

TUESDAY, AUGUST 1ST.

(His Honor took his seat on the Bench at 10 a.m.)

CHARGE OF CATTLE STEALING.

John Kessey, the elder, was indicted for that he, on the 19th day of May, 1898, at Tillsbury, did steal one ox the property of Thomas Durack. A second count charged accused with receiving and having the said beast.

Plea: Not Guilty.

Mr. Thompson appeared for the defence.

Accused exercised his privilege of challenge to the fullest extent.

Constable Tapling, of Oberon, deposed that on 22nd September last he was on duty and saw a red and white hide branded TD in front of Fox's store; soon afterwards he met accused coming up the street; asked him what brands were on the hides he sold to Fox that day; accused said they were his wife's and he had bred the cattle; witness then gave accused a piece of paper and asked him to write down his wife's brands; he wrote down HK; they went together to look at the hides, but accused failed to point out his wife's brand, while Mr. Durack's could be distinctly seen; witness asked how he came to have this hide and he said "it must be one I pulled out of the bog and which Mr. Rushworth, Mr. Durack's manager, gave me permission to skin":

witness took possession of the hide and took it to the Police Station, leaving accused at the store; he returned to the store but could not find him; before leaving accused he told him he was not altogether satisfied with his explanation and he would take possession of the hide; accused replied "If you are not satisfied go out to my place and you will find plenty more with the same brand;" witness was away for about half-an-hour and when he returned he could not find him anywhere, but a team he had driven into town was left standing in the street, and witness had it placed in a yard; that night witness rode out to Tillsbury to see Mr. Rushworth; accused's place is in the centre of Tillsbury run; he rode afterwards to accused's place but he was not at home; next day he searched for him again and continuously until the time of his arrest on May 31st last; a warrant was issued for his arrest; on May 31st Constable Howe and witness went out to prisoner's place and when searching for him found him in a hole underneath the bed in the bedroom; the boards had been cut off and the hole dug into the soil; it was large enough for him to secrete himself and the boards were replaced; witness had some difficulty in finding him but when searching witness saw some sawdust on the floor and on trying to move the boards he found accused whom he dragged out; he was wearing only his shirt; the bed on which he had

only his shirt; the bed on which he had slept was quite warm and witness had to wait for entry into the room until his wife had dressed; Constable Howe told him a warrant had been issued for his arrest, and he then took him in charge; on the way to the station he said he had only returned home the previous night at 12 o'clock; that for the past six months he had been living out back but had returned home with the object of giving himself up when he knew what day the court would be held; at the police station he was shown the hide and he said his wife's brand should be on it; witness clipped off the hair and discovered what he took to be his wife's brand; Constable Howe asked him how it was Durack's brand was on it he replied "I do not know. My cattle have been running in Rushworth's paddock and Rushworth must have branded it in mistake" the hide was quite dry when witness found it; it appeared to have been dried over a round stick and had been off about a couple of months; the hide was quite clean and there was no appearance of the beast having been dragged out of a bog:

To Mr. Thompson: There were three hides at Fox's and he said the brands should be on the whole of them; one of them was a clear skin and the third had Mr. Stevenson's brand; Rushworth told me he had told accused to pull a white beast out of a bog some two years before; when witness had looked at the hides he told accused he could go for the present, but in an hour or two I would be able to say whether I would want him again; since September I have searched accused's house half a dozen times; I do not think he was in Oberon half a dozen times; the fences are not very good and cattle of various owners were mixed; did not know that cattle were then dying from pleuro in the district; Rushworth had not reported the loss of this beast; he did not know it had been stolen until I told him; no brand could be seen on the hide as it was lying on the ground; when held up to the light it could be seen; could not see which brand was put on first; there is a hole on the neck of the hide; it was not cut in to hang up; would not say that the hide is from a beast that died from pleuro; this is often done out there; I showed the hide to the butcher at Oberon when he called at the station on one occasion.

Constable Howe gave corroborative evidence.

Richard Rushworth deposed that he was manager for Mr. Durack in September last; in March, 1898, accused had 42 cattle running at Hillsbury; Mr. Durack's brand was T.D., and he branded some during 1898; he missed a red and white cow about six weeks before the police told him about the hide; this cow had been running in the house paddock which adjoins accused's place; the hide produced is from the cow witness lost; about 8 years ago witness allowed accused to skin a strawberry cow that had died; accused took the carcass and witness took the skin; it

the carcass and witness took the skin; it was one he bought from Mr. Cunningham; since then he had not had authority either to kill or skin any cattle of Mr. Durack's; the red and white cow was in good condition and there was nothing wrong with her when witness last saw her in August; the hide produced was from a slaughtered beast.

To Mr. Thompson: Cattle were not dying of pleuro at this time; accused's house is about 200 yards from Tillsbury house; any slaughtering

going on at accused's could not be seen from the house as it was over the hill; Mr. Durack never wrote me telling me not to have any more cattle skinned as it was dangerous; my wife never showed accused a letter from Durack; my wife is not here to-day; Kessey served her with a subpoena and let him fetch her here; if her expenses had been paid she would be here; she kept the books and did all my correspondence; I cannot read or write; do not know Mrs. Murphy complained about dead cattle lying in the creek; accused pulled out two that were lying there; Mr. Durack gave no orders about not skinning cattle that were diseased; the cattle were allowed to lie on the ground without skinning.

John Shingsbury deposed to helping Rushworth to brand Durack's cattle.

George Piper, an employee of Mr. Fox, Oberon, deposed to having purchased, for his employer, three hides from accused on the day they were taken possession of by the police.

Thomas Durack identified the brand on this hide as his; he had given his manager instructions to skin all beasts whenever practicable and keep a record; he never gave authority to others to skin any beasts; he was sure the beast was slaughtered.

For the defence.

John Kessey, accused, deposed that he sold the hide to Mr. Fox; afterwards Constable Taplin spoke to him about that and others he had sold; the beast from which the hide produced was his; it had died from disease and he then skinned it; the hide was hung on a pole near his house and it hung there from July to September; Rushworth had given him permission to skin beasts which had died on the creek, on condition that he dragged them out of the bog; his brother Henry and the three Foleys had skinned cattle of Duracks that had died from pleuro; in March or May, 1898 he killed a beast and gave portion to Mrs. Rushworth; the day he left Oberon he called on Rushworth to explain about the hide; Rushworth was not in; he then left Oberon to search for work; he had been living about Bathurst; the hole under the bed was a cellar in which they kept butter; it was covered with a trap door.

To the Crown Prosecutor: The hole in which the police found me is a cellar used for butter; I have never been hiding there before; it has been there over 80 years; I have often

been to the cellar for butter; I went into the cellar on this morning to hide from the police; I knew they were after me but did not know the charge; I knew if they once got hold of me what they are capable of and that I would not get bail; I did not get away from the police in Oberon but went out to see Rushworth because the police would make up a case against me; the constable did not tell me the TD brand was on the hide; I pointed out my wife's brand; when I left there I did not know there was any question about Durack's cattle; between September last year and last May I was working in Bathurst; I went home for the purpose of giving myself up to the police; I have been in trouble for pig stealing, but I was not guilty; I had been in trouble before this, about 80 years ago; it was late in 1896 or early in 1897 Rushworth told me I could skin beasts, but soon afterwards he told me not to skin any more.

John Kessey, son of accused, deposed that he sold Rushworth 89 cattle in March, 1898, the cattle belonged to the family, but father did not own them; witness could not swear whether the hide was off one of those cattle.

Mr. Thompson addressed the jury.
His Honor summed up.

(Case proceeding.)