

THURSDAY, AUGUST 13.

*Before Sir James Dowling and a Civil Jury.*

Five aboriginal natives of the Namoi and Big River tribes, named Sandy, Billy, Jemmy, Cooper, and King Jackey, were indicted for stealing from the dwelling-house of John Brown, John Hector, and Edward Trimmer, situate between the Namoi and Gwydir Rivers, on the 16th of March last, 1 waistcoat, 2 carbines, 3 pistols, 7 blankets, a quantity of gunpowder and bullets, and flour, the property of the said John Brown, John Hector, and Edmund Trimmer, of the value of £5.

An interpreter having been sworn, and the prisoners (through his medium), having been made to understand the charge against them, they pleaded not guilty, and chose a civil jury. Mr. Windeyer undertook their defence at the Judge's request.

The Attorney-General, in stating the case to the jury, observed, that although it was unusual to place aboriginal natives at that bar, he hoped that no distinction would be made between them and white people, in the administration of justice. Although the prisoners had been only indicted for stealing in a dwelling-house to the value of £5, the circumstances of the case afforded presumptive proof of a heavier crime against them. The two men in charge of the hut when it was robbed, had disappeared. The bones of a human being were found near the place, and the waistcoat and pistols stolen, were found on the prisoners; but the difficulty of identifying the skeleton, was the reason why they were indicted for stealing in a dwelling-house only. Most of them spoke and understood English well, and displayed as much intelligence as many white people in the colony; and they had admitted, that the muskets and things found on them, belonged to the hut they were charged with robbing.

Alexander Taylor sworn.—I am stockman to Mr. Hector, of the firm of Brown, Hector, and Trimmer. (Mr. Windeyer objected to the evidence being proceeded with, without the questions and answers being interpreted as they were put and answered. The Attorney-General objected, and said, it was not

the term in the language which indicates robbery.

Mr. Windeyer submitted to His Honor, that the interpreter was not a competent one. He did not think it his duty to raise frivolous objections; but an interpreter ought to be found who can perfectly understand the prisoners, or they must stop at every question, to ascertain whether they understood or not. Mr. Henry Chambers was assigned as attorney to Mr. Windeyer, at that gentleman's request. Mr. Windeyer then requested, that the interpreter should make the prisoners understand, that himself and Mr. Chambers were their *friends*, and that all they told them was sacred and in confidence, and for their *advantage*. The interpreter said, he could not explain that to them.

Mr. Windeyer then submitted, that it was impossible to undertake their defence. The Attorney-General said, it should be done in private; and suggested, that the Court might be adjourned for a short time, to make them sensible of the duties of Attorney and Counsel. The Attorney-General said, he felt bound to resist a practice arising out of a spurious humanity.

His Honor said, he could not allow such words as "spurious humanity" to be applied to Mr. Windeyer, who had undertaken the prisoners' defence by assignment of the Court. His Honor then adjourned the Court for one hour, to afford an opportunity for Mr. Chambers to communicate with the prisoners.

On the re-assembling of the Court, Alexander Taylor was recalled and examined.—I am stock-keeper to Messrs. Hector, Brown, and Trimmer—I resided at the head station about nine months—a new station was formed about 40 miles from the head station, between the Namoi and Gwydir Rivers, about the 8th of March last—there were three of us stationed there—I was the stock-keeper, and the other two men were hut-keepers. We lived there in a hut made of saplings—made skilling-fashion, high in the front, and low in the back—there were no windows, and but one door. I had been living there about 14 days when I left (on the 14th,) to go for rations. I slept there eight nights with the other men, Burns and Jemmy—I left them there. Possession was taken for my masters—the hut was intended as a homestead for the station for the cattle—it was Government ground. When we first arrived we saw five native blacks. The prisoner Jemmy went with us from Mr. Hobler's station—he carried a cross-cut saw and led a pack-horse for us—we had seen him once before at Mr. Hobler's station—he could understand a little English, and I could understand him—he did not speak many words—he understood when I told him to carry the saw, for which I promised him some bread. He seemed on good terms at Hobler's—they called him a *wild* black—he was the only one that accompanied us to the station; when we got there, five other blacks came (Jackey, Sandy, Billy, and Cooper); on the following morning, while we were at breakfast, a native called Tailboy was the fifth; these are names we gave them; Jackey was the king of the tribe; they showed friendship to us, and sat down talking in their own language; they brought wood and water; we gave them some tobacco, and bread and meat; what we could spare in order to keep them quiet; they were unarmed when they came; they assisted us in making the hut, by carrying the saplings in; we had in the hut five stund of arms, 2 cut down muskets, 3 pistols, 2½ cannisters of gunpowder, 60 musket balls, and some buck shot, about 28lbs. of flour, and some sugar; we were out of meat at the time; those things we kept in the hut in sight; I left these things in the hut with the other men when I left on the 14th; I was gone 3 days; I returned on the 17th; I left the prisoners there.

the practice in Ireland, especially in the county of Mayo, where half the prisoners did not understand English. The Judge was of opinion, the prisoners had a right to have the questions and answers answered as they were put. The Attorney-General requested His Honor to take a note of his objection, as similar prosecutions might be embarrassed by the practice now permitted. Mr. Windeyer begged the Judge to take a note also of his disclaiming having received any instructions, being assigned by the Court as the prisoners' Counsel. The Attorney-General pressed his objection, and His Honor said, although he did not question the respectability of the Irish Bar, these men had to be tried by English and not Irish law.) The interpreter was again sworn and examined by Mr. Windeyer.—I came here at the instance of Mr. Mayne, and not at the instance of the prisoners; I cannot understand all the prisoners say, nor they all that I say, but I can make them sensible they are charged with a felony; the prisoners speak the Commerini dialect, which is the one I speak; it is extensively spoken, and it differs as much as broad Scotch and English in some parts; I do not speak perfectly, but I can make them understand; neither can I understand them perfectly even in the part where the dialect is spoken; I would not undertake to swear to a whole conversation of theirs; I can swear I understand the term in the language which indicates robbery.

other men when I left on the 14th; I was gone 3 days; I returned on the 17th; I left the prisoners there, with Jeremy and Byrnes (the two white men), in the when I went away; we were all on good terms with the prisoners all the time that I was there; I saw no change in them while I was there; we never had any thing to do with their women; they used to come to the huts; there were more than fifty in the tribe; I saw no improper intercourse with the women and our men; they knew I was going for rations, for they saw me take the horse and the bag; on my return on the 17th, as I was sitting on my horse, I saw two men's hats about five or six yards from the door of the hut; they were cabbage tree hats belonging to Byrnes and Jemmy; I looked through a hole in the end of the hut, and saw a whip and spur hanging up, and the bedticks emptied out opposite the door; I then went back about three miles to look for one of the horses, which I could not find; I then went back to Hobler's station, about twenty-five miles off, and reported the circumstance to Mr. Macdonald Mr. Hobler's overseer; on the 20th I came back with Mr. Macdonald and Mr. Brown, to look for the bodies; we went into the hut and missed the spur and whip, and one of the men's hats; we searched for the bodies of our companions, and found some human bones about forty rods from the hut, on the ground against some trees; all the flesh was off; the bones were scattered about; we saw a skull broken on each side, a hole in the forehead, and a piece knocked out of the back; the brains were out; we took the bones away; the thigh bones were broken in two; the bones were green; there was no sign of flesh either on the bones or skull; I have not seen either of my companions since; I believe both of them to be dead; I found the saddles and bridles gone; I saw the muskets at Muscle Brook, at Mr. Day's, the Police Magistrate, and some blankets similar to those left in the hut; we found in the hut, a cross-cut saw and an axe lying on the floor; every thing else had been taken away; The men had no other hats than those found near the hut. This waistcoat in my opinion was Jemmy's. I have seen him wear such a waistcoat, he had it on the day I left. The prisoners did not come back; they had gone away altogether. On going for my horse, I did not see one track. I understood that was the place they were in the habit of always stopping at. We saw plenty of tracks near the skull, and signs of scuffling about the spot. We saw no tracks of boots nor shoes there; they were the tracks of naked feet. I saw the teeth in the head; they were not like black men's teeth; their teeth are smaller and cleaner than ours; these teeth were hollow teeth in the skull; Jemmy or Byrne had hollow teeth. These five blacks remained about the place more than any of the others they used sometimes to get small quantities of bread and meat. They never handled the firearms. They saw me once fire at a crow and kill it, and they ate it.

Mr. William Macdonald called:—I am Superintendent to the firm of Messrs. Brown, Hector & Trimmer. Their head station was half way between the Namoi and that part of the Big River called the Gwydir. In the beginning of March I established another station and also sent three men there. I recollect Taylor coming down and telling me that a murder had been committed; I went up with Taylor to the new hut. (This witness corroborated the evidence of Taylor in every other particular, except that he saw the impression of footmarks of shoes, and he had no doubt that the prints were those of the shoes of the men supposed to be murdered.) The prisoners were not present when I was examined at Mr. Maine's.

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Cross-examined—I will not swear that the blankets produced were those stolen, but they were of the same pattern. I never heard of the two horses which were lost—never heard of natives taking horses—I have heard of bushrangers committing many depredations in the north-easterly direction. I will not undertake to say whether the bones found were those of a black man or white man, or of a black or white woman.

William Anderson called—I am Sergeant in the Mounted Police—I was stationed at Mr. Maine's in March last, beyond Liverpool Plains. I apprehended them with the assistance of Mr. Ogleby's and Mr. Maine's men. I took them between Mr. Fitzgerald's and Walter's Creek, about one hundred and fifty miles from where the hut stood that was

robbed. This carbine is the one that the prisoner Billy gave me on the 23rd March. Billy and Cooper came to me, and gave me two muskets, and told me "they tumbled down two white fellows." I took the muskets and gave them up to Mr. Maine. On the 24th I got seven blankets, powder and balls from the five prisoners, and two more black men. I was near Mr. Maine's tent at the Big River when they brought them to me. This waistcoat was given up at the same time. I had an interpreter (a black) with me. Billy spoke the best English; it was he that told me they had tumbled down two white fellows, when he and Cooper gave me the muskets.

Cross-examined—We gave blankets to such blacks as assisted in taking the prisoners. There might be nine or ten more black fellows together with the five prisoners and two others. Billy said "they tumbled down two white fellows, and not me," when he and Cooper gave up the muskets. What was taken down before the Magistrate against the prisoners was not interpreted to them. Never saw any blankets given to black fellows up there. I heard Cooper speak a little English coming down on the road. A black named Georgy was Mr. Maine's interpreter, who spoke first to the prisoners.

Mr. Edward Maine, called and sworn—I am Commissioner of Crown Lands at Liverpool Plains, and also a Magistrate, and I also hold the office of Protector of the black natives. This latter duty is included in my office as Commissioner. I found the upper part of the District in great disorder when I went up in January, between the blacks and whites. That feeling of hostility began to abate after I got up. On the 21st or 22nd of March the loss of Messrs. Browne, Hector and Trimmer was reported to me. I proceeded up the River. I was then getting the wild tribes in, and establishing a friendly intercourse. Mr. Macdonald and Mr. Ford, (the original superintendent of the estate) made the report to me. I saw this tribe with blankets, and, set on foot an enquiry to ascertain how they came by them. I knew that no blankets had been issued to blacks in this country.

Cross-examined—I took Mr. Macdonald's deposition relative to the murder. I did not read these depositions over to the prisoners when apprehended. Mr. Macdonald's deposition was the only legal ground work for the prisoners' arrest. I issued a warrant for their apprehension and they were taken. I brought them down to Mr. Day. I did not examine them when apprehended. Mr. Macdonald's deposition was not read to them; it was with the Attorney General. Taylor's deposition was not read over or explained to them—no interpreter was sworn to assist them in their defence. I think I sent up the deposition upon which the

sworn to assist them in their defence. I think I sent up the deposition upon which the warrant was issued against them before they were taken. Georgy, the interpreter, was down in Sydney since the affair, but he is gone back to Liverpool Plains.

Mr. Windleyer took an objection to the information, which charged the prisoners with stealing to the value of £5, which would subject the party convicted to fifteen years transportation, and property to the amount of three pounds only had been sworn to. Another objection was, that it had been proved, that this took place two hundred miles beyond the boundaries of the Colony, and there was no evidence that the locality was within the jurisdiction of the Court. Neither was there any evidence of property belonging to any of the firm of Browne & Co. As there was no evidence against Sandy, he submitted that he ought to be discharged, and put into the box as evidence for the other prisoners. It did not at present appear that he was an incompetent witness, and he was entitled to him as a witness under the circumstances. The same circumstances under which they were acquitted of the murder, would also acquit them of the theft. There was no presumption against them, but what there was an equally strong one in their favor. He urged the illegal manner in which they had been committed, whereby they had been precluded from preparing their defence.

His Honor was of opinion, that the case ought to go to the jury as it stood.

The prisoners, through their interpreter, stated, that they received the muskets and blankets from two other native blacks, named Wollandi and Worroadli.

His Honor, in summing up, impressed upon the minds of the jury the right the prisoners had to the same consideration at their hands, as if they were of the same complexion as themselves, and exhorted them to dismiss all prejudice which they might have imbibed against the prisoners from reports out of doors. He also charged them to dismiss from their minds all that had been said casting the suspicion of murder upon them; with that they had nothing to do; the prisoners had been simply charged with a larceny, and whether they were guilty of that, or not, was the only matter for inquiry. He also pressed on them the disadvantages under which the prisoners came to their trial, in consequence of the depositions taken against them not having been read over and explained to them by the committing magistrate.

The jury retired for half an hour; and on returning delivered a verdict of 'guilty' against all the prisoners, but recommended them to mercy, in consequence of the disadvantages under which they had laboured in their defence on their trial. Remanded. Court adjourned.