CHAPTER XXV.

ELECTIONS TO THE LEGISLATURE OF NEW SOUTH WALES.

SYNOPSIS.—Qualification of Electors.—Rev. Dr. Lang.—His Religious Fanaticism.—The First District Election.—The Qualification of Electors.—The First Melbourne Election.—The Purge War Crisis.—"Orange" and "Green."—Cundell's Beer "Repealed."—Judge Wilks a Political Convenor.—"Are the Compounding Here Come?"—The Polling Day.—Mayor Condell First Parliamentary Member.—Crown's Deprison.—Mayor St. John, Dissolute in mode, et Forbitter in me.—The "Red Act" Read.—Light-weight Darcy.—Judge on the Imperial Ten.—Green's Auction Mart Commanded.—The Mob First On.—Green's Affractions.—Green, Greenaway and Martin, Discharged from Custody.—Mr. Edward Curr's Sectarianism.—Condell's Resignation.—Mr. Joseph Philip Robinson his Successor.—Resignation of Messrs. Helen and Thomson.—Election of Sir Thomas Mitchell and Mr. Abdykins William Young.—Resignation of Sir Thomas Mitchell.—Mr. Benjamin Boyd his Successor.—Resignation of Messrs. Walker and Youg.—Captain O'Connell and Mr. T. E. Boyd their Successors.—Mr. Benjamin Boyd Resigns his Seat.—Mr. Edward Curr's Election.—Mr. T. E. Boyd resigns his seat.—Mr. E. J. Brewster's Return.—Mr. Edward Curr's Resignation—Election of Mr. John Leslie Foster.—Resignation of Sir Lang.—Mr. John Moer Army's Election.—Mr. Brewster's Resignation.—Election of Mr. C. H. Ebden.—The General Election of July, 1848.—A Political Conf de Maitres.—Memorial to the Secretary of State.—Election of Earl Grey as Member for Melbourne.—The Duke of Wellington, Lord Brougham, Lord John Russell, Lord Palmerston, and Sir Robert Peel, Nominated for the District.—Election of Messrs. McKinnon, Greenaway and Martin.—Mr. William's Resignation in 1849.—Mr. William MacArthur his Successor.—Resignation and Defeat of the Duke of Wellington.—Mr. Edward Curr's Resignation.—Mr. J. L. Foster his Successor.—Dr. Palmer's Resignation.—Mr. Henry More succeeds to the Vacancy.—Mr. McKinnon's Resignation.—The "Iron Duke" again Defeated.—Mr. McKinnon Re-elected, 1849.—Messrs. Foster and McKinnon's Resignations in 1850.—Election of Messrs. Helen and Thomson.—Resignation of Earl Grey.—Election of Mr. William Westgarth.

The colony of New South Wales (including, of course, the district of Port Phillip) was governed by a Nominee Council until the enactment 5 and 6 Vict. C. 76 (30th July, 1842), when the first concession of anything approaching Representative Government was granted. By this it was ordained that a Legislative Council should be constituted, consisting of 36 members—24 to be elective, and 12 nominated by the Crown. Of the former, Port Phillip was to return a fourth, i.e., one for the town of Melbourne, and five for the district. The qualification of electors was an estate of freehold in possession, of lands or tenements in own right within the district for which the vote was given, of the clear value of £200 at least, above all charges and incumbrances; or a householder occupying a dwelling of a clear annual value of £25 at least; the voter to be 21 years of age, either a natural born subject, or naturalized, or the holder of letters of denizenship according to law, and an occupier for six months prior to issue of the writ of election; but persons attainted or convicted of treason, felony or infamous offence, could not vote unless pardoned or had undergone sentence or punishment. No person was eligible to serve as a member unless a subject or naturalized, 21 years old, and possessing for his own use and benefit freehold estate in New South Wales, of lands or tenements, of the yearly value of £200, or worth £2000, above all charges and incumbrances. The Council was to continue for five years; but the Governor had power to dissolve it sooner. The Act came into operation in 1843, and the people grew excited over the novelty, and determined that the first elections, at all events, should be carried on with no lack of public spirit. As a consequence there was a great deal of preliminary agitation and canvassing. Election meetings were held, money was melted, liquor drank, and bad blood engendered. It was announced that the Reverend Dr. Lang was coming from Sydney to offer himself as a candidate; and this intensified the excitement, because of his past writing and speaking against, and his extremely intolerant views respecting, the Irish Roman Catholics. A Papist was Dr. Lang's earthly abomination, and the mere name of one of that benighted creed had much the same quieting effect upon him as the shaking of a red
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blanket before a wild bull. He was a man of exceptional ability and untiring energy; but a kind of political church militant, never out of trouble with his own or some other sect. He invariably fanned the smouldering embers of religious fanaticism. For Melbourne, Mr. Edward Curr was a candidate, and his admitted talent and past public services led to a presumption that he would not be opposed; but this belief was unfounded. From the Civic Elections of the year before there survived a remnant of party feeling, which the presence of Dr. Lang (now arrived) roused to a wild frenzy; and thus the efficient representation of the town sank into a very secondary consideration, as compared with the gratification of sectarian intolerance. Much difficulty was experienced in getting a party of sufficient social standing to enter the lists against Mr. Curr, whose special fitness for the post was universally acknowledged; and but for Curr himself, the probability was that he would have had a "walk-over." Lang was at this time a declared candidate, and he, Curr and others, addressed various meetings of the constituencies. Mr. Curr was very dogmatic and overbearing, and at one of his gatherings he declared that if Dr. Lang were returned for the district, he (Curr) would not go to Sydney as member for Melbourne. This was crossing the line and no mistake. Many who appreciated Curr's ability rebelled against his bounce. Renewed efforts were made to get up an opposition, and a rival was finally found in Mr. Henry Condell, the brewer (who was also Mayor), a vain, empty-headed individual, and whose candidature, under ordinary circumstances, would have been resented as an impertinence.

The First District Election

Was the first to take place, and the nomination was fixed for the 17th June. The hustings was erected at the Cattle Market, now the intersection of Elizabeth and Victoria Streets, and from an early hour its vicinity was garrisoned by all the available police force (cavalry and infantry), supplemented by a number of ticket-of-leave convicts, whose Major St. John, the Returning Officer, in some perverse freak of humour, had sworn in as special constables. He also issued cards of admittance to the stage, without which no person was permitted to ascend to the reserved circle. About 11 o'clock the Committee and supporters of Sir Thomas Mitchell made their appearance, wearing scraps of ribbon and waving small flags. Dr. Nicholson's partisans were followed by those of Messrs. Ebden and Walker, who chartered the Town Band, and the musicians wore white and red rosettes, having their instruments ribanded in similar finery. They also sported half-a-dozen banners inscribed with "Separation," "Independence," "Education," etc. The last to appear was the thoroughly hated, and thorough good hater—the Reverend Doctor, encircled by a cordon of backers, in a state of ultra-excitability. Each candidate was loudly cheered, but Dr. Lang was saluted with a hurricane of groaning and cheering, the groans preponderating, and the united discord of sounds echoing through the surrounding forest. Lang boldly confronted the bellowing human herd, with a peculiar physiognomical expression of half sneer worked into a mixture of smile and frown. In response, the vocabulary of back-slum slang was put under requisition for terms sufficiently opprobrious, and the vilest threats and most foul-mouthed epithets were hurled at him. Firm as a tower, and cool as a cucumber, he never quailed for a moment as he gazed on the sea of contorted faces surging below him. The spirit of the game-cock was now in his eye, though, as a rule, he preferred the distant war-whoop to a close quarter combat. During a temporary calm the following nominations were made:

Dr. Alexander Thomson, proposed and seconded by Messrs. James Montgomery and Scene Craig.

The Rev. John Dunmore Lang, by Dr. Peter M'Arthur and Mr. George S. Brodie.

Sir Thomas Livingstone Mitchell, by Mr. J. L. Foster and Captain M'Crae.
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Mr. Charles Hotson Elden, by Captain G. W. Cole and Mr. Alfred Langhorne.
Dr. Charles Nicholson, by Messrs. A. F. Mollison and Archibald Cunningham.

It was arranged that each candidate, or representatives for the absentees, should address the assemblage in the order of nomination. They did so, and all obtained a fair hearing except Lang, who was subjected to such a storm of hooting and hissing that after several persistent ineffectual efforts to speak, he was obliged to give way, and submitted with a bad grace. A show of hands was next taken, and declared to be in favour of Elden, Nicholson and Lang, whereupon Dr. Thomson demanded a poll, which was appointed for the 20th June.

The whole province was one electorate, with three polling places, viz., Melbourne, Geelong and Portland. On the polling day there was only one booth opened for Melbourne, viz., that at the Lamb Inn (now Scott's Hotel). The gross poll at the several localities named was:—For Elden 228, Walker 217, Nicholson 205, Thomson 185, Lang 165, Mitchell 157. The first five were consequently elected.

The official declaration was made on the 24th June, in the same place as the nomination. Elden had the Town band playing through the streets for some time before noon. He was the only successful candidate present, and returned thanks in a ponderous, inflated speech. Proxies appeared on behalf of Walker, Nicholson, and Mitchell. Thomson and Lang were both absent and unrepresented, the former having returned home to Geelong that morning and the latter started overland for Sydney. At the conclusion of the ceremonial, when Elden, his brother, Edward Curr, and J. L. Foster, were about to be driven away in Elden's carriage, their supporters unshod the horses, relays of shouting volunteer bipeds took their places and the vehicle was hauled at a quick pace through the streets. But all the interest taken in the "chairing" was suddenly eclipsed if not extinguished by the welcome news that a mandate of the Executive suspending Judge Willis from office, had been received from Sydney.

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When a contest was known to be inevitable it evoked the fiercest feelings of political antagonism and religious acrimony. Every disturbing element was called into play, the exuvia of the internecine feuds of the old country were re-heated, and the discordant party cries of "Orange" and "Green" were raised in the furore. Election meetings were held in the several Wards, where the tumultuous rows were most discreditable. House-to-house canvassing was made, and threats and intimidation of every kind freely interchanged. Exclusive dealing against the shopkeepers was vowed; the Irish publicans swore lustily they would never again buy a barrel of Condell's beer; and the Irish tipplers were as emphatic against ever drinking it. As a climax to these indecencies, the Resident Judge (Willis) dishonored the ermine of his high office by requesting the retailers, with whom he did business, to vote for Condell; and one day, whilst on a vote-touting expedition, Willis and Curr met face to face in the shop of Mr. Charles Williamson, a Collins Street draper (lately Alston and Brown's), where the Judge waxed so personally offensive that Curr's forbearance only prevented the public scandal of a pugilistic encounter between the judicial canvasser and the candidate.

The 15th June, 1843, was the period appointed for the Borough nomination, and a hustings was put up on a stretch of waste land where the Town Hall now stands. Alderman Russell was Returning Officer, in consequence of the disqualification of the Mayor, through his being a candidate. Curr was the people's favourite, and his Committee having secured the Town Band, the strains of "See the Conquering Hero Comes " were heard, accompanied by Curr and a numerous body-guard of friends. Condell arrived soon after with his principal supporters.

The writ was read by the Town Clerk, and the Returning Officer eulogised that high privilege, the pride and the boast of every loyal subject throughout the whole of Britain's Isles, namely, the System of Representation," and concluded a brief though excellent address with a hope "that they fully appreciated the trust reposed in them—the first electors for the Borough of Melbourne—the capital of Australia Felix."
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Mr. Edward Curr was proposed by Mr. George Were, and seconded by Doctor Dixon; whilst Messrs. John Porter and James Brown acted as political sponsors for Mr. Henry Condell. The speeches of Messrs. Curr and Dixon were deliveries of marked ability. The Currites obtained fair play, but the Condlites, especially the Mayor himself, were subjected to much interruption. But, though not a justification, there was this difference, that Curr was probably the ablest public man in the province, and his opponent just the reverse. The show of hands was very much in favour of Curr, and on the demand of Condell, a poll was fixed for the 17th June.

The First Election Polling Day

Was an event to be long remembered in Melbourne, for never, in the election annals of the colony was there fiercer animosity, grosser provocation, or more riotous excesses. The opposition was an intensely factious one, started not so much to oust Curr as to glut the morbid appetite of national and religious malignity. To accomplish this the fierce flame of unholy bigotry was lit up alike in the public meeting and the tap-room, on the canvassing tour, and in the ranting conventicle. The two cliques of which the Corporation was composed, were answerable in no small degree for such a deplorable state of things; and the arch-disturber Lang was on the spot stirring up the fires of fanaticism in something of the manner of a stoker raking his furnace. It was providential that the day passed over without loss of life, and miraculous that Lang was able to retire that night to his peaceful pillow without sustaining grievous bodily harm.

There was one polling place in each of the four Wards, opening at 9 a.m. and closing at 4 p.m. Then, and for years after, there was no such thing as vote by ballot—nothing but straight, outspoken, open voting in much the Corporation style. It was done in this way. Each elector on presenting himself received a card on which the names of the several candidates were printed. He erased the names for which he did not vote, and after signing returned the document to the Returning Officer, who thus read aloud “John Smith votes for Tom Jones,” and if Tom Jones was a popular idol, John Smith was greeted with loud cheering; but if not, the voter, after performing a duty to his country, on leaving the room was pushed and knocked about, and getting into the street was lucky if he did not meet with even rougher treatment from a half drunken crowd looting outside; and the hugging and husling, cheering and groaning, blessing and cursing, according to the humour of the rabble, was a source of anything but amusement to the victim of them. Furthermore, the receptacles into which the cards were dropped, were repeatedly opened, the votes counted, and the state of the poll issued on slips every hour, sometimes oftener. These bulletins would be posted outside the door, and so far from allaying, only served to increase the excitement tenfold, and heated the bubbling passions of the populace to boiling point. The friends of the candidates were to be seen from cock-crow running about, bustling and busying like bees, their fussiness encumbering their utility, and their verba embarassing their facta. Curr’s adherents worked openly; Condell’s to a great extent sub rosa; and yet, contrary to general expectation, the Mayor led from the start, was never collared during the race, and was landed at the winning post by a majority of 34, the numbers at the close of the poll being—Condell 295, Curr 261.

In the afternoon Curr was so far behind as to render his return hopeless. He was the favourite, and his backers were in a state of desperation. Some of Condell’s voters were openly threatened, and, after voting, were not only abused in unmeasured terms, but in some instances assaulted. As the time for announcing the poll approached, the excitement grew almost uncontrollable. The towns-people congregated in thousands in front of the chief polling place, the Mechanics’ Institution, in Collins Street, and the approach was kept by a body of special constables. The point of endurance had been at length reached, and there was about to be an explosion, when Major St. John, the Police Magistrate, galloped up the street, waving a policeman’s truncheon over his head, and followed by Captain Dana, the chief of the native police, with four white and six sable troopers. St. John had tact in dealing with a mob, for he was not devoid of presence of mind and good humour in emergencies; he had also a stock of mixed bounce and blarney, which went well together, the treacle and vinegar forming an amalgam which was taken with a degree of relish, where either dose by itself would be rejected. He said something in this strain—“Well, now, my men, you know I am your friend, and come, like good fellows as you all are, have sense, and let there be no
rowing; for, if you get up a fight, by — it will be worse for you! The election is now over, and what’s
the use of losing temper about it? The thing is settled now, and no amount of broken heads can unsettle
it. I have always found the Melbourne men good-humoured, decent fellows, and I don’t want them to
make fools of themselves now. All of you had, therefore, better disperse peaceably, for if you don’t I’ll
precious soon make you. Now, like good fellows, do go home quietly, and God bless you!’” The Major
was patiently heard to the end of his oration, when he was astounded by a stunning bombardment of
yelling, groaning, and other indescribable vociferations, which infuriated him to a white heat. Soap
was no longer at his command, and, pulling a copy of his favourite “Riot Act” from a breast pocket, he read
it in loud and angry tones. The clamour continuing, on a signal from St. John, Dana and his troopers
drew their swords, and fiercely brandished them, as if fighting with the air, but, beyond a little flashy
pantomime, did nothing more. An attempt was made to unsear the troopers, who showed much
forbearance, and in only one instance, where a half-made “drunk” endeavoured to pull one of them to the
ground, was a slight flesh-wound inflicted. Whilst all this was going on in front, Mr. Curr, obtaining an
entrance at the rear of the building, appeared at one of the windows, and earnestly besought the people to
separate peaceably, as the declaration of the poll would not be made until Monday, the second day after.
He was received with loud cheering, intermixed with some groaning; but no disposition was shown to
comply with his entreaty. In a moment a storm of distant howling swept over the building, and it became
known that some of the Condellites were undergoing corporal punishment at the rear of the Institute, in
Little Collins Street. Away started the greater portion of the mob, round by Russell Street, to the back lane,
and off with them also galloped the Major and his whity-black pacificators; but the actual shindy was over,
and, after a hasty council of war, the leaders decided upon a plan of campaign. It was decided that the
evening’s amusement should take the form of guerilla scouting through various quarters of the town, the
army to be told off in battalions of fifties for the expedition. A maddened mob made sectional forays
through the several Wards, yelling like wild beasts, throwing stones, smashing windows, and insulting and
assailing wayfarers. The Police Magistrate sent couriers everywhere for assistance to enable him to abate
or stamp out the increasing popular fury. A detachment of the military then in Melbourne were quickly
turned out under the command of Captain Lewis, and every possible policeman was on the streets. From
battering and blackguarding to house-wrecking is only a step, and this small advance on the road to extreme
violence was soon made.

There lived at the northern side of Collins Street West, a few yards from the Elizabeth Street corner,
a Mr. David Young, the keeper of a grocer’s shop. Whether from any deficiency in himself or in his scales
I do not know, but he was known as “light-weight Davey.” His active interference on behalf of Condell
rendered him very obnoxious, and his establishment was the first to receive attention. One of the brigades
already mentioned paraded in front of his place, stoned the windows (the age of plate-glass had not yet
arrived), and doing much damage. Young was most pressingly invited “to come forth;” but “Davey” had
not the courage to rush into the lion’s mouth, and instead he was cute enough to remain as quiet as a cat-
hunted mouse until the storm blew over. The angry wave rolled up Collins Street, and next vented its
fury upon Williamson’s drapery mart (where Curr and Willis were so near playing the game of fisticuffs),
but the attack was discontinued, as it became known that Mr. Williamson had recorded his vote for Curr.
The Imperial Inn, a little further up on the other side, was next attacked. This was a tidy, well-conducted
hostelry, kept by a small barrel-bodied individual known as Henry Baker, whose peculiarities of
temperament did not personally attract people towards him, but whose shilling dinners—a good square
meal—were well worth the figure, and went down more pleasantly with his patrons than he did himself.
His political proclivities were, however, on the wrong side, and he, or rather his “Imperial,” was now in for
it. The place was fusilladed, and one huge wedge of rock, propelled with catapultic force, dashed through
a large window, and landed amongst a general state of smash. None of the inmates were injured. Another
contingent operated in Elizabeth Street, at the auction mart of one Thomas Greene, situated about half-
way on the west side between Bourke and Little Collins Streets. Greene, or someone from inside, retaliated by
firing a pistol into the crowd, and, as mostly happens, hitting an innocent, or at least an unoffending, man
named Patrick Murray. Wounded in the back he fell to the ground, whence he was lifted on a door
unhinged in a hurry, and borne like a martyr from the field. The mart was now cannonaded with much
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fury, the missiles bursting through the window-shutters and making piecemeal of the crockery, glass, and other breakables stored within. Some inmates retreating to the upper region discharged three shots in quick succession from one of the windows, without killing or dangerously wounding anyone. The only casualty happened to a Mr. R. Curie, a clerk of the Returning Officer's, who received part of one of the discharges in the foot. The mob, goaded to fury by resistance, made an ineffectual attempt to force the street door, and lynch anyone found inside. Stones and brickbats were freely resorted to, until the Police Magistrate, with some soldiers, and mounted and foot police arrived. Major St. John succeeded better on this than on the prior occasion at the Mechanics', and displayed much judgment and determination. Obtaining a parley with the ringleaders, he premised if they would disperse to force admittance to Greene's house and arrest all he found within; so the mob accepted this assurance, the storming was arrested, and the mob was dispersed. The Major kept his word, and, insisting upon an entry, was admitted, when Greene and two other persons were apprehended, marched away amidst a din of derisive shouting, locked up for the night in the watchhouse, and refused bail.

The residence of the successful candidate, in Little Bourke Street East, was also interviewed, but escaped with trifling loss. Further up the same street was a tavern known as the Elephant and Castle, kept by Mr. Matthew Cantlon, against whom the mob had what is colonially termed a "down," and thither they moved on from Condell's. The place was attacked, the bar windows broken, and some interior injury inflicted, when a shot was fired without taking effect. About ten o'clock the rioting had died out, and of the tempest remained occasional drunken quarrelling and the uttering of loud vows of vengeance. As precautionary measures against a possible violent reaction, all the hotels were peremptorily compelled to shut up their "drinkeries" until morning, and the police patroled the highways and byways until far after "cock-crow."

Through all these scenes of tribulation, the Rev. Dr. Lang, mischief-maker-in-chief, and principal factor in producing this outbreak of popular incendiarism, was at the private residence of his files Achates, Mr. William Kerr, in West Lonsdale Street, convivially enjoying the company of a select coterie of "brither Scots," little recking the direful consequences, which might have sprung from the civil commotion they were instrumental in fomenting. Dr. Lang had been advertised to preach on the following Sunday at the Collins Street Independent Church; but though there was a numerous and expectant congregation, the pulpit knew him not. It was rumoured that he had received a mysterious premonition not to attend; and his friends averred that there was a banditti of three or four disguised bravoes in the gallery, with secreted weapons, in waiting to assassinate him. There is little doubt that this was a cleverly got up canard to cover the Doctor's retreat, or veil his cowardice. If met with on the polling evening he might have had a crack on the head or a knock over; but that there was any deliberate plot to shoot or stab him either in the dark or light is simply a fiction. In truth his courage failed, he showed the "white feather," and although he ostentatiously vaunted himself a missionary of "peace and goodwill amongst all men," his practice and his preaching were as disuniting as fire and water.

On the Monday morning, three individuals, viz, Thomas Greene, Christopher Greenaway, and William Martin, were charged at the Police Court with discharging firearms, intending thereby to do bodily harm. There was no evidence whatever against them—not a shred of proof as to identity; and under the circumstances, the Bench of Magistrates ordered them to be released unconditionally.

The official declaration of the poll was made at noon the same day—the ceremony was a mere formula, the monotony of which was only relieved by a protest against the return on certain technical grounds, to test which a petition would be duly transmitted to Sydney. Nothing further was ever done in the matter. The excitement would have soon blown over but for an unpardonable indiscretion of the defeated candidate, who would be no party to an early burial of the hatchet. Mr. Edward Curr was one of the most trusted public men and prudent advisers of the District in its early agitations; but, with all his showmanship and ability, was not a Nestor either in Council or newspaper. A day or two after the closing of the election, Mr. Curr published one of the most inflammatory and injudicious epistles that was ever penned. In it he inveighed with turbulent bitterness against the sectarianism infused into the contest by the presence and the actions of Dr. Lang, and the virulent attacks levelled against the Roman Catholic fraction of the population by the Langite organ, the Patriot. The following extracts were deemed so
presumptuous, unauthorized, and ill-timed, that their writer was never forgiven by either friends or foes—

"For the sake of peace and harmony, I will retain my position (of leadership) during the good pleasure of my Irish supporters. They will have a leader against "Orange" ascendency, and they can find a thousand worse than myself before they obtain one who is better; and Melbourne would be laid in ashes on the first occasion if the leadership of that warm-hearted and insulted people were transferred from an English Conservative to an Irish agitator." I have not sought my present bad eminence, but there are those in Melbourne who must consider themselves as wearing their ears through my mediation, and I wish them to remember that the unlettered mob who should crop them are not one whit more overstepping their bounds than are those wicked and heartless men, who wantonly set up the detestable flag before which I have for the present been vanquished." Though but a mere youth at the time, I had better opportunities of knowing more of the Irish feeling and Irish temperament than Mr. Curr. I have as much knowledge of the same subjects now possibly as most men in the colony; therefore, calmly looking back over the current of time which a period of forty years has traversed, I can safely declare that any "English Conservative" who, from the White Settlement of the country to this day, ever fancied that he could hound on the Irish colonists, like so many wild Indians, to worry and scalp any other section of society, must be the victim of some wicked hallucination begotten by cerebral disturbance, or disarrangement of the nervous system, sufficient to exclude him from the class of beings presumed to be morally and legally accountable for their actions. And so ends a narrative of the First Parliamentary Election held in Victoria, as written by a spectator of some of the incidents therein described.

At a time when it was a matter of supreme importance to Port Phillip to be ably represented in the Legislature of New South Wales, the defeat of Mr. Curr was little short of a public calamity; and though everybody in his conscience felt it to be so, everybody was far from openly acknowledging it. Mr. Condell, on the opening of the Session, bade good-bye to his Little Bourke Street Malting, and set off to attend to his newly-born Senatorial duties, bearing with him to Sydney neither social weight nor ordinary ability. He was a dummy—barely a respectable one; a mere voting machine. His absence from business soon told on him, the listlessness of Sydney life to a man of his mental capacity quickly tired him, and in February, 1844, he resigned his seat. Mr. Ebden and Dr. Thomson for private reasons followed suit a few weeks after, thus extinguishing for the time all resident representation. The election for the town vacancy so created was held on the 12th March. The only candidate offering was Mr. Joseph Phelps Robinson, a Sydney merchant, and largely connected with banking interests. He was proposed by Captain Cole, seconded by Mr. H. G. Ashurst, and returned as a matter of form. Mr. Robert Fennell, a relative and his Melbourne agent, briefly returned thanks on his behalf, and all was over in ten minutes. Mr. Robinson continued to represent Melbourne until the Earl Grey election, and, with the exception of Dr. Lang, was one of the best of the many non-resident members that followed in subsequent years. He was an Irish Quaker, born on the banks of the Suire, a romantic river, in that well-known county of Southern Ireland, Tipperary. He was a liberal benefactor of the Mechanics' Institution and the Melbourne Hospital.

The seats vacated by Ebden and Thomson were filled the month after, and, singularly enough, called forth an acrimonious contest, got up by some of the most rampant of the Curr opponents at the first election, who, in the most ludicrous manner, changed not only sides, but colours on this occasion. No local man could be induced to stand; and as for Curr, like a modern Achilles, he retired to his tent at Abbotsford, and sulked his time away. He was therefore out of the question. Two officials of the New South Wales Government offered themselves, for there was no such awkward stumbling block as an "Officials in Parliament Act" to bar the way. They were Sir Thomas Mitchell, the Surveyor-General (the only rejected candidate at the first election), and Mr. Adolphus William Young, the Sheriff. They were influentially supported, and up to the nomination day (16th April) it was believed there would be no opposition. At the eleventh hour, however, a rival was brought forward in the person of another Sydney gentleman, Captain Maurice C. O'Connell, without either his knowledge or consent. This was a factious movement (instigated by an antipathy to the squatters), by Messrs. William Kerr, J. P. Fawkner, H. W. Martiner, and others who yelped most loudly in the anti-Irish cry raised by Dr. Lang on behalf of Condell. These gentrty now saw no inconsistency in "jumping Jim Crow," and because the "Captain" was a
namesake and cousin of Daniel O’Connell, then at the zenith of his Irish political career, they acknowledged

that a good deal after all might be made out of a name, and through its agency the Irish vote and Irish

influence could be made to serve their purpose. The “Orange” banner was consequently muffled, the

“Green” substituted, and the Orangemen of Melbourne for the nonce became apparently as ardent

admirers of the detested colour, as the Prince of Orange was in reality at the “Battle of the Boyne,” when

he issued an order that his soldiers should pluck the green branches of the adjacent trees, stick them in

their caps, and fight under the cognizance of the green cockade. Mr. William Verner was appointed

Returning Officer, and the nomination was held on the 16th of April, on a hustings erected in front of the

new (now old) Court House. Sir Thomas Mitchell was proposed by Mr. James Simpson, and seconded by

Dr. M’Crea; Mr. A. W. Young, by Mr. J. L. Foster and Major Firebrace; Captain O’Connell by Messrs.

Samuel Raymond and Thomas Wills; Mr. Edward Curr, 

notable discord, quite unexpectedly advocating

the Captain’s election. Mr. Young was the only candidate who appeared in person and delivered a short

speech, and a poll was appointed for the 23rd at Melbourne, Geelong, and Portland.

