

water hole, and the native struck Kearnan on the temple and on the right elbow with a club, while they were falling I was singing out to Kearnan that the native was getting the best of him, and that he would not be able to take him, and he had better come to his horse; at this time the prisoner came up, I can't say whether he fell or jumped into the water hole, the native was standing on a stump when the prisoner rode up and fired at him. Mr. Bolden was about fifteen or twenty yards distant from the native when he fired, it was a good large water hole, the native was on the opposite side of it when the prisoner fired, it was as the native was going into the water, simultaneous. I saw smoke when the pistol was fired, the pistol was a short barrelled pistol, it was a little longer than the double barrelled pistol. After the shot was fired we immediately rode away.

Judge Willis. – Do you know the native's name?

Crown Prosecutor. – The Protector will be able to prove the name of the native.

Judge Willis.– Was he present at the time the shot was fired? where is the native? why is he not produced? he would be the best evidence in all cases of murder, the production of the body is always considered the best evidence.

Cross examined by Mr. Barry. – I did not see either the first or second pistol loaded, I cannot say whether the pistols were loaded with ball, Mr. Bolden was absent about a quarter of an hour; during has absence the native did not complain that he was hurt, when the native said there were other blacks on the run, Kearnan said to the prisoner, “for goodness sake go home for more fire arms to protect us, for this man says there is so many natives on the run.” I never saw the native before that day. The boy had an axe, the woman had a basket full of bullock fat.

Mr. Croke. – I object to this mode of examination; there was nothing about bullocks mentioned in the examination in chief.

Judge Willis. – I wish all the truth to come out, and I have no hesitation in stating from the bench that if a person receives a licence from the government to occupy a run, and whether white or black comes on that run to commit a depredation on the party's property, he is fully authorized to use any lawful means in his power to protect it.

Mr. Croke. – Yes your Honor, but what right have they to turn a black off their run?

Judge Willis. – They have a right to turn either black or a white off. I will go further and say if the government take upon themselves to be the desvisors of the soil, the tenant has a warrant under the descisor, to occupy the land, and that descisor, Mr. Croke, is the Queen of England, your mistress, in whose name you are this day conducting the prosecutor.

Cross-examination continued.– The fat was not give to the woman, some cattle were missing; there had been some cattle stolen about a week before; when Mr. Bolden fired, he could have fired the second barrel, he was in a very inconvenient posture and did not take any aim; when the native had the contact with Kearnan I did not see his belly, his back was towards me, I saw his belly twice, I am quite sure the native that went into the water hole was the same man that the prisoner fired at the first time, the native went into the water, feet first; he must have seen the prisoner coming up when he went into the water hole, we did not wait to see him rise; had the prisoner wished to have shot him he could have done so by waiting until he rose to the surface, I cannot say whether the second shot took effect. This occurred on Wednesday, and my deposition was taken on the following Friday. I never gave my evidence under the impression that the native was killed.

By the Jury. – It is a common course to frighten the natives by snapping or presenting a pistol at them.

By the Court. – When the native struck at the prisoner he had three or four weapons about him.

