

James John Benedict Kinkead M.C., K.C.

(1888 – 1950)

“The First 45 Years”

As Described in Australian Newspaper Articles

(1899 – 1933)

By

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## **Abstract**

**This paper provides a description of James John Benedict Kinkead (1888 – 1950) during the first 45 years of his life. This description is derived from mentions in 1,224 Newspaper Articles published in Australia from 1899 through to 1933. It is the first of two papers, the latter to describe the last 17 years of his life.**

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## Introduction

James John Benedict Kinkead was born on 2 May, 1888 in the Australian outback mining town of Cobar, New South Wales. He was the 7<sup>th</sup> of 12 children. His father, Robert John Kinkead (1844 – 1922) emigrated from Limerick, Ireland in 1867 and among other things, became a successful and wealthy businessman in Cobar and held the respect of his peers.

James' mother, Mary Jane McNamee (1858 – 1896) was the first of three wives to Robert. While Mary was born in Friars Creek, Victoria, her parents emigrated from Scotland sometime prior to her birth.

James was educated initially at the Cobar Convent and then at the prestigious Saint Ignatius College Riverview in Sydney. Throughout his life he was an enthusiastic participant in alumni events.

On leaving school he worked as a Clerk of Petty Sessions at various courts in outback New South Wales.

On the outbreak of the Great War, he enlisted as a private in the Australian Lighthorse and served in the Camel Corps in Egypt. During his four years of service he was awarded the Military Cross and was ultimately commissioned in the field to the rank of Captain.

On his return to Australia, he continued working as a Clerk of Petty Sessions and then moved to the Crown Law Office where he instructed the Prosecutor while completing his Law Degree.

In September, 1925 Jim had completed his Law Degree at Sydney University and was admitted to the N.S.W. Bar Association. He continued to work for the Crown Law Office.

On 30 December, 1925 Jim married Teresa Catherine Bridge O'Neill, also known as 'Pops'. Her father was a barrister.

In March, 1928, Jim was strongly tipped to be the next Junior Crown Prosecutor, however before the position was filled, he opted to go into private practice.

In 1929 his only child, Judith Ann Kinkead, was born.

The remainder of this paper follows Jim's career as a barrister as reported in the newspapers up until 1933, by which time he is 45 years old, well established and well respected. The paper only finishes there due to the large volume of material. His remaining life and career will be continued though to his death in 1950 at the age of 62 years, in a subsequent paper.

## Notes

The articles are addressed in chronological order. The initial article on a topic will be referenced. Subsequent articles on the same topic will appear in the Bibliography unless they are particularly noteworthy. Where there has been a lengthy or lifelong participation in a topic, the total discussion on the topic will take place at the time of introduction.

## School Years

### Overview

Jim was educated initially at the Cobar Convent and later at St Ignatius College, Riverview. While there are no articles included in the section regarding the latter, there are many articles that have not been included in this paper detailing the participation by both he and his wife at the various alumni functions each year at Riverview.

Jim is described here as playing the violin at various concerts both while he was at the Convent and after he had left. He was also a vocalist. He continued to perform in the Convents concerts up to the age of 21 years.

At the age of 18 years, he contracted Typhoid which was doing it's rounds of the district. Fortunately he survived. In the same year, on finishing school, he was appointed as an assistant at the local Court House. A year later he became secretary of the Cobar Rifle Club.

### Articles

*18 November, 1899.* A concert was given by the children attending the Cobar Convent, assisted by local amateurs, took place in the Masonic Hall on Wednesday evening. Instrumental duets were played Master's J. Kinkead and H. Chaston (violins). About 20 boys dressed in gold braided green suits sang the merits of the "Mulligan Guards" and under the cool commandership of Colonel Jim Kinkead, they marched around the state, occasionally one of them lost step, but that didn't matter to the Mulligans, who were quite at home in their gay costumes and did their part well. A violin solo by Master J. Kinkead was well received.<sup>[1]</sup>

*20 October, 1900.* James Kinkead was a successful candidate for the Convent School, Cobar in the Trinity College of London Musical Examinations held on Monday. He received a pass in violin.<sup>[2]</sup>

*17 November, 1900.* The Convent was held. Master James Kinkead played 2<sup>nd</sup> violin.<sup>[3]</sup>

*7 December, 1901.* The concert and waxworks show given by the pupils of the Convent School, assisted by local amateurs in aid of the Roman Catholic Church, took place in the Masonic Hall on Wednesday evening. The Waxworks Show was introduced by Master's James Kinkead and Harry Chaston as showmen. Ten students dressed as was figures. Master J. Kinkead explained the capabilities of the figures in a song. A comic song, 'three Old Men of Ware' was performed by Master James Kinkead and two others.<sup>[4]</sup>

*16 June, 1906.* Jim Kinkead was taken to Nurse Angus's Private Hospital on Thursday suffering from typhoid.<sup>[5]</sup>

*30 June, 1906.* Jim Kinkead, who is suffering from typhoid, is making good progress.<sup>[6]</sup>

*29 December, 1906.* The business at the local Court House has so increased during the last six months that the authorities have decided that a second assistant shall be appointed from the 1<sup>st</sup> of the New Year. Mr Jim Kinkead (son of Mr Robert Kinkead) has the temporary appointment.<sup>[7]</sup>

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*9 July, 1907.* Master Jim Kinkead is making an active and energetic secretary for the Cobar Rifle Club.<sup>[8]</sup>

*16 August, 1907.* The annual meeting of the Cobar Rifle Club was held at the Grand Hotel on Tuesday evening. Jim Kinkead, secretary, was present. He had taken over from Mr Hardwicke who retired due to illness. The committee was most grateful for Jim's efforts. Election of officers resulted in him being appointed a Handicapper.<sup>[9]</sup>

*13 November, 1908.* The Convent Concert took place at the Masonic Hall on Monday evening. The first part of the concert concluded with the cantata, 'Red Riding Hood'. Mr J. Kinkead played the wolf.<sup>[10]</sup>

*18 December, 1908.* The Convent School Concert took place on Tuesday evening and 200 people were present. The senior girls sang in the 'Laughing Trio' however Miss Lily Kelley was absent from the district, so Mr James Kinkead sang with great effect in her place. Mr Jim Kinkead was the stage manager and carried out his work without a hitch.<sup>[11]</sup>

*1 June, 1909.* Father Hughes Testimonial Concert was held at the Masonic Hall on Friday night. The instrumental gem of the evening was a violin quartet symphony by Messrs G. & A. Hogan and J. & A. Kinkead, commanding loud applause from the audience. Jim Kinkead also played in a septette performing 'Der Freischutz'.<sup>[12]</sup>

## Clerk of Petty Sessions

### Overview

Jim worked as a Clerk of Petty sessions from the time he left school until he enlisted in the army and departed for the Great War at the age of 27 years. He serviced the country courts in New South Wales.

### Articles

*17 November, 1911.* Mr Jim Kinkead, C.P.S. (Clerk of Petty Sessions), at Parkes, was in town during the week, spending a few days with his father, Mr R. Kinkead, and members of the family. He looks splendid and has made rapid progress during his 3 1/2 years in the Justice Department. He proceeds to Broken Hill in the course of a few days to take up the duties of assistant C.P.S.<sup>[13]</sup>

*28 November, 1911.* Mr J. Kinkead, who has been appointed assistant C.P.S. at Broken Hill, was at Forbes courthouse on Tuesday presented by the police magistrate on behalf of the official staff with a silver mounted set of pipes.<sup>[14]</sup>

## War

### Overview

Jim enlisted on 18 August, 1915 as a Private in the 6<sup>th</sup> Light Horse Regiment. He was deployed to Egypt and Palestine in the Camel Corps. He was awarded the Military Cross, was twice mentioned in Despatches and was commissioned in the field, holding the rank of Captain at the time of discharge.

The Military Cross was awarded for:

*“For conspicuous gallantry in action. He commanded an advanced exposed post under continuous shell fire for six days, during which time he set a splendid example of gallantry and determination to his men. On another occasion he covered the retirement of the battalion with his section, remaining behind in an isolated position and finally withdrawing his section under heavy barrage with great courage and skill.”*

The articles should be read in entirety and do not need summation.

### Articles

[30 July, 1916](#). Lance Corporal J.J.B. Kinkead of Cobar was listed as being ill.<sup>[15]</sup>

[12 September, 1916](#). Lance Corporal A.C. Johnstone writes from Egypt on 20 July.

*“I am in the best of health; not a day’s sickness since I left Australia. There is a good deal of sickness in the camp – diphtheria, septic sores and boils – they are the chief ailments. Jim Kinkead is in hospital with septic hand and foot. He has gone under a couple of slight operations and had the nail from one finger and toe removed. We are expecting something solid during the next few days – big opposition. Had a couple of our boys wounded yesterday, one by the name of Johnston, but not A.C. We are not allowed to say what is doing, if we do the letters are only destroyed. Kind regards to all Cobar People”.*<sup>[16]</sup>

[7 March, 1917](#). From the War Zone. Private Robert McBride. How he died.

The following letter has been received by Mrs C. McBride, mother of Private Robert McBride, whose death we recently reported. The letter was written by his officer, a soldier named J. B. Kinkead, who hails from Cobar, on January 13, 1917. Although, the letter gives us no idea where it was written, it is more than probable it was at El Arish, where the gallant soldier was buried: —

*“My Dear Mrs McBride – It is very painful to me to have to write to you and inform you of your son’s death. I was his officer in our last attack on the Turks on January 9. I, myself, was born in Cobar and lived there for years. In fact, my people are still there. I met your boy at the base in Cairo, and he asked me to take him with me to the desert to do some fighting. So, I took him. He was a well-conducted, lad and his bearing soon won for him the affection of his mates. The Turks were defending their position savagely, and we went out to take it at the point of the bayonet. We had to advance over 1½ mile of fire-swept country, the final 800 yards being up a slope of ploughed ground. Your boy got to within about 400 yards of the enemy, when he was hit, the bullet passing through the lower part of his abdomen and his groin. He was very badly hit but was very cheerful. He was quickly*



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*attended to and taken to the Field Hospital at El Airish. I visited him on the morning of the 11th, and in reply to my questions he said: ' I feel grand, I'll get well, don't worry about me.' The grit of these lads is marvellous; and Australia will never be dishonoured while she has such lads as your son fighting for her. Let the fact that he died a soldier's death in the service of his country, comfort you in your sorrow. A nobler death no man could wish for. He died from his wounds yesterday, January 12, and his mates and I buried him in a soldiers' cemetery at El Airish. His grave will be cared for by me. We avenged his death with the bayonet".<sup>[17]</sup>*

*30 July, 1918.*

*"Lieutenant James J.B. Kinkead, who has been awarded the Military Cross, is attached to the Imperial Camel Corps on active service. He was born at Cobar, and educated at St Ignatius' College, Riverview. On leaving college he entered the Justice Department and was at various times in the clerk of petty session office in Cobar, Forbes, Parkes, Broken Hill, and Wagga, and at the time of enlistment was in the office of the clerk of the peace, Sydney. He enlisted in 1915 as a private and gained his commission in the field. He has a brother, who enlisted at the same time, and who is now on active service with the Field Artillery in France. Lieutenant Kinkead is a son of Mr Robert Kinkead, formerly of Cobar, but now of Edgecliff".<sup>[18]</sup>*

*5 December, 1919.* Captain James Kinkead, of Cobar, has returned after some four years on active service in Egypt and Palestine with the A.I.F. Jim looks to be in the best of health.<sup>[19]</sup>

## Clerk of the Peace

### Overview

On returning from the war at the age of 31 years, Jim continued his work as a Judge's Associate in Sydney. He had moved from Clerk of Petty Sessions and was employed as such prior to enlisting. Jim is mentioned in articles as having been the Judge's Associate for both Judge White and Judge Armstrong.

### Articles

*6 August, 1920.* Lismore Quarter Sessions.

Mr Kinkead was assisting Judge White preside over the sessions.<sup>[20]</sup>

*8 December, 1920.* Quarter Sessions.

The sessions were opened on Monday before Judge Armstrong. Mr T.S. Crawford was Crown Prosecutor, Mr J.J.B. Kinkead, Clerk of the Peace, and Mr D.D. Henderson J.P., Deputy Sheriff.<sup>[21]</sup>

*22 December, 1921.* St Ignatius College Old Boys Reunion.

Jim Kinkead attended the reunion held on the 9th December.<sup>[22]</sup>

*1 March, 1922.* Parramatta Sessions.

The Parramatta Quarter Sessions opened on Monday, Judge Armstrong presiding. Mr. T. S. Crawford was Crown Prosecutor, Mr J.J.B. Kinkead, Clerk of the Peace, and Mr. J. H. Murray, Deputy Sheriff.<sup>[23]</sup>

## Crown Law Office

### Overview

By the age of 34 years, Jim was working for the Crown Law Office and studying for a Law Degree at Sydney University. He instructed the Crown Prosecutor, Mr L.J. McKean. A number of the cases Jim briefed the Prosecutor on are listed in the articles.

By September, 1925 Jim Kinkead had completed his Law Degree and passed his Bar examinations at Sydney University and was admitted to the N.S.W. Bar. He continued to instruct the Crown Prosecutor.

In March, 1928 the Junior Crown Prosecutor retired and Jim Kinkead was a favourite for the position. He was considered a popular choice due to his extensive experience in the courts and the fact that he had prosecuted court martials while in the A.I.F..

Instead, Jim left the Crown Prosecutors Office and in April, 1928 at the age of 40 years, went into private practice as a Barrister.

The following cases were reported on in the Newspapers during Jim's time in the Crown Prosecutors Office.

Date	Accused	Action	Offence	Result
8 October 1922	John Robert Anderson	Prosecuted	Stole a Motor Car	Acquitted
15 October 1922	Clara Williams	Prosecuted	Theft	Convicted
19 November 1922	Henry Ridley	Prosecuted	Assault & Robbery	Convicted
19 November 1922	Ernest Law	Prosecuted	Assault & Robbery	Convicted
19 November 1922	Francis Connolly	Prosecuted	Assault & Robbery	Convicted
26 November 1922	Henry Marks	Prosecuted	Indecent Assault	Acquitted
26 November 1922	Esther Eggers	Prosecuted	Assault	Convicted
26 November 1922	Fred Eggers	Prosecuted	Assault	Convicted
26 November 1922	Benjamin Court	Prosecuted	Carnal Knowledge	Acquitted
3 December 1922	Arthur Charles Abigail	Prosecuted	False Pretences	Acquitted
21 August 1923	William Alexander MacNicol	Prosecuted	Conspiracy to Defraud	Convicted
21 August 1923	Norman Dewberry	Prosecuted	Conspiracy to Defraud	Convicted
21 August 1923	Alexander Berghouse	Prosecuted	Conspiracy to Defraud	Convicted
8 October 1923	James Joseph Donoghue	Prosecuted	Fraudulent Conversion	Convicted
22 October 1923	Harold Price	Prosecuted	Armed Robbery	Convicted
27 August 1924	George Percy Tice	Prosecuted	Sold Crop under Lien	Acquitted

17 September 1924	Olaf A. Siden	Prosecuted	Conspiracy to Defraud	
17 September 1924	Walter L. Hartley	Prosecuted	Conspiracy to Defraud	
8 October 1924	Robert Gilbert	Prosecuted	False Pretences	Convicted
9 February 1925	Harold Legge	Prosecuted	Assault	
31 March 1925	Arthur Nickells Bishop	Prosecuted	Perjury	Acquitted
2 April 1925	Marko Aprilovic	Prosecuted	Attempted Murder	Acquitted
10 June 1925	Albert Herbert Thompson	Prosecuted	Conspiracy to Defraud	
10 June 1925	James Skelton	Prosecuted	Conspiracy to Defraud	
10 June 1925	James John Morrish	Prosecuted	Conspiracy to Defraud	Acquitted
1 September 1925	Arthur Keeling Boyden	Prosecuted	Murder	Acquitted
2 September 1925	John William Abbott	Prosecuted	Murder	Acquitted
26 November 1925	William Corson	Prosecuted	Conspiracy to Defraud	
26 November 1925	Phillip Solomons	Prosecuted	Conspiracy to Defraud	
26 November 1925	John Henry Robinson	Prosecuted	Conspiracy to Defraud	
26 November 1925	William Gerald Flack	Prosecuted	Conspiracy to Defraud	
30 April 1926	Percy Henry Tomley Bennett	Prosecuted	Forgery	Convicted
6 March 1926	William John Beckett	Prosecuted	Fraudulent Conversion	Acquitted
9 March 1926	Jack Laws	Prosecuted	Assault	Acquitted
9 March 1926	Godfrey Wentworth	Prosecuted	Mail Fraud	Acquitted
14 April 1926	Cecil Mervyn Williams	Prosecuted	Sexual Assault Minor	
14 April 1926	Edgar Thomas Jones	Prosecuted	Sexual Assault Minor	
14 April 1926	Bartholomew Leslie Brown	Prosecuted	Sexual Assault Minor	
18 May 1926	Harrie Talbot Woods	Prosecuted	Extortion	
18 May 1926	John O'Donnell	Prosecuted	Extortion	
18 May 1926	William Henry Nicholas	Prosecuted	Extortion	
7 July 1926	Walter Arthur Nelson	Prosecuted	Murder	

19 October 1926	Edwin Charles Waldegrave Lloyd	Prosecuted	Rape	Acquitted
15 February 1927	John Connell	Prosecuted	Noxious Drug	Acquitted
15 February 1927	Alexander Murchie	Prosecuted	Noxious Drug	Acquitted
24 May 1927	Harry Waldemar Baum	Prosecuted	Misappropriation	Convicted
1 August 1927	Frank Schroder	Prosecuted	Misappropriation	Acquitted
3 December 1927	Sadie Belle Selfe	Prosecuted	House Breaking	Convicted

## Articles

### **8 October, 1922. Burns Buick – Moral for Motor Magnates – Illegally Using Not Indictable.**

The upshot of a case that was investigated before his Honor Judge Scholes at the Court of Quarter Sessions last Thursday should give the owners of motor cars 'seriously to think'. A bright and breezy young man named John Robert Anderson was charged with having stolen a motor car. Valued at £300, the property of James Burns, from the Royal Sydney Golf Links, at Rose Bay, on September 6. Mr. L. J. McKean was the Crown Prosecutor (instructed by Mr. J. J. Kinkead, of the Crown Law Office). The accused was undefended and pleaded not guilty.

### **Joy-Ride Jaunts**

The story unfolded at the trial showed that somewhere about midday on September 6 Burns left his single-seater Buick car in the yard at the Royal Sydney Golf Links at Rose Bay. When he looked for the car at about 3 p.m. it had gone. The police were advised and about 2 o'clock next morning the night patrol bailed up a party of young bloods, of whom the accused was one, driving along George-street West. The explanation given by the accused set out that he 'picked up' the car from Victoria-street. Darlinghurst, somewhere about 5 o'clock on the afternoon of the 6th. He admitted having gone joyriding out to Parramatta in the car with a party of friends. The party was on the return journey when interrupted by the police. Anderson blandly admitted having 'pick-other occasions. In exculpation of one of these escapades the accused pointed out that when he left the car. having finished with it, he left it in the open, under an arc light outside the Hotel Sydney.

### **Accused Acquitted.**

In the course of his summing-up Judge Scholes reminded the jury that illegally using a car did not constitute a criminal offence — yet. But in this case the accused was charged with having stolen the car, with having taken it with intent to permanently deprive the owner of his property. The jury found the accused not guilty, though the foreman intimated that they were unanimously of opinion that the accused had illegally used the car. A further kindred charge was then preferred against Anderson— that on August 30. 1922, at Paddington, he stole a motor car, the property of Thomas and Alfred John Playfair. To this charge also the accused pleaded not guilty, but the hearing of the case was postponed. The accused was remanded to his former custody. But somewhere in all of this there is surely a moral for motorists.<sup>[24]</sup>

### **15 October, 1922. Clara Capitulates - After Capturing Chong's Cheques**

Tall and slender, neatly attired in a dark costume, and by no means unattractive in appearance, Clara Williams stood in the dock at the Quarter Sessions on Friday, the 6<sup>th</sup> inst., before his Honor Judge

Scholes. She was charged with having stolen from the person of a Chinaman named Hop Chong three valuable securities at Surry Hills, Sydney, on the afternoon of September 5, 1922.

The woman was defended by Mr. J. E. Spear, and pleaded not guilty. The Crown Prosecutor, was Mr J. McKean. who was instructed by Mr. J. J. Kinkead, of the Crown Law Department. In his opening address, the Crown Prosecutor explained that the valuable securities mentioned in the indictment comprised a cheque, for £32, a cheque for £7, and a bank draft for £100.

### 'What's the Time?'

How the accused woman came to get possession of the Chinaman's securities was told by Hop Chong himself. Hop Chong, a short-statured Chinaman, gave his evidence, through an interpreter. Hop Chong is a cabinetmaker carrying on business at Waterloo. On the afternoon of September 5, and while strolling along Brisbane Street, Surry Hills, he met the accused, who was in the company of another woman. At this time, he had on him two cheques — one for £32, the other for £7, and a bank draft for £100. These documents were in his passbook in the left-hand pocket of his coat. One of the women asked him the time, and while he was obliging her, the accused managed to abstract the documents from his pocket. Then the two women moved off, and though he called to them to stop, they refused to do so. He followed them to Milk-lane, repeatedly asking her to return to him the documents she had taken: A young man came out of a house and chased him away. The last he saw of this young man, the latter was struggling with accused for possession of the passbook. He advised the police and next day accompanied Sergeant Turner to Milk-lane, where the accused woman was arrested.

### Clara Capitulates.

Hop Chong's tale of woe having been told, an official from the bank at Alexandria positively identified the accused as the woman who had cashed the cheque for £7 on the very day it was taken from Hop Chong. After a short consultation with her counsel, Clara capitulated and pleaded guilty. Judge Scholes sentenced her to 12 months' imprisonment with light, labour in the State Penitentiary for Women at Long Bay.<sup>[25]</sup>

### 19 November, 1922. An Ultimo Uproar - Host Horton's House Warming.

#### Sultry Saturday Evening Soiree - Assault and Robbery in Company

There appears to have been what certain gentry would style 'a rough house' at the abode of John



Figure 1 - Henry Ridley - 1922

Horton, at 3 Dennison Street, Ultimo, during the early evening of Saturday, October 14. The outcome of the more or less joyous happening was that, last Monday, at Sydney Quarter Sessions, three young men were indicted before his Honor Judge C. A. White on the serious charge of assault and robbery. It was alleged that on the date mentioned, the three accused — Henry Ridley, Ernest Law and Francis Connolly — while in company, assaulted and robbed Bartholomew O'Connor of a bottle of wine & purse, and upwards of £7 in money. There was an alternative count of

common assault against the accused. The Senior Crown Prosecutor (Mr. W. T. Coyle, K.C.), instructed

by Mr. J. J. Kinkead, of the Crown Law Office, conducted the Crown case. The accused Ridley was defended by Mr. C. M. Collins. The other accused were undefended. All pleaded not guilty.

### Sultry Saturday Soiree.

Bartholomew O'Connor, a young man, stated that he was a labourer, living in Ultimo. On Saturday, October 14, in the afternoon about 6 o'clock, he bought two bottles of wine from a wineshop in George-street West. He met a friend, Jack Horton, and accompanied the latter to his home at 3 Dennison-street, Ultimo. The torn trousers he was now shown were his. He was then wearing those trousers, and they were not then torn. After he had been at Horton's for about a quarter of an hour, the three accused, along with two others, came into the kitchen. They had brought a demijohn of beer with them, and began throwing furniture about. Horton then left, and as soon as he had gone the three accused took one bottle of wine from witness. It was Connolly who took the bottle. Having drunk that bottle, they returned, and took the second bottle from him. Then Law remarked,



Figure 2 - Ernest Law - 1922

### 'We'll Tip Him Up!'

It was Law who actually tipped him up. He was thrown out on to a couch and Connolly ripped the pocket out of his trousers. Witness put up a struggle but was overpowered. Ridley placing his foot on witness's throat, so that he could not call out. Witness had money in each of his pockets, upwards of £7 in all. He also had a wallet in one of his pockets. The only other persons there were the 'missus of the house' — but her he did not see— and a small boy named 'Syd.' Having assaulted and robbed him, the whole party went away. The three accused shortly afterwards returned, bringing some bottles of beer with them. Then Horton returned with the police.

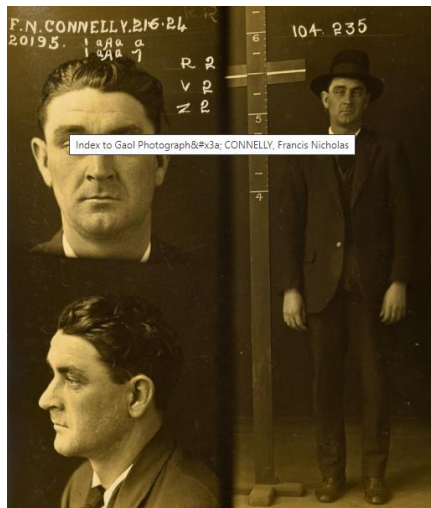


Figure 3 - Francis Connolly - 1924

### 'Don't Be Silly!'

When witness gave the three accused in charge. Law said, 'Don't be silly, you old fool'. A bottle of wine was found in Connolly's pocket, and the three accused were taken away by the police. The three accused had robbed him of every penny, leaving him nothing at all. Witness was in constant work and had his wages on him intact at the time. Mr. Collins: Had you

had any drink during the afternoon? — Yes, about five at hotels, and then three threepenny wines at the wine bar. You were there till close up time? — Yes. Had you any drink at Horton's? — Yes, one glass of beer. Where did you have tea that night? — I had none. When did you meet. Horton? — Between 6.30 and 7. It was on my way home to tea. You saw the accused Ridley and Connolly on the Sunday after your arrest, the very next day? — Yes. You told them you'd found your money? — No. They said they'd give me back my money if I didn't prosecute. I went up to the police and tried to withdraw the charge; but the police told me I couldn't do so. I told this to Ridley and Connolly, saying



I'd have to go on with the case. Who were the other two? — I couldn't identify them. The little boy 'Syd' found some money? — He said he found 2s and Horton lent me 2s, as I had nothing at all. How much did you take out with you that day? — About £7 15s. When the police came each of the accused asked to be searched? — I know nothing about that. And you said to the police, 'These choked and robbed me' — I may have said so. Didn't each of the accused say, 'I've got nothing on me'? — I don't remember them saying so. You were very drunk yourself? — I was not. You didn't see 'the missus of the house'? — Not till after the police came. In what state was she? — She was pretty drunk. Did the other two men interfere with you? — Yes, at the start, but they didn't do too much. They didn't do as much as those three there. You went to the police station with these three men? — Yes. And were there when they were searched? — Yes, a bottle of wine was found on one of them, but no money on any of them. The Accused Law: Were those trousers torn then? — No, not till you chaps had done with me. What wages do you get? — £5 11s 6d a week. Accused Connolly: You say we wanted you to 'square it'? Witness: Yes, you offered me £10 to 'square' it. Where do you live? — Round in McArthur-street, Ultimo.

#### **Small Boy- 'Syd.'**

Sydney Carroll, a fair-haired, neatly dressed little boy, whose fair head just showed above the witness-stand wall, and he was six years old, but did not know his birthday. Mr. Collins submitted that the lad was not a competent witness. In answer to his Honor the little chap stated that he attended both public school and Sunday school. His Honor ruled that the boy was not a competent witness, and his evidence was not taken. The lad did not satisfy the Judge that he adequately understood the nature of giving evidence on oath.

#### **Host Horton's House-Party.**

John Horton, a driver, living at 3 Dennison-street, Ultimo, said he knew O'Connor as 'Bob'. About half past 6 p.m. on October 14 he met 'Bob' in George-street West, and O'Connor went home with him. O'Connor had with him two bottles of wine, one in each of his trousers pockets. Before this day witness had known Connolly, but not either of the other accused. Somewhere about 7 o'clock, along with two others, the three accused arrived at his place, bringing a demijohn of beer and some bottles of beer. They became very rowdy, and witness left to get the police. When witness left O'Connor was seated near the door. Witness failed to find a constable and returned. O'Connor was still there, but the others had gone. O'Connor said: 'They've gone through me'. Witness: went out again and this time returned with a constable, and the three men were taken into custody. All of the party. O'Connor included, had had some drink, but O'Connor was quite able to look after himself. O'Connor's face was scratched, and his trousers had been badly torn. The accused Law: Who else was in the house? Witness: The boy 'Syd' and my missus'. Is that boy your son? — No, he's my step-son. Is that woman your wife? — She's as good as my wife.

#### **What the Boy Told the Constable.**

Constable John James Taylor, of No. 2 Station, said that on October 14 Horton and the lad Carroll told him something, and in consequence of that he went to Horton's place, at 3 Dennison-street, Ultimo. He found Law lying on a couch in the kitchen and Connolly and Ridley seated at a table. There was a woman present also. All of them had been drinking. O'Connor had taken drink but knew what he was doing. He said, 'Those \*\*\* choked and robbed me'. O'Connor replied, 'Go on, you old \*\*\*, you're drunk! You don't know what you are talking about'. The little boy Carroll said to witness: 'I saw them (pointing to the accused) knock this man over the couch, sit on him, and kick him. I saw Connolly



take his purse out of O'Connor's pocket and put it in his own pocket'. Connolly said, 'We're having a night of it'. Law and Connolly each said, 'I've got nothing on me'. Witness found a bottle of wine in Connolly's hip pocket, and the bottle O'Connor said was his. Connolly said, 'You gave it to me a while ago'. But O'Connor retorted, 'I didn't give it to you. You took it from me with my purse a few minutes ago'. Witness then took the three accused to the police station. There they were searched, but nothing was found on any of them. O'Connor said he had lost about £7 10s.

### **The Tale of the Trio.**

Of the three accused, only one gave evidence on oath, the others confining themselves to unsworn statements from the dock. Giving evidence on oath, the accused, Henry Ridley, said he lived at 8 Campbell-street, Glebe, and was a carter by occupation. On the afternoon of October 14 he had been drinking and was with Connolly, who had a demijohn of beer. They went to Horton's place in Dennison-street, Ultimo. There were others there. Horton had a few drinks and then left. Both O'Connor and a woman who was there. Mrs Carroll had some drinks. Connolly took no wine from O'Connor. The bottles were already on the table. Connolly picked up the bottle of wine from the table after the constable had arrived and had said, 'Pick up your beer and come to the Glebe'. Connolly picked up the bottle of wine by mistake. Accused knew nothing of O'Connor's money, and had not assisted in any assault upon O'Connor. Mr. Coyle: You three accused are friends? Accused: Yes. We went to school together, but we don't knock about together. Had you ever been to Horton's place before? — Yes. about a month before. Were you throwing Horton's furniture about? — There was none thrown about in my presence. Do you remember the little boy telling the constable the story about you three men tackling O'Connor?—

You remember Constable Taylor arriving? — Yes, he came with Horton. You saw the little boy there? — Yes, I saw him go into his bedroom off the kitchen. You have been convicted of offensive behaviour? — No, for resisting the police. Mr. Collins: How long ago was that?— About nine months ago; I was fined £1 10s. On the Sunday after the arrest, you saw O'Connor? — Yes. he sent over for us and we went down to his place. He said he had found his money and wanted £3 from us to 'square' the case. He went down to the police station but could not get the case withdrawn. The accused Law made an unsworn statement from the dock. He said he had met Ridley and Connolly that afternoon. They went to Horton's place and were admitted by a woman. O'Connor was there and all were drinking in the kitchen. There were songs sung and Horton went away and returned with a Constable. Law denied that he or any of his comrades in the dock had in any way assaulted O'Connor or taken his money. They went peaceably to the station with the constable because they did not know there was any crime attached to what they had done. The accused Connolly also made an unsworn statement from the dock. His version in the main tallied with that of Law. None of the accused called any witnesses. The three accused were found guilty on the major count of assault and robbery in company. Ridley received a sentence of eighteen months' hard labour in Goulburn Gaol. Each of the other accused was sentenced to 23 months' hard labour in Bathurst Gaol.<sup>[26]</sup>

### **26 November, 1922. Marks's Misfortune – Reputable Citizen's Odious Ordeal.**

Allegation of Assault on Girl – Crown Case Collapses and Jury Acquits

A criminal case was listed for hearing by his Honor Judge Cohen at the Sydney Quarter Sessions last Wednesday that surely calls for some explanation from the authorities answerable for its presence on the list. To the principal party concerned— a middle-aged, family man of excellent repute, Henry Marks, an engineer, of Waverley, though he eventually achieved a clean acquittal, the trial must have

proved the most harassing of ordeals. The case advanced for the Crown was so flimsy and so feeble that it is somewhat mystifying how it came to be sent along to Quarter Sessions at all. That it should have got that far constituted a crucifixion of an innocent man of hitherto unblemished repute. The charge against Henry Marks was that, at Waverley, on October 15, 1922, he indecently assaulted Mary Dorrington, a child of the age of nine years. The Crown Prosecutor was Mr. L. J. McKean who was instructed by Mr J.J. Kinhead, of the Crown Law Office. The accused was defended by Mr R. D. Meagher and pleaded not guilty. Not a single jurymen was challenged.

Mr McKean, in opening for the Crown, remarked that if the story to be told by the little girl Dorrington was true, the offence was a most extraordinary one for the accused to have committed, for at the outset the Crown would admit that the accused, a married man with, a family, was a man of excellent character.

### **The Children of the Sandhills.**

Mary Dorrington was the first witness called — a tiny, hatless auburn-haired child. His Honor declined to permit the child to give evidence on oath. Telling her unsworn story, the little girl said that she was nine years old and lived in Victoria-street, Waverley with her mother and father. At about 9 o'clock on the morning of Sunday, October 15. she was playing on some sandhills In Queen's Park, near Centennial Park. She there saw the accused, whom she had frequently seen before and to whom she had often spoken. At this stage the child halted — uncertain how to proceed. Mr. McKean: On this Sunday morning did the accused do anything to you? The little girl (after a protracted pause, during which her eyes roamed round the court): Y-e-e-s. The small witness further said that she was sitting on the ground and the accused was seated near a bush, but 'he did nothing to me'. She remembered the Sunday morning now — the morning her brother Ted came along. The accused called her over and placed his hand on her bare leg — 'not far up, but above my knee'. Accused also gave her five pence. She was wearing bloomers, but the accused's hand was outside the garment. When Ted appeared, he called her away but said nothing to the accused.

Mr Meagher: There were other little ones playing there besides you? The Child: Yes. And your little sister was there turning somersaults down the sandhills?— yes. You had seen Mr. Marks there before and seen him give children pennies? — Yes. Did you tell Mr. Marks your little sister, Nellie, would stand on her head for threepence?— Yes. When your brother came, Nellie ran to him? — Yes. Mr Marks didn't hurt you in any way? —No. Mary Jane Dorrington, mother of the little girl living at Victoria-street, Waverley, said that her little daughter, Mary, was born on May 23, 1913.

### **Ted Tells His Tale.**

Albert Edward Dorrington, crippled and on crutches, said he was a son of the preceding witness. Describing that Sunday morning Incident, witness said the locality was bushy sandhills. He saw his little sister Mary come from behind a bush. The accused was behind the bush, peeping round. Witness could not at first see the child, but when she rose up, he saw her pulling down her clothes. Her bloomers— she wore no petticoat — were, visible up to the hip. Witness called her and she came. He noticed that in her hand she had a threepence and two pennies. The child seemed very excited and was half crying. At first, she would not say where she had got the money from, but after a cry she said that 'Mr. Marks gave it to me for letting him (do something)'. While this conversation was in progress, the accused was peeping round the bushes, still on his hands and knees. Witness said nothing to accused, but 10 minutes later he made a complaint to a constable. At this time the

accused was talking to some other little girls. The spot was just off Darley-road. He had seen accused before but did not know him. The accused was then arrested by Constable Gorman.

Mr Meagher: Both sisters came over to you together? Witness: No: the younger one came to me first. The other one came after I had walked up to within about 15 feet of her. When the child came to you she led you to believe that accused had been behaving indecently to her?— Yes. Did you call out to this man. 'You dirty old scoundrel'? — I said nothing.

### 'It Is All Lies!'

Constable Breffly Richard Gorman, stationed at Waverley, gave evidence to the arrest of accused. When told what the charge against him was, the accused said he knew the little girl Mollie Dorrington, but denied having improperly touched her. He said, 'That is all lies'. The, accused admitted having given both little girls some money. At the Waverley Police Station, when a statement already made by the little girl was read over to him, the accused denied the truth of it.

Mr. Meagher: The accused denied the charge from the very start? Witness: Yes. He bears a good reputation? — Yes; a very good reputation. He is an engineer by profession and told me that for 22 years he had been in the employ of the Broken Hill Proprietary. Ltd. This concluded the case for the Crown.

### Crown Case Collapses.

His Honor pointed out to the jury that there was not the necessary corroboration of the child's evidence and directed the jury to return a verdict of 'acquittal. This the Jury did.<sup>[27]</sup>

### 26 November, 1922. Underworld Upheaval - Sordid Story From Surry Hills



Figure 4 - Esther Eggers - 1919

Esther Eggers and brother Fred found Guilty of Audacious Assault on 'An Unknown'.

Echo of unsolved Cart Dock Crime.

A brother and sister, both young people, occupied the criminal dock before his Honor Judge Cohen at the Sydney Quarter Sessions last Thursday. They were Esther Eggers and Frederick Reardon. They had both occupied the same situation in the same court and before the same Judge to answer precisely the same serious charge, exactly a month before — on Thursday, October 26. On that occasion the jury, after a

protracted deliberation, had been unable to agree. The charge against the two accused was: 'That at Sydney on June 17, 1922, they did assault some person whose name was unknown to the Crown Prosecutor, with intent to rob that person', or that, alternatively, 'they had been guilty of common assault upon that unknown person.' Both accused pleaded not guilty. The male accused, Frederick Reardon, was undefended. His sister, Esther Eggers, was defended by Mr. W. D. McMahon. The Crown Prosecutor was Mr. L. J. McKean, who was instructed by Mr. J. J. Kinhead, of the Crown Law

Department. Three jurors were challenged from the dock, and one ordered to 'stand aside' by the Crown. A notable difference between this trial and the preceding one lay in the more elaborate defence put forward by the male accused. In the course of his defence, Reardon seized every opportunity of impressing upon the jury his claim that he was the victim of a systematic persecution from the police. He brought witnesses of repute, in whose employ he had been — men of unquestionable repute — who affirmed that the police had approached them to have Reardon put off jobs on which he was employed. Reardon subpoenaed two witnesses from Long Bay Gaol, but these witnesses were not available when they were required and had to be specially sent for by the presiding Judge. The hearing of the case occupied the whole day.

#### **Terry-street Tragedy.'**

May Smith, a slender young woman, wearing a neat, sensible summer costume, said that she now resided at 91 Raglan-street, Alexandria. She was a single woman and had formerly lived at 25 Terry-street, Surry Hills, her house facing Sophia-street. She there earned her living as a dressmaker. The accused Reardon she had known for about 18 years and his sister, Esther Eggers, for about two years. At about 8 o'clock on the evening of June 17 she saw both the accused in Foveaux-street. They were some 30 yards apart, on the opposite side of the street. She next saw the woman Eggers coming out a lane leading into Sophia-street, some 30 yards from witness's place. The woman was hanging on to a man. She could not say whether or not this man was sober. Reardon went across the street to these two and witness heard the smashing of a bottle and saw the unknown man fall. Witness could not say whether Reardon struck the man with his fist or with a bottle, but he did hit the man. Witness heard the woman accused say to Reardon,

#### **'Come On ! I've Got All I Want'!**

The two accused then passed her place and moved on into Foveaux-street. Witness was at her door as they passed. She did not render the fallen man any assistance but went inside her own home. When she came out again, some 20 minutes later, the man who had been knocked down, had gone; Terry-Street was not lighted.

#### **The Constable on Beat.**

Constable John William Swasbrick said he know both accused. On the evening of June 17, he was on duty at Surry Hills and at about 8.15 p.m. saw Reardon in Terry-street and the woman Eggers in Foveaux-street. They were about 10 yards, apart. This constituted the Crown case in chief.

#### **'I Stand Here Innocent!'**

The accused Reardon elected to make a statement from the dock. Did the jury think that if he were about to commit crime, he would take his sister with him? That night he was talking to some men at the corner of Castlereagh and Bathurst streets, and had not been in the locality indicated for two years. 'I stand here an innocent man!' was Reardon's dramatic conclusion.

#### **Laggards From Long Bay.**

Reardon had intimated that he purposed calling a number of witnesses. He complained that two men, at present Inmates of Long Bay Penitentiary, whom he had subpoenaed, were not available. His Honor ordered that these witnesses be brought in as promptly as possible. They arrived in time to testify for Reardon. The next witness desired by Reardon was Michael Melville. It was explained that this witness was an inmate of the Darlinghurst Reception House. His Honor explained to the accused

that even if this witness was available his evidence would be of no service to him. Reardon proceeded to call what witnesses were to hand.

Harry Young said that from 6.30 p.m. till after 8 p.m. on June 17, he was talking to Reardon in Bathurst-street. A man named Pritchard was with them. Harry Pritchard also remembered having been talking to Reardon on the evening of June 17 in Bathurst-street until well after 8 o'clock'— perhaps till a quarter to 9. Mr. McKeon: How do you remember talking to the accused on June 17? Witness: Having read in the paper that Reardon had been arrested on a charge of murder. Do you say you were not talking to Reardon this morning? - I may have spoken to him. What about? — A letter sent to me from Long Bay Goal. From Reardon? — Yes. What did you say?— I told him I had got his letter and had come to give evidence. William Ferguson also remembered the night of Saturday, June 17. Witness did not speak to Reardon that night but saw him, outside the Royal Standard Hotel, speaking to a one-legged returned soldier. This would be about 20 minutes to 8. Mr McKean. How do you remember this date, June 17? Witness: I could not get away from it. Why?— That was the night of the Surry Hills murder and I had breakfast with Reardon next morning.

#### **A Matter of Names.**

Horace Talke, manager of the City Night Refuge in Kent-street, said that if a man were put out of the night refuge during the night, he would know of it. Men who slept there were locked in and could not get out till 6 o'clock the next morning. Witness would be able to tell from the Refuge records whether a man named 'Peter Edwards. 22 years of age' had been in the habit of staying there for some time prior to June 17. His Honor instructed the witness to bring along the necessary record books, though he told Reardon he did not see how the information was likely to help him. Reardon said that an attendant at the Refuge who took the names of lodgers knew his correct name to be Reardon, though the name he gave was 'Edwards'. "A man doesn't always give his right name when he goes to these places", explained Reardon. William James Kell, master builder, said that for eight- or nine-months Reardon had been in his employ at Burwood. His weekly wage was £4 19s 11d.