And now, by one of those extraordinary political card tricks which some whim of chance occasionally

affects, a coalition was evolved as incongruous at any political shuffle that has been accomplished since. To

compare it with the veering of a weather-cock would be incorrect. Here was Edward Curr, the self-dubbed

leader of “the warm-hearted and impulsive people” (the Irish), whipping in his “unlettered mob” to obey

the behests of the malignant slanderers of everything Irish—the firebrand factionists who had put him out of

reputation! This gross tergiversation was never satisfactorily explained, and there could be no other supposition than that it originated in a vindictive desire to gratify some deeply buried private

grudge towards one or more of the other candidates. The intervening week was a busy one. The

O’Connellite” were attended by Kerr, Mortimer, Fawkner, and a picked retinue of Scotch and North of

Ireland body-guards. Curr, though working privately, as if conscience-stricken, kept himself apart from the

public demonstrations. The Irish Southerners generally made up a large portion of the assemblages, and

Kerr and his confederates used to lure them out to them like sop of a counterfeit soft sawder—some drippings from

the Blarney stone, put through a filter of Caledonian burr. The Irish Catholic element, before so shamefully

reviled, was now lauded to the skies; and it was not only Erin-go-bragh, but everything that by any

correlation could have direct or indirect connection with it, that was to be held in honour and respect. The

Fawkner-Kerr” “Orange” organ, the Patriot, rang out in loud and shrill notes, the glories of

the land of the Milesians; cracked up to the skies the great Irish Liberator, the “Father of his country,”

and declared the Irish to be not only the finest “peasantry,” but the “greatest people” under the sun. If

they only helped to return the Australian O’Connell, they would be securing the services of a second

Liberator, and one who, following in the footsteps of his illustrious kinsman, would obtain for Port Phillip

that which the other in a similar sense was agitating for at Home, viz, a “Repeal of the Union” with New

South Wales. The credulous, good natured, impulsive Irish colonists, in their ardent hero-worship of one

they trusted and revered, actually believed the arrant trash that was thrown to them like chaff. The polling

office, the “pride of the place,” of having put up a trio of would-be assassins to murder Dr. Lang at the first town

election, and who, one day, some time after the present event, knocked Kerr into the channel for writing,

and declaring the Irish to be not only the finest “peasantry,” but the “greatest people” under the sun. If

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election, and who, one day, some time after the present event, knocked Kerr into the channel for writing,
The declaration was made on the 29th, when Mr. Simpson returned thanks on behalf of Mitchell. Young was called for but did not appear, for though in Melbourne, it was said he was not aware of what was taking place. The O'Connellites were loudly discontented with the issue, though they derived some poor consolation by Mr. Mortimer handing in a protest on behalf of their protege.

Though the general interests of Port Phillip were identified with those of the whole colony, there were special issues apart from them in which this Province was particularly concerned, such as an Equitable Participation in the Funds appropriated to Immigration, the Expenditure of the Revenue on Public Works, and other financial considerations; and occasions would arise in the Legislative Council when it was necessary in order to do justice to their constituents, that the non-residential representatives should consider Port Phillip first and New South Wales after. This was often embarrassing. There were, besides, times when the powerful opposition brought into existence, waged war so determinedly against the Government, that the fact of two of the District Representatives being Government office-holders proved very inconvenient; but Sir George Gipps soon let them know that contingencies might occur in which "open questions" could not be recognised, that salaried employees of the Executive, in choosing which of the two masters they should serve, should not ignore the quarter from which they drew their annual stipend, and that they were expected, on all questions of importance, to vote with the Government benches. The first intimation of this kind conveyed to Sir Thomas Mitchell, clearly convinced him that he could not preserve his independence as a Port Phillip member and his Surveyor-Generalship together; so as an honourable and upright man should do he resigned his seat.

The choice of his successor was made in Melbourne on the 10th September, 1844, and, without opposition, Mr. Benjamin Boyd, a gentleman largely concerned in the mercantile and marine interests of Sydney, "walked over the course" almost in solemn silence.

A blank of nearly a year now occurs without a single ripple of the Electoral waters, until the spring of 1845, when Messrs. Thomas Walker and A. W. Young resigned. The nomination for their successors was presided over by Mr. Verner, as Returning Officer, on the 7th August. Though the only candidates offering were Sydney men, it was known that for one of the seats there would be opposition. Mr. Archibald Boyd (another Sydney merchant and squatter) was proposed by Mr. Archibald Cunningham and seconded by Mr. Peter Inglis; Mr. J. P. Fawkner proposed, and Mr. Richard Ocock seconded, Captain O'Connell (the gentleman previously defeated); and Mr. Edward Curr, who was prone to creating surprises, and, to the astonishment of most present, declared he had risen from a sick bed to offer his strongest opposition to Mr. Boyd, whom he (metaphorically) tomahawked in an unmeasured style. On a show of hands O'Connell had more than half in his favour, whilst there were only three for Mr. Boyd, who was not in attendance to demand a poll, and his "bottle-holders," unable to muster six electors to do it for him, Captain O'Connell was declared to have duly elected. For the second vacancy there was no opposition, and Mr. T. E. Boyd was proposed by Major Firebrace, seconded by the Mayor (Dr. Palmer) and elected. This Mr. Boyd was for years manager of the Union Bank of Australia, and subsequently of the Colonial Bank. He was an expert in working Bank "screws," but was otherwise unknown, and it was only the impossibility of then procuring any other local man that permitted his return. As far as he was personally concerned, it was little more than a sham, for it is doubtful if he ever consented to be nominated. He was absent from the nomination and never performed any service for the "greatness" so forced on him during the three months he was a member, for he never even condescended to be a "sitting" one.

Mr. Benjamin Boyd resigned his seat in little more than a month, and on the 19th September the nomination of a successor took place. The loss of Mr. Edward Curr's eloquent advocacy of "Separation," the watch-word of the Province, was often acknowledged, and efforts were now made to bring him forward. By this time he had rubbed off the freshness occasioned by his first undeserved discomfiture. At first he "could not think of it," then he hesitated, and when a politician does so, he woes the fate of the proverbial hesitating lady. Finally, he was prevailed upon, and for a second time very severely treated, though not defeated. It was generally supposed Mr. Curr would be unopposed; but Mr. J. P. Fawkner nominated Mr. Neil Black, who was seconded by Mr. A. Sprat. Mr. Edward Curr was proposed by Mr. Thomas Wills, and seconded by Mr. E. E. Williams. Mr. Black was not in attendance, and had never sanctioned
the unpardonable liberty taken with his name; but Mr. Curr addressed the assemblage, and there was a large show of hands in his favour. Six electors, however, were mustered to ask for a poll, which was appointed for the 26th. Mr. Black, on ascertaining what had been done, very properly withdrew his candidature, so there was virtually only a nominal contest. The gross number of votes recorded at the three polling places—Melbourne, Geelong and Portland—were: For Curr, 50; Black, 12 (all in Portland). Mr. Curr was at last a member of the Legislature, and the Fawknerian freak, which wantonly occasioned so much annoyance and expense, was much deprecated. Mr. T. E. Boyd resigned at the beginning of 1846, and on the 16th January Mr. E. J. Brewster was returned in his place without opposition. His electoral sponsors were Messrs. D. S. Campbell and Robert Fennell. The ceremony occupied less than ten minutes, and there were just twenty-two persons present, including five newspaper reporters, with the officials of the Supreme and Insolvent Courts. Mr. Brewster did good service in Sydney, where some measures of a practically useful nature were passed through his exertions.

Notwithstanding the desire of Mr. Edward Curr to serve his adopted country in the Legislature, and the obstacles surmounted in placing him there, Providence willed that his tenure of the trust should be of short continuance, for, owing to a deep family bereavement (the death of his son), he was constrained to resign in May, 1846, and on the 22nd June Mr. John Leslie Foster succeeded without opposition to the vacant seat. The candidate was proposed by Mr. James Simpson, and seconded by Major Firebrace. The proceedings were conducted by Mr. R. W. Pohlman, appointed District Returning Officer, vice Mr. Verner, who had left the colony; and the public were represented by five electors, with twelve "strangers," including four reporters and as many Supreme Court subordinates. Towards the end of 1847, Dr. Lang, beset by financial troubles, tendered his resignation; and about thirty persons assembled on the 15th December to elect Mr. John Moore Airey, of Geelong, to the position. Mr. Brewster resigned in 1848, and, on the 8th March, Mr. C. H. Ebden was returned unopposed in his place.

**A Political "Coup de Maître."**

The quinquennial Legislature of New South Wales expired by effluxion of time in 1848, and there was a general election in July. Hitherto, through the difficulty of obtaining the services of local politicians, the representation of the Province resembled a corpus—a "subject"—for Sydney would-be Statesmen to make experiment upon, and the present afforded a grand opportunity. A quintette of Sydneyites, like so many modern Assyrians, came down as "wolves on the fold." They were Messrs. J. P. Robinson, W. S. Boyd, Adam Ruge, Archibald Boyd, and Samuel Raymond. The first and last named were favourably known in Port Phillip—Robinson as a courteous and attentive member for the town, and Raymond as the first Deputy-Sheriff here, and one of the Provincial Bar. Mr. Leslie Foster, a late member and a resident, was satisfied to accept a renewal of his seat, and he, with the Boyds, Ruge and Raymond, made up just the District number, whilst Robinson was again a candidate for the suffrages of the Melbournians, now by the favour of Her Majesty swollen to full-fledged citizens. The plan was nicely arranged, but, as the sequel will show, it was blown away like a house of cards.

The political representation of Port Phillip in the Council at Sydney was pernicious. The Separation movement was thwarted; the transportation question trifled with, financial injustice continued, and the interest of the Southern were always made subservient to those of the Middle District. If Port Phillip had had as its members half-a-dozen Pitts, Peels, or Gladstones, instead of as many mediocres, shiftless, and shifting self-servers, with whom ex universitate she was obliged to be satisfied, even they would have been outnumbered as one to five, and, in voting power, nowhere. The difficulty was to cope with this state of things, and in this fermenting process of dissatisfaction the election campaign opened. The District nomination was fixed for the 20th July, and a few of the leading public men held a consultation, and decided that no effort should be made to return an empty writ to head-quarters as the most emphatic mode of demonstrating the absurdity of continuing a system which was universally regarded as a "mockery, a delusion, and a snare." At noon, Mr. R. W. Pohlman, the Returning Officer, was in attendance in the Supreme Court porch. The writ was read, and the proposition of candidates invited, when Mr. Thomas Wills proposed, and Mr. E. E. Williams seconded, the nomination of Mr. J. L. Foster.
Mr. J. P. Fawkner then popped forward, and entreated the meeting to pause before going further. He asked them to consider whether it would not be better to do nothing than continue the sham of sending members to Sydney—a course which had been more injurious than beneficial to the District. One of two things ought to be done: Elect no one under the writ, or return five Port Phillippines, who would pledge themselves not to attend the Legislative sittings. To go on doing as had been done for years was helping the Sydney Legislature to plunder this Province of the money to which it was equitably entitled. This suggestion was received with a loud expression of approval, and Mr. Edward Curr, whilst agreeing with Mr. Fawkner, was disposed to make exception in favour of Mr. Foster on account of past services. This view was also upheld by Messrs. Colin Campbell and C. H. Elden, whilst Dr. M'Arthur, Mr. W. Kerr, and others submitted that the principle sought to be established would be destroyed if Mr. Foster were elected.

Mr. J. B. Were moved an adjournment of the proceedings, which was seconded by Mr. Fawkner. Mr. Foster spoke in opposition to adjournment, and was followed by Captain Cole, who, in an energetic strain of brusque and uncompromising energy, went in strongly for absolute and total non-election. Several gentlemen gathered around Foster (who appeared considerably chagrined and disappointed at the turn of affairs), and prevailed upon him to consent to the withdrawal of his nomination. Foster acquiesced with both a sly face and a bad grace, and Mr. Edward Curr, advancing to the verge of the hustings, in a loud voice exclaimed: “This day has produced the most gratifying act of public virtue ever witnessed in Port Phillip, when every man did away with his ambition either in duty to himself or his friends in Sydney. He was truly proud of it.”

The Returning Officer at length peremptorily demanded if there were any candidates to be proposed, and was answered by loud and general shouts of “No, no.” He then declared it to be his duty, it being an hour after the time, to make his return accordingly. The day’s doings terminated with cheers for the Returning Officer, cheers for “Non-election,” and cheers for everyone, a species of shouting “hands all round.”

As soon as people had leisure to quietly reflect, public opinion was divided as to the effect of such a line of policy. It was most unequivocally condemned by some as a mere Quixotic freak, calculated to retard instead of promote the interests of the Province; whilst others, and certainly the sounder thinkers of the time, approved it as a strategic feat, the important results of which would yet more than amply justify it. A difficulty now arose as to how the “Non-election” theory could be successfully applied at the approaching election for the City. If unanimity prevailed of course it could be easily done; but divided counsels would render this impossible, for any two electors could place a candidate in nomination, and any six could force the same, _nolens volens_, to a poll. As a general consent could not be procured, it was agreed, if possible, to nullify the election by the indirect mode of returning some person who would be unable to take the seat; and this is the way in which Melbourne attained the distinguished honour of having for its first City Member no less a personage than EARL GREY.

Dr. Palmer (the Mayor) acted as Returning Officer, and the nomination was held at the site of the present Town Hall, on the 25th July, 1848. Dr. Greeves (then an Alderman) opened the ball by speaking in eulogistic terms of the late member (Mr. Robinson), and regretting that, under existing circumstances, it would be extremely impolitic to re-elect him to the position, a compliment otherwise well deserved. But, as he thought it was their bounden duty to uphold the principle enunciated and acted upon at the District Election, he begged to say that if any person proposed a candidate he (Dr. Greeves) should most assuredly nominate Earl Grey, the Secretary of State for the Colonies. This intimation was received with loud cheers, intermingled with expressions of dissent.

Mr. L. J. Foster, in strong and eloquent terms, entreated the meeting not to destroy the moral effect of what had been done in reference to the election for the District. After a brief delay, Mr. A. F. Mollison, in the midst of a hurricane of hisses and cheers, proposed Mr. J. L. Foster, which was seconded by Mr. John Duerdin.
Mr. Thomas M’Combie then proposed, and Mr. J. P. Fawkner seconded, the “Nomination of Earl Grey, Her Majesty’s Principal Secretary of State for the Colonies, as a fit and proper person to represent the City of Melbourne in the Legislative Council of New South Wales.” There were many friends of Mr. Robinson present, but they had the tact and good taste to withdraw him from the now inevitable contest. A show of hands was asked for, and announced to be most unmistakably in favour of Grey. Foster was not in attendance, and for some time it was hoped a poll would not be demanded; but six electors were found for the purpose, and it was appointed for the following day. The half-dozen citizen-electors who thus nailed their colours to the Fosterian mast were Messrs. Henry Moor, James Hunter Ross, A. F. Mollison, John Duerdin, Frederick G. Dalgety, and Dr. Thomas Black, one squatter, one merchant, and one physician. A vote of thanks was, on the motion of Mr. W. Kerr, passed to Mr. J. P. Robinson, the late member; and no one ever deserved it more. The gathering then separated with loud cheers for “Grey” and “Non-election,” and a round of hissing for the Foster followers.

As an evidence of the prevailing apathy it may be mentioned that, out of a constituency of 935, only 397 votes were recorded, viz.:—For Earl Grey 295, Foster 102; majority 193. On the 27th the official declaration was made, when the Right Honourable Earl Grey was declared duly elected. A protest, setting forth various technical objections to the return, was presented, which the Returning Officer promised to transmit with the writ to Sydney.

Mr. M’Combie returned thanks for the high honour conferred on his nominee, and so ended the queerest election episode that ever occurred in the colony.

The Greyites, elated with what they had done, considered it advisable to get up a public demonstration, and an influential meeting was held at the Mechanics’ Institution on the 31st July. The Mayor was in the chair, and in addition to a resolution vindicating the action taken at the election, a memorial to Earl Grey was adopted, setting out in detail the reasons which led up to his Lordship’s return. This document was in fact an elaborate statement of the case for Port Phillip. It was from the pen of Mr. Edward Curr, and characterized by all that gentleman’s clearness of diction, calm logical reasoning, and fulness of information. It was ordered to be transmitted through the usual official channel, accompanied by a letter to the Governor of New South Wales, asking His Excellency to reserve the revenues of Port Phillip in the Province, pending a reference to the Secretary of State.

NOMINATION OF “NOBLE LORDS.”

Geelong was ever watching Melbourne with a jealous eye, and whenever a chance offered, the Geelongsites were only too glad to have a slap at the capital. Whatever public step was taken in Melbourne, some local counter demonstration was made there. Geelong, therefore, would not permit the “Non-election movement” in the district, and accordingly a public meeting was held there on the 2nd August, 1848, to remonstrate against such “high-handed doings.” Mr. Charles Sladen was Chairman, and resolutions were unanimously passed protesting against the disfranchisement of the District, and memorialising the Governor to issue a new writ, in which Geelong should be notified as the chief polling place. The Executive in due time complied, and the newspapers entered on an excited typographical warfare; the Argus, Patriot, and Gazette, going in strongly for “Non-election,” the Herald, Geelong Advertiser, and other Western journals going as strongly the other way. Meanwhile a public meeting of “Non-electionists” was held in Melbourne, whereat it was proposed that in order not to embarrass the Government, five British Peers or members of the English Cabinet should be nominated; and the reason for so doing was that unless “some sort of members” were elected for the District, there were strong doubts as to whether the Legislature of New South Wales would be legally constituted. After some discussion the proposition was agreed to, and the notabilities selected as candidates were the Duke of Wellington, Lord Brougham, Lord J. Russell, Lord Palmerston, and Sir Robert Peel. Furthermore, a delegation, consisting of Captain Cole, and Messrs. J. S. Johnston, and J. P. Fawkner, was commissioned to proceed to Geelong and effect the necessary nominations. A contra meeting was convened at Geelong, where it was determined that there should be a bona-fide election, and a committee was named to select five suitable candidates. The nomination under the second or new writ came off at Geelong on the 21st September, when the “pro-electionists” put forward the following candidates,
THE CHRONICLES OF EARLY MELBOURNE.

without the consent of more than one of them, viz., Messrs. Lauchlin McKinnon, James Williamson, John Dixon, J. F. Palmer, and E. Curr. The “Non-electionists” started the five distinguished English personages already named, and Mr. William M’Arthur, of Camden, in New South Wales, was also proposed and seconded. The show of hands was in favour of the first bunch of candidates, and on a demand for a poll it was fixed for the 3rd October, at Geelong, Melbourne, Portland and Belfast. The local candidates were in high favour and polled about three to one as against the others. The official declaration of the poll made on the 10th October, was as follows:—For McKinnon 239, Williamson 234, Dixon 232, Palmer 226, Curr 189, Duke of Wellington and Co. (each) 58, M’Arthur 25.

Mr. M’Arthur had virtually withdrawn before the polling.

The Returning Officer declared the five “pro-electionist” candidates to be duly elected, and Geelong, now supremely happy, continued to be the chief polling place for all subsequent District Elections until the separation of the province in 1851.

The team thus yoked like bullocks to the lumbering wagon of legislation, worked no better than their predecessors, and some of them soon tired of their newly-imposed labours.

In the beginning of 1849 Mr. Williamson resigned and Mr. William M’Arthur, the gentleman withdrawn at the preceding election was proposed as his successor. Mr. J. P. Fawkner was also nominated. Mr. Fawkner did not care about the proffered dignity, but, in declining it, proposed the Duke of Wellington. Fawkner’s nominators refusing to withdraw him, he obtained the show of hands, whereupon the M’Arthurites demanded a poll, which was appointed for the 24th. Few cared a straw how this polling went. Fawkner retired, and as an evidence of the manner in which it was viewed in Melbourne, it need only be stated that though there were 236 district electors on the roll for the County of Botoke, only 14 votes were recorded, viz., for the Duke 9, and for M’Arthur 5. Geelong went in, of course, for the colonial, and the gross poll showed M’Arthur at 87, and the Duke 10.

Mr. Edyward Curr was the next to resign, and Mr. J. L. Foster, on the 11th June, was elected in his place. Dr. Palmer immediately after did likewise, and was succeeded by Mr. Henry Moor on the 5th July. About the same time Mrs. M’Kinnon died in Sydney, and her husband determined to withdraw from public life. The nomination for a fresh election took place on the 19th July at Geelong. McKinnon, after resigning, was persuaded to change his mind, and agreed to re-offer himself, but Mr. Fawkner was again on the look-out on behalf of the “Iron Duke,” whom he nominated. He was also nominated himself. McKinnon had the show of hands, and the result of the polling on the 31st July was:—For McKinnon 139, Duke of Wellington 3, Fawkner 1.

The next election was held at Geelong on 30th May, 1850, consequent upon the resignations of Messrs. Foster and McKinnon. Dr. Lang having extricated himself from pecuniary involvements, his Port Phillipian friends made an effort to get him returned; but the Doctor’s popularity had died out—his sun was set, and there would be no other rising. The following candidates were nominated:—The Rev. Dr. Lang, Mr. C. H. Edben, Mr. L. M’Allister, and Major Mercer.

Messrs. Kerr and Fawkner went down specially from Melbourne to kick up a row, but failed. Lang and Mercer had the show of hands; but at the polling on the 11th June, Edben and Mercer were returned by large majorities.

Earl Grey, though he did not accept the Representation of Melbourne, was in no hurry to decline it, a fact which in itself proved his election as a master stroke of political manoeuvring. It was not until after the Separation Act had passed the Imperial Parliament that His Lordship declined the compliment paid him. A writ to fill the vacancy caused by the non-acceptance was issued, appointing the nomination for the 6th November, 1850. The election was held in the porch of the Supreme Court, when Mr. William Westgarth was returned without opposition; and no man in the colony was more entitled to recognition of valuable public services. In returning thanks, Mr. Westgarth declared that within his own personal knowledge Earl Grey had rendered much service to the colony; and as to His Lordship’s return for Melbourne, so far from having done injury, as some persons supposed, it had exercised a vast beneficial influence in favour of Victoria. If Earl Grey had had his own way, Port Phillip would have been an independent colony long before.

There were no more elections in Port Phillip.
CHAPTER XXVI.

REMOVAL OF THE SUPERINTENDENT.

SYNOPSIS.—Public Meeting re Removal.—Mr. M'Combie's Catalogue of Transgressions.—Denunciatory Speech and Indictment by Mr. J. P. Fawkner.—Petition to the Queen.—Meeting of Government Officials Rebuking Charges.—Fawkner's Indictment of Major St. John.—Major St. John's Resignation Accepted.—His Departure from the Colony.—Superintendent Latrobe Unscathed.—Memorial lo the Queen Unsuccessful.

PROMPTED by the action of the City Council in commencing an agitation to endeavour to procure the recall of Mr. C. J. Latrobe from the office of Superintendent of Port Phillip, a public meeting convened by the Mayor (Mr. A. Russell) was held on the 3rd July, 1848, in the open space (now the enclosed ground) rearward of the Public Library and Hospital, to adopt a Petition to the Queen on the subject. Mr. M'Combie was in the chair, and in a lengthy address entered largely into the alleged misconduct of the Superintendent. In the course of his remarks Mr. M'Combie thus dwelt upon some of Mr. Latrobe's alleged public transgressions:—"The revenues of this Province had been carried by Mr. Latrobe to Sydney, there to defray the expense of works of the same nature as were required by themselves. The revenues of their fine Province had gone to build up the barren sand-banks of Sydney. Much had been said of Sir George Gipps that he bled the Province; but who held the basin? He (the Chairman) considered the man who held the candle to the murderer was as bad as the assassin. (Cheers.) In the present meeting it was not a question of '43, or '44, or '45, but also of '46, for on the arrival of Sir Charles Fitzroy, the Superintendent again misrepresented the Province, and, by withholding the funds voted, allowed the working-men to go to Sydney for want of employment. Mr. Latrobe had written to the Governor advising him to carry on the same misrule towards the Province, and said it was not capable of managing its own revenues—it was not fit for Separation. Why were they to pay a man, who ought to look to their interests, but, whatever he had done, had always been against them? Surely such a man ought not to side with the Sydney Governor against them. Regarding Mr. Latrobe personally, he had no ill-feeling towards him; he viewed him only in his public capacity, but he knew that the Superintendent had not done that which he ought to have done. He trusted that no speaker at the meeting would make any allusion to the private life of Mr. Latrobe, as in that case, he, as Chairman, would put a stop to it; and in conclusion, he trusted the meeting would support him in his duty that day, and pass over all private quarrels on the present occasion. (Cheers.) The first resolution was proposed by Major Newman, viz. —"That this community, having lost all confidence in the administration of the Government by His Honor Charles Joseph Latrobe, Esq., it has become absolutely necessary for the tranquillity, good government, and prosperity of the Province, that the Colonists should avail themselves of their constitutional right of appeal to the Throne for His Honor's removal."

Mr. J. P. Fawkner, in seconding the motion, made what was decidedly "the speech of the day," and one which was fraught with consequences upon which the orator did not then quite calculate. He inveighed against the so-called aristocracy of the Province for not attending, whose absence was downright cowardice, and induced through a fear of endangering their runs. "Gentlemen," he exclaimed, "the enemies of the people impune to us bad motives and worse language; let us this day contradict them. I come forward on this occasion to rid the colony of a nuisance in the person of our ruler. His private character I leave unsailed, but his public conduct throughout has been mean, base, and to us, as well as to himself, most contemptible; to us, in so long permitting him to
hold office uncomplained of; and to himself, in the slavish and degrading position he most cheerfully assumed on Sir George Gipps' memorable visit. On that occasion, and at the public dinner given to His Excellency in October, 1841, Mr. Latrobe licked the dirt publicly to Sir George Gipps, in these memorable words:—'Your Excellency—I feel that I am now placed in my proper position; I am fully prepared to play second fiddle to your Excellency, to any tune you may please to lead.' And he continued for some minutes to ring the changes upon first and second fiddle to the utter disgust of all the thinking part of the company present. Could any language imply greater baseness, the meaning of which was self-evident? It might clearly be read thus:—'Whatever dirty work, whatever base conduct you require of me, whatever dirt you order me to eat, or give to this people, I am the man to carry out your orders.' He had done so to the fullest extent of his limited capacity."

After some discursiveness, Mr. Fawkner unfolded his indictment, containing, amongst others, the following counts:—

"That Mr. Latrobe had wasted the public money, in having expended £450 on a private road leading to the house of Mr. Lyon Campbell, a particular friend, and only a paltry £50 on the Sydney Road; that he lavished upwards of £4000 on that miserable, abortive cut, the Beach Road, and only £50 on the Main Road of the colony; that he withheld some £20,000 from circulation in the years 1842 and 1843, when labour was to be had for the very lowest possible price—bricks, at 7s. per 1000; timber, 6s. per 100 feet, and all other work in proportion. Mr. Latrobe had delayed the erection of lighthouses at Cape Schanck and King's Island, and was consequently accessory to the loss of the hundreds drowned by the wreck of the immigrant ship, 'Cataraqui.' Again, does he not openly patronise a man notorious for receiving bribes? Aye, bribes from all conditions of men—from the half-dozen eggs, or the pound of butter, up to a cow or a calf, horses, grog, wines, champagne, brandy, and gin. Yes. There was a man present who gave this official a cheque lately for a portion of a run which he did not get. Yet the cheque was never returned. Another in order to obtain a slice of a neighbour's run, made a present of a pair of horses; but he, too, got 'put in the bucket.' It was, to use a homely expression, 'greasing the sow on the wrong side.' Yet this official was sustained by Latrobe; and though informed of such facts, has he cut the venal receiver of bribes? No! Has he not even refused to have this affair investigated? Does he not keep up the very greatest appearance he can show of friendship for this very traitor to the public?

'Birds of a feather,' you know the rest. In fact, the whole tissue of the Superintendent's misrule of the Province has been of one texture. It has one aim to please the 'First Fiddle,' never regarding the people who pay the fiddlers. Now, to sum up, Mr. Latrobe has not only refused to get money for the Province, but he has actually refused to lay out the sums put into his hands; he has vilely, falsely, and wilfully traduced us. The Superintendent supports the man who, it is said, lives upon bribes; he has shown the littleness of his very paltry spirit by desiring the Government to spend upon Geelong the famous beach water-pipe money—and worse, if worse be possible—has written to the 'First Fiddle' to send to him here a keeper for the powder magazine, a keeper for the Lunatic Asylum, and, as I hear, even a new gaoler. Thus he betrays his paltry vindictiveness, and makes it appear that the free and energetic men who have made Port Phillip what it is, are not competent to fill these very petty offices. It is misrule, a deep hatred of the people, and an insult to all classes! But the man who has written ill of other places and people cannot be expected to spare even them from whom he draws his means of living."

The motion was supported by Mr. J. S. Johnston, in a clever, splenetic harangue, and carried amidst loud acclamations.

A lengthy Petition to the Queen was adopted on the motion of Mr. George Annand, and seconded by Mr. D. Young.

The third resolution was proposed by Mr. Robertson, seconded by Mr. Bingley, and passed, viz.:—

"That the following gentlemen be appointed a Committee to procure signatures and to forward the Petition:—Major Newman, Dr. P. MacArthur, Dr. A. Thomson, Messrs. T. M'Combie, J. P. Fawkner, G. Bingley, A. M'Killop, — Webster, D. Young, G. Annand, J. S. Johnston, and J. Rankin."

Three cheers were given in honour of the Chairman, and three times three for Her Majesty. The latter were accompanied by a wish that the Province might speedily be rid of the Queen's Representative in Port Phillip.
THE CHRONICLES OF EARLY MELBOURNE.

The charges of bribery and corruption so openly made by Mr. Fawkner fell like a shell in the somewhat select and exclusive camp of officialdom, and the heads of departments were so panic-stricken that they assembled in conclave on the 7th July, and prepared a manifesto to this purport:—They invited the attention of his Honor the Superintendent to the accusations so made, which, if not rebutted, affected their characters as gentlemen and Government officers, and disgraced them in the eyes of the community. As general statements pointing directly to none, whilst involving all, they pronounced them false and slanderous to a degree, and means ought to be taken for their refutation. They declared solemnly on their honour as gentlemen, that they, neither by selves nor others, directly or indirectly, in any shape or fashion, had received, or allowed to be received, any bribe, present, or consideration for anything done or expected in their capacities as officials of the Government, save only such fees as were duly authorised by law. They requested that publicity should be given to this declaration, and expressed an anxiety for the most rigid public investigation.

This document, subscribed to by all the prominent chiefs of departments, eighteen in number (including the signature of Major F. B. St. John, the Commissioner of Crown Lands for the County of Bourke, and the individual to whom it was known to everybody Mr. Fawkner referred), was transmitted to the Superintendent, who had it immediately published in the Government Gazette, with a notification of his own, avowing his readiness to investigate any charges of misconduct officially brought before him. The Herald and Daily News at once openly declared that Major St. John was the public official indicated by Fawkner; and J. P. Fawkner on the 13th July wrote direct to the Superintendent naming Major St. John as the person whom he charged with the receipt of bribes and presents, and declaring his readiness to substantiate the accusations before any open and impartial court. The Superintendent, in reply, informed Mr. Fawkner “that any specific charge or charges of misconduct in the performance of duty on the part of the officers named, or any other in the service, which may be transmitted in proper form, will meet with full and immediate attention on the part of the Government.” All this time the subject formed the absorbing topic of discussion everywhere, from the bank parlor to the loveliest tap-room; from the newspaper leader to the gossip of every street-crossing. That the question could not be pigeon-holed was beyond doubt, and there is no reason to think that the Superintendent had any disposition to do so; but the difficulty was as to the proper mode of dealing with the case. Some of the newspapers suggested that Fawkner’s letter should be placed in St. John’s hands, with a peremptory direction to commence a civil action in the Supreme Court; and this suggestion seems to have been adopted, for it was announced that legal proceedings had been instituted. Fawkner, not content with writing to the Superintendent, with his accustomed impulsiveness also wrote to the newspapers preferring some half-a-dozen specific charges against St. John, and it was upon this unprivileged communication, the authorship of which was admitted, that the suit was based. Major St. John seemed not to be in the least put out by the turn things had taken, and regarded it with the utmost nonchalance, at least to all outward appearance. Even the Sunday after the public meeting he patronised the Superintendent’s pew in the Episcopalian Church, at which it was alleged that Mr. Latrobe’s sense of propriety was so offended that he next day wrote to Major St. John, expressing a wish not to see him again, either publicly or privately, until the charges hanging over him were cleared up. It also soon became understood that Major St. John had not been interdicted from transacting any official business; in fact, that, though not literally, he was practically suspended. There is reason to believe that he subsequently placed his resignation of office in the Superintendent’s hands, by whom it was held over until the result of the appeal to the Supreme Court could be known. The particulars of the memorable case of St. John v. Fawkner are narrated in another chapter, and, though the non-verdict of the jury rendered it a drawn battle, Major St. John accepted it as a virtual defeat, and the terminus of his official career in Port Phillip. His resignation was accepted, and in June, 1849, he left the colony in the “Stag” ship, for England, and never returned. It may be added here that the meeting out of which the St. John episode was evolved, though it indirectly ruined the Major, left Latrobe unscathed. The Memorial was duly transmitted to Downing Street, and, after a long course of post, officially acknowledged; but its prayer was not granted.
CHAPTER XXVII.

REMARKABLE SUPREME COURT TRIALS.


FORGERY.—26TH APRIL, 1841.

On consequence of the non-adoption of the Imperial Act, Ist Vict, abolishing death as a punishment for forgery, this was the first capital felony tried in Port Phillip. The prisoner, Alexander Wilson, was indicted before Judge Willis and a jury of twelve, for having, on the 20th February, forged and uttered a cheque on the Union Bank at Melbourne. The prisoner went with a Mr. Lake to the Bank, and the latter filled a cheque, which the prisoner signed as a marksman for one Daniel Dudley, whom he personated. The cheque was paid, but it was afterwards ascertained to be a forgery. The prisoner was undefended, found "Guilty" of uttering, and sentence of death recorded, the Judge intimating that, in consequence of the state of the law, he should recommend a commutation of the sentence to transportation for life, and transported Wilson was eventually.
was satisfied, the witness went into the box, dropped the soup-plate on the floor, and declared he would not fib. This was a clincher. The Judge bowed his acquiescence of what certainly cannot be called "irrefragable" logic and received the testimony. The defence set up was that the prisoner was so drunk at the time as to be utterly oblivious of what he did. In charging the jury the Judge put the case as one of murder or nothing; and as for manslaughter, any notion of that kind was to be discarded from their consideration. As to drunkenness, he thought it should be treated as an aggravation, instead of an excuse. The prisoner was found "Guilty," and the Judge, putting on the fatal black cap, (a custom now obsolete), passed sentence of death without hope of mercy. This announcement was received by the prisoner without any visible emotion. In the condemned cell, and heavily ironed, the unfortunate wretch was suffered to remain, as if swinging between life and death, for nearly three months; for, through the unaccountable indifference of the officials in Sydney, the warrant for execution was deferred from week to week; yet to this seeming inhumanity the culprit was indebted for his life, because the Judge, moved by the delay, strongly represented to the Executive that the extreme sentence ought not to be carried out, after all the acute agony the convict must have suffered. Strange to say, the Judge's missive for mercy, and the death warrant, passed each other on their diverse journeys. It was not until the 31st July that the fiat arrived, appointing the execution to take place on the 13th August, an interval which fortunately gave time for a reprieve to be received in response to the Judge's recommendation. The punishment was commuted to transportation for life.

PERJURY.—17TH JULY, 1841.

D. C. Simson was arraigned for perjury, arising out of an affidavit exhibited in Chambers on the 13th July, and was an ex-officio information filed by the Crown Prosecutor, by whom the prosecution was conducted, Mr. Barry appearing as Counsel for the defence. The traverser was a member of the firm of Messrs. Dutton, Darlot and Simson, settlers, who were indebted to Messrs. Willis and Co., and proceedings were taken to recover on a bill of exchange for £1000. A process of the Supreme Court issued, to which defendants did not appear, and judgment went by default. A summons was then obtained to set aside the judgment, in support of which the traverser made affidavit that he had never been served personally with any process, nor was any original shown to him. The affidavit was sworn before Mr. Gurner, the Deputy-Registrar, and Mr. Robert Cadden (for many years afterwards Clerk to the District Court) clerk to the solicitor of Willis and Co., swore positively that he had served the traverser, in person, with a copy of the Court summons, exhibiting at the time the original, and leaving a duplicate copy for Darlot, one of the other partners. The defence was an inpugnment of Cadden's testimony, and a coloured servant, in traverser's employ, testified that it was to him Cadden delivered two law documents during Simson's absence, which he (the servant) handed to a Mr. Steinforth, at the time staying at Simson's. The jury returned a verdict of "Not Guilty." In the next issue of the Port Phillip Gazette the Judge was roundly charged with gross partiality in his conduct of the case, whereupon the editor (Arden) was sent for, cautioned by the Judge to be more circumspect in future, and not to forget that there were such things as "attachments."

CONSPIRING TO DEFRAUD CREDITORS.—20TH AUGUST, 1841.

D. C. Simson, J. M. Darlot, and H. N. Simson, were indicted for conspiring, by means of a mock sale, to defraud the creditors of W. H. Dutton, one of the partners of the firm of Dutton, Simson, and Darlot. The Crown Prosecutor and Mr. Barry being retained for the prosecution, and no other Barrister being available for the other side, by the permission of the Judge, Mr. F. L. Clay, an Attorney, appeared for the defence, and was complimented from the Bench. This case, from the social position of the defendants, excited no common interest, and the verdict was received with very mixed feelings. Several witnesses were called to prove the sale of certain property to H. N. Simson. Dutton, Darlot, and D. C. Simson were in partnership, and their transactions in stock and other valuables extensive. Simson and Darlot had dissolved with Dutton, and disposed of considerable property without the consent of two trustees, who ought to have been consulted. A bill in equity was filed to restrain the sale, but it miscarried through a
technical error in the drawing, and the property was sold to H. N. Simson. On behalf of the defendants it was contended that the sale was bond-fide, and the jury acquitted them.

**THE FIRST BREACH OF PROMISE.—17TH NOVEMBER, 1841.**

In this case the defendant was a Sergeant O'Neil, a swell member of the police force, and the keeper of the lock-up at Melbourne. The plaintiff was a Miss O'Gorman, the sister-in-law of another limb of the constabulary. Damages were laid at £300, against which was pleaded the general issue, and a plea of special matter as to the loose and immoral character of the plaintiff. Counsel for plaintiff, Mr. Barry; for defendant, the Hon. Mr. Murray. The plaintiff resided with her sister, a Mrs. Morgan, a constable's wife; and the defendant was a lodger in the house of his comrade. Thus the parties were constantly brought together, and a mutual attachment was contracted. The question was in due time “popped,” the gay and gallant sergeant was accepted, and the preliminaries of the marriage expedited. Father Geoghegan, Roman Catholic pastor, was engaged to tie the nuptial knot. The services of a Miss Britton were secured for the interesting office of bridesmaid; and even a man-cook was got in to prepare the hymeneal repast. The day was named and came, the bride and her handmaiden were in readiness, and they came; the bridal feast was well under-way; but the principal figure in the domestic drama did not appear, and an adjournment sine die was unavoidable. On being called to account for his backsliding, O'Neil had the unmanliness to declare that he could not think of marrying without a fortune, and would not take less than £50; and so to raise this sum Mrs. Morgan disposed of some cows and bedding. O'Neil again backed out unless the dower was increased to £100; and, being urged to be a man to his word, vowed “he would hang by the hair of his head first.” His conduct was the more disgraceful as it was proved that by the promise of marriage the girl had been seduced. Evidence was given as to the defendant's means; he was reputedly worth about £400, and had been heard to declare “that through his watchhouse perquisites he sometimes cleared as much as £30 in a week.” For the defence it was alleged that the plaintiff was of improper character, and that Morgan (who had some time previously retired from the police) had kept disreputable houses both in Little Bourke Street and Geelong. The summing up was favourable to the plaintiff, to whom the Assessors awarded £100 damages.

**MURDER OF AN ABORIGINE.—21ST DECEMBER, 1841.**

Sandford George Bolden, a gentleman, and personal friend of Judge Willis, who had been out on bail, surrendered to take his trial for having, on the 23rd of October, shot at, with intent to kill and murder, a certain aboriginal native known as Totkeire. The prosecution had been instituted at the request of Mr. G. A. Sieveywright, the Assistant-Protector of Aborigines for the Port Fairy district, and was conducted by the Crown Prosecutor, Mr. Barry appearing for the defence. The theory sought to be established on behalf of the Crown was that the prisoner, a station-holder near Port Fairy, was out riding with his brother and two stockmen mustering cattle, when they met with the deceased, a black woman, and a black child. The prisoner charged the blackfellow and shot him in the stomach. Finding himself wounded, the blackfellow made for a waterhole and jumped in, whilst the prisoner, after giving instructions to his companions to secure the aborigine if he attempted to escape out of the water, went back to the homestead for some ammunition. As the prisoner was returning he fired a second time and killed him, and rolling from a log the body disappeared in the water. There was no positive evidence of the death; but the Assistant-Protector swore that the blackfellow was missing since the occurrence. The defence was that the aborigines in the neighbourhood of the station were both troublesome and thievish, and some short time previously had speared several of the prisoner's cattle. On the day in question, the aborigine alleged to have been killed, in company with a lubra and picannini, made his appearance on the station; and as the blackfellow was armed with a spear, a couple of clubs, and a shield, there was reason to apprehend mischief. The prisoner ordered them off, when the blackfellow both pointed a spear and aimed a blow at him, which was only averted by the prisoner quickly swerving round with his horse, and then it was that the first pistol was discharged. When prisoner fired the second shot it was averred that the blackfellow was in the act of assaulting a stockman. It was further submitted that there was no felonious shooting, and that it was
customary to discharge firearms to frighten the natives; that there was no proof of the pistol having been loaded with ball; and if so, that the firing was in self-defence; and finally, that there was no proof to show that any death at all had ensued. After a charge so favourable to the prisoner as to amount to marked partiality, the jury returned a verdict of “Not Guilty,” and the Judge expressed strong disapproval of the action of the Crown Prosecutor in filing an information in such a case, and so unnecessarily wasting the public time. The Crown Prosecutor curtly replied that in the performance of his official duties he should always exercise his own discretion, whereupon the Judge angrily retorted that he should take an early opportunity of representing the matter to the Executive Government. Mr. Bolden was released from custody, and warmly congratulated by a number of his friends in Court.

**MURDER OF WHITE MEN BY BLACKFELLOWS—20TH DECEMBER, 1841.**

On the 26th September a party of whalers were at a place on the Western Port Coast, then known as Lady Bay, which they left, and travelling through the bush until the 6th October, reached a coal-mining station at Cape Patterson, of which one William Watson had charge. The whalers possessed themselves of what they thought was an abandoned hut. Its being untenanted surprised them, and after a time two of them were sent as scouts to discover something of the people supposed to be attached to the station. Their names were Cooke and “Yankee” (as the second was called), and soon after their departure those who remained heard the report of two gun-shots. About an hour after, a William Watson (in the employ of Anderson and Massie), who had charge of the place returned, and was astonished to find his residence “jumped” by a lot of sailors. He had seen some black people prowling about the neighbourhood for a few days, and was fearful that something wrong had happened. A man named Patrick, also in the service of Anderson and Massie (who accompanied Watson), volunteered to try to solve the mystery, and after a brief absence he rushed back and reported that he had found the dead bodies of two white men only some three hundred yards off. The Yankee was shot as if a bullet had passed through his head. Cooke had a shot wound in his side, and his head was battered as if beaten with a cudgel of boxwood, portions of which as big as a man’s fist were found close to him. The two bodies were buried in a sand gully above high water mark. Some days before this intelligence had been received in Melbourne that armed blacks were committing depredations in the Western Port District, and Mr. F. A. Powlett, (a Commissioner of Crown Lands) started with a party of the Border Police and a few soldiers in quest of the marauders. On his route he heard of the white men’s murder, and, following up a clue received from a native, swooped down upon a mia-mia containing two male and three female blacks, and took the five into custody. The men blacks took their capture quite coolly, and the women did as ladies generally do in any trouble great or otherwise, have a good cry, and with much unintelligible volubility cast all the blame upon the men. One of the prisoners known as “Bob,” declared that the other, “Jack,” had fired the first shot, and threatened to shoot him if he did not fire too; and one of the women, “Truganini,” asserted that she had seen “Jack” brain one of the dead men. The prisoners were arraigned at the Criminal Sessions under the names of Robert Timmy Jimmy, alias “Small-boy,” Jack Napoleon Tarraparrura, Lalla Rook Truganini, Fanny Waterfordia, and Maria Matilda Natapolina. The male prisoners were natives of Van Diemen’s Land, could read and write, and had some knowledge of the principles of religion and the existence of a Supreme Being.

Mr. G. A. Robinson, the Chief Protector of the Aborigines in Port Phillip, deposed that “Bob” and “Jack” had been attendants of his in Van Diemen’s Land; he had found them to be always dutiful and trustworthy, and gave them a very good character.

Mr. Barry, Counsel for the prisoners at the opening of the case challenged the arraignment, on the ground that the prisoners, not being naturalised subjects, were entitled to be tried by a jury of half aliens, which the Sheriff had not summoned. After hearing arguments as to the Aboriginal right to a jury of mediates linguae, the Judge overruled the objection but he should enter it upon his notes. Mr. Barry addressed the jury in a very effective manner, but the evidence he had to contend with was irresistible. He dwelt forcibly on the unreliability of circumstantial evidence, and the weakness of the prosecution against one of the men, who had acted under compulsion. The jury found the men “Guilty,” and
acquitted the women, but they recommended the former to mercy because of their good characters, and the peculiar circumstances of the case. What the “peculiar circumstances” were, the foreman did not specify. The men were remanded for sentence until the next day; and the women, after being discharged, were handed over to the care of the Protector of Aborigines. When brought up for judgment, Mr. Barry moved for a writ of error on behalf of “Bob” and “Jack”; but Judge Willis held that such a process would not lie; and His Honor, in a few observations of much feeling, sentenced the prisoners to be hanged, and held out no hopes that the jury’s recommendation would have any effect. The prisoners listened to the Judge with apparently much emotion, and when he concluded, large beads of perspiration spotted their cheeks.

**BUSHRANGERS CAPTURED BY GENTLEMEN VOLUNTEERS.**—11TH MAY, 1842.

In the early part of 1842, there was a lodging-house in Little Flinders Street kept by a person named Seymour, who was not over particular as to the character of those who put up at his place. Money was their passport; and so long as they possessed this, little was cared about whence they came, or where they went; and, as a consequence, his customers were often a very questionable lot—more black than white sheep amongst them. There casually met at this doubtful rendezvous, four men, two of whom were mere youths and the others in the prime of life. They were all able but unwilling to work; preferring to wait for something to turn up, and not over particular as to what that something might be. Their names were John Williams, Charles Ellis, Daniel Jepps, and Martin Fogarty. Seymour had a son-in-law named William Cam—a man of somewhat equivocal reputation; in fact, what is known in thieves’ slang as a “fence”; a scoundrel who puts up others to commit crime, and shares in the profit without risking the danger. A bushranging expedition having been planned, Cam was to be a sort of adviser and receiver of the booty, and the others to take to the highway, or rather to the bush. All their arrangements being duly made, Cam and his co-rangers withdrew to the country, and towards the close of April, the people of Melbourne were alarmed by the report of the perpetration of several daring robberies at and about Dandenong. At this time the settlers’ residences were mostly little more than large log, paling, or slab huts, roofed with bark or thatch, and the sticking up of such premises was a comparatively easy task for armed men.

The gang provided themselves with horses, arms, and ammunition, by surprising the overseers on a couple of stations where they found plenty of cash. One day, at the place known as “No Good Damper,” near Dandenong, they came upon Captain Gwatkin, the well-known master of a colonial trader, and Mr. Frederick Pittman, a Melbourne merchant. The two gentlemen were taking an airing in a gig, when they were ordered to pull up by the four robbers. They gave their names, vacated their vehicle, stripped off their clothes, according to orders, and the handsome takings of £63 1s. 8d. were realised out of the skipper’s vestments; but Pittman, had little or no money about him. The robbers, then unarming the horse, appropriated it; and by an amusing perversion of fair play, gave Pittman, from whom they took hardly anything, a five-shilling-piece of the captain’s cash, but when the skipper asked for a little of his own pocket-money, they ordered him “to shut up, or they’d blow his brains out.” The same evening they called at a Mr. La Mann’s and at two or three other places, where they helped themselves to saddlery, firearms, jewellery, and money; and, so far, their nefarious game commenced flourishingly. The same day intelligence of the outrages reached Melbourne; and in such times, it must be borne in mind, there were no such things as telegraph wires, railways, or even passable roads; and bush travelling in even weather, even to persons well-mounted, was often a slow, difficult, and dangerous work. Mr. Powlett, the same Commissioner of Crown Lands who hunted out the Western Port black murderers, lost no time in getting a party together to commence pursuit. There was himself as leader, with Mr. John Barker (the present Clerk of the Legislative Council), Mr. Robert Jamieson (long since dead), Mr. William Wright (“The Tulip,” ex-Chief-Constable), Captain Dana, and three of his black mounted police, soon in the saddle, and scouring the country after the scoundrels. The gang, however, doubled back, and, retreating upon the Cam “receiving-house,” refreshed themselves, afterwards crossing the Yarra at Anderson’s Creek, and commenced operations in the Plenty country. Williams was the recognised leader of the gang, and
possessed a good knowledge of the country. They were well-mounted, and armed with double-barrelled guns and pistols. On the 28th April they "bailed up" the several stations of Messrs. Sergeantson, Bond, Peat, Langor, Northcote, Bear, Fleming, Rider, and Captain Harrison, and secured a large booty, consisting of a considerable sum of money, gold and silver watches, gold chains and other jewellery. At nightfall they camped in the bush not far from the house of Mr. Bear, one of the places they had plundered. Next morning, before nine o'clock, they robbed the homesteads of Messrs. Wills, Sherwin, and Roland. They next proceeded to the station of Mr. Campbell Hunter, and leaving their horses at a fence a short distance off, rushed the house, or rather hut, where, at breakfast they surprised the following gentlemen—The proprietor, Dr. Grimes, and Messrs. Smeathman, Rumbolt and Boswell. Williams stepped forward, and, with the politeness of a Frenchman, intimated to the astonished inmates "that they would have the goodness to make way for their betters;" they then marched the ex-breakfasters outside, placed them standing backed up against a fence, where Jepps kept guard, with a pistol at full cock and ready to shoot the first man who moved either tongue, foot, or finger. The others, re-entering, sat down to the table and proceeded to execute hungry justice on the comestibles. Whilst the robbers are so enjoying themselves, I shall ask my readers to accompany me back to the Club House in Melbourne (now the Union Club Hotel, corner of Collins and Market Streets).

About four o'clock on the afternoon of the day preceding the "breakfasting" event just recorded, the Superintendent of the Province, Mr. Latrobe, was at the Club House conversing with half-a-dozen members of the Club, when a man on horseback galloped excitedly up the street. This person was a mounted messenger, despatched from the Plenty with instructions to report the daring outrages at the Police Station, then situated at the south-western corner of the Market Square, now the Western Market. Knowing Mr. Latrobe, he pulled up as he passed, and communicated the startling intelligence to him. His Honor was much concerned at the news, and, after recounting the circumstances to his friends, said—"Look here, Fowler! the fact is those fellows will never be taken unless some of you do it. Why not get up a party amongst you squatters, and start at once in pursuit?" The person he addressed was Mr. Henry Fowler; and others, if not all of those who afterwards volunteered, were by. The suggestion took; was acted upon instantaneously; and when Mr. Latrobe said he would supply horses and firearms, the "gentlemen squatters" declared they could equip themselves, and set about doing so without loss of time. If they had not done this, there was no police officer in town capable of commanding a mounted search party, and there is no telling to what excess a long immunity might not have induced the bushrangers to go. An adjournment to the Club parlour took place, where a hasty "Council of War" was held, and the outcome was that five brave men volunteered to turn out without delay, start in pursuit of the bushrangers, and either capture them dead or alive, or—be killed themselves. These amateur heroes were Messrs. Henry Fowler, Peter Snodgrass, Robert Chamberlain, Oliver Gourlay, and James Thompson. They took the precaution of getting themselves sworn in as special constables; and though Chamberlain was a retired Lieutenant of the 31st Regiment, who, from his trained military knowledge, might have been appointed Commandant, his professional claim was waived in favour of Fowler, who was chosen leader in consequence of his superior bushcraft, and thorough knowledge of the "hunting ground" they were bound for. Booted and spurred, well-armed and well-mounted, they started on their perilous expedition, dashing over the green open upland past the Old Gaol, and thence along through the north-west corner of the Carlton Gardens—then a forest, down by the Travellers' Rest (which though afterwards metamorphosed into a college, was, in the age I am writing of, a quaint old shake-down of a grogery, round which a main road curled)—and crossing the Merri Creek, tore away to Heidelberg.

The information communicated in town was so vague that the pursuers did not well know what particular route they ought to take. Arriving at Heidelberg, and obtaining some further intelligence there they made a detour, crossing through Carrington's station, entering the Diamond Creek district, and skirting the picturesque amphitheatre of the Yan Yan (since misnamed Yan Yean) arrived about daybreak in the Plenty country. Here they ascertained that nine homesteads had been robbed on the previous day; and in prosecuting their inquiries they incurred considerable danger, for some of the people suspected them to be bushrangers. The settlers were in such a state of alarm that at the residence of a Mr. Beal, a pistol was presented at Snodgrass, who narrowly escaped a summary eviction from this world. At Mr. John Bear's
station they were informed of much that had taken place on the preceding day, and a Mr. Sampson offered to put them on the trail. As they proceeded particulars were obtained of the recent outrages, and, arriving within a quarter of a mile of Campbell Hunter’s, some horses were seen near the homestead, which left little doubt that “the gang” were close at hand. It was at once decided that the party should gallop on to the place, and without firing a shot, dismount, rush the bushrangers and take them alive.

We can now return to the bushrangers, who were left enjoying themselves at the breakfast they had “annexed.” The table was deserted, and, making for the prisoners outside, they liberated them on parole, that they would not take any part in the coming fray, and ordered them to retire to the back of the hut. The state of affairs therefore was that, as the five pursuers were in the act of dismounting, they beheld the four robbers, about fifteen or twenty yards off, with four double-barrelled guns levelled at them. The five made a rush, and as they did so eight shots were fired at them, none taking effect. The bushrangers hurried back to the hut, which three of them succeeded in entering and barricaded the door. The fourth robber (Williams) was cut off by Gourlay, and tried to reach an adjoining store, erected with thick slabs, and interstices between each. He was pursued by Gourlay upon whom he turned and fired; but Gourlay knocked the weapon aside saving his own life; he had a very narrow shave, for the powder scorched his face. He then fired at Williams, but missing fire, he struck the fellow on the head with the butt. By this time they were both in the store, and as the robber was preparing to discharge another pistol, Gourlay knocked him down and threw himself upon him. After struggling for some time Williams again fired at Gourlay; but the bullet striking a powder flask at Gourlay’s side, his life was again saved, though he called for assistance. Snodgrass hearing his friend’s cry, at great risk of his life (for he had to cross the front of the hut) flew to his succour, and lodged a bullet in Williams’s head. In its transit it was nearly taking Gourlay instead, but only singed some of his hair. Life was, however, tough in Williams, for so far from dying he once more rallied, struggled to his feet, and again tackled Gourlay, who was about to be submitted to another pistol experiment, when Chamberlain, making his appearance, gave Williams a ball in the side, and killed him as “dead as a door nail.” All this time there was a brisk firing into and from the dwelling, but without any fatal result. Chamberlain, after shooting Williams, was hedged in himself, for the balls from the other bushrangers came whistling into the store through the spaces between the slabs, and it is said that it was only to his very slender, though tall and lithe figure that he owed his escape. The first chance that offered he saluted once, and was wounded in the left elbow. Mr. Fowler was placed hors de combat soon after the firing commenced. He was shot in two places, a small slug lodging below his ear, and a ball through the hut window penetrated his cheek, and then, by some eccentric movement from within emerged by the side of the nose, not decapitating that useful appendage to the human face divine, but barking it. After he fell a great quantity of blood spurted out of the hole in his cheek, a clot of which settled on and about the top of his nose, so that he and his companions really thought he was what is vulgarly termed a “nosey,” and he good humouredly exclaimed, “Well, the villains have spoiled my beauty at all events.” The agreeable truth was only ascertained when Dr. Sanford examined his wounds afterwards, and clearing away the congealed gore, discovered that his sense of hearing was permanently much impaired, probably by the ear-wound. It was also nearly eventuating in lock-jaw, and his articulation was affected by it ever after. Whilst Mr. Fowler lay wailing in blood, Mr. Smeatman drew him beyond the range of further danger, and placed him under a large gum-tree some yards away. He was afterwards carried further off by Captain Harrison (who with others of the bailed-up settlers, was present), and placed in a hut, out of harm’s reach. Snodgrass had some hair-breadth escapes in the encounter, was three or four times shot through his clothes, and was once within an inch of shooting a friend of his (Hunter), mistaking him in the row and the smoke for one of the bushrangers. Gourlay was struck four times by balls, though little more than scratched by any of them. After Fowler was disabled, Chamberlain took charge of the party. The firing into the loosely constructed slab store, where Williams was killed, Gourlay floored, and Chamberlain so cleverly dodged the bullets, was so brisk, that on examination after the battle was over, eighteen or twenty bullets were found embedded in the slabs inside.