William Kearnan, sworn – I am a stockman in the employ of the prisoner; on the 37th (sic) of October I was employed in getting in some cattle, I saw three aboriginal natives consisting of a man, a woman and a boy; I do not know the native's name, but I had seen them several times before; I sung out “gigo” and asked them where they were going to, they said to Mr. Seivewright's station, about eighteen miles distant through the bush, but about thirty miles by the road, I said they were not, but were looking for cattle; I did not attempt to drive them off the run; I considered the prisoner was within hearing; the blacks said “Mr. Seivewright said plent (sic) wygell-wygell you,” meaning that I should be hung; in five minutes Carney came up, Mr. Bolden and his brother were on the flat, I sung out that the woman's bag was full of bullock or cow fat; during the time I was shewing the fat to Mr. S. Bolden the prisoner and the black had some words, I did not hear what the words were, being engaged with the woman; I turned round and saw the prisoner engaged with the native, the native trying to strike him with his club; I was about fifty yards distant; I did not see the prisoner endeavouring to ride down the black or galloping his horse; I heard a pistol shot, at the time I heard the shot fired the native was within four of five yards of the prisoner; I saw smoke when the pistol was fired; the black then ran as fast as he could to the water hole and went in legs foremost; I frequently looked round while examining the woman's bag because I expected a reinforcement of blacks; the native was nearer the water hole than the prisoner; I and prisoner went to the water hole, the native then sprang in and caught hold of a log singing out “plenty more blackfellows kimbarley directly;” I then asked the prisoner to go home for some more fire-arms; I have frequently seen the double barrelled pistol; Mr. Bolden then went home for some more fire-arms; I was trying to keep the blackfellow in the water or take him into custody until Mr. Bolden's return, I thought it my duty to do so; during the absence of the prisoner the native came out of the water hole, I let him out quietly, when I walked up to him and he struck at me with his club, I thought to get hold of it; the moment the native saw the prisoner coming up he rushed to the water hole, and just as he got in the prisoner fired the pistol; the first I heard of the prisoner's return was the report of a pistol; we were struggling at the time; the native struck me several blows with his club, once on my forehead, which bled, and several times on the arm; it was a weapon I never saw before, it was much heavier than a shelalagh; after that shot was fired we got on our horses and went on our business; I often saw the prisoner before.

Cross-examined.– I found the same native killing a beast on the 19th of the same month; I never met a party of blacks killing a beast without this native being amongst them; I always told my master I knew this man; I cannot swear whether there were either ball, shot, or slugs in the pistols; when Mr. Bolden returned and fired the second shot the black was in the act of attacking me.

C.W. Seivewright examined – I am one of the Assistant Protectors of the aborigines for the western district; I am also a magistrate of the territory; I know the prisoner, he lives about eighteen miles from my station; I took the depositions in this case, they were taken in the prisoner's presence and read over to him; he had an opportunity of asking questions and did so; I knew an aboriginal native named Talkier, he was one of the natives I had superintendence over; I have not seen him since the 29th of October; I have made several enquiries for him, among his own tribe in particular; I saw him about a fortnight before that time; I think it improbable that he is now wandering about; I searched for him twice; it is probable that he is still alive.

His Honor wished to know why depositions had been taken relative to a death when it had not been shewn that any death had occurred; he understood the commitment was for murder, he should like to see that commitment.

Mr. Croke. – Is it because a Justice commits a man for murder that I am to prosecute him for that charge? I will, however, send for the commitment.

Mr. Seivewright .– Your Honor, the commitment was made out for feloniously shooting.

Judge Willis. – Then why did you not send for the parties and alter the heading of the depositions? common prudence would have directed you to have done so.

Examination continued. – I saw the prisoner previous to the examinations of the witnesses against him; I went to his station, it was on the 28th of October, I saw him at his stock-yard and made myself known to him; I said I was sorry to hear that there had been a collision between some of his people and the natives; he said "No, no collision;" I replied "are you not aware of it?" he said "are the bodies found?" I said "I believe so;" this belief was from the report I obtained from an aboriginal boy, wholly a savage; Mr. Bolden then said "I have no hesitation in stating it was I who shot the native, but I assure you it was in self-defence, and it was my intention to have informed you of the circumstance as soon as I could." That was not said until I stated the bodies were found; he said the reason he had not sent was, because he was engaged in going over some cattle he had sold; I observed that he was under considerable agitation and advised him to say nothing more until the morrow, when I would return and take it from him; my reason for doing so, was, that in his agitation he might inadvertently have made a statement in which he might have committed himself; I held out no inducement except that the body was found.

His Honor said he would reserve the point, whether a confession taken under such circumstances could be admitted in evidence, and commented very strongly on the conduct of Mr. Seivewright in the matter.

By the Court. – I was engaged in endeavouring to ascertain whether the story of the aboriginal boy was true; I traced, in company with six natives and a constable, to a water hole where there were tracks of horses, when one of the natives descried a boy on horseback; the natives who accompanied me threatened to kill him; in consequence of the danger of the boy I gave up the search.

Cross-examined.– I rested what I stated on the statement of the aboriginal boy; I heard that the person who was shot was named Talkier from the native boy; the prisoner said after making his voluntary confession, that had he known the bodies were not found he would not have made the statement; I did not state to the men on the examination that the bodies were found; I think Mr. Craig, Captain Webster, and prisoner's brother were present when he made the statement; I have been in charge as a Protector eleven months; the dialects are various amongst the tribes; I swear I put a right interpretation on what I heard from the boy, who was ten or eleven years old.

Judge Willis. – What! am I to understand that you ground your belief on the statement of a boy ten years of age, and that boy wholly a savage, and that you as a magistrate act on that assertion to bring such a serious charge as that against the prisoner.

Cross-examination continued.– The other body said to have been killed was that of a woman, but on enquiry I found she was alive; I have not seen her; the same boy who told me that the man was dead told me also that the woman was dead; I never told the prisoner of the fact; I told Mr. Croke.

Mr. Croke distinctly denied that he had ever made any such statement until he put the question to him, and that was the reason he had filed the present information, because it occurred to him that the man might still be alive.

Judge Willis. – You had plenty of opportunity to have communicated that fact to the prisoner or his friends, and I must say it is not the way a magistrate should do his duty.

Cross-examination continued.– After collision with the natives and the settlers, it is usual for the former to abscond for two or three weeks; I sent for the woman but she had not arrived when I left; she belongs to a tribe at a remote distance; I have searched for the native within the beat of his tribe; I never had the water hole dragged; I put a stick in the hole but it was too deep; if any bodies were in the water they would have floated when decomposition had taken place; the prisoner and his friend offered every facility in investigating the affair.

Judge Willis. – Gentlemen, the reason that I sift the evidence in this case so closely is, because the prisoner at the bar is a brother of a neighbour of mine, and I intend to leave the case in your hands without a single comment from me, for it has been asserted and also published in one of the newspapers, that I have allowed private feelings to interfere in the administration of public justice. Such imputations I scorn, they are too contemptible to notice, and those observations recoil on the parties who wrote them. I could in the beginning of the case have stopped it, but I preferred letting it go before you on its merits, for I was anxious that a full investigation should take place, which I am happy to say has been the case this day.

This closed the case for the prosecution, and no evidence for the defence being adduced,

Mr. Barry then addressed the Court as follows:– May it please Your Honor and Gentlemen of the Jury, – when my eye first lighted on the paragraph published in a local newspaper the day before yesterday, to which I have already called the attention of the Court, I feared that I should have had to present myself to you to perform the most trying and important duty which devolves upon a human being; to defend a young man in the prime of life, struggling for his existence, and leaning on the casual support of a feeble advocate. But do not imagine, gentlemen, that I rise now under any such impression. Do not suppose that I address you overwhelmed with the hopeless difficulties of this case. Let it not be conceived that I mean to occupy your time by soliciting your indulgence for the inadequacy of my powers; or endeavour artfully to enlist your passions on the side of my client. No gentlemen, such is not the case but I rise with whatever of law, justice, and of the British constitution have been transplanted in this country of our adoption at my back, and standing in front of that powerful alliance I demand a verdict of acquittal. You have heard, gentlemen, the testimony of the last witness, one of the committing magistrates, who has declared that throughout the whole of this proceeding every possible facility has been afforded by the young gentleman himself who is arraigned at the bar, and by his relations, in aid of the investigation of this matter. You have also heard the evidence of the two servants of this gentleman, who have undergone a very rigid examination by the Crown Prosecutor, and who are in fact the only witnesses whose statements bear directly upon the question; and though it might perhaps, be apprehended that these men might be influenced by fears of the unfavourable result of this trial, or swayed by their attachment to an indulgent master, never, I sincerely believe, was a more candid, upright and honest narrative deposed to in a court of justice. The prosecution you must observer gentlemen has signally failed, for you have no evidence whatsoever to satisfy your minds that this pistol was loaded either with “ball, shot, or other