#### **Police Persecution Alleged.**

Alfred Edward Ware, building contractor, of Wonga-street, Canterbury, said Reardon had been in his employ and was a good workman. Witness had been visited by the police, who told him that Reardon was one of the greatest swindlers in Sydney." The witness, in further reply to Reardon, said that Reardon was 'one of the best workmen I've ever employed in my life'. 'I believe candidly that what Mr. Young has been writing in the papers had reference to this case', continued the witness. But the flow of his unbidden eloquence was peremptorily stopped. Mr. McKean: You don't know how Reardon spends his nights? Witness: That's no concern of mine so long as he does his work. Would you be surprised to know that within the last 14 years he has been convicted some 20 times? Reardon protested against the question. His Honor pointed out that Reardon was setting up that he was a man of good character, and for that reason the question was admissible against him. Mr McKean: You were led to believe the police were persecuting this man? Witness: Yes—from what Detective Jones told me. Do you know he's been convicted of stealing?— No — and it doesn't concern me so long as he does his work. Frank Reardon, a brother of the man in the dock, describing himself as a labourer, said that while he was talking to his accused brother in Bathurst-street, he was pulled up by Detective McKnight, who threatened. "For two pins I'd put you in under the van. You're another one of the Reardon's".

His Honor: What's all this going to prove?

Reardon: I'm going to prove that this case against me arises out of spite on the part of the police. Frederick Reardon, father of the two accused, said that his accused son had a good home, and did not go out much at night. His married daughter also had a good home. His son did not patronise the hotel in Terry-street because he would be called 'the police pimp'. On one occasion his son was stabbed at his own gate and had to have his eye stitched at the hospital. The man who did the stabbing ran away. The woman accused also made a statement from the dock. She said she was nowhere down in Terry-street on the night of June 17, and knew nothing about the alleged offence. She was at a friend's place at Moore Park that evening.

William Williamson, better known as 'Willo" Williamson, who had just arrived by special express from Long Bay, said that on the night of June 17 he was in Marshall-street, with Esther Eggers. He was arrested with Reardon. A man named Starkey was also lined up for identification. He had not seen Reardon for three months prior to June 17. Witness said that the police had asked him to alter his statement. Detective-Sergeant McKnight said to him. 'Esther's altered her statement. What about you altering yours? You're not charged yet'. Detective-sergeant Robson was present. Witness was told that if he altered his statement so as to implicate Reardon, they would charge him only under the vag. Esther Eggers was in his company all that evening. Witness admitted that he was at present serving a sentence.

Thomas Fiddler, another visitor from Long Bay, hobbled into court on crutches. He also remembered seeing Reardon at the Standard Hotel in Bathurst-street during the afternoon of June 17. After 6 p.m. while they were standing at the corner of Bathurst-street, a constable came up and 'chipped' Reardon.

This closed the case for the defence. The Crown Prosecutor called evidence in reply:— Harold Meredith Dixon, formerly manager of the Federal Lodging House, 221½ Castlereagh-street, Sydney, said that Reardon had twice stopped at that lodging-house. On June 17, Reardon arrived at about 10.35 p.m. He was then slightly under the influence of liquor. Reardon only stayed the night but made arrangements to take a single room for a week. The jury retired at 3.30 p.m. and inside a quarter of an hour had found both accused guilty on the major count of assault with intent to rob. Both brother and sister had a fear-some array of previous convictions, those of Reardon dating back to 1908. Reardon was sentenced to 18 months' imprisonment with hard labour in Bathurst Gaol, and his sister, Esther Eggers, to nine months' light labour in the State Reformatory, for Women at Long Bay.<sup>[28]</sup>

### **26 November, 1922. Tilly's Trouble – Peculiar Pranks 'At The Pictures'**

Startling Scenario Screened at Sessions – Matilda alleges impropriety, but jury acquit youth she accuses.

The tale of a lad and a lass- a lad of just 18 and a girl only 14 last July— engaged the attention of his Honor Judge Cohen and a jury at the Sydney Quarter Sessions last Tuesday. The youth, Benjamin Court, is an apprentice - moulder at the Railway Workshops, Eveleigh, and he was in the dock to answer a distinctly serious charge — that, at Enfield, on May 20, 1922, he did wilfully and carnally know Matilda Eaves Pickard, a girl over the age of 10 years and under the age of 16 years — to wit, of the age of 13 years and 10 months.



The accused pleaded not guilty and was defended by Mr. B. D. Meagher. The Crown Prosecutor was Mr. L. McKean who was instructed by Mr. J. J. Kinkead, of the Crown Law Office.

In opening the case for the Crown, Mr. McKean remarked that in the course of the defence it was probable that the morals and the habits of the prosecutrix in this case would be assailed. The accused young man was charged with having carnally known this girl of under 14 years. It was certain that someone had carnally known her, for the girl was now some six months advanced in pregnancy. The girl and her sister Rita lived with their mother at Croydon Park, and the first intimation the mother had that anything was amiss was when, on the morning following the alleged offence, she found an undergarment of her daughter Tilly's torn, and there were other indications of interference.

While the Crown Prosecutor was unfolding the general trend of the Crown case, his Honor remarked upon a number of women and young people who were in court, and suggested that perhaps their own sense of delicacy would prompt them to forego the hearing of such a case as this promised to be. Judge Cohen made no order, but the curious folk indicated all left the court.

In the course of his opening address, the Crown Prosecutor intimated to the jury that It was possible that one of the witnesses called for the Crown, a young girl named Norah Leach, who had attended the Enfield pictures with the prosecutrix on the night of this alleged offence, might not be in attendance. However, the Crown did not wholly rely upon her evidence. As it happened, the girl mentioned did appear to give evidence, but she, proved a far from enthusiastic witness on behalf of the Crown. Under examination by Mr. McKean she at first denied that she knew Court the accused, at all, and immediately afterwards admitted that on the night of May 20, at the pictures, he was seated next to her after the interval.

#### **How the Tale Was Told Mother.**

Matilda Eaves Pickard said she was a married woman living with her husband at Croydon Park. Her daughter. Matilda Eaves Pickard. the principal Crown witness in this case, was born at Campsie on July 21 1908. So that she was 14 years old last July. On the evening of May 20, 1922, witness's two daughters, Rita and Matilda, went out to the Broadway Pictures at Enfield. Rita returned first that evening, Matilda arriving half an hour later. Both girls slept in the one room. Witness had been sick that evening, and so had not left home. Next morning, behind a tin trunk in the girls' bedroom, witness found a certain article of underclothing belonging to her daughter Matilda, the garment having the elastic broken and showing other indications of a suspicious nature. Mr. Meagher: You did not know the accused? Witness: Yes— I didn't know him then. This offence allegedly occurred on May 20? — Yes. And you never got into touch with the accused till July? — No. And that was because your daughter was in a certain condition? — Yes. Your daughter has a close companion, Myrtle Baker? — Yes. And that girl has an illegitimate child,— Yes. Your daughter goes to the pictures with this young girl? — Sometimes. Had your daughter Tilly ever before arrived home as late as half-past 11 at night?— No. When did you first go to see the accused — after you'd seen the doctor? — After I'd seen the doctor and after I'd seen accused's mother. Mr. McKean: When did you first learn that your daughter was pregnant? Witness: In July, after I had taken, her to the doctor.

#### **The Girl in the Picture.**

Matilda Eaves Pickard, the principal girl in this somewhat pitiable picture, proved to be plump in build beyond her years. She was arrayed in a cool, flimsy costume of pink. She said that she lived

with her parents at Croydon Park. On the evening of Saturday, May 20, she went to the Broadway Pictures at Enfield. She saw accused there. She had then known him some time. She was in the company of some other girls and her sister Rita also was there. During the Interval witness visited the lavatory, and when she returned, she found that her seat had been taken. 'Sit here', said accused, pulling her on to his lap. There she remained throughout the rest of the programme, or until they left together a few minutes before the show ended. Outside the picture show she and accused proceeded down Hill-street, accompanied for some distance by Norah Leach and 'her boy'. When these had left witness and accused continued until they reached a vacant paddock. Here the accused made an improper proposal to her. When she refused, he pulled her on to the vacant allotment, and there was improperly intimate with her against her will and despite her protests. This occurred at a spot some two minutes' walk from her own home. The accused, after the impropriety, compelled her to remain with him for half an hour, and warned her against telling her mother what had happened. As a result of what accused did to her that night, she was now pregnant. No male had ever touched her improperly before.

### **Concerning Companions.**

Mr. Meagher: You've been to picture shows with Myrtle Baker?— Yes, sometimes. She's a close companion of yours? — Yes. Norah Leach and you are good friends?—Yes. Did you ever ask her to keep her mouth closed and not put you away? — No. Myrtle has a baby?— Yes. And she's not married?— No. And she hasn't yet found a father for her baby? — No. Have you been helping her to find the baby's father? — No. Until this night at the picture show you had never spoken to this boy, the accused, before? — No. But you've spoken to many others? — I know a lot, but I've not spoken to many of them. Do you know Billy Mitchell and his brothers? — No— never heard of him before. You know Elsie Pearson? — Yes. You and she have been to the picture show with boys— No. Ever go to the pictures on Wednesday night? — Sometimes with mother. Elsie Pearson and Mary Rowe were called into court, and the witness said she knew them both. Both were short frocked girls in their early teens. Mr. Meagher: There's no reason why Elsie Pearson should be bad friends with you? Witness: No. Then if she says that between Christmas and New Year's Day you went into a paddock with Mitchell, who was then improperly intimate with you? — It's not true. You know Henley Park? — Yes, I've been there on Saturday afternoons. You've never been there at night with "Delia from Strathfield"?— No. In front of a chemist's shop did you ever tell the girl Rowe that you were in the family way? — No. Or Elsie Pearson or any other girl? — No. Have you been to the pictures since May 20? — Not without my mother. So that any statement that you've been improperly familiar with other boys is untrue?— It is. After your mother took you to the doctor, how long was it before you saw the accused? — About a fortnight or three weeks. Did he deny this charge?— I never spoke to him. Mother spoke to him.

### **Sister Rita Sustains a Shock.**

Rita Pickard, sister of the preceding witness, said she was 16 years old and was now working at 150 Edward-street, Croydon, in domestic employment. On the night of May 20, she saw the accused, whom she had known for some years, at the Broadway Pictures. After the interval witness saw accused pull her sister on to his knees and afterwards indecently tamper with her clothes. Accused and her sister left the pictures before witness did, but witness reached home first. Mr. Meagher: It was dark when your sister came in after the interval? — Yes. Where were you? — Four rows away from my sister and the accused, in front of them. Where was Norah Leach?— Sitting next accused .



When you saw what you say you saw, you were disgusted? — I was. There are attendants or ushers there? There were none there that night. There are police there? — There are generally some out in front. Why didn't you take your sister away from this man? — I was afraid he might hit me. How long was accused holding Tilly? — She was about a quarter of an hour on his lap. Accused had never threatened you before? — No, but I wouldn't chance myself going near him. When accused and your sister went out, why didn't you follow? — I was too frightened. How long did you stop on? — Till the pictures were over. Was Norah Leach shocked also?— I couldn't say. So, though you were so disgusted and horrified you saw this young man carry off your sister and did nothing? — He didn't carry her out (laughter). He only had his arm round her!

#### **Norah Knows— 'Notting'.**

Norah Leach, a neat little girl on the small side, said she was 15 years old. She had been at the pictures on the night of May 20, and saw Tilly Pickard there. She did not know accused and didn't see him at the pictures that night. At the Interval she went to the lavatory with Tilly Pickard, and they came back together. Tilly, after the Interval, sat next her. On the other side some young man was sitting. This young man was the accused! (Laughter.) Tilly and the accused were joking together. After the interval, as Tilly and she were returning, some man grabbed Tilly and pulled her on to his knee, but who this young man was she could not see. Witness had not spoken to accused, and before the night of May 20 she had not seen him. She had seen him since, at the Carnival, some two or three weeks after May 20. She had also seen accused at the Burwood Police Court on October 11. She could not say who the boy was who that night in the picture-show pulled Tilly Pickard on to his knee.

Mr. Meagher: You are not acquainted with accused at all? — No. ? At Burwood Police Court you said: 'I did not see his (accused's) face, and cannot say he is the boy' — Yes. And you say today what you that day said to the Magistrate, Mr. Peisley?— 'you've known Tilly for some time?— For a good while. Did Tilly ask you anything at Burwood Court? — Yes. She asked me not to say I'd seen her out with other boys. Have you ever seen Tilly out with other boys?— Yes, with one— Syd Saunders. How long was Tilly on that young man's lap? — He just pulled her down and then put her on a seat alongside him. Did you see this man in any way behave improperly?— No. And you were seated alongside? — Yes.

#### **Direct Denial on Oath.**

The accused gave evidence on oath on his own behalf. He stated that he had just turned 18 years. He was an apprentice-moulder at the Eveleigh Workshops. He had never before been before any court. He could not be sure that he was at the Broadway Pictures at Enfield on the night of Saturday, May 20, though he had been there one Saturday night during May. After the interval he remembered a girl came and stood between him and the screen. He touched her on the shoulder and, pointing to a seat next his, said to her, 'Sit down there'. She did so. He never had her on his knee nor had he in any way interfered with her. He spoke to this girl as she sat alongside him, and when he said he was going for his tram, she said, 'I'll see you to the tram'. The picture-show is in Liverpool-road. The girl Leach and the boy with her went down Liverpool-road, but accused went down Hill-Street. The prosecutrix, Tilly Pickard, was with him, but the story told by the prosecutrix as to the alleged assault upon her by him was absolutely untrue. He was never off the main street. The girl, when they parted, asked him, 'Will you see me again?' He replied, 'Next Saturday night'. They parted good friends, and the last he saw of her was after he had boarded the tram and she was talking to some hoys near the fruit shop. He had heard nothing about this charge till July. Mr. McKean: Was this girl on your knee at

any time? Accused: No; but she may have brushed against my knee. This girl, whom you had never seen before, volunteered to go with you? — She did. Is there a paddock or any vacant ground In Hill-street?— I couldn't tell you. Where is the tram-stop? — There's one right close to the picture-show, but the girl asked me to walk right round, and I did so. She said it was her way home. The girl's story is true with the exception of the paddock incident? — Yes. Did you know Norah Leach before that night? — No.

### **Why That Long Delay?**

In his address to the jury Mr. Meagher contended that the evidence for the prosecution disclosed an offence that, if it amounted to anything, amounted to rape. If the story told by the girl were true—and there was no corroboration of her story — how came it that so long a period was permitted to elapse before any endeavour was made to find the author of the alleged outrage upon her? The truth was that this young girl now found herself in the same position as her unfortunate girlfriend, Myrtle Baker — looking for a father for her illegitimate child. The accused was not one of the young fellows who had been knocking about with this girl. Still, he had been picked upon as the putative father of this young woman's prospective child. If the story set up for the Crown had been genuine this young man would have been apprehended the following morning on a charge of rape.

Mr. McKean said that the silence of a clean-minded, decent girl such as the prosecutrix in this case, could be readily understood — she had been hoping against hope that nothing would happen as a consequence of what had occurred on the night of May 20. Why had the men mentioned in connection with this young girl not been called into the court? Because a girl was not chaste, it did not necessarily follow that she was a liar.

His Honor, summing-up, said this was a charge that was very easily brought but that was very difficult to disprove. It was a very dangerous thing for a jury to convict in a case of this sort on the uncorroborated evidence of the girl, though it was quite within the province of the jury to do so if they implicitly believed the girl's story.

### **Some Pertinent Queries.**

The jury retired at 12.35 p.m. At 3.10 p.m. the jury intimated to his Honor that they desired to ask a question of the prosecutrix, of her sister Rita, and of the mother of the girls. These witnesses took the witness-stand in turn, only the witness then questioned being in court, the others withdrawing till the Jury's question was asked.

The prosecutrix, Matilda Eaves Pickard, came first. The Foreman of the Jury: After you left the accused on the night of May 20, did you speak to anyone else? The Prosecutrix: No, I went straight home. Her sister was next called. The Foreman: On your return home that night did you tell your mother what you had seen? Sister Rita: Yes. Last came the mother of the girls. The Foreman: When your daughter Rita returned home that night, did she tell you what she had seen in the theatre and afterwards? Mrs. Pickard: Yes. The Jury again retired to continue consideration of their verdict.

The jury eventually acquitted Court, who was thereupon discharged.<sup>[29]</sup>

### **3 December, 1922. Abigail Acquitted – Curious Conjectures Concerning Mrs Chew's Cash**

She Alleges that Arthur Bribed the 'Bobbies' – Remarkable Assertions at the Sessions

A False Pretences charge that commanded quite an unusual measure of attention was heard before

his Honor Judge Cohen at the Sydney Quarter Sessions at Darlinghurst, last Monday. The accused was Arthur Charles Abigail, a member of the well-known Sydney legal family. He is managing clerk to Mr. C. R. Penny, another prominent Sydney solicitor, and he is professionally well known in court circles. The precise charge against Arthur Charles Abigail read: — That on July 5, 1922, at Sydney, he did falsely pretend to Florence Thomasine Chew that certain members of the Police Force were prepared to accept money by way of a bribe not to move all stock from the premises of one Charles Chew, and did then make to the said Florence Thomasine Chew the following wilfully false promise: — That if he, the said Arthur Abigail, were then given certain money by the said Florence Thomasine Chew, the said members of the Police Force would not move the said stock from the said premises — by means, partly, of which false pretence and partly by means of which wilfully false promise, he, the said Arthur Abigail, did obtain from the said Florence Thomasine Chew money, to the amount of £200, the property of the said Florence Thomasine Chew and Charles Chew, with intent to defraud.

The accused pleaded not guilty and was defended by Mr. Mack. K.C. (instructed by Messrs J. W. and E. R. Abigail). The Crown Prosecutor was Mr. L. J. McKean (instructed by Mr. J. J. Kinkead, of the Crown Law Department). The accused challenged seven jurors and the Crown ordered two to stand aside.

#### **Thomasine's Troubled Tale.**

Florence Thomasine Chew, a young married woman, said that she lived with her husband Charles Chew, at 157 Little Oxford-street Darlinghurst, where they carried on a ladies' clothing factory. On July 5 last certain police officers called at the premises at about half-past 8 o'clock in the morning. The police were searching her place in connection with some serge that had been stolen. Witness rang up the accused, who shortly appeared. The accused asked her, "What's up?" She replied, "My husband's in trouble". "Do you want it fixed up?" accused inquired. She replied that she did and accused asked her for £50. This she gave him. A Mr. Royce was present at this time. On receiving the roll of notes from her the accused called Detective-sergeant Quinn into a corner of the sales-room. Witness then went into the office. Detectives Walsh and Matthews were also present. Later on, the accused called her out of the office and said to her, "Fifty pounds is no good, I want another £150". She said she hadn't got £150. She told the accused that she and her husband hadn't the money, and though she had jewellery she didn't want to pawn it. Accused replied, "You'll have to get it to stop the stuff being taken away". Witness then sent Annie Barnes to the Savings Bank for £35, drew a cheque herself on the Commercial Bank for £60, borrowed £50 from Mr. Royce, and added to these a five-pound note, making up the £150. This money she handed to accused in the dining-room. Accused told her to go out of the room and he would call Sergeant Quinn. So, she went into the workroom. She returned to the dining-room shortly afterwards, when accused said,

#### **"Everything Will Be All Right".**

Her husband had been committed to stand his trial for receiving stolen property. On July 18, at the office of Mr. C. R. Penny, she handed accused a cheque for £50, this being in payment of the fee for the defence of her husband. That day she remarked to accused, "That was a lot of money to pay you— £200". Accused replied, "If you hadn't paid it, they'd have taken all the things away. You remember Solomon's case". If it had not been for the representations made to her by the accused, she would not have given him this £200.

**To "Square" the Police.**

Mr. Mack: You thought that money was given Abigail to bribe the police? — He led me to believe that. I thought they could take the stuff. And you thought that he'd give the money to the police? — Yes. You thought if you paid this money, you could go bail? — No. I knew I could go bail. I'd been bail before for my brother. What was that for — opium, wasn't it? — No — drunkenness, I think. How long have you been married? — Six years. You are a full-blooded European? — No. Any children? — One. You thought Abigail was to share this money with the three police who you said at the police court that Abigail got Detective-sergeant Quinn to go behind a partition? — Yes. And that you left them there together? — Yes. And that they did this in sight of the other police? — Yes. You substantially swore that Abigail and these police were all in the swindle? — Yes. And you thought it was a very rotten thing for him to do? — Yes. When did you see your solicitor? — On the 18th I saw Mr. Penny. He's the accused's employer, but you made no complaint to him about Abigail? — No. You'll admit that up to the time your husband was committed for trial you made no complaint about this fraud? — I spoke to the accused. In the police court you swore. "I did not go to the defendant about the £200 since the 18th, and I have made no demand on him for its return"? — Yes. When you paid that cheque for £50, did you tell Mr. Penny anything about having been defrauded by Arthur Abigail? — I paid the cheque to accused, and did not see Mr. Penny, who was out. But Mr. Penny appeared for you at the police court? — Yes. And you made no complaint to him there? — No. In the presence of your husband there was never anything said by the accused about wanting this £200? — There was We'll leave it at that. You have no doubt of this? — No. It was mentioned in the presence of your husband? — Yes.

**Punting Proclivities.**

How long have you been owning racehorses? — Three years. You're a loser? — I don't lose much. Don't you sometimes have a run of bad luck? — Sometimes. And you don't tell your husband? — I never tell him anything about it. It's my business. Your husband doesn't like you doing this? — He doesn't interfere. How much have you lost at one time? — £10 or £12. You'd been drawing a lot of money about this time? — I put it into the business, I paid the money into my husband's account as the business is in his name. How long have you been racing? — A couple of years. What's this man, Royce? — My trainer. Where did you pick him up? — He was introduced to me by a commercial traveller. What does it run you into, this racing? — I pay £6 a week. Where do you get this money? — I earn it. Have you ever told your husband you were paying £6 a week to this man? — He knows. He knows I have four horses. Isn't it a fact that that day — July, 5 — you gave that £30 to Royce to put on a horse for you? — No. And that to explain this to your husband, you put the blame on the accused and the police? — No. At the police court you swore that Chew refused to give you more than that £30? — Yes. He didn't know he had the money. He had to sign the cheque for £40. At the police court did you not swear that you gave this money to Arthur Abigail for bail money? — No. You told your husband the bail money was £200? — Yes. Why? — Because I thought he would not have given me the money otherwise. You did tell your husband a lie? — Yes. And that day the races were on? — Yes. Charles Chew, a burly, dark-headed Chinaman, said that he carried on a business known as the Sydney Ladies' Clothing Factory, at 157 Little Oxford-street. On the morning of July 5, at about 10 o'clock, he gave his wife £30. He saw the accused at the shop that morning, but he had no conversation with him. Neither did he hear any conversation that passed between accused and Mrs. Chew.

**Raising That £150.**

Annie Barnes, a witness in the employ of the Chews, deposed that on the morning of July 5, Mrs. Chew sent her to a solicitor. She saw accused at the factory, and afterwards Mrs. Chew sent her to the Savings Bank, where she got £35 which she handed to Mrs. Chew. William Royce, a young man, horse trainer, living at Kensington, said that he trained horses for Mrs. Chew. Last July he was training two of her horses, At the factory of the Chews', on July 5, he lent Mrs. Chew £50. hut was repaid in about a quarter of an hour. Witness saw accused at the factory that day. He saw Mrs. Chew with other money beside what he had given her. Mr. Mack: She must have known you were coming? Witness: No. I Just happened to drop in. That is not the way to the races? — It was before the races. You used to give Mrs. Chew racing information? — If I knew anything I'd let her know. What's the largest amount you've known her win? — I never knew what she won. Yet you're her trainer? — Yes. And you know nothing about her betting transactions? — No. How did she repay you that £50?— A cheque for £40 and £10 in notes. Who signed the cheque?— I couldn't say. I think the cheque was signed by the husband What did you do with the cheque? — Cashed it at the bank. Percy Clarence Lee, a young tailor, said he was Mrs. Chew's brother. On July 5 he saw accused talking to Mrs. Chew in the latter's dining-room. His sister told him to go away as "every-thing was all right", so he did not speak to accused. David Chin, a Chinese, said he was a cook, living in Liverpool-street. On July 5, when Chew was arrested, he had been at the Chews' place. On that date he saw Mrs Chew with a roll of notes in her hand, but he could not say what she did with the notes. Mary Cummings, a slip of a girl under a spaciouly leafed hat, said she was a domestic servant employed by, Mrs. Chew. On July 5 accused asked her if she were worried, and she said she was not. This was in the dining-room. Hollis wrote out a statement for Mrs. Chew? — I don't know. Why are you brought into the case? — Because I saw her counting money at the table. Do you know I stopped them taking the lot. They've got someone in there now trying to identify the serge". Thomas Joseph Law, of Chinese extraction, said he was a wharf manager, living at Waverley. He deposed that at the Central Police Court on the day when Chew was committed, he spoke to accused, asking. "What do you think of the case?" Accused replied, "I think it's all right. Do you know I stopped them taking the lot. They've got someone in there now trying to identify the serge."

**Denials from Detectives.**

Detective James Quinn stated that on July 5 he saw accused at Chew's factory. He never at any time represented to accused that if certain money were forth-coming the whole of the stock would not be removed. It was never intended to remove the whole of the stock. All they wanted was the stolen stuff. Mr. Mack: It's not a fact that accused called you behind a screen? Witness: There's, no screen there, as far as I know. Accused was under your observation all the time?— Practically. Did any money pass between you and Abigail? — Certainly not. Was any arrangement about money arrived at between you? — Certainly not. All the time you were there no money passed between Mrs. Chew and the accused? — All the time he was under my observation none passed. Detective John Henry Walsh, was also of the search party at Chew's factory on July 5. At no time did he hear any representation made through the accused to Mrs. Chew, that if certain money were forthcoming the whole of the goods would not be taken away. At no time did he see any money pass between Mrs. Chew and the accused, or between accused and any of the police. Mr. Mack: There were others present besides the police? Witness: There were representatives of four firms. So that if any hanky-panky business were going on, these folk could see it? — I saw none going on. The depositions of Inspector Arthur Leary were put in and read. Leary's evidence was to the effect that when taxed with

the complaint made by Mrs. Chew, the accused replied, "It's a lie." The evidence of this witness also gave the accused an admirable character. Detective Francis Matthews was not in-attendance. The depositions of the evidence this witness gave in the lower court were read. The evidence of this witness corroborated that of the proceeding detective and denied that any money had passed between Mrs. Chew and the accused, or between the accused and the police. Had such a thing happened witness must have seen it. The accused went upstairs with the detectives. When accused spoke to Mrs. Chew. Detectives Quinn and Walsh were present. The accused was "sticky-beaking" the whole time and was a nuisance to the investigating detectives.

This was the Crown case.

#### **Arthur Abigail on Oath.**

When the Court resumed at 2 o'clock, contrary to some expectations, the jury had not arrived at a decision. The defence was accordingly entered upon. Arthur Charles Abigail, the accused, giving evidence on oath, said that he was managing clerk for Mr. C. R. Penny, and in that capacity occupied a position of unlimited trust. There had never previously been any imputation against his character, and he was not guilty of the charge. Beyond the £50 paid as fees for her husband's defence, Mrs. Chew had paid him no money at all. Mr. McKean: How long have you been with Mr. Penny? Witness: For upwards of six years. Mrs. Chew has been a client of Mr. Penny's? — Yes. You know Law? — I never saw him until the day of my committal and was astounded at what he then said. On the occasion of Chew's committal you had no conversation' with Law?— No. You haven't spoken to Law since? — No. Did you know Mary Cummings? — Not till I saw her at the police court. Is it true that you that day asked her if she were worried? — It's absolutely untrue.

#### **Accused is Acquitted.**

Robert Henry Levien, solicitor of the Supreme Court, gave the accused an excellent character, describing him as "absolutely honest and trustful." Thomas Ford, chemist and druggist, had known accused for some 15 years, and had always found him "straight and above-board." Sydney Elliott, retired, had known accused for 20 years, had had many business dealings with him, and had always found him "wholly trustworthy." Mr. Mack intimated that he had numerous other witnesses he could call as to the character of the accused. The jury retired at 3.27 p.m., and within five minutes had recorded a verdict of acquittal. The accused was thereupon discharged.<sup>[30]</sup>

#### **12 April, 1923. University – Final LL.B Examination.**

J.J.B. Kinkead received a pass in Contracts, Mercantile Law, Torts and Crimes, and Property.<sup>[31]</sup>

#### **3 August, 1923. Personal**

Mr. James Kinkead, who was assistant C.P.S., at Forbes in the days before the Great War, in which he took his part, has been paying a return visit to Forbes during the week in connection with the Quarter Sessions. Mr. Kinkead is now in the Crown Law Office, and he has been assisting Mr. T. S. Crawford/Crown Prosecutor, in the conduct of the lengthy criminal cases here this week. Jimmy's rotundity is more pronounced than in the old days, but he suffers no more today from swelled head than he did in the days when he was "devil" to Mr. Arnold and others, and his old friends were pleased to renew acquaintance with him.<sup>[32]</sup>



### 21 August, 1923. Conspiracy Charge - Redfern Firm's Loss Three Convicted

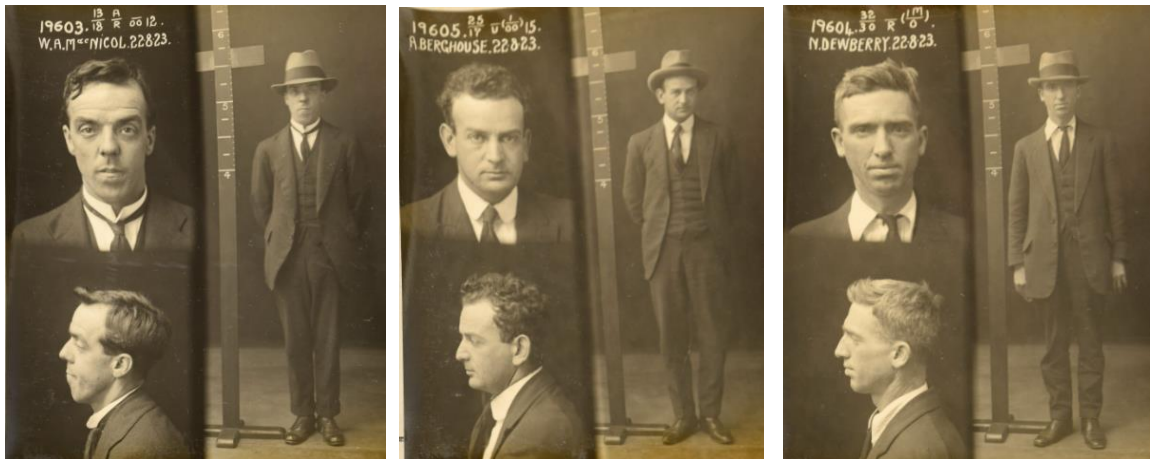


Figure 5 - William Alexander MacNicol, Alexander Berghouse, Norman Dewberry - 1923

The trial took place at the Darlington Sessions to-day, before Judge White, of William Alexander Macnicol, aged 34, motor mechanic; Norman Dewberry, aged 32, packer; Alexander Berghouse, aged 27, carter; and James Thomas Macarthur, aged 48, shopkeeper, on a charge of having conspired among themselves to defraud Silvester Bros., Ltd., suppliers of smallgoods, Regent-street, Redfern, of large quantities of goods. The total loss of the firm, it was said, was about £314. All pleaded guilty with the exception of MacArthur, who was defended by Mr. E. R. Abigail. Mr. Clifton Penny appeared for Macnicol, and Mr. Maddocks Cohen for the other men. Macnicol, Dewberry, and Berghouse were remanded for sentence. In outlining the Crown case Mr. McKean, who was instructed by Mr Kinkead, of the Crown Law Department, said that Macnicol, Dewberry, and Berghouse had been employed by the firm. It was alleged that they had stolen various quantities of small-goods, and that these had been sold at reduced prices to Macarthur, who ran a smallgoods shop in Liverpool-road, Ashfield. The proceeds were pocketed by the other three men. After evidence had been given for the Crown by Macnicol and Dewberry Mr. McKean said that It would be impossible to carry the case any further against Macarthur and the judge then directed the jury to acquit. Macarthur was discharged.<sup>[33]</sup>

### 8 October, 1923. Mercy And Censure - Jury's Rider Theft By Postal Official

As the jury had failed to agree at the first trial James Joseph Donoghue, postal official at Manly, with 33 years service, was again arraigned at the Darlington Sessions today, before Judge Cohen, on a charge of having fraudulently converted Government money to his own use. He was found guilty, and was remanded for sentencing. In recommending the prisoner for mercy, the jury added the following, rider:— "We censure the postmaster for his neglect of duty, because he had the £100 note in his possession in the early part of the day and never made any comment on it when he took over the cash." Mr McKean (instructed by Mr J. Kinkead, of the Crown Law Department) appeared for the Crown; and Mr. E. R. Abigail, for the defence.<sup>[34]</sup>

**22 October, 1923. Randwick "Hold-Up" - Mistaken Identity Issue**

Contending that the evidence of identification was incorrect, Harold Price, aged 26, cleaner and presser, who was charged with robbery under arms, detailed, in a long statement at the Darlinghurst



*Figure 6 Harold Price - 1923*

Sessions today, his movements on June 16 — the day of the alleged offence. He was defended by Mr. Hogarth, while Mr. McKean (instructed by Mr. Kinkead, of the Crown Law Department) appeared for the Crown. The Crown case was, that during the absence of Mr. and Mrs. Forsyth from their home in Hendy-avenue, Randwick, on the afternoon of June 16, their adopted son, Roland George Ward, aged 16, was in charge. Answering a ring at the door he saw Price,

who inquired the location of another house in the street. Price pushed his way inside, pointed a revolver at Ward, and threatened to blow out his brains if he made a noise. He then tied up the lad, collected money and jewellery, and, in company with another man, left. Constables Maher and Lawless called at the home of Price, where they found five revolver cartridges. From the dock Price said that he was innocent, and that he had never seen Ward prior to the "line-up" at the police station. Price called evidence to support his statement that he was not at Randwick on the day of the alleged "hold-up". Price was found guilty. The jury recommended him for mercy because of his youth. A long list of previous convictions was read, and Constable Maher gave evidence that Price was regarded as being the master mind in juvenile crime at Surry Hills. Judge Cohen sentenced him to two years imprisonment.<sup>[35]</sup>

**17 April, 1924. University – Faculty of Law – Final LL.B Examination.**

Legal Interpretation. J.J.B. Kinkead.<sup>[36]</sup>

**30 April, 1924. University – Faculty of Law – Final LL.B Examination.**

Procedure. Bankruptcy, Probate and Divorce. J.J.B. Kinkead.<sup>[37]</sup>

**8 May, 1924.** Advice have been received in Broken Hill that Mr. J. J. B. Kinkead, who was at one time attached to the staff of the local Courthouse, has been successful in passing two stages of the barristers' examination held at The Sydney University.<sup>[38]</sup>

**27 August, 1924. Lien on Crops - Interesting Case for Farmers**

An unusual case, and one of great interest to the farming community, was heard at the Quarter



Sessions in Sydney before Judge Scholes, in which George Percy Tice was charged, under the Leins on Crops and Stock and Wool Mortgages Act with having at Leadville, on 25th October last, being then the owner of a certain crop of wheat affected by a lien given him by the Minister for Agriculture, on 22nd June, 1923, by sale of crop, without the written consent of the Minister, defrauded the Minister of such crop. Mr. L. J. McKean (instructed by Mr. J. B. Kinkead, of the Office of the Clerk of the Peace) prosecuted, and Mr. H. W. Moffit (instructed by Messrs. Minter, Simpson- and Co.) appeared for the defence.

The Act provides that anyone that gives a lien or mortgage under it and subsequently deals, with the property again, shall be deemed guilty of an offence. The Crown case was that Tice, who is a returned soldier, with the rank of, Major, had obtained £163/18/7 as an advance from the Soldiers' Settlement Department, and as security he gave a lien over his growing crop. Subsequently, before the crop was ripe, he let the paddocks on agistment, and received payment for the right to run sheep on them. When the departmental inspector went to view the crop, he found the sheep de-pasturing on the paddocks. At the close of the Crown case, Mr. Moffit submitted that there was no case to go to the jury; that there was no evidence that Tice had sold anything of value, or that he had deprived the Department of Agriculture of a valuable security.

After discussion, the jury, without leaving the box, returned a verdict of not guilty, and Tice was discharge.<sup>[39]</sup>

#### **17 September, 1924. Alleged Conspiracy - Young, Tuesday.**

At the Young Quarter Sessions, before Judge Bevan, Olaf A. Siden and Walter L Hartley appeared to answer a charge that, in January, 1922, they conspired among themselves to cheat and defraud John Irvine and others of divers large sums of money. Accused were arrested in Sydney. Mr J. Kinkead, of the Crown Law Office, appeared, and instructed the Crown Prosecutor, Captain Storkey V.C. Both the accused pleaded not guilty, and were defended by Mr. W. Monahan of Morgan and Morgan (Sydney).

The Crown Prosecutor, in outlining the case said the Crown alleged that the two accused and a man named Paddison had conspired together to induce certain farmers to part with their hard-earned cash, by misrepresenting the nature and value of certain land which they had sold them. The land belonged to Paddison, and he had subdivided and got these two men, Siden and Hartley, to sell it for him. The land was the Sylvawatha Estate, which, they said, was within a stone's throw of Cronulla Beach. The corner block was said to be on the beach. The accused went further, and utilised two letters, which purported to be signed by two well-known local men, Messrs. F. H. Tout (Young) and Stein (Grenfell). The letters stated that both these men had done business with Paddison and Co., and had been extremely satisfied, and further, that they had made money on the investments. Other land which, it was alleged, the accused had sold by misrepresentation was the Port Hacking Estate, which they said was six miles from the G.P.O, and had a water frontage. The land in question was very precipitous, and not what it was said to be. The unfortunate people were deluded, and separated from their cash. These men conspired to foist this land on country people. They would not try to sell it to city people, but they said they wanted to give the country people first preference. Evidence was entered upon.<sup>[40]</sup>

#### **8 October, 1924. Imitation Polish - A Grocer Convicted**

Robert Gilbert (40), manager of a grocery business at Lane Cove Road, Crow's Nest, was convicted at

the Quarter Sessions yesterday, before Judge Edmunds, of having falsely pretended that a tin contained "Shinoleum" polish, by means of which he obtained the sum of 11d. Mr. L. J. McKean (instructed by Mr. Kinkead, of the office of the Clerk of the Peace) prosecuted, and Mr. Mack, K.C., with him Mr. Moors (instructed by Messrs. Robson and Cowlshaw) defended.

The evidence showed that Gilbert had tins of a polish that was unsaleable, and that he filled "Shinoleum" tins with it. He was bound over to appear for sentence if called upon within three years.<sup>[41]</sup>

#### **9 February, 1925. Midnight Motor Ride - Warehouseman on Trial**

The sequel to a midnight motor ride on November 15 was the appearance at the Darlinghurst Sessions today, before Acting-Judge Rowland, of Harold Legge, aged 27, warehouseman, on a charge of having assaulted a young waitress, Doris McKeon, with intent to commit a capital offence.

Mr. W. T. Coyle, K.C., (instructed by Mr. J. Kinkead, of the Crown Law Department), appeared for the Crown, and Mr. C. R. Penny for the defence. The Crown case was that McKeon and another woman, on returning from a party, at Parramatta, left a motorcar in Oxford-street, and were walking on their way home when they were hailed by three men in another car. One of them was Legge. The car drew up at the kerb, and when the women explained that, they were going to Elizabeth Bay an invitation was given to them to make the trip in the car.

Frankfurt's and beer were obtained by one of the men, and as the car sped along in the direction of Maroubra the women became anxious. It was alleged, but the assurance was given, "You will be taken home directly."

At a point on the Long Bay-road the car was pulled up and the driver and McKeon walked away. When they returned the driver said to Legge. "Teach this girl how to dance."

Legge then danced away with the girl, who subsequently complained that Legge had assaulted her, and that he had put his hands over her mouth to subdue her screams.

Legge, the Crown alleged, handled the girl very roughly. He punched her on the face, and she was severely bruised. Her eye was blackened.

#### **Girl In Witness Box**

In the witness box Doris McKeon was in tears after Mr. Penny commenced his cross-examination. Witness was questioned with regard to a conversation with another woman subsequent to the alleged crime. "That is her version of it," the witness shouted. "She is now sitting in court, the big mongrel." The hearing had not concluded when the court adjourned.<sup>[42]</sup>

#### **31 March, 1925. Perjury Charge Fails - Sequel To Libel Action**

Arthur Nickells Bishop was acquitted at the Central Criminal Court yesterday, before Mr. Justice Gordon, on a charge of having committed perjury before Mr. Justice James, at the Supreme Court, Sydney, on June 12 last. The indictment set out that Bishop wilfully and falsely swore that he did not show to Henry Arthur Goddard, or Gordon Coghill, a letter requesting him to send a team of Australian boxers to China, nor did he state to Goddard that the sum of £5000 had been remitted to his credit at a Sydney bank. Among other things, he denied telling Coghill that he required two or

three champion boxers from Australia to box in China, and that the sum of £5000 had been placed in the bank as a token of good faith.

The indictment further set out that the accused denied that he had asked Coghill to arrange the team or told him that all his expenses would be paid, or that he told him that a hitch had taken place, and that the matter would have to stand over for a while.

Mr. C. E. Weigall, Solicitor-General (instructed by Mr. J. J. B. Kinkead, of the office of the Clerk of the Peace) prosecuted; and Mr. J. W. Abigail was I for the defence. In opening the case, the Crown Prosecutor explained that the matter arose I out of an action brought by accused against a newspaper for damages in respect of an alleged libel which had been published by the paper. The perjury complained of consisted in answers by accused in reply to Mr. Watt, K.C., in cross-examination.

Mr. Abigail raised the point that the judge who presided at the trial for libel, did not give leave for the particular form of indictment before the Court. Perjury had to be proved clearly and precisely.

His Honor considered that the leave was sufficient.