The day was advancing, and curiosity, mixed with anxiety, induced several of the Melbournians to ride after the volunteers. Rumour directed their route, and the report of the firing brought some of the
country folk, and two or three policemen to the scene of conflict. Amongst those who ventured so far out of town was a Mr. John Eyvart, not only a very “horsey” character, but one of the best judges of horseflesh in the colony. From a hip-malformation of some kind, which gave him a queer, jerky, one-sided gait, he went by the alias of “Hopping Jack,” and was as well known in the old times as Kirk’s Bazaar, the still popular horse repository in Bourke Street. On this day “Jack” was fated to appear in what must have been to him a very novel character, i.e. a diplomatist. Two o’clock had arrived; there was a partial cessation of hostilities, and the party outside the beleagured hut now numbered about thirty. The robbers held out until they saw they had no chance of escape; and if they had done so much longer, it was intended to procure a cart from Harrison’s, and with a mattress on it, improvising a bullet-proof bulwark, under cover of which to storm the hut, rush the bushrangers, and overpower them. Councils of war were held, both outside and inside, and the three bushrangers were heard shouting as if for a parley. After some shouting in reply, “Hopping Jack” mounted a haystack near one of the hut windows, carried on a loud patter with the fellows inside; and it was ascertained that they were desirous that “Jack” should visit them as a plenipotentiary, with whom they could treat about a surrender; and then arose the difficulty as to whether any one should venture into such a human tiger’s den. It was suggested (and not unreasonably) that it might be a ruse to entrapp some person to be detained as a hostage, and probably murdered in the event of a non-compliance with any demand of the robbers. “Hopping Jack,” however, was not deficient in courage, and without giving time for further deliberation, “hopped” merrily into the hands of the Philistines. And he had no reason for repenting his rashness, for they respected the truce, and treated the envoy to a feed on the roast duck, red herrings, and brandy, which Campbell Hunter’s hospitality had unwittingly supplied. The bushrangers then came to business, and agreed to capitulate, if the attacking party gave a written undertaking of their desire that the bushrangers on their trial should be mercifully dealt with. After some communication with the outside, a Mr. Rider followed “Jack,” and acted as the scribe by whom the proposed treaty was committed to paper, when it was signed by two of the outside party, and the gang laid down their arms, Fogarty being the first to surrender. It is hardly necessary to say that the “bit o’ writin’ fared the fate of many more pretentious protocols executed by greater powers. It was more “honoured in the breach than the observance,” and, in lawyers’ parlance “it would not hold water.” About 3 o’clock the capture was completed, and one of the rascals was in an advanced state of intoxication. They were forthwith handcuffed, and being searched, £26 in bank notes, a few sovereigns, and a quantity of silver were found upon them, besides what it was stated, they were so plentiful in cash that having run short of paper during the day, they actually used £1 notes as gun and pistol wadding. At the hottest period of the gold mania, rum-maddened lucky diggers over-laid ham sandwiches with £5 notes, to add piquancy to a counter lunch; but such a thing as bank-note cartridge paper was a novelty unknown at the most layvless period of gold-fields highway robbery.

A singular story is told of Jepps. On their way to Hunter’s in the morning, the “Rangers” met Mr. Charles Ryan (of the now well-known stock-selling house of Ryan and Hammond), and stuck him up. In the property of which they eased him was a pocket-knife, fitted with a corkscrew, and this constituted a portion of the spoil allotted to Jepps, the actual robber. During the fight it was in the bushranger’s vest pocket, and a ball discharged at him struck the knife fair in the centre, splintering the handle, and breaking one of the blades. The force of the blow knocked the fellow over amongst his companions in the hut, and they, believing him to be dead, were about to submit, when he revived and prevented them. After his arrest he said to Mr. Ryan, “I wish I had not taken your knife; for had I not done so, I should have been shot like a man, but now I shall hang like a dog.” The knife was subsequently restored to its lawful owner, and is preserved by him as a souvenir of an unpleasant incident and an eventful day.
the Plenty, was promptly attended by Dr. Sanford, a Melbourne surgeon, and, thanks to a good constitution and skilful treatment, was soon able to be about. The body of Williams, the dead bushranger, was conveyed to Melbourne, and a coroner’s inquisition found a verdict of justifiable homicide. A day or two after the arrest, Fogarty, the youngest of the gang, showed much uneasiness at the position in which he was placed. He made certain overtures to the authorities, which left little doubt of his willingness to turn “approver” against his companions in wickedness, and the Crown had some notion of accepting him as Queen’s evidence; but it was found that the direct testimony in sustainment of a capital charge against the whole party was so conclusive, that it was resolved to bring the three to trial. Fogarty, however, made some revelations of such a character as induced the police to pay a visit to the residence of the man Cam (before mentioned), the result of which was the “springing of a plant” of watches, jewellery, pistols, and other property, subsequently identified as part of the plunder taken by the bushrangers from some of the persons robbed near Dandenong. Cam was apprehended, convicted as a receiver of stolen property, and transported for fourteen years.

The bushrangers were brought before the Melbourne Police Court on the 4th of May, and fully committed. Their trial followed before Mr. Justice Willis on the 11th May. Mr. Croke (the Crown Prosecutor) conducted the prosecution, and the Honorable Mr. Murray appeared for the defence. The Judge delivered an address at once abstruse, learned and discursive. The exordium, however, bore a special reference to the issue exclusively before him, and is worth quoting:—“Gentlemen,—You are especially convened this day for the trial of certain prisoners, who are supposed to have been some of those who recently united in the commission of many daring robberies, and became alike the terror and disgrace of this happy land. For the speedy check to the lawless career of these wicked men we are indebted, not to the ordinary police (though the activity and zeal of the Crown Commissioner merits entire approbation), but to the spirited conduct and undaunted courage of the colonists themselves. The names of the captors, gentlemen, and the details of their achievements, are already familiar to you; they will live in the grateful memory of their contemporaries; and the future annals of this Province will

*Record their dreadful daring with applause.*

The prisoners were indicted for shooting at and wounding Henry Fowler, with the intent to murder him, at West Lowlands, in the District of Port Phillip, and colony of New South Wales, on the 29th April. The information contained twenty-four counts, the first twelve varying the offence, charging Ellis with the shooting, and the others as aiders and abettors; the sixth count charged Jepps as principal, and the others with aiding and abetting; the seventh count charged Fogarty as the principal, and the others as aiders and abettors, etc.; whilst the last twelve counts charged the prisoners with shooting at Fowler with intent to maim, disfigure, and disable; varying the offence between the prisoners as in the first twelve.

Mr. Fowler's appearance in Court, a wounded invalid, created a sensation, and he was most courteously and considerately treated by the Judge, who permitted him to give his evidence seated. He, Snodgrass, Gourlay, Chamberlain, Thompson, Entart, Rider, and others were produced, and their evidence could not be shaken by cross-examination. As to defence, there was in fact none, though Counsel delivered a lengthy and eloquent address to the jury; but it was simply *a voc et preterea nihil.* The jury retired for about an hour, and returned to Court with a verdict of “Guilty.” His Honour directed the prisoners to be remanded to the 13th, as he wished some time for consideration, and was desirous of affording Mr. Murray an opportunity of moving an arrest of judgment, if he believed he had any grounds for doing so. He informed the prisoners, though, that they would end their existence shortly after the passing of the sentence. On the day indicated the Judge took his seat at 12 o'clock, and the prisoners were before him awaiting their doom. Then the Crown Prosecutor rose and prayed the judgment of the Court. In reply to a question from the Bench, the prisoners' Counsel expressed his regret that he had nothing to urge against it. His Honour then put on the black cap, and in brief and impressive language passed sentence of death upon the prisoners, earnestly imploring them “to make use of the short time that now remained for their existence in this world in seeking to make their peace with the Deity they had offended.” Jepps and Fogarty heard their fate with firmness, but Ellis pressed his forehead with his hand, and, “with compressed
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lips, evidently sought to stifle the effect produced by the sentence." The prisoners sent a message of grateful thanks to their Counsel, and were conveyed back to the gaol, the escort finding some difficulty in passing through the immense crowd congregated about.

Postscript.

Post-mortem would, perhaps, be a more appropriate heading for this note, for several notable and estimable old colonists have passed away in the brief interval elapsing since the commencement of the writing of the "CHRONICLES OF EARLY MELBOURNE." I was about thinking of making a start when Sir Redmond Barry was carried off amidst universal regret. He was the most remarkable personage among the annals of Port Phillip, for he threw in his lot with the destiny of the Province when it was a weak, struggling settlement in 1839, and identified himself with every stage of its wonderful progression until he left it a bright and brilliant colony in 1880. Had he lived I am sure he would have enjoyed many of the queer old facts exhumed in the course of my several narratives; and, if requisite, I should have confidently appealed to him as a testimony of their general accuracy, for no man amongst us would be more capable of expressing an opinion on such a subject. Mr. W. F. A. Rucker has also made his exit from the worldly stage, and to him I was much indebted for the inspection of several old tracings and newspapers otherwise unattainable. He was the second merchant or wholesale dealer in Melbourne, Batman being the first; and it was Mr. Rucker who started the first banking agency here. He was one of "The Twelve Apostles," a curious Mutual Assistance Co-partnership, of which I hope on an early day to furnish a full, true, and particular account. Next is the Hon. James Henty, one of the historic brothers who pioneered Portland ever so long ago. Then there is Mr. John Marchion, who died recently at Kew, an old resident of rare integrity and enterprise, who, amongst other feats, accomplished that of driving the first tandem overland from Sydney, when there was not only no railroad, but no road at all between the two capitals. Mr. Robert Hoddle (the first Surveyor-General, though not the first in charge), who came to Melbourne before it was even a township, with Governor Bourke, in 1837, has also gone under, after a long-lived and prosperous career; and so has Mr. William Highett, the first manager of the Union Bank, leaving hundreds of thousands of pounds behind him. Mr. Robert Hoddle (the first Surveyor-General, though not the first in charge), who came to Melbourne before it was even a township, with Governor Bourke, in 1837, has also gone under, after a long-lived and prosperous career; and so has Mr. William Highett, the first manager of the Union Bank, leaving hundreds of thousands of pounds behind him. Mr. Thomas Napier, the first timber importer, has likewise passed to his account, and two or three others of the very old identities are said to be in a precarious condition. Mr. Michael Croker has also departed this life, at Blackwood, in his 79th year. His obituary notice, announced that "he was deeply regretted by a large circle of friends." And I am not surprised at it, for a more generous and kind-hearted man never existed amongst us. Arriving in Melbourne in 1839, he was in business in the town and city until after the gold discoveries, in 1851-2, when he betook himself to the diggings, and continued there since, having for many years resided at Blackwood. There was hardly a man in the old times better liked; and no one ever in vain asked the aid of Michael Croker in any movement for a good purpose. He was one of the original members of the St. Patrick Society, and amongst the most prominent in the early national celebrations by which the days of yore were distinguished. He was an old and true friend of mine; and it is with sincere sorrow I publicly place a bunch of cypress on his freshly-covered grave.

The Murder of Mr. Codd—19th July, 1842.

There was no time, perhaps, in the colony when the aborigines were more truculent and bloodthirsty than in the year embracing the last half of 1839 and the first of 1840. Outrages of a serious character were of almost daily occurrence in the interior, and there were impediments of a formidable nature to avert the retribution of the law. In April, 1840, a gentleman named Codd was murdered by the chief of one of the Western tribes, and the event caused a profound sensation, the deceased being held in general esteem. The coolness and daring of the deed brought apprehension to the scattered station-holders in the bush. Without inquiring whether the blacks or the whites were the original aggressors, any person fairly conversant with the early history of Port Phillip must admit that unprovoked atrocities were committed on both sides, for which terrible revenges were exacted. The instances in which offenders were brought to the bar of
justice are few; and, though aborigines have been convicted and hanged, there is no case in the criminal annals of Victoria of a European having been found guilty for taking the life of an aborigine.

The scene of the murder I am now writing of was the station of a Mr. Brock, at Mount Rouse, in the then District of Port Fairy. Codd was, as was common in those days, a “gentleman overseer” and on the 19th April, 1840, with a couple of the station hands, was at work in the scrub, not far from the homestead. A mob of blacks, some eighteen or twenty in number, were seen prowling about, but not much heeded, when suddenly the white men were rushed, and before they had time to defend themselves Codd and a man named Rooney were stricken down, the former fatally, and the other dangerously wounded. Codd survived only five minutes, and Rooney recovered after a protracted illness. The blacks fled, but their leader, quite a model of the thoroughly developed and powerfully proportioned aboriginal, was easily identifiable, and a warrant was issued for his arrest. For more than two years he contrived to elude capture, though parties of mounted-police seldom slackened rein in endeavouring to run him to earth. At length he was overhauled, secured, and sent to Melbourne for his trial. His tribal name was Figara Akoopurata, though he usually went under the English appellative of “Roger.” There was much difficulty in obtaining the services of interpreters, but the Crown succeeded in procuring four persons, by whose united efforts he was brought to some dim comprehension of the process of trial by jury. This quartette consisted of Messrs. G. A. Sieveywright (the Assistant Protector of Aborigines for the District), Hurst, Lacy and Smith. The prosecution was conducted by the Crown Prosecutor, and the defence by Mr. Barry, who was now regarded as standing Counsel for the aborigines. The facts above summarised were deplored in such detail, and satisfactory proof was given that the prisoner was not only the leader of the attacking force, but that he had struck Codd several times with a heavy native club. The prisoner in his own way was not devoid of a certain shrewdness and intelligence, and seemed to thoroughly understand (through the interpreters) all that passed. In defence, he declared himself innocent of the murder. He put in a verbal alibi, i.e., that he was at the time of the committal of the offence at the neighbouring station of a Captain Webster, with his brother, “Milk-and-Water,” and three white men, employed sheep-washing. Whilst so engaged three blacks arrived, and told them of the murder of Codd, and he asked them why they did it, but got no answer. The jury returned a verdict of “Guilty,” and after sentence of death was passed the prisoner, little concerned, was removed to the gaol. Next day the Chief Protector of Aborigines made him a visit, when the prisoner was very anxious to know by what mode he would be put out of the world—whether by being hanged, shot, or having his throat cut. On being told that he would swing, he replied that he liked hanging least of all.

THE FIRST CRIMINAL LIBEL CASE.—17TH AUGUST, 1842.


The plaintiff was a Commission Agent, and the defendant the Editor and registered proprietor of the Port Phillip Gazette. Anterior to the passing of the Melbourne Corporation Act, there was much local agitation arising out of the proposed provisions of the measure, and meetings were held in the several Wards, into the proceedings of which much personal feeling and unworthy jealousies were introduced. As a matter of course the newspapers took different sides, and Marshall having presumed to officiate as Chairman at a gathering in Bourke Ward, and to accept a vote of thanks for his services, the Gazette pitched into him in a style that would scarcely be sanctioned by the most relaxed canons of criticism. It was an intensely acrimonious attack, in which personal abuse and innuendo were so bitterly mixed, that it was small wonder that the publisher should be brought over the coals for it. Not content with treating of Marshall’s colonial career, it went back to his pre-emigration period, disintering a former bankruptcy and some alleged questionable doings on the London Stock Exchange, and declared that he had quitte England for Belgium under circumstances the reverse of creditable. Marshall summoned Arden to the Police Court, whence the case was sent on for trial; but beyond formally sanctioning the filing of a bill, the Crown Prosecutor had nothing further to do with the business. The case was tried at the Criminal Sessions in the usual manner, Mr. Barry appearing for the complainant, and Messrs. Murray and Williams for the defence. The
indictment laid the offence as the publication, in the Gazette of 2nd July, "to the great infamy, injury, and scandal" of Marshall, etc. For the prosecution the complainant was called as a witness, and, whilst emphatically traversing various sections of the libel complained of, on cross-examination he acknowledged to having been insolvent, and arrested for debt in England, but had given bail there and had not left whilst under bail. He declared he had never been outlawed. The jury found Arden "Guilty," and he was admitted to recognizances, to appear for judgment on the 15th September, when Judge Willis sentenced him to a fine of £50, to find two years' good behaviour security, himself in £500 and two bondsmen in £250 each, and to be imprisoned until the fine was paid, and the recognizances entered into. The Judge subsequently allowed Arden to give bail for the fulfilment of the sentence within a few days, which was done accordingly.

THE FIRST TRIAL FOR RAPE.—15TH OCTOBER, 1842.

John Taylor was indicted for the violation of Anne Handhaugh, at Geelong, on the 8th September. For the prosecution the Crown Prosecutor appeared, and Mr. Cunninghame, assigned by the Court, defended the prisoner. The prosecutrix was a married woman, about 25 years of age, and in very delicate health. She lived at Ashby, near Geelong, and on the day named had occasion to go into Geelong to procure some medicine from Dr. Shaw for her sick servant. She had to travel a mile to and from, and was returning in the afternoon when she met the prisoner on the road, who remarked that it was "a fine evening." She made the usual reply, and he then uttered an insulting expression, at which she got alarmed, called out "Murder," and ran from him. He overtook her, threw her down, and maltreated her with a violence that rendered her insensible. Two men and a woman witnessed the outrage from some distance, and one of them (Sylvester Newton) pursued the prisoner and caught hold of him, but was quickly shaken off, and Taylor for the time escaped. That night he was apprehended by the police, and next day committed for trial from the Geelong Bench. Whilst giving her evidence the prosecutrix became so exhausted by extreme nervousness that stimulants had to be twice administered to her. Dr. Shaw and her husband were obliged to support her in Court, and when her examination was concluded she fainted, in which state she was removed to the Judge's room. The charge was most conclusively proved, and the jury found the prisoner "Guilty." He was remanded for judgment until the 17th, when sentence of death was passed, which was afterwards commuted to transportation for life.

MURDER AT THE PYRENEES.—17TH OCTOBER, 1842.

John Connolly, alias Maloney, was tried for the wilful murder of Mr. Francis, a settler at the Pyrenees, on the 17th September, and his defence was undertaken by Mr. Cunninghame, assigned as Counsel for that purpose. From the opening statement of the Crown Prosecutor, it appeared that the prisoner was employed on the station of the deceased. They had had some dispute, during which Connolly snatched up a gun and presented it at Francis, but it did not go off. He was then ordered to quit the place, which he did, but returned some hours after. Francis seeing the man coming back went towards him to prevent it. He had a piece of rotten stick in his hand, and, meeting Connolly about 150 yards from the house, told him he would have nothing more to do with him. Connolly dared him to prevent his going back, and would force his way, when Francis struck him with the stick on the shoulder. Connolly then rushed on Francis, and the latter fell to the ground. This much was seen by some men working a short distance off; but they saw no other weapon used than the rotten stick. Francis, who had on only his shirt and trousers, scrambled to his feet and hastened back to the house, telling the inmates that Connolly had stabbed him; he went to bed, and died next day. The murderer was at once seized by the men on the place; and when Francis heard the scuffling, and was told the cause, he sent word "that the prisoner was not to be ill-used." No one had seen any stab given, nor was any weapon found on the prisoner or about the scene of the occurrence, and so far they did not know what to make of it; but the mystery was made plain next day by the prisoner confessing that he had stabbed Francis with a knife formed out of a sheep-shears, and immediately after dropped the weapon in a water-hole. It was elicited in evidence that the prisoner was sometimes what is colonially termed a "shingle short," and, in consequence, was known as "Cranky John." The defence set up was insanity, but the prisoner was convicted after little deliberation.
by the jury. On being asked if he had anything to say why sentence of death should not be passed on him, the unfortunate man replied that "he wished to get out of the country;" and whilst the Judge was passing sentence, the prisoner exclaimed with fervour, "Oh! thank God!" whereas the Judge sharply told him "that he had more reason to pray to God!" The prisoner then declared that "Francis had struck him and set the dogs upon him, and a man might as well be dead as torn by dogs." The Judge sentenced him to be hanged, but the punishment was afterwards modified to transportation for life.

THE FIRST CIVIL LIBEL CASE.—30TH JANUARY, 1843.

Leadbetter v. Cavanagh.

The plaintiff was a Law Clerk, defendant the registered Proprietor of the Herald, and it was sought to recover damages for the publication of a very defamatory libel. Leadbetter owed Cavanagh money, and was rather long-winded in his payment. Leadbetter cleared out one day for Sydney, with the score unsatisfied, for which he was denounced in a Herald paragraph of a most abusive nature. By it the gentleman who had made himself scarce was held up to public scorn as "a bolter from the colony;" and ticketed "as a most notorious scamp who had fled to Sydney in the 'Earl of Durham.'" It was further declared "that a greater scamp never disgraced the Province;" and as a kind of "hae and cry" for the benefit of the Sydney people, the runaway was printed down as "of common stature, peering eyes, a curl on the upper lip, ruddy complexion, and an extremely obtrusive manner." When Leadbetter read the terrible tirade on himself, he returned to Melbourne and sought legal redress. Mr. Barry appeared for the plaintiff, Mr. Cunninghame for the defendant, and the jury awarded damages £20.

FALSE IMPRISONMENT.—12TH MAY, 1843.


An action for false imprisonment, damages £1,000. Counsel for plaintiff, Mr. Williams; for defendant, Messrs. Croke and Barry. Plea—the general issue. There were no two better-known men in their time than the litigants in this case. The plaintiff was Mr. William Kerr, the Editor of the Patriot, and an Alderman of Melbourne; the defendant Major F. B. St. John, the Police Magistrate. It has often occurred to me that "the Major" used to copy the weaknesses and eccentricities of the Superior Judge, though on the whole he was more good-natured, independent, and fair-minded than Willis. On the 8th August, 1842, there appeared in the Patriot a mosquito paragraph, reflecting upon a decision of the Major's, which stung him to such a pitch that he forthwith issued a summons requiring Kerr to appear at the Police Court, and answer any questions that might be put to him. Kerr was in no wise loth to appear, and the moment the Major had him before him, he became bounceable, and Kerr waxed impudent. The consequence was that the Major committed the Editor-Alderman to prison for twenty-four hours for contempt, and to gaol he went in high good humour. The warrant of commitment was made out on a printed form in general use in the Court, and the words "with hard labour" were, by an inadvertence of the clerk, not erased; so that the detainer was bad, inasmuch as it imposed an addition to the durance, which was ultra vires in a punishment for contempt of Court. An application was therefore made to the Supreme Court next morning to set aside the warrant, because of its faultiness, and the Judge quashed it accordingly. Kerr was thereupon enlarged, but not before he had put in the whole twenty-four hours less twenty minutes. Kerr, who knew more law than the Major, seemed aware of the flaw, for, whilst he was confined, he begged of the gaoler to put him to hard labour of any kind—he was not over-particular as to the quality of the work, provided he was kept doing something; and was ready and willing to clean boots, brush a coat, or scrub a cell; in fact, he was ready to lend a hand to do anything. But the gaoler, possibly out of regard for Kerr's public position, was unwilling even to oblige him so far. The jury found for the plaintiff, damages £50; and on the announcement of the verdict, Judge Willis rubbed his hands gleefully, and exclaimed, "It was just the very sum I thought they would give."
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MURDER OF AN ABORIGINAL WOMAN.—31ST JULY, 1843.

This was the first trial of note that was held before Mr. Justice Jeffcott (the second Resident Judge). As the prisoners were white men, the issue was looked forward to with the utmost interest. After the jury panel was called, Richard Guinness Hill, Joseph Betts, and John Beswicke, were put to the bar charged with the murder of an aboriginal woman, named Coonea, at Muston's Creek, on the 23rd February, 1842. The prosecution was conducted by the Crown Prosecutor and Mr. Barry. The prisoners Hill and Betts were defended by Messrs. Williams and Stawell, whilst Messrs Cunninghame and Stawell appeared for Beswicke. The indictment contained ten counts in which the offence was varied in every form known to legal ingenuity, and the prisoners pleaded "Not Guilty."

On the 25th February, 1842, Mr. C. W. Sievewright, the Assistant Protector of Aborigines for the Western District, accompanied by a blackfellow, found the bodies of some native women on the station of Messrs. Smith and Osbrey, at Muston's Creek. He identified two of them, named Coonea or Connyer, and Naidgoncher. Coonea, he believed, had been shot dead, for she had received a gun shot in the abdomen, and had had her left arm smashed by another shot. He had been twenty-five years in the army, and was well acquainted with the appearance of shot wounds. The bullet had entered the right side of the woman and passed out at the left. He was well aware of the difference between a wound from a spear and a gun shot. Had seen deceased about a week before, and did not observe any male aborigines about on this day. He would not swear positively that the abdomen wound had not been caused by a barbed spear. Christopher M'Guinness, a bush carpenter employed on the station, said that on the 23rd or 24th February, 1842, he saw the prisoner Betts ride rapidly up to the master's hut and talk to Hill. Betts then came over to the men's quarters, and asked one of the hands (Arabin) to lend him a gun to shoot some kangaroos, and Arabin loaded a gun with two bullets and passed it to him. Soon after witness saw Betts and some other men on horseback ride away from the master's hut, and he followed them. When about three-quarters of a mile off he heard two shots fired, and stopped, expecting to see some kangaroos. He saw six men on horses, and the prisoners were some of them. One of the six, named Boursiquot rode after a blackfellow. Betts moved towards the bottom of a scrub, and, levelling his gun, fired into a clump of trees, and witness saw a black figure fall. The figure when falling uttered a loud shriek, and some other black figures rushed out of the scrub. Hill shouted, "Here they come," when three shots were fired, and there was terrible wailing from the scrub. Witness returned home, and at supper in the evening, Betts and Arabin talked about the blacks, and Betts said there were some lubras and children shot in the hollow. Hill was armed with a pair of pistols, and Beswicke with a short gun or rifle. The witness, on cross-examination, admitted that he was an expiree-convict, and had been arrested on suspicion of complicity in the murder.

The most important evidence was given by Mr. Thomas Osbrey, one of the owners of the Muston Creek Station. He stated that Hill was his manager and Betts the hut-keeper. On 23rd February three gentlemen named Smith, Whitehead, and Boursiquot, visited the place, and whilst they were in his hut, Betts looked in at the door, saying "there was a mob of blackfellows at hand." The whole of the party then jumped up and got their arms; but he paid no attention to what they talked about. They went away, and on their return he saw some blackfellows' weapons with them. He did not see Beswicke that day, and he thought Beswicke could not have been there without him (Osbrey) seeing him. Afterwards saw the dead bodies of three black women and a child. George Arabin corroborated portions of the statement of M'Guinness, and declared to having seen the three prisoners in the party of six who set forth, as he was given to understand, "kauparing." M'Guinness followed to obtain the skins. He only saw firearms with Betts, who said, in the evening, that he had fired twice, and hit a gum tree. Three days after the Black Protector called at the men's hut, informed them that three black women and a child had been murdered, and offered a reward of £50 for information concerning the outrage. In reply to prisoners' Counsel the witness acknowledged to his having been arrested on the charge, and that when examined before Sievewright, who was a J.P., he swore he knew nothing of the affair. The trial was adjourned until the next day, and the jury locked up in charge of a sheriff's officer at the Royal Hotel in Collins Street. On its resumption Messrs. Williams and Cunninghame addressed the jury on behalf of the accused. The defence relied on was that the witnesses (M'Guinness and Arabin) were unworthy of belief, being, according
to Cunningham, "wretches, steeped to the lips in crime, self-convicted perjurers seeking to earn the price of blood." The evidence of these two witnesses as given to the Court was compared with their depositions at the preliminary investigation, and the discrepancies indicated. An alibi was set up for Beswicke, who on the day of the alleged massacre was away on the station of a Mr. Brock, attending to his business. The whole charge was declared to have been trumped up by "conspirators banded together in perjury, linked together by the bond of mutual guilt, and joining together in a well-concocted story, to swear away innocent life, and earn a blood-stained reward." At this stage the prosecution was stopped by the jury intimating that they had agreed to a verdict of "Not Guilty." The Judge, in directing the discharge of the prisoners, remarked that it would have been an everlasting disgrace on the Government had this case not been investigated, and if the prisoners had been convicted he should have passed sentence of death upon them without the slightest hope of mercy.

It was reported that two other parties supposed to have been implicated had cleared out for England, and if there had been a conviction, warrants would have been despatched for their apprehension.

FALSE IMPRISONMENT BY A JUDGE—24TH NOVEMBER, 1843.

Ebden v. Willis.

An action for trespass by false imprisonment; damages laid at £5000. Declaration contained one count. Pleas, the general issue and justification—"For that defendant, as Resident Judge of Port Phillip, did in the lawful exercise of his authority imprison the plaintiff for constructive assault." Counsel for plaintiff, Messrs. Raymond and Barry; for defendant, Mr. Williams.

The suit arose out of the circumstances detailed in Chapter VII, pp. 76 ("Eccentricities of Judge Willis") when Carrington, an Attorney, attempted to serve an order of the Supreme Court of Sydney on Judge Willis, in Bourke Street, and the Judge, when either struck or touched by the papers, gave Carrington into custody. The plaintiff (Ebden) as the friend of Carrington, was with him on the day of the occurrence, and the Judge put him along with his companion for having, as he conceived, committed a constructive assault. They were both detained in the lock-up for a short time, and then brought before the Police Court, where the charge against Ebden was withdrawn. After the plaintiff had proved the facts, Mr. Williams submitted the following non-suit points:—1. That no action could lie against a Judge acting and exercising his functions within his proper jurisdiction.—2. That the plaintiff should have given notice of his action, so that if wrong were done, defendant might have an opportunity of tendering amends.—3. That the action should have been commenced within six months of the alleged trespass.

His Honor, Judge Jeffcott, having signified his intention of sending the case to the jury, a defence was raised on the merits in effect that Ebden had gone out of his way in backing up Carrington; and that the attempted personal service in the streets was a trick to produce a scene, and so humiliate the Judge. Before the occurrence in the street, the conduct of both Ebden and Carrington in the Supreme Court had been most offensive.

In summing up, the Judge commented on the want of courtesy in not communicating by letter with Judge Willis as to his accepting personal service. Improper feeling had been displayed on both sides, and there was no evidence that personal service of the legal process was necessary. If the jury were of opinion that the throwing of the order at the Judge was merely a service of it, they ought to consider that no assault had been committed. It was also a matter for consideration as to what power the Judge possessed to commit those persons to prison, for a Judge walks through the streets as any other private individual, and has no right to order into custody anyone who may be personally rude to him. If the parties went simply to serve an order, there was nothing offensive in it; and if some person had been deputed to accept service for the Judge, the degradation of the street scene would have been avoided. If they thought personal service was necessary, then the Judge brought the trouble on himself. It was for the jury to weigh all the facts submitted to them, and consider whether one or both of the parties (Carrington and Ebden) intended to commit an assault; and also how far the Judge was justified in sending them to prison, though this was rather a question of law.
THE CHRONICLES OF EARLY MELBOURNE.

The jury after a short deliberation found for plaintiff, damages 42s. I am not aware of any subsequent steps having been taken to set aside this verdict. Ex-Judge Willis was at the time away in England, prosecuting his appeal before the Privy Council; and a Melbourne newspaper, some months after, stated that a writ of execution had issued, and £1200 worth of the defendant's property had been sold for considerably under that amount, by Sheriff's sale, to satisfy the verdict and costs.

Prosecution for Libel.—28th November, 1843.

During the Municipal Election agitation of 1843, a violently scurrilous article appeared in the Herald, denouncing the candidature of Mr. Anthony H—n for a seat in the Town Council, and alleging that "H——n's father was a convict assigned to his wife in Sydney, and that he had been convicted of an offence of frightful atrocity." The newspaper soon found out that it had made a great mistake, and had committed an act of the grossest injustice. A most unqualified apology was promptly published, and fifty copies of the paper containing the libel were destroyed. But this did not satisfy the H—ns, who took out a warrant against Mr. Clarke, the registered printer and publisher of the Herald. He was committed by the Police Court for trial, but upon Mr. George Cavenagh, the proprietor, offering to change places, Clarke was released and Cavenagh bound over to answer the charge at the Criminal Sessions. He was accordingly arraigned for the libel on a bill filed by the Crown Prosecutor, but conducted at the expense of the plaintiff, who was represented by Mr. Stawell; whilst Cavenagh was defended by Mr. Williams. Defendant pleaded "Guilty," and was admitted to bail, himself in £200, and two sureties in bonds of £100 each, to appear for judgment when called on.

Cavenagh, it appears, had been misled by one of the swarm of groundless rumours circulated during the high pressure heat so characteristic of the early Municipal Elections, and there could be no question of the manner in which H—n had been calumniated. Cavenagh very soon found this out, and made all the amends in his power. During the period that intervened between the publication of the libel, up to, and after the trial, various certificates, declarations, and letters appeared in the other Melbourne journals, establishing the good name and fame of the H—ns, and the falsehood of the libel, every iota of which Cavenagh had reprinted in the Herald.

On the 16th December, he appeared to receive sentence; and Mr. Stawell, for plaintiff, prayed the judgment of the Court. Mr. Williams for defendant put in affidavits in mitigation, in which a dozen of the most respectable residents of Melbourne testified that for years they had heard and believed, up to trial, the report that Mr. H—n, senior, was as set forth in the libel. Contra affidavits were also filed, including one by a Mr. Thomas Jennings, expressive of his belief that the story about H—n had originated with H. N. Carrington, a well-known Attorney and a great mischief maker. Mr. Williams addressed the Court at much length. He made a very forcible appeal to His Honor for leniency under the circumstances. Mr. Stawell in reply submitted that the affidavits of the defendant simply aggravated the original offence. Judge Jeffcott took until the 18th to consider the affidavits, and on that day sentenced the defendant to a fine of £50, and three months' imprisonment, with further incarceration on non-payment of the fine. Mr. Williams applied for the remission of the imprisonment, which, if enforced, would ruin the defendant, who had a large family dependent on him, and the Judge intimated that he would have no objection if the prosecution consented. After a brief consultation, the consent was given, and the imprisonment cancelled. The fine was paid at once, and Cavenagh walked forth a free man.

Conviction of a "Gentleman Rowdy."—16th March, 1844.

On the night of the 3rd February, 1844, six or seven inebriated "swells," freighted with more gog than brains, sallied out of the Melbourne Club for a "bit of a spree," determined to do something sensational. What particular form their heroism was to assume was undetermined, and depended very much
upon what Fortune might throw in their way. They were armed in manifold manner—two or three of them with broad palings, others with bludgeons, and one with a poker; whilst he who seemed to perform the functions of conductor, brandished aloft something very like a crowbar. After some slight skirmishing, undeserving of record in this veritable history, they arrived at what was then known as the River Townend, after a grocer who kept shop at the south-western corner of Collins and Elizabeth Streets. This was a sort of nasty ravine discharging into the Yarra, and the Corporation had recently had a wooden bridge thrown over the chasm, so as to enable a safe transit from the footway into the centre of Elizabeth Street, and this public convenience the hot-blooded "skylarkers" determined to destroy, not by siege, but by assault. To work then they went literally *vi et armis*, but had not progressed far in their intended wrecking, when some of the police, and a brace of night-watchmen appeared. They quietly begged of the gentlemen to drop their mischief, and go home in peace to bed, when one of them (a Mr. White) told off to do duty as a sapper by undermining one side of the bridge, roared out that "he'd like to know what the constables had to do with him?" A general engagement immediately commenced, and the first man down was an old constable named Corrie, who was capsized by a back-hander from White, who, either from the impetus of the blow, or the whisky-toddy he had been imbibing, tumbled on the top of the peace-preserver. White was soon himself again, and fell foul of a little podgy sergeant well-known as Swindell, whom he punched tremendously. Another of the "skylarkers" recognised as Mr. Peter S——s, was a sort of free-lance, hitting out right and left "for fun," and punishing both his friend and foe with great impartiality. The leader of the Mohawks (identified as a Mr. Henry Wheeler) played "poker" in a style which rather astonished the thick heads and shoulders of some of the police, three of whom tackled him on the bridge, but got paid off for their intrepidity; for one of them (Higgins) received "one for his nob," and the others were treated to contused arms. Higgins was a big "Sprig of Shillelah" well trained in Irish skirmishing, and he kept the bridge like a modern Horatius; but, unlike the latter, had no Tiber to jump into and swim away with a whole skin. Like Horatius, though, he held the bridge manfully against the "spifflicated" Etrurians, until levelled by the poker, and after the battle was over, was found soaking in blood, covering with his body the bridge which he refused to abandon. The police were at length reinforced by some of the townspeople, and singularly enough, it was a diminutive, half-cranky tailor, named Elliott, who disarmed Wheeler, by stealing behind and adroitly twitching the poker out of his hand. The poker was to Wheeler what his hair was to Samson; and having lost it, it was all up with him. White, Wheeler, and S——s were made prisoners of war, and marched off, in triumph, to the watch-house. The other night-birds escaped. The rioters were charged at the Police Court next morning, when the evidence against S——s was trifling, and he was therefore let off scot free. White was fined £5, but Wheeler's conduct proved to be so outrageous that the magistrates declined to deal with him summarily, and he was therefore committed for trial, but admitted to bail. His trial came off at the Criminal Sessions on the 16th March, though during the interval strenuous exertions had been made to effect a compromise—but to no purpose. The traverser, who was defended by Mr. Raymond, was indicted for an assault upon Constable John Higgins in the discharge of his duty, and a second count charged a common assault. The jury convicted on the first count, and Judge Jeffcott in passing sentence administered a severe rebuke to persons ranking in society as gentlemen descending to acts that would disgrace the humblest man. The judgment of the Court was three months' imprisonment, a fine of £50, and to find two sureties of £100 each to keep the peace for twelve months, with further imprisonment until the pecuniary requirements were satisfied. The cash and bail-bonds were forthcoming, and after serving a month's incarceration the Executive remitted the remainder of the confinement in deference to an influentially signed memorial. It was understood that Higgins had been compensated by way of erie for the serious injuries he sustained. He remained for several years afterwards in the police force.

A MAGISTERIAL HORSE-WHIPPING.—17TH APRIL, 1844.

*M'Crae v. Foster.*

Tried before Judge Jeffcott and a special jury of twelve, was an action for assault and battery; damages, £2000. The assault was admitted and £10 paid into Court. Counsel for plaintiff, Messrs. Cunningham and Williams; for defendant, Messrs. Barry and Stawell.
THE CHRONICLES OF EARLY MELBOURNE.

The plaintiff was Dr. Farquhar M'Crae, and the defendant, Mr. J. F. L. Foster. They were both in the Commission of the Peace, and the event caused considerable interest in the upper stratum of society, to which the individuals belonged.

On the 1st December, 1843, M'Crae was riding through Queen Street, when he was rushed by Foster, whip in hand, who struck both man and horse, which led to the unhorsing of the rider. M'Crae, recovering his feet, followed Foster, who grasped his pursuer, held him firmly, and again gave him the whip several times over head and shoulders. The fracas arose out of a dispute about the purchase of a run from M'Crae by Foster, the latter of whom complained of having been unhandsomely treated by the former. Some correspondence ensued, in which M'Crae interrogated Foster as to the way in which he had spoken of him. This was not denied, and M'Crae again wrote to him on the subject, as well as with reference to a debt which he alleged Foster owed him. Foster sent M'Crae a challenge, which was declined, on the not unreasonable ground, that before a man offered to fight another he should first pay him what he owed him. M'Crae, however, proposed to refer the matters in dispute to a friendly arbitration; but Foster, while not denying the liability, rejected the mediation, and the street scene was the consequence. The correspondence was produced, and M'Crae's letters were certainly couched in language of studied and covert affront, as for instance wherein he declared "that no laws in the code of honour were more imperative than that no gentleman could be allowed to go out with another under dishonour." In further letters both parties asserted that each had so insulted the other as to place him outside the pale of fighting. The jury found for plaintiff, damages £250.

AN INDIGENOUS BLACK MURDER.—15TH MAY, 1844.

"Jacky Jacky," an aborigine, was indicted for the murder of an aboriginal boy named Tommy. A second count charged the offence of aiding and abetting in the same murder, and alleging its commission by another aborigine known as "Long Bill." The Crown Prosecutor appeared against, Mr. Barry for the prisoner, and the Rev. Mr. Tuckfield, (a Wesleyan Aboriginal Missionary) undertook the duty of interpreter. The prisoner pleaded "Not Guilty," and on it being explained to him that he had the right to challenge any of the jury, he replied "Very well," which Mr. Barry submitted was tantamount to challenging the whole.

The offence was averred to have been committed on the 22nd January, at Fyansford, near an out-station of Mr. Manifold. A Mr. Cosgrave and a servant named James were travelling with a dray, some cattle and a mule, the dray being driven by a blackfellow from Sydney, and the deceased was accompanying them. They were followed by a mob of twelve or fourteen aborigines (including the prisoner) who threatened to kill the boy, and Tommy, the better as he thought to provide for his own safety, jumped upon the mule, which so frightened the animal that it rushed in amongst the cattle. The blacks, dashing after the mule, pulled the boy off, threw him on the ground, and whilst he was down one of the savages, who was armed with a gun, fired at him. Spears were also cast, and several were found sticking in his dead body when it was recovered. The prisoner, who was one of what was known as the "Janga" tribe, was found "Guilty" of aiding and abetting, but recommended to mercy. The Judge passed sentence of death which was subsequently mitigated to transportation for life.

HIGHWAY ROBBERY AND ATTEMPTED MURDER.—17TH MAY, 1844.

John Abbott was arraigned for having, on the 24th March, at the Honeysuckle Range, near Mount Rouse, robbed one John Buchannan, and afterwards discharged a pistol at, and wounded him. Mr. Raymond was assigned for the defence.

John Buchannan had been in the employ of the Messrs. Burchett for two years, and was paid his wages preparatory to leaving the station. On the day mentioned he set forth with William Holmes, a mate, intending to proceed to the station of Captain Webster. They reached a place called Honeysuckle Scrub, when the prisoner, and one Peter Stratton, dashed suddenly from the bush, and one of them sang out: "Come on Buchannan, we want your cheque." Abbott and Stratton were in the men's hut at Burchett's when Buchannan was paid. As the two robbers approached, the prisoner cocked a pistol and presented it...
at Buchanan, who instantly handed him a cheque for £11 4s. 6d., which the prisoner passed to Stratton, who was armed with a carbine and pistol. The prisoner next ordered Buchanan and Holmes to go with him into the bush, as he intended to tie them up. They complied and Stratton walked behind to keep guard. When about 40 yards off the road, the prisoner pinioned each of them so tightly that their elbows touched, and they were placed back to back. Their two dogs were next fastened to a tree, and prisoner and Stratton commenced firing at the men, as if at a target. Buchanan received five wounds about the breast, though none of them proved fatal. Holmes escaped with a trifling scratch. The robbers ran away, leaving Buchanan lying on the ground. Holmes having loosed his bonds, freed Buchanan, who with great difficulty and suffering much agony, was got back to the station by his companion, and intelligence of the atrocity was sent by mounted express to the police authorities at Geelong. It was believed that Buchanan would die of his wounds, but he recovered. The cashing of the stolen cheque at a bush public-house afforded a clue which led to the arrest of the prisoner. Stratton disappeared and all traces of him were lost until the following year. Abbott was found "Guilty," and Judge Jeffcott, in pronouncing sentence of death, was so much affected that on concluding he shed tears, and the prisoner, on his return from the Court-house to the gaol, remarked to one of the turnkeys, "What a kind-hearted man that Judge is; he seemed so much affected in sentencing me, that I be blowed if he did not almost make me cry."

John Abbott went under the two aliases of Sullivan and Slater, and was nicknamed "Jack the Sawyer." He was born of Irish parents and as a sailor he knocked about the world for some years, until he arrived in Port Phillip. He was sent to prison for three months, after which he took to the bush, and nothing further was heard of him till this Mount Rouse affair. He was believed to be a desperado, so after his condemnation he was heavily ironed, and confined in the most secure portion of the gaol, and was constantly watched by a warder day and night. He declared that when he stood on the scaffold he would make such horrible revelations as would frighten all who should hear him. The public looked for his execution, but the miscreant dodged the hangman, as the Executive Council had commuted the capital punishment to transportation for life. The discovery of some technical flaw in the trial was said to be the cause of such mis-timed leniency, but the real reason will be found set forth in the chapter on "Executions." A reward was offered for the capture of Peter Stratton, and when in Melbourne he was arrested for drunkenness by Chief-Constable Sugden, who fancied he answered the description of the man so much wanted. Further inquiries established his identity, and he was convicted of the same offence as Abbott, on the 14th March, 1845. He was also sentenced to death, but for the same reason as interposed to save the neck of his companion in guilt, was relegated to the same period of penal servitude.

AN ACTION FOR LIBEL.—2ND AUGUST, 1844.  
Stephen v. M'Combie.

This was an action tried before Judge Jeffcott and two Assessors, to recover damages for the publication of "a false, scandalous, and malicious libel." Counsel for plaintiff, Messrs. Barry and Pohlman; for defendant, Mr. Williams.

The parties to this suit were well-known public characters for many years. The complainant was Mr. John Stephen, a member of the Town Council, an Advocate at the Police Court, and a free lance in newspaper circles. Defendant was Mr. Thomas M'Combie, a voluminous, if not popular writer, also one of the Civic body, and Editor and proprietor of the Port Phillip Gazette.

The plaintiff had ordered a coat from a tailor named M'Namara but did not pay for it. "Mac" was about the last man in Melbourne to be done out of his money; so he sued Stephen, got a verdict, and levied upon a boat supposed to belong to the defaulting debtor. Mr. James Warman, an attaché of the Stephen connection, claimed the boat as his property, and the execution was withdrawn. Some short time before this the boat had been placed in the hands of one Watson for repairs, and Watson, taking a fancy to it, was disposed to stick to the craft, when he was summoned before the Police Court for unlawful detention by Stephen, who deposed that the boat belonged to him. Stephen's affidavit was filed in the Court, and M'Namara's Solicitor applied for a copy with the intention of commencing exterior proceedings against Stephen. This led to the affidavit being looked up, but look up or look down, or anywhere, no affidavit
could be found, for it had either been abstracted, or vanished through some mysterious agency; whereupon a paragraph appeared in the *Gazette* in reference to the matter, in which insinuations were made the reverse of complimentary to Stephen. In fact, it was broadly hinted that he knew much more about the fate of the lost document than it would be agreeable for him to acknowledge; and this constituted the libel complained of.

In defence it was urged that the alleged libel was nothing more than a newspaper report, and fully warranted by the facts disclosed at the Police Court. Witnesses were also called as to the repute of the plaintiff, and the late Mr. J. T. Smith swore "that he did not know a more worthless character in the Province," but it must be stated that between Stephen and Smith there was always some feud at work, either Masonic, Civic, or otherwise. A verdict for £50 damages was returned.

A "BLACK" MURDER.—14TH MARCH, 1845.

Nigolobin, alias "John Bull," an aboriginal native, was indicted for murdering Booby, another aboriginal, by spearing him at Keilor on the 12th December, 1844. The prisoner belonged to the Mount Macedon, Booby to the Barrabool, tribe, and the latter was employed on the station of Mr. Leslie Foster. As he was returning home from Melbourne with a couple of white men, the dray in which they travelled, when beyond Flemington, was surrounded by some blackfellows, one of whom threw a spear which perforated the deceased's body, and he died within two days. The question turned upon the identity of the murderer, and one of the white men (named Fitzgerald) swore that he saw the prisoner, spear in hand, approach the dray and cast it. He heard the deceased cry out, and saw the spear sticking in him. On the other hand, Sergeant Bennett, of the Mounted Police, deposed to having arrested, for the same offence, a blackfellow of the Buninyong tribe, named Wundella, who afterwards escaped by cutting his handcuffs, and that Wundella had confessed to the killing of Booby, because the Barrabool blacks had wished him to do so. The jury believed the Sergeant, and the prisoner was acquitted.

A MERCHANT TRIED FOR FRAUD.—17TH MARCH, 1845.

In the olden time in Melbourne there was a merchant named W———h. Some called him Patrick and others Paddy, but he ignored such common praenomens, and whether he was in reality a "Pat" or a "Padd," he preferred the Latinised formula of "Patricius," and as such lived and traded during an ephemeral career amongst the very old colonists. He was of an enterprising and speculative disposition, for in an era favourable to an excess of over-trading upon a minimum of capital, he was ever to the fore. His name figures prominently in most of the old dead and buried companies, the rockets that blazed up in our old commercial system, and generally ended as rockets usually do. If Melbourne had not "merchant princes" in those days, it most assuredly had merchants; but the trying times of 1842-3 swept the most of them out of existence. W———h, however, weathered the storm until the early part of 1845, when one morning trouble knocked at his counting-house door, and beckoned him to the Criminal Sessions, where a difficulty that could not be arranged by any civil jurisdiction required his personal attendance. Accordingly on St. Patrick's Day (above all others) "Patricius" William "Paddy" W———h was compelled to put in an appearance to an information charging him with "having, on the 20th January, falsely represented himself to Richard Grice as the owner of a certain quantity of wool, to wit, 3482 lbs, upon which he had obtained an advance of money, with intent to defraud the said Richard Grice," etc. The indictment was subdivided into ten counts, each varying the alleged offence, and the 5th presented it with an intent to defraud John Wright. The plea was "Not Guilty." The prosecution was conducted by the Crown Prosecutor, and the defence by Mr. Williams. The case was a lengthened and complicated one, and entangled in several side-issues with which it was sought to mix it up. Several witnesses were examined, and the jury returned a verdict of "Guilty" on the 5th count, with a recommendation to mercy. The prisoner was remanded until next day for sentence, and allowed bail. On his reappearance, Mr. Williams moved an arrest of judgment on a host of technical points, and after hearing long and learned arguments for and against, Judge Therry took time to consider his decision, the prisoner's bail being enlarged. Finally the Judge held some of the objections to be fatal, and the verdict was set aside, whereupon "Paddy W———h" clapped his hands, and rejoiced, for he had had a precious narrow escape.
THE CHRONICLES OF EARLY MELBOURNE.

A MISCARRIAGE OF JUSTICE.—21ST MAY, 1845.

A truculent old blackfellow named Koort Koort Kirrup, who was supposed to have committed several daring robberies, and more than one murder, in the Western country, was committed for trial, and sent to Melbourne. There was great difficulty in driving into the grey head of this savage any notion of a trial and its consequences, and he was detained in gaol for some time before the authorities could see their way sufficiently to bring him before a jury. He was arraigned at the Criminal Sessions on the 14th March, but as there was no person capable of interpreting, Judge Therry remanded him. On the 21st May he was indicted for the wilful murder of William M'Kenzie, by striking him with a waddy at the Eum Creek on 5th May, 1842. In the dock the man seemed the incarnation of stupidity, and he looked around with as much unconcern as an old bullock, instead of one of the so-called "Lords of Creation." A jury was sworn to try the issue of his mental capacity; but his only "capacity" was an enormous one for the absorption of Government rations. The jury came to the conclusion that a gum-tree log had as much comprehension of the goings-on in Court as the prisoner, and it was impossible, according to any recognized principle of jurisprudence, to go farther. A man could not be tried, and, probably, hanged, unless he had some rational glimmerings of the functions of Judge and jury. The Judge, however, assumed the responsibility of detaining the prisoner in custody until the Executive decided what was to be done with him. He returned to gaol, where he continued for several weeks, and was then turned over to the charge of the Assistant Aboriginal Protector for the Western District. He died with his tribe in about a year after his release.

EMBEZZLEMENT AT THE TREASURY.—17TH JULY, 1845.

William V. M'Vitie was indicted for embezzling, on the 25th April, £40, the property of Her Majesty; and there were four counts alternating the offence. The Crown Prosecutor conducted the prosecution, and Messrs. Williams and Stayvell the defence.

The accused was Chief Clerk in the Sub-Treasury at Melbourne. On a certain day he received £33 l3s. 6d., two license fees of £10 each, and two assessments of £6 16s. 6d. each. The amount was paid by a Mr. Turnbull with a £40 cheque, and he received the balance of £6 7s. in cash. The embezzlement of the whole constituted the charge. The evidence disclosed the facts that the mode of doing business at the Treasury was irregular and unsystematic, and that however fitted for the satisfactory performance of other duties the Sub-Treasurer (Captain Lonsdale) might be, he certainly was not at home in supervising the Provincial Exchequer. M'Vitie had been five years in the appointment, and there was never before the least ground for the slightest imputation on his integrity. The Judge's summing up was much in his favour, and the jury acquitted him. Public opinion seemed to discredit the notion of his guilt, the presumption being that the accused had got into trouble through some mistake; a theory justified by some persons owing to the following circumstance which subsequently transpired:—"At the period of the supposed fraud, the Treasurer's office was in a dilapidated building on Batman's Hill, and some years after, when they were moving away, a roll of bank notes* (between £30 and £40) was discovered crushed behind an old pigeon-hole; and this was probably the identical sum for which M'Vitie was deficient in his accounts, and which had doubtless got into its hiding place by accident."
CHAPTER XXVIII.

REMARKABLE SUPREME COURT TRIALS—CONTINUED.


ACTION AGAINST A CROWN LANDS COMMISSIONER.—14TH AUGUST, 1845.

Sprot v. Fyans.

BEFORE Judge Therry and a special jury. The declaration contained two counts; damages laid at £200. Plea, the general issue. Counsel for plaintiff, Messrs. Cunninghame and Williams; for the defendant, Messrs. Croke and Barry.

The complainant was Mr. Alexander Sprot, a settler in the Portland Bay district, and the defendant Captain Foster Fyans, Commissioner of Crown Lands for the same circuit. In November, 1841, a Mr. Muston had a number of sheep and cattle on a station at Muston's Creek, which he sold to a Mr. Osbrey. The sheep numbered 500, the cattle 50, and part of the run, as agreed upon, was to be given in. In 1842, Osbrey obtained a depasturing license for the slice of land that went with his purchase, and a Mr. Charles Payne purchased the residue of the run. When Payne got into possession, he complained to the Crown Lands Commissioner of certain encroachments of the other, and Osbrey received a letter from the Commissioner intimating that he had no right to any part of the run, that Payne was entitled to the whole, and that he should clear out. A fortnight after a peremptory notice to quit was given, and Osbrey accordingly vacated the place, when Payne's overseer took possession of the empty hut and made things comfortable there. Matters so remained for some months, when Fyans, in the course of an official visitation, called at the place, and, from personal observation, satisfied himself that Osbrey was the rightful owner. He accordingly gave him a certificate authorising the issue of a depasturing license to him. Osbrey remained in possession until January, 1843, when he sold to Sprot, and shortly after the latter went into occupation. Payne went to work again with Fyans—and so effectually, too, that Fyans placed him once more in possession and Sprot had to decamp. This trial lasted five days, and completely fagged everyone connected with it. At length a three-fourths verdict was taken, by which damages were assessed at £200. Some points of law were reserved, and subsequently a new trial was moved for upon seventeen different grounds. The matter did not, however, proceed further, as a compromise was effected. Sprot having gained a verdict, and thereby established the principle he was fighting for relinquished the £200. The Crown afterwards paid the defendant's costs.

A BUSH MURDER.—20TH JANUARY, 1846.

Two men, named Thomas Were and Thomas Simpson, were together at Buninyong on the 28th November, 1845. Simpson was the owner of a mare and foal. The men went away in company, and on the 4th December the dead body of Simpson was found in the bush, with the skull smashed in.
several other wounds inflicted, and a blood-smeared cudgel as big as a young tree lying close by. Suspicion pointed towards Were, who was after much trouble apprehended by a trooper, and the murdered man's mare and foal found with him. He was accordingly tried for wilful murder and defended by Mr. Stawell. After the jury had retired to consider their verdict, one of them (a Mr. George Cooper, a hairdresser in Elizabeth Street), declared it would be against his conscience to convict in any case where death was the penalty. After some delay and barneying in the jury room, a compromise was agreed upon, by which the scrupulous barber was mollified, and the jury returned a verdict of “Guilty,” “with a strong recommendation to mercy.” The prisoner was condemned to be hanged, but his life was not forfeited, not because of the uncalled-for “recommendation,” but for the reason referred to in connection with other capital trials. He was transported for life, and had been originally a convict from England to Van Diemen’s Land. Horse-stealing had got him into trouble there, and it was his weakness for horse-flesh (old and young) that prompted him to slay Simpson.

MURDER ON THE HIGH SEAS.—26TH JANUARY, 1846.

William Dobson was indicted “for having on the 10th November, 1845, on board the ship ‘Kestrel,’ on the high seas, near the coast of Balli, in the Indian Ocean, so wounded a Lascar seaman, named Bucksheer, as caused him ‘to languish, and languishing live on’ until the 27th November when he died at sea near the coast of New South Wales.” A second count charged him with “murdering by various assaults,” whereby a certain mortal disease, from which Bucksheer was suffering, was accelerated. Counsel for the Crown, Mr. Croke; for the prisoner, Messrs. Barry and Sidney Stephen. Both the captain and mate of the vessel were committed for trial to the Criminal Sessions.

The “Kestrel” arrived in Hobson’s Bay on the 5th December, 1845, with Robert North Bauvais as commander, and William Dobson (the prisoner) as mate. She shipped a number of Lascars, as part of a crew, at Singapore, whence she sailed for Hong Kong, and thence, via Manila, to Melbourne. As a rule, Lascar seamen are treated to a good deal of knocking about, and even knocking down; and the “Kestrel” rule, so far from being an exception, was exceptional in its severity. Captain Bauvais had some twinges of humanity, but, if the evidence adduced at the trial was credible, the prisoner had none. Rough and ready in his treatment of the hands under his control, he appeared to have selected Bucksheer as the subject of special inflictions. The dead man had at an early period of the voyage contracted a disease in the legs and face, for which the prisoner would make no allowance, but exacted as much work as possible from him, so that when the poor wretch fell sick his task-master thrashed him. It was proved that when he was physically unable to work the Serang (the Lascar boatswain) was ordered to put him to the winch. Prisoner would ropes-end and strike him with his fist, and when the sick man stammered forth, “Oh! me beg your pardon, sir,” the answer was to be hammered again. The Serang, by command, gave him twelve strokes with a thick rope; and the prisoner officiated as flagellator himself, with a knotted rope. The prisoner in cold weather amused himself by having the Lascar crew stripped and scrubbed in the scuppers. A witness deposed that “the mate flogged him fore and aft, and from stem to stern.” Deceased’s legs got so sore that they had to be bandaged in tar and canvas, and began to rot. Still he was kept at work, and when he had literally “not a leg to stand on,” he was cuffed and kicked, until at last he was found dead in the coal hole. There were sixteen Lascars on board, and when asked by the Serang for medicine for them the captain would serve hog’s lard and bluestone. The defence was an allegation that the affair had been got up through design, and was simply a conspiracy amongst some of the ship’s hands and others to further purposes of their own. It was declared that, so far from the prisoner being cruel, he was the reverse, as was evidenced by his having made a pair of shoes for deceased, to whom he had been kind. His putting him to work at the winch was through kindness, as it would improve his health. Several witnesses were called, including Drs. Sanford and Howitt, both of whom would, under the circumstances detailed, apply tar to Lascar sores; and some ship captains, to show that the Lascars were an indolent race, and required stirring up and scrubbing to make them attend to their work, and keep them from sinking to a state of torpidity, to which in cold weather they were liable. The trial lasted two days, and the jury were locked up for a night. They returned a verdict of “Guilty of Manslaughter,” with a recommendation to mercy. Remanded for sentence.
On the 29th January the prisoner was again placed on his trial for an assault upon a Lascar named Mahomet, by striking him on the eye, in Hobson's Bay on the 6th December. A second count was for a common assault. The defence was that it was only a push, and not a blow, and the prisoner was convicted. He was then brought up for judgment, and sentenced to nine months' imprisonment for the first offence, and two months' for the assault. In passing sentence Judge Therry appeared to be much impressed with the presumption that the prisoner must have been acting, if not by the captain's express orders, yet with his approval, for otherwise such acts as those complained of would have been prevented. Some other charges against the prisoner were withdrawn; and next it was intimated that the Crown Prosecutor did not intend filing any bill against Captain Bauvais. This took the public much by surprise, as the captain was believed to be much the more culpable of the two, and that Dobson had acted according to instructions. Still the public wondered and the public growled; but the Crown Prosecutor was the Grand Jury of the colony, and the oracle remained dumb.