destructive materials,: as laid in the different counts of the information; which it is absolutely necessary to prove. Nor has there been adduced any evidence to shew that the native named in the information as Talkier is the person whom the prisoner at the bar is charged with having fired at. To show you that this is requisite, I need only refer you to the case of Lord Cardigan lately decided in England which must be fresh in your recollection, and to which your attention has been already directed by the learned Judge. But, gentlemen, though these deficiencies in proof are of themselves fatal to the information, I do not rest the case solely on these grounds, but will insist upon it that this young gentleman was justified in the fullest extent in acting as he has done in discharging his first pistol in defence of his own life, and the second in defence of that of his servant. What then is the case? This young man with his brother, accompanied by two stockmen, were riding on the morning of the 27th round their run, and in the progress of their ride they found three aboriginal natives, one of whom, a man, was well known to one of the stockmen as a most violent character, and identified by him as connected with divers acts of aggression upon the property of his master; another, a woman, was carrying in her basket a considerable portion of fat, which there was every reason to believe had been taken from a bullock killed on the run by the aborigines during the previous week. These people were desired to leave the spot, upon which the man exclaimed that “there were plenty more blackfellows down yonder,” and invited the party to proceed in that direction. It appears that when they reached a small plain while the prisoner was sitting upon his horse he was attacked by this ferocious savage, armed with a weapon, which has been described to you as one which “would cut a horse's head of,” he eluded the blow, and on a repetition of the assault, in accordance with the first principle of the law of nature, to protect himself he fired at the assailant, but in such a hasty manner, in a position so unfavorable for taking a cool and deliberate aim, that it is quite uncertain whether the man could have been hit. Then upon the earnest entreaty of the stockmen, one of whom begged him “for God's sake to return for some fire-arms for the protection of the party,” the prisoner left his men and was absent for the space of about twenty minutes, during which time this native was engaged in a conflict with one of the witnesses, in the course of which he wounded him severely on the temple, and inflicted several blows on his arm and other parts of his body. At this moment the prisoner arrives; his horse is at a gallop; he sees the life of a confidential servant exposed; he sees him standing unharmed (sic) and attacked by an infuriated cannibal and at the distance of twenty yards, or more, for the distance is not accurately ascertained, he discharges a random shot, and without waiting to observe the effect he turned his horse and rode off at full speed to the support of his brother. Now, gentlemen, whatever uncertainty existed in the law in former time as to the right of a master to commit an assault in defence of his servant; though there was no doubt whatever as to a servant being justified in defending his master; it is now clearly the law of the land, speaking on the authority of Lord Mansfield, “that a master interfering when his servant is assaulted, is justifiable under the circumstances, as well as a servant interposing for his master, as it rests on the relation between master and servant.” Let me beg of you, gentlemen of the Jury, to consider for one moment if this young man entertained the “willful and malicious intent” necessary to support this information; what could possibly have been more easy for him to do than on the first occasion, on the failure of the first discharge, to have ridden up to this aboriginal native and put a period to his existence by means of the second barrel which he held in reserve; or on his return with a further supply of fire-arms to have waited until the native rose to the surface, when he could have deliberately accomplished his

murderous design. Nay more, to make sure of his victim, he might have had recourse to such means as were adopted on a subsequent occasion when the water hole was searched for the body. But no, the whole transaction evinces the very contrary of such a disposition, and the hurried manner of acting, the small size of the weapons used, and the provocation on both occasions render it very doubtful whether the shots could have taken effect, and quite excuse and justify recourse having been had to such extremity. The evidence must be so well impressed upon your minds, gentlemen, that it is needless in me to occupy you any longer by a recapitulation of any portion of it. However wretched, indeed, will be the situation of the settlers, who are, Heaven knows at present sufficiently unprotected, if they defend their property, the lives of their servants and their own, at the risk of being exposed to the ignominy of a public accusation such as you behold this day. I will not dwell, gentlemen, on the anxiety of the relations and friends of this young gentleman, as to the result of this trial, but I confidently resign the case into your hands and ask for such a verdict as you can reconcile with your consciences, your country and your God.