Accused, giving evidence, said that he had received a letter from the Shanghai Club, stating that It had been seen by the newspapers that Criqui, the French boxer, was in Sydney, and asking him if he would get in touch with the boxers, with a view to having a couple of fights in Shanghai. He saw Criqui's manager and spoke about two fights, but nothing came of it.

When Mr. Abigail rose to address on behalf of the defence, the foreman of the jury asked leave to retire for five minutes, and upon returning to court the foreman intimated that they had found a verdict of not guilty, and accused was discharged.<sup>[43]</sup>

#### **2 April, 1925. Poisoning Case Fails - An East Hills' Incident**

Marko Aprilovic, a Serbian, was charged at the Central Criminal Court yesterday, before Mr. Justice Gordon, with having, at East Hills, on February 26, feloniously administered poison to Robert Shaw Arnold, with intent to murder.

Mr W. T. Coyle, K.C. (instructed by Mr. J. J. B. Kinkead, of the office of the Clerk of the Peace), prosecuted; and Mr. H. J. Studdert (instructed by Mr. A. W. Perry) was for the defence.

The jury acquitted.

Aprilovic was further charged with having committed a similar offence with respect to the boy, Arnold Herbert Gray, to which he pleaded not guilty, and was remanded for trial on bail.<sup>[44]</sup>

#### **21 April, 1925. Sunny Jim Kinkead**

Mr James Kinkead chief Instructing officer at the Darlinghurst Courts, and wearer of a perpetual smile, is due to don the wig and gown of a barrister. He figured in the recent list of successful law students.

If the genial James were to write his memoirs, despite his youth, he could supply reams of readable matter pathetic and humorous. He served in the A.I.F. in Palestine, and rose to the rank of captain.<sup>[45]</sup>

**21 April, 1925. Public Service Board Notice.**

The Public Service Board have classified in the Professional Division the work performed by Mr. James John Benedict Kinkead, Clerk, Office of the Clerk of the Peace, Department of the Attorney General and of Justice,—to take effect from 1st March, 1925.

T. S. CHAMPION, Secretary.<sup>[46]</sup>

**13 May, 1925. Personal.**

Mr. J. J. B. Kinkead, who acted as associate to His Honor Judge Rowlands, at the Quarter Sessions yesterday, is a brother to Nurse Kinkead, of Dudley private hospital. After the formal calling of the jury panel, Mr. Kinkead retired to assist the Crown Prosecutor, in his capacity as Deputy Clerk of the Peace, and Mr. Avery took up the duties of associate.<sup>[47]</sup>

**10 June, 1925. Central Criminal Court - (Before his Honor the Chief Justice)**

Crown Prosecutors, Mr. E. Milner Stephen and Mr. Cassidy.

**The Gasificator - Alleged Conspiracy**

Albert Herbert Thompson, James Skelton, and James John Morrish were charged with conspiring among themselves, and with Clarence John Law, to cheat and defraud August Herman Nathaniel Reihelt and others of divers large sums of money and valuable securities at Sydney on or before December 8 last.

Law was originally included in an indictment with the other three accused, but on the Court being informed by Mr. Houston (of Messrs. Houston and Co.) that he had met with an accident and was unable to attend, it decided to defer the trial of Law pending his convalescence.

Mr. Mack, K.C. (instructed by Messrs. Braund and Watt) appeared for Thompson, and Mr. Young (instructed by the same firm) for Skelton and Morrish. Mr. J. J. B. Kinkead (of the Crown Law Department) instructed for the Crown.

The Crown alleged that Thompson owed Law some money in connection with the gasificator, which was the invention of Law. Thompson wished to sell some shares for the purpose of raising sufficient money to pay Law, and it was arranged that Skelton, who had been in business in Gilgandra, and was well known there, and Morrish, who was formerly a member of the Legislative Assembly and a member of the Public Works Committee, and also well known throughout the State, should form a party to go to Gilgandra for the purpose of disposing of the shares to local persons. During their stay in Gilgandra, the Crown alleged the accused sold shares by false and fraudulent representations.

Reiheit, in giving evidence, stated that Thompson, when he was pushing the sale of shares, told him that he was a very wealthy man, and would soon be a millionaire; he had gone so fast that he could not stop himself, and that the gasificator was far superior from a money-making point of view to his brick making machines or any other interests in which he was concerned. Skelton and Morrish endorsed all that Thompson had said.

The matter stands part heard.<sup>[48]</sup>

**20 June, 1925. Central Criminal Court - (Before his Honor the Chief Justice.)**

Crown Prosecutors, Mr. E. Milner Stephen and Mr. Cassidy.

**Gasificator case.**

The hearing was concluded of the charge against Albert Herbert Thompson, patent agent, James Skelton, commission agent, and James Morrish, ex-M.L.A., of having conspired among themselves and with one Clarence John Law to cheat and defraud Nathaniel Herman Reiheit and others of large sums of money.

The defending counsel, Mr. Mack, K.C., and Mr. Young, at an earlier stage in the trial asked his Honor to make it plain that any question of conspiracy between any of the accused and law should not be considered by the jury, as the Crown had made the definite statement that Law was too ill to appear for trial.

In summing up the case, his Honor said that if the defence understood from the commencement of the case that Law would not be available as a witness, he considered it would be fairer in the circumstances, not to press any charge of conspiracy with Law. His Honor suggested that the Crown had adopted that course, as it was consistent with the attitude of fairness which the Crown took up in these cases.

Mr. Milner Stephen, having expressed his willingness to adopt the suggestion, his Honor said he would tell the Jury that the question for them to consider was whether the three accused had conspired together, or whether any two had done so.

Mr. Mack, K.C., appeared for Thompson, and Mr. Young for the other two accused, both counsels being instructed by Messrs, Maunder and Watt. Mr. J. J. B. Kinkead (of the Crown Law Department) instructed for the Crown.

After several hours' retirement the Jury, returned a verdict acquitting Morrish. In respect to Skelton and Thompson the Jury could not agree.<sup>[49]</sup>

**1 September, 1925. Central Criminal Court - (Before Mr. Justice Ferguson.)**

Crown Prosecutor, Mr. W. T. Coyle, K.C.

**Manslaughter Charge - Accused Acquitted.**

Arthur Keeling Boyden, a musician, 21 years of age, was charged with feloniously slaying William Thomas McInerney, a telegraph messenger, 17 years of age, at Sydney, on July 11. Mr. Windeyer, K.C. (instructed by Mr. W. G. Forsyth), appeared for the accused, and Mr. J. J. B. Kinkead for the Crown.

The case for the Crown was that McInerney, accompanied by two ladies, Miss Elsie Eileen Taylor, and, Miss Doris Jane Curran, was proceeding along Oxford-street shortly after 10.30 p.m. on July 11, when the accused, who was driving a motor car, came from behind an omnibus and knocked the three people down. The car continued on its way until stopped by a tram, McInerney being carried by it for about 40ft. The ladies were not injured, but McInerney was killed. The Crown alleged that accused, who was quite sober at the time, had been guilty of gross negligence.

In defence, Boyden said that he had exercised every care, and he did not see the deceased until the car was right upon him, whereupon he pulled up as quickly as he could.

After the lunch adjournment the jury intimated that it did not wish to hear further evidence, and acquitted the accused without leaving the box. Accused was discharged.<sup>[50]</sup>

**2 September, 1925. Murder Charge Fails - Leichhardt Tragedy**

"Not guilty, and we are agreed that the wounds were accidentally inflicted," was the verdict of the jury in the case in which John William Abbott (20), a wire-worker, was charged at the, Central Criminal Court yesterday, before Mr. Justice Ferguson, with the murder of Andrew Walter Cuthbert, at Leichhardt, on May 29. Mr. W. T. Coyle, K.C. (Instructed by Mr. J. J. B. Kinkead, representing the Crown Solicitor), prosecuted; Dr. Evatt and Mr. Dovey (instructed by Mr. H. R. Hunt) defended,

It was set out in the dying deposition of accused, which was read to the jury at the request of the defence, that there had been a family quarrel, and Cuthbert said he was as much to blame as anyone, and that he and accused were both hot-tempered. He got Injured in the stomach with a carving knife; the injury was done by accused on the spur of the moment, and was accidental. Deceased added that it was provoked; he hit Abbott before Abbott stabbed him. In a statement from the dock, accused said that when Cuthbert rushed at him he picked up the knife, and deceased rushed against it, Cuthbert was a big, powerful man, and accused was afraid of his life. Abbott was discharged.<sup>[51]</sup>

**Jim Kinkead becomes a member of the N.S.W. Bar****5 September, 1925. New Member For Bar**

Mr. James J. B. Kinkead, instructing officer to the Crown at the Darlinghurst Criminal Court, will be admitted to the Bar on Monday, on the application of the Senior Crown Prosecutor (Mr. W T. Coyle, K.C.) Before he was transferred to the office of the Clerk of the Peace, in 1914, Mr. Kinkead was in the Justice Department, and held appointments at Broken Hill, Orange, Cobar, Parkes, Forbes, and Wagga. He recently obtained his LL.B. degree at Sydney university. Mr. Kinkead enlisted as a trooper in the 5th Light Horse Brigade and rose to the rank of captain. He won the M.C.<sup>[52]</sup>



**NOW A BARRISTER**

Mr. J. Kinhead, the Crown's instructing officer at Darlinghurst Courts, who was admitted as a barrister to-day.

*7 September, 1925.* Now a Barrister. Source of the Image.<sup>[53]</sup>

*7 September, 1925.* **A New Barrister - Splendid War Service**

Mr. James John Benedict Kinhead. Instructing officer to the Crown, at the Darlinghurst Courts, was admitted as a member of the Bar today, on the application of Mr. Coyle, K.C. Senior Crown Prosecutor. Mr. Coyle said that Mr. Kinhead, had been an officer of the Clerk of the Police, for a considerable time. Prior to that he was in the Justice Department, and held appointments at Broken Hill, Orange, Cobar, Parkes, Forbes, and Wagga. At the outbreak of war he enlisted, as a trooper, and served four years in Palestine. As a result of meritorious service he rose to the rank of captain. He won the M.C. and was twice mentioned in despatches. Mr. Justice. Ferguson said he was pleased to welcome Mr. Kinhead to the Bar and congratulated him on his signal public service.<sup>[54]</sup>

*26 November, 1925.* **Alleged Bogus Race Books - four persons charged**

The story of the alleged bogus race-books, which were in circulation on Randwick racecourse on Derby Day, was told before Judge Edwards, at the Darlinghurst Quarter Sessions yesterday when William Corson (36), printer, Phillip Solomons (39), bookbinder, John Henry Robinson (36), paper distributor, and William Gerald Flack (27) news vendor, were charged with conspiring to defraud the Australian Jockey Club of large sums of money. Mr. Norman McGhie (instructed by Mr. Kinhead, of the

Crown Law Department) prosecuted; Mr. Neil McTague (instructed by Messrs. R. D. Meagher and Company) appeared for Corson, Solomons, and Robinson; and Mr. J. C. J. Ryan was for Flack. The alleged bogus books, the Crown Prosecutor said, were a poor imitation. They did not even correspond in colour with the genuine books. Detective T. Wickham questioned two street-sellers on Derby Day and seized a number of pink-covered race-books. The sellers told the officer that Flack had given them the books to sell, and when Flack was approached he said he obtained the books from Robinson, who, in turn, said he received them from a Jew. The Crown Prosecutor went on to say that, when interviewed at North Sydney, Solomons said to the detectives that his partner, Corson, had printed the books, and that he had wired them. When Corson was informed of the arrest of Solomons, he admitted that he had been concerned in the preparation of the books. The charge stands part heard.<sup>[55]</sup>

*19 December, 1925.*

Newspaper reporters attending the Darlinghurst courts made a presentation yesterday of two travelling bags to Mr. James Kinhead, instructing officer to the Crown, who is to be married at the end of the month. The Clerk of the Peace (Mr John Gonsalves) presided.<sup>[56]</sup>

*5 March, 1926.* **Jury Disagrees - Banker Bennett in The Box. Queer Banking Transactions**

After being locked up all night the jury disagreed in the case at the Dubbo Quarter Sessions, in which Percy Henry Tomley Bennett was charged with forgery.

The case was commenced before his Honor, Judge Armstrong, on Tuesday. Bennett, who was formerly Manager of the Forbes branch of the Australian Bank of Commerce, was charged with having forged two cheques for £600 and £500 respectively, in the name of D. G. Boreham, of Forbes.

Mr. H. V. Stacy was Crown Prosecutor. He was Instructed by Mr. James Kinhead, of the Crown Law Department. Mr. Bruce Walker defended. The case for the Crown, as outlined in the last issue of the

"Dispatch", was that Bennett, the former manager of the Forbes branch of the bank, got into private financial difficulties and appealed to his personal friend, G. A. Boreham, for assistance. Boreham offered to guarantee an account at the bank, which, in order to overcome bank regulations regarding officers' accounts, Bennett opened in the name of D. G. Boreham, G. A. Boreham's son. Boreham junior was entirely unaware of the existence of the account. Eventually Bennett became further involved and requested further aid. Boreham responded. He gave Bennett an open cheque, with which to close the old account of £1500 and open a new one in the name of "D. G. Boreham No. 2 account." Bennett filled the cheque in for £2350; paid off the old overdraft, and through another friend's account transferred £1100 in Sydney. This amount was used in paying off the balance on a Kogarah house. The irregularities were discovered after Bennett had been transferred to Mudgee. Bennett was summoned to head office in Sydney, where he was interrogated by the chief inspector. Bennett admitted the whole of the transactions and agreed to make a clean breast of them. As a result of the interview, Bennett's wife rushed off to Grenfell to interview Boreham, who agreed to take no action in the matter if Bennett's Kogarah property was transferred to him. This was done. But contrary to Bennett's expectations the bank proceeded against him.



Figure 7 - Percy Henry Tolmey Bennett - 1926

Sergeant Charters gave evidence of the arrest at Newcastle, and of having received a statement from Bennett, in which Bennett said that he had already made a confession.

Cross-examined by Mr. Bruce Walker, witness said that he had previously warned accused that that statement would be used in evidence against him. He denied having told accused, what to put in the statement.

#### **Guaranteeing an Account.**

George Arthur Boreham said that he was a client of the bank. Last year accused approached him and asked him for assistance in paying off a house at Kogarah. Witness agreed to guarantee accused's account for £1500. Accused opened the account in the name of D. G. Boreham, witness's son. Later on, accused wanted further assistance, and witness again agreed to help him. Accused wanted to close the old

account and open a new one in the name of "D. G. Boreham No. 2' account." Witness agreed to this and signed an open cheque, which Bennett afterwards filled in for £2560. Witness had no authority to fill in the cheque for such an amount.

Cross-examined by Mr. Bruce Walker, witness said that he had always been good friends with Bennett. Bennett had made over a property valued at £1500, though he could not remember him offering to make over a car to him. He bore no ill-will towards Bennett.



Mr. Stacy: It is not a question of ill-feeling. Mr. Walker: I want to show that the bank took the proceedings out of spite, because it had to pay the money. Further cross-examined, witness said that he considered accused an honest man.

His Honor: After he had robbed you. Mr. Walker: There is no question of jobbery. His Honor: It is pretty close to it. Mr. Walker: The charge is one of forgery. Accused could have opened the account in the name of John Brown and drawn the cheques in the name of John Brown if he desired.

Witness admitted writing a letter to the accused before proceedings were commenced by the bank, expressing good wishes and the hope that he would get a good job somewhere. He denied that he had told Bennett that he didn't care in whose name the account was opened. Accused was not given any authority to draw £2650, Mr. Walker: You are not a fool altogether, are you? — No.

Then why did you give him the open cheque? — I thought he was an honest man. I gave him the signed cheque to be paid into his account. Witness added that he had sanctioned the opening of the No. 2 account in his son's name, but he had not authorised the filling in of a cheque for £2650. A cheque for the £2650 was produced, and witness admitted that he had signed the cheque in blank, for the purpose of opening the No. 2 Account and wiping out the guarantee.

#### **The Son's Evidence.**

Dudley G. Boreham, a son of the former, witness, stated that cheques for £500 and £600 purported to be drawn in his name, had not been signed by him. The bank register of signatures was produced, and witness denied that the specimen signature in the register had been signed by him. He was not aware that an account had been opened in his name until recently.

#### **Accused in the Box.**

Accused's defence was a denial of fraudulent intent. He admitted that he had opened and operated the account in D. G. Boreham's name without D. G. Boreham's knowledge. He said that the amount of £2650 was filled in on the cheque immediately after the cheque was signed by Boreham, and in Boreham's presence. In the manager's office. Accused negotiated the cheque and sent a draft to Sydney to pay off the mortgage on his house. When he was sent for by the bank authorities he went to Sydney and interviewed Mr. Hull. He asked Mr. Hull why he had been sent for. Mr. Hull said: "What do you think you were, sent for?" Accused replied: "Some irregularity at Forbes I suppose." Accused added, in the box, that he meant an irregularity in regard to some overdraft. Mr. Hull replied that it was in connection with D. G. Boreham's account; that he (accused) had forged a cheque in the name of D. G. Boreham. Accused replied to Mr. Hull: "That has been fixed up long ago." Mr. Hull told him that he had better make a clean breast of the thing. Accused asked Mr. Hull what the bank intended doing in the matter. Mr. Hull replied that the matter was at present one between accused and Mr. Boreham. The bank was doing nothing at the moment and that if accused made a clean breast of the whole affair the bank would deal leniently with him. Accused, who was then staying at a Sydney hotel, told his wife what had happened at the interview. His wife went to Grenfell to interview Mr. Boreham, and, subsequently, accused transferred his property, valued at £1500, to Boreham in settlement of Boreham's claim.

Accused added that he was 47 years old, and was on good terms with Mr. Boreham.

#### **Cross-examined.**

Cross-examined - by Mr. Stacy, accused denied that he was indebted to the bank to the extent of £1100. He had paid that amount into the account. Mr. Stacy: Then who is £1100 out now? — The bank.

His Honor: Through whose fault? — Through Boreham's fault. I intended to pay the amount off if given an opportunity.

Mr. Stacy: Boreham didn't know about the No. 2 account? Accused: No. j "You kept the pass book back from Boreham?— I. did. ' Why?— For my own purpose. That will do me. When did you come to the conclusion that you had committed a forgery? — When I interviewed Mr. Hull. And how long had you been managing a branch?— For nine years. Do you think It was honest to get Boreham to guarantee an account for you in his son's name?— Yes. I could not possibly open the accoant in my own name.

His Honor: Do you conscientiously say that?— Yes your Honor.

Further cross-examined, accused said that he had not told Boreham that he was drawing against the son's imaginary account, because he did not think it necessary. Boreham was a man to whom it was difficult to explain financial matters, and, furthermore, being such friends, accused did not think it necessary to tell him what he was doing. Paying the cheque into Miller's , account was done to deceive the bank officers, as he did not wish them to know what he was doing. The object of closing up the "D. G. Boreham" account was to open up the No 2 account. He would reiterate that Boreham had promised to lend him what money he required. The only reason why he had not filled in the cheque for £2650 before asking Boreham to sign it, was that he had not totalled the amount when Mr. Boreham called at the bank. He told Boreham shortly afterwards the amount for which the cheque was filled in. His own finances were not satisfactory at the time, but Boreham told him that he was too good a man to be in the bank and that he was prepared to finance him and put him on the land. Boreham said that he was doing very well. Had Boreham put him on the land the amount would, no doubt, have been paid off quickly. He had not deceived the bank; not at least to Its detriment.

Mr. Stacy: Only to the extent of £1100.

Accused, in conclusion, said that he had bought a piano-player for £275, and had found it difficult to meet payments on his salary. The player had been bought some time before the alleged forgery. Mrs. Bennett had bought a motor car, but, accused declared, that had nothing to do with him, or with the case.

#### **Accused's Wife.**

Mrs Bennett said that she had two children, one ten years old and one eight. She reiterated evidence already given during the preliminary argument on the admissibility of accused's statement to Mr. Hull, published in Tuesday's Issue of the "Dispatch." I Mr. Walker submitted a sheaf of letters and a report of a public send-off to Mr. Bennett, when he was transferred to Mudgee, as evidence of accused's previous good character, which the Crown Prosecutor immediately admitted. Mr. Walker, in addressing the jury, declared that the absence of fraud was manifested by the fact that accused, instead of handing his property over to his wife, transferred it to Boreham in payment of the debt he owed him. The jury retired at 3.30 p.m. to consider its verdict, and after being locked up all night, disagreed. Accused was remanded for trial again at the Dubbo Quarter Sessions on June 6. Bail was reduced from £500 to £250.<sup>[57]</sup>

#### **6 March, 1926. Quarter Sessions (Before Judge Cohen.)**

Crown Prosecutor, Mr. L. J. McKean.

William John Beckett was charged with fraudulently taking and applying to his own use and benefit the sum of £28/2/6, while he was a director of the Citizens' and Graziers' Life Assurance Company, Limited, at Sydney, on March 23, 1923.

Mr. Mack, K.C. (instructed by Mr. W. H. Drew) appeared for the accused, and the Crown was instructed by Mr. J. J. B. Kinkead, of the Crown Law Department.

It was stated by the Crown that Beckett had been given 8000 preference shares for promoting the company. He had been man-aging director, but he, with two other directors, had resigned in 1924.

It was alleged that accused had transferred some of his own shares to Spicer, an applicant for shares, instead of issuing new shares. The board had approved of the transfer.

No evidence was called for the defence, and the jury, after a very short retirement, returned a verdict of not guilty, and accused was discharged.<sup>[58]</sup>

#### **9 March, 1926. Found Not Guilty.**

One of the three cases at the Dubbo Quarter Sessions, in which verdicts of not guilty were returned, was that in which Jack Laws was charged with having assaulted William Silk and robbed him of C3/17/6. at Dubbo, on January 29. Mr. R. V. Stacy (Sydney) was Crown Prosecutor, and was instructed by Mr. J. Kinkead, of the Crown Law Department. Mr. W. P. Kelly, of Wellington, appeared for the accused, who pleaded not guilty. Silk said that he and Laws had had a drink at the Macquarie View Hotel, after which accused followed him into the hotel yard and assaulted him, knocking him out. When he recovered the money had disappeared. Cross-examined by Mr. Kelly, however. Silk admitted that he had not complained to the licenser or anyone else of the assault or robbery at the time. Accused admitted that he had been at the hotel. He remembered Silk leaving the bar. Later on he saw Silk lying in Hie hotel yard. Silk was bleeding at the mouth, and his pockets, obviously, had been rifled. Ernest Smith gave evidence to the effect that he was present when Laws found Silk lying on the ground. Accused could not have hit Silk without witness seeing him. — After a brief adjournment the Jury returned a verdict of not guilty.<sup>[59]</sup>

#### **9 March, 1926. Quarter Sessions - (Before Judge Cohen.)**

Crown Prosecutor, Mr. L. J. McKean.

#### **Alleged Mail Fraud.**

Godfrey Wentworth, 37, salesman, described as former private secretary to Mr. Winston Churchill, and Sir Neville Chamberlain, was charged with fraudulently taking 10 letters from the possession of William Dixon McIntyre, an officer of the Postmaster-General's Department at Sydney on January 16.

Mr. Curtis, K.C., with him Mr. Toose (instructed by Mr. K. M. White) appeared for the accused. Mr. J. J. B. Kinkead, of the Crown Law Department, instructed for the Crown.

The case for the Crown was that on January 16, somewhere about 9 a.m., accused called at the General Post-office and presented a forged order written on the official paper of Robert Reid and Co., Ltd., warehousemen, of York-street, city, requesting the delivery of mail matter from the firm's private box, which mall contained a number of cheques. Two days afterwards, an account was opened at the Barrack-street Savings Bank in the name of S. E. Hines, the drawer of a cheque for £22 odd which cheque was portion of the mall obtained. On January 19, a cheque for £147 was deposited in the Goulburn-street Savings Bank, to be transferred to Hine's account, the drawer being Edward Arnold. On the following day £22 was drawn against the account and the next day £147, leaving a balance of 11/6. That cheque of Arnold's was also portion of the mail alleged to have been fraudulently obtained. Subsequently cheques in the names of Ferguson, Alcock, Tooths, and Lawson were, deposited to that account, and all were also portion of Robert Reid and Co.'s mail. The endorsements on the cheques were alleged to have been forgeries.

Clerks from the head office of the Government Savings Bank, and the branches In Goulburn-street, Circular Quay, and Martin-place, gave evidence regarding accounts being opened with cheques, but none was able to identify the accused as being the person.

In the witness box Wentworth said he had served in the Norfolk Regiment, and also In the Royal Flying Corps during the war. He had arrived in Australia as secretary to the then Governor of Tasmania, which position he resigned In 1921. He had a private income of £20 a month and was employed as salesman at £7/10/ a week.

Cecil David Tarrant, who is a member of the firm with whom the accused was employed, stated that he met the accused by appointment at Edgecliff-road about 8.40 a.m. on January 16, and accused was with him until 11 a.m.

The jury acquitted the accused, who was discharged.<sup>[60]</sup>

### **30 March, 1926. Maitland Quarter Sessions.**

The Maitland Quarter Sessions were resumed at the East Maitland Courthouse yesterday morning.

Mr J.J.B. Kinkead intimated that Mr. T. S. Crawford, Crown Prosecutor, was ill, and as no other prosecutor was available the Attorney General desired that the venue of the remaining cases of trial by jury be changed to the next sitting of the Supreme Court in Maitland.

In granting the application his Honour said he was sorry to hear of Mr. Crawford's illness, and hoped that it would not be of a serious nature.<sup>[61]</sup>

### **14 April, 1926. Circuit Court**

The Maitland Circuit Court was opened at the East Maitland Courthouse yesterday before his Honor Judge Fergusson. Mr. Reimer was Crown Prosecutor and was instructed by Mr. J. Kinkead. Cecil Mervyn Williams, Edgar Thomas Jones, and Bartholomew Leslie Brown were charged with having at Kurri Kurri, on October 10, 1925, committed a serious offence upon a female aged 10 years. A plea of not guilty was entered in each case. Mr. T. A. Braye appeared for Williams, Mr. Hogarth for Brown, and Mr. Gee, instructed by Mr. J. Gunn, for Jones. Jones challenged twenty jurors, Williams six, and the Crown asked eight to stand aside. The evidence had not concluded when the Court adjourned until ten o'clock this morning, and the jury was locked up for the night.<sup>[62]</sup>

### **30 April, 1926. The Bennett Case - Second Trial in Sydney - Sentenced To Two Years**

Percy Henry Tolmey Bennett, formerly Manager of the - Forbes branch of the Australian Bank of Commerce, appeared at Darlinghurst Sessions on Tuesday, charged with having forged two cheques for £600 and £500, in the name, of D. G. Boreham of Forbes. The Crown case was that Bennett got into private financial difficulties. He appealed for assistance to G. A. Boreham, a personal friend, who offered to, guarantee an account at the bank. Bennett, unknown to G. A. Boreham and to his son, D. G. Boreham, opened an account in the name of "D. G. Boreham." After becoming further involved, Bennett, again went to G. A. Boreham, who consented to open a No. 2 account, and some transactions passed between him, and the defendant. He gave Bennett an open cheque on his No. 2 account. This, the Crown alleged, was filled in by Bennett for £2650. He paid off D. G. Boreham's account and obtained a bank cheque for the balance (£1496/3/-), which was sent to Sydney. The position was discovered after Bennett had been transferred to Mudgee.

Mr W. T. Coyle, K.C. (instructed by Mr. James Kinkead, of the Crown Law. Department), appeared for the crown, and Mr. Bruce Walker for the defence. George Arthur Boreham, a grazier, said that in 1924 he agreed to guarantee Bennett's account for £1500. He had never given authority to Bennett

to fill in a blank cheque for £2650. He did not know anything about this cheque until after Bennett had been transferred from Forbes. Since, then the bank had satisfied his claim for £1150.

In evidence, Bennett said he was innocent of the charge of forgery. There was no fraudulent intent. The cheque for £2650 was filled in immediately after Boreham had handed him a blank cheque, signed. Boreham was present throughout the whole of the proceedings, and knew the purposes for which the cheque was drawn. Bennett's wife, who also gave evidence, said that G. A. Boreham told her that he knew that accused had no intention to "do him in." Boreham added that he knew all about the transactions.

Mr Coyle Did Boreham tell you that he knew the cheque was drawn and what it was for? – Yes.

Witness added that Boreham was quite content to accept £1500 restitution. He refused to accept Bennett's furniture and motor car.

Before it gave a verdict the jury asked if it were competent for it to find forgery while dissociating "intent to defraud" from the verdict. The judge replied that it could not do so.

Just before the jury filed into court Bennett smilingly conversed with a constable. He remained calm and expressionless when the judge passed sentence. As he left the dock for an anteroom, where he was joined by weeping relatives, he waved to a friend in the back benches.

Mr. Bruce Walker, for the prisoner, asked the judge to deal mercifully with Bennett, who had lived an unblemished life for 35 years. It was true, he said, that Bennett had acted indiscreetly, but everyone made a slip. His salary was small, £7 a week, which was no more than that given to an ordinary labourer. It was impossible for a man in Bennetts' position to have lived on that salary and to have kept up his responsible position. The banks should pay higher salaries to their country managers.

Judge Rolin, in passing sentence, said that Bennett had' been, convicted on the clearest possible evidence. He had abused a position of trust. He had defrauded the bank of £1100. It was said that his salary was small. Still, it appeared that he had had a motor car and had purchased an expensive musical instrument. The crime was deliberate. Bennett had confessed to it, and it was because of legal reasons that the confession was not admitted at the trial. Bennett was convicted and sentenced to two years' imprisonment. The jury recommended him for mercy on the ground of his previous good character.<sup>[63]</sup>

#### **18 May, 1926. Quarter Sessions (before Judge Scholes).**

##### **Alleged attempted extortion.**

Harrie Talbot Woods, John O'Donnell, and William Henry Nicholas, were charged with threatening Gerald Phillip Tarleton to print certain matter touching P. W Spong, Ltd. at Sydney, between November 21 and December 5, with intent to extort a certain application by one Annle Hurley for shares in P. W. Spong. Ltd., from Tarleton.

Mr, Watt, K.C. with him Mr. Castor and Mr. Studdert (Instructed by Messrs. Norton, Smith, and Co), appeared for the accused; while the Crown was instructed by Mr. J. J. B. Kinhead.

The case for the Crown was that Tarleton was the managing director of P. W. Spong, Ltd, and that sometime In November last, Annie Hurley applied for 4500 ordinary shares in the company. Sometime afterwards, it was added, Miss Hurley got anxious and threatened Tarleton with an action She then went and saw "Smith's Weekly." A few days afterwards Woods called at Spong's to make inquiries about the company, and later, Tarleton received a telephone ring from O'Donnell asking him

to go and see him. Tarleton did not wish to go that day, but O'Donnell said it would be all the better for him if he came. He visited the office of "Smith's Weekly," where he was questioned about the financial affairs of Spong's Ltd. At that interview, Woods demanded the return of the share application, and when Tarleton refused, the accused threatened to publish certain matter concerning the firm in such a way that it would be impossible for the company to again trade in Sydney. The Crown Prosecutor added that the affairs of the company were written up. He said that the defence would be that the application for shares was not a genuine one, and one obtained under false pretences.

Gerald Phillip Tarleton, in evidence, stated that he had been the managing director and secretary of P. W. Spong, Ltd. He saw Miss Hurley at Oyama Flats, Addison-road, Manly, on November 28 last, when she signed an application for shares in P. W. Spong, Ltd., which he had filled in and sent over to her. Woods came to his office on November 30 and said that he had come to inquire into the financial accounts of P. W. Spong, Ltd. on account of Miss Hurley. Woods said he had no authority, but Miss Hurley had asked him to come. Witness asked him what accounts he would like to see, and he replied that he would like to see the balance-sheet, and the profit and loss account. Woods personally perused it and made notes. Witness said to Woods that in reviewing the balance sheet, he would have to take into consideration that commission in suspense was not taken into account in the preparation of the accounts. After going into the finances of the company. Woods asked for the share application register. He expressed himself as being satisfied with the financial position of the company. On December 1, about 2 p.m., he received a ring from O'Donnell asking him to come up at once. He said he was busy, but at length agreed to go. When he arrived, Woods said he was the investigating officer for "Smith's Weekly." He said they wanted some information with regard to the share transaction with Miss Hurley, and he wished witness to answer some questions regarding them. Nicholas picked up the affidavit of P. W. Spong and said the firm had paid 15 per cent interest. Witness replied in the negative. Spong's had been incorporated 18 months and had not paid a dividend. Nicholas said, "That is lie number one." Witness replied, "That is pretty summary judgment, isn't it?" O'Donnell said, "We want you to understand that in dealing with Spong and yourself, we are dealing with a pair of crooks," to which Witness replied, "And in dealing with you I recognise that I am dealing with a gang of blackmailers." After further conversation Nicholas said, "We will write you up as a band of 'crooks' in such a way that it will be impossible for you to continue trading in Sydney." Witness replied that as far as he was concerned "they had nothing in their files they could truthfully say to his detriment. Nicholas replied, "So far as your record is concerned we have sufficient evidence to put you in gaol a dozen times over; and if you don't do as we require in this matter your rotten doings in the islands will be exposed." Nicholas then said, "We want you to hand back the share application in question." Witness answered, "I consider this is blackmail," to which Nicholas replied, "You can do as others do, issue a writ for libel." Woods asked if the company had considered the effects of a "write-up" in "Smith's Weekly" if he did not hand over the document, and witness replied that the governing director had given due consideration to their blackmailing threats and refused to be intimidated.

Cross-examined by Mr. Watt, Tarleton said that the share list did not show the name of Miss Hurley in the share allotments register, neither was any notification of allotment sent to her. She was paying £4250 for 4500 shares, the application for which was drawn up by himself. He did not receive a letter from Miss Hurley asking for the return of her share application. He admitted proceeding against certain shareholders, who repudiated their shares, their defence being gross misrepresentation.

Tarleton was the only witness for the Crown, and at the close of the evidence, Mr. Watt submitted that there was no evidence of extorting. The applicant, through the defendants, her admitted agents,

was merely demanding the return of a document to which she had an undoubted right. Recent decisions trade union cases showed that a person might threaten to do that which one might do lawfully.

His Honor said he thought there was a case to answer.

Miss Annie Hurley stated that she was the proprietress of Oyama Flats, Addison road, Manly, on which there was a mortgage for £4260, while the property was worth, in her estimation, £8500. On November 23 Mr. Spong came to see her. She had got into touch with him through her sister, and he inspected the flats with a view to selling them. She next saw him on November 34 when he came and told her something. On November 26 she wrote telling him that she did not want shares, she wanted cash. She then went to Spong's office on the 27th where she was introduced to Tarleton. At that interview a document was placed before her to sign. She replied that she wished to consult a solicitor or accountant. Spong answered that the books were open for inspection by anyone sent along provided she gave an order to examine the books. Before she left the office, the paper was placed before her, and Spong said he wished her to sign it before she left the office, but she refused to do so.

The matter stands part heard. Accused were allowed to leave the court on their own recognizances.<sup>[64]</sup>

#### **2 July, 1926. Personal**

Mr. J. Kinkead, barrister, is reported to be booked for Broken Hill to instruct Mr. A. E. Rainbow, Crown Prosecutor, at the country sitting of the Supreme Court to be held on Wednesday next. Mr. Kinkead has made great strides in the legal world since leaving the local Courthouse staff several years ago. Mr. Kinkead was deposition clerk when here.<sup>[65]</sup>

#### **6 July, 1926. Wilcannia Murder Case - Accused's Second Trial Will Begin To-Morrow**

Judge Bevan, with a special commission, will preside over the country sitting of the Supreme Court to be opened at the Courthouse tomorrow. The only case for trial is that in which Walter Arthur Nelson has been charged with the murder of William Oliver at the Yanterbangee Government Tank, near Wilcannia, in January last.

Mr. A. E. Rainbow will prosecute for the Crown. He will be instructed by Mr J. B. Kinkead, barrister and formerly of the local Courthouse staff. The accused will be represented by Mr. J. J. Davoren who appeared for him on the last occasion he was before Mr. Justice Campbell and a jury.<sup>[66]</sup>

#### **7 July, 1926. Wilcannia Tragedy - Afternoon Proceedings**

##### **Nelson's Second Trial for Murder of W.M. Oliver - Court Adjourned**

At the Courthouse this afternoon the hearing was continued of the case in which Walter Arthur Nelson is charged with the murder of William Oliver at the Yanterbangee Government Tank near Wilcannia in January last. Mr. Acting-Justice Bevan presided. Mr. A. E. Rainbow prosecuted for the Crown, instructed by Mr. J. Kinkead. Mr. J. J. Davoren appeared for the accused.

Detective-Constable Hill went on to tell of his visit to Yanterbangee Government Tank on February 8 and the finding of the shovel produced. He referred to the finding of two tents and a Ford car. On February 15 witness was present when human remains were unearthed some distance from the camp. With the shovel found witness removed sand from the grave. Marks found on the side of the excavation could have been made with the same shovel. When spoken to in Broken Hill the accused had a letter in his possession signed "W. Oliver."



To Mr. Davoren: The accused at Wilcannia admitted that most of the property he had in his possession belonged to Oliver. He laid claim to the belt when in Broken Hill on July 29.

Lewis Downs, of Knox and Downs, Wilcannia, again related the dealings his firm had had with William Oliver. He did not know Oliver personally. He produced letters for goods purported to have come from Oliver who mostly paid his accounts by cheque. Witness first met the accused at the end of December when he came with a letter from Oliver requesting information about rabbit poison. When in custody later the accused said, "I think I owe your firm money, and if I do I will give you an order on Green Bros., as I do not want to leave owing money." The accused said something about Green selling a car for him. Witness told the accused that he would send his accountant to see him. Oliver had settled all his accounts.

At 4 o'clock the court was adjourned for 15 minutes.

On resuming his Honor intimated to the Crown Prosecutor that he did not propose to sit tonight. Probably the jury would like to go for a run round in a car till tea.

The Crown Prosecutor: It is certainly tiring sitting here all day.

Mr. Acting-Justice Bevan: What do you say, Mr. Davoren?

Mr. Davoren: I would not like to sit later than is convenient.

Mr. Acting-Justice Bevan: Well, we will sit till 5.45 o'clock, and the jury can then go for a car ride till tea. It will freshen them up. What do you say gentlemen?

Jurors (in chorus): That will do. Ernest Charles Young, accountant at Knox and Downs, told of business dealings with a man named William Oliver. Oliver usually paid by cheque. A cheque for £15 3/1 was received in September. As far as witness could remember Oliver had been dealing from the store for about 12 months. The accused had no account with the firm but was in the store late in December. Witness next spoke to the accused at Wilcannia and told him that. Oliver had overpaid his account and that no one named Harney had an account. In reply to a question about Oliver the accused said: "He's gone." but did not say where Oliver had gone.

Henry William Reddell, storeman employed at Knox and Downs, retold how he addressed the label produced to William Oliver. One parcel was sent out to Oliver on January 13. Witness gave it to the mailman to take to Momba Station.

At 4.40 o'clock the court was adjourned till 9.30 o'clock tomorrow. His Honor advised the jurors to take their overcoats when out motoring.

After the judge had left the courtroom, a large crowd remained in the building hoping to catch a glimpse of the accused as he was led out under escort. The accused seemed to know the reason for the gathering, and as he passed out, he looked towards the people assembled and smiled.<sup>[67]</sup>

#### **8 July, 1926. Wilcannia Tragedy - Nelson's Second Trial For Murder of W.M. Oliver**

The second trial of Walter Arthur Nelson for the murder of William Oliver at the Yanterbangee Government Tank, near Wilcannia, in January last, was continued before Mr. Acting-Justice Bevan in the country sitting of the Supreme Court today. Mr. A. E. Reinbow prosecuted for the Crown, instructed by Mr. J. Kinkead. Mr. J. J. Davoren appeared for the accused. The following jury was empanelled at the opening of the case yesterday:- Percy J. Curtis, William George Lewis, Robert William Watson, Edmund J. Guppy, Samuel J. Whitford, Louis H. Mincham, John Bailey, Henry J. Mann, Francis Brockhill, Albert John Lang, Samuel Berry, and Edward E. Thomas.

Interest was again maintained in the case today, and a large crowd assembled in the court. Crowds of witnesses and friends outside the court building also made it evident that a case of more than ordinary interest was being heard.

Dr. C. Hellstrom, of Wilcannia, was the first witness this morning. He again told of his visit to the Yanterbangee Government Tank on February 15 and the examination of the human remains taken from a grave. He gave evidence of decomposition rates and definitely said that the skull found had been battered in. He did not see any evidence of fire about the remains.

Drs. G. H. S. Dobbyn and G. M. Hains also gave medical testimony as to certain points about the bones. Their evidence on the whole was similar to that tendered at the last trial.

Proceeding.<sup>[68]</sup>

**9 July, 1926. Wilcannia Tragedy, W.A. Nelson's Second Trial For Murder of W.M. Oliver – New Witnesses Called.**

The trial of Walter Arthur Nelson for the murder of William Oliver at Yanterbangee Government Tank, near Wilcannia, sometime in January last, was continued before Mr. Acting-Justice Bevan in the Supreme Court yesterday.

Today was the third day of the trial and interest was still great, the court being crowded throughout the sitting while many people congregated outside of the court building. The accused today was showing signs of the strain of the trial.

The following is a list of the jurors: Percy J. Curtis. William George Lewis, Robert William Watson. Edmund I. Guppy. Samuel J. Whitford. Louis H. Mincham. John Bailey. Henry J. Mann, Francis Brookhill. Albert John Lang. Samuel Berry. Edward E. Thomas.

Mr. A. E. Rainbow is prosecutor for the Crown, being instructed by Mr. J. Kinkead. Mr. J. J. Davoren appeared for the accused.

With the exception of the last witness yesterday the story unfolded was given at the first trial of the accused in April last when the case was reported fully in "The Barrier Miner."

Shortly before the adjournment last night Adolph, Engelby, a retired farmer residing at Brighton. South Australia was called for the first time by the Crown on the matter of the peculiar formation of certain of Oliver's bones. The witness said that Oliver stayed at his place for some time about five years ago. On that occasion he complained of a sore hip and witness rubbed it. He had noticed that Oliver walked with a limp and had shin bones that were bowed forward.

To Mr. Davoren: I first knew that I was to give evidence when a trooper called on me. I may have mentioned that I knew of a malformity in Oliver's shins.

The first witness today was Hugh Charles Sanford, who did not give evidence at the first trial. The witness described himself as a station hand and said he lived at Cal Lal. Witness once worked for Mr. Stoekel and there he met William Oliver. Oliver occupied the same room as witness for about four months. He first met Oliver in 1914 but it was in 1917 when they worked together at Stoekel's. Oliver was then between 40 and 45 years of age and about 5ft. 10in. in height. Oliver had a good set of teeth but witness could not say if they were artificial teeth. Oliver had bowed shin bones and when walking took short steps and had a limp.

To Mr. Davoren: I never noticed Oliver cleaning his teeth. I certainly did not see him take artificial teeth from his mouth. We worked together for two years. I saw the bowed shin bones in 1917. I first

noticed the shin bones while we were washing our legs in a channel after working in an onion plot. On June 18 I was ask to give evidence. Sergeant Spicer Cal Lal called on me and asked me about Oliver. I knew of the case before Sergeant Spicer called on me. I was not aware that the shin bones found at Yanterbangee were bowed outward.

Donald McDonald, station hand at Mount Murchison, again said that he did not know the accused.

To Mr. Davoren: There are very few stations in the Wilcannia district starting with Mount.

William Henry Furber, manager Momba Station, retold of a conversation he heard at Green Bros. coach office last January when the accused said the mail driver of the Wilcannia coach, "I am going back with you tomorrow; Old Bill has cleared out." The accused made it clear that. Old Bill was his mate William Oliver.

Detective-Sergeant Truskett gave same lengthy evidence that he tendered at the first trial. He retold how on March 15 he was travelling on a train from Bathurst to Cobar with accused. When at Nyngan the accused saw Mrs. Knight and said, "Hail that woman," adding that he wanted to know her movements. On that occasion when mention was made of William Oliver's death, the accused said, "What is Old Bill dead; where did they find him?" Witness then told him of the finding of the body, and the accused said "Go on, spit it out, I knew there was something wrong. Tell me what I am being taken out for." Witness told him he was being taken out for the inquest on Oliver. The accused said that the last time he saw Oliver alive was on a Friday and that he did not want to say anything more then but would have lot to say when he got to Wilcannia.

Detective-Sergeant Truskett, continuing, said that on March 17 property in suitcases was shown to Mr. Stoekel, Mr. Scott and Mrs. Knight. Subsequently the accused said to him, "Give it to me straight, am I to be charged with murder?" Witness told the accused that he would be, and the accused replied, "I know that you have got it over me. I know it looks black for me having possession of so much of Oliver's property but now that I know that I am going to be charged I want to make a statement." Detective-Sergeant Truskett tendered lengthy statement signed by the accused in which he told of his associations with Oliver from the beginning. This has already been published in "The Miner." The accused alleged in the statement that a man at Nocheleche Station had struck Oliver

that Mr. Campbell, manager of the station, had issued orders to keep Oliver off the station property and threatened him. The accused also alleged that one night before his disappearance Oliver was very nervous and slept little. The morning after Oliver left for what is known as the Five Mile Tank and the accused said that he had not seen him since. On March 18, the accused was charged with the murder and made no reply.

Lionel Forester Campbell, manager of Nocheleche Station, a new witness, deposed that he knew the accused who was working on the station. The accused first came to the station Mrs. Knight, as a married couple. They stopped there over six weeks received £3 a week. When they he gave them a cheque for £18 18/. The accused gave a week's notice on November 13, 1925, and left of his own accord saying that he was going on account of "Evie," meaning Mrs. Knight. The accused grumbled about the wages, saying that Oliver had told him that other cooks had been paid more. Witness told him that he carne to the station under an agreement and would have to abide by it. Witness first met Oliver when he was camped on Nocheleche and when witness first went to the station. Oliver was a very reserved man and over 40 years of age. Oliver walked with a bad limp and sometimes he had a stick. Witness had never quarrelled with Oliver. When the accused had mentioned about Oliver and

wages paid to the cooks' witness wrote to the head manager. Witness never told the accused to refuse Oliver food and chase him out of the kitchen. Oliver did sell a turnout at Nocheleche Station to a man on the place. Witness never had any conversation about the matter, finishing up by telling Oliver to clear off the station property. Witness had never threatened to knock the accused's head off and had never described Oliver as an agitator either to the accused personally or over the telephone. Witness never inquired from the accused which way Oliver had gone after he left the station. The accused volunteered the information that he had taken Oliver up Wanaaring way. Wanaaring is in the opposite direction to Yanterbangee Government Tank. Witness never told Oliver to clear off Nocheleche Station straight away but had a conversation with Oliver following on what the accused had told him.

To Mr Davoren: Oliver and the accused appeared friendly. Oliver had been given meals on the station by the accused. I was not annoyed when I heard that Oliver had been talking to the accused about wages. I never had cross words with Oliver. I never heard that Oliver collected his mail at the horse paddock gate. I did not know that Oliver was always anxious to avoid me. I would be surprised if Norman gave evidence to that effect. I did not draw a cheque and offer it to Oliver for a horse. I did hear of a row between a station hand and Oliver, but I did not know that the accused took Oliver's part.

At this stage the accused admitted that two letters produced were written by him from the Broken Hill Gaol.

Thomas Edward Charles Norman, mail driver, again told of hearing the accused talk about Old Bill going, and later refer to Old Bill as Oliver, his mate.

Heram R. Clarke, manager of the Commercial Banking Company at Wilcannia, again gave evidence about the handwriting on cheques and letters produced.

Douglas S. H. Morton, manager of the E.S. and A. Bank at Broken Hill, again tendered evidence on handwriting, giving comparisons between the exhibits handed him.

Frances George Norman, mail driver, recalled, deposed that Oliver told him to leave his mail at the horse paddock gate because Nelson had told him that Mr. Campbell had instructed the accused to keep him (Oliver) off the place.

To Mr. Davoren: Oliver told me he wanted to get off Nocheleche Station.

To Acting-Justice Bevan: When I took the accused from Yanterbangee Tank we had a breakfast of tinned corned beef. The accused told me he had no bread or tea or sugar. I did not see any cheese about the place.

The Crown case was concluded at 1 o'clock and the court was adjourned till 2 o'clock.

**- Accused's Statement. -**

On resuming after the adjournment Mr. J. J. Davoren intimated that the accused would make a statement from the dock. On rising Nelson appeared most composed, and at the outset spoke in a fairly firm voice. He said that he admitted the correctness of the statement given to Detective-Sergeant Truskett. He said that he had no money for his defence so he sought the aid of the Crown. He and Oliver were always on the best of terms and never quarrelled. He had not seen Oliver since Friday, January 15 last, when he went to the Four or Five Mile Tank to get traps. It was Oliver's intention to stay for a little while, return, and then go to Renmark to enter the Hospital. Before leaving Oliver handed him most of his things to take care of for him or to leave at Renmark if he

(accused) went that way. Oliver said he did not know whether he would travel by horse or by what. Oliver requested him to go to Knox and Downs, Wilcannia, to fix up accounts as he thought that some goods, including schnapps and strychnine, had not been paid for. Oliver handed him a cheque for £3 odd which he endorsed on his side. That was the last money due to him (accused) on skins according to the arrangements made. He had always maintained that the property in court belonged to Oliver. The wallet he claimed, Harry Cruickshanks having given it to him. He bought the belt in Newcastle eight years ago. As regards the mineral specimens he got these at the Port Kembla copper smelters. When he left the camp for Wilcannia he decided to go to Broken Hill for medical treatment. He got treatment at Wilcannia but was not satisfied with it. On his arrival in Broken Hill, he stayed at Page's Imperial Hotel. He met Morris but did not ask him for money on an agreement. Morris had previously borrowed money from him. He did not say to anyone that he had loaned Oliver money on the agreement. He did see a doctor in Broken Hill. He denied having a roll of notes at Page's Hotel. As regards the dog he took away from the camp, it was given to him by a musterers' cook employed by Mr. Furber, of Momba Station. The dog was given to him when the musterers were at Tonga Tank. Oliver was going away, and he (accused) took it because he did not want the animal to starve. He asked for permission to leave the dog at the station, till he returned. He denied telling Sergeant Robson or Frank Norman, the mailman, that he would find letters underneath a bag at the camp. When he mentioned bags, he meant that a bag would be on top of the petrol case and not on top of the letters. He did not write the letters found and could not say who did. Oliver endorsed the cheque. He had not seen Oliver since that Friday morning. If anything happened to Oliver, he did not know of it. He had handed his counsel a letter that day which was brought to him by the mailman while he was at Wilcannia. Oliver in that letter requested a motor car registration form and a license, telling him to see Sergeant Robson. Oliver had told him previously that if he sent the forms he would fill them in for him. He had also given Mr. Davoren a letter that he sent to the manager of Nocheleche Station asking him to ask Oliver about a Queensland registration number. He then had the car at Nocheleche Station having bought it from Oliver for £13. A lot of things said in court certainly looked black against him, and he could not explain them. All he could say was that he did not kill Oliver. He would declare before God that he was not guilty of Oliver's death.

Dr. W. D. K. Macgillivray again gave evidence as to his examination of the human bones produced. The bones were disconnected and quite clean, being devoid of all organic matter. There was a fracture of the skull. It was almost impossible that the bones should have reached the stage they were found in in such a short space of time as alleged. Had the body been disarticulated by an unskilled person he would have expected to see cut marks, about the joints. Bones are hardy in their resistance to decomposition.

Proceeding.<sup>[69]</sup>

#### **12 July, 1926. Personal**

Judge Bevan, Mr. A. E. Rainbow (Crown Prosecutor), and Mr. J. Kinkead, who was instructing the Crown Prosecutor in the trial of Walter Arthur Nelson for the murder of William Oliver, will leave for Sydney tonight. Mr. A. B. Page, the shorthand writer who took the notes of the proceeding, will also leave tonight.<sup>[70]</sup>

#### **19 October, 1926. Not Guilty – A Tumbarumba Case.**

After hearing evidence which occupied practically the full day at the Wagga Criminal Court last week, the jury returned a verdict of not guilty on two charges against Edwin Charles Waldegrave Lloyd, a grazier, of Tumbarumba.

His Honor, Mr. Chief Justice Street, presided, and the Crown was represented by Mr. Lionel Dare, Crown Prosecutor, instructed by Mr J. J. B. Kinkead, of the Crown Law Department. Lloyd conducted his own defence. The first charge was that Lloyd, on July 10, at Tumbarumba, committed rape on Lily May Smythe, a married woman; and the second a charge of assault arising out of the same instance.

The Crown case was that defendant, who was on friendly terms with her husband, visited Smythe's house, on the outskirts of Tumbarumba, during the absence of the husband. He made suggestions that the husband was not good enough for Mrs. Smythe and proposed that she should leave him and go with defendant to Sydney. He left the house, but, returned again at night and repeated the proposal. Receiving a definite refusal, Lloyd was alleged to have said, 'if you don't give me what I want willingly, I will take it.' He then, it was alleged, seized Mrs. Smythe by the throat and committed the offence. Accused, in defence, sought to prove an alibi. He flatly denied that he was at Smythe's house on the night of July 10, and brought witnesses to prove that he was in Tumbarumba township at the time of the alleged offence. The jury retired at 6 p.m. and returned at 7:25 with a verdict of not guilty on both counts. Lloyd was discharged.<sup>[71]</sup>

#### **15 February, 1927. Finale of Coopernook Drug Case.**

John Connell, 36, bookmaker, and Alexander Murchie, 39, horse owner, were charged at Darlinghurst Sessions on Monday with having caused a noxious drug to be taken by Nita Cameron on September 6th. Mr. N. McTague, in opening the Crown case, stated that a motor car party of five men, including the two accused, and five women, arrived at Coopernook, near Taree, on the night of September 6th. Four of the girls went into the parlour of a hotel, and drinks were served. It was alleged that a drug was put into a glass of wine by accused, and Nita Cameron, a Taree barmaid, became ill after she had consumed the wine. Judge Cohen ruled that there was no proof that the drug in question was obnoxious, and directed the jury to acquit the accused, who were discharged. Mr. N. McTague, instructed by Mr. J. Kinkead, appeared for the Crown; while Mr. J. Young appeared for the defence.<sup>[72]</sup>

#### **24 May, 1927. Quarter Sessions – Charge Against Solicitor**

Evidence was concluded in the hearing of the charge preferred against Harry Waldemar Baum, a solicitor, of misappropriating £1518 to his own use out of the proceeds of two cheques he had received from Michael F Toomey, of the Newcastle Hotel, Elizabeth Street, amounting to £2300

Mr. Mack K C (instructed by Messrs Stuart Thom and Co) appeared for the accused, and Mr J Kinkead instructed the Crown a Prosecutor.

Continuing his examination, Baum told the Crown Prosecutor that when he applied for a passport to leave Australia, he intended to sail by the Makura. He had the passport post-dated and caught a German steamer to Fremantle The reason he did not leave by the Makura was because he had a Common Law case in hand, which had not been completed before the sailing of the steamer. Accused said he could not remember having raised six points of law in objection to his being extradited from Port Said.

The Crown Prosecutor, who said he was quoting from the official records, then enumerated the points among which were the following -That the extradition laws apply only to British dominions and their possessions, and therefore did not apply to Egypt, which was an independent country. That even if the law applied to Egypt, it was passed before the Commonwealth of Australia was created, and therefore lapsed as far as New South Wales was concerned That the arrest was irregular, being made upon a German ship.

In reply to Mr Mack, witness said that his trust account for the three years before he went away averaged between £40,000 and £60,000 a year. Large amounts of his own were included In these



averages. When he returned to Australia, he found that his office had been turned inside out, papers were in disorder, and some had been lost.

This concluded the evidence of Baum, who entered the witness-box last Thursday afternoon.

A number of witnesses were called for the defence, who stated that they had had transactions with Baum, and everything had been quite satisfactory.

Michael F. Toomey, a former detective, and now a hotelkeeper, was recalled. He said that Baum had asked him to make loans to certain people. Had he known that Baum did not intend to make the loans to the persons specified, but to others, he would not have had anything to do with the transactions.

Counsel had not concluded their addresses when the Court rose.<sup>[73]</sup>

### 25 May, 1927. Baum Convicted - Misappropriation Charge.



Figure 8 - Harry Waldemar Baum - 1927

The hearing was concluded at the Quarter Sessions yesterday of the case in which Harry Waldemar Baum, 37 years of age, a solicitor, was charged with having misappropriated to his own use £1518, out of the proceeds of two cheques he had received from Michael F. Toomey, a former detective-sergeant, and at present the Licensee of the Newmarket Hotel, Elizabeth-street.

Baum was convicted and remanded for sentence.

Mr. Mack, K.C. (instructed by Messrs. J. Stuart Thom and Co.) appeared for the accused; and Mr. J. Kinkead, instructed the Crown Prosecutor.<sup>[74]</sup>

### 1 August, 1927. 'Digger' Dunn Fund – An Extraordinary Case.

The 'Sun' in its issue of the 27th July, published the following interesting case: — There was an echo at the Darlinghurst

Sessions on 27th July, of 'Digger' Dunn's unsuccessful attempt to win a seat in the Senate, when Frank Schroder, described as a former secretary of the German Club, and as an official of the State Bakery, was charged with misappropriation. The Crown case was that Schroder had been appointed secretary of a committee formed to organise a function at the stadium in aid of Dunn's campaign. This realised about £20, but subsequently Schroder refused to hand over any money to Dunn. When questioned by the police, Schroder declared that he had been to the Paddington Town Hall on several occasions to meet the committee, but no one had turned up but himself.

In evidence, Sergeant Best said that Schroder told him that he refused to produce a balance-sheet or any of the money until Mrs. Dunn had handed in the money she had collected. Dunn said that as the matter had been held up for two years, he wanted a settlement between Schroder and himself.

Mr. Dovey: You are still a supporter of the Labor Party?— My word, yes.



You expected Schroder to carry on the duties of secretary without remuneration?— Yes.

Don't you know that all the Ministers, and most of the parliamentary members, with the exception of a few, refused to buy tickets for your testimonial?

Judge Edwards: We are not concerned with the refusals. All we want to know is how much money was received.

At the close of the Crown case the jury announced that it did not wish to hear the defence. Schroder was then acquitted and discharged.

Mr. Neil McTague (instructed by Mr. James Kinkead, of the Crown Law Department) appeared for the Crown, and Mr. W. R. Dovey for the defence.<sup>[75]</sup>

### *18 September, 1927. A Versatile Barrister.*



**J. Kinkead.**

A few years ago, Mr. J. Kinkead was an assistant Clerk of Petty Sessions, but he is one of the good men that can't be kept down. He secured the Clerkship of Petty Sessions at wintry Blayney, and later was promoted to Broken Hill. Kinkead kept on working to good purpose and emerged a full-blown barrister about two years ago.

Indefatigable, his worth was recognised by the Justice Department, and he is now a familiar figure in Criminal Courts as the instructing officer to the Chief Crown Prosecutor. On Wednesday, when the Jury disagreed in the famous Bulli trial. Jack Kinkead, as the only Justice of the Peace about the place, sat down and made out the papers for the bail sureties. 'All in the Job,' said he, as he pushed piles of his papers out of the way.<sup>[76]</sup>

### *3 December, 1927. Marriage Made in Court – Girl Saved From Gaol – Wedding In A Week.*

For a few moments yesterday, the grim old Darlinghurst Courthouse forgot its associations with hard-shelled attorneys, and hard-boiled bad men, to become suffused with the soft glow of Romance.

A young attractive, girl tearfully promised Judge Cohen that she would get married, and so keep out of mischief. The Judge agreed that it would be a good thing. Recently, Sadie Belle Selfe was convicted on two counts of house-breaking and sentenced to imprisonment. The Judge, however, suspended the sentence on condition that she went to the Salvation Army Home for two years.

For a while she was content, but one day she listened to the blandishments of another girl at the Home, and they agreed to run away. The result was freedom for a while, and the inevitable capture by the police.

#### **Lover Ready.**

Yesterday, the girl was asked why sentence should not be passed upon her. Judge Cohen was in a quandary as to what he should do with her, when Mr. Kinkead, of the Crown Law Office, told him that the young man who had promised to marry her was in Court.

Judge Cohen and the young man went into conference, and between them, arrived at a scheme, whereby the girl would not be sent to prison.

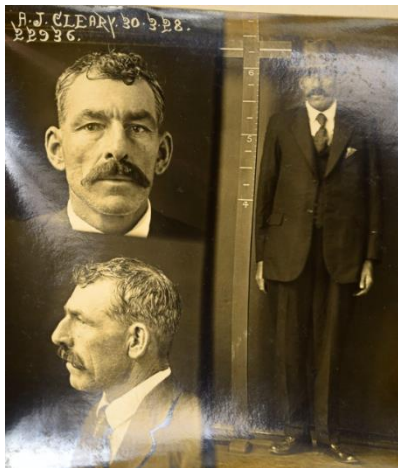
"I'm prepared to marry her immediately. I think I will be able to wean her from her old associates," the young man said.

Judge Cohen promised them that the Law would not interfere, provided they were married. He granted the girl a week's remand, so that she could fulfil her part of the pact.<sup>[77]</sup>

**6 December, 1927. Chips from the Central.**

Mr J. Kinkead (of absentee accused): "He as left the State. If he comes back he will need police attention. We don't want him back".<sup>[78]</sup>

**6 March, 1928. Three Years Gaol – Manslaughter at Tamworth.**



At the criminal sitting of the Supreme Court at Tamworth before Mr. Justice James, Albertus John Cleary, 41, teamster, of Attunga, was charged with having maliciously slain Stuart Green, 60, an accountant, at Attunga on December 1.

Cleary, who challenged 14 jurors, pleaded not guilty.

Mr. L. J. McKean, Crown Prosecutor, instructed by Mr. Kinkead, of the Crown Law Department, conducted the case for the Crown, and Mr. Mack, K.C., instructed by Mr. R.J. O'Halloran of Tamworth, appeared for the accused.

After evidence, the jury returned a verdict of guilty of manslaughter.

Figure 9 - Albertus John Cleary - 1928

Accused was sentenced to three years' hard labor.<sup>[79]</sup>

**11 March, 1928. Strongly Favoured.**

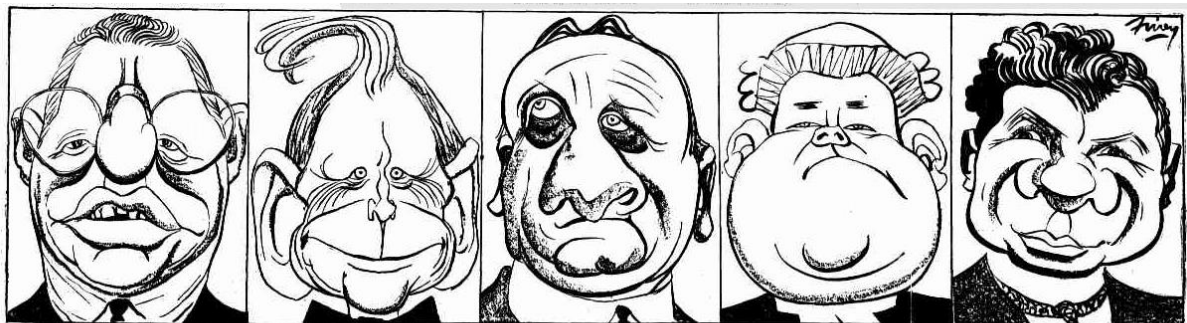
Who will be successor to Mr. Neil McTague, who retires shortly from the position of Junior Crown Prosecutor?

In legal circles the chances of Mr. J. J. B. Kinkead are strongly favored.

'Jim' is a barrister with an extensive experience in criminal law, and has for a long time instructed Mr. L. J. McKean, Senior Crown Prosecutor. Prosecutor.

While in the A.I.F. he acted in various court martial as prosecutor, defending counsel, and as president of the court. His appointment would be a popular one, and his knowledge and long experience are qualifications that will undoubtedly receive consideration.<sup>[80]</sup>

**17 March, 1928.**<sup>[81]</sup>



Artist George Finny adds a few more to his gallery of portraits. Left to right: "Ford" Cornwall, of Queensland, who, of course, answers to the name of "Lizzie"; Commissioner of Taxation McGee, of same State; "Doc" Taylor, of Taylor and Elliott's, of Brisbane wholesale drug fame; J. J. B. Kinkead, member of the N.S.W. Clerk of the Peace Staff; and C. H. Simpson, president of the N.S.W. Commercial Travellers' Association.

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*17 April, 1928.* (Before Mr. Justice Long Innes.)

**New Type Of Petrol Pump - O'Reilly v James Syphonic Visible Measures.**

The suit of Henry George O'Reilly, of Margaret-street, Brisbane, against James Syphonic Visible Measures, Ltd., was before the Court by way of an application on behalf of the plaintiff to continue the ex parte Injunction restraining the defendants, their servants, and agents from further proceeding with an action against him at common law to recover the sum of £750, alleged to be due by him in respect of allotment moneys and calls on shares in the defendant company.

Mr. Weston (instructed by Messrs. W. G. Forsyth and Co.) appeared for the plaintiff; and Mr. Kinhead (instructed by Mr. G. A. Prendergast) represented the defendants.

Plaintiff claimed that in September, 1926, one William Wildman called upon him at his office, told him he was a representative of the defendant company, and that he wanted him to become a shareholder in the company. The defendant produced a prospectus, and told him that the company had been formed to manufacture and sell a new type of petrol pump, and that it was proposed to register the company in Queensland within a couple of months. Plaintiff alleged that he was induced by the representations made to him to apply for 2000 £1 shares in the company, hence the suit, in which he asked, among other things, for a declaration that he was entitled to rescind the contract; and that the company's register be rectified by removing his name therefrom as the holder of the 2000 shares.

By consent, the injunction was continued till the hearing of the case, with leave to the plaintiff to amend his statement of claim by charging that the prospectus stated, contrary to the facts, that each of the directors of the company had a substantial cash holding, and to make certain consequential amendments, without prejudice to the injunction.<sup>[82]</sup>

## First Year as a Barrister in Private Practice – 1928

### Overview

Jim commenced private practice as a Barrister in April, 1928. Much of the year was taken up with two Royal Commissions. The first, he represented Mr Theodore MP. The second, 'The Coal Inquiry', he represented Silas Young Maling who was ultimately sent to prison.

The following is a list of some of the cases he dealt with that were reported in the Newspapers.

Date	Accused	Action	Offence	Result
19 April 1928	Collis Bag Sewer Pty Ltd	Defended	Civil Matter	Acquitted
20 April 1928	Thomas John Clark	Defended	Theft of Cattle	Acquitted
21 April 1928	Laurence Terrance	Defended	Theft of Cattle	Convicted
27 April 1928	Arthur James Dalrymple	Defended	Break & Enter	Acquitted
28 April 1928	Cyril Matthew Thompson	Appeal	Murder	Refused
1 May 1928	Ida Maker	Defended	Theft	Convicted
20 May 1928	Beatrice Shipway	Prosecuted	Civil Matter - Assault	Convicted
6 June 1928	Mr Theodore M.P.	Defended	Royal Commission	
8 July 1928	Richard Merton	Defended	Assault	Committed
23 July 1928	Silas Young Maling	Defended	Royal Commission	Convicted
8 August 1928	Leslie Thompson	Defended	Break & Enter	Convicted
8 August 1928	Elsie Bowman	Defended	Break & Enter	Convicted
10 August 1928	Cyril Ernest Craig	Defended	Sexual Assault Minor	Acquitted
21 August 1928	Ernest Vale	Defended	Sexual Assault Minor	Convicted
22 August 1928	Frank Allen	Defended	Larceny	Convicted
5 September 1928	Charles Henry Jackson	Present	Murder	
7 September 1928	Patrick Francis Cass	Defended	Break & Enter	Convicted
8 September 1928	Donal McCauley Vial	Defended	Mail Fraud	Convicted
14 September 1928	John Robertson Linscott	Defended	Malicious Wounding	Acquitted
15 September 1928	Jack Hayes	Defended	Assault & Robbery	Acquitted
22 September 1928	Patrick Hunter	Defended	Break & Enter	Acquitted
26 September 1928	James Henry Stubbings	Defended	Murder	
27 September 1928	Albert Edward Bishop	Defended	Theft	Convicted
28 September 1928	Ruby May Dawson	Defended	Shop Breaking	Convicted
30 September 1928	Patrick O'Donnell	Defended	Conspiracy to Defraud	
30 September 1928	Philip Smith	Defended	Conspiracy to Defraud	

30 September 1928	Martin Hamilton	Defended	Conspiracy to Defraud	
7 October 1928	Matthew Biggar	Defended	Vagrancy	Acquitted
9 October 1928	Mrs Stocker	Prosecuted	Civil Matter -Theft	Denied
16 October 1928	Mona Nicola	Defended	Malicious Wounding	Acquitted
16 October 1928	Ellio Nicola	Defended	Malicious Wounding	Acquitted
17 October 1928	Sydney Thomas Osterland	Defended	Sexual Assault Minor	Acquitted
17 October 1928	Keith Percy Kenyon	Defended	Break & Enter	Convicted
22 October 1928	Norman McDonald	Defended	Assault	
1 November 1928	Ernest Joseph Coffey	Defended	Attempted Murder	Convicted
8 November 1928	Reuben Holmes	Defended	Appeal	
10 November 1928	Evelyn Price	Defended	Appeal	Allowed
10 November 1928	Leslie Robert Sindel	Defended	Appeal	Dismissed
12 November 1928	John Olive	Defended	Appeal	Dismissed
12 November 1928	Douglas Olive	Defended	Appeal	Dismissed
17 November 1928	Richard Moynahan	Defended	Appeal	Upheld
25 November 1928	Dorothy Quinn	Defended	Prostitution	Convicted
8 December 1928	Edward Emmert Lawson	Defended	Appeal	Dismissed
14 December 1928	Frank Stacey	Defended	Theft	Convicted
20 December 1928	William Smiley	Defended	Appeal	Allowed
21 December 1928	Arthur Callaghan	Defended	Appeal	Allowed
21 December 1928	Walter Harold Littler	Defended	Appeal	Allowed
21 December 1928	Bertie Charles Littler	Defended	Appeal	Allowed
21 December 1928	James Pearce Pascoe	Defended	Theft	Acquitted

## Articles

### *19 April, 1928. Personal.*

Mr. W. F. Sheahan has succeeded Mr. J. J. B. Kinhead as instructing officer to the Crown at Darlinghurst Sessions. Mr. Sheahan, who has been with the Clerk of the Peace since his return from the war in 1920, was a student of St. Patrick's College, Goulburn. He is qualifying for the Bar.<sup>[83]</sup>

### *19 April, 1928. No. 2 Jury Causes. (Before Mr. Justice Davidson and Jury.)*

#### **Supply Of Bag-Sewing Machinery**

Electricity Meter Manufacturing Co., Ltd. V Collis Bag Sewer, Ltd., and others.

This action was brought by the electricity Meter Manufacturing Co. Ltd against the Collis Bag Sewer, Ltd, plaintiffs claiming £6107/7/9 alleging breach of contract In respect of the supply of certain bag sewer machines supplied by the defendants, also £5000 from Ernest Arthur D'Ombran and others on an alleged guarantee by them In connection with the contract In the first case the substantial

defence was an alleged warranty, defendants stating that they made known the purposes for which the machinery was required; that they relied upon the Meter company's professed skill and judgment to supply articles reasonably fit for their purposes; and that the articles supplied were not reasonably fit. Defendants claimed damages, stated at £8000, by way of cross action. Separate defences were filed in the second action. Mr. Shand, K.C., Mr. J. W. Shand, and Mr. W. F. Owen (instructed by Messrs. Alfred Reife and Sons) appeared for the plaintiff company; and Mr. Halse Rogers, K.C., Mr. Studdart, and Mr. Kinkead (instructed by Mr. G. A. Prendergast) for the defendant company.

The case is part heard.<sup>[84]</sup>

**20 April, 1928. Made Good Start – In Role Of Advocate.**

Mr J. J. B. Kinkead, who was for some years instructing officer to Crown Prosecutors, was seen in a new role at Darlington Sessions today. Mr. Kinkead, who recently went into private practice, appeared on behalf of an accused man, and was successful in his plea to have his client released on a bond. Judge Cohen, in congratulating Mr. Kinkead on his first appearance at the Court as an advocate, said he hoped to see him appear many times in the future to assist the Court.<sup>[85]</sup>

**20 April, 1928. The Evidence.**

The first witness was John Ward, manager of the Yanco Irrigation Area, employed by the Water Conservation and Irrigation Commission. He deposed that among his duties, defendant was in charge of all cattle and horses belonging to the W.C. and I.C. Defendant's ordinary salary was £377 per annum, but whilst acting as land settlement officer, he received an additional £70, and also received the climatic allowance of £31. At this stage Mr. Kinkead objected to the witness stating certain authority the defendant had, also in respect to leases. The matter was held over pending the documents being produced. Continuing, witness said that so far as he knew, defendant had no authority to deal privately with Commission cattle. The Commission registered stock brand was Crown over I.C.

To questions put by Mr. Kinkead, witness replied: — He did not know the defendant's brand. Defendant up to the time of this trouble was recognised as a valuable officer to the Commission, his duties as field officer included the purchasing of horses and cattle, veterinary officer to the 1000 head Commission's stock, care and control of Commission's horses and cattle, organising parties for protection against bush fires, dry area inspector, noxious weeds inspector, valuation of Crown Lands, inspector of rice-growing area, and a large number of other duties, as reeled off by Mr. Kinkead, who said that defendant was a regular 'Pooh-bah'. Witness said that for the last 16 years, the defendant had borne an excellent character with the Commission. Witness agreed that the fact that the Commission had nominated the defendant to the elevation of Justice of Peace showed the trust the Commission had in the defendant.

Harold Griffin Lawson, land settlement inspector for W.C. and I.C., at Griffith gave evidence of taking over some cattle from F. Dance, Farm 263, Beelbangera, on May 4, of last year. There were 65 head, made up of 21 cows, 21 yearlings, 10 poddies, and two calves at foot, and one bull. Witness handed this stock over to herdsman Johnson, to be transferred to the Commission at Leeton. At that time, witness took the brands and particulars of all the cows. He entered them on a sheet in pencil, and afterwards they were typewritten on a sheet of paper. The cattle were principally Shorthorn breed, with Jersey cross and Ayrshire mixed with them. Witness told to herdsman to take the stock towards Leeton and hand them over to Leeton herdsman.

Frederick Stewart Johnston, herdsman employed by W.C. and I.C., residing at Griffith, gave evidence that on May 4 last, he went to Dance's farm with Mr. Lawson, and took away 55 head of cattle, and



placed them in a yard for the night. The following day, he brought them towards Leeton and about half way delivered them to herdsman Mooney, and obtained a receipt produced, which witness made out himself, showing 21 cows, 2 calves, 21 yearlings, 10 poddies and bull.

Mr. Kinkead: 'You, of course, didn't examine the brands?'

Witness: 'Yes, when I took them over from Lawson, but not when I handed the stock to Mooney.'

To inspector O'Neil: Witness said he put the cattle in the yard, and when he went to the yard, it was alright There were no rails down, and none broken . Inspector O'Neill: 'Will you swear they were the same cattle you handed to Mooney as you received from Lawson?'

Mr. Kinkead objected to witness answering. How could he swear, when he didn't examine the brands. Inspector O'Neil to witness: 'If you saw the cattle in the yard the night before, would you know them the following day??'

Witness: 'I would have a fair idea. To P.M: Witness said he would swear they were the same number he handed over to Mooney as what he received from Lawson.'

Michael Mooney, herdsman, employed by W.C. and I.C., at Leeton, giving evidence said that up to recently, he received his instructions from the defendant, Clark. He remembered going with Leo Mulloy, on May 5, last, half way to Griffith. Witness went on defendant Clark's instructions. He met some cattle with a man named Johnston in charge. Witness took the cattle over and signed a transfer for them. There were 55 head of mixed cattle, cows, yearlings and poddies principally. Defendant had told witness that the Stock were brought over to be put on river for agistment. They were brought to the saleyards at Leeton that night. The next morning, along with Mr. Mulloy witness took them to the poundyard for branding. They were commencing to brand them Crown over I.C., when Defendant Clark came along and picked out 12 head of heffers, 1 steer and 2 bulls, about 12 months old, and said don't put the Crown brand on them. Take them and put them down in the Lake Paddock. The Lake Paddock, witness knew was rented by the defendant. Some time afterwards, about four months after, witness received instruction from the defendant to bring up the cattle from the Lake Paddock to the Pound Yard. Defendant wanted to put his (defendant's) brand on them. Leo Mulloy and witness brought the cattle up as Instructed. They were branded by Mr. Clark in witness' presence. Mulloy and witness assisted. The brand was TC in half circle. The bulls, were treated later on. After branding, the cattle were put back into the Lake Paddock. The cattle were of the same class and age as those took over from Johnson.

Inspector O'Neil: 'Would you say they were the same cattle?'

Mr., Kinkead: 'I object. How could the Witness swear they were the same cattle?'

The P.M. upheld the objection.

To questions put by Mr. Kinkead witness answered there was no secrecy about defendant's actions, so far as witness knew. The poundyars was in a public place. Everything defendant did was for everybody to look upon and see. When witness took the cattle over from Johnston, witness did not check the brands over. The Leeton saleyards are pretty dilapidated. So far as witness believed, they were the same cattle he took from the poundyards as what he took over from Johnston. Witness said he never got the cattle boxed and he never passed any cattle on the road. The yearlings would be much bigger after four months.



To P. M.: Witness said that when he went down, after a lapse of four month's, to the tLake Paddock, he got 15 head to be branded. We brought up all the cattle he saw on the Lake Paddock. They were all young stuff.

Leo Sylvester Mulloy, herdsman, employed by W.C. and I.C., gave corroborative evidence in support of the previous witness.

By Mr. Kinkead: Witness Mulloy said he would say that the cattle branded by Defendant Clark were of a similar class to those brought from Griffith, but he wouldn't swear they were the same cattle. Witness denied having his memory refreshed that day. He did not have a conversation with the Sergeant that afternoon .

Inspector O'Neil objected to the insinuation.

Later on when the second charge was being heard, Mr. Kinkead withdrew the insinuation against the sergeant, and then asked Mulloy if Jack Dempsey had spoke to him about the two calves being left behind, because they were poor travellers. Witness denied absolutely that Dempsey had spoke to him about that matter.

Witness Mulloy said that yearlings could get out of the dilapidated saleyards.

Frederick Dance, residing on Farm 263, Beelbangera, remembered handing over cattle to Mr. Lawaon, and Mr. Johnston. There were 51 head of cattle and three calves on their mothers. He would say there were about 19 cows, one full grown bull, the rest young stuff, the progeny of those cattle, ages ranging from 2 1/2 years to three months. There were some steers, about six young bulls, about 12 unbranded ones among them. They were cattle being returned to W.C. and I.C.

Colin Thomas Eurell, drover, employed by Mr. Gus. Lonnie and Mr. G. E. Thomas, in giving evidence said he bought stock for Lonnie. Some time in October, 1927, witness purchased ten head for Lonnie from defendant. Witness inspected the stock in the Lake paddock. They were branded TC in half circle. The brand produced was the defendant's. It was a very plain brand on the rump. No other brand besides that. Witness said he saw the defendant at the Commission Offices to make those arrangements. Witness asked defendant if he wanted to sell the cattle in the Lake Paddock. Defendant asked: — How much are they worth. Witness said he would give £5 ahead for the pick of ten. Defendant said alright. Witness bought them. He got the cheque off Lonnie for £50 and handed the defendant the cheque The cheque was on the Bank of N.S.W. Six of the ten were killed at Yanco and four killed at Griffith. Witness made out the slaughtering notices for the killing of the six cattle at Yanco. Witness examined the brands when making the notices.

By Mr. Kinkead: Witness said that every dealing he had with the Defendant Clark was clear and above board. Defendant never attempted to hide anything. There was no attempt at a blotch brand. Reginald George Lane, accountant, in the Commercial Bank, at Leeton, produced deposit slip to credit of T. J. Clark, paid in by Clark for £50.

Ernest Mathew Willis, manager of Bank of N.S.W. at Leeton, tendered a cheque for £50 on Bank N.S.W. dated Oct 25, 1927, payable T. Clark, drawn by A. V. Lonnie. It was, paid against Mr. Lonnie's account on 26th October, 1927.

Gus. Lonnie, cattle dealer, residing at Leeton, said he employed Colin Eurell, who buys a good few cattle for him. Witness paid the £50 cheque (exhibit) for ten head of cattle. The cattle were brought to witness' place, they were branded TC half circle.

By Mr. Kinkead: As far as witness was concerned, the deal was perfectly clear, open and above board. Witness had brought other cattle through the defendant from the Commission.

Franklin Septimus Digby, accountant, employed by W.C. and I.C., at Leeton, said he dealt with the moneys of the Commission at Leeton. Defendant Clark did not pay an amount of £50 into the Commission during the months of October and November last. Witness produced regulation 6, under the Treasury Act, which stated that all amounts collected over £2 must be paid in on day received. Witness said Defendant as a collecting officer should pay all Commission money through him (witness). Mr. Digby also tendered regulation 28 for the Control of Officers employed by the Commission, which stipulated that Commission officers could not enter into competition with the Commission.

John Ward, recalled, produced the agreement leasing about 70 acres, known as the Lake Paddock to the Defendant. Continuing his evidence, witness stated that referring to the application made by the defendant to sell by private treaty, such recommendation was not approved until December 5, 1927.

As this recommendation was not relevant to the period of the subject, charge, it was not admitted.

Continuing, witness stated that prior to December 5, 1927, defendant had no permission from the W.C. and I.C. to sell by private treaty any cattle owned by the Commission. Cattle had to be either sold by auction or any private sale recommended had to be submitted to the Commission for approval. After the tea adjournment on Tuesday night, Inspector O'Neil announced that Witness Ward's evidence closed the case for the prosecution.

Mr. Kinkead submitted that there was no case for the defendant to answer at all. If his worship thought there was a prima facie case, then he would not waste his worship's time.

P.M. Mr. Parker said he thought there was a case and committed the defendant to stand his trial at the Quarter Sessions, to be held at Narandera on July 17, 1928, to the following charge; that on or about 25th day of October, 1927, at Leeton, in the said State, being employed in the public service, to wit, as acting Land Settlement Inspector, for the Water Conservation and Irrigation Commission having, then in his custody and under his control by virtue and colour of his employment, ten head of cattle, did steal such cattle the property of His Majesty.

Bail was allowed as previously fixed at £100.

### **Other Charges**

Mr. Kinkead asked that the remaining charges be heard altogether. Whatever the defence may be, his client could not be placed in a worse position.

Inspector O'Neil claimed he had a perfect right to present the cases in his own way and he would take cases (2), (3), and (4) .

Inspector' O'Neil entered the box, and gave evidence that on that day at Leeton, he charged the defendant that; he did on about December 14, 1927 steal 21 head of young cattle, to wit, steers and heifers, the property of the W. C. and I.C. at Leeton, to the value of £63. Defendant made no reply.

Witness said he further charged the defendant that on 3rd January, 1928, at Leeton, he did steal 20 head of young cattle, to wit steers and heifers, the property of W.C. and I.C. at Leeton, to the value of £50., Defendant made no reply to the charge.

Witness stated that he also charged the defendant that he did on 26th day of November, 1927, at Leeton, did steal 6 head of young cattle, to wit steers and heifers, the property of W.C. and I.C. at Leeton, to value of £25/10/-. Defendant made no reply.

Mr. Kinkead said to make it clear, 'It was a fact, Inspector, you read the whole list of charges, and I instructed my client in your presence to make no reply? : 'Yes, but I paused between each charge.'

Mr. Kinkead: 'I just mention that so you would get no advantage out of the fact that the defendant made no reply.'

John Ward, manager of the Yanco Irrigation Area, gave evidence that on December 5, 1927, Defendant was given authority to sell cattle by private treaty. The authority was produced and tendered as an exhibit.

Mr. Kinkead drew attention to the fact that as Mr. Ward had only been appointed Manager on January 4, 1928, he did not enter into any of the cases whatsoever, so could not state what verbal authorities Defendant had received.

The P. M. upheld the objection. Joseph Thompson, herdsman, employed by W.C. and I.C., residing at Yanco, said he knew the River Paddock. He received instructions on 7th November 1928 from the Defendant not to allow anything to go off the river frontage, unless a receipt be signed for. Witness remembered being at the Commission Office on Nov. 7. The defendant was there with Colin Eurell and Gus. Lonnie. Clark said, Lonnie has bought some cows and Eurell some vealers, give them what they require. Got them to sign a receipt. The following morning, 8th, Eurell, Lonnie, Defendant, Mulloy and witness mustered the cattle on the River Paddock, and cut out 18 vealers and 25 cows. They were taken down to the yards and descriptions, brands and numbers taken. Eurell signed for them. (Receipt tendered was entered as exhibited). All Commission cattle branded Crown over I.C.

Continuing, witness said that on November 17, 1927, Lonnie, Eurell and Mulloy came down to the River Paddock. Defendant Clark was not there. They went through the cattle and separated 18 cows and 30 vealers. Colin Eurell signed for them. Cattle branded Crown I.C. and various other brands. 30 head young stuff branded Crown I.C. Witness said the Defendant Clark had no cattle of his own on the River Paddock. Witness saw the Defendant after he came back from holidays in January last. Mulloy was with him. It was at witness' home. Defendant said there was a bit of a mess up about the cattle and he would like to see witness' book. Witness said his book wasn't there. Mr. Barrett and Mr. Williams came down and took book from him. Defendant referred to the transfer book.

To questions put by Mr. Kinkead, witness said he knew the number of cattle he had at the River Paddock. Witness said he did whatever he was told. Sometimes he repaired fences irrigated grass country, attended bush fires. He admitted there was a large thick growth of gum seedlings on the flooded country of the river paddock. It was hard to muster cattle. Hundreds of cattle may be lost in the gum seedlings. Witness remembered the flood waters flowing down the river and drowning between 14 and 20 head. Witness said he did not know that a great number of stock died on settlers' property through starvation. The fences on the River Paddock were not stock proof. Witness said that there was never a check made, to his knowledge of the cattle in the river paddock. Witness said he knew the return was made by the auditors of the Commission on various dates — 30th June, 1st July. Witness said he knew a man named Simpson (since deceased). Witness said he never trucked two trucks of cattle to Victorian saleyards for Simpson.

Colin Eurell, a drover, said he remembered November last, being in company with the defendant and Mulloy. It was on November 8, down on the River Paddock. They gathered up the cattle and cut out

25 cows also 18 yearlings. Defendant called witness aside and asked him if he would take 18 vealers for him (defendant), up with Lonnie's 25 cows. Defendant said: "don't let anybody else know I'm buying them. Leo Mulloy will take charge of the 18 vealers at the Commission Offices." Witness said he signed for them. Mr. Thompson told witness he would have to sign for them.

Continuing, witness said that on November 17, in company with Leo Mulloy, Joe Thompson, and Gus Lonnie, he went down to the River Paddock and brought up 15 cows and 30 yearling's to the Yanco abattoirs yard. They brought them to the Leeton saleyards the following day. Mulloy, Lonnie, and witness cut out the 18 cows and Witness took the 18, cows out to Lonnie's. The last witness saw of the 30 yearlings was when they left them in the saleyards.

By Mr. Kinhead: Witness said he had done nothing to be afraid of. Everything was perfectly open and above board. He had nothing to hide. Clark done nothing to be ashamed of so far as witness could see.

Leo Sylvester Mulloy, drover, deposed that on November 5, he received instructions from Mr. Clark. Clark said that Col. Eurell was going to bring some poddies up from the River Paddock and witness was to put them in the Lake Paddock. From the Commission Offices Eurell took the cows away and witness took the poddies to the Lake Paddock, (known as defendant's paddock). Some of the poddies were branded Crown I.C., some not branded at all. Witness did not sign for any cattle that day. On November 16, witness saw the defendant at the Commission Offices. He said go to the river tomorrow with Gus Lonnie, who goes to take what fat cows he wants. Defendant added that Col. Eurell would bring some poddies up for him (defendant). Next, day (November 17), witness went down to the river with Lonnie and Eurell, and mustered the cattle. They got 18 cows and 30 poddies and brought them to the abattoirs yard at Yanco, and next day took them to the saleyards. Witness went back to the Commission Office and told Defendant Clark that Gus Lonnie was over at the saleyards and wanted to see defendant. Defendant went over and spoke to Lonnie for a while. Clark told, witness to put the poddies in the Lake Paddock. Some of the poddies were branded Crown I.C., some had no brand at all. Witness received instructions from Defendant Clark to give Jack Dempsey some cattle from the Lake Paddock. After November 9, witness delivered six head of young cattle about 12 months old. Witness did not know what they were branded. Witness delivered 21 head of yearlings to Dempsey some time after. Most of those were branded Crown I.C., don't know what the balance were branded. Witness remembered meeting defendant at Narandera after he came back from his holidays, and later coming to Yanco to see Joe Thompson. Defendant asked Thompson for the transfer book. Thompson said the Commission had the book.

By Mr. Kinhead: Witness said he would not swear that any of the six head were branded at all. Of the other lot, he would swear some were branded Crown I.C., but he did not know how many. All transactions were perfectly open and above board. As far as witness knew, Defendant Clark had no reason to be ashamed with his dealing's.

The court, adjourned at 10 p.m., until 9 o'clock, the following morning (Wednesday).

### **Wednesday's Sitting**

The first witness on Wednesday morning was Robert James Gordon, manager of the Government Savings Bank at Leeton, produced three cheques for identification, payable to T. J. Clark, one for £25/10/0; another for £63; and other for £50.

John Albert Dempsey, dealer, residing at Leeton, said he knew the defendant. He had known him for 17 years, and was with him for four years at the war. Witness knew the Commission's brand. Crown I.C. Witness also knew Defendant, Clark's brand, and knew the defendant had the Lake Paddock.

Witness said he also knew the Commission's River Paddock. Witness had had a life-long experience with stock. Pretty well all dealings witness had with Clark was at the Defendant's office. Witness wrote the cheque for £25/10/-, which was for some young cattle he had bought off the defendant two or three days before November 26, 1927, the date on the cheque. Witness got delivery of six cattle. He wouldn't swear that those six were branded. The cheque for £63 was for 21 head young cattle delivered to witness by Mulloy out of the Lake Paddock. Witness could remember some were branded Crown I.C. They were trucked to Sydney. The cheque for £50 he gave to defendant on January 3, 1928, was for 20 head of young cattle that witness had got himself from the Lake Paddock some time in December. There were some Crown I.C. amongst those too. Witness had seen Mr. Clark and he told witness to go down to the Lake Paddock and get those cattle. They were trucked to Sydney.

By, Mr. Kinhead: Witness gave market prices for the cattle. As far as witness was concerned, Defendant's dealings were above board. The biggest part of the cattle on the irrigation area were branded Crown I.C. They were not all owned by the Commission. Witness had quite a number of dealings with Mr. Clark, both dealing in Commission cattle and dealing with defendant himself. Witness had bought other Crown I.C. branded stock from other people in this district.

To Sgt. Thomson: It was early in November 1927, that witness had his first dealings with defendant, so far as defendant's own private cattle were concerned.

Frank S. Digby, accountant for W.C. and I.C. at Leeton, gave evidence that the defendant had paid no cheque for £50 into the Commission since January 3, 1928; no cheque for £63 since Dec. 14; no cheque for 25/10/0. since November 25. Defendant was bound by the Treasury regulations.

By Mr. Kinhead: Witness said that if he received a cheque for himself that was his own money, he wouldn't hand it over to the Commission. Witness would say that Clark had paid in numbers of cheques to the Commission and also certain amounts of money in cash. Witness would not say that those monies could not be traced.

That closed the evidence for the prosecution.

Mr. Kinhead submitted there was absolutely no identification of the cattle whatsoever.

### **Charge Re-worded**

The P.M., Mr. Parker, thought there was, in the way he intended to alter the three charges to read, which was as follows:

Thomas John Clark, on the eighth day of November, 1927, at Leeton, being employed in the public service, to wit, as acting Land Settlement Inspector for the Water Conservation and Irrigation Commission, and having then in his custody and under his control, by virtue and color of his employment certain cattle, to wit, nine steers and nine heifers, did steal such cattle the property of His Majesty and afterwards, to wit on the seventeenth day of November, 1927, being so employed as aforesaid and having certain cattle, to wit 9 steers and 21 heifers, then under his control as aforesaid, did steal such cattle, the property of His Majesty-

Defendant replying to the charge, said:— 'On the advice of my counsel, I reserve my defence.'

Bail was allowed self in £50, and one surety of £50.

### **No Evidence On Other Charges**

Inspector O'Neil said he had no evidence to offer on the other charges, which were dismissed.<sup>[86]</sup>

*21 April, 1928. No. 2 Jury Causes - (Before Mr. Justice Davidson and Jury.)*

### **Supply Of Bag-Sewing Machinery.**

Electricity Meter Manufacturing Co., Ltd. V Collis Bag Sewer, Ltd., and others.

This action was brought by the Electricity Meter Manufacturing Co., Ltd., against the Collis Bag Sewer, Ltd., plaintiffs claiming £8107/7/9, alleging breach of contract in respect of the supply of certain bag sewer machines supplied to the defendants, and £5000 from Ernest Arthur D'Ombran and others on an alleged guarantee by them in connection with the contract. In the first case the substantial defence was an alleged warranty, defendants stating that they made known the purposes for which the machinery was required; that they relied upon the Meter Company's professed skill and judgment to supply articles reasonably fit for their purposes; and that the articles supplied were not reasonably fit. Defendants claimed damages, stated at £8000, by way of errant action. Separate defences were filed in the second action. Mr. Shand, K.C, Mr. J. W, Shand, and Mr. W. F. Owen (instructed by Messrs. Alfred Rofe and Sons) appeared for the plaintiff company; and Mr. Halse Rogers K.C., Mr. Studdart and Mr. Kinkead (instructed by Mr. G. A. Prendergast) for the defendant company.

In the action on guarantee, the plaintiffs were non-suited, on the ground that the deed between the parties was void, because of uncertainty. The action on the contract preceded and was adjourned until his Honours return from the circuit.<sup>[87]</sup>

### *21 April, 1928. Stealing In A Dwelling*

Laurence Terrance, 21, labourer, who had pleaded guilty in stealing a suit of clothes in a dwelling-house, was called up for sentence.

Mr. Kinkead (instructed by Mr. G. A. Prendergast) appeared for the prisoner, and submitted police evidence that accused was abnormal, being mentally weak, and with the intelligence of a child. The prisoner was bound over in his own recognisance in £25 to come up for sentence if called upon within three years.<sup>[87]</sup>



*Figure 10 - Laurence Terrance - 1928*

### *27 April, 1928. Quarter Sessions (Before Judge Cohen)*

Crown Prosecutor, Mr V.H. Treatt.

### **Acquitted**

Arthur James Dalrymple, 37, plumber, was charged with breaking and entering the factory of George Robert Campbell and another at Sydney on January 14, and stealing 198 pairs of shoes and other things. He was alternatively charged with receiving.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused, who was acquitted and discharged.<sup>[88]</sup>

### *28 April, 1928. Law Report – High Court of Australia.*

(Before Sir Adrian Knox, C.J, Mr Justice Isaacs, and Mr Justice Starke)

### **The Tamworth Murder – Thompson v The King**

Cyril Matthew Thompson, a horse-trainer, who had been convicted at Tamworth on February 29, before Mr. Justice James and a jury, of having murdered Frederick William Thorley, applied for special leave to appeal against the conviction on the grounds that certain evidence called was inadmissible, and that the Judge misdirected the Jury.





Figure 11 - Cyril Matthew Thompson - 1928

Thorley was found under a bridge at Tamworth with his head battered in, on June 28, 1927, and it was alleged that after he had left a gambling school, he had been followed by Thompson. There were two trials, and the prisoner was convicted at the second and condemned to death. He then appealed to the Court of Criminal Appeal, but his appeal was dismissed.

The Court refused the application. In announcing the decision the Chief Justice said that the counsel for the applicant had put the case very fairly and very well.

Mr. Studdert (instructed by Messrs. Waterford and O'Donnell, of, Quirindi, by their Sydney agents, Messrs. John A. K. Shaw, Lewis, and Co.), appeared for the applicant; the Solicitor-General (Mr. C. B. Weigall, K.C.) with him Mr. Kinkead (instructed by Mr. J. V. Tillett, State Crown Solicitor), appeared for the Crown.<sup>[89]</sup>

#### 29 April, 1928. Genial "J.B."

J.B. Kinkead, for long the Crown Law Department's instructing officer to the Chief Crown Prosecutor, has started out in private practice, and, in his new role, appeared recently at the Central Court. Incidentally, Mr Kinkead was well in running for the junior Crown Prosecutorship vacated by Mr McTague, but it was obvious that he liked his chances outside better. The genial "J.B.", whose smile is almost as certain as the sunrise, when he gets going as an advocate, will clearly prove how versatile these lawyers can be.<sup>[90]</sup>

#### 1 May, 1928. Wealth Female Kleptomaniac.

"It is a pitiable case, and I do not propose to send the defendant to gaol." said. Mr. Gates, C.S.M., at Central Court on Monday, 'referring to Ida Maker, 40, who was crying when she appeared on a charge of having stolen goods worth £2/18/6 from Mark Foy's. Mr. Kinkead who appeared for the defence, said he never appeared in a case which had more sad features. The defendant was in good circumstances, of good family, and had no need to steal; but she was unable to help herself. "No doubt, your Worship knows she has been previously convicted," he said, but she has resisted temptation for more than three years and deserves consideration. For the sake of her little children, who know nothing of the disease which has brought her to this, I ask your Worsip not to send her to gaol." Mr, Gates imposed a fine of £15, in default two months' gaol.<sup>[91]</sup>

#### 8 May, 1928. Quarter Sessions (Before Judge Cohen)

Crown Prosecutor, Mr V.H. Treatt

#### Acquitted

David Samuel Strickland, 69, postmaster at Gordon, was charged with having fraudulently converted £76/5/1 to his own use. Mr. Kinkead (instructed by Mr. E. R. Abigail) appeared for the accused, who was acquitted and discharged.<sup>[92]</sup>



**20 May, 1928. Love's Dream Is Over! - Scorned Lady's Passion for Bald Man Lands Her in Court Case - Fracas At The Front Gate**

One half the world does not know how the other half lives, which is perhaps as well for both. One sees only the outward man during business hours. The man who serves you with the joint may be a 'mute, inglorious Milton,' or the suave individual, who assures you that 'the coat is a perfect fit,' may be a wife-beater — off duty.

No one, looking casually at David Francis McKenzie would suspect him of being a man likely to inspire any great affection in the bosom of a lady. But they run in all shapes, as the sports say of greyhounds, and this little bald-headed chap — a salesman, employed by Bebarfalds, the big furniture people, was the hero — of sorts— of a drama staged before Mr. McMahon, S.M., in the Central Summons Court last week.

It is true that the prologue was not particularly heroic, as McKenzie appeared in the role of prosecutor against the lady in the case, Mrs Beatrice Shipway, whom he charged with assault, McKenzie was assisted in his attack by Mr. J. J. B. Kinkead, who in turn, was instructed by Mr. C. R. Penny, while Mr. W. Leary acted as the squire of dames, or dame, as it happened.

After Dr. Andrew, of Balmain, had certified that, on April 26, he found McKenzie to be suffering from various scratches and bruises upon his face, the prosecutor himself said his piece.

He was a single man, he began, and had been living for about five years with Mrs. Shipway. They had parted on several occasions during that period, but the last break, about seven months ago, looked like a permanent one.

He complained that the lady had written several threatening letters to him, and had annoyed him by calling at the shop and at his home in Brougham-street, Darlinghurst.

And she timed her visits most inopportunistly. On April 26, for instance, while he was in his room (about 8 p.m.) suffering from a bad attack of flu, she came along and knocked at the front door. He was not really fit to be out of bed, but as his landlady was out, he answered the door. She immediately accused him of 'having a woman in his room,' when, as a matter of fact, 'the woman was purely a friend, who had called for a paper'. She then called him a 'thief, a \_\_\_\_\_, and a rotter,' and drawing an iron bar from somewhere about her clothes, went to hit him over the head with it.

He took the bar— produced — from her. It was a short piece of waterpipe. He told her to go, but she would not. Then he tried to push her out, but she refused to budge, hanging on the rails, so that he was reluctantly compelled to use some force upon her; not much force really.

Mr. Leary: You lived with this woman in Brisbane, at her residential there, as man and wife?— Yes.

And you went to New Zealand in 1923 —Yes

And she paid your fare— £40? — Yes.

In fact, you were living on her?— No, I was not.

You did approach her regarding marriage, didn't you??— No. On the contrary, she offered me everything to marry her.

The lady: 'Oh, o-oh!'

Beatrice Shipway, a little, dark-eyed woman, smartly dressed in a black and white frock, with hat to match and a heavy coat with a fur collar, stated that she had been living in Crown-street, but was now removing to Rockdale.

After the break with McKenzie she was naturally anxious to obtain a settlement of the sums he owed her, and it was for the purpose of discussing financial matters that she called to see him. But, as soon as he opened the door, he tried to push her off the verandah and when she resisted he pushed her off. She fell and he kicked her in the side.

Mary McCarthy, proprietress of the residential in Brougham-street, said that, during Christmas week, Mrs Shipway called to see her. She spoke about 'husband, Mr McKenzie,' and gave Mrs McCarthy seven days in which to turn him out, threatening to shoot the pair of them if she did not do so. Mrs Shipway produced a revolver from her bag at the time.

In binding Mrs Shipway over to keep the peace for six months, Mr McMahon, S.M. said 'She seems to think that this man has got hold of another woman. Her action is natural, perhaps, under the circumstances, but she has gone too far in threatening to use a revolver.'

She was further ordered to pay the some of £2 10s professional costs and costs of court, but an application by Mr Kinkead for witnesses' expenses was refused.

'I think Mr McKenzie can fix that up,' remarked the S.M.<sup>[93]</sup>

#### **20 May, 1928. The Reason**

Mr J.J.B. Kinkead (to witness): Do you know Sergeant Hayes, of Redfern?

Witness: Oh, yes!

Mr Kinkead: That's right; everybody knows him. He's twice as big as I am!<sup>[94]</sup>

#### **26 May, 1928. No. 2 Jury Causes - (Before Mr. Justice Davidson and Jury.)**

##### **Supply Of Bag-Sewing Machinery.**

Electricity Meter Manufacturing Co., Ltd. v Collis Bag Sewer, Ltd., and others.

This action was brought by the Electricity Meter Manufacturing Co., Ltd., against the Collis Bag Sewer, Ltd., plaintiffs claiming £8107/7/9, alleging breach of contract in respect of the supply of certain bag sewer machines supplied to the defendants, and £5000 from Ernest Arthur D'Ombrian and others on an alleged guarantee by them in connection with the contract. In the first case the substantial defence was an alleged warranty, defendants stating that they made known the purposes for which the machinery was required; that they relied upon the Meter Company's professed skill and judgment to supply articles reasonably fit for their purposes; and that the articles supplied were not reasonably fit. Defendants claimed damages, stated at £8000, by way of errant action. Separate defences were filed in the second action. Mr. Shand, K.C., Mr. J. W. Shand, and Mr. W. F. Owen (instructed by Messrs. Alfred Rofe and Sons) appeared for the plaintiff company; and Mr. Halse Rogers K.C., Mr. Studdart and Mr. Kinkead (instructed by Mr. G. A. Prendergast) for the defendant company.

In the action on the guarantee the plaintiffs were non-suited, on the ground that the deed between the parties was void because of uncertainty. The action on the contract proceeded, and was, after a protracted hearing, concluded today.

The jury returned a verdict for the plaintiff on plaintiff's action for £4203/11/, and on the cross-action for the defendant for £4488. In the result a verdict was returned for the defendants on the action.<sup>[95]</sup>

6 June, 1928.<sup>[96]</sup>

AT THE ROYAL COMMISSION INQUIRING INTO THE ALLEGED OFFERS OF £3,000 FOR A PARLIAMENTARY SEAT FOR MR. THEODORE.



LEFT TO RIGHT: MR. LAMB, K.C. AND MR. A. C. HILL (WHO ARE APPEARING TO ASSIST THE COMMISSIONER, MR. WINDEYER, K.C. (WHO, WITH MR. KINKEAD, IS APPEARING FOR MR. THEODORE), MR. LAMBERT, M.P., MR. J. B. KINKEAD, MR. HALL, AND MR. R. D. MEAGHER (WHO ARE INSTRUCTING MR. WINDEYER AND MR. KINKEAD), MR. THEODORE, M.P.

6 June, 1928. **Political Graft – Mr Lambert's Charges – Inquiry by Commission.**

The Royal Commission appointed by the Federal Government to investigate charges, of political corruption made by Mr. Lambert, M.P., commenced its sittings yesterday, and on the application of counsel for Mr. Theodore. M.P., was adjourned until 10a.m. on Monday next.

The Commissioner (Judge Scholes) having read his commission. Mr. Windeyer, K.C. (for Mr. Theodore. M.P.) asked for an adjournment. He said that he had to meet a very serious charge, and he was not prepared immediately to go on with the case.

Mr. George Cann ex-M.L.A. objected to an adjournment. He said that certain statements had been made since the commission had been appointed. He thought that the inquiry should be expedited.

Mr. Lambert said he objected to a postponement unless some substantial reason could be adduced. "There has been a demand in political circles," he added, "to have these charges dealt with as quickly as possible."

Mr. Lamb, K.C. (who is assisting the commission), said that it was the desire of the Government that the inquiry should be expedited as much as possible.

The Commissioner: It seems to me that Mr. Theodore must receive greatest consideration. Messrs. Cann and Lambert are not charged with anything. Personally I am prepared to proceed with the inquiry immediately

The commission was adjourned until 10a.m. on Monday.

Mr. Lamb, K.C., and Mr. Hill instructed by Mr. W. H. Sharwood, Commonwealth Crown Solicitor) are appearing to assist the commission; Mr. Windeyer, K.C., and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Mr. Theodore. M.P., and Mr. McTiernnn (instructed by Messrs. Marsland and Co.) for Mr. Coleman, M.P.; Messrs. Lambert, M.P., and Cann, ex-M.L.A.. appeared in person.<sup>[97]</sup>

**20 June, 1928. Graft Inquiry - Mr. Anstey to be Recalled. - Who Made Offers? - Explanation Wanted.**

The Royal Commissioner (Judge Scholes) who is inquiring into charges of political corruption, declared yesterday that there must be nothing "secret" about the conduct of the inquiry.

It was stated by his Honor that it was his intention to recall Mr. Frank Anstey, M.P., who had made a definite statement that he had been offered money, to ask him when and where the offer had been made. He also intimated that he desired the attendance at the Commission of Messrs. Sullivan and Riley, whose names had been mentioned during the inquiry.

**Brisbane Bank Account**

His Honor announced that he had examined Mr. Theodore's Brisbane bank account. "A position arose yesterday," he went on, "which will have to be made plain. Mr. Windeyer made practically a demand that Mr. Theodore's business matters should not be made public. Mr. Lamb also agreed that he had no intention of making Mr. Theodore's business concerns public. Yesterday, in camera, I inquired of Mr. Theodore if he could show me what matters in his bank account related to business only. I came to the conclusion that I knew 'Which of those were his business matters, and I offered the banking account to Mr. Lamb for the purpose of investigation and then the word 'private' and 'public' and 'secret' cropped up. These are words that must not apply to an open investigation by a Commission. I have thought the matter over during the night, and I think the proper thing for me to do is to hand the banking account to Mr. Lamb, and for him to examine Mr. Theodore upon that fully. There should be nothing secret about it."

Mr. Windeyer, K.C. (for Mr. Theodore): The course I suggested was that your Honor should acquaint yourself as to the accounts. There should be an inquiry in chambers into the Brisbane account.

His Honor: I do not think so. There are certain withdrawals between January and July. Mr. Lamb may not examine as to the particulars of his business transactions. Otherwise it must be right open.

Mr. Windeyer. The position I took up yesterday is the right one.

His Honor: It is the secret business to which I object.

Mr. Lamb suggested that his Honor should take the accounts in camera with Mr. Theodore and mark any items with a cross that were irrelevant. Any items which his Honor required investigating further could be left open. If he could use the account in that way without any suggestion that he was receiving it in private it would be a convenient course.

Mr. Windeyer agreed to that course, and gave an assurance that there would be no resistance in inquiring into such items.

**Mr Anstey's Allegations**

His Honor: Is Mr. Anstey available? He has made a definite statement that he has been offered money and I cannot allow that to go. I must ask him when and where and I want Mr. Anstey here for that purpose.

Mr. Windeyer: I am afraid he has gone to Melbourne.

His Honor asked Mr. Lamb to notify Mr. Anstey that he was required to attend.

His Honor then retired to his chambers to hold a preliminary inquiry in camera regarding Mr. Theodore's account in the Brisbane branch of the Bank of New South Wales and his account in the Commonwealth Savings Bank.

Following the examination in camera, his Honor announced that the bank books and accounts were all available to Mr. Lamb. The items which he had marked "business only" would be accepted as business transactions. The others were all open to Mr. Lamb for purposes of examination.

Mr. Theodore, recalled, was examined by Mr. Lamb regarding withdrawals of certain sums of money aggregating £650 in January and February, 1927, portion of which was utilised for election expenses. He denied that he had made a false declaration concerning these expenses. "I am sure Mr. Bruce must have had the same twinge of conscience when he made that declaration himself," said Mr. Theodore, amid laughter. "I am sure his election expenses in the Flinders electorate were considerably higher than mine in Dalley. I asked the returning officer if my completion of the declaration form was sufficient, and he told that it was."

Replying to Mr. Windeyer, witness said that he had never authorised anyone to see Mr. Lambert or anybody else on his behalf. Nobody had authority, directly or, indirectly, to approach any of the men mentioned with a view to their resigning their seat on his behalf. After his defeat for Herbert he had made arrangements to carry on his business in Queensland until the next Federal elections; in fact, he signed a lease of premises in Brisbane for a period of two years. His transfer to Sydney had involved him in expense.

Mr. Windeyer: Do you think it likely that Dr. Earle Page's election expenses were £8/1/0?

Witness: Not at all likely.

Mr. Lamb then proceeded to examine Mr. Theodore with respect to his finances in such a way that the majority of the questions and answers could be understood only by his Honor, Mr. Theodore, and himself, since they knew of the respective items in the bank accounts.

#### **A.W.U. Opposition.**

Mr. Windeyer: A great deal has been said about the A.W.U. Is that organisation, as a body, opposed to you?

Witness: No; I am on particularly good terms with the A.W.U. Certain officials of the central branch, including Mr. Bailey, have been very hostile to me during the last year or two; but the A.W.U. as an organisation supports me. There are certain grounds for the suggestion that Mr. Bailey has a personal animus against me, more particularly since my finding in the ballot box case.

Errol H. Coote, of the literary staff of the "Daily Telegraph Pictorial," also gave evidence.

#### **A New Witness.**

His Honor: I am just wondering whether I should see Mr. Sullivan or Mr. Riley. If I see one I should see both. I think I should like to ask Mr. Sullivan whether Mr. Riley told him, and to ask Mr. Riley if he was ever offered money. If he was it is no evidence that these other men were offered money; but the evidence that money was being offered might be valuable. I shall ask that Mr. Riley and Mr. Sullivan should attend, and if necessary I will issue subpoenas.

The inquiry adjourned till 10 a.m. today.

Mr. Lamb, K.C., and Mr. Hill (instructed by Mr. W. H. Sharwood, Commonwealth Crown Solicitor) appeared to assist the Commission; Mr. Windeyer, K.C., and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Mr. Theodore, M.P.; and Mr. E. A. McTiernan (instructed by Messrs. Marsland and Co.) for Mr. Coleman; Mr. D. R. Hall for Messrs. Lambert, M.P., and Cann; and Mr. B. Little (instructed by Mr. Hubert Hourigan) for Mr. Mahony.<sup>[98]</sup>

**25 July, 1928. Political Graft - Royal Commission Inquiry**

Sydney, Sunday. Judge Scholes yesterday continued his inquiry into the allegations of political corruption in connection with the Dalley seat in the House of Representatives. Mr. E. C. Riley, M.H.R. for Cook, denied that he had ever been asked by anyone to give up his seat in favor of Mr. Theodore. Mr. James D. Miller gave evidence that he was driving a car when a conversation took place between Mr. Riley and Mr. Sullivan in George street West. He corroborated Sullivan's statement that Riley had been approached to give up his seat in favor of Mr. Theodore. Replying to Mr. Kinkead (for Mr. Theodore), Mr. Miller admitted that Mr. Sullivan had communicated with him in Melbourne about the case. On his arrival in Sydney he was met by Mr. Sullivan. The Commission adjourned till 10 o'clock on Monday. It is anticipated that the inquiry will conclude on Monday and that counsel will then address Judge Scholes.<sup>[99]</sup>

**25 June, 1928. No Offer To Buy His Seat Says E.C. Riley M.H.R. – D.R. Hall and Resignations. Conversation In A Car**

Emphatic denials that he had been approached with a view to vacating his seat in favour of Mr Theodore, or that he knew anything about any offers for seats were given by Mr E.C. Riley M.H.R. for Cook, before he Royal Commission presided over th Judge Scholes on Saturday.

Of several piquant interludes, the most amusing was a statement by a witness that he remembered an alleged conversation between Riley and another witness named Sullivan because, he said, "Meeting a politician was an event in my life".

When the Commission resumed. Mr Hall (appearing for Lambert and Cann) called for the production of a document previously mentioned in evidence and containing, he said, the signatures of five persons, including Mr Willis.

Mr Kinkead, who is assisting Mr Windeyer K.C. promised to produce the document.

The Commissioner announced that a man named Cohen who had tried to address the Commission on Thursday, would be called if his proposed evidence were relevant.

Edward Charles Riley M.H.R. for Cook, gave evidence regarding a conversation near Grace Bros. of which the witness and Sullivan had given them. He rememberd court one version meeting Sullivan in George Street West at the end of January, 1927, not in December, 1926 as stated by Sullivan. To the best of his recollection witness stated he was speaking to a man named Goggins, and he met Mr Sullivan who gave him a lift in his car. They catted about political and industrial affairs. In which their interests were much akin. He left the car near Grace Bros.

The Commissioner: Did you say: "They will fix me up?"

Witness: No.

Did you say: "They want me to give up my seat for Theodore?" – No.

"Nor anything like that?" – No.

Did you say: "They will put the boot into me?" – I am positive I did not.

"Was any suggestion made to you at any time that you should give up your seat to Mr Theodore?" – No.

Witness further denied that any suggestion to vacate his seat or any inducement to do so had been made to him at any time.



No Discussion.

Mr Lamb: Did you ever discuss with anyone that you should give up your seat to Mr Theodore?

Mr Riley: No. There was no need for me to say anything on the subject.

Witness emphatically stated that he had no direct knowledge of any efforts being made to find a seat for Mr Theodore.

The statements made by Mr Sullivans wife regard to alleged overtures were untrue said Mr Riley.

He had visited Sullivan at his office on several occasions but had certainly made no remark to Sullivan about "Mahony getting 5000 quid. The word 'quid'" said witness warmly, "is one I never use."

He could not recall what the discussion was about while he was in the mot car with Sullivan.

Mr McTiernan. About Sullivan. There is a type of person in the Labour Movement who is chronically unfriendly with politicians. Mr Sullivan never whos any friendly feeling to what he would call the politician class.

Mr Rileys reply was not clear.

Mr McTiernan. You know that he has been bitterly opposed to Mr ???.

Mr Riley. There has been a fair amount of friction between them.

Witness told Mr Hall that the person had never had any dispute with Mr Sullivan. The latter had written him a letter dated June 5 1928. The letter was written by Mr Sullivan said Mr Hall after Sullivan had received a subpoena and in it he warned Riley that he would give evidence about their conversation.

Witness stated that in reply to the letter, he telephoned Sullivan from Canberra. He asked Sullivan what was at the back of the matter and who was responsible.

Sullivan replied saying he thought George Cann was responsible. After that they were cut off.

Mr Hall dealing with Mr Mahony's resignation: Resignations are not very common in Parliament?

Mr Riley: No. They do not happen every week. After a pause, Mr Riley looked very severly at Mr Hall and continued very deliberately. But there have been some from 1912 onward.

Mr Hall looked dumfounded and the Commissioner was obviously surprised.

Mr Riley very belligerently: "You have only to scratch my memory a bit... "

Mr Hall hastily ceased questioning the witness.

### **Would be Fixed Up**

James Dermot Millar in the box told Mr Lamb that he was in the car when Sullivan and Riley had a conversation. Riley said witness told Sullivan that he had been asked to vacate his seat for Theodore, and if he didn't, he would be 'fixed up'.

Asked how he remembered the incident so clearly, Millar said that he never came in contact with politicians. 'Meeting Mr Riley,' he added, 'was an event in my life.' (Loud Laughter)

Sullivan, witness explained, had met him on his arrival from Melbourne to give evidence before the Commission and he had been in Sulivans company since then.



Although he had been associated with Sullivan for about eight years and regarded the latter as his best friend, he had not discussed Sullivan's evidence with him.

Witness said he was the representative of Nobel Industries.

Mr Sullivan, witness stated, had been engaged in the Islands trade and had also been a representative of Paterson, Lading and Bruce.

Mr Kinkead: That will do.

The Commission adjourned until 10.00 am on Monday.<sup>[100]</sup>

#### **28 June, 1928. Federal Inquiry - Alleged Corruption - Addresses By Counsel.**

##### **Mr. Windeyer Attacks Mr. Lamb.**

"Mr. Lamb has disclaimed that he appears for the country; he admits frankly that he appears as a partisan," declared Mr. Windeyer, K.C., in his address before the Royal Commission (Judge Scholes) on alleged political corruption, yesterday.

Mr. D. Hall (for Messrs. Lambert and Cann) said that in the evidence the probable position was that Mr. Theodore knew nothing of the alleged transactions respecting the seat, and took fine care not to inquire that they were going on. He suggested that his Honor might find that the conditions at the time were such as might lead to the bargaining for and the sale of a seat for Mr. Theodore, and that Mr. Mahony was the most probable man to take advantage of those conditions: that Mr. Lambert was offered a sum by Mr. Mahony in consideration of his selling his seat to make room for Mr. Theodore; and that Mr. Coleman was offered a sum by some unknown person, or was approached by some unknown person, with a view to his resigning his seat to make room for Mr. Theodore. Further, that Mr. Mahony, failing to get others to carry out the scheme he had in mind in 1925, towards the end of 1926 or early in 1927, when he found himself sick, out of step with the rest of his party, and unhappy in his political association, did carry out what he had endeavoured to get Mr. Lambert to carry out, and received for it the sum of about £5000; also, that there was not one scintilla of evidence on which to support the suggestion that Mr. Theodore either provided any part of the money or was a party to the bargain.

##### **Mr. Windeyer's Address.**

Mr. Windeyer, K.C., who, with Mr. Kinkead, appeared for Mr. Theodore, M.P., maintained that there was no evidence whatever against Mr. Theodore. He regretted that there was no representation of the country at the Commission.

"Mr. Lamb," said Mr. Windeyer, "at one time claimed the right to cross-examine other witnesses, but he did not wish to cross-examine Mr. Lambert, because he was his witness. The Prime Minister (Mr. Bruce) has announced that this commission was appointed to vindicate the fair name of the political institutions of the country. Your Honor has been the soul of impartiality. Mr. Lamb, who is termed your Honor's representative, however, has kept back vital and grave matters necessary to elicit the truth. He has resisted my obtaining access to matters contained in his instructions."

Mr. Windeyer, continuing, criticised Mr. Lamb's attitude respecting Messrs. Lambert and Cann. He contended that Mr. Lamb's primary duty was to show the defects in the stories of Messrs. Lambert and Cann. The commission could not hold up Mr. Lambert as a man on whose word the credit of Mr. Theodore would be impeached. They all knew the political history of the country, and what had been said about the City Council, of which Mr. Lambert was the Lord Mayor.

They had the outstanding fact, said Mr. Windeyer, that the so-called disclosures were made at the time when they would suit the clique. At that time one of the clique had seen Mr. John Bailey, Mr. Bailey professed not to want to disclose "the big political story" to which this was to be the forerunner. If it was true that this country had been bribed and drenched with Russian money, would Mr. Bailey have kept it back all that time? The reason for his hesitancy was he knew that when he uttered those words, "the forerunner of a big political story," he meant that it was the beginning of a political campaign, and that this was the first shot.

#### **Mr. Bailey Criticised.**

Mr. Windeyer said he wished to direct attention to one of the most remarkable things. Mr. Lambert, in his statement, said: "I saw John Bailey, and he said, 'I knew your seat was to be sold.' " He repeated that on oath. It was obvious when Mr. Bailey had to go into the box it would not fit Mr. Lamb's prosecution, so Mr. Bailey had to give a new version of it, and said he had let Mr. Lambert know that the matter had appeared in the Press. Was it not a fact that the whole thing was a concoction? Mr. Theodore had found that Mr. Bailey was guilty of constructing ballot boxes with sliding panels. Mr. Bailey said that the sliding panels were for no dishonest purpose. Was he the kind of man who would devise all kinds of machinations to bring those people together to give that sort of evidence?

"There is no direct evidence against Mr. Theodore," Mr. Windeyer said. "How can gossip be regarded as evidence? Every witness who has been called and who knew anything about the circumstances of the time has dwelt on the fact that there were rumours, current talk, gossip, and jokes everywhere."

Continuing, Mr. Windeyer said that Mr. Lambert did not make it known in 1925 that he had been approached, because he could not afford it; but he knew that he could have exposed any abuse under privilege of Parliament without running any risk. Mr. Lamb would say that it did not suit his book to make it known then. If that was so, it was exposed at this time for political purposes, and must be regarded as being tainted with suspicion.

Mr. Windeyer, in a general summary of evidence as it affected Messrs. Theodore and Mahony, and the attitude of the A.W.U., facetiously remarked: "They shot at the eagle and knocked a few feathers out of the sparrow."

His Honor: Who was the sparrow?

Mr. Windeyer: Mr. Mahony.

Mr. Lamb: Who was the eagle?

Mr. Windeyer: Mr. Theodore.

#### **Party Funds.**

Mr. Windeyer said he wished to make it quite plain that there had been no mishandling of party funds by Mr. Mahony. They were trust funds, with which Mr. Mahony had been implicitly trusted. He (Mr. Windeyer) wanted to dissociate himself from any suggestion of impropriety in that regard on the part of Mr. Mahony, whose personal honour as regarded other people's property was in no way impugned. What Mr. Mahony had described as his domestic inharmonies might be some explanation of the matter. Up to the time Mr. Mahony came to the Court he declined to state where he obtained the money.

Continuing, Mr. Windeyer said that Mr. Lamb had started out to prove the payment of a large sum of money: but was now concentrating on the fact that he (Mr. Windeyer) elicited, that Mr. Theodore had given £200 to the testimonial. The action reflected credit upon Mr. Theodore, who decided to make the present when he found that the man who had previously occupied the seat was in ill

health, and the testimonial he expected had been a failure. No one had any right to say that human nature was so constituted that Mr. Theodore's story of generosity could not be true. But true or false was that which the Prime Minister referred to in his speech in Parliament.

His Honor had suggested that it might be that Mr. Coleman had been offered money and turned it down, which would be to his credit. But Mr. Coleman had denied it. The consequence was that Mr. Coleman, as a man of honour, was on trial by reason of the evidence he had given. But the only evidence against him was that of Mr. Cann, who, when Miss Preston Stanley made some political accusation against him in the Legislative Assembly, retorted by asserting that the lady was a lewd woman. Misunderstandings often happened in Parliament, and people charged one another in political language; but it was another thing to invent a foul calumny against a single woman such as that she made lewd overtures to Mr. Cann. The man who would do that was a reckless man, whose mind was indifferent to the truth, and, as he admitted, never once had he the manliness to withdraw the charge. When they were measuring the credibility and veracity of Mr. Coleman against that of Mr. Cann, was it right, in the face of that incident alone, that Mr. Cann's word should be accepted before that of Mr. Coleman.

#### **"A Malicious Campaign."**

Mr. Windeyer said the whole of the evidence at the inquiry, from beginning to end, hung upon the belated statements of men having an antagonistic motive which they had admitted against the persons affected. An analysis of the evidence showed that it was part of a campaign that had a malicious and improper motive. Both Mr. Cann and Mr. Lambert were of a disgruntled party which, to their disappointment, was now disassociated from Mr. Theodore. To their surprise, Mr. Theodore was still holding to what one might call the constitutional organisation of the Labour party, and admittedly they put their heads together to attack him.

The hearing was adjourned till 10 a.m. today.<sup>[101]</sup>

#### **29 June, 1928. Federal Seats - Alleged Corruption - Mr. Lamb's Address - Attack on Mr. Mahony.**

"Mr. Mahony stands out as a self-confessed humbug with regard to his testimonial," declared Mr. Lamb, K.C., yesterday, in his address to the Royal Commission (Judge Scholes) on alleged political corruption. "He has also made himself stupid by a fairy tale which nobody can believe."

Mr. Lamb, continuing, said that the questions which his Honor would have to decide, were:

(1) Was money received by Mr. Mahony (a) in consideration of his resignation, or (b) with a view to inducing his resignation?

(2) Was money offered to Mr. Lambert in consideration of his resignation or with a view to inducing his resignation? Was money offered to Mr. Coleman or to Mr. Anstey?

(3) By whom was money offered to Mr. Lambert, Mr. Coleman, or Mr. Anstey?

(4) By whom was money given to Mr. Mahony?

(6) In whose interest was money offered or given?

Dealing with Mr. Mahony's evidence respecting his turf winnings, Mr. Lamb said it was alleged that Mr. Mahony had backed Spearfelt for the Melbourne Cup and won a large sum of money. It was a ridiculous story. He should have called the horse "Bumps-felt" instead of "Spearfelt." (Laughter.) "Mr. Mahony," said Mr. Lamb, "is a man who has committed deliberate perjury."

Mr. Lamb said that four reasons could be adduced for Mr. Mahony's resignation, viz., ill-health, patriotism, party quarrel, or money. He declared that the suggestion that he resigned on account of ill-health was bogus.

In the course of a criticism of Mr. Theodore's bank accounts, Mr. Lamb said he had no desire to make some of this business public. Mr. Theodore had certainly been raising money, and those moneys had not gone through his bank accounts. "Why?" asked counsel.

Mr. Kinkead (who, with Mr. Windeyer, K.C., appeared for Mr. Theodore) pointed out that certain moneys realised had been paid to certain firms, and would not appear in the bank accounts. He (counsel) was prepared to put Mr. Theodore back in the witness box if necessary.

Mr. Lamb: I have no objection to him making any explanation to your Honor in regard to these matters.

Mr. Kinkead: He has done so, fully. Every transaction with Mr. Theodore, with one exception, has gone through his bank accounts. That transaction consisted of certain securities with a firm of brokers in Queensland, and has been fully explained to his Honor.

His Honor: I do not know whether they were. What I went through were the matters in his bank accounts.

#### **Further Questions For Decision.**

Referring to the Dalley by-election Mr. Lamb said it was quite clear that Mr. Theodore had been ready to conceal details of his election expenses and to make a false declaration under the Electoral Act, declaring his expenses had been "nil."

It would be for his Honor to determine the following points, said Mr. Lamb:

- (1) Did Mr. Theodore offer money or pay money?
- (2) Was it to Mr. Theodore's interest for money to be paid?
- (3) Did Mr. Theodore know who put the money up?
- (4) Did Mr. Theodore believe that Mr. Mahony was giving up his seat without reward?
- (5) Did Mr. Theodore take no interest in a man who was making a sacrifice and giving up his Parliamentary seat to him?

"Was Mr. Theodore so lost in ignorance," asked Mr. Lamb, "that he would not know the source of the money that was being put up?"

His Honor: It is not my commission to find out whether Mr. Theodore knew or not.

Mr. Lamb: Beyond all question there was money paid by Mr. Theodore to Mr. Mahony for having resigned his seat; if not for being about to resign his seat.

His Honor, referring to an interview between Mr. Windeyer and Mr. Mahony after the issue of the Commission, said that Mr. Windeyer very properly asked Mr. Mahony where he got the money, but the latter refused to say. "If Mr. Mahony's story of the source of the money were true, there was no reason why he should not have disclosed it to Mr. Windeyer," added his Honor. "That he did not give the information is strong evidence against Mr. Mahony that his story is not true. If Mr. Theodore had provided the money, Mr. Mahony would have referred Mr. Windeyer to him. That he did not do so is evidence in favour of Mr. Theodore."

In concluding his address, Mr. Lamb said: "There is no doubt that this case is one of the most important that has come before a tribunal for decision in the history of the State, because there has been a charge made of buying and selling seats in the highest Parliament in this country. The responsibility of ascertaining the truth of these charges rests with your Honor, who was chosen, I venture to say, because of your wide experience in having dealt with matters of fact in the Court over which you presided for so many years."

This closed the case, and his Honor will report his findings to the Governor-General.<sup>[102]</sup>

### *8 July, 1928. Memories Bring Sobs.*

The Curtain of Her Past Drawn Aside - Woman Tries to Protect Her Children's Names  
Mrs. Herringe and the Man

The saddest feature of a case heard at Central Court on Thursday was the bringing back to memory, by cross-examination, the names of two little children who met an untimely end, by drowning in a bath at Darlinghurst about two years ago.

Their mother, Mrs. Margaret Jean Herringe, who was prosecutrix in the case, may not have been a model of virtue, but her voice shook with sobs when the names of her lost children were mentioned. "Your Worship" she pleaded, "the children are dead and gone, and I don't see why they should be brought up in court." In spite of her protestations, the searchlight of gruelling examination was pierced into Mrs. Herringe's past, and a story was told that was amazing in its suggestion.

Richard Merton, 31, music-seller, was charged with assaulting Jean Herringe and acting wrongly. Mr. J. J. B. Kinkead instructed by R. D. Meagher, Sproule, and Co., appeared for the man.

Mrs. Herringe, a young woman of fading beauty, said she had been a salesgirl for Merton at his place in Rawson Chambers, and for three months had lived with him as husband and wife at Glebe Point. She still continued in his employment after she ceased living with him.

On June 20, stated Mrs. Herringe, she received a note from Merton, in reply to which she visited him at Rawson Chambers, when the trouble occurred. 'Mrs. Herringe,' said Mr. Kinkead, 'Will you admit you are yourself a woman of very bad character?' 'No. I will not.' The probing of her past life was then done thoroughly. Her maiden name was Newham, she said. She had had an affair with a man named Gleeson, who was the father of one of her children. She did not know Gleeson was a married man at the time. She had not been living with a returned soldier at Fitzroy, Melbourne.

She met Herringe at Cowra. The wedding did not take place on the day fixed because she was thrown out of a sulky and had to go to hospital.

She knew a man named Summers, but had not lived with him. She had lived apart from her husband several times. She first went to live with Merton at King's Cross. She had her three children there with her — Daphne, Bobbie, and Colin — two of whom were her husband's. She had never lived under the name of Chamberlain. All she had told about the incident in Rawson Chambers had happened. Merton was sent for trial.<sup>[103]</sup>

### *11 July, 1928. Personal*

Judge Coyle presided at the Wagga Court of Quarter Sessions yesterday. With His Honor on the bench was Mr. J. J. M'Grath, deputy sheriff. Mr. J. J. B. Kinkead counsel appearing at the Wagga Court of Quarter Sessions yesterday, was assistant clerk of petty sessions at Wagga in 1914. He met many old friends.<sup>[104]</sup>

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**11 July, 1928. Alleged Cattle Stealing - Three Counts - Irrigation Commission Officer Charged Public And Private Sales - Verdict To-day**

Before Judge Coyle, at the Wagga Court of Quarter Sessions yesterday, Thomas John Clark was arraigned on charges of having stolen 10 steers and 10 heifers at Leeton on October 25, 1927; having stolen 6 steers and 6 Heifers on November 22, 1927; and having stolen 21 steers and 21 heifers on December 6, 1927, all cattle the property of the Water Conservation and Irrigation Commission.

Mr. P. V. Storkey, V.C., prosecuted for the Crown, Mr. J. J. Kinkead (instructed by Messrs. R. D. Meagher, Sproule and Co., Sydney) appeared for the accused, who pleaded not guilty to all the charges.

A jury of 12 was empanelled none being challenged by the accused or ordered to stand aside by the Crown.

Mr. Storkey said that the accused was charged with having stolen steers and heifers because it was not known definitely whether the animals were steers or heifers. The accused was in the employ of the Water Conservation and Irrigation Commission as land settlement inspector, and was in charge of the cattle, the property of the commission. The first charge was in respect to 10 head of cattle, either steers or heifers. Where settlers on the irrigation area had taken up rice growing and wanted to get rid of their cattle the commission would take the cattle back and credit the settlers accounts. A man had delivered up 55 head of cattle to the commission, and they were taken by drovers to the Leeton yards and branded with the commission's brand, a crown over the letters 'LC.' After reaching the yards the accused gave instructions for 12 head of cattle to be lead out and taken to the Lake paddock which had been leased by him for the agistment of horses. Three or four months later, acting under instructions from the accused, the same drover brought back 15 head of cattle from the Lake paddock, including the 12 head he had taken there four months previously. The cattle were sold, but the cheque never reached the commission's account.

The other charges were that a man named Thompson, who was in charge of the commission's cattle in a paddock called the River paddock, which was 8 miles from the Lake, paddock, was given instructions by the accused to muster certain cattle. He first mustered 35 cows and 18 vealers, and after taking them to the Leeton yards he received instructions from the accused to cut out 18 vealers, and took them to the Lake paddock. About a fortnight later he had another muster from the commission's paddock and 30 cows and 30 vealers were taken to the Leeton yards and the 30 vealers were taken to the Lake paddock. under instructions from the accused. Both lots of cows were sold and the money placed to the commission's account. Some of the vealers taken to the accused's paddock were branded, with the commission's brand, but others were not branded. About this time the accused, directed one of the drovers to deliver six head, and on another occasion 21 head, to a man named Dempsey who took delivery, and paid for them by cheque. The first was for £25/10/, and the second was for £63. Neither of the cheques was paid to the commission's account.

John Seebles, accountant, employed by the Water Conservation and Irrigation Commission, said that he was acting manager for the commission at Leeton, from June, 1926, until some time in 1927. Clark was a land settlement inspector for the commission. He had charge of the whole of the assistance to settlers and the supervision of the assets gained by this assistance, the maintenance of the commission's dry area, the valuation of improvements, and the control, of the land settlement work generally. Before a certain date in December, 1927 Clark had charge of the disposal of cattle, subject to his approval as far as price was concerned. Clark applied for permission to dispose of cattle on behalf of the commission by private treaty. Before this time Clark did not have any authority to sell cattle. Under the regulations no officer of the commission could engage in a private business. Clark

was supplied with one of the commission's receipt books, and he issued a receipt for all money, received on behalf of the commission, and this was handed to the commission's paymaster.

Cross-examined by Mr. Kinkead, witness said that he had had a high opinion of Clark. He had first been a herdsman, and had risen to a responsible position. He denied that Clark had been allowed to sell the commission's cattle without his approval. He might have sold one or two lots. Some cattle were sold to a man named Hopley, but he did not remember Clark saying that he had lent some cows and calves to Hopley, and as they were returned without the calves he had 'cut Hopley out.' Every sale of cattle was accompanied by an invoice, which was returned to the commission's office. Clark always required permission to sell cattle to butchers. He had given Clark written permission to sell certain cattle. He had given Clark general instructions to sell all the bulls owned by the commission. He would not admit that Clark had been selling the commission's cattle for years and that no exception had been taken to the way he was dealing with the stock. Most of the officers had their own farms, mostly fruit farms and sold their produce in the usual way. He denied that the approval given to Clark in respect to the sale of cattle was merely to fix the minimum price at which the cattle were to be sold. Clark's duties would keep him in his own office a great deal of the time. When cattle were returned a record was made in the Soldier Settlers Register. This book did not contain entries respecting stock which came from Griffith. All the stock from Griffith were entered up there, and Clark would certify to the invoice of the cattle received at Yanco. All the Griffith stock were accounted for in the register.

Harold William Lawson, land settlement inspector employed by the commission, said that he took over 21 head of cows, 21 head of ewes 10 poddy calves and one bull from a settler named Dance at Griffith. There may have been some young bulls among them. He took record of the brands of the cows only and that record was taken to the Griffith office.

Cross-examined by Mr Kinkead, witness said that he had no reason for saying that there might have been some young bulls among the cattle. He was prepared to say there were some young bulls among them.

Frederick Stewart Johnston, herdsman employed by the commission at Griffith said that in May, 1927, he went to Dance's paddock with Lawson to take over 55 head of cattle, comprising 21 cows, 21 ewes, 10 poddy calves and one bull. He drove the cattle towards Leeton, and handed them over to a man named Mooney, who took them on towards Leeton.

Cross-examined by Mr Kinkead, witness said that he did not check the cattle or the brands when he handed them over to Mooney. The cattle were similar to other cattle throughout the irrigation area. There was only one bull among the cattle.

Michael Mooney, herdsman, said that he took over a certain number of cattle in May from Johnston. He was accompanied by a man named Malloy. There were 55 head of cattle. Clark told him to take them to the Leeton saleyards. They were put in the yards next morning and then put on the River paddock for agistment. When he branded the cattle he took a record and this was entered in the cattle register. Referring to the entry in the book, he said that he branded 31 yearlings, made up of 18 cows, 11 bulls, and two steers. The older cattle consisted of 21 cows and one bull. When he was branding the stock Clark told him to take 12 head to the Lake paddock. The remainder of the cattle were taken to the River paddock. About four months later Clark told him to take the stock from the Lake paddock to the pound yard, and witness and Molloy helped Clark to put his own brand on them. There were 15 head in all, including the 12 head he had taken to the yards four months before.



Clark's brand consisted of the letters 'TC' and a half circle. After the 15 head had been branded they were taken, back to the Lake paddock.

Cross-examined by Mr. Kinkead, witness said that he relied on the color of the stock to identify them as those he had taken to the paddock earlier. Of the stock he brought from Griffith, 31 were unbranded. The 12 head taken to the Lake paddock consisted of nine heifers, two bulls, and a steer. The saleyards were in a very dilapidated condition and he could not swear that the cattle he took over in the morning were the same that he had placed in the yards the night before.

Leo Molloy, herdsman, corroborated Mooney's evidence. On November 8, 1927, he received certain instructions from Clark. He was told to go to the River paddock. Mooney and Thompson and he mustered the stock. Clark told him to take some of the stock out of the muster to the Lake Paddock. They mustered 25 cows and 18 poddies, the latter being taken to the Lake paddock. Some were not branded. On November 16 Clark told witness to go to the River paddock with another man named Lonnie. He went to the river paddock and 30 poddies were taken from the muster to the Leeton saleyards. The poddies were later placed in the Lake paddock. Most of them, were branded with the commission's brand. About a fortnight later he delivered six head of young cattle from the Lake paddock to a man named Dempsey. Shortly after that date he took 18 head of young cattle and handed them over. Some were branded and some were not. At the beginning of the present year he met Clark at Narandera and went to see Thompson and asked him for his transfer books, but Thompson said that the commission's officers had taken them. In the course of his duties he had to see the Lake paddock at times. He would not say that all the cattle in the paddock belonged to the commission.

Cross-examined by Mr. Kinkead, Molloy said that he took the first 12 cattle to the Lake paddock and he was present when the 15 head were brought to be branded. He thought that probably three or four of the bulls were treated. He based his identification of the cattle on their color, and admitted that the color was common on the area. He would say that young cattle could have got out of the Leeton saleyards.

Colin Thomas Eurell, drover, said that he bought 10 head of stock from the Lake paddock at Leeton for a man named Lonnie. They were branded TC and a half circle. He inspected the stock, and later handed Lonnie's cheque for the cattle to Clark. Six head of the cattle were killed at Yanco and four were killed at Griffith. In November, 1927, he was with Clark and Molloy in the River paddock. Clark asked him to cut out 18 vealers and take them to the commission's office, where Molloy took possession of them. Again in November he went to the River paddock and took 18 cows and 30 vealers to the saleyards. The cows went to Lonnie's place.

Cross-examined by Mr. Kinkead, witness said that, he had taken cattle from Clark's paddock to the River paddock. He had made four trips and had taken about 40 head of cattle to the paddock.

Reginald George Ley, accountant at the Leeton branch of the Commercial Bank of Sydney, produced a deposit slip for £50 paid in by Clark to his own credit.

Augustus Lonnie, cattle dealer, of Leeton, said that he bought cattle from Clark, and the cheque given to Eurell for Clark was for cattle he had bought. He thought that the cattle were branded TC. He had often bought cattle from Clark. When he bought the commission's cattle he made the cheque payable to the commission and when he bought Clark's cattle he made the cheque payable to Clark.

Joseph Thompson, herdsman, said that he had been, in charge of the commission's River paddock for eight years. He received his instructions about the paddock from Clark who told him that anyone

coming for cattle must sign a receipt for them. On November 7 Clark told him to be sure that for any cattle taken by Lonnie or Eurell he got a transfer signed. The next day he saw Clark, Eurell and Lonnie on the River paddock. They cut out 25 cows, nine steers and nine heifers. The 25 cows were branded with a crown and IC and numbered. Some of the younger cattle, were branded with a crown and IC, while others were not branded. On November 17, 18 cows, nine steers, and 21 heifers were taken out by Clark, Lonnie, Dempsey, Molloy, and Eurell. They were signed for by Eurell. To his knowledge Clark did not have any cattle in the River paddock, but he owned some horses. Witness saw Clark after he had returned from holidays. Clark said there was a bit of a mess up about the cattle and asked for his transfer book. Witness replied that two officers of the commission had taken the books away.

Cross-examined by Mr. Kinhead. Thompson said that Clark had told him to get a receipt for all the commission's stock that went off the paddock. He had many duties to perform and was away from the paddock for a great deal of his time. Stock were often put into and taken from the paddock without his knowledge. There were about 2000 acres of gum saplings, and it was quite possible that there were stock there to-day that he knew nothing about. At times he did not know, what stock were in the paddock. As remembered on two occasions settlers telling him that they had removed stock from the paddock. The fences were not stock proof. He did not know how many stock he should have in the paddock: He remembered Dempsey buying some stock from the paddock and later recognised six head of cattle back in the paddock as having been among the stock sold to Dempsey. He remembered mustering all the young stock he could find in the paddock. A lot of the calves in the paddock were not on commission's cows, and may not have belonged to the commission. He mustered recently and found that there were 143 cows and 34 young stock. According to the books he was five cows short. He admitted having found 17 head of cattle among the gum suckers.

John Albert Dempsey, dealer, of Leeton, said that he had known Clark for 17 years and had worked for the commission for 14 years. He had had several cattle deals with Clark. He paid Clark by cheque (produced) for £25/10/ for six head of cattle. Another cheque paid by him to Clark for 21 yearlings for £63 was produced. The cattle were bought from the Lake paddock.

Cross-examined by Mr. Kinhead, witness said that he went through the war with Clark. He bore an excellent character. When he was dealing with Clark for his own cattle he made the cheque payable to Clark but when they were the commission's cattle, he made the cheque payable to the commission. He agreed that nearly all the cattle in the Irrigation Area were branded with a crown and IC, but all did not belong to the commission. Many had been returned to the commission and sold again to the public.

Robert James Gordon, manager of the Government Savings Bank, Leeton said that the cheques for £25/10/ and £63 were passed through his bank.

Frank Septimus Digby, accountant for the commission, said that the cheques for £50, £25/10/ and £63 were never paid into the commission's account.

Cross-examined by Mr. Kinhead, witness said that stock on hand on June 30, 1927, according to the commission's cattle account, were 46 cows, 81 yearlings, and 6 bulls. At June 30, 1926, the stock totalled one cow and four bulls. The stock received between June 1926, and June 1927, totalled 119 and the cattle sold totalled 43, and this left a balance on hand of 76, whereas the balance shown on hand was 83. The increase of seven was not due to natural causes. The number received up to June

30, 1928, totalled 821, and the number on hand was 802, 19 having died. This completed the evidence for the prosecution.

Mr. Kinkead submitted that on the evidence there was no case to answer. In regard to the first charge there was no evidence that the cattle referred to were the property of the commission. In regard to the second and third counts, the evidence was most unsatisfactory.

Mr. Storkey submitted that there was evidence that the cattle were the property of the commission. Lawson had taken charge of the cattle for the commission from Dance.

Judge Coyle said that there was a case to answer on each of the three counts and he would let it go to the jury.

#### **Statement From The Dock**

Clark made a statement from the dock. He said that he had been in the employ of the commission for 16 years, and during that period he had various duties. He started as a herdsman and gradually rose step by step until he became sitting head of the land settlement branch. Previously he had to purchase all the horses and cattle required by the soldier settlers. Later, when he was appointed land settlement inspector, he continued these duties. He had the supervision of all soldier settlers' farms, together with the whole of the commission's dry areas. Supervision of these areas included the control of noxious weeds, fruit pests, maintenance of improvements, and, in connection with the farms he controlled, the expenditure by the commission on improvements, horses, implements, and fencing. The average expenditure on these lands, which was controlled by him was £25,000. In connection with the rice farms, he purchased about 1,000,000 lbs of seed. He inspected rice lands held by the settlers, and if they were satisfactory he would advance sufficient money to purchase horses or cattle and the responsibility of selecting the animals was thrown on him. He had a free choice of where the animals were to come from, and he had to inspect them as to soundness and suitability of type. He had purchased during his term approximately 1000 head of stock. On numerous occasions vendors went to his senior officers' and asked them to veto the prices of stock set by him, but they had never done so. He also acted as stockman and impounded all straying stock, and was Crown improvements valuer. During the summer months he was in charge of all work in connection with the prevention and fighting of bush fires. After 16 years' service with the commission he was appointed justice of the peace on its nomination. The commission had leased him a paddock, and although it may have been a breach of its regulations for a servant to deal privately; the fact remained that the commission had purchased stock from him in his own name. When his own paddock was bare of feed he had sent stock to the river country. He had placed them on the river country unknown to the man in charge of the paddock. Altogether he had sent about 40 head of stock to the river country. Some of these had been accidentally branded with the IC brand by Thompson, who was in charge of that country. Some time ago Lonnie spoke to him in regard to the purchase of some stock from the Lake paddock. Witness told him that they had been transferred to the River paddock. Shortly afterwards a mob of cattle was cut over from Griffith. He intended to sell some of these cattle to Lonnie on behalf of the commission, but finding that his own stock were the same, size and quality as the Griffith cattle he left his own cattle on the river country and sold the Griffith cattle in his own name, making a fair exchange. In regard to the two mobs that were taken from the River paddock, quite a number had been returned. Some of them were his own stock and were on the river country unbranded. He had not stolen a single head of stock. He had broken regulations about private dealing, but everything had been done openly and above board. When the cattle were taken from the river they were taken right to the commission's office, and then to the Lake paddock, which was only half a mile away. There was a public recreation ground on one side of

the paddock and a public road on the other side. In regard to the sale of the commission's stock privately, any he sold was in the name of the commission and not in his own name, and therefore the money was made payable to the commission and an official receipt was issued. When he sold any of his own stock he gave the purchaser distinctly to understand that they were his own stock and the cheques were made payable to him. It had been submitted that he had had no right to sell the commission's stock by private treaty. If this were so why did the commission allow it? Why did the Government auditors pass it, if it had not been correct? In November last he had a large number of offers, for cattle at various prices. Some of the buyers got antagonistic towards him because he would not sell at a lower price. It was then that he had made up the agreement about private treaty. The fact that the commission had a surplus of stock now should be evidence in itself that no stock had been stolen.

Judge Coyle adjourned the Court at 5 p.m. until 10 o'clock this morning, and the jurymen were allowed to return to their homes.<sup>[105]</sup>

### **12 July, 1928. Cattle Stealing Charges - Clark Not Guilty - A Further Charge**

The hearing of charges against Thomas John Clark, which was begun on Tuesday, was resumed yesterday at the Wagga Court of Quarter Sessions before Judge Coyle and a jury. Clark was charged on three counts of having stolen, on October 25, 1927, 10 steers and 10 heifers; on November 22, 6 steers and 6 heifers; and on December 6, 21 heifers and 21 steers, all the property of the Water Conservation and Irrigation Commission of New South Wales at Leeton.

Mr. P. V. Storkey, V.C., prosecuted for the Crown, and Mr. J. J. Kinkead (instructed by Messrs. R.D. Meagher, Sproule, and Co., Sydney), appeared for the accused, who had pleaded not guilty to all the charges.

John Ward, manager of the Leeton Irrigation Area, said that he knew Clark who bore a very high character. He was a married man with a family. Mr. Kinkead tendered the commission's cattle register, the commission's cattle account, and the official receipt book as it related to the sale of cattle by Clark to butchers on behalf of the commission.

John Seabrook, accountant, employed by the commission, recalled by Mr. Storkey, said that he heard the accused make a statement to the effect that the Commission had bought cattle from him, in his own name. He denied that this was so.

Cross-examined by Mr. Kinkead, witness said that there was a commission cattle register in respect to soldier settlers. He denied that a head of cattle appeared in that register as having been sold on behalf of Clark.

Mr. Kinkead said that it was the soldier settlers register that he wanted to have produced, but a mistake had been made and the wrong book produced.

At this stage Mr. Kinkead objected to John Albert Dempsey, dealer, of Leeton, being recalled to give certain evidence. After the jury had retired Mr. Kinkead argued the legal aspect of the matter, after which his objection was upheld and the jury returned.

Addressing the jury, Mr. Kinkead said that the question it had to decide was whether or not certain calves had been stolen. It must not take into consideration the fact that Clark may have been guilty of a breach of the commission's regulations in regard to trading privately in cattle. The commission had leased him a paddock at £12/10/. It did not lease him the paddock to agist its cattle. Other officers of the commission had their own farms and sold the produce from them. Clark did not have fruit, he had stock. Certain witnesses had been called, in the lower court who could have given

valuable evidence. One Witness had not been called and that was Dance. Why was he not called? Seabrook had given evidence that Clark had not been given permission to sell the cattle on behalf of the commission. Other witnesses called by the Crown gave evidence of having purchased stock from time to time from the commission through Clark. Referring to the stock in the River paddock, the number of stock which had been put in the paddock was checked and later, when a muster was made there was an increase. It was not a natural increase, and this in itself was proof that none of the commission's cattle was missing. Thompson was the only man who had given definite evidence of identification of the cattle. Even he could not say whether they were the commission's cattle or not. He admitted that stock had been placed in the paddock and taken from it without his knowledge. In reference to the removal of the stock from the River paddock Thompson had said that Clark told him that whenever stock were taken from the River paddock to be sure to get a receipt for them. If he intended stealing the cattle he would not have told Thompson to get a receipt. There was a section of the Crimes Act which said that a man's character must be taken into consideration. He had only asked the commission's own officers in respect to Clark's character. They had given him an excellent character and it was on their own recommendation that he had been a Justice of the peace.

Mr. Storkey said that every man was a man of good, character up to the time of his first offence. The reason he did not call Dance was that he did not have Dance's depositions before him and considered that he could prove everything without his evidence. On question of identification, Mr Storkey said that it had been shown that the cattle had been taken over by the commission's officers and put in the Lake Paddock. The cattle were entered in the commission's books because they were entered at the Griffith end of the area, and Clark did not have any control over these books. Thompson had been in charge of the commission's cattle for eight years and he could tell the commission's cattle without having to examine the individual numbers and brands. On his own admission Clark had broken the commission's regulation by selling stock privately. He had also put his own stock into the commission's River paddock unknown to the man in charge of the paddock, the eat out the commission's grass. This was dishonest. Again, he had sold some of the commission's Griffith stock as his own and had placed some of his own stock back, saying that it was a fair exchange. If Clark had sold cattle on his own behalf, then the settlers should have been called to prove that they were his own cattle and the man who had sold the cattle to Clark should have been called.

Summing up, Judge Coyle told the jury that he was satisfied that the Griffith cattle were the property of the Commission. It was for the jury to decide whether or not Clark's story about the exchange was to be believed. The fact that there might have been a breach of the regulations did not make a man a criminal. On the other counts Judge Coyle said that the jury would have to decide whether Clark had placed any of his stock in the River paddock, or whether the stock in that paddock belonged to the Commission. Clark had stated that he had placed 40 head of his own cattle in the River paddock and that the fact that some of the cattle had been marked with the Commission's brand was an accident brought about by Thompson. It was for the jury to decide whether this was reasonable or not.

After a retirement of about 20 minutes, the jury returned a verdict of not guilty on each of the three charges and Clark was acquitted.

Clark was charged with having, at Leeton, on December 24, 1927 stolen 20 steers and 20 heifers, the property of the Water Conservation and Irrigation Commission. He pleaded not guilty. Clark was remanded on his own recognisance of £100 to appear at the next sitting of the Court of Quarter Sessions, to be held at Wagga or at such other Court as the Attorney General may decide.<sup>[106]</sup>

**10 July, 1928. S. Y. Maling - Dr. Evatt for Defence**

Messrs. R. D. Meagher, Sproule and Co. solicitors, to-day retained Dr. H. V. Evatt and Mr. J. B. Kinkead to appear for Silas Young Maling, formerly deputy manager of the Electricity Department, City Council, at the Central Police Court on Monday next, when the charge against him under the Secret Commissions Prohibition Act will be proceeded with before Mr. Gates, C.S.M.<sup>[107]</sup>

**23 July, 1928. Graft Charges<sup>[108]</sup>**



**AT GRAFT CHARGES HEARING**—Some of the City Council records, used at the hearing of the charges against Silas Y. Maling to-day, being carried into court. From left to right: The Town Clerk, Mr. Layton, Mr. Maling, and his representatives, Dr. Evatt and Mr. Kinkead, on their way to the Central Court.

**24 July, 1928.<sup>[109]</sup>**

**PROSECUTIONS FOR ALLEGED GRAFT IN CONNECTION WITH CITY COUNCIL CONTRACTS.**



**SOME OF THE PERSONALITIES AT THE CENTRAL POLICE COURT YESTERDAY.**

From left to right: Dr. Evatt, and Mr. Kinkead (for Silas Y. Maling), Mr. W. G. Layton (Town Clerk), Mr. R. Hendy (deputy Town Clerk), Mr. Silas Y. Maling, Mr. E. Morris (Crown Law Department), and Mr. A. J. Arnot (attorney and general manager of Babcock and Wilcox, Ltd.), (at rear); Mr. Shortland (who appeared with Mr. Shand, K.C., to prosecute), Mr. Mack, K.C. (for Mr. A. J. Arnot).



24 July, 1928.<sup>[110]</sup>

## CIVIC CORRUPTION CHARGE DRAWS CROWDS TO COURT



S. Y. MALING, with Mr. G. Hall, manager for Messrs. R. D. Meagher, Sproule, and Co.

THE TOWN CLERK, with his deputy (Mr. [unclear]) on his left

FURTHER PROBE OF CIVIC ADMINISTRATION was begun yesterday with the hearing of a charge of corruptly receiving £10,000 against Silas Y. Maling, formerly acting general manager of the Electricity Department. The lower left picture shows Dr. [unclear] and Mr. [unclear] (for Maling). Centre: Mr. Geo. Norton, municipal clerk, laden with civic records. Right: Mr. A. J. Arnot takes cover behind the won in front.

### 24 July, 1928. Civic Graft Charges – S.Y. Maling in Court - Arnot's Evidence.

The Central Police Court was crowded yesterday when the hearing was commenced before Mr. Gates. C.S.M., of the prosecution of Silas Young Maling, formerly deputy general manager of the City Council Electricity Department, arising out of the Royal Commission on graft allegations respecting City Council contracts.

Maling was charged with having at Sydney between September 6, 1926, and February 6, 1927, then being an agent of the City Council of Sydney, corruptly received from Babcock and Wilcox, Ltd., a



valuable consideration, to wit, the sum of £10,600, as a reward for having recommended the acceptance by the City Council of a certain offer made by Babcock and Wilcox. Ltd.. in connection with steam-raising plant for the Bunnerong power station.

As there was a full bar table, Dr. Evatt applied for additional accommodation for counsel not appearing in the case, but who were watching the interests of other persons affected by the prosecution.



Figure 12 - Silas Young Maling - 1928

After argument Mr. Gates, C.S.M., informed Mr. Mack, K.C., who said he was watching the interests of Mr. A. J. Arnot, that he could not appear in the case against S. Y. Malng, Mr. Mack said he would probably make application at a later stage.

Dr. Evatt made an application that the case against Mr Maling should not be heard before that against Mr. Arnot. He said it was apparent from Mr. Mack's statement that he was going to ask for a certificate that Mr Arnot in his evidence had told the truth.

Mr. Gates, C.S.M., said that on the last Court day it was decided that Malings' case should be taken first.

Mr. Shand said he had advised the course of proceeding that Maling's case should be taken first.

"Why should Arnot be given this way of escape by counsel for the prosecution?" asked Dr. Evatt.

Mr Shand: Because counsel for the prosecution thinks this is the best way of getting Justice.

Dr Evatt said he desired formally to object to his Worship's jurisdiction to try the charge.

Mr Shand K.C. in outlining the case for the Crown said the City Council knew nothing of the alleged payment of money nor was it authorised by the council in any shape or form.

### **The Evidence.**

William G. Layton, Town Clerk of Sydney, gave final evidence that no permission had been given to Maling or any alderman to receive moneys in respect of the Bunnerong power-house contract. He said the electricity committee of the City Council decided unanimously to accept the tender of Babcock and Wilcox Ltd. There were 11 ex-aldermen present at the meeting comprising ex-Alderman Mostyn (who presided), English, Fitzgerald, Glasgow, Green, Holdsworth, Shannon and Laws representing the Labour party, and ex-Aldeimen Jackson, Nicholls, and Milner Stephen, who were opposed to the administration of the time

Two cable messages received by the witness from the general manager of the Electricity Department (Mr Forbes Mackay) while in England in relation to tenders for the Bunnerong power station were tendered by Mr Shand. They were endorsed by Mr Maling, and read: -

"London, 10<sup>th</sup> April, 1926. Yours, seven: International Combustion, on cable figures, is best commercial proposition. Firm interviewed. Can increase space between fronts of boilers 10ft, and reduce space between backs correspondingly. Clinker grinder desirable, permitting higher thermal efficiency. If International tender accepted would propose negotiate for substitution Dewrance mountings and valves for hopkinson, with reduction in price, and addition Murray back walls, with addition to price. I have no specific objection to Babcocks tender, except less commercially advantageous. Probably Babcock's better able to complete by required date. Other tenders inferior."

"London, April 13, 1926. Yours, 13<sup>th</sup>, specification 964. Think tenderers' efficiency guarantees must be accepted unless obviously impossible. On cable figures Internation Combustion tender shows commercial advantage over Babcock. Wilcox: therefore, I prefer it. Maling in best position judge relative values, having all details before him."

George Marshall Noake committee clerk of the City Council since 1920 produced the minutes of the meeting of the Electricity Committee on April 22, 1926 at which the acceptance of Babcock and Wilcox tender was recommended.

Roy Hendy, Deputy Town Clerk of Sydney since August, 1924, gave evidence that he was present at a council meeting on April 27, 1926. When the report of the electric supply committee, recommending the acceptance of Babcock and Wilcox, Ltd., tender for the construction of Bunnerong power station was agreed to on the voices.

Dr. Evatt: You heard charges made in council of graft and corruption against aldermen?

Witness: At many meetings imputations were made.

**A.J. Arnot in Box**

Arthur James Arnot, attorney and general manager for Babcock and Wilcox, Ltd., was next called. "I have been instructed to refuse to answer anything," said witness.

Mr. Mack, K.C., sought leave to make reference to the protection afforded a witness by the Act.

Mr. Shand: The witness is not allowed to have counsel present to decide for him whether or not he should answer questions. It is introducing a practice which is a novelty and is unwarranted.

Mr. Mack: The Act is a novelty. Witness asks to be excused on the ground that the answers may tend to incriminate him, and your Worship is requested to issue a certificate.

Dr. Evatt: I thought it was a sham fight. It is a sham.

Mr. Shand: I object very strongly to my friend making a statement of that kind.

Dr. Evatt: I am making no reflection on you.

Continuing, Dr. Evatt said he wished to be heard on the question whether the Court had power to order the witness to answer questions which might tend to incriminate him.

Mr. Shand objected, and said that Dr. Evatt had no right to be heard on the question.

Mr. Gates, C.S.M. (to Dr. Evatt): I don't see that it has anything to do with you. How do you come to appear to argue whether I should excuse him or not?

Dr. Evatt: I presume your Worship would not decide off-hand without hearing some argument. If evidence is given by the witness that he has been a party to an agreement to bribe aldermen of the City Council, that is a common law conspiracy, and his answers could be used against him in such proceeding, and would expose him to prosecution for common law conspiracy. It is a common law conspiracy for two persons to agree to carry out a purpose by unlawful means, and the unlawful means is the breach of the Secret Commissions Act. I submit your Worship will not compel him to answer.

**Must Answer Questions**

When Mr. Arnot again took the witness-box Mr. Shand asked him whether his firm carried out large operations in Sydney.

Dr. Evatt objected.

Mr. Mack said Mr. Gates had not directed the witness to answer.

Mr. Gates: I am not going to excuse him from answering any questions.

In reply to Mr. Shand, witness said that Babcock and Wilcox's tender for the steam-raising plant for Bunnerong was accepted. He saw defendant on several occasions.

Dr. Evatt objected to the witness stating the conversation that took place between himself and the defendant. He said that matters could not be gone into which constituted an offence two years prior to the present proceedings.

Mr. Gates said he would have to hear what the evidence was.

Mr. Shand said he would give evidence which would prove another offence under the Act. Defendant was not charged with that offence because it occurred two years before the present proceedings. He was giving that offence because it was a continuous transaction, and to show the nature of the receipt of the money within the statutory period.

Witness detailed the conversation he had with defendant, when the latter said: "The gang behind him wanted £5000, and he wanted £2500 for himself before Babcock and Wilcox could get the contract." About Sunday April 4, 1926, in response to a telephone call, he visited Maling's flat in Billyard-avenue, Elizabeth Bay. Maling told him that he was sorry to inform him that the International Combustion Company, which was offering the Thompson boilers made in England, had put up £15,000 to get the contract, and that the money was in the hands of a third party but the gang behind him would agree to his (witness's) company having the contract if he would agree to pay £10,000. Witness stated that they did not have a margin of £10,000. The price was bedrock. They had works here; they were the lowest tenderer, and were entitled to get the contract without any blackmail. Maling, said witness, replied that he was very sorry. He was satisfied that the Babcock and Wilcox tender was the best and the cheapest, but his instructions were that he was to get a promise of £10,000. Witness then promised to recommend the payment of that amount to his directors.

Mr. Shand: Did Maling say anything about the amount he was to get at that Interview?

Witness: My recollection is that he was going to pass over £7500 or £8000, and was going to keep the balance.

The hearing was adjourned until this morning.

Mr. Shand, K.C., and Mr. Shortland (instructed by the Crown Solicitor) appeared for the Crown; Dr. Evatt and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for the defendant.<sup>[111]</sup>

#### **26 July, 1928. Graft Charges – Protracted Hearing – Solicitor from England**

Before the hearing was resumed at the Central Police Court yesterday of the charge of alleged graft against Silas Young Maling, formerly deputy general manager of the City Council electricity department, three other prosecutions arising out of the recent Royal Commission on City Council contracts were mentioned.

The hearing of the charge against Frank Green, ex-alderman of the City Council, of having corruptly received a consideration from Babcock and Wilcox, Ltd., of £7600, was adjourned until Wednesday.

The hearing of the charge against Arthur James Arnot, of having unlawfully and knowingly been privy to certain acts in contravention of the Secret Commissions Prohibition Act, and the charge against Babcock and Wilcox, Ltd., of having given corruptly to Silas Young Maling £10,600, were adjourned until Monday.

Mr. Mitchell, K.C., said it might be necessary for him to ask for a further adjournment in the case of Babcock and Wilcox, Ltd. In the information the company was described as a foreign company. The English board of management had had no opportunity of giving their instructions to counsel in Australia, and they were anxious to send out their own London solicitor with materials, so that their case might be put properly before the Court. Their case would differ materially from that of Mr. Arnot, who would be the chief witness against them. The company's solicitor left England on July 19, and was expected to arrive in Sydney on August 24.

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**Maling Prosecution.**

The case against Maling was then proceeded with.

Detective-Inspector Mackay, further cross-examined by Dr. Evatt, said he did not tell defendant during the Royal Commission that the Beecher-Pittock stamp duty matter had been fixed up, that there would be no prosecution of either him or Mrs. Pittock, or that he would do his best to prevent a prosecution.

Arthur Herbert Albert, diver and contractor, was the next witness. He testified that he met Maling, whom he had known for about 10 years, in July, 1926, when defendant asked him if he would get out some money from England through his (witness's) bank account. Witness agreed to do so. A few days later he had to go to Melbourne, and informed defendant, who asked him if he knew anybody else who could get the money through his account. Witness told Maling that a friend, Frank Buckle, of Pyrmont, who had an account in the E.S. and A. Bank, would get out the money.

Dr. Evatt objected to Mr. Shand's leading the witness. . "I have never heard such ridiculous nonsense in my life," responded Mr. Shand.

At that moment the lights in the Court failed. "The objection did that," remarked Mr. Shand, amid laughter. Immediately afterwards loud explosions resounded through the Court-room; caused by the excavating for the under-ground city railway. The magistrate adjourned the proceedings pending the restoration of the lights.

**Payment of Money.**

When the hearing had been resumed, witness said that after he communicated with Mr. Buckle he told defendant that Mr. Buckle would allow the money to come out through his account. Defendant asked if Mr. Buckle could be trusted, and witness replied, "Yes, the same as you are trusting me." Later he telephoned defendant and told him that the money had arrived. Witness also informed defendant that he was going to Melbourne on the following Saturday, and defendant asked him if he could let defendant have £600 before he went away. He told defendant he could have £500 on the Saturday. Witness received £470 from the Bank of New South Wales, Pitt-street.

Dr. Evatt objected. He said that at an early stage of the proceedings he took exception to a large number of offences against the Act being heard together. The magistrate might not see at that stage the importance of the objection, but it was apparent that it was proposed to adduce evidence of a large number of transactions between the witness Albert and the defendant, each of which tended to prove an offence against the Act. He submitted that under Section 57 of the Justices Act that could not be done.

Mr. Shand argued that the agreement was to receive from Babcock and Wilcox £10,600, although it might have been carried out by a series of acts.

Mr. Gates, C.S.M.: That being so I don't think I could ask them to elect to prove one amount.

Continuing witness said he put £30 to the £470, and handed it to defendant. Before that he had asked defendant if he would take the whole lot at once, but Maling refused, and said he wanted it in amounts periodically.

Witness was referring to letters he had written to defendant from Melbourne when Dr. Evatt said he objected to any evidence of letters having been sent from Melbourne.

Mr. Shand: Do you admit you were served with a notice to produce all documents?

Dr. Evatt: I make no admissions.

Arthur Simpson, officer in the Crown Solicitor's Department, gave evidence that he served a notice on the attorneys for Maling on July 17 to produce documents.

Witness Albert, resuming, said that he wrote a letter from Melbourne to Maling stating that there was £1500 in the bank, which Miss Gordon would give him. Maling subsequently wrote to witness stating that he had received the £1500 from Miss Gordon. On January 26, 1927, accompanied by Miss Gordon, he visited defendant's flat, and handed over £1500 to defendant. He gave him £1000 on the following day, £3000 on February 3, and £600 on February 4.

Mr. Shand: Did Maling tell you at any time what was this money? Witness: No, never.

When did you first hear of the amount? When Buckle told me. It was. £10,600.

Is it a fact that you kept any of that money yourself? No, certainly not.

Did you ever arrange with Maling that any sum at all was to be paid to you for your trouble? No. He was a friend of mine, and I did not want to be paid for anything I did for him.

On Friendly Terms.

Witness said that he saw defendant up to the time he went to New Zealand, and was on friendly terms with him. Defendant told him he did not intend coming back again if he could get away from New Zealand. If he could get a passport he would go altogether. He said he was taking his motor car and Mrs. Ptttock with him. Witness said to defendant: "What about Miss Gordon and myself, having had all this money in our accounts?" defendant replied in a jocular way, "Oh, I did not receive any money from you." He then walked away.

In reply to Dr. Evatt, witness said the whole of his transactions with defendant were perfectly innocent. He was only obliging Maling.

He received no receipt for any of the payments to defendant.

Dr. Evatt: You are a money-lender as well as a diver?

Witness: Yes, but not much good. Only by accident I became a money-lender.

You are still a registered money-lender? Yes; but I don't lend money. ,

Witness said, he had had a safe deposit box for about seven years.

Dr. Evatt: What was the largest amount you had in it at one time?

Witness started to count up some figures

Dr. Evatt: Don't think aloud. Let me know the amount.

Witness (hotly): Well, you wait my time. I am going to do a bit of calculating. (After a pause.) The largest amount was about £1600 or £1700.

Dr. Evatt.: You had some trouble with the Taxation Department over a sum of money you handled?

Witness: Yes; but it was not over that sum.

Was not an assessment made on you for Income tax in respect of some portion of this money? No.

Didn't you receive a default assessment for a large sum of money? Yes; spread over four years.

Was It not for £2000 No. Nothing like it. Did not the taxation authorities Issue a writ against you? Yes, for £600.

For four years you did not pay any income tax? Yes, I did.

But not sufficient? Yes; and there are a lot more like me. (Laughter.)

Witness added that, under protest, he paid £1000 respecting State and Federal Income tax, the payments going back over a period of four years.

The hearing was adjourned until to-day.

Mr. Shand, K.C., and Mr. Shortland (instructed by the Crown Solicitor) appeared for the Crown; Dr. Evatt and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.). for Silas Young Maling; Mr. Mack, K.C., with Mr. Hutchinson (instructed by Messrs. Creagh and Creagh), for Mr. A. J. Arnot; Mr. Mitchell, K.C., with Mr. Turner, (instructed by Messrs. Creagh and Creagh), for Babcock, Wilcox, Ltd.<sup>[112]</sup>

### **29 July, 1928. Maling Faces Graft Charge – Civic Dir Heap Raked**

Diver Albert Tells His Story of Huge Amount Passed On – Accused Man Listens Calmly.

Throughout the past week the Maling 'graft' charges have occupied the attention of Mr. Gates, C.S.M., sitting in the summons division of the Central Police Court. During the six hours the court sits daily, the portion allotted to the public has been packed closely by a crowd which always includes numbers of business men. This crowd is unusually well-dressed — quite different from that which ordinarily fills the public gallery in the Summons Court.

The proceedings have been solemnly decorous. The hearing of tie charges against Maling will very likely last the greater part of next week, and after that there are charges against the tendering firm, against ex-Aid. Frank Green, and against Arnot (the Sydney representative of Babcock, Wilcox Ltd. to be heard. Babcock, Wilcox Ltd. are sending out from England their own solicitor to undertake the firm's defence in Sydney. He is billed to arrive here on August 24, 1928. The count faced by Silas Maling is that he, at Sydney, between September 5, 1926, and February 5, 1927, then being an agent of the City Council of Sydney, corruptly received from Babcock, Wilcox Ltd. a valuable consideration, to wit, the sum of £10,600, as a reward for having recommended the acceptance by the City Council of a certain offer made by Babcock, Wilcox Ltd. in connection with steam-raising plant for the Bunnerong power station. Monday, the first day of the hearing, was a day of formal 'objections' by Dr. H. V. Evatt, with Mr. J. B. Kinkead (instructed by R. D. Meagher, Sproule and Company), for Maling. From the commencement at 10 a.m. until 4 p.m. the doctor oozed objections. He objected to this and objected to that, while Mr. Shand, K.C., with Mr. Shortland, for the prosecution, argued for this and argued for that in reply. For Arnot appeared Mr. Mack, K.C., and for Babcock Wilcox Ltd., Mr. E. M. Mitchell, K.C. Silas Young Maling sat behind his counsel throughout the day with an air of being interested, yet not personally concerned. He was immaculately garbed, as usual, in a well-cut sac suit of pale violet shade, and his aquiline nose, deep-set eyes, black hair, small mouth and jutting chin recalled pictures of Napoleon. Arthur James Arnot, engineer, entered the box. In reply to Mr. Shand, Arnot told the Court that he first met Maling soon after the latter's appointment— about twelve years ago.





**ON THEIR WAY TO THE COURTHOUSE— (Left to right) Detective Morgan, Silas Maling, Mr. Hall (of R. D. Meagher, Sproule and Co.), Mr. J. J. B. Kinkead and Dr. H. V. Evatt.**

'I saw Maling in March,' continued Arnot, 'and he said the gang behind him wanted £8000 and he wanted £2500 for himself before we could get the contract, I said, 'We should not have to pay anything; we are the lowest; we have works in Australia, and should have the preference. Our company is the best boiler-company in the world!' I said I would not recommend the payment.' Early the following month, said Arnot, he went to Maling's flat in Billyard-avenue, Darlington, after the latter had asked him per telephone. There Maling told him that the International Combustion Co., who were offering Thompson's boilers in England, had put up 115,000 to get the contract, and that the money was in the hands of a third party. However, the crowd behind Maling, said Arnot, wanted to give his company the contract if he, Arnot, agreed to pay £10,000.

Mr. Shand: Did Maling say how much he was going to get? — My recollections, so far as that, is that he was going to pass over £8000 or £7500, and keep £2000 or £2500. On Tuesday Arnot's examination in chief was continued amid a barrage of objections raised by Dr. Evatt, the majority of which were turned down by Mr. Gates. Arnot said that he had two interviews with Maling, one at his

flat; and another at the Town Hall. The question of the cabling of the £10,600 came up for discussion, and Arnot related how he said to Maling 'I don't care to handle the money. Can you name a person to whom it can be cabled from England?' Maling said he, would consider the matter. 'You are running a great risk, Maling,' Arnot claimed to have remarked. Maling's reply, he stated, was: 'There is no risk.'

Mr. Shand: What was the next meeting about with Maling? — He said he wanted the money sent to Frank Butler, Pyrmont. Dr. Evatt: The acceptance of the tender was of considerable importance to you? — It was of importance to me; not of considerable importance.

You swore before the Royal Commission that this transaction was a unique one in your life? — Yes.

Did you mean by that that you were never a party to any previous graft transaction? — I won't say that.

Did you state at the Royal Commission that you had caused to be paid a sum of £250 as graft to an alderman? — Yes, as a present.

Dr. Evatt: In connection with your recent marriage, had your other marriage been dissolved?

Mr. Shand objected, and it was upheld.

Inspector John McKay, of the C.I.B. who went to New Zealand under the assumed name of Johnstone on board the s.s. Tahiti to interview Maling, said he left by that vessel on April 23, 1927. Prior to leaving, he had attended a meeting at headquarters with the Police Commissioner, the Crown Solicitor, his assistant, and certain police officers. When it was arranged that Maling should return, McKay said he was told by Maling that the sum of £10,600 had been offered by the firm as an expression of its pleasure at getting the contract.

Counsel: Did you ask him whether he could give you any information concerning graft transactions in the City Council? — Yes.

Did you tell him that if he did, it would be favorably looked upon by the Crown? — No. I asked him if he knew about the envelope containing £250 being passed to an alderman in connection with a coal contract.

On Wednesday morning 'Diver' Albert was put in the box just before midday. He said he lived at 205 Macquarie street, and had an office in Queen Victoria Buildings. He had known Maling for about ten years, and was a visitor at his home.

Dr. Evatt: I object to this.

Mr. Shand: You used to visit his house? — Yes, in a friendly way. Do you remember seeing him in July, 1926?

Dr. Evatt: I object to learned counsel leading witness.

Mr. Shand: Are you serious?

The Bench: Go on.

Albert: Maling came in to my office, and we had a casual conversation. Then he said in a casual sort of way, 'Would you mind some money coming from England being placed through your account?' I told him I was doing business with the Bank of New South Wales. It was arranged that I should pass the money through my account, but later on I found that I would have to go to Melbourne on

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business, and I told him that it was no use his getting any money out from England through my account.

'He asked me,' continued Albert, 'if I knew anyone else who would do it, and I said I had a friend, whom I would see. Later on I told him that this friend, Frank Buckle, of Pyrmont, would do the business for him.

'I told him that Buckle did not mind the sum of £10,600 mentioned by Maling coming out and being put, through his account at the E.S. and A. Bank.'

Dr. Evatt: I object to counsel leading.

Mr. Shand: I'm not leading.

Albert told Mr. Shand that he had never received any portion of the money from England, and had no understanding with anyone that he should receive any.

Albert was subjected to a lengthy cross-examination by Dr. Evatt.

Albert said that he handed Maling three parcels containing notes on February 7. The notes were fifties and twenties, and were tied up with rubber rings around them. He handed them to Maling in the office, and Maling placed one in a breast pocket, and the others in two other pockets.

Dr. Evatt: And the £1000 you paid him at his home? — He took that into his room.

Albert went on to relate what happened when Maling allegedly came by arrangement to his office to get £3000. Miss Gordon was not actually in the same room, but she could see the motion of passing the three bundles of notes to Maling reflected in a polished door, which acted as a mirror.

Albert, at the following day's sitting, admitted that he did not tell the Royal Commission about Maling placing the three separate bundles of notes in separate pockets. He had gone to Maling's house with Miss Gordon on Anniversary Day and had paid Maling £1500. A few days later he had paid him £1000. He was certain about that. The total amount he had paid to Maling was about £6500. He had told the police in a statement that he had paid varying amounts to Maling — £760 to a few odd pounds.

Dr. Evatt: You never told the police about the £3000? — I didn't remember; my mind was so upset.

Did you say that Mr. Frank Buckle had handed you £1500 and £11,000 to Miss Gordon, your assistant? — No, I don't remember saying that. That £11,000 was an error.

Alice Martha Gordon, housekeeper, living at Turramurra, entered the box wearing a fawn costume, aviator's cap, and a huge white-feather boa.

She has been associated with Diver Albert, and gave evidence concerning the graft charges before the recent Civic Royal Commission.

'In 1926 I was in Sydney,' she said, 'and engaged in a private house in Macleay-street, Potts Point, as housekeeper. I had known Mr. Albert for about ten years.'

She related that she had delivered various sums to Maling.

'On February 3, 1927,' she stated, 'I was in Mr. Albert's office. Mr. Maling came along.'

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'I heard Mr. Albert and Maling talking, and then I saw reflected in the polished panels of the door Mr. Albert passing something across the desk to Mr. Maling. Before leaving the office I had seen three bundles of £3000 — £1000 in each parcel— on Mr. Albert's desk.'

She told the police that she had made three payments. Subsequently she made another statement to the police in Sydney, but on neither occasion did she mention the fact that she had seen the reflection in the polished office-door of the passing of something to Maling.

Miss Gordon stated that she had no doubt at all that she had paid Maling three sums of money, one of £1500 and one of £1000, and one of another amount. All the figures she had given were correct.

At the close of the evidence for the prosecution, Dr. Evatt, Maling's counsel, raised the point that Mr. Gates, C.S.M. had not jurisdiction to try the charge.

After hearing argument from Dr. Evatt for, and Mr. Shand, against, his Worship stated that he was quite satisfied he had jurisdiction to try the charge and that there was a case to answer.

Gwynn Stewart Boyd, acting deputy-general manager of the city Council Electricity Department, stated that he and resident engineer Harrington had analysed the tenders, and in their selection of Babcock and Wilcox's tender they had not been influenced by Maling, or anyone else.

John Carruthers, 32 Macquarie Place, said in 1926 he was employed by Babcock and Wilcox. He knew Colonel (now Sir James) Murdoch. He had a conversation with Colonel Murdoch, and subsequently he saw Mr. Arnot. He told Arnot that Murdoch had said it was reported that some money was to be paid in connection with the Bunnerong contract.

Carruthers said he had delivered Colonel Murdoch's message to Arnot, and also the Colonel's warning that he would 'get' Arnot and make the matter public if the latter paid any money in connection with the acceptance of that tender. That was before the tender was accepted, and when he suggested that Arnot should phone Murdoch he declined to do so.

To Mr. Shand: He had since left the firm of Babcock and Wilcox, because his salary was insufficient.

Resident Electrical Engineer Harrington, Town Hall, who resides at Cabramatta-road, Cremorne, said he had recommended the acceptance of Babcock, Wilcox Ltd.'s tender because he thought it was most suitable for the council. Every tender received full consideration.

Mr. Shand submitted a lengthy cable to the witness, who said that he had drafted it. It dealt with the tenders received in connection with the Bunnerong works.

In answer to that cable, the general manager, Mr. Forbes Mackay, who was abroad at the time, said that the International Combustion Company's was the best offering from the council's point of view, and expressed doubts whether Babcock and Wilcox could do the work within the time allotted.

Mr. Shand, cross-examining Harrington on credit, asked him if he did not think that the councillors and the Electricity Committee were entitled to all papers and reports and any advice tendered by General Manager Forbes Mackay.

Harrington said that he looked to Mr. Maling as acting manager in this matter, and he omitted from his report Mr. Mackay's opinion on the tenders referred to.

On Thursday Dr. Evatt referred to the calling of ex-Ald. Holdsworth, whose name had been mentioned frequently in the case, and stated that he was ill.

When called again on Friday afternoon, the ex-alderman was still too ill to attend the court, and the further hearing was adjourned until 10.15 on Monday morning.

The general opinion that the proceedings at the Central Police Summons Court in the Maling prosecution during the week are of a preliminary character, is without justification. A person convicted by a magistrate under the Secret Commissions Prohibition Act may be fined £500, or sentenced to six months with, or without, hard labor. Or he may be sentenced to both fine and imprisonment.<sup>[113]</sup>

#### **1 August, 1928. Tension in Court 1**

Chief Stipendiary Magistrate Gates, giving his momentous judgment yesterday, was so affected that twice he paused with a break in his voice. As he read his decision a hundred pairs of eyes were fastened on the ex-deputy manager of the Electricity Department, who stood behind Dr. Evatt, his counsel.

When the penalty was read, Maling seemed to take a deep breath. That was all. The stolidity which he has displayed throughout the case hardly varied. A strange calm held the court.

When he had finished, Mr. Gates immediately left the Bench for a few minutes, and a deep buzz of comment broke over the room. Maling then smiled at Dr. Evatt and Mr. Kinkead, his defenders, but it was a brief, strange smile.<sup>[114]</sup>

#### **8 August, 1928. Quarter Sessions No. 1 Court - (Before Judge Cohen.)**

Crown Prosecutor, Mr. V. H. Treatt

#### **Breaking And Entering.**



Figure 13 - Leslie Thompson & Elsie Bowman - 1928

Leslie Thompson, 23, John Parker, 23, and Elsie Bowman, 25, were charged with having broken and entered the shop of Ernest Albert Field, at Hurstville, on June 14, and stolen six rolls of material.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Thompson and Bowman; and Mr. Dovey for Parker, who pleaded guilty, and was remanded for sentence.

The Crown alleged that the three accused, while travelling in a motor car from Sydney to Hurstville, on June 14, were intercepted by detectives. Parker jumped from the car and two detectives grappled with him. Another detective struck Thompson's arm as he was in the act of levelling a revolver at the two detectives who were struggling with Parker. Another revolver was taken from Parker. In the back of the car the detectives found four chaff bags containing suit materials.

Thompson and Bowman were both convicted and remanded for sentence.<sup>[115]</sup>

**10 August, 1928. Acquitted.**

Cyril Ernest Craig, 33, Iron worker, was charged with having committed a serious offence upon a girl, 13 years and five months of age, at Balmain, on some day in July. Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused. The girl refused to give evidence, and the accused was acquitted and discharged.<sup>[116]</sup>

**12 August, 1928. Coal Commission Sits On Monday**

On Monday next the Royal Commission inquiring into the Civic coal contracts will resume its sittings before Judge Thomson at the Town Hall. Ex-Alderman Holdsworth will be represented by Mr. Robert Sproule, (of Messrs. R. D. Meagher, Sproule, and Co.), Silas Young Maling by Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.), and ex-Alderman Stokes by Dr. H. V. Evatt.<sup>[117]</sup>

**13 August, 1912.**<sup>[118]</sup>



**FIGURES AT COAL COMMISSION.**—At the commission inquiring into civic coal contracts at the Town Hall to-day (top, from left to right): Mr. Curtia, K.C., appeared for B. Byrnes, Ltd.; Mr. Sproule for ex-Ald. Holdsworth; and Mr. Kinkead for Mr. Maling. Bottom: Ex-Alderman R. D. Bramston, Mr. T. W. K. Waldron, City Solicitor, and Mr. D. R. Hall, who appeared for ex-Ald. Bramston.



*14 August, 1928. Council Coal Contracts – ‘Monthly Payments to Official’ Allegations At Inquiry – Ex-Lord Mayor Mostyn Mentioned.*

An allegation that an official or officials of the City Council received regular monthly payments from B. Byrnes, Limited, coal contractors, was made yesterday by Mr. Shand K.C., at the Royal Commission (Judge Thomson) inquiring into the City Council contracts.

He further said that he would tender evidence to show that bribes were paid by Mr. Earnshaw in regard to a contract for coal supplies entered into with the City Council by Messrs. Kirton and Earnshaw. These bribes, he said, were paid to Mr. Maling, ex-deputy general manager of the Electricity Department, and Mr. Woof, formerly superintendent of the City Council power house.

The names of the ex-Lord Mayor (Mr. Mostyn) and also ex-Alderman English were mentioned by Mr. Shand in connection with a specification for the supply of from 900,000 to 1,000,000 tons of coal covering a period of three years ending January 31, 1931, respecting which the Town Clerk withheld his certificate.

**"An Unqualified Denial."**

At the outset Mr. Sproule said that the allegations against ex-Alderman Holdsworth were very few and very simple, according to the opening of Mr. Shand, and should not take more than a few days to investigate. For the convenience of the parties and to save expense he asked whether the Commission could see its way clear to allot two or three days and to confine the inquiry to the allegations made against Mr. Holdsworth. His client had been under the stigma of the allegations for a fortnight, and had taken the first opportunity to give the allegations an unqualified and indignant denial.

Mr. Hall said that the same remarks applied to his clients, ex-Aldermen Farrell and Bramston, who were anxious that their counsel should not have to sit day after day listening to evidence that related to happenings years after they had left the council.

Dr. Evatt said that from Mr. Shand's opening address there was only one matter that affected ex-Lord Mayor Stokes. If it suited the convenience of the Commission he would suggest that a day should be set apart to probe the matter; otherwise they would have to listen to matters in which they were not interested.

His Honor said he could not decide until he heard what Mr. Shand had to say.

Mr. Shand said it was absolutely impossible to shut the cases off into compartments. He would intimate to counsel the days upon which he would call particular evidence. If Johnston's statement involved certain people —

His Honor: The interviews must be taken consecutively.

Mr. Shand said that he proposed to start with formal evidence of the contracts which had been entered into during the period to be investigated.

Dr. Evatt said that, judging from the suggestions made by Mr. Shand in his opening address to the Commission, the City Commissioners had reached certain conclusions in the matter. He asked that access to certain statements made by one or more persons be given to him.

Mr. Shand: If your people are guilty that is just the way to let them get out of it.

Dr. Evatt: I submit that the allegations depend largely upon the word of one individual.



Judge Thomson: Every indulgence will be shown in the matter of adjournments should you find it necessary to ask for them, and ample time will be given to call evidence.

**The Evidence.**

Archibald R. Pringle, secretary and manager of B. Byrnes, Ltd., produced the minute books of that firm for the last 20 years, and also ledgers and other documents. He said a certain cash book was missing, but the details were entered in the minute book.

Mr. Shand: When did you discover that that book was missing?

Witness: After the opening of the Commission.

Mr. Shand: When you were interviewed by the detectives did they tell you they expected certain documents were going to be destroyed?

Witness: No, they did not.

Did you tell them you had all your books and wages sheets for years past? — Pardon me, I said nothing of the kind. They must have misunderstood what I did say. I told them that all the books of the firm which were there would be available if wanted, and they could make their minds easy about that.

Mr. Curtis, K.C., protested against the cross-examination of the witness. He said that he had already intimated that all the documents of the firm would be produced. When he put the secretary of the company into the box to produce them he was cross-examined on the subject of a conversation.

Mr. Shand: I want to see where those books are. I want to find out where they have gone to. I am not going to accept these statements merely because an assurance has been given that the books would be produced.

Mr. Hall asked if there was any record of entertainment allowances made to Mr. Johnston. Witness replied that Mr. Johnston received an allowance for this purpose every week, and the amount was shown on the wages sheet. It would be between £10 and £15 a week. There would be no record, however, of the amounts for periods before June, 1925. Out of his entertainment allowance he had to provide his own car. If any large sum was paid to Mr. Johnston a record of it would be made in the minute book. It would not appear on the wages sheet.

Mr. Hall: Supposing Mr. Johnston wanted to draw £200 to pay away to someone in connection with a contract, what explanation would he give?

Witness: I know nothing about that.

He was a plausible gentleman? — My word he was. (Laughter.)

Do you remember him asking for £200 in 1918? — No, he would not ask me. There would be a voucher. The board would deal with any such matter, at which Mr. Johnston would be present.

To Mr. Curtis: Mr. Johnston had been associated with the company from its beginning. He (Mr. Johnston) received a fixed salary of £50, but eventually it became £750.

Mr. Shand: When did commission cease to be credited to him?

Witness: It practically became a fixed salary 16 years ago.

Mr. Hall: Is Mr. Johnston now in the employ of your firm?

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Witness: No.

Was he dismissed? —The minutes will show the reason he left the firm. You can read between the lines.

#### **Payments To Officials.**

Mr. Shand said that he proposed to tender all the contracts for coal entered into by the council from 1908 onwards. From 1914 onwards, or, at any rate, during 1918, 1919, 1920, an official was, or officials of the council were, in receipt of regular monthly payments from Byrnes and Company, Ltd.

Mr. Shand then tendered a mass of documents relating to the acceptance of tenders for coal supplies by the City Council, extending over 20 years.

Referring to the contract of Peacock and Co. for the supply of 30,000 tons of Northern Extended coal in 1920, Mr. Shand said that the company put in various classes of coal, which was supplied to the City Council as Northern Extended coal. Apparently when the trucks of coal arrived at the council's siding, Rhondda Company's tickets, which were on the trucks, were changed for Northern Extended tickets, and the coal was put in as Northern Extended. Attention was directed by someone interested in Rhondda coal to what was taking place. An inquiry was held, and it was explained that it was owing to an accident that the coal had been supplied. Some adjustments were made between Peacock and Co. and the City Council to cover the difference in price. Things went on all right for some months. Then the council's attention was again directed, apparently by an outside source, to the fact that Peacock and Co. were supplying a lot of coal that was not Northern Extended coal, and the council decided that no further supplies should be taken from Peacock and Co. The contract was ultimately cancelled.

#### **Alleged Payment Of Bribe.**

Dealing with a contract entered into with the City Council by Messrs. Kirton and Earnshaw Mr. Shand said: "We propose to tender evidence to show that a bribe was paid by Mr. Earnshaw. There were, in fact, two distinct bribes."

Dr. Evatt: Who were concerned in these?

Mr. Shand: Both Mr. Maling and Mr. Woof. "The last tender with which we are concerned," added Mr. Shand, "is the specification for the supply of coal for Pymont or Bunnerong, dated September 20, 1927. Specifications were before the electric lighting committee of the council for the periods from February 1, 1928, to January 31, 1929; from February 1, 1929, to January 31, 1930; and from February 1, 1930, to January 31, 1931. When the matter was brought before the council by that committee it was recommended that tenders should be invited for coal for the three years' period, and the council assented. Tenders closed in six days. Varying tenders were received. The amount of coal required was between 900,000 and 1,000,000 tons. The tenders were sent to the proper officer for report, but in the meantime, before the report was fully considered by the council, it had ceased to function. The Lord Mayor remained to carry on the business of the council. There was a resolution of the council, passed on November 15, empowering him to 'take such action as might be necessary in case of emergency in connection with any matter coming within the scope of this committee.' The general manager of the electricity department recommended the acceptance of certain tenders for three years, in consequence of the urgency of getting coal supplies; but the Town Clerk withheld his certificate, so that no tenders were accepted.

"I propose to direct particular attention to the tender of the Austral Investment, Ltd., agent for the Spring Vale collieries. The evidence I propose to give will involve ex Alderman Mostyn, who was Lord Mayor at the time, and also ex-Alderman English."

**Production Of Books.**

Archibald R. Pringle, recalled, produced additional books and documents of B. Byrnes, Ltd. These related to sales transactions of Lithgow coal from 1913 to date, and sales of the Metropolitan Coal Agency from December, 1919, to 1925. He also produced day books containing records of transactions with the City Council from 1921 to 1927; three cash books from December, 1914, to date, and wages sheets from June, 1925, to date.

In reply to Mr. Curtis, witness said that wages sheets previous to 1925 had not been kept. A book containing a summary of the wages sheets commenced at December 5, 1914.

Mr. Curtis: Are these the whole of the books and papers of the company that you have anywhere or know of that could be of interest to the Commission? Witness: Yes.

Mr. Shand: Do you produce letters written by the Official Assignee to Byrnes, Ltd., in connection with J. W. Sydney's bankruptcy?

Witness: I do not know anything about them.

Mr. Shand: I want you to produce those tomorrow. Do you know the Sydney payments? Yes.

Where do they appear in the books? — They don't appear at all.

Mr. Curtis: There is no record of them.

Witness: No.

Mr. Shand: You know it is a big amount?

Mr. Curtis objected. "There is no record in any book anywhere of any payment for what we call the Sydney matter," he said. "Having given that assurance, if anything comes to my knowledge I will withdraw it."

Henry Gray, secretary of the South Clifton Coal Mining Company, Limited, was the next witness. He produced certain books of the company, including ledgers, the cash book, wages sheets, journals, and minute books.

Mr. Shand informed counsel that he would call the following witnesses today: — Messrs. Nicol Peacock, James Head, J. W. Sydney, and James Johnston.

The inquiry adjourned till 10 o'clock this morning.

Mr. Shand, K.C., with him Mr. J. Cassidy (instructed by the City Solicitor, Mr. Waldron) appeared to assist the Commissioner; Mr. E. A. Barton (instructed by Messrs. Magney and Magney) for Richard Woof, ex-Superintendent of the City Council power-house; Mr. W. J. Curtis, K.C. (instructed by Messrs. Sly and Russell) for B. Byrnes, Ltd.; Mr. J. F. Millington for J. W. Johnston; Mr. R. Sproule (of Messrs. R. D. Meagher, Sproule, and Co.) for ex-Alderman Holdsworth; Dr. H. V. Evatt (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for ex-Lord Mayor Stokes; Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for S. Y. Maling; Mr. D. R. Hall for ex-Aldermen Farrell and Bramston; Mr. Markell, K.C., assisted by Mr. J. Leaver (instructed by Mr F. Arnott) for the South Clifton Company and the manager of the company.<sup>[119]</sup>

### 15 August, 1928. At the Coal Inquiry

It might be a conciliation board or a committee meeting. But for the wigs and the austere judicial figure in a black robe, you might take it for an aldermanic reunion of pre-Commission days.

The meeting place is the same. This Council Chamber of the Town Hall has seen strange mutations in its time, but nothing as strange as this. Its present character is that of a court.

There is no dock, and no iron grille; not even a jury box. No one is brought in under guard. But a formidable array of legal men confront each other on opposite sides of a long rectangular table.

And the most unusual spectacle of all is that of a witness, seated at one end of the cushioned bench on which barristers sit, fencing with a persistent cross-examiner, while an interested gallery looks on.

#### Mr. Shand and Others

Such is the Coal Commission inquiry. An inquiry that has a long way to go. Anyone who entered the precincts yesterday could have felt nothing but admiration for the cheerful demeanor of everyone there — except, perhaps, one or two of the witnesses, whom Mr. Shand, Mr. Kinkead, and Dr. Evatt attacked in turn.

The most impressive figure at the table — symbol and mouthpiece of the justice that is looking back twenty years — is Mr. Shand. K.C.

A big man in a double sense, he seems to dominate the table. When he rises from his seat, and, with massive finger on a typed document, fixes the expectant witness with his eye — then the chirpiest person in the gallery holds his breath.

Judge Thomson, calm, detached, watchful, gives everyone a hearing, while careful that no one gets out of hand.<sup>[120]</sup>

### 15 August, 1928. Alleged Graft Payments – Aldermen and Officials

#### Lump Sums and Tonnage Rates – City Council Coal Contracts

The feature of yesterday's evidence before the Royal Commission (Judge Thomson) on City Council Coal Contracts, was a series of admissions by coal contractors that, in order to secure acceptance of their tenders, they paid sums of money to Council officials.

It was alleged that £1500 was paid, in 1921, on behalf of B. Byrnes, Ltd., of which Mr. Maling, ex-deputy general manager of the Electricity Department, received £300, and Mr. Woof, ex-superintendent of the power-house, £1200; that on another occasion Mr. Maling was paid £200 on behalf of Nicol Peacock and Co., and Mr. Woof £100; and that ex-Alderman Farrell was paid £200.

One witness admitted that money which he gave to officials of the City Council took the form of bribery. He said his opinion was that the money was wanted by someone or other in the City Council because they were getting it from other tenderers.

#### The Evidence.

John William Sydney, at present carrying on poultry farming at Baulkham Hills, said that prior to 1921 he was in the employ of the Sugar Company at Fiji for a time, and later worked on his own account. He came to Sydney in 1920. His father introduced him to Johnston. At that time he had some money he was desirous of investing, and Johnston put up a proposition that if he had £1500 to spare and would lend it he would get £1800 back in three years, repayable at the rate of £50 a month.

Mr. Shand (who is assisting the Commission): Did he say to whom you were to lend it?

Witness: To B. Byrnes, Ltd.

Continuing, witness said he sent for the money about March, 1920. Johnston then informed him that only £1400 was required. He gave that amount to Johnston in the office of B. Byrnes, Ltd., and received a receipt for it. That receipt subsequently went into the hands of the official assignee. The repayments were made monthly in notes and cash by Mr. Pringle at the office of Byrnes, Ltd. Sometimes the amount was less than £50 and sometimes greater than that amount. He drew Mr. Pringle's attention to that on one occasion, and Mr. Pringle said that it depended upon the amount of coal that went through.

Mr. Shand: How much was repaid prior to the bankruptcy?

Witness: About £1050. That was up to March, 1923.

Mr. Shand tendered a letter from the official assignee to B. Byrnes, Ltd., dated May 4, 1923, regarding Mr. Sydney's receipt for the loan of £1500, and a letter dated May 18, 1923, signed by Mr. Johnston, and written on B. Byrnes, Ltd.'s, paper, to the official assignee, stating that £1145 had been repaid to Mr. Sydney, leaving a balance of £655, £55 of which he enclosed, and promised to pay the balance as arranged with Mr. Sydney.

Mr. Shand: Do you know Woof?

Witness: Yes; I met him once at the Clarendon Hotel.

Who was present at that time?—Johnston. Do you remember in what year?—In 1921.

Did you see anything pass?—No; but Johnston told me he was going to pay Woof some money.

Did he tell you the amount?—No.

He said it was something to do with commission?—I could not tell you for certain. I had an idea it was something to that effect.

Did you lend another sum of money to anyone in connection with coal contracts?—Yes.

Mr. Curtis (interjecting): Are you certain it was in connection with coal contracts?

Witness: Well, a coal business.

Mr. Shand: How much did you lend?

Witness: £3000.

To whom was it lent?—To Peacock, who had an introduction to me from Johnston.

What did Peacock tell you about the coal business?—He told me he had a contract to supply 30,000 tons of coal to the City Council for three years, and he wanted me to finance him to enable him to carry on. He wanted £3000 from me.

You did lend it?—Yes: and I had six debentures in his firm, also a life policy for £1000.

He lost the contract?—Yes, and I lost my money.

That brought you into the Bankruptcy Court? —Yes.

#### **Discussion At Hotel.**

Mr. D. R. Hall (for ex-Aldermen Farrell and Bramston): You were perfectly friendly with Johnston?

Witness: Oh, yes.

Did you meet him at any other time?—I met him frequently at Aaron's Exchange Hotel. He was an exceptionally well-known man.

I suppose you would have drinks?—Oh, yes. And one drink would lead to another?— Yes.

If other people came into the hotel Johnston would know most of them?—Yes.

He would ask them to have drinks too?— Yes.

As often as newcomers came in the in-vitations went forth?—Yes, he was a very popular man.

Who spent money very freely?—He was a very liberal man.

He gave you the impression of always having plenty of money in his pocket to spend?— Yes. He carried a large number of notes in his pocket.

After an hour's drinking would he go away still capable of doing business?—Oh, certainly.

Drink had no effect upon him?—No.

Johnston was a man who talked a good deal? —Yes, he was always a great talker.

If a group of people were in the hotel talking he would have most to say?—He was generally in the chair, as we would say. (Laughter.)

He was not a silent chairman?—No.

Johnston had the reputation of being a good raconteur?—Yes.

He could tell a pretty good tale?—Yes.

And anyone who knew him listened to his tales with a grain of salt?—Occasionally.

You had to allow some discount to his tales?—I generally did. (Laughter.)

And that was the reputation he had generally?—Yes.

As a friend of Johnston you would say he drank freely, spent freely, and yarned freely, and exaggerated somewhat?—That would be a fair statement.

Mr. Curtis, K.C (for B. Byrnes. Ltd.): Have you continued to be in touch with Johnston for the last 12 to 18 months.

Witness: No, I last saw him about two years ago.

Mr. Hall: After your bankruptcy your estate subsequently paid 20/ in the £ and returned a surplus?

Witness: Yes.

Mr. Shand: Has Mr. Hall spoken to you in regard to this matter?

Witness: Yes, at his office on Friday last. He asked you to go to his office—Yes.

#### **Loan To Johnston.**

James Head, who was the next witness, said that up till August, 1920, he carried on the business of a tobacconist in Pitt-street. Whatever inquiries were made by the Commission they would have



nothing whatever to do with the present firm of W. F. Muir. He said that in 1921 he lent £600 to Mr. Johnston.

He explained that, prior to 1921, he was trustee of an estate, the principal asset of which was property in Surry Hills, where a business was being carried on. He considered it best to realise on the property, but had had no previous experience of such matters. He had known Mr. Johnston for some years, and got him to negotiate the sale of the business. Mr. Johnston asked witness if he had £600 to lend, for which he promised to give him 7 per cent interest, also 1d a ton on 10,000 tons of coal, provided he got a certain contract. He gave Mr. Johnston £600, and received from him a receipt for £300.

Mr. Shand: Tell us what happened.

Witness: When Johnston gave me the receipt he said, "I have given Nicol Peacock £300, and he will give you the receipt for that. The payments will be made in the same way."

How were the payments made?—The payments for B. Byrnes, Ltd., were made at Byrnes's office, sometimes by Mr. Pringle and sometimes by Mr. Purcell.

How did you receive the money?—In notes.

**Billheads Printed.**

Was there anything with the money?—Yes, an account showing the number of tons paid on. I was advised by Mr. Johnston to get some billheads printed, as a commission agent and I did so.

What did you do with the billheads?—When the account was handed to me showing the 7½ per cent interest and the tonnage paid on it, it was made out on one of my billheads.

Do you know to whom the coal was supplied?—I had no idea.

The account did not show that?—No. Was the interest calculated monthly?—I don't know.

Did Peacock pay you?—He paid me the same as Byrnes, Ltd.

Where did you get his money?—At his office. He paid you up till the time he lost his contract?—Yes.

Had you been repaid in full up to that time?—Yes; but I handed back to Peacock the original £300.

And lost that?—Yes.

His Honor: Did you acknowledge the payments in writing?

Witness: I signed a pay sheet.

In Byrnes's or Peacock's office?—I signed them in Byrnes's office and I think I did the same in Peacock's office.

Mr. Shand: Was the first repayment by cheque or cash?

Witness: I think it was cash.

Mr. Shand said there was an entry in Byrnes's book of the first payment,

What did you do with the billheads you had printed?—I handed them into Byrnes's office.

**Loss OF £700.**

Mr. Hall: Were you interested in a company called the Central Coal and Shipping Agency?

Witness: Yes. £700.

Who induced you to go into that?—Mr. Johnston.

Did you lose the money?—I did.

When was that firm in operation?—I don't know for how long.

What operations did it carry on?—I have not the faintest idea, except that they were coal and shipping people.

They were out after coal contracts?—I don't know what they were after. Mr. Johnston said he would get me 700 shares in the company. He explained at the time that owing to the position he held he was not permitted to sell his shares direct, but he would hold, them in trust for me.

Did you ever get the shares?—No; I got no return whatever from the investment. He sold me 700 of his shares.

What did he tell you this company was supposed to be doing?—It was in the coal and shipping business. I did not know what they did in it.

You knew he was in a good position in B. Byrnes, Ltd.?—Yes.

At the time he was inducing you to put money into this company?—Yes.

Did it not strike you as extraordinary that he should be organising a company which should be a rival to the one he was earning his living from?—That was a matter that did not concern me.

Did you think Mr. Johnston was an honest man when he was doing that?—If I had not had confidence in Mr. Johnston I should not have handed him that money.

It was entirely a matter of confidence in Mr. Johnston that induced you to go into the company?—Yes.

Dr. Evatt (for ex-Lord Mayor Stokes): Did you pay this £700 to Mr. Johnston yourself in cash?

Witness: I don't remember.

Did you remain friendly with Mr. Johnston?— Yes, the money was gone. I have seen him at times since.

#### **Alleged Payment To Maling.**

Nicol Peacock, coal-selling agent for the Northern and South Pacific collieries, testified that prior to securing the City Council contract in 1921 he was carrying on coal business. Witness said that before getting the contract he spoke, among others, to Mr. Johnston, of B. Byrnes, Ltd., whom he had known for many years. Mr. Johnston told him that he thought there would be a good chance of getting City Council business because there was a shortage of small coal at that time. Witness made tentative arrangements with Northern Extended for 30,000 tons a year. "Johnston," said witness, "told me that I would probably be asked to pay some money over in the event of being a successful tenderer. I replied that if I had to do so I suppose I must. In due course my tender was accepted. Shortly afterwards Johnston told me that the sum of £300 would have to be paid over, and that he had arranged with Maling, whom he had met at the Masonic Club, to be outside the 'Sydney Morning Herald' office in O'Connell-street. I put £200 in an envelope, gave it to Johnston, and saw him hand the money to Maling. Maling put it in the pocket of the door of his car. There was a minute's conversation, and Maling then drove off."

Mr. Shand: Did you pay any other moneys?

Witness: Yes, I paid Woof, the City Council superintendent, small amounts from time to time on a tonnage basis. Woof suggested to me that he should get it because he had received nothing out of the other money. Johnston got another £100 from me, which he said he had paid to Woof, but Woof told me he had got nothing at all for himself. Woof suggested that he should get so much a ton.

I demurred at that.

Do you remember the amount per ton?—I cannot swear whether it was one-halfpenny or one penny a ton. It worked out in sums of £6 or £8 from time to time.

For how long did you pay that?—I suppose for about nine months.

Were you paying that up to the time your contract was cancelled?—I think so.

Did you ask Woof anything about the £100 you had given to Johnston?—Yes. As far as I can remember he said that it was for other people and not for himself.

Shortly after the contract began difficulties arose in your supply?—Yes. The proprietor of the Northern Extended colliery said he could not undertake to supply me with 30,000 tons per annum, and told me to supply hard coal of approximate quality. I sent coal from three mines—Rosedale, Preston, and Tankersley—also a quantity from Rhonnda colliery."

Witness, continuing, said that he paid a man named Biddle £1 a week to look after his interests at the City Council raliway siding at Pymont. Biddle was also employed by Howard Smith, Ltd., and B. Byrnes, Ltd. He knew that tickets on waggons were changed and Northern Extended tickets put on the trucks when he was officially notified of it. He was paid the contract price for the coal supplied to the council, based on its calorific value. When he learned that the tickets had been taken off the coal trucks before they were shunted to the City Council power-house he told Biddle that he had no further work for him. He could see that there would be a lot of trouble. He had lost a lot of money over the matter.

Mr. Shand: Did you pay any money to anyone else except Woof—to any alderman?

Witness: I paid certain sums to Alderman Doyle, but not in connection with City Council contracts.

Were they gifts?—Yes, because I expected I wanted to use him in connection with a matter which did not come off. He was secretary of the Labour party.

What sums did you pay him?—Just small sums. It might have been £1 or £2 at a time.

How many times?—Only two or three times. Dr. Evatt protested. "Alderman Doyle is dead," he said. "This line of examination is outside the scope of this Commission?"

His Honor: The witness says it does not apply to any coal contracts.

Witness: It had nothing to do with coal. I did not know he was an alderman. I used to see him at Parliament House.

Witness. In reply to Mr. Hall, said that he became bankrupt to the extent of between £5000 and £6000 in 1922. His estate was not yet wound up.

Mr. Hall: When you gave Johnston money to pay a bribe to Maling you knew he was working against the interests of his own company—his own employer?

Witness: No.

Did you make any protest to Johnston about the bribery of officials?—I do not know whether it would have affected the circumstances very much.

Replying to Dr. Evatt, witness said that he paid Woof from £60 to £70 altogether, the amount being on a tonnage basis. The payments were spread over a period of about nine months.

Mr. Kinkead (for S. Y. Maling): You knew that Biddle was changing the tickets on the trucks :

Witness: No.

Didn't you say in answer to Mr. Shand that Biddle's clerk was taking the tickets off the trucks?—Yes.

I put this to you that you had Northern Colliery tickets printed?—No, I deny that.

Did you have tickets printed by anybody else for you?—No.

Why was Johnston taking this particular interest in your getting contracts?—We had been friendly for years, and there was more coal required by the City Council than his firm was in a position to tender for.

Was there any suggestion that he should get something for himself?—No.

Had he any financial interest in Nicol Peacock and Co.?—No.

Who held the majority of shares in your company?—I did.

You were connected with R. W. Miller and Co.?—Yes.

Did you leave that firm voluntarily or compulsorily?—Voluntarily.

Were you not dismissed?—Absolutely no. I resigned in 1920. It surprised Mr. Miller.

While you were with Miller and Co, what business transactions had you with Johnston?—I don't think I had any.

Fire At Johnston's.

Do you remember a fire occurring at Johnston's place?—Yes I was there when it happened.

Was anyone else there besides you and Johnston?—The housekeeper.

Are you sure she was there?—Yes. We would have been burned to death but for her. Were you not in the room where the fire started?—No, I was in bed. When the house-keeper woke us up the stairs were on fire.

You were one of the witnesses to Johnston's claim on the insurance company?—I suppose I would be.

Have you been in difficulties with the Courts of this State?—Yes, and I was acquitted.

You were charged with false pretences?— Yes.

Dr. Evatt: Did Woof know that coal other than that specified in the contract was being supplied?

Witness: I don't know.

**Common Practice.**

What did you pay him the £60 or £70 for? —It is a common thing in the engineering line for the engineer-in-charge to receive a commission on the contract without any suggestion of doing anything for it.

You said in your statement to the police that Woof was aware that coal other than that specified was being supplied?—I do not know that.

I don't want to be personal, but there is no doubt during this year you have been very "hard up?"—I have been for some years.

Are you represented here?—No.

I suppose you realise that a good deal of your evidence is incriminating yourself? — I do.

Are you receiving any expenses?—I don't know. I have made inquiries, but have received no answer.

In reply to Mr. Curtis, witness said he knew Mr. Johnston was business head of Byrnes, Ltd., for many years. He trusted Mr. Johnston absolutely. He thought it was wrong to bribe an official of the council; but that could not alter his opinion of Mr. Johnston, because he knew he was doing it before. He could not say when he first found out that Mr. Johnston was bribing officials. He could not say that he even actually knew before he saw him hand Maling the money, that he had done it before.

**Evidence by J. Johnston.**

James Johnston, formerly employed by B. Byrnes, Limited, was the next witness. He gave evidence that for many years the company had been tendering for the coal requirements of the City Council. Witness used to make up the tenders, which were signed by Mr. Pringle, and forwarded to the City Treasury.

Mr. Shand: Has money been paid by you to anybody in connection with the City Council?

Witness: Yes; in 1918, and in earlier years, when the contracts were not so large.

What did the smaller sums represent?— From £100 to £150 a year; 1d a ton commission.

To whom was that paid?—Mr. Woof, super-intendent of the power-house.

For how long did those payments continue? —Up to about three months after he left.

Do you remember the contract of 1918?—Yes; I know I paid £200 in one amount.

**Payment To Alderman.**

What were the circumstances connected with that?—Ex-alderman Bramston assured me that he and ex-Alderman Farrell would get the contract through, provided I paid £200. It appeared that there had been some juggling with the contract. Bramston saw me at my office. I also saw Farrell, and told him I would pay it, and arranged to meet them in the lounge on the second floor of Usher's Hotel. We met there. Bramston went downstairs. I gave Farrell £200, and afterwards went downstairs. I told Bramston I had paid Farrell, and if there was anything for him he had better go up and get it now. I did not see Bramston for some months afterwards. The money was paid in notes. I told Mr. Pringle, the secretary, what had taken place but no record of the transaction was kept.

Is Byrnes Ltd., a wealthy concern?—At the time the company started the capital was £32,000. Subsequently it was cut down by half, and in 1910, the profits for that year were over £30,000.

Did you ever speak to Bramston again about that matter?—No; he came to me one day, and wanted to borrow a small sum of money— I think it was £1—which he paid back the next day. Bramston often borrowed £1. He said he had pawned his watch, which was a presentation, and had an inscription on it; he had not got his "cut" of the money which had been paid to Woof. I told him that I did not know anything about that, and that he had better see Woof. Bramston told me later that Woof had squared up with him.

His Honor: How long ago was that?

Witness: The last time he was an alderman.

Replying to Mr. Shand, witness said that repayments of borrowed money were camouflaged by B. Byrnes, Ltd., being shown in the books of the firm as special commission. In 1921, witness was receiving a salary of £650, and 2½ per cent. commission. This amount was increased to £700, and 2½ per cent. commission; and afterwards to £1350 a year without commission.

#### **A £1500 Story.**

"Just prior to the acceptance of our tender in 1921," witness went on, "I had an interview with Maling, who said we would get the contract provided we paid for it. I forget the exact amount he asked for. I was not prepared to pay him that amount, and said 'I do not know why we have to pay this money. You know as well as I do that you are getting good results from the coal.

Maling replied, 'The gang down below won't pass it. You know what they are.' Well, I did. I had had previous experience. I worked it out on a tonnage basis, and again saw Maling. I told him I was prepared to give him £1500. He said, 'All right. I will put it up to them, and see what they say. I want £300 myself.' I said, 'You will only get £1500. We cannot afford to pay any more.' Maling then told me to see Woof and explain the arrangement I had come to, but that I was prepared to pay £1200—not £1500. I saw Woof and told him that I had arranged with Maling to give £1200. Woof asked, 'What about 1d a ton?' I told him that 1d a ton would be all right.

Mr. Shand: Did Woof say what happened to the 1d a ton?

Witness: He said that he had to cut it up. Did he mention any names?—No.

"After the contract was signed," proceeded witness. "I saw Sydney and Head, put a proposition to them, and they advanced me the money. Sydney brought his amount down to the office and counted it out. Pringle was there. There was such a large amount of money I thought they might turn round and think I was sticking to some of it. I got Pringle to take the numbers of the notes, a record of which was kept in the safe until I left the firm."

Mr. Shand: Did Pringle know what it was for?

Witness: Oh, yes. I told him that I was borrowing the money from Sydney under certain conditions, and explained the way in which it was to be paid back. I told Pringle it was money to go to the City Council. When I came back from Maling I told Pringle that they wanted so much money to get the contract through, and that we would not get it unless we paid it. Pringle had nothing else to do but to agree. My word went. Meantime, I rang up Woof, and told him I would meet him in a hotel to pay the money. I counted £1200 into a paper bag, and asked Sydney to come with me. He came with me to the Clarendon Hotel. I introduced him to Woof and handed the money to Woof. I rang up Maling and told him I had the £300 for him if he would come down to the city. He said he would meet me at the usual place (O'Connell-street). I met him, and we drove around to Mrs. Macquarie's Chair. I gave



him £300, and told him I had given Woof £1200. Maling asked me if I had mentioned the £300 to Woof and I said "No."

### Special Commission.

In reply to Mr. Shand, Mr Johnston said that money for commission was put in his name on one occasion, but when it came before the board the chairman suggested that all special commission should be drawn in the name of Macafee, who was practically solely on commission.

Mr. Shand read out a typical entry: "March 30. supervising supply and delivery of contract coal, £106/18/," and asked: "What did Macafee do in connection with supervising the supply and delivery of "contract coal?"

Witness: Nothing.

Mr. Shand quoted the following amounts recorded in the company's books as commission to Macafee:—1921: January, £100; February, £100; March, £106; April, £130; May, £161; June, £141; July, £139; August, £126; September, £133; October, £117; November, £155; December, £129; or a total of £1541. 1922: January, £159; February, £134; March, £158; April, £171; May, £179; June, £228; July, £215; August, £164; September, £185; October, £118; November, £134; December, £103; or a total of £1954. 1923: January, £92; February, £91; March, £137; April, £102; May, £173; June, £184; July, £188; August, £206; September, £151; October, £139; November, £139; December, £111; or a total of £1720; making a grand total of £5216.

In regard to the contract which Mr Nicol Peacock obtained, witness, in reply to Mr. Shand, said he told Mr. Peacock that he would have a good chance of getting the contract. Peacock said: "See what you can find out." When witness saw Mr. Maling he asked him: "What chance has Peacock of getting his contract?" Mr. Maling replied: "I think he is all right: but he will have to pay £300." Witness told him that it was a matter between Peacock and Maling. Mr. Maling said: "He won't get it unless he pays that amount " He conveyed the message to Mr. Peacock. He thought Mr. Peacock was making 2/ a ton, and could afford to pay, especially as he was being compelled. Mr. Peacock said he would pay, and when witness saw Mr. Maling he told him that Mr. Peacock was willing to pay. When Mr. Peacock got the money witness rang Mr. Maling and arranged for Mr. Maling to meet him in the usual place in O'Connell-street. Mr. Peacock gave witness £300, £200 of which was in an envelope and £100 he put in his pocket. The £200 was to be given to Maling and the £100 to Mr. Woof. When Mr. Maling arrived witness gave him the envelope, and told him to put it in the pocket of his car. Mr. Maling passed the remark that he saw Mr. Peacock standing on the corner of the street, and he did not like it, because Mr. Peacock would be a witness against him. Witness told him the money was from Mr. Peacock, so that he knew all about it, and was there to see that he (Johnston) did not stick to it. The next day he gave Mr. Woof the £100.

Mr. Shand: Do you remember which matter it was that Bramston spoke to you about?

Witness: The contract about which I gave Farrell the money. We never gave anybody any money until the contract was signed. I had no dealings with him at all.

Was there another way of covering up this money as commission?—Yes; in my name, as wages and as expenses.

Witness said that the wages sheet produced was typical of the number of persons employed and paid wages from 1919 onwards.

The inquiry adjourned till 10 o'clock this morning.<sup>[121]</sup>

**16 August, 1928. Coal Contracts - City Council Inquiry - Ex-Aldermen Called - Sydney. Thursday.**

When the City Council contracts inquiry was resumed today, Dr. Hall announced that he represented ex-Alderman Mostyn. Augustus Blair, managing director of Bulli Colliery and Coko Works, Ltd., said his company was never interested in B. Byrnes, Ltd. His company never supplied coal to the City Council.

Witness said his company sold coal to a Southern coal agency, of which it was a member. He knew the agency had contracts with Byrnes. He had never taken any interest in the City Council matters, and did not remember having ever heard the City Council discussed in coal circles.

Mr. Shand: On your oath, you swear you never discussed this matter with any of the coal men?

Witness: Not that I remember. I have had no conversation on the subject. John Harold Mostyn, ex-Lord Mayor, was asked by Mr. Shand to produce an agreement between himself and the Austral Investment Coy.

Witness: 'I do not produce it,' said witness.

Mrs. Laura Mostyn, wife of the previous witness, then entered the box. She also refused to produce a certain document of agreement between the Austral Investment Coy., Ltd., and herself.

Ex Alderman J. E. English, answering Mr. Shand, said he did not produce the agreement between the Austral Investment Co. and his wife.

Mr. Shand: Does your wife own a business? Witness: No, but she is interested in shares in a certain company.

Mr. Shand: What shares has she?

Witness: I object to you questioning me on her business. I refuse to answer. I refuse to answer any questions at all.

**Maling Approached.**

Harry Maurice Moore, wholesale coal merchant, said that prior to the calling of the City Council tenders in 1920, he consulted Maling in connection with the quotations, which he proposed to submit for 50,000 tons of Rhondda coal one year, 60,000 the next, and 80,000 the next.

Maling told him that for a commission of 21 per cent, he could influence the placing of the coal in Melbourne.

Witness said his firm had no yards or other facilities in Melbourne, and would not pay the commission. He put in his tender, and was unsuccessful.

Later, he was approached by a man named Richards, who said he could influence the placing of the tender if £500 were paid. Later a man named Slattery, manager of the Central Coal and Shipping Company, told him he would not be successful unless a considerable sum of money was paid.

Slattery said he would take witness to Alderman Doyle, who would take him to Alderman Holdsworth. He went with Slattery to Holdsworth's hotel, where Slattery spoke to Holdsworth, who said he could influence the placing of Rhondda coal. He asked to be paid £500 cash and 2/ a ton commission. Nothing more was said.

### **Tender Rejected**

Moore said he returned to his office and told his partner the whole subject was one of bribery, and they had better drop it. They went no further in the matter, and their tender was rejected.

Witness said his rejected coal was later put into Peacock's supplies and ticketed as Northern Extended and accepted.

He asked Maling why the coal was good enough to go in under Peacock's contract when it was rejected under another contract at a cheaper price. Peacock cancelled his contract with witness next day.

Moore explained that it was he who drew Maling's attention to the fact that Rhondda coal had been camouflaged by the use of Northern Extended tickets.

Mr. Kinkead: Maling did not ask you for commission.'

Witness: He did ask me for commission.

Mr. Kinkead: Not in connection with the council contract?

Witness: No, but — .

Mr. Kinkead: Stop there.

Never Paid Woof.

Witness said he never paid money to Woof nor anybody else.

Witness denied that he was being involved in a conspiracy. He had protected himself by the use of special tickets, which read, 'From Rhondda Colliery to ' N. Peacock, Darling Island.'

Dr. Evalt: You used those tickets to protect yourself.

### **To Entrap Others.**

Witness: Yes, and to entrap others. I went to Maling in Moore Street, because I thought then he was a sincere and honest man. After that I knew he was not, and know our coal had no chance.

Mr. Shand: Did you ever see anything between Maling and Peacock.

Witness: Yes. I was walking from my office in O'Connell Street towards the 'Herald' office and I saw Johnston hand Maling, who was in his car, an envelope. I saw Peacock standing nearby, and I said to him, 'what's that.' He replied, 'Oh, it's only commission,'<sup>[122]</sup>

### **17 August, 1928. Amazing Evidence of Systematic Bribery – City Council Coal Contracts - Richard Woof's Confessions.**

Amazing confessions of alleged graft respecting City Council coal contracts were made before the Royal Commission yesterday.

Richard Woof, formerly superintendent of the Council's power-house, admitted having accepted and distributed bribes over a period of about eight years preceding 1921. He alleged that he received large sums of money from certain coal contractors, that he retained a portion for himself, and distributed the remainder. He described in detail how the moneys were shared by Silas Y. Maling, ex-deputy manager of the Electricity Department; and a number of aldermen.

During the sitting the ex-Lord Mayor Mostyn, and Mrs. Mostyn, and ex-Alderman English were called to give evidence. Ex-Alderman English refused to answer questions.

**The Evidence.**

As soon as the proceedings started Mr. D. R. Hall (who appeared for certain aldermen) informed the Court that he had been Instructed to appear for Ex-Lord Mayor Mostyn and Mrs. Mostyn.

Augustus Edmund Blair, managing director of the Bulli Coal and Coke Works, said that his company had been a member of the Southern Coal Owners' Agency for 14 years. His company held no shares in Byrnes, Ltd., nor had there been any transactions between the two companies. He knew, however, that the Southern Coal Owners' Agency had contracts with Byrnes, Ltd.

Witness stated that he had never been requested to take any shares In Byrnes, Ltd.

Mr. Shand, K.C. (assisting the Commissioner), I suppose you have taken some interest In what has been going on in the City Council.

Witness: No, I am not interested in the matter.

You heard a good deal about it In your dealings with the coal owners?- I do not think it was ever mentioned.

Did you keep off it purposely? No, it was never discussed.

I suppose you never discussed with Mr. Earnshaw how things were going at the Town Hall' Not a word".

John Harold Mostyn, formerly Lord Mayor of Sydney, was the next witness.

Mr. Shand You have got a summons to produce a document executed by the Austral investment Co., Ltd., in favour of Laura Mostyn. Do you produce It?

Witness: I have not got It.

Well, you do not produce it? No.

Laura Mostyn, wife of Ex-Lord Mayor Mostyn, was then called. "You were served with a summons to produce a certain document, an agreement with the Austral Investment Co., Ltd., and yourself?" asked Mr. Shand.

Witness: I have not got it.

Mr. Shand: You do not produce it?

Witness! No.

**Refusal To Answer Question's.**

John Richard English, formerly an alderman of the City Council, then took the witness seat.

Mr. Shand: You have been served with a summons to produce a document- Do you produce It?

Witness: No.

It was an agreement between the Austral Investment Co., Ltd., and your wife?- I do not know. (To his Honor): I desire to produce a medical certificate in respect of my wife.

Does your wife conduct a business?- She has different shares in different companies, and is unable to go out.

What business does she conduct?- She has shares in J. W. Alexander, Ltd.

What other business has she?- That is for her to answer.

I am asking you?- Well, I do not know.

You need not pretend to me. I object to answer any question as to her business.

You refuse to answer? I refuse to answer anything. I refuse to answer any questions at all. This subpoena was only served on me last night. You have the benefit of having had three months on this case. I want to be represented fairly by counsel in regard to this matter.

### **Story Of Alleged Graft.**

Harry Maurice Moore, wholesale coal merchant, said that in 1920-21 he was trading as a colliery agent under the name of the Northern Colliery Agency in partnership with a Mr. Hewison. Prior to tenders being called by the City Council in 1921 he interviewed Mr. Maling. They discussed the quantities, period of supplies, tests, and size.

Mr. Shand: What was Maling's attitude?

Witness: Well, he indicated to me that he could sell quantities of coal in Melbourne, but there would have to be a 2.5 per cent commission attached to it. Maling said that he could influence the tender being accepted if I would pay 2.5 per cent. That indicated to my mind that he was asking me for commission only in an indirect way. I told him that we were not trading in Melbourne. I said, "Well, we will put in our tender." I was then approached by a Mr. Richards, who represented to me that he could influence the acceptance of the tender for the payment of £500. I later saw Mr. Slattery, general manager of the Central Coal and Shipping Agency, and he told me that there was very grave doubt whether our tender would be accepted unless I paid a considerable amount of money. I asked him who was demanding this money, and he replied "Alderman Doyle." I told Mr. Slattery that we would have nothing to do with bribery, but that I would ascertain the position. We drove in a taxi cab to Alderman Holdsworth's hotel in Woolloomooloo. Mr. Slattery carried on the conversation and I listened. Mr. Slattery said to Alderman Holdsworth, "You are chairman of the Electricity Committee, and we understand that the power house comes under your control. Well, I am interested in Rhonnda coal, and I understand that you can influence it if money is paid to you," Holdsworth said. "I want £500 cash and 1/2 commission, the £500 to be deducted from the total amount." Nothing further was said, and we left. I later advised my partner, and told him that the position was an impossible one, that the whole business was one of graft. We decided to drop the business. I had not seen Holdsworth or Doyle before. Our tender was rejected.

### **Interview With Maling.**

Witness, continuing, said that tickets on the trucks of coal from Rhonnda Colliery were taken off and "Northern Extended" substituted. "I saw Maling on the matter," proceeded witness, "and asked him, if our coal was good enough to go in as Northern Extended, why was it not good enough to go in at 1/ a ton cheaper in the original tender? Maling got in touch with Woof. I could see that they were working hand in hand, and orders were given that no more Rhonnda coal was to come in under the Peacock, contract."

Mr. Shand: Did you hear the conversation between Maling and Woof?

Witness: Yes; it was in Maling's office.

Immediately afterwards the, balance of the contract for Rhonnda coal with Peacock was cancelled.

Examined by Mr. Kinkead, witness said that Mr. Maling had the contract in respect of Rhonnda coal cancelled, but not in respect of other suppliers of coal to Mr. Peacock. Witness told Mr. Maling that his company's coal was being camouflaged for Northern Extended coal.

Mr. Kinkead: What coal was supplied in place of Rhonnda?

Witness: I do not know. Several coals were supplied.

Have you ever paid any money to Woof? Not a penny.

You have paid no money to anybody? No.

Is your evidence about Maling and Woof the imaginings of your mind?—No; it is the truth.

#### **A Disappointed Tenderer.**

Dr. Evatt: You were a disappointed tenderer? Yes.

You knew that Peacock was supplying coal other than that for which his firm had contracted. You regarded it as a conspiracy to defraud the City Council? I did.

And you were a party to it by supplying the coal to Peacock? Yes. But we protected ourselves by having special tickets on our trucks indicating that the coal came from us.

You did not inform the police? No.

You did not write to the City Council? No. That would have been useless, because I could see that Maling, Woof, Holdsworth, and Doyle were working in with one another. I discussed the matter with Mr. Shephard, Laidley and my partner, Mr. Hewlson. Mr. Laidley suggested that I should see Mr. Forbes Mackay, give him his compliments, and inform him that he was not satisfied with the City Council's manner of dealing with coal contracts. I saw Mr. Forbes Mackay, and I also protested to Mr. Maling.

You were supplying this Rhonnda coal for eight or nine months? No, about five weeks. Although Peacock had ordered 10,000 tons from us, we supplied only sufficient coal to trap the City Council officers.

Dr. Evatt: Why did you not expose the whole matter to the City Council?

Witness: It was useless to complain. I was always a disappointed tenderer.

Yet you did nothing to expose it? We did everything. We spoke to Maling, and we trapped them. I also told Mr. Forbes Mackay, and told him I was not satisfied with the treatment meted out to our company by council officials.

#### **A Street Incident.**

Mr. Shand: Did you, on any occasion, see anything happen between Maling and Peacock? Witness: Yes; I was walking down O'Connell-street from our office towards the "Sydney Morning Herald" Office when I saw Johnston hand an envelope to Maling, who was in his car. Peacock was nearby. I stopped immediately, and said to Peacock, "What is that?" He said, "Only a commission."

Mr. Kinkead: What time was this?

Witness: I do not recollect the time.



Between 9 o'clock and 6 o'clock? To the best of my recollection it was some time in the afternoon between 12 and 1.

Where was Peacock at the time you saw him? He was standing within a few yards of the car.

Peacock told his Honor that he was endeavouring to make himself inconspicuous. What do you say?- A man could not be inconspicuous outside the "Herald" office in O'Connell-street.

What sort of a car was it?-Maling's own car, black, closed-in, of the limousine type.

Not a council car? No, the car in which he drove to and from his business.

Continuing, witness said that the Mr. Richards who had approached him was a brother of a former Lord Mayor.

Patrick Joseph Carroll gave evidence of the payment of amounts totalling £825 to Johnston. Witness said that when Mr. Slattery returned from the visit to Alderman Holdsworth at Woolloomooloo he seemed to be very annoyed. He told witness that "they" wanted money.

Replying to Mr. Schrader witness said that Mr. Slattery and Mr. Johnston were free drinkers.

His Honor: It's a dusty trade. (Laughter.)

#### **Mr. Woof's Evidence.**

Richard Woof, ex-superintendent of the City Council's power station, gave evidence that he had occupied that position from 1908 till 1923, when, having reached the age of 64 years, he resigned. In August, 1922, he said, Mr. Maling told him that it was the intention of the general manager (Mr. Forbes Mackay) to reorganise the power-house staff, and would like a younger man as superintendent. Mr. Maling advised him to accept a nominal position at a lower wage. Witness decided to resign from the service.

Witness described at great length the methods by which coal tendered to the council by various collieries was tested.

#### **Witness's Confessions.**

Mr. Shand: You have received money connected with the supply of coal? Yes.

At what date was the first money received?

About 1913.

And to what extent did you receive moneys? Were they regular moneys? They were pretty regular up to about 1919.

How much? About £8 or £10 a month.

Who paid you that money? Johnston.

How was it paid? Just in Notes.

Did you ever get any cheques from Byrnes? No. I never had anything to do with them.

Did you pay any of that money away? No.

Did you receive any other moneys? Yes. I received some money previous to the 1921 contract.

Do you remember the particular contract? No. It would be a Byrnes' contract.

**"Cuts" With Maling.**

Did you receive any moneys that you paid away to anyone up to 1918? Yes. I am not quite sure whether it was 1918. I got about £300, which I cut up with Maling.

Who paid you that money? Johnston.

Where? In the private passage of the Paragon Hotel.

Where did you give the money to Maling? He came over to my office.

Do you remember what was said when you gave it to him? No; nothing particular was said. He knew it was coming.

You gave him £150 in notes? It was always in notes.

What was the £8 or £10 a week, based on? There was no basis. It was given for services rendered. I was technical adviser to Mr. Johnston. Small coal was then very cheap, and Johnston told me that if I could fix any trade in small coal he would always be ready to meet me. I got probably 20 customers for Johnston. Including Cockatoo Island and the Water and Sewerage Board. Wherever I could push this trade I did so. I also instructed him technically; what I would say a magsman. I gave him technical or engineering advice so that he could talk to people. He could talk and I did the other part of the thing.

**Always Got The Money.**

Mr. Shand: Was the amount you received based on the amount of coal used by the City Council?

Witness: No. Even if I could not get him any trade at all I still got the money.

He always had trade with the City Council? Oh, yes. That was settled. You could not keep them out of the City Council because they had the cheapest coal of that sort. They had a monopoly of it.

Was the amount based on a tonnage basis one penny a ton or one half-penny a ton, for instance? Oh, no.

His Honor: Was it paid in odd amounts?

Witness: Not always. Round sums of £8 or £10. I do not know whether I am incriminating myself; but if I had not been power-house Superintendent I would not have got it.

Mr. Shand: Probably not. What happened at a later period?

Witness: Before 1921 there was a strike amongst the men who unloaded the coal at the power-house. They wanted more money. They were Byrnes' men. Eventually the strike was settled; Johnston deciding to give them more money. Johnston then came to me and said the directors had allowed him more money, I think he said 1d a ton and he would be able to split that up with me. I got about £25 a month, and Johnston from £10 to £12 a month.

What did you do with that money? I kept it.

Do you remember the contract that was ex-tended for three years in January, 1921-for 106,000 tons a year? Yes.

What took place with regard to that? About April, 1921, Johnston said that he had arranged things, and that there would be a present coming to me in reference to a contract which he wanted me to pass along I said "Alright." Some time after that he rang me up. I went over to the Paragon Hotel, and

he handed me a brown paper parcel of notes from which about one-third had already been extracted. He said "There is £300 for yourself. Hand the rest to Maling." I put the money in my pocket.

#### **Visit To Maling's Home.**

Did he say where the money was to go? No; I understood he knew where it was going, but I am not sure.

He said nothing about the disposal of it? No; there was no talk about the distribution of it, only to myself and Maling.

What did you do with it? After talking for a little while I left Johnston. I could not count it. I did not want anyone to see me, but I afterwards took £300 and put it in the safe; doubled the other up; had my dinner; and after that took the car and went out to Darling Point-road to Maling's place. I was expected. Mrs. Plttock, whom I know, opened the door and let me in. She just called Silas, and we went into the front room overlooking the harbour. I had a few words with her, and then handed the money to Silas Maling. There was very little said. I remarked: This is from "Jimmy" Johnston. He said "That's all right, Richard." I did not have a drink; I only stopped a few minutes, shook hands, and came away. That was the finish of it.

#### **Johnston Complains.**

Had you any other conversation with Maling on that matter? No. The next conversation I had was what I saw Johnston about a fortnight afterwards. I met him in Pitt-street, and he said "They have been round to me saying they have not got their cut." I said "It was not all there when you gave it to me."

What did you mean? That there had been some money extracted from the packet. Instead of the envelope being full there was a third of it vacant.

How much ought there have been? Since then I know; but I did not know then.

Had you not the curiosity to count how much was in the parcel? No; it was immaterial to me, you see.

Why? I could not keep more than £300 because Johnston had already said how much was in it, and I would not have been allowed.

But why? Well, I would have had all the people down on me if I had kept more than my share.

#### **Directors Of The Council.**

Whom do you mean by all the people? The directors of the City Council, I suppose you call them.

When you say directors do you mean aldermen? Yes.

Did Maling tell you aldermen of the City Council were sharing it? He did not exactly say that. I just formed my own conclusion. Of course it was split up. He would not be allowed to keep all that.

That was your idea? Yes.

His Honor: Which was the bigger parcel?

Witness: The amount I gave Maling at his house.

Was it much bigger? Oh, yes; twice as big. Did you count out the £300 which you took out? Yes, I counted it.

**Other Contractors Named.**

Mr. Shand: Did any other coal contractors give you any money?

Witness: Yes.

Can you tell me who they were? Mr. Earnshaw, of Earnshaw and Kirton, and Grey, of South Clifton.

Tell me the circumstances under which Earnshaw paid you money? One of the occasions was for an order of 30,000 tons. It was an emergency contract.

Tell us what was done? There was a tender for 30,000 tons, and Earnshaw came over to my office at the power-house and said: "There is a tender going in. Can you do anything in the matter?" I said, "I can't do anything, but I will see." I then communicated with friend Maling. I told him that Earnshaw was tendering, and that there would be something coming along. Maling said, "All right. What is it?" I said I was not quite sure. I said about 3d a ton."

Did Earnshaw mention that sum? I am not sure. It is a long way back. The order went through, and Earnshaw came round and gave me £300 or something of that sort, which I split with him. I am not too sure whether Maling got two-thirds, and then he would probably have to divide. Earnshaw paid the money in small notes.

Did you have a further deal with Earnshaw. Yes, practically on the same lines. I think it was a 30,000 tons order. The order was recommended by me, and Earnshaw came round and said something was coming. I think he said it would be all on a tonnage basis, 3d or 4d a ton. The total amount came to about £400. Whatever it was he paid on a tonnage basis. The money was paid in a lump sum.

**Pre-Arranged.**

What did you do with that? Split it with Maling.

His Honor: Before you split it did you see Maling?

Witness: Oh, yes, it was all pre-arranged. I was the man who took the money, unfortunately.

Referring to documents, Mr. Shand said that in 1921 the council accepted a contract from Kirton and Earnshaw for the supply of 10,000 tons per annum for two years. Another contract was let in October, 1921, for 5000 tons, and again in November, 1922, for 20,000 tons.

**Meeting With Holdsworth.**

Questioned by Mr. Shand concerning a South Clifton coal tender, witness said that in 1926 he received a telephone message at his home from ex-Alderman Holdsworth, asking him if he would go down to Holdsworth's hotel at Woolloomooloo.

Mr. Shand: Do you remember what time that was?

Witness: At the time the South Clifton tender was being considered by the council.

What took place when you saw Holdsworth? Holdsworth took me into a room at his hotel and said: "Paddy Stokes asked me to send for you and ask you if you knew any of the South Clifton people." I said: "No, I do not know any of them. I know their coal, and have used a lot of it. What is it all about?" He said: "Well, I want to know whether you think there would be anything doing." I replied: "I will go round and try. How much do you want?" Holdsworth said: "I do not know. You had better see Paddy (meaning Stokes) in the morning." I said: "All right," and went away. Next morning I came down to the hall here and Stokes, of course, was expecting me.

**A Dramatic Pause.**

At this stage witness appeared to be greatly affected. On looking towards officials of the council, outside the barrier of the chamber, he said, In plaintive tones: "This is nice evidence to give, isn't it?" There was a dramatic silence for a few moments. Mr. Shand then gently urged the witness to continue his story.

**Get £500.**

"Stokes said to me," he proceeded, " 'Get £500.' He then said to Mr. Carrick, 'Introduce him,' and Carrick introduced me to the whisky. (Laughter.) I then left, and not knowing any of the South Clifton people, I saw Pringle, and asked him if he knew any of them. Pringle said, 'Well, I don't; but I think Mr. Bragg does.' I said, 'Of course, their's is a coal that is practically recommended. It will go through anyway, although I do not know whether they know it. Would you get in touch with Bragg?' Eventually I got in touch with Bragg, and discussed the circumstances with him. I told him that I had been commissioned to come down; that the coal had been practically recommended; and that he could make 'dead' sure of it for £500. He said he knew that, but that was not much good. "Where do we come in?' Bragg asked. I said, 'I only want £500. Whatever I get above that sum I will split with you.' On the next day Bragg said that he had seen Gray, who was a little bit afraid of it. Bragg said he would vouch for him. I went round next day and saw Gray, and explained the whole circumstances to him. Bragg told me that he had fixed it for £750; £250 was outside my part of £500 that I was to collect. When I saw Gray I assumed that instead of asking for £500 I was to ask for £750, which I did. Gray said, 'I will have to see one of my directors. I could not do this.'" Next day he said, 'Yes, I am agreeable;' but he was not sure whether I was genuine or not. I said, 'Stokes is at the Town Hall. Ring him up.' He said, 'All right.' Gray rang up Stokes, and said, 'Woof is here. Is it all right?' I assume that Stokes said 'Yes.' He said, 'That is satisfactory,' we shook hands, and I went away. I then went back to Pringle, and told him and Bragg the result. The thing then lay in abeyance until the order went through."

Mr. Shand: Did you communicate with Stokes or Holdsworth?

Witness: Yes; I telephoned to Holdsworth, and said "I have fixed that all up."

Did you see Gray? Yes, I saw him. He said they only paid fortnightly, and that I would have to wait for the next fortnightly payment. I went round on that day, rather early, and after a time I saw Gray, who said, "Where do I come in?" I said, "Is a 'tenner' any good?" He replied, "Yes." I do not know whether I extracted a "tenner" from the others or had it in my own pocket. At any rate, I gave him a "tenner," took the money, and came away.

Where was the money placed? On the table.

What did you do next? I came round here (at the Town Hall), and asked Carrick to tell Stokes that I was here. Carrick said he was very busy. Anyway, he went in, and Stokes came out. I said, "I have got that in my pocket." He said, "Keep it there, and go down to Belfields, and I will pick you up there." I went down to Belfields, and Stokes came down in a car. I jumped into the car. and we went to Holdsworth's hotel. We went into the back room again, and laid the money on the table-not £750, but £500, less £10. The £250 was through me "double-crossing" them. I did not tell them that. Stokes said, "Well, Dick ought to have £100." Holdsworth said, "I object to that. If he is given that he will have more than any of us." The end of it was that I received £40; but I am not quite sure I did not make any demur. Then Stokes said, "I must be going now," and took a "fiver" from the table.

Where was the money when you came in? On the table.

Anything said about the £10? Oh, no. Nothing was said about that. I had told them about it.

What did you do with the rest of the money? Split it with Pringle, Bragg, and myself-one-third each.<sup>[123]</sup>

**18 August, 1928. £10,000 On Mortgage – Richard Woof's Admission  
Further Graft Disclosures – City Council Coal Contracts**

In cross-examination yesterday before the Commission on City Council coal contracts, Richard Woof, ex-superintendent of the power-house, admitted that he had £10,000 lent on mortgage.

Witness also described a number of "single and double-crossing jobs" respecting contracts for coal. In reply to Judge Thomson, witness said that he was unable to give the names of any aldermen, other than those he had already mentioned, who had participated in alleged graft transactions.

Woof said he realised his grave responsibility in ventilating the disclosures, and his liability to be sent to gaol. "I either had to do that, or commit perjury", he declared.

**The Evidence.**

Continuing his evidence Richard Woof, formerly superintendent of the City Council's power-house, said that Earnshaw paid him the commissions about two weeks after the contracts had been ordered.

Mr. Shand: The last thing you told us yesterday was an account of the transaction with the South Clifton. Did you see Stokes frequently after that?

Witness: I have not seen him since.

Have you had any communication with him since this commission started? Yes, he rang me up and asked me to go along and see him. He asked me how I was, and said he was glad to hear my voice again. He told me he was staying at the Lyceum Chambers. I think I said "All right," but I consulted my solicitor next day, and, acting on his advice, I did not go to see him.

Replying to Mr. Barton (for Woof) witness said that he remembered Peacock getting a contract for Northern Extended coal. He received a cheque for £4 or £6 in respect of the contract.

Was that the first payment you received from Mr. Peacock? Yes, as far as I can remember.

Did you receive any money from Johnston in respect of that contract? No. The whole transaction with Peacock was kept a secret commission, and must have been arranged by Maling, I knew nothing whatever about it.

Witness, continuing, said he understood that Maling was to receive £400 out of one contract. When he received the bundle of notes in 1921 no alderman saw him in regard to the money. He did not hand any money to any alderman before 1926. Ex-Alderman Bramston never complained to him that he had not received his "cut." He did not see Ex-Alderman Bramston. Witness knew that there was trouble about a contract for coal, but he was not aware that it was over the substitution of Rhondda coal for Northern Extended.

Mr. Millington (for J. Johnston): You referred yesterday to Johnston as a "magsman." You mean he was a fluent speaker?

Witness: Yes. I did not mean to be insulting.



Dr. Evatt (for ex-Lord Mayor Stokes): According to your evidence yesterday you betrayed your trust to the council; you are a grafter, and had been practising for years? Yes.

You realise you have made charges against a large number of persons? Truthfully.

I suppose you will admit, even on your own story, that you deceived people you were conspiring with. In other words, you "doublecrossed" them, and tricked them? Yes, and they "double-crossed" me.

You tricked them? And they tricked me.

Witness, further examined, said that when he joined the City Council's service in 1908 his salary was £400, rising in annual increments of £25 to £500. He first opened a bank account in 1911. He now had a large sum of money lent on mortgage.

### **£10,000 On Mortgage.**

Dr. Evatt: Did you take graft before you came to Australia? No, I was in a position to give it.

Witness (to his Honor): Am I obliged to go back to my actions in England?

His Honor: I think you should answer it.

Witness: In the positions I held in England I would have money in my pocket to pay people for assistance in carrying out work.

Dr. Evatt: You practised bribery?

Witness: No, it was not bribery. I paid men to get more than an ordinary day's work done. I consider that I earned that money I received from Johnston. My technical knowledge was worth more than £10 a month to him, in addition to which I helped to push his small coal trade. I can even get money now for my expert knowledge. I got £5 quite recently for expressing an opinion about a dynamo.

In 1921 you got £300 for yourself. Do you think you were justified in taking that? No.

In 1921 you were a fairly wealthy man? Yes. I paid income tax on between £1300 and £1500 a year.

Witness went on to say that before joining the service of the council in 1908 he had about £2500 or £2600.

How much money have you now got out on mortgage? About £10,000. When I left the employ of the City Council I had about £9000 out on mortgage and a cottage for which I paid £975.

Witness said that his wife knew nothing whatever about the graft transactions. She did not understand them now.

Is it pricking of the conscience that has made you come forward and make these statements? It is on account of my health, and is on the advice of my solicitor, and Mr. Johnston sending the police to me.

Will you not be frank enough to admit that it was the result of the visit of the police sent by Johnston? It was on the advice of Mr. Magney that I decided to make a clean breast of everything.

Until the visit of the police to your home you had no intention of disclosing these things? No; Johnston told me that I could expect a visit from the police. He also told me of a statement he had

made. It was a tissue of lies. Johnston told me that I was to deny everything, especially the moneys I had received from him.

Did you agree to that? Seemingly, I didn't know whether Johnston was telling the truth.

And I suppose Johnston could not tell whether you were telling the truth? No.

(Laughter.)

Did Johnston tell you that he himself handed over an envelope containing £300 to Msling? No, that was kept from me.

Did Johnston tell you that he denied all knowledge of the transactions, and he wanted you to do the same? Yes.

When the detectives saw you were you concerned with your own safety? Yes, the thing was making me bad.

And you know that proceedings were being taken in the court about other graft transactions? Yes, I did.

Did you seek advice as to whether you might be put into gaol for your share in these graft transactions? I understood that I might. When the transactions were in progress I did not think the rule would be so strict, but that I would simply be told to resign. I did not realise it meant ruination.

It meant ruination to you? You have still got all your money? Yes, I still have all the money.

#### **Liability To Imprisonment.**

Were you not frightened you would be put into gaol? I quite realised I might be imprisoned.

You were sorry to leave the council service? No; I was going blind. If I had gone blind I intended to finish.

Finish what? Finish myself.

To kill yourself? Yes: I had all my teeth knocked out, and it turned out to be pyorrhoea.

You are interested in racing? Yes; I have won £300 and a couple of £100 bets. But I have lost money, too. I bet now. I used to get tips from Earnshaw. He had a horse called Bardoleur.

Witness said that he kept the graft money in a safe at his home, which he kept for his living expenses and betting. In 1921 the council passed a resolution to pay all overtime, and sometimes he picked up as much as £45 per month. He was a free giver, free spender, and a free better, "too free altogether."

Dr. Evatt: And a free taker, too. (Laughter.)

When Mr. Kinkead rose to cross-examine Woof, witness said that he hoped counsel would "hurry up." "I am not well," he added, "and I am doing my best."

Mr. Kinkead: What was Moore's reputation? Not good.

On what do you base your opinion? On "Jimmy" Johnston's opinion. (Laughter.)

His Honor: It is getting more deep now.

(Laughter.)

Had you any trouble with Moore? No.

Continuing, witness said that when Peacock's contract was cancelled there was an urgent need for the council to get coal from somewhere, and (he thought) Byrnes increased their supplies.

**Conversation In Hotel.**

About 12 months after he left the council's employ he met Peacock, "who had had too much," in an hotel, and he himself "had not had a little." (Laughter.) "I said to Peacock," said witness, "'Well, what have you done with all the money?'" and Peacock replied, 'You know most of the money found its way into "Jimmy's" pocket.' That was the time I learned I had been double-crossed."

Did Johnston ever warn you against Moore? He told me that Moore was not of much use.

Did he tell you that he was a grafter? No. We never mentioned anything about graft. We were very sensitive about the word "graft." (Laughter.)

Witness protested that he was not treating the matter lightly.

Mr. Bryan Fuller for Arthur Earnshaw, and Kirton and Earnshaw, Ltd.: Did you get anything out of the Bulli contract?

Witness: No; that was another "double cross."

If money was paid you did not get it? I learned afterwards that there was a big deal, but I got nothing out of it. It was a most unsuitable coal.

Tenderers paid their money to someone or other to get the coal into the powerhouse? That is my idea.

No one got a contract to supply coal to the powerhouse unless they paid money to someone or other? I could not say that.

Were there many contracts from which you did not get something? Only those I have mentioned.

You got something out of Byrnes's contracts? Out of the last two.

That firm was supplying, from 1913 onwards, at least 70 per cent, of the coal used at the powerhouse? That is so.

You had a good deal to say as to who would supply the coal? No; I could not say that. I never saw the tenders.

Your recommendation would carry a lot of weight? Yes; my verbal recommendation would be given to Mr. Forbes Mackay, and would carry weight with him.

Do you know the tender of Kirton and Earnshaw was the most favourable one considered? Had I the choosing of it, I would have done so. It provided for a low volatile coal which was most suitable.

**£500 For Aldermen.**

Witness examined by Mr. Markell, K.C. (for South Clifton Coal Co.), referring to an interview between himself and Gray, of the South Clifton Coal Co., denied that he told Gray that he (Gray) would not get a fair deal with his tender unless he had someone at the Town Hall to watch his interests. He went to ask Gray whether he would give £500 to the aldermen to pass the contract.

Mr. Markell: What was he to pay £500 for? Witness: To have the contract passed through.

How much was the contract for? About 60,000 tons.

You were to ask for 3d a ton? No; I was told to ask for £500.

Do you know that 60,000 tons at 3d a ton is equal to £600? No.

Who told you to ask for £500? Stokes. It was a double-cross job.

Who was doing the double-crossing? I was. You were not the representative of the South Clifton Co.? No.

You were merely getting the money illegally from the company? I was after the cash.

Witness told Mr. Markell that he did not count the £750 which he received from the South Clifton Co. He took it home and counted it.

Mr. Markell: Are you always as trustful as that?

Witness: Yes. Money like this is treated very lightly.

And apparently honour is treated lightly? Yes.

Is it not a fact that Gray paid you £40 before that day? I am not sure of that I would not swear it.

Are you sure Gray took £10 as a bribe? Absolutely.

Had he advanced you money beforehand, would it have been dishonest? No; but I am sure he did not advance me anything. . . I am taking a good share of the blame.

But you took your share of the money? Naturally. I would not take a risk for nothing.

You are an honourable man? I am not an honourable man.

You are not? I am telling the truth, as nearly as I can remember it.

#### **Single And Double Crosses.**

To Mr. Hall (for certain aldermen), witness said that although Johnston was getting £500 for him, he was only giving him at the rate of £100. Johnston was "doublecrossing" him. "He is down and out now," added witness, "and I feel sorry for him. I do not bear any malice towards him. He was a generous spender, and made a good fellow of himself."

Mr. Hall: Would you say that he was living at the rate of £3000 a year. Witness: