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BATHURST CIRCUIT COURT.

(Abridged from the Bathurst Times.)

FRIDAY, OCTOBER 14.

BEFORE Mr. Justice Milford.

Henry Baker, on bail, was indicted for that he on the 6th day of September, 1864, at Currajong, did falsely, wickedly, maliciously, and corruptly commit perjury. After the examination of two witnesses, the Crown Prosecutor (Mr. Butler) said he must give up the case. The jury were then directed to return a verdict of not guilty, and the prisoner was at once discharged.

Richard Norris and Henry Stratton were indicted for that they did, on the 18th May, 1864, fire a pistol, loaded with gunpowder and divers leaden shot, at and against one William Webb, with intent to kill and murder him. There was a second count charging the prisoners with shooting at the said William Webb with intent to do him some grievous bodily harm. From the evidence, it appeared that the store of Mrs. Webb, at Mutton's Fall, was visited by the prisoners between eight and nine o'clock of the 18th May, when John Tinck, Mrs. Webb's nephews, William Webb, Anne Webb, and their mother, Mrs Webb, were engaged in a barn or stable, at the rear of the premises, husking corn. They were on foot, their horses being hung up at a fence a little way off. The attention of Tinck was first attracted by the barking of a dog, and he went out to ascertain the cause. He saw William Webb confronted by the prisoner Stratton. The other prisoner, Norris, appeared at the stable door, and ordered Tinck and the other persons in the stable to bail up, at the same time presenting a gun at them. He told them all to go into the kitchen. Tinck requested him not to hold the gun in such dangerous proximity to Miss Webb's face, when he turned towards him (Tinck) and ordered him to go first, threatening to blow his brains out if he did not move at once. It was a bright moonlight night, and Tinck saw his assailant's features distinctly. Miss Webb got out first, and ran away. Norris ran after her, saying he would bring that —— back, when Tinck seized the opportunity thus afforded him, and escaped in the opposite direction. As Tinck was running he heard the report of a gun or pistol in the direction where William Webb was bailed up by the prisoner Stratton. He returned shortly afterwards and found the prisoner gone. Next morning the tracks were followed and the prisoners overtaken and apprehended by senior constable Wood, about twenty-one miles from Mrs. Webb's. Mr. Innes submitted that under the indictment there was no case to go to the jury, as the indictment was not supported by the evidence. The prisoners were charged with shooting at William Webb "with a pistol loaded with powder and divers leaden shot," and he contended that to sustain a conviction it must appear that the pistol was loaded with a bullet and divers leaden shot. Mr. Dalley followed in support of the objection. Mr. Butler replied. His Honor ruled that it was necessary to show that the pistol was loaded with a bullet or divers leaden shot, or some other material in the place of shot by which life might be taken or grievous bodily harm done; and directed the jury to acquit the prisoners, which they accordingly did. The prisoners were, however, retained in custody, there being another charge against them.

James Feely, charged with stealing a horse, at Thorpe's Pinch, on the 6th of July last, the property of Thomas Case, was found guilty, and sentenced to two years' imprisonment with hard labour, to commence at the expiration of a former sentence of ten years on the roads.

SATURDAY, OCTOBER 15.

Richard Norris—who, along with Henry Stratton, had been acquitted on the previous day—was indicted for that he did, at the Fish River, on the 18th of May, 1864, being armed with a certain offensive weapon, to wit, a gun, feloniously assault one Hannah Webb, with intent to rob the property of Ann Webb against her will. In a second count the prisoner was charged with assaulting one William Webb with the same weapon, and with the same felonious intent. There was also a third count which charged the prisoner with feloniously assaulting one John Tinck with the same weapon, and with the same intent. (Henry Stratton, though not upon his trial, was also placed in the dock for purposes of identification.) The case was clearly proven on the evidence of senior constable George Wood, John Tinck, Hannah Webb, and William Shepherd, whose evidence was substantially the same as that given on the trial of Norris and Stratton jointly upon the charge of "shooting with intent to kill and murder." For the defence,

Thomas Ryan was examined, and attempted to prove an *alibi*. After an absence of a few minutes, the jury returned into Court with a verdict of guilty under each count. His Honor said he would reserve sentence till after Stratton's trial; but as the jury had found Richard Norris guilty, which they could only have done on the basis that the witnesses for the defence had perjured themselves, he felt that it was his duty, for the sake of example, to commit at least one of those witnesses. He then ordered Thomas Ryan to be brought before him, and committed him to gaol to await his trial for perjury at the next assizes.

Henry Stratton was next arraigned under an indictment similar to that of Richard Norris, only with the addition of a fourth count, which charged him with having assaulted William Webb with intent to rob him. The same witnesses having been examined for the prosecution, as in the previous case, and no witnesses called for the defence, the jury brought in a verdict of guilty on the first and fourth counts, viz. of an assault upon William Webb, with intent to rob Mrs. Webb and William Webb. Richard Norris was sentenced to ten years' hard labour on the roads. Henry Stratton to twelve years' imprisonment with hard labour.

MONDAY, OCTOBER 17.

Frederick Pelsley, Thomas Kessey, and Shadrach Grose were indicted for having, while under arms, waylaid, stopped, and robbed the Orange and Bathurst mails, on the 18th of June last. Mr. Dalley appeared for the defence. Senior-constable Armstrong deposed to searching the house of Kessey, who lives at the White Rock, on the 11th of July, under a warrant, and apprehended him on the warrant charging him with robbing the Orange mail. Found a shirt marked George Hayes, and a pair of boots; had a conversation with Kessey after he was arrested asking him if he had any fire-arms; he said "Yes," and they were planted under a truss of hay covered over with a tarpaulin; searched and found nothing. Constable M'Carthy corroborated the foregoing evidence; he went to Kessey's again, accompanied by Armstrong, in about ten days, and got a hat and mask (produced). The prisoners all wore masks, but they were sworn to as being in height, figure, and general appearance, the parties who stuck up the mail. One witness (George Milne) averred that he "saw *Grose's* face and could positively swear to his identity," and he "believed the two other prisoners from their height and general appearance, were the other robbers." The jury returned a verdict of acquittal as to Pelsley and Grose, and guilty against Kessey, who was sentenced to ten years' hard labour on the roads, or other public works of the colony.

James Kessey was charged with robbery under arms, he having, in company with others, at the Limekilns, on the 20th June last, stopped one Hugh M'Kinnon, a farmer and grazier, and taken from him one mare, bridle, and saddle, a poncho, a pair of socks, and 7s. 6d. in silver. Mr. Dalley defended the prisoner. Sergeant Lyons deposed to having, from information received, made a search in the house of the prisoner's father on the 12th July. He found a poncho under a bed in one of the bedrooms, which he was told was the prisoner's bed. The poncho was between the bed and the stretcher. The prisoner was then in custody. I found a pistol locked up in a drawer. Showed the things to the prisoner's father. Thomas Kessey, father of the prisoner, said: I remember the day my house was searched. I was shown the poncho that had been found by the police. I had never seen it before, and don't know how it came there. Hugh M'Kinnon swore to the poncho found as above described being his. He knew it by a private mark on one of the seams, which he sewed there with his own hands a day or two before the robbery. It was attempted to be shown that the poncho had been purchased for 15s at a mock auction in a public-house, kept by a man named M'Donald, but this failed, and the prisoner was found guilty and sentenced to ten years' hard labour on the roads.

Michael M'Namara, charged with stealing or unlawfully disposing of certain goods, the property of Messrs. Church, Brothers, of Sydney, on the 7th April last, was found guilty, and sentenced to eighteen months' imprisonment in Bathurst gaol, with hard labour.

Mary Beattie, whose recognisances had been estreated, in consequence of her non-appearance when called upon to take her trial, now surrendered, and Mr. Butler therefore

consequence of her non-appearance when called upon to take her trial, now surrendered, and Mr. Butler therefore prayed his Honor to reverse his order of forfeiture, to which assent was notified; the case to be transferred to the Goulburn assizes, to sit in April next. As a surety for her attendance, the recognisance of her brother in the sum of £50 was accepted.

The information against Patrick Lahey, for conveying tools into the gaol, was abandoned by the Crown, and the prisoner was accordingly discharged.

Patrick Lahey was again placed in the dock, charged with uttering a forged £10 note. In the absence of a material witness, Mr. Butler prayed that the trial might be postponed till next Circuit Court, to which proposition his Honor assented, and the witnesses were bound over to prosecute.

This concluded the criminal business.

CIVIL SIDE.

THURSDAY, OCTOBER 18

Before Mr Justice Milford, and a jury of four.

JARVIS V RUTHERFORD AND ANOTHER

This was an action to recover compensation for injuries sustained by the plaintiff by being, through defendant's negligence, cast out of a coach belonging to the latter. Plaintiff also sought special damages for injury to his business through his having been unable to attend to it, and for medical attendance, &c. Damages were laid at £2000.

Mr. Powell and Mr. Innes appeared for the plaintiff, and Mr Butler and Mr. Dalley for the defendants.

The plaintiff was a storekeeper and soap and candle maker, residing at Forbes. The defendants were coach proprietors, trading under the style and firm of Cobb and Company. The injuries forming the subject matter of the suit were sustained by the plaintiff on a journey to Orange. The plaintiff's case was, that after stopping at Boree to change horses, one of the fresh horses appeared to be restive; and before they had proceeded far the bridle of the off wheeler broke, the animal became unmanageable, and the vehicle was brought into violent contact with a tree, causing the plaintiff to be thrown out and rendered for a short time insensible, besides being severely bruised. The driver returned to Boree for other harness, and the journey was resumed. Plaintiff, in consequence of the injuries he had received, hastened to Bathurst, where he had friends, and for the purpose of obtaining the aid of Dr. Machattie. He felt easier when he arrived at Bathurst, and therefore did not send for the doctor. He remained in Bathurst two days, and then continued his journey to Sydney, where, though still subject to paroxysms of intense pain, he did not call in medical assistance, as he wished, if possible, to avoid such expense. He might have transacted his business in Sydney in three days; but owing to the injuries he had sustained was unable to do so within seven days. On his return to Forbes, he continued to suffer much from the injury to his right side, and after trying many expedients, from which he was unable to obtain relief, he called in Dr. Beattie, who at once ordered the application of two dozen leeches. Still being unrelieved, he requested Dr Beattie to consult with Dr. Daykin, who was accordingly sent for and attended at once. Plaintiff was for two months unable to walk without a crutch or a stick, and for upwards of a week could scarcely turn in his bed. He employed a person to conduct his business during his illness. In consequence of his illness, his wife was prevented from going to Sydney to select fancy goods, and he thereby lost the winter trade. He was obliged to close his soap and candle business, because he could not get anyone competent to manage it. He paid Dr. Beattie £4 4s. and Dr. Daykin £2; that was all the expense he incurred for medical attendance and medicine. His expenses in Bathurst amounted to £2—i. e., £1 a day; plaintiff wrote to the defendant Rutherford, before taking legal proceedings, to inform him of his sufferings and losses, and of his intention to seek compensation at law. Receiving no answer directly to this communication, he called upon Mr Barnes, defendants' agent at Forbes, and, in consequence of the interview with that person wrote a second letter to Mr. Rutherford, in which he offered to make any reasonable compromise, and to have the matter settled by arbitration. He estimated his loss by the soap and candle business during the two months at £50, that being the season for the soap trade. During his illness, he went to his friend Mr. Stott's place for three days, and then to the Billibong for change of air—to his own store; but he was not able to attend to his business there. He had told the coachman that he did not blame him; and remembered telling the agent at Orange, who wanted to charge him 2s. 6d. extra because he had not booked through from Forbes to Bathurst, that Cobb and Co. might consider themselves fortunate if they did not have to pay heavy damages in consequence of his having been thrown out of the coach; he did not remember mentioning the accident at the booking-office in Bathurst, but spoke about it to Mr. Barnes, who had come to Bathurst on business; nor did he mention it at the booking-office in Sydney.

Other witnesses confirmed the plaintiff's story, but it appeared from the medical evidence that the injuries had been magnified by plaintiff's neglect to obtain professional aid in due time.

For the defence it was proved that when plaintiff called at the booking-office in Sydney he did not appear to be suffering. Also, that when he was being booked at Orange for Bathurst, he refused to pay more than £1, although the fare was £1 2s. 6d., saying that £1 was enough, considering the accident he had met with, and adding nothing about any claim for heavy damages. Likewise, that he made no complaint on his arrival in Sydney. James Rutherford (one of the defendants) stated that he had never seen Mr. Jarvis till a day or two ago, when he was pointed out to him in Bathurst. There was a separate harness for every horse, and he had a careful, steady groom at Murga (who had been in his employ several years), whose business it was to keep it in order. (He described the vehicle.) It was dangerous for a person to place himself in the bottom of the buggy as Mr. Jarvis had done; luggage was never placed there because it was liable to be jolted out; he never heard of a passenger sitting there before, and would not allow it if he were in the buggy. The buggy was so constructed that a passenger might safely go to sleep if he sat firmly upon the seat; it would be almost impossible for him to fall out. William Peacock, a fellow-passenger with Mr. Jarvis when the accident occurred, remembered having heard the coachman tell Mr. Jarvis several times not to sit in the bottom of the buggy, as it was dangerous to do so; Mr. Jarvis said he was all right. The horses had been going very steadily for some time, when they shied at a small bush which had broken across the road. One of the near wheels of the buggy was brought into contact with a sapling, and Mr. Jarvis was thrown out. Mr. Jarvis had been asleep, and did not get upon his feet before he was thrown out. After the buggy had passed the sapling Mr. Jarvis having been thrown out, the driver was trying to pull up, when the bridle of one of the horses broke. The horses then took fright and ran amongst the trees. Matthew Coovey, the groom, and Clayton, the driver, confirmed the foregoing evidence.

His Honor, having summed up, the jury after ten minutes' consideration found a verdict for the defendants.