Judge Willis, in putting the case to the Jury, said he should only occupy their attention a short time with his observations on this case; he would state now what he had stated in the early part of the day, that the prisoner at the bar was the brother of a neighbour of his, and although it had been stated that he allowed his private affections to interfere with the administration of public justice, he disclaimed having any feeling in this case more than he had in any other, and it was always his study to administer the same justice to the poor as to the rich man. If his (Judge Willis') brother were placed in that dock to be tried before him for any criminal offence, he solemnly declared he would deal with him in the same manner as he would with the greatest stranger. The case before the Jury was a very important one, but he had no doubt would meet with the attention it required at the hands of the Jury; he could have stopped the case at its commencement because he knew the information could not be supported in evidence; there was no proof that the aboriginal native that was shot at by the prisoner was named Talkier; the learned prosecutor having failed in proving that fact, the information must fall to the ground. But he (Judge Willis) preferred letting the charge got to the Jury on its merits, and he rejoiced that he had done so, and that the matter had been thoroughly investigated; although he, as Judge, was bound to take notice of all informalities that might benefit any prisoner that came before him, he had let the case go to the Jury, because there could not then remain a shadow of doubt on their minds as to the motives which actuated him thus to act, so that if any feelings existed in the minds of the Jury, that any prejudice on his part in favour of the prisoner, it could not prejudice the verdict they would find in the case; such a feeling instead of serving would operate much against the young man who was placed in so unfortunate a position. The case before the Jury was not of the same description as the matter which had recently been argued before the Court, he meant the case of **BONJON**, in which case he had already stated his impression on the law of the case, which impression would be forwarded by his Excellency the Governor to the home authorities, it had been asserted that he had given a decision in that case; that statement was false, he had never decided on the matter, but he had given his opinion; and he was still of that opinion. This case however was widely different from the case of Bonjon, this was a case of aggression of the whites against the blacks; and in all cases of aggression of the whites against the blacks, or the blacks against the whites, the law of England prevails. He had on a former occasion alluded to the case of **KILMEISTER** and others, who were tried and executed for the murder of several aboriginal natives, to show there could be no doubt about the law of the case, that

point having been recorded as the laws of this colony, in letters of blood. In this case a paragraph had appeared in one of the local papers relative to this case, headed “charge of murder,” he had already stated his opinion on publishing preliminary reports of cases, that paragraph might tend to affect the opinion of the public, but he was sure it could not have any effect on so respectable and intelligent a Jury; at the present indeed he regretted that paragraph had been published because it, in all probability, would reach the friends of the prisoner in England, before the matter could be cleared up, and thereby cause considerable uneasiness. Reports although true, and in some measure a libel, but he had no doubt these reports had been published by the parties who were ignorant of the law of the matter, but he (Judge Willis) hoped from what he then stated, such reports would not be published in future; he rejoiced for the sake of the prisoner, that he had allowed this case to proceed, and its publication would be useful to the colony; the case before the court, solely depended upon secondary evidence, and that evidence had been communicated by a native boy, wholly a savage of ten years old; what was there to prove that the aboriginal named in the information was the person shot at by Mr. Bolden, had ordinary exertion been used, by the committing magistrate, by going to the water hole, if the native who was shot at had been killed, decomposition would have taken place and the body have floated to the surface; he was bound to tell the jury there was no evidence against the prisoner. Had the Crown prosecutor indicted him for shooting at an aboriginal, name unknown, then something might have turned out, but there was nothing to identify the aboriginal named in the information with the one that was shot at by the prisoner; and for aught that appeared that man might be alive and well, for Mr. Seivewright has himself stated that the parties, after a collision with the whites, leave their usual haunts for a considerable time. His Honor here alluded to the case of Lord Cardigan for shooting at Captain Tucket, and observed, that the precedent before him was exactly similar to the present case; when the matter of identification was so essential, in his opinion the case was not made out against the prisoner; had a little common sense been observed in the matter it would have been a great deal better.