The prisoner, after passing three months in gaol, had the residue of the two sentences remitted by the Executive, on the recommendation of the Judge.

RUINED BY DISSIPATION.—20TH APRIL, 1846.

Perhaps in the records of the colony there is not a more remarkable example of the baleful effects of youthful dissipation than was disclosed by the trial of which a brief abstract is subjoined:—

Amongst the recent arrivals was George Brady, a young man with a highly-cultivated intellect, and who had read for the Bar. He was respectably connected, his father, Sir Nicholas Brady, having on two occasions filled the high office of Lord Mayor of Dublin, and this very year (1846) his uncle, the Right Honourable Maziere Brady, was Lord Chancellor of Ireland. With such prestige, there was a bright and promising career opening for the son, George; but he plunged into unrestrained vices, which brought him to degradation, and finally landed him a convicted felon in the common gaol. He used to stay at the boarding-house of a Mrs. Roche, and, after he exhausted whatever means he was possessed of, was not above doing occasional menial offices for the other lodgers. A Mr. R. W. Sutton came to stay at the place, and Brady scraped acquaintance with him. Before long Sutton had reason to think that some person made nocturnal raids on his pockets, for his money used to disappear. On the evening of the 31st March (a race day) he returned home with £43 in his purse, and retired to bed. The next morning he was waked by some person stirring about in his room, and, on asking who was there, was told it was Brady, who was fetching in his boots. He thought no more of the interruption until dressing, when he missed the money. Brady was suspected to be the thief, and the robbery was reported to the Chief-Constable. Brady was soon in the hands of the police, and a bank-note found on him was identified by Sutton. He was brought before the Police Court, sent for trial to the Criminal Sessions, and convicted, when Judge A'Beckett sentenced him to fifteen months' imprisonment. After he had passed half the time in confinement the remainder was remitted by the Executive, and through the kindness of Mr. Croke (the Crown Prosecutor), the unfortunate young fellow was placed in funds sufficient to enable him to return to Dublin, and Port Phillip knew him no more.

SLAYING WITH A POKER—15TH DECEMBER, 1846.

Jeremiah Connell was indicted for the murder of Edward Martin, at Buninyong, on the 11th November, by striking him with a poker. The prisoner declared he remembered nothing whatever of the matter.

There was a tavern at Buninyong known as Veitch's, and on the day of the occurrence some men were there noisy and drinking, when a religious controversy was introduced. The prisoner was amongst them, and desired a quarrel with some one or other, declaring "that he would never be satisfied until he had the blood of an Orangeman on his soul." He offered to fight several people, one of whom, named Procter, accepted the challenge, but the prisoner backed out, saying he could not think of fighting with a "paper man." A young fellow named Cameron at this threw off his coat, and, introducing himself as a "Scotchman and a Protestant," promised soon to let the prisoner see what a "paper man" could do.
They had a couple of rounds, and a “knock-down” gave the Scotchman the worst of it. Martin, who (with his wife) was a servant at the inn, was passing at the time, and told the prisoner he was a coward for knocking the youngster down; but before a quarrel could possibly commence Martin’s wife forced her husband away. This happened shortly after noon, and matters were quiet until about 6 p.m., when Martin was sitting in the kitchen reading a book. The prisoner and Cameron suddenly entered, and the former, without saying a word, struck Martin on the head with a poker. Martin cried “Oh!” and, turning to look round, the prisoner repeated the blow with such effect that Martin fell in a heap on the floor. An alarm was raised, and Connell attempted to get away, but was overpowered by some men who were drinking in the house, and who would have lynched him on the spot but for the barman. Martin was removed to his bed, from which he never rose. The prisoner, who was without Counsel, alleged intoxication and excitement as his defence. The jury found him “Guilty,” and Judge A’Beckett, in a feeling and eloquent address, passed the extreme sentence of the law. The prisoner heard his doom with a calm indifference, and walked out of the dock the least affected person in a densely-crowded Court.

MURDER OF MR. BEVERIDGE BY BLACKS.—25TH FEBRUARY, 1847.

One day towards the end of August, 1846, Melbourne was shocked by the intelligence that Mr. Andrew Beveridge, jun, a settler on the Lower Murray, had been murdered in cold blood by three aborigines, to several of whom he had shown many acts of kindness. For some time it was doubtful whether any effective attempt could be made to capture the murderers; but it was done, nevertheless, bravely and skilfully by Corporal William Johnston, of the Western Port Border Police, and troopers Dollard and Farrell. They were patrolling at the Murray on the 30th October; and obtained from Mr Brierly, overseer for Captain Coghill, a description of the desperadoes. Johnston was well acquainted with the country surrounding the Beveridge Station, as well as with a few friendly natives of the neighbouring tribes. Some of these he sought, and arrived at the conviction that the criminals were three ferocious savages of great muscular power, who went under the respective designations of “Ptolemy,” “Booby,” and “Bullet-Eye.” They were personages of recognized power and influence amongst the most formidable tribes on the Murray, and it occurred to Johnston that success would be owing to stratagem rather than to open force. To do something, however, he made up his mind; and this is how he performed a feat in the capture of the desperadoes, which, for adroitness, pluck and gallantry, has never been equalled, or even approached, in all the raids ever made after bushrangers or murderers in the colony.

Doffing their troopers’ trappings and apparel, the three men procured changes of the regular bush toggery at a settler’s, and were speedily transformed into thorough bush hands, with humped swags, and forth they went as if the most veritable cadging pilgrims that ever wandered along a “wallaby track.” Two or three friendly natives proved trusty and valuable allies, and through their means it was ascertained that the trio so much in request were then with a large party of blacks sojourning on the opposite side of the river. It was an axiom of Johnston’s fortified by a bush experience of several years, that there was no more effectual mode of circumventing a blackfellow, of inveigling him into the cobweb of the “White Spider,” than through the stomach, and he accordingly caused it to be given out by the friendly natives that the “wallaby trackers” would, on a certain evening, treat all the blacks that might cross the river to a big feast of “bubble-bubble”—a mess of flour, sugar and water, to which, in the early days of colonization, the Port Phillipian Aborigines were even more partial than to the squatters’ rum or beef. The invitation was accepted; and Johnston procured a quantity of ingredients for the feast, among them being three choice pieces of rope not likely to give at the first pull. Johnston and his comrades were well armed, and had plenty of ammunition stowed away in a bark hut not far off, which they had made their headquarters. The three pieces of rope were looped into a kind of short lasso, to be worked at close quarters, and each man was supplied with one, which he was to secrete in his jumper. It was further arranged that if the three murderers (who by this time, from the full descriptions obtained, could be easily identified) put in an appearance, a trooper should contrive to stand behind each of them at the feed, with rope ready, and when Johnston sang out the word “Three,” to fly the lasso over his head, and, so noosed, each trooper should stick to his game, and for what followed depend on the chapter of accidents. Two shepherds, borrowed...
from an adjacent station, were posted in a clump of dense scrub within a hundred yards of the supper
ground, and, armed with drawn swords, on hearing the beginning of the melee, they were to rush out
and make as much noise as they could. About five and thirty of the wished-for strangers attended, and to
Johnston's great satisfaction, "Ptolemy," "Booby" and "Bullet-Eye" were amongst them. They all eagerly
squatted round the platters overflowing with the thin, sweet paste, and each fellow, with his pair of scoped
black paws, lost no time in setting to work. The three principals happened to be under a tree, and seemed quite proud of the attentions of the bushmen who stood like flunkies behind, but
were rather considerably astonished when "Three" was ejaculated, and they found themselves not only
rope, but half choked into the bargain. The troopers did their work cleverly, and immediately all
the blackfellows were on their feet, and a loud yelling and slashing of weapons followed. The three savages,
though unable to join in the chorus of howling, emitted deep convulsive grunts, and struggled like wild
beasts; but the odds were desperately against them. A human being, though endowed with the strength
of a Hercules, is heavily handicapped when a rope is twisted about his neck and the running knot in the
hands of a vigorous antagonist. The sworded shepherds now appeared on the scene brandishing their
fighting weapons and shouting with lungs of Boanergian strength. When the menacing mob of blackfellows
beheld this unexpected reinforcement, they believed that others were following, and fleeing like a herd
of scared kangaroos across the river, buried themselves in their native fastnesses. The prisoners were then
hauled away (black in the face it would be superfluous to add), literally throttled, to the hut, and there tied
up in supposed security. This happened on the 2nd November. About an hour after the tying-up, a
blackfellow arrived at the hut, despatched from the runaway tribe as an emissary to the prisoners, charged
to communicate to them the intelligence that it was intended to rescue them at daybreak. This fellow,
however, probably in expectation of more "bubble-bubble," turned traitor to his trust, sought out Johnston,
and conveyed an ambiguous warning in the phrase "to borac (not to) sleep that night." The hint was not
thrown away on the experienced officer, who, thus forewarned, determined to be forearmed, and measures
were taken to put the place in as effective a state of defence as possible. The party had about 120 rounds
of ammunition, and were well supplied with rifles and pistols. These were loaded, the door secured, and
some weak points in the frail bark fortress strengthened. By this time a relative of the deceased, with
three or four other white men, arrived, and threw in their lot with the police. The defending force thus
consisted of eight individuals, and they spent an anxious time of it until about 3 a.m., when the painful
suspense was broken by a volley of yelling, and instantaneously the hut was rushed as if by a horde of
screaming devils. It was assailed front and rear, in fact all round, by fifty or sixty aborigines, some of
whom climbed up on the roof, and tried to tear off the bark covering. Johnston turned his attention to a
chief of huge dimensions, and whilst in the act of reconnoitering, a spear perforated his jacket and within
an inch of killing him. A Mr. Kirby fired in the direction whence the spear came, and a big blackfellow was
afterwards found dead at the place. Another assailant from aloft had forced his way half down through the
roof, when a bullet from Mr. G. S. Beveridge (brother to the murdered man) brought him toppling dead.
The besieged kept up firing wherever they thought a ball was likely to tell, and the unlooked-for warm
reception so frightened the besieging force, that their zeal slackened by degrees, and as the morning got well
advanced they beat a retreat over the river, killing one of the tethered horses. In addition to the
immediate assailants, some 200 blacks were planted in the scrub, ready to cut off the white men, who, they
expected, would abandon the place when they found it attacked. So much was gleaned afterwards from a
friendly native. The difficulty now was how to transmit the prisoners safely to Melbourne, through a
country of hostile aborigines, in a secluded part of the bush, and 250 miles away. A mounted express was
at once sent on a 75 mile trip for assistance, and before the close of the next day Johnston was joined by
nine mounted volunteers. No time was lost ere making a start, and the party sustained no further
molestation from the blacks. When the more dangerous part of the interior had been traversed, the amateur
quota of the escort returned home, leaving the three troopers and three captives to go their way. Each
trooper took charge of a prisoner, until about twenty miles from Melbourne, when Johnston and Dollard,
taking their prisoners with them, set out in search of a drinkable waterhole, leaving Farrell and "Ptolemy" to
wait their return at an appointed place. When "Ptolemy" found himself with only a single guard, he threw
himself on the ground, pretended to be sick, and gave some pantomimic indications that he was going to
Johnston was immediately promoted to a Sergeantcy, and pecuniarily rewarded. His comrades benefited in a lesser degree; and Dollard, after having charge of the Eastern Hill watchhouse, became a publican at Emerald Hill, and one of the minor celebrities of that once verdant locality.

For Farrell dismounted, and is believed to have good-naturedly relaxed the cordage with which his prisoner was secured. The sickness very soon left " Ptolemy," for, watching an opportunity, he sprang suddenly to his feet, snatched the trooper's sword from its sheath and attacked him. The blackfellow not being an expert sabreur was unable to prevent Farrell grappling with him, though he wounded the trooper in the arm.

They both came in a roll to the earth, Farrell holding on to the blackfellow, and "cooeeing" loudly for help. The water-seekers, hearing the loud shouting in the distance, hastily returned, to find the other two still engaged in what might have been a deadly struggle for either of them. However, it took a very little time to separate them, and replace " Ptolemy" in security. The remainder of the journey was accomplished without further mishap. The prisoners were lodged in gaol; and loud were the praises accorded to troopers Johnston, Dollard, and Farrell for the gallant manner in which, against formidable obstacles, they managed such an important capture.*

The trial took place before Judge A'Beckett, at the Supreme Court, on the 17th December, for murder. The prisoners were defended by Mr. Barry. The interpreters having declared their inability to make the prisoners understand the nature of the judicial ceremony about to be gone through, and after a conference between the Judge, the Crown Prosecutor, and the prisoners' Counsel, they were remanded until the next Criminal Sessions.

On the 25th February, 1847, the prisoners were again placed on their trial, and being asked to plead, remained silent. Mr. E. S. Parker, an Assistant Protector of Aborigines, interpreted the proceedings, "Ptolemy" and "Bullet-Eye" both saying, "They did not spear Massa Beveridge." "Booby" made a similar declaration, and pleas of not guilty were recorded. The next question was as to the mental capacity of the prisoners to exercise their right of challenge, and the nature of this privilege having been, with some difficulty, expounded, the prisoners replied, "Jury velly good," and the trial went on.

The Crown Prosecutor stated the case and called several witnesses, who, in addition to the circumstances already narrated, deposed to further particulars. The Beveridges occupied a squating station at the Murray, and were the reverse of unkind to the aborigines, who were permitted to go and come about as they liked, and even to sleep in huts at the homestead. On the morning of the murder, Mr. Andrew Beveridge hearing some noise outside went to see what was the matter, and found himself suddenly confronted by several armed blackfellows, amongst whom were the three prisoners. "Booby" held a "jagged" spear, "Ptolemy" a reed one, and the former on seeing Beveridge, sung out at him—"What for you yabber me cram jumbuck?" (Anglice, "why did you charge me with stealing your sheep?") when Beveridge replied, "You did?" and "Ptolemy" speared him in the breast. Beveridge turning round exclaimed, "I am murdered," and was returning in doors, when "Booby," following, speared him in the arm. A "jagged" spear was stuck six inches deep in his hip, and there were wounds on his temples and arms. He died before the morning. The identity of two of the prisoners was complete; but beyond being present, there was no proof of any overt act by "Bullet-Eye." After a careful summing up by the Judge, the jury, after three minutes' deliberation, returned a verdict of "Guilty" against "Ptolemy" and "Booby," and acquitted "Bullet-Eye," who was transferred to the care of the Black Protectorate. When asked what they had to say why sentence of death should not be passed, they declared that they had nothing to do with the killing of Mr. Beveridge; and that it was done by three blacks known as "Wellington," "Buonaparte," and "Henry."

Johnston was immediately promoted to a Sergeantcy, and pecuniarily rewarded. His comrades benefited in a lesser degree; and Dollard, after having charge of the Eastern Hill watchhouse, became a publican at Emerald Hill, and one of the minor celebrities of that once verdant locality. Of the future of Farrell I know not. Johnston retired from the Force, was a bush inn-keeper for some time, and after trying his luck in other pursuits, was berthed in a subordinate billet in the Crown Lands Department.

* Mr. Maurice Fitzgerald, an old colonist of varied bush experience, assures me that with regard to the murder of Mr. Beveridge, that a Mr. French, one of the persons in the assaulted hut, had two or three of his fingers mutilated by the Natives. He states that he also traced the marks of spears and axes on their bodies, and that whilst returning the parties through the bush, were brakes these marks after them, one of which, he saw being an expert sabreur, in the thigh, the marks of which he showed me. In 1848, at the consulate, Mr. M. Fitzgerald attempted to trace the marks of the spears in the mud; but was unable to do so. From February, 1845, to the end of July, when this chapter will out, I reported for a Melbourne journal every trial (criminal and civil) that took place in the Supreme Court, and in my compilation I have been careful (so far as I could) to omit no material point adduced in evidence.—The Author.
This was an action for libel tried before Judge A'Beckett and a Special Jury of Twelve, the origin of which arose thus:—The plaintiff was Mr. George Cavenagh, the proprietor and editor of the Herald, and the defendant was Mr. George D'Arly Boursiquot, proprietor and editor of the Patriot. The two "Georges" were not only newspaper rivals, but personal foes, and their mutual animosity was such that had they been the two proverbial Kilkenny cats, they would have welcomed the opportunity that gave them a chance of engaging in a tight-rope encounter similar to that which the traditional grimalkins, according to Irish folk-lore, gobbled up each other. In the month of January the Special Jury List was revised by the Melbourne Court of Petty Sessions, and the name of Cavenagh, a Special Juror for the preceding year, being inadvertently omitted by the compiler, an application for its restoration was made and granted. In those times the position of special juryman was believed to confer a badge of social distinction, and as Cavenagh was now "on," Boursiquot could not comprehend why he should be "off"; and "on" he sought to be placed accordingly. For this purpose he put in an application, which, to his infinite chagrin, and Cavenagh's intense satisfaction, the Justices rejected. A paragraph appeared in the Herald recording the occurrence, and though it was piquantly peppered, it was nothing more than one of the many small spiteful interchanges of ill-will weekly bandied between the contemporaries, and altogether insufficient to justify the manner in which the Patriot retaliated. The magisterial meeting was held on the 17th, the Herald notice appeared the day following, and after taking a week not only to nurse his wrath, but so shape it that it would scorch, the Patriot of the 26th published a poetical squib that nigh drove Cavenagh to distraction. Clever, pungent, witty, and telling; every second word like the sting of a wasp—an epitome of the real or reputed antecedents and characteristics of Cavenagh—it gibbetted him after a fashion he never forgot. It was not written by Boursiquot, but was the effusion of a guerilla rhymester named Hammond, and headed "An Ode to an Esquire." It will be seen from the following specimen extract that a more personal composition has hardly ever appeared in print:—

"His coward heart with venomed malice swells,
While rancid envy festers in its cells.
His brutal coarseness wakes in the indignant flush,
By manners fit to make St. Giles's blush—
Then turns apostate after he has hurled
His Den's Theology against the world."

The special sting in this lampoon was its religious reference. Prior to Cavenagh founding a newspaper in Port Phillip he managed the Sydney Gazette, from the office of which journal was issued a cooked and mutilated edition of Den's Theology, which certain controversialists averred was one of the class-books prescribed for the theological curriculum in some of the Roman Catholic colleges of Europe. Any individual responsibility on this score had been more than once disavowed by Cavenagh; but as his Melbourne paper was largely supported by the Roman Catholic community, trade-capital was occasionally made out of the Den's transaction, and references to it wrung his withers considerably. The trial elicited a good deal of interest. Messrs. Williams and Stawell were Counsel for the plaintiff, and Mr. Barry for the defendant. The defence set up was that, as everything was fair in newspaper warfare, the matter complained of was only a journalistic "guilt pro quo." The alleged libel had been provoked by the notice in the Herald in re the failure of the defendant's application to be enrolled as a Special Juror, as well as divers publications in the Herald disparaging the Patriot as to its circulation and in other respects. After an elaborate and dispassionate summing up by the Judge, the jury retired for three-quarters of an hour and found for the plaintiff, damages £40, but only £13 found its way to Cavenagh, £10 of which he gave to the Hospital, and a further £10 to a Scotch Relief Fund.
SHOCKING MURDER IN GIPPSLAND.—12TH OCTOBER, 1847.

John Healey, alias "Pretty Boy," James Francis, and George Savage were indicted for the wilful murder of James Ritchie, at Tarraville, in Gippsland, on the 27th May, viz, Healey as principal, and the others as aiders and abettors. The first-named was defended by Mr. Staveley, and the others by Mr. Sidney Stephen. About half past seven o'clock on the morning in question Henry Sherwin, a resident of Tarraville, noticed blood marks and signs of dragging on the roadway. On looking over a fence he perceived the dead body of a man, and he forthwith repaired to a tavern known as the Royal Hotel, and informed the landlord of the circumstances. It was not more than 200 yards from where the corpse lay, and Neilson, the landlord, Sherwin, and two or three other persons, recognized in the dead man one James Ritchie, who was well known to them. The throat was cut, and the head battered, whilst the dog of the deceased was dead in his arms, the creature's throat gashed in a horrible way. Ritchie's coat, saturated with blood, was thrown beside him, seemingly as if dragged over his head, with its pockets turned inside out.

During these revelations Francis and Savage joined the group, and actually assisted in lifting the body on to a cart. It soon transpired that the prisoners and the deceased had been seen more than once drinking together on the preceding day. Early in the afternoon they were at a public-house kept by one Fitchett. Ritchie was drunk when they separated, he went his way, and the others made for the Royal. Later in the evening they again turned up at the latter place, where they resumed their drinking, and were quite jolly over the rum bottle until about nine o'clock, when all save Ritchie left. He soon after followed, but subsequently returning, asked to be supplied with rum, which was given to him in a lemonade bottle labelled "J. M. Chisholm." With this he left, and nothing was seen of him there again. About one o'clock next morning Healey knocked up the hotel people, and purchased a bottle of rum and a loaf of bread, with which he went away. It was noticed at the time that when the bar door was opened he did not enter, but standing some distance off, and beyond the reflection of the lamp-light, called out for the supplies, which were taken outside and handed to him. The discovery of the murder caused much consternation in the small township, and Chief-Constable Cornelius O'Sullivan arrested Healey at the house of Hannah Wilson, a person of more than doubtful reputation. Francis and Savage were also arrested, and the three committed by Mr. Tyers for trial in Melbourne.

It was shown that the four men had been knocking about the township together, drinking, and that they consortted occasionally with two or three disreputable women. The publican, Fitchett, deposed to having once heard Healey declare "he would serve out Ritchie because he had befriended a female relative of Healey's, who had been ill-treated by her husband." Fanny Hughes testified to more than once hearing Healey say he would take Ritchie's life. On the evening of the 26th May she saw them all drinking at the forge of a Mr. "Tom the Tinker," the village blacksmith, where they played cards for grog. Healey was so drunk that he went to bed there, and did not leave till about ten o'clock, after the others had gone. She let him out and he was hardly able to walk. John Maynor proved to having heard a cry or scream from the direction of Neilson's paddock after nine o'clock on the night before the finding of the body.

Michael Bradly, an acquaintance and drinking mate of the prisoners, who was let into the Alberton watchhouse whilst Healey was detained there, evidently to trap him, detailed a conversation which passed between them one night. They spoke from cell to cell, and Healey, referring to the murder, said "I'm guilty, and willing to die for it sooner than be in the state I'm in." This was the confession which was corroborated by a constable placed in a favourable position to hear the dialogue. Hannah Wilson (under a commitment for harboring him, possibly a legal ruse to secure her evidence), was next brought up on a writ of habeas corpus, and her testimony admitted as that of an approver. She declared that about eleven o'clock on the night of the murder, Healey visited her house, and some time after she accompanied him to Neilson's Hotel to procure some rum. After returning they commenced drinking, and he showed her a purse and a clasp-knife he had. He remained all the night, which he passed in a restless and sleepless state, and when asked what was the matter replied that "the horrors" were on him. This witness swore that about a week previously she had killed a goose with the axe found on the premises. A written statement made by Healey to Mr. Tyers was put in, but the only evidence in it affecting Healey was his admission that he had left at Wilson's a purse, produced, which corresponded in description with one seen in Ritchie's possession.
when alive. Healey also declared that a sum of money contained in the purse was some he was keeping for his aunt; but the amount and appearance of the bank notes, tallied in some respects with money said to belong to Ritchie. Evidence was also given of conversations held by Healey with several persons during his incarceration, in which, though he denied any implication in the actual murder, he confessed to knowing a good deal about it, and sought to cast suspicion upon persons not in custody.

In the course of the trial strange disclosures were made as to the social and moral condition of the community at Tarraville. There were two public-houses there, open day and night, and all Sunday as well. A clergyman of any religious denomination was not known in the township. Bacchus was the idol around whom they all, men and women, staggered, and the worship of that god was almost incessantly kept up at the two grog temples, so that between drunkenness, lewdness, and quarrelling, the place was the reverse of an Elysium; and the Judge protested that if only one half of what they had heard could be believed it was a perfect Pandemonium. Healey was found guilty, and Francis and Savage acquitted, for there was nothing beyond a very strong suspicion against them. The conduct of these two fellows during their two days in the dock, was characterized by so much shameful levity, that it was almost a pity to turn them loose without some punishment. They grinned, grimaced, and horse-laughed at intervals: and during recitals that shocked every decent person in Court, the scoundrels rubbed their hands gleefully, and gazed around in such a villainously leering manner as created an intense feeling of disgust.

On being asked what he had to say why sentence of death should not be passed on him, Healey exclaimed: “All I have to say in the presence of the Almighty God, I am innocent of the crime, and I am willing to die for my innocence. That is what I said from first to last.” Judge A’Beckett pronounced the last sentence of the law in an address which made a deep impression. The general feeling was that, though Healey was convicted rightfully, the other two had also been in the murder with him; and that, though the jury could not have acted other than they did, somehow or other the ends of justice were frustrated.

**Poisoning by a Chemist’s Assistant.—15th October, 1847.**

John Howard was placed at the bar charged with the murder of Julia Smallmon, at Melbourne, on the 2nd October, by the administration of a large dose of concentrated oil of bitter almonds, two drachms of which he “put into, mixed, and mingled” with a certain syrup of squills, which she swallowed, and from the effects of which she “grew mortally sick in body, and died.” The prisoner was defended by Mr. Barry.

On the day named in the information, Mrs. Julia Smallmon sent a friend, Mrs. Julia Davenport, to a druggist’s shop in Collins Street East, known as Dr. Wilmot’s, to procure something to cure her. This messenger asked for some oil of sweet almonds in syrup of mulberry. Having partaken of some, Mrs. Smallmon declared she was poisoned, and begged that none of it should be given to any of her children. Dr. W. H. Campbell was at once summoned, and applied the usual remedies, but death ensued in about an hour and a half. The bottle had been taken back to the druggist’s and shown to the prisoner, who, smelling it, said he had given what had been asked for, and could not change it.

Mr. John Hood, another druggist, said that Davenport had first called at his shop before going to Wilmot’s. She asked for oil of sweet almonds in mulberry syrup, but was not served there, as the oil in stock was rancid. She called afterwards, and, telling what had happened, showed him a bottle, the contents of which he tasted, and believed to be the essential oil of almonds, four drops of which he considered sufficient to kill a man; two drops were known to kill a dog. The taste and smell should be a test in guiding a person giving it, though a person affected with influenza or kindred complaint might not easily detect the smell.

Dr. Wilmot, the proprietor of the establishment, testified to the prisoner being in his employ as a dispenser. He came to him from Dr. Thomas, and he had every confidence in him. The last witness examined for the Crown was Dr. Campbell; and the defence set up was that it was a misadventure—a pure accident—a simple mishap. It was submitted that the jury could not return a verdict against the prisoner, unless satisfied that the act had been occasioned by a culpable disregard of human life—gross unskilfulness, or wilful negligence. Besides, no post-mortem had been held, which should have been, so as to account for death beyond any reasonable doubt.
Dr. Thomas deposed that the prisoner had originally come to him as groom and butler, but, hearing that he had been in a dispensary in England, he was promoted to the charge of the surgery. He was competent and trustworthy.

The jury, after twenty minutes' deliberation, brought in a verdict of "Manslaughter."

The Crown Prosecutor said he knew a good deal about the prisoner, and a better conducted man there could not be.

The prisoner was remanded for sentence. The case was called on for judgment on the 18th, when his Honor Judge A'Beckett inflicted a fine of forty shillings.

**First Libel Action Against the "Argus"—14th March, 1848.**

**Moor v. Kerr.**

There never was a cause tried before the Supreme Court which excited more public interest than this, and most persons looked for the result with some degree of expectation. The plaintiff was Mr. Henry Moor, twice Mayor of Melbourne, once very popular; and the defendant was Mr. William Kerr, equally well known as the proprietor and Editor of the *Melbourne Argus*. The trial took place before Judge A'Beckett and a Special Jury of Twelve. Messrs. Williams and Stawell were Counsel for the plaintiff; Messrs. Pohlman and Stephen for defendant.

In the course of the jury panel Mr. George Cavenagh answered, but was challenged by the defendant, because he was the Editor and proprietor of the *Port Phillip Herald*, not only a rival newspaper, but always at war with the *Argus*, personally and editorially. After some legal arguments, Alderman Bell and Mr. Dalmahoy Campbell were sworn as triers, to determine the issue whether Cavenagh stood indifferent between the parties in the suit. Cavenagh was sworn, and admitted having expressed opinions upon the merits of the case; but he could not say that his mind was made up, and he did not know anything of the evidence to be adduced. He certainly had formed a very decided opinion as to the party who ought to succeed. After a few remarks from the Judge, the triers found that Mr. Cavenagh did not stand indifferent between the parties. So he was put by. Mr. Skene Craig, a merchant, was challenged by the plaintiff for a similar reason, and a similar process of testing was resorted to. He admitted the expression of an opinion on the subject, but he put the case hypothetically. The triers declared him to be indifferent. Mr. John Bullen, a member of the City Council, was objected to by the defendant, and acknowledged that he had jocularly remarked to the defendant that, if on the jury, he should find against him. Objection disallowed. Mr. D. S. Campbell was next challenged, and informed the Court that it was his intention, if on the jury, to appeal to the Judge to strike him out, "because he, and all connected with him, had been so repeatedly libelled by the *Argus* that it was not in human nature that he could go into the box and find an unprejudiced verdict." He was declared "not indifferent," and shelved. The next impeachment was as regarded Mr. Ebden, M.L.C., who stated that he had expressed opinions about the defendant, but it was only private spleen that prompted the course now taken. Mr. Ebden was pronounced indifferent.

The pleas were the general issue, and a special plea of justification. The statement for the plaintiff disclosed that the parties had been for years connected with separate Political, Municipal, and National cliques, and were unfriendly disposed to each other. Moor had already been Mayor, and Kerr wanted to be; but the other thwarted him in his desire; and took an opposing side at the November Municipal Elections, the pivot upon which the Mayoralty annually turned. Moor was a solicitor in large and lucrative practice, and professed to be a staunch Episcopalian, whilst Kerr lived in a continuous state of partial impecuniosity, and was an unflinching Presbyterian. The Episcopalian Bishop arrived in Melbourne in January, and shortly after it was announced that he had appointed Moor his Chancellor of the Diocese. This was a chance which Kerr was not disposed to let slip unutilised, and accordingly one morning during the month of February an issue of the *Argus* appeared with the following paragraph, which constituted the libel complained of:—"The English Church—Her Majesty's Letters Patent, ordaining Melbourne to be a City, and appointing the Right Rev. Dr. Perry first Lord Bishop of this Diocese, which were missing when the time was appointed for the installation of the Bishop, have at length turned up, and
THE CHRONICLES OF EARLY MELBOURNE.

were formally read on Sunday last at St. Peter's Church, Mr. Councillor Moor officiating as Chancellor. The ceremony of installation is now complete, and the Bishop of Melbourne may be considered as fully in possession of his Bishopric. We confess ourselves a little surprised at his Lordship's choice of a Chancellor for his Diocese. With our view of Bishop Perry's character, we would quite as soon have expected to hear of Mr. Moor receiving a similar appointment under Mr. Geoghegan when he gets his expected mitre; and sure we are that he was better fitted for a Father Confessor for the Eagle, or Mother Scott's establishment, than to hold office in a Christian Church."

Proof of the proprietorship and publication of the paper was presented, and several witnesses called to depose to the effect of the innuendos complained of, and the imputations conveyed by the libel, viz, "that such was the immorality of the defendant as to fit him more for an office-holder in houses of infamy, to wit, the Eagle, and Mother Scott's, than in the church of a Christian denomination." A paragraph which appeared in a subsequent number of the Argus, was put in in aggravation. Several nonsuit points were raised, but the Judge decided to send the case to the jury, and after Counsel had been heard for the defence, it was proposed to examine the Chief-Constable, against which it was contended that the plea of justification precluded the adoption of such a course. The Court ruled that only evidence as to general repute and character was admissible, as no specific instances had been set out in the record. The Judge summed up, the jury retired, and after an absence of some length it was announced that they could not agree to a verdict. They were finally despatched, under the charge of bailiffs, to the Prince of Wales Hotel, in Little Flinders Street, where they remained in conclave until midnight, whence they were escorted to the Judge's residence in East Collins Street, and received by His Honor when the foreman intimated that they were unanimous in finding for the plaintiff, but differed as to the amount of damages. Ten had agreed to £250, and a three-fourths verdict for that sum was received and the jury discharged. The Right Rev Dr. Perry who had been subpoenaed as a witness for the defence, was in Court all the time of the trial, but was not called.

A motion was subsequently made to set aside the verdict upon various technical grounds. Judgment was reserved, but ultimately given for discharge of the rule nisi, and the verdict was allowed to stand. The matter was fought out to the last, and even after the issue of execution it was sought to annul the writ by various pretences, all of which failed. The judgment was in the end satisfied, and it was said that Mr. Moor presented the net proceeds to the building fund of St. James's Schoolhouse.

In correction of a historical mistake it may be stated as a fact that Mr. Henry Moor was never Chancellor of the Church of England. He was the first Registrar; and the Chancellorship was in the first instance conferred upon the once well-known and much esteemed, Mr. C. J. Griffith.

OFFERING A BRIBE TO A CROWN PROSECUTOR.—15TH MARCH, 1848.

Michael Ryan pleaded "Not Guilty" to an indictment charging him with having on the 7th March, delivered a letter containing a £5 note to James Croke, Esq., Her Majesty's Crown Prosecutor, that the latter might use his influence with the Licensing Magistrates of Melbourne to obtain a publican's license for Ryan, "to the disgrace of the said James Croke, the evil example of others," etc, etc. Mr. Barry conducted the prosecution, and the defendant was not represented by Counsel.

On the day referred to Mr. Croke received a letter containing a £5 note, intimating that the writer having a friend willing to advance some cash to enable him to start in business, he wished Mr. Croke to put in a good word for him, in the way towards getting him a publican's license. There was not a word in the letter about the valuable "flimsy." The moment he had finished reading, Croke rushed to the kitchen, where his correspondent was waiting an answer; and the latter, seeing fire and fury glaring from the eyes of the irate old lawyer, murmured out in piteous tones, "Oh, pray sir, do forgive me! I did not know I was offering you an insult. Oh, Mr. Croke, for God's sake remember I have a large family, and you will ruin the whole of us if you take any steps against me!" Croke was in such a rage as to be unable to speak,
and he flung the letter and its enclosure into the yard, when Ryan mastered sufficient presence of mind to pick them up and run away. Croke set off forthwith to the Police Office, and instituted criminal proceedings, which eventuated in the runaway’s committal for trial at the Criminal Sessions. The only defence set up was that neither insult nor bribery was intended. Ryan had been known for some time to Croke, who had more than once done him a kind turn, and it was as a recognition of such, rather than through any corrupt motive, that a present, and not a bribe, had been offered.

The jury returned a verdict of “Guilty,” and Mr. Croke, addressing the Court, intimated that though as Crown Prosecutor he had through a sense of duty brought the defendant to justice, it was neither his duty nor his wish to urge a severe sentence. Ryan was sentenced to a fine of £15, and imprisonment until payment. The penalty was at once paid, and the released Ryan departed amidst a large retinue of friends.

The curious incident of this case was the selection of the official to be operated upon. Ryan had been for years, a Melbourne watchhouse-keeper, and must have known that £5 passed to other hands than Croke’s would have secured him what he was in quest of; for it was a matter of notoriety at the time that the most influential of the Licensing Magistrates “took tip,” as it was styled, from everyone who gave it; and such a largess as the one so indignantly cast forth by the Crown Prosecutor, would have secured any licensing favour that could possibly be asked.

A "PENTONVILLE" MURDERER.—16TH JUNE, 1848.

About 5 o’clock on the evening of the 20th April, Mr. Walter Butler, a resident of Williamstown, was returning home from Melbourne, and in a hollow at Stony Creek, two miles from the then Saltwater River punt, and about four miles from Williamstown, he discovered the dead body of a boy lying near some scrub, with the head half cut off. Constables Sugden and Brodie lost no time in endeavouring to track the murderer; for that a foul murder had been committed there could be little doubt. Sugden took Melbourne as his searching ground, whilst Brodie rode away to Stony Creek, where he saw approaching, a Williamstown constable and two other persons, bearing the dead body on a door. They took it to the Punt Inn, and on being searched, there was found in one of the pockets of the deceased a letter enclosing £2, purporting to have been written by his brother in Launceston, and requesting him to go there. This led to a knowledge that the deceased was one Matthew Lucke, a Pentonville “exile,” who had arrived in the colony by the “Marion.” From enquiries made by the Town police it was ascertained that the deceased and another “exile” boy—Augustus Dauncey—were on terms of intimacy, and frequently together. Dauncey was hunted up at a lodging-house, kept by a Mr. John Stanway, in Little Flinders Street. He was then arrested on suspicion of the murder. An inquest was held next day at the Saltwater River, and the evidence against the prisoner was wholly circumstantial. He and the deceased kept company on the day prior to the murder, and occupied the same bed that night. Next morning they started together from Melbourne to walk to Williamstown, and crossed by the Saltwater punt. The puntman, afterwards noticing Dauncey alone, asked, whilst towing him over the river, what had become of his companion, and Dauncey carelessly answered, “I left him behind at Williamstown.” After the prisoner’s arrest his clothes were examined, when some blood stains were found on his trousers, and two of the bone buttons of his vest showed blood marks. In a pocket he had a black-handled, one-bladed pocket-knife, the blade of which seemed as if recently rubbed or scoured with gravel or sand. The principal wounds on deceased were such as could be inflicted with a knife. A frightful gash reached from ear to ear, and on close examination appeared as if done by three several cuts or draws. The head presented contusions, as if deceased had been felled before the throat cutting, or had bumped his head against a stone or stump whilst being slaughtered. A verdict of “Wilful Murder” was returned, and the prisoner committed for trial.

On the 17th May Dauncey was indicted at the Criminal Sessions, and when called on to plead, said he could not do so unless he had Counsel.

The Judge (A’Beckett) ruled that he had no power to assign Counsel to prisoners. If Counsel were present it would be for him to say whether he would appear in the case.

The Crown Prosecutor promised that the prisoner should be treated as fairly as if he had Counsel.
THE JUDGE: "No doubt. For himself, he should take care that every justice was done to the accused."

The prisoner would then apply for a postponement until the next Criminal Sitting, and by that time he hoped to be able to procure Counsel.

The Crown Prosecutor had no objection, and the prisoner was remanded.

Sympathy took an unusual turn for the prisoner in the gaol. The other confinees initiated a movement to subscribe funds for his defence; but the effort was unavailing, as the gross proceeds amounted to only £1 12s. On the 16th June the prisoner was again placed on his trial, and was undefended.

The facts already narrated were established; the defence was simply a strong denial of guilt, and an emphatic assertion of innocence. After five minutes' deliberation, the jury found a verdict of "Guilty;" and, being asked what he had to say against the passing of sentence, the prisoner boldly reiterated his innocence.

The Judge sentenced the prisoner to death with the usual formula, expressed a strong hope that the prisoner's untimely fate would be a warning to any others of the "Exile" class, to which he listened without the slightest emotion, and, when the Judge had concluded, he exclaimed in a loud, unfaltering, and semi-defiant voice, "I am innocent! You, Judge and jury, may destroy my body; but neither of you can lay a touch on my soul. I shall meet those who have given false evidence against me in another place, and on another day, where, thank God, I shall see them punished."

SECOND LIBEL ACTION AGAINST THE Argus.—12TH AUGUST, 1848.

Moor v. Kerr.

This was an action for libel, the defendant having published alleged libels against the plaintiff in the Melbourne Argus of the 17th, 24th, and 28th of March. The Pleas put in were—1st, "Not Guilty;" 2nd, Traversed the fact of being the editor of the Melbourne Argus; 3rd, Traversed that certain houses (the Eagle, and Scottish Hotels) in the declaration do not bear the application assigned; 4th, Traversed that he was defendant in the former action, Moor v. Kerr. The damages were laid at £1500.

Counsel for plaintiff, Messrs. Williams and Stawell; for defendant, Mr. Barry.

This case arose out of the previous action between the same parties, and the repeated attacks to which the defendant was subjected by the Melbourne Argus. A special jury was struck with much less trouble than at the former trial, and Mr. Williams, in stating the plaintiff's case, read the several libels complained of. The first was an Argus leader printed three days after the delivery of the verdict in the former trial, and some idea of the style may be formed by a perusal of the following extract:—

"The relative position of the plaintiff and defendant as regards the subject matter of the action is not changed by this proceeding, excepting that the allegations of the libel, which before rested solely upon the defendant's assertion, have now received confirmation strong as proofs of Holy Writ:"

from the plaintiff's shirking the question of truth. With his own declaration acknowledging himself charged with the promotion and encouragement of houses of bad repute, and with immorality of character, uniting him for holding office in any Christian Church, he has not dared the vindication of his character. With a plea of justification on the record, and witnesses in abundance to support it, he has feared to face the truth. With every street, lane, and alley in the city resonating with the nauseous details of his brothel exploits, he has sought shelter in the refuge of a technicality. He has got money, or rather an order for money, as his compensation, and we envy him not, for at the poorest moment we ever saw, we would not exchange positions with Mr. Moor for ten thousand times the amount of his verdict.

To vary his retaliation the defendant had recourse to the muses, and by the aid of Erato, certainly not the most pure-minded of the Sisterhood, produced this lyric, which was introduced to the Argus readers on the 24th March:—
"THE RAKE'S DECISION.

"Farewell to lovely virtue, farewell to all that's good,
Since vice, they say, don't hurt you, and shall not if it would,
I'll be hencforth in fashion, I'll gratify myself—
The baser lusts of passion, I'll feed by means of pelf.
I will, in fact, be vicious, I'll practise all that's bad—
Drink, swear, and be ambitious, just like a jolly lad.
With harlots I will revel, but sleep at home at night,
I'll be in short a devil, dressed in a garb of white.
The 'Scottish' and the 'Eagle,' my patronage shall share,
My office makes it legal, to go and visit there;
I'll frolic with the lasses, and feast my carnal sight,
On the shameless work that passes, in a bawdy house at night.
'Tis time for melancholy, when both of these have past;
I'll be a jovial fellow, with this world ne'er be vex'd—
And when I'm getting mellow, I'll think about the next.
If vice in future flourish, don't you presume to check it;
Virtue be yours to nourish, and vice leave to all—tt."

Calliope was next invoked for a change from Lyric to Heroic, ex gra.

the following extract of an Argus epic on the 28th, headed "Vice versus Virtue," which constituted the Third libel :

"Thus having prefaced, let me now point out
The wrongs we suffer, which I spoke about,
And nature dictates that our greatest wrong
Be first the subject of my feeble song.
This then, it is, and be it understood,
That men are punished here for doing good;
Virtue is blighted—vice of every sort,
Is all but pampered by the Church and Court.
Let men be rich, they must of course be good;
Let them be poor, they're trampled in the mud;
They may be upright, sober, chaste, and clean,
Industrious too, but, without money, mean;
This is the doctrine, this the truth I fear,
That's sought so much to be established here.
That these alone entitle men to sin—
'A face of brass,' and pockets lined with 'tin.'
'Tis wealth alone that can a license grant,
To sing at brothels, and at church to chant;
To pray for peace, and to encourage strife,
To keep a harlot, and to own a wife:
A man may be a rake, tussel a wench,
And yet a Justice, and adorn the Bench;
May be immoral, and yet be a Mayor
Without disgracing, too, the Civic chair.
Is this the issue of the famous trial?
Then down with virtue—banish self-denial."
Formal evidence was given of the registration, proprietorship and publication of the papers containing the articles complained of, as also of the result of the previous trial, and the fact of the defendant in present and former action being the same person. Witnesses were called to prove the innuendoes, which generally meant that Moor was a man of immoral character, frequented immoral haunts, and was, therefore, unworthy of the public positions he filled.

Mr. N. J. Sugden, Chief-Constable of Melbourne, deposed to the disorderly character of the Eagle Inn and Scottish Hotel, both in Bourke Street, for which he had reported them several times to the Magistrates. One of them lost its night, and the other its general license, at the Annual Licensing Session.

Mr. John Curtis, reporter to the Argus in March, swore that he was utterly ignorant of the individuality of the Editor of the Argus. The cashier used to pay his salary; his "copy" was given to the "devil" of the establishment; and for all he knew to the contrary the devil might be the Editor. He might infer something of the editorship; but absolute knowledge of it he had not. He was scarcely an hour in the day in the Argus office; he corrected his own proofs, and frequently saw letters addressed to the Editor knocking about the place.

Mr. W. E. Hammond testified to Mr. Kerr being the Argus Editor; to witness's personal knowledge he exercised the functions of an Editor; he had received witness's contributions and said they should be inserted; would swear as matter of fact that Kerr is the Editor of the Argus; there is only one Editor to a small journal of limited means and unlimited partisanship; Mr. Kerr is the Editor; there is no sub-Editor; there is no inferior devil in the office; he is the arch-fiend himself (Laughter) and he (Hammond) communicated with him as such. (Laughter).

Captain G. W. Cole deposed that the references complained of in the several libels pointed to the plaintiff. On being asked to read the libels, witness had some difficulty in getting through them in consequence of the peals of laughter by which he was frequently interrupted.

Mr. Barry moved for a non-suit, inasmuch as it had not been proved that the defendant, William Kerr, was the Editor of the newspaper called the Melbourne Argus, according to the course laid down by the Act of Council, and on other technical grounds, but the Judge declined to stop the case.

Mr. Barry having addressed the jury at much length on behalf of the defendant, His Honor summed up. He advised the jury to assess damages upon each count; but directed them to keep the first and fourth issues apart from the others. He had no hesitation in saying they were libels. It was also said that the present action had reference to the preceding one, and had the appearance of a persecution, and that the jury were to be the hounds who were to run down the defendant. If the jury entertained such a thought, they would then be justified in giving small damages. Of course the jury were not to be guided by him, but he gave it as his opinion that whatever is written tending to bring a man into disrepute or ridicule, is, in law, a libel. It was pleaded by the defendant that Mr. Moor's character stood so high that a libel could not affect him. It might as well be said that a person stands so high that every shaft might be let fly at him. It was also urged that the defendant had paid the sum awarded on the former trial, which meant, if it meant anything, that as he had paid his money before, he might now retract the charges, and take out his money's worth. Remarks had also been made upon himself respecting the course he had pursued, but no man sitting there as a Judge dare act as he was represented to have acted. It did not follow that a man had not had a fair trial if he had not shaped his defence according to the rules of the Court; and in vindication of the law, he (the Judge) declared (not of himself, for he would not condescend to it), that the defendant had had a fair trial. His Honor read through the whole of the libels, commenting upon the purport of each, and strongly urged upon the jury a patient and conscientious consideration of the case.

The jury retired to consider their verdict, but the foreman announced that there was no probability of their arriving at an unanimous verdict, although three-fourths had agreed upon giving a certain amount of damages, and asked His Honor to allow them to retire to an hotel for six hours, as there was not even a chair in the jury-room. Mr. Barry objected to this request, but His Honor granted permission. Mr. Barry, amidst a shout of laughter, proposed that the jury should retire to the Scottish or the Eagle. His Honor again stated to the jury the different counts, and re-composing them to the care of a bailiff, they accordingly retired, until ten minutes to nine o'clock, when a verdict was returned for the plaintiff of £500 on the first count, one shilling on the second, and one shilling on the third.
As a postscript, it may be stated that the Argus turned upon the presiding Judge, and libelled him with such pertinacity that a rule to attach Kerr was granted in December, upon the 13th of which month judgment was given on the arguments, making the order absolute, though suspending the warrant of commitment, which was never enforced. On the same morning the Herald published an article with the intent to prejudice the decision; and upon Kerr bringing this act of contempt under the notice of the Judge, His Honor declared it if it had happened during Sittings in Term, he should certainly have directed proceedings to be taken against the party so offending.

**CHARGING A GOVERNMENT OFFICER WITH BRIbery AND CORRUPTION.—8TH NOVEMBER, 1848.**

St. John v. Fawkner.

The issue of this case was awaited with extreme interest amongst all classes of the community—both on account of the nature of the accusations, which were not only topics of town talk, but common belief in every place of public resort, and the relative positions of the parties to the suit. The complainant was Major St. John, once Police Magistrate of Melbourne, and now the Commissioner of Crown Lands for the district of Bourke, and a member of the City Licensing Bench; whilst the defendant was Mr. John Pascoe Fawkner, one of the oldest inhabitants, and about the best known individual in Port Phillip. The action, one for libel, arose out of the proceedings at a public meeting, held to petition the Queen for the removal of Mr. Latrobe from the Superintendency, at which the defendant openly accused His Honor of conniving at the misfeasances of a certain Government official, whom he subsequently designated in writing as the plaintiff, and preferred half-a-dozen charges against him in a letter transmitted to the Superintendent, as well as published in some of the newspapers. The plaintiff now sought to vindicate his character before a Judge and Special Jury.

Mr. Barry, with Mr. Stawell, was Counsel for the plaintiff, and the defendant was represented by Mr. Williams.

The pleadings were very voluminous; the declaration contained two counts, i.e., (1) setting forth that defendant had in certain libellous publications falsely and maliciously accused the plaintiff of having committed divers acts of bribery and corruption in the performance of his duties as a Commissioner for the granting and the transfer of licenses for the occupation of Crown Lands; and (2) That the defendant had made similar charges against the plaintiff of malversation in his capacity of Licensing Magistrate for the City and District of Melbourne.

To each count of the declaration the defendant put in several pleas of justification. He admitted the authorship of the publication complained of, and set out the grounds upon which, in each case, he was prepared to justify.

The pleadings were opened by Mr. Stawell, and Mr. Barry stated the case in a very forcible and eloquent style, and asserting that, in the whole history of libel, there never was one so bad, so false, and so malignant as the one now before the Court. To his mind the libeller was the leper of society, and such practices were calculated to sully the British name. As for the defence set up, it was a most impudent aggravation of the original offence. He pronounced three of the principal pleas “as false as Hell,” and the remainder were of the most frivolous description. The plaintiff was not a man of wealth and possessions; and having to maintain a large family, relied upon the appointment he held under the Government to enable him to keep the position in society he was entitled to; and if permanently deprived of them by the foul slanders of the defendant, he would be irretrievably ruined. The defendant, on the other hand was childless, a person of much wealth, and not distracted by the cares of public employments. The case was most unmistakeably one which called for exemplary damages, for which the defendant looked with confidence to the jury as a means of replacing him in the estimation of the Executive—of clearing his character from false and malicious accusations, so that he might go back to his family with his peace of mind restored, and meet the public with his name unblemished.
The publiction being admitted, Mr. Williams opened the defendant's case. He did not deny that Fawkner's letter was libellous, and that he was bound to substantiate the pleas filed by the defendant. The latter had done only what he believed to have been his duty—not in gratification of any private or revengeful feeling, but purely for the public good. He acted only as he thought an upright man should do, and was prepared to justify his act.

Mr. John Bear, sen, of the firm of Bear and Son, cattle salesmen, deposed to having spoken to Major St. John about some cattle he had sold on a run in the Western Tier district, which he wished to have transferred to the purchaser. St. John objected that M'Cracken, owner of the sold cattle, never had a run there; the place was only held by some sawyers, and there never was a run there at all. Witness rejoined that as agent he had sold a run with cattle there, and unless the run was transferred, the sale would be void. St. John responded that he could not help it, but he would not give a transfer. Witness then said that he would, if it could be arranged, advise the party to pay any reasonable expenses, whereupon St. John brightened up and asked, "How much could they afford?" Witness answered, "That M'Cracken was a poor, industrious man, with a large family, but he would recommend him to pay a couple of guineas." Nothing further passed at this interview, beyond St. John saying to the witness, "Tell your son to come to me and I will define the boundaries." This occurred at the end of May or beginning of June, 1845, and though witness did not see any money paid to St. John, he believed it had been. He had acted as the agent of M'Cracken, whose cattle with right of pasturage he had sold to one Lalor, and on subsequently seeing the purchaser, he was informed that the run had been duly transferred by the Commissioner of Crown Lands, so he was satisfied.

Mr. John P. Bear gave evidence of having communicated with plaintiff in June, 1845, with reference to a run, and accompanied him to the place, when a sum of two guineas was paid to the plaintiff on account of Hugh M'Cracken. Had no recollection of paying the money on account of Lalor. This witness produced a cash book of the firm of Bear and Son, containing the following entry:—"18th June, 1845, paid Major St. John for assigning boundaries, £2 2s."

The plaintiff having testified to his holding the appointments of Commissioner of Crown Lands and Justice of the Peace, James Lalor swore to his getting a run in the Melbourne District in June, 1845, from the plaintiff, whom he directed Mr. Bear to send a cow and calf, for which, however, he was subsequently paid by another cow and a cheque. On the 13th May he bought a station and some cattle from Bear, of which he got possession, and the license had been transferred to him.

Major Charles Newman deposed to being in occupation of a run at South Yarra, and towards the end of 1844, or commencement of 1845, the plaintiff called there and they went over the boundaries to settle them. Witness had a grey horse named "Ginger," which seemed to take the Major's fancy, and, accordingly, the steed was lent to him. Some months after, at St. John's request, another horse, known as "Jacky," was given to him, for which witness was to receive a filly in exchange, and a receipt was duly signed and delivered in consequence of the handsome manner in which plaintiff had acted about the run.

Mr. Lewis Clarke gave evidence to having, at the request of one Oliver, handed to Major St. John two sovereigns rolled up in a piece of paper, why or wherefore he knew not; but never gave the Major any money on his own account.

Thomas Bolman, a porter in a wine and spirit store, declared to having just before Christmas, 1847, delivered at the residence of Major St. John, in Brunswick Street, (now Fitzroy.*) a basket-full of champagne. He did so by direction of Mrs. Kavenagh, whose husband kept a public-house known as the "Brian Boru." Mr. James Kavenagh, the landlord referred to, on the other hand, declared he had never authorised his wife to make any such champagne present, and offered to explain, but the Court rejected the proposed explanation as irrelevant. On cross-examination this witness admitted to his wife having sent a champagne Christmas-box to the wife of the Major; but witness was not at home on the day when this was done. Mr. Kavenagh's mode of giving his testimony was described as being strongly tinted with non mi ricordo-ism.

* "Makemore," now the residence of Dr. R. MacInnes.
Mr. Gavin Ralston, a wine and spirit merchant, declared that Mrs. Kavenagh, of the Brian Boru, called at his place of business, bought and paid for a parcel of wine to be delivered at the residence of Major St. John, which was accordingly done. Mrs. Kavenagh was next placed in the witness box, and admitted having ordered the wine at Ralston's to be sent as a complimentary gift to the Major; but it was purely a voluntary friendship offering, for no one had asked her to do so.

Mr. Joseph C. Passmore, painter and paperhanger, afterwards the licensee of the Shakespeare Hotel, testified that in February, 1847, he obtained a transfer of license from Mr. M. J. Davies. About that time he used to do glazier work for Major St. John to the extent of some thirty shillings per month, and did not remember giving any receipts in payment. Had no knowledge of a receipt of his for £5. There was an item of £1 5s. for ale in his books, marked "paid," but he knew nothing more about it. Had previously sent some ale as a present to the Major, but could not say whether he ever got cash for it, though it was booked as settled. The present was made without being asked for, or letting the Major know anything about it.

Mr. Germain Nicholson, grocer, Collins Street, deposed, in substance, that, previous to the 28th June, 1848, he had several conversations with the plaintiff respecting the transfer for a license for Crown lands, for which the consideration was to be pecuniary assistance by bill accommodation or otherwise. On application being made in the matter, the plaintiff said, "Oh! 'tis all right," and then asked witness to oblige him with the loan of some money, which he would secure by a lien upon stock he had. In reply as to the amount required, the Major said about £400 would do, and the witness rejoined that such a sum could not be spared. Some time after the parties again met, and witness asked the Major to sanction the transfer of old Craven's run, but was told it could not be thought of. In a subsequent conversation the Major intimated that a less sum than previously mentioned would suffice for his then requirements, whereupon the witness suggested that if the two lots of land about which they had spoken were put together, he would then probably be prepared to accede to some pecuniary accommodation, and the Major at once answered, "I'll do it." A proposition was then made for witness to give his acceptance for £250, which he took some time to consider, and ultimately transmitted a written refusal. The Major, on seeing witness some time after, remarked that it did not matter, the run was still in his hands, and he could obtain the money he wanted elsewhere. A few days subsequently, on the parties meeting in the street, the Major declared that, if accommodated with the £400, the license could be at once obtained. They again met on 28th June, when the Major thus accosted the witness: "Well, so you have been telling Johnny Fawkner that I wanted to get £400 from you;" to which witness replied that he had not spoken to Fawkner on the subject. Again, after this, Bloomfield (the City Chief-Constable) called upon the witness to say that "Major St. John wished to see him," but he refused, remarking that "the public might talk about it." He had an objection to go to the Major's private residence; but, coming across him again in the street, he renewed the subject of the transfer of the run, when St. John curtly replied: "It can't be done." The witness (who, it seems, had been acting for a third party) made a further appeal to the Major, by saying: "Major, I know you have an open heart, and will do a poor man a service;" whereat the Major laconically exclaimed: "Indeed I won't." He furthermore declared that a less amount than £400 would do, but the witness answered he could not afford it, and the Major left, with this parting intimation: "If you'll do that for me, I'll do the other for you."

On cross-examination the witness admitted that on one occasion the plaintiff told him that Mr. Latrobe had been consulted in the matter, and what was wanted in the run-transfer could not be done. He also remembered it being said that the transfer and the loan were to be different transactions; and he was to have a lien to secure the money.

Mr. D. C. McArthur, manager of the Bank of Australasia, was called to prove a conversation which the plaintiff had had with him about the discounting of a bill, in the course of which Nicholson's name was mentioned. He advised the plaintiff, if he wanted money, to raise it on his stock in the usual business way, through some of the Melbourne auctioneers, as a private transaction, for any dealing with Nicholson in the manner mentioned might give rise to suspicions.

This closed the defendant's case, and several witnesses were produced to rebut some of the testimony given on the other side. One John Mooney was examined, with the intention of showing that the two guineas referred to by the witnesses Bear, was the result of a transaction arising out of some cattle dealing,
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In which the plaintiff was concerned, and not, as represented, a gift or gratuity; and John James swore that, on the occasion referred to by Major Newman, he accompanied St. John to settle the boundaries, Major Newman entertained them in a very hospitable manner, and in the course of the festivities the Major asked Newman if he would loan the horse "Ginger" to him, and the other Major replied: "Yes, if good care be taken of the animal." This "Ginger," according to the witness, was not worth £5, for he was in very low condition—as thin as a wafer, his fore feet cracked, and altogether a wretched "screw." As to the other animal, "Jack," he was even worse, and in his case it was a regular "swop," for St. John agreed to give a filly in exchange. Newman seemed to be very well pleased with his bargain, but on the 11th November, 1845, when he was asked to sign a document for the two nags, he refused, until he was put in possession of the filly.

In submitting the case to the jury, Judge A'Beckett charged favourably for the plaintiff, and expressed an opinion that none of the charges had been satisfactorily substantiated. If the jury believed so, too, it would be their duty to find for the plaintiff, not in vindictive damages, but such an amount as would fairly meet the justice of the case. Some of the charges, if they amounted to anything, resolved themselves into the reception of presents, and could not well be called bribery, whatever else it might be. Should the jury think proper to return a verdict for the defendant, they must not only find in accordance with the facts proved, but they must be convinced that the charges so made were made for the public good.

The jury retired, and, after some considerable delay, it was announced that there was no chance of any speedy agreement. They were consequently locked up for the night, and on appearing in a crowded Court next morning, the foreman intimated that there was no possibility of a verdict; and the only alternative was to discharge them, which was done accordingly. On the day mentioned Thomas M'Dermot, the mail-carrier between Warrnambool and Belfast, was riding with his mails towards the last-named town about 8 o'clock in the evening, when he arrived at Cronin's public-house, some seven miles from Belfast. Passing onward he was thrown from his horse, and reappearing after the lapse of a couple of hours at the inn, gave his horse and mails to a man (supposed to be Byng) who was standing at the door; he then proceeded to the tap-room, where he remained for nearly an hour. On returning to the door, he could find no trace of mails, man nor horse, and off he went in search along the Port Fairy Road. He came back to the house towards daybreak, and, to his surprise, found his horse safe and sound in the stable, with the mail bags strapped to the saddle, and in all outward appearance untampered with. So, mounting the horse, he proceeded without further delay to Belfast, and delivered the mails to Mr. Hutton, the postmaster. According to his statement, he was neither drunk nor sober when he had the fall; but his version of the mishap, in his examination before the Police Court, was somewhat different. The postmaster, finding on inspection that the mail bags had been robbed, gave M'Dermot into custody, but he was subsequently released in the absence of any evidence to incriminate him. Cronin, the publican, on being questioned, stated that when he heard of the disappearance of the mails, he
went in search, and in a flat not far from his house, recovered the horse with what he believed to be the mails intact (one large and two small leather bags) fastened on the saddle, and, leading the animal back to his place, was preparing to start for Belfast when the postman made his appearance, and he handed over the animal and its belongings to him. The prisoners, Thomas Daley and Byng, were staying at the public-house, and were about there at the time; but it was noticed that they were up and away at a very early hour the next morning. This and other information subsequently procured led to the arrest of the three prisoners. In addition to the foregoing facts, it was proved that the day after the robbery Byng and Felix Daley made some purchases in Belfast at Hovenden's store, for which Daley paid by a £10 cheque, receiving as the difference between the purchase-money six £1 notes and some silver. Later on the same day the other Daley, and a person not known, called at Rutledge's store and bought largely, paying with a £30 cheque, and receiving some balance. F. Daley and Byng also put up at the Merry Jig Hotel, where they made merry on a cheque for £2 19s. nd. Evidence was also given of the identity of the several cheques, and their posting at Warrnambool in letters addressed to Belfast.

The defence was that the whole affair was only a matter of suspicion. The prisoners were not charged with robbing the mail, but with simple larceny, and the jury returned a rather inconsistent verdict; for whilst convicting Felix Daley, they acquitted the two others. The prisoner (who arrived free in the colony) was sentenced to twelve months' imprisonment.

ASSAULT AT THE RACOURSE.—19TH APRIL, 1849.

Oliver Johnstone was placed in the dock upon an indictment, charging a felonious assault upon Mr. (afterwards Sir) John O'Shanassy by stabbing, cutting, and wounding him on the head, with intent to maim; a second count varied the offence as with intent to disfigure; a third to disable; and a fourth to do grievous bodily harm, at the Racecourse, near Melbourne, on the 28th March. Mr. Stawell appeared for the defence.

On being asked to plead to the information, the prisoner declared that it had all happened through intoxication; and he was guilty.

The prisoner's Counsel, interposing, offered, on his behalf, to plead "Guilty" to a common assault, but the Crown Prosecutor declined to accept it. After a brief consultation between Counsel and client, the latter pleaded "Guilty" unconditionally, and was remanded for sentence.

The outrage in question was committed on the second day of the race meet, and after the two favourite horses (Petrel and Bessy Bedlam) had each scored a victory. Mr. O'Shanassy was riding about the course when his contemplations were unceremoniously disturbed by a shock, as if the side of his head had been broken in; he was astonished, though not quite stunned. He beheld a man riding away, waving a riding whip over his head, and seemingly in high glee with himself. This man was the prisoner, who had ridden from behind to O'Shanassy's side, and, taking him unawares, dealt what he intended to be a murdering blow with the butt end of his whip. Finding that he had neither killed nor unhorsed his man, he took to his, or rather the horse's heels, and gave what is known as "leg bail" for his disappearance. Away they went at full gallop, the pursued and pursuer, for O'Shanassy was about the last man in the world to take a "jaw-breaker" of the kind with equanimity. They were both fairly mounted and far from indifferent riders. So there was added to the programme of the day this improvised "helter-skelter" of over a mile run, and it is needless to say it was witnessed with much excited interest, and followed at some distance by half the horsemen gathered on the course. Fear and passion sat behind the two foremost characters. Johnstone knew well that if overtaken he had to cope with a rough customer, who would severely punish him; whilst the clotting blood that dyed one-half of O'Shanassy's face by no means mollified a temper the reverse of angelical when much put out of order. At length they approached the verge of the Western Swamp between the course and Melbourne, where the assailed overhauled the assailant, to whom he administered a hiding not to be soon forgotten; and then seizing him by the neck, held him until District Chief-Constable Brodie arrived, to whom he handed him over in a very sore condition, with a well-tanned skin and unbroken limbs. The officer took charge of his prisoner; and next day the Police Bench decided on sending the case to a higher Court.
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On the 20th April the prisoner was called up for judgment, and his Counsel was heard in mitigation. Evidence as to good character was given, and stress was laid upon the fact that Mr. O'Shanassy had sustained no injury of a serious nature. Judge A'Beckett passed a sentence of six months' imprisonment, and at its expiration to enter into recognizances to keep the peace for twelve months, himself in £50, and two sureties of £50 each.

It was generally believed that the prisoner had been the scapegoat of others—more cunning and cowardly who put him up to assault O'Shanassy out of feelings of vengeance engendered by the party spirit that remained smouldering in the embers of Orangeism permeating a small exclusive section of the community since 1843. However this might have been, Johnstone paid the penalty of half a year's incarceration.

ROBBERY OF THE PORTLAND MAIL.—17TH MAY, 1849.

Peter Devlin and Thomas Jones, were jointly indicted for highway robbery, and "putting in bodily fear and danger of his life one John Ross, and stealing from his person three bags, of the value of 3s., containing a warrant or order for the payment of £39 8s. 6d., and another for £6, the property of the Queen, at the Moorabool Creek, near Ballan, on the 25th March." A second count laid the property of the stolen orders in Ross as mailman, and a third in Mr. F. P. Stevens, the Belfast postmaster, who forwarded them to Melbourne. The prisoners were undefended.

It appeared from the evidence that Mr. Stevens, on the 23rd March, placed the two cheques in a letter, which he posted in a mail-bag that was not to be opened until delivered at Melbourne Post Office. This bag was sealed up and handed over at noon to Samuel Harrison, by whom it was to be conveyed as far as the Hopkins. This bag he sealed up and handed over at noon to Samuel Harrison, by whom it was to be conveyed as far as the Hopkins. This was done in due course; so it passed on until it reached the custody of John Ross, the relieving mailman at Mount Emu, who started for Ballan. About eight o'clock of the 25th, when between Buninyong and Ballan, and as the mail cart was jogging quietly on its way, two men armed with pistols rushed from behind a tree, and commanded the driver on pain of death to pull up. This he did, and the prisoner Devlin declared that if Ross stirred " he would blow his brains out." There were two passengers, Messrs. Lyall and Kirby, in the conveyance, and they were told to get off, after which they were searched and put standing aside. Ross was next requested to produce the mail bags, which he refused, whereupon Jones jumped into the cart and pitched them into the road. There were three bags—one large and two small; and cutting open the lot they crammed the contents of the first into their pockets, and then decamped on the horses, after telling the driver and passengers to be off about their business, as there was no further need of them. Devlin wore no disguise, but Jones had his face wrapped in green mosquito gauze. Search parties were hunting about everywhere, but no tidings could be learned of the highwaymen.

A Mr. James Warman occupied a station on the Tarwin River in Gippsland, some sixty-four miles from Melbourne; and about seven o'clock in the morning of the 5th April, two men, armed with pistols, rode up to the homestead and inquired if they could have breakfast. Warman replying in the affirmative, the strangers dismounted and unsaddled their horses. They remained for the day, and represented themselves to be brothers—the sons of a Mr. Devlin, a shareholder in the South Australian Burra Copper Mines, who were on a horse-purchasing trip, and for fear of accident their circulating medium consisted almost entirely of cheques. Several of these they displayed before Warman, who recognised one as bearing the signature of S. G. Henty, of Portland. One of them left in four days, the other remaining, and offering to help his hospitable entertainer to any pecuniary accommodation he should require. Warman said he was out of flour, when the other handed him a cheque for £8 10s., drawn on the Bank of Australasia by J. F. Palmer, in favour of John Bennett; but taking it back, exchanged it for other cheques. Warman, who had up to this heard nothing about a mail robbery, began to have suspicions that things were not quite as stated; and in this mood intimated to his guest that he should procure some flour from a store twenty miles away. He left home accordingly, making for the Kentish Hoy Hotel, about four miles off, and informed Mr. Hook, the landlord, of all that had taken place at the Tarwin. On arriving there he learned all the particulars of the robbery of the mail; and the two men...
concerted the following means by which they hoped to secure Warman's visitor. They were to set out for Warman's next morning; Hook was to secrete himself outside, and remain perdu until a given signal. Warman marched into his home, and on the pretence of requiring a wash, took off his coat and sauntered towards the door. This being the understood signal, Hook crept lightly up, and both men taking from behind the unsuspecting stranger, had little difficulty in securing him, and transferring him to the police station at Dandenong. This man was the prisoner Devlin. Jones was arrested some days after by Mounted Constable Cowen, whilst asleep in a hut on the station of Mr. McLeod, on the Snowy River, near Maneroo. About £28 in cash and notes were stolen out of the mail, and had disappeared; but the greater number of the abstracted cheques were found on the prisoners and restored to their owners. There was no defence, and the jury returned a verdict of "Guilty" on the third count. Sentence of each—five years' hard labour.

HORSEWHIPPING ON A RACECOURSE.—15TH OCTOBER, 1849.

William P——n, of Gippsland, gentleman, was presented at the Criminal Sessions for having assaulted Francis Desailly, on the 9th March, in Gippsland. In the second count the offence was charged as a common assault. Mr. Barry defended.

The Crown Prosecutor, said it was not usual for a Public Prosecutor to file a bill in such cases, but the present one was rendered exceptional by certain circumstances of aggravation.

The parties were settlers of good condition, and the complainant was one of three brothers, himself, Lewis, and George; but George had left the province in July. On the 9th March, races were held at a place known as the Green Wattle Hill. George Desailly and P——n were competing in a hurdle match and P——n's horse balked the second jump, coming into collision with the complainant, who was galloping long, absorbed in the chance of his brother winning. Both riders were thrown, and when they got upon their legs after the joint fall, P——n, who was in a terrible rage, stigmatised Desailly as a blackleg, and struck him with a whip. Desailly did not return the blow, but after the race had terminated went up to the stand and informed his brother of what had happened. Whilst in the act of doing so, P——n approached, shaking his whip in a menacing manner, and addressing the surrounding crowd, vociferated, "Gentlemen, come this way; I have already horsewhipped a scoundrel, and I mean to do it again;" and so saying he again pitched into Desailly, declaring that he wanted other satisfaction, and would have it too. He had not it all his own way this time, though, for Desailly closing with him, a second whip went to work, and the engagement ended in the flooring or rather grounding of both combatants. Desailly returned home, and after a month's cogitation thought proper to initiate legal proceedings.

Several witnesses were examined, the jury found defendant "Guilty" on the second count, and Judge A'Beckett, after administering a severe rebuke for such conduct, especially from a person supposed to belong to the gentlemanly grade of society, sentenced him to pay a £50 fine, and to enter into a personal recognizance of £100 to keep the peace for twelve months. The legal requisitions were at once complied with, and the defendant was discharged.

THIRD LIBEL ACTION AGAINST THE "ARGUS."—13TH MARCH, 1851.

Moor v. Wilson and Another.

This was the third time Mr. Henry Moor sought redress for defamation of character by the Argus, in a civil action before the Judge of the Supreme Court and a Special Jury of Twelve. On the two previous occasions Mr. William Kerr, the then Editor and proprietor of the Melbourne Argus, was the defendant. The verdict in the second case burst up the paper, which passed over to a new proprietary; but though nominibus mutatis, there was no change in the persistent rancour with which it stuck to Mr. Moor. At the date of the present suit, the plaintiff was a member of the Legislative Council of New South Wales, and Messrs. Edward Wilson and James Stewart Johnston, the co-proprietors of the Argus, were the defendants. The action was for a libel published in that journal on the 18th December, 1850, and damages were laid at £1000. Counsel for plaintiff, Messrs. Williams and Stawell; for defendants, Mr. Barry.
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The libel complained of was a commentary on Moor's career as a public man, and the special innuendo relied upon was the declaration that plaintiff was "a double-faced, unprincipled schemer." Captain Cole was put in the witness box to prove that in his opinion the publication of the phrase was calculated to injure Moor in public estimation, though he admitted it did not alter witness's opinion of him.

A non-suit was moved for on the ground that it had not been shown that the plaintiff had been damned in reputation, professional emoluments, or status in society. The words were not actionable per se, and they were applied to the plaintiff as a member of the Legislature, and not to him as a Solicitor or citizen. Several authorities were cited to sustain this view, but Judge A'Beckett declined to non-suit as the law of libel and slander had been altered. If desired, he should reserve the point, though he did not concur with the line of argument.

The defence, on the merits of the case, was a contention that the career of a public man ought to be open for remark and possible censure. The libel complained of was a garbled portion of a long article, and could not be fairly understood apart from the context. It was written in a time of excitement, and was a review of certain component parts of the Legislative Council. The Duke of Richmond and Sir Robert Peel had been stigmatised as "dissembling traitors" by the London Times, and an action at law was not even dreamed of. The defendants simply claimed the privilege of commentary upon the acts of public men, and a verdict for the plaintiff would amount to the suppression of free criticism of public functionaries.

The question was put by the Court to the jury, not as to whether any, or what, injury had been sustained, but whether the innuendo or libel was calculated to injure the plaintiff; and the jury after being locked up for an hour intimated that they could not agree to a verdict. They were ordered to retire until 7 p.m., when one of them, Mr. G. A. Gilbert, assured the Judge he was very far from well, and asked to be allowed certain refreshments. The answer was in the affirmative so far as a biscuit and a glass of water went, but the Judge most decidedly objected to the jurors dining until they had decided in some way. At 7.20 they re-appeared with an unanimous verdict for the plaintiff, damages one farthing.

The result had such a discouraging effect upon Mr. Moor that he forthwith resigned his seat in the Legislative Council of New South Wales.

ONE POLICE OFFICER SHOOTING ANOTHER.—18TH MARCH, 1851.

William Hamilton Walshe was placed at the bar upon an indictment containing four counts, viz:—

(1) shooting at William A. P. Dana, on 14th January, at Narre Narre Warren, in the district of Dandenong with intent to murder; (2) with intent to maim; (3) maliciously wounding; and (4) doing grievous bodily harm. Mr. Stowell appeared for the prisoner.

The parties had been brother officers for six years in the corps of Native troopers. About 10 p.m., Dana was walking near the Police Station, when Walshe rode up in a state of much excitement, and when three or four yards off Dana, discharged a pistol at him. The ball entering Dana's right side under the ribs, passed through his body, and crying out that he was shot. Walshe was sitting quietly on horseback looking on, having a pistol in his hand. The sergeant turning to the horseman said, "Mr. Walshe! you are a cowardly fellow to do this;" and Walshe's answer was, "I wish more of them were in it." Walshe then coolly rode off to the stables, put up his horse, and retired to his quarters, where he was found by Trooper Tolmie with a carbine in his hand and "wishing he had another shot at Dana." Though he presented the piece at the trooper he was disarmed, placed under arrest, and subsequently sent for trial before the Criminal Sessions. Dana remained for days in a condition of much danger. It was elicited that the prisoner, who had not been long married, suspected the other of carrying on a clandestine correspondence with his wife, of which he accused him a few days before; but the next day they became reconciled and shook hands as friends. Even on the very morning of the shooting, Dana had lent Walshe a horse for his wife to ride out with him. The prisoner, it was asserted, had been subject to fits of irritability and occasional eccentricity, superinduced, it was thought, by injuries received several months previously in a brush between the Native police and a tribe of blacks on the Murray. These infirmities used to be much intensified when he indulged in drink, and he was by no means a teetotaller. The defence was simply a plea of insanity, and several medical witnesses supported his theory. One of them, an M.D., was himself manifestly in a state, if not of "D.T.s," at least in
something so very much approaching it, as to provoke a severe rebuke from the presiding Judge. He was, however, most emphatic in regarding the prisoner "as mad as a hatter." The jury convicted on the fourth count, and the prisoner was sentenced to seven years' hard labour. The Judge, in a very feeling address, remarking that the circumstances were such as would justify a verdict on the first count, and had the jury so found, nothing would have saved the prisoner's life. As to insanity, there was nothing in the evidence to sustain it, or to warrant a belief that the prisoner was not in full possession of his senses when he committed the heinous deed, or that he had ever been otherwise, except when under the influence of drink.

A SHOCKING WIFE MURDER.—19TH AUGUST, 1851.

Patrick Kennedy pleaded not guilty to a charge of having murdered his wife, Mary, on the 30th April, at Mount Rouse, in the Western District. Mr. Stawell (just recently appointed Attorney-General) appeared for the Crown, and the prisoner was defended by Mr. Williams.

The prisoner was employed as a shepherd on the station of a Mr. Cameron, of Mount Sturgeon. He, his wife, and four children, had a hut for themselves, the other men occupying quarters close by. Kennedy, who was usually a good-tempered man, had hitherto lived on affectionate terms with his wife and was fond of his children. Though not drunk, he seemed a good deal out of sorts on the last day of the month, shirked his shepherding, and sent his daughter, the eldest child, to look after the woolly charge, while he lounged moodily in and out of the hut, ill at ease, and disposed to find fault not only with himself, but everybody else. Williams, another shepherd, and Kennedy sat down to dinner, and though the wife was present with her baby in her arms, she ate nothing. During the meal Kennedy remarked to Williams that he had a notion of selling "the old woman" (meaning his wife), and had an offer of £60 and a mare for her. Williams, astonished, asked Mrs. Kennedy if what her husband said was true, and on her answering, "I believe so," Williams said to Kennedy, "I know you have too great a respect for your wife to sell her;" but the other turned sharply upon him with the words, "Ah, you brute!" Williams begged of Kennedy to go and relieve his little girl with the sheep-minding, but Kennedy shoved him out of the door, with the intimation "that he and the wife may both go to ——."

After some further wordy altercations, Kennedy promised not to strike his wife; but immediately after, with a horrible grin, made a blow at her, which missed, and he ejaculated, "Ah, you brute!" Williams begged of Kennedy to go and relieve his little girl with the sheep-minding, but Kennedy shovelled him out of the door, with the intimation "that he and the wife may both go to ——."

Williams had not gone far when he heard the noise as of a scuffle and blows in the hut, and hurrying back, saw Mrs. Kennedy on the ground, and her husband beating and kicking her, but had no weapon in his hand. Williams sung out, "Oh, Kennedy! what have you done?" But the other rushing at him swore "he would serve him the same;" and Williams ran off to procure assistance. Another shepherd, Carter, who, attracted by the uproar, rushed to Kennedy's hut after the departure of Williams, saw Kennedy dragging the woman about half naked. Dashing upon the infuriated husband, he forced the poor woman from him, and taking her in his arms laid her on a bed. The murderer, seizing a shear-blade, made towards Carter, who, to save his own life, was obliged to leave the woman to the barbarous violence of her husband. The husband, when all was over, came and told him that his wife was dead. Kennedy suddenly got very sorry, "declaring he could not think what made him do it, unless it was the devil." The prisoner was committed for trial in Geelong, but the venue was changed to Melbourne.

The defence was a weak attempt to disparage the evidence for the Crown, and after two hours' deliberation, the jury returned a verdict of "Guilty," to which nine of them added a "Recommendation to mercy."
Mr. Williams moved an arrest of judgment, as the venue having been changed, the word "Geelong" had been erased from the record; and also as the information did not show that the Attorney General for Victoria was the proper officer to prosecute for the offence.

His Honor reserved the second point, and passed sentence of death upon the prisoner, concluding a solemn address in these words: "Almost every serious offence springs from this source (intemperance). Indeed, I cannot remember a single crime of any magnitude but what could be traced to drunkenness. I beg of all present who are pursuing the drunkard's career, and sneer at any remonstrance that may be urged upon them, to take warning by the present example."

The prisoner, during the Judge's parting remarks, seemed to thoroughly realize his awful position.

Two Unavenged Murders.

Several murders occurred in the early days, the perpetrators of which escaped "unwhipt of justice." This was notably the case in the interior, when black and white homicides inter se, and the killing of blacks by whites, and vice versa, secured impunity by distance from Melbourne, the imperfect and tedious communication with the principal town of the Province, the paucity of post-offices, the non-existence of the electric telegraph, and the utter inadequacy of the foot and mounted police force. A rumour of one terrible murder in the Western Port district was generally credited, in 1848, though no data reliable enough for action ever reached the police authorities. A settler in a small way suddenly disappeared, and it was declared he had been murdered by his wife and an accomplice, who afterwards married her. The old man was garotted one night in his sleep, "mireabile dictu!" his body was boiled down, the more easily to render the flesh and bones amenable to the action of the fire, and every trace of him was reduced to cinders of the most friable kind, when complete pulverization followed. Thus much was vaguely known to the police, but not until time had rendered any attempt at investigation impracticable. The widow and her second husband (the accomplice; a widower too when he espoused her) lived, if not really, at least apparently happy together for several years after in Melbourne, whither they had removed, and the latter before he died came to be regarded as a person of some political influence. They have both long since passed away to the eternal "bourne" where their guilt or innocence has no doubt long ere this been established. Over their names I throw the charity of silence, for they never got into the early newspapers, and as their innocence might be quite possible, notwithstanding the rumours and belief to the contrary, it is no purpose of mine to even risk an injustice to anyone either living or dead.

But another shocking case occurred within half-a-dozen miles of Melbourne, and though it terminated in a total miscarriage of justice, as it formed the subject of a police office investigation in Melbourne, there can be no objection, from a historical point of view, to the following resume:

In August, 1849, John Keane, Thomas Austin, and John Moroney, were employed as shepherds on the station of Mr. James Robertson, at Keilor. Keane was married, and his wife lived with him; and so matters went on until one day Keane was not to be found, and no one could or would tell what had become of him. Keane had been for five years in service at the place, and when Mr. Robertson heard of the man's unaccountable absence on the 13th July, he questioned the wife as to her husband's whereabouts, and was told by her that he had gone to Melbourne to obtain payment of some money owing him by one M'Manus, a resident of Little Bourke Street. In a day or two after Austin was sent to inquire after the missing man. He hunted up the supposed creditor (M'Manus), who declared he had seen nothing of Keane. Austin returned to Keilor with an account of the failure of his mission, and things were allowed to rest for some days; but no tidings of Keane turned up. Before a week had passed Austin noticing the remains of a fire, a short distance from Keane's hut, some impulse prompted him to search, and from the ashes were picked up portions of charred bones, three or four shreds of burnt cloth, and a pipe belonging to the missing man. The search was extended, and some more burnt bones were discovered in the creek closer to the hut. Chief-Constable Brodie instituted a further search, and an examination of the creek, which led to the finding of some more bones and pieces of cloth, one of the latter of greenish woolen stuff, corresponding in colour and texture with the materials of a coat which Keane was known to have worn, though on being questioned about it his wife declared that at the period of his disappearance her husband had no such garment, for he
had some time previously lent it to a shepherd, who never returned it. On being further interrogated she
sulked, and asked, “If they thought she was going to say anything to condemn herself.” To one of the
search party she observed with some sarcasm, “Ha, that’s a way indeed to search for a man, as if ye think
ye can make one out of rags and bones!” The woman’s manner was peculiar, one moment cool and
collected, the next violently agitated, and then breaking into fits of levity. A thorough examination of the
hut resulted in some extremely suspicious revelations; i.e., there were marks of blood on the bedstead, out
of which pieces of wood had been recently cut, the ticking was damp, and appeared as if it had been lately
washed, and some bones were scraped out of a heap of ashes near the door. Mrs. Keane and Moroney
were arrested on a charge of murder, and on the 30th August the prisoners were brought before Mr.
Charles Payne, J.P., and a Bench of District Magistrates at Melbourne. It was proved against the male
prisoner that he was apparently on very intimate terms with the woman, at whose hut he had been frequently
seen both before and since the husband’s disappearance. He admitted having been at Keane’s hut on the
11th, when Keane wished him to prepare a deed of separation between him and his wife. Both prisoners
protested their innocence. They were committed for trial, the man being allowed bail in his personal
recognizance of £100, and two sureties of £50 each, which he obtained and was discharged. But the
woman was remanded to gaol, and whilst there betrayed some symptoms of insanity. She was kept in
prison until the 19th December, when the Crown Prosecutor, considering he had not sufficient evidence to
go further, consented to her release upon a personal bail bond of £50. No further steps were ever taken to
bring Keane’s murderers to justice. Mrs. Keane seemed as if a haunted woman. She could not bear the
sight of Chief-Constable Brodie, to whom she would point tremblingly, and audibly mutter in flattering
accents, “Oh! there’s the devil,” and run away. She once said her husband had been stabbed, but never
could be got to speak again about him. In this way she remained, leading a life of miserable unrest until
March, 1851, when a fine strapping young Scotchman, a new arrival, named Percival, actually fell in love
with her; in a week after they became man and wife, and so she passed out of public view, and nothing
after was heard of her. If there be any truth in the time-honoured adage that “Marriages are made in
Heaven,” one would be induced to regard the second nuptials of Mrs. Keane as an exception to the rule.