Mr. Croke thought there was sufficient evidence to support the information against the prisoner for shooting with intent to kill.

Judge Willis wished the learned Crown Prosecutor to shew what proof he had that the person named in the information was the party that was fired at by the prisoner; at the same time he must say that the Crown Prosecutor had only done his duty in bringing the matter before the Court, but the time of the public was not to be taken up with cases that could not be sustained, he must, under all the circumstances of the case, tell the jury that they were bound to find a verdict of acquittal, the prosecution having completely failed.

The Crown Prosecutor said, with such depositions, he would put a thousand such informations on the files of the Court.

Judge Willis. – Then I do not think you would be doing justice to the public; you have no right to occupy the time of the Court with informations that you cannot sustain.

The Crown Prosecutor said he did not think the public considered he occupied his time unnecessarily.

His Honor then concluded his charge to the Jury, remembering that there was no evidence against the prisoner and that they must acquit him.

The Jury without retiring pronounced a verdict of Not Guilty.

Mr. Manton, one of the jury, wished to state on behalf of himself and some of his fellow jurymen, that the prisoner left the Court without any imputation on his character.

Mr. D.C. M'Arthur, the Foreman, begged to tell his Honor that that was not the unanimous opinion of the jury.

Mr. Croke in addressing his Honor, said, that he considered a heavy charge had been laid at his door by his Honor for occupying the time of the Court on informations he could not sustain.

Judge Willis. – Is it justice to the public to do so? yet such has been the case on several occasions this session.

Mr. Croke. – I again repeat that I would on such evidence file an information to-morrow; is it because I have lost several cases this session form want of witnesses who have absconded or have not been in attendance that I am to be accused of occupying the time of the Court unnecessarily? I will use my discretion in putting such prisoners on their trials on the depositions which are sent to me by the magistrates as I conscientiously think I should do.

Judge Willis said if such was the determination of the Crown Prosecutor he should feel it his duty to represent his conduct to the proper quarter, and state that the public time and expense was unnecessarily taken up in trying cases he could not sustain.

Mr. Croke. – I again say, with great respect, by virtue of my office I will use my discretion as to what cases I bring before the Court.

Judge Willis. – Very well, then I will know what course to pursue.

The matter was then dropped,

(The Court adjourned until eleven o'clock on Saturday.)

[1] Thanks to Chris Brien for supplying the newspaper account of this case.

FREE PRESS, 1/117, 07/12/1841.

NEWS AND RUMOURS OF THE DAY.

An inquest was held in Parramatta-street, on Friday last, on the body of a Coolie named **MONGRU,** late in the employ of Mr. **JOHN LORD**, who had been missing for some days previous to the discovery of his death. The body of the deceased was found in a well on the premises, on Thursday evening, and it was supposed that he had accidentally fallen into it. Verdict, accidental death.

An inquest was held on Friday last at Leburn's public house, opposite the Benevolent Asylum, Parramatta-street, on the body of a male child, about three months old, who expired on the previous evening from the exhausting effects of an indisposition under which he had been labouring since his birth. Verdict, died by the visitation of God.

ACCIDENT. - A little boy, the son of **JOHN WELSH** of brougham-place, Pitt-street, came to an untimely death of Sunday evening last, by falling down a w ater-closet, attached to the premises where his parents reside. The latter being at that time at a place of worship had left the unfortunate child in the charge of his brother, a lad of about ten years old, from whom he contrived to absent himselk, when he met with the fatal accident above stated.

TEMPERANCE, 2/10, 08/12/1841

INQUESTS DURING THE MONTH JUST ENDED. - There have been twenty inquests in the district of Sydney alone, being at the rate of two every three days, or two hundred and forty-four per annum, in a population of 35,000.

An inquest was held last Friday, on the body of a Coolie, named **MONGROU**, in the employ of Mr. **JOHN LORD.** The body was found in a well. It is supposed that the deceased had, while in liquor, accidentally fallen into it. A verdict of accidental death was returned.

PARRAMATTA.

An inquest was held at the Plough Inn, on Monday the 20th November, on the body of **PATRICK COLLINS**. It appeared from the evidence produced, that the deceased had been employed in Sydney as a labourer for some time past, and had amassed a considerable sum of money, he had been drinking for a long period, and thereby brought on himself a fit of delirium tremens, which had caused his death – verdict accordingly. The Coroner remarked, that every inquest which he had held for the last six months, excepting those on young children, had been caused by intemperance.

FREE PRESS, 1/118, 09/12/1841.

NEWS AND RUMOURS OF THE DAY.

About sixteen days ago a man named **GEORGE PHILLIPS**, residing in Sussex-street, accompanied by two other acquaintances, set out in a small boat, for the purpose of fishing between the Heads; but since then neither the men nor the boat have been seen of heard of.

INQUESTS. - On Monday afternoon, an Inquest was held at the New York Hotel, George-street, on the body of a man named **THOMAS LONG**, formerly an assigned servant to Colonel **GIBBES**, the Collector of Customs. It will be remembered by our readers, that the deceased was accidentally drowned by the upsetting of a boat, On Sunday, the 24th of November last, in which he was seen sailing about the harbour with his master and some others. The body, although diligently searched for, was not discovered until Saturday evening, when it was found floating near Barry's Wharf, on the North Shore. Verdict – accidental death.

Another inquest was held on Tuesday, at the Dumbarton Castle public-house, Liverpool-street, on the body of a male infant, the son of a female named **CONNELL**, the widow of the constable of that name who was murdered some time ago. The child had been born alive, but had expired within five hours afterwards, and Dr. **M'KELLAR** having certified that its death had been produced by natural causes, a verdict to that effect was returned.

FREE PRESS, 1/119, 11/12/1841.

ARGYLE.

A lamentable and fatal accident occurred near the Stockade at Tourang, a few days ago. Mr. And Mrs. **MONEYPENNY** and child, were returning to their residence at Goulburn, in a chaise, when by some means, at present to me unknown, the gig was overturned, at a bridge now in the course of erection, and the whole of the carriage inmates thrown out. Mr. Moneypenny was killed on the spot, Mrs. Moneypenny was seriously injured, and the child escaped unhurt.

Recent news from Goulburn states, that two men (**LYNCH** and **THOMSON**) who were in the employ of Messrs. Bradly & Shelly, had a trifling dispute while shearing sheep; one word brought on another, until at last they began to fight. The man Thomson, finding his opponent Lynch one too many for him, whipped up a pair of sheep-shears that were close to him, and plunged it into the body, betwixt the second and third rib on the left side, of the unfortunate Lynch. The act was so sudden that were there fifty individuals present, they could not have prevented the blow. The wounded man was forthwith borne to the General Hospital; and the assassin secured,

and conveyed to Goulburn Gaol. Although every attention was afforded by the medical gentleman of Goulburn to the sufferer, the shears had struck a vital part, and after undergoing the most excrutiating agony, he died the same night. On the following day an inquest was held at the body, at the Hospital, when a verdict was returned against Thomson of "Wilful Murder". Thompson will be tried for this treacherous and atrocious act at the next Circuit Assizes.

TEMPERANCE, 2/11/, 15/12/1841
DOMESTIC INTELLIGENCE
A man having entered a loft at Windsor, drunk, walked out of the window, and falling from a height of eleven feet, died in consequence.

TEMPERANCE, 2/12, 22/12/1841
INQUESTS. - On Saturday last, an inquest was held in the Sir Walter Scott, public house, Bathurst-street, on the body of **WILLIAM COOPER**, a seaman from the 'James Pattison,' who was drowned on Thursday evening, by falling overboard, from the schooner he belonged to, lying at Steele's wharf, bottom of Bathurst-street. At the time of the accident, the deceased was intoxicated. Surgeon **STEWART** having certified that death had been caused by drowning, a verdict of accidentally drowned, while intoxicated, was recorded.

Another Inquest was held the same day, on the body of **ALEXANDER MELLON**, surgeon, who had been found dead in his bed, on Saturday morning, on board the 'Letitia,' schooner, lying at Peacock's wharf Darling Harbour. From the evidence it appeared the deceased had of late, been much addicted to liquor, and after a severe drinking bout, had obtained permission from the captain of the 'Letitia' to reside on board of her till he recovered from the effects of his intemperate habits, which he intended to break off; that he had been drinking on Friday, and went to bed in his usual state. Surgeon **M'KELLAR** having certified that death had been the result of natural causes, induced by intemperance, a verdict to that effect was recorded. It is said that property to a considerable amount has lately been left to the deceased in his native land.
WINDSOR.
Last week we reported the death of a man, while under the influence of drink. This week a soldier, stationed in that town, put an end to his existence while under the influence of liquor. We hope that cases of this description are reported to the Horse Guards.

TEMPERANCE ends, further issues under the title of TEETOTALLER.

FREE PRESS, 1/124, 23/12/1841.
INQUESTS. - On the 18th instant an inquest was hjeld before **B.C.LYONS**, Esq., coroner, on view of the body of a **PERSON UNKNOWN**, at the house of **JAMES KIRWIN**, sign of the Horse and Jockey, on the Sydney road; the jury returned a verdict of found drowned.

Another inquest was held by the same coroner on Tuesday last, on the boby (sic) of **RICHARD OAKES**. Verdict, determination of blood to the head, accelerated by mental excitement.
INQUEST. – A coroner's inquest was held on Monday last, at the Crown and Anchor public house, George-street, on the body of a man named **JAMES BENZIE**, who had

died suddenly on Milk Beach, Rose Bay, on the preceding day, in consequence of an internal attack, - the deceased was a man of good character and temperate habits, and had been employed at a storekeeper in the service of Mr. **P. DeMESTRE** for some years previous to his death. Verdict, died by the visitation of God.

FREE PRESS, 1/125, 25/12/1841.

INQUEST. - A Coroner's Inquest was held yesterday afternoon, at Leggatt's public-house, corner of Druitt and Sussex-streets, on the body of an old man, named **GEORGE HARVEY**, formerly employed as a bell-ringer at the Auction Mart of Mr. **STUBBS**, in King-street. The deceased had been found at an early hour the same morning suspended by his neck, behind the door of his room, with the point of his toes touching the ground, in which position he had evidently remained for some time, as upon being cut down he was found to be perfectly stiff, and fell upon his feet, where he remained standing until removed. It appeared by the evidence, that the deceased was a man of intemperate habits, and, in consequence of his bad conduct, had, a short time previous to his death been discharged from his situation. The Jury returned a verdict that the deceased had put a period to his existence while labouring under the effects of temporary insanity, produced by intemperance.

SUICIDE. - A female immigrant belonging to the *Emerald Isle,* which arrived in this port on Thursday last, sprang overboard from that vessel, when within a short distance from Sydney, and was drowned before any assistance could be rendered. No cause has as yet been assigned for the commission of this rash act, and what renders the affair still more mysterious, is the fact that no mention was made of it by the surgeon when making the usual report to the Health Officer of those who had died on the passage. The officer in charge of the vessel at the time the health-officer went on board was equally silent, and it was not until they were very closely pressed that the fact was spoken of, when the plea of *forgetfulness* was brought forward as an excuse for not mentioning it before! The whole affair, we believe, is about to undergo a strict investigation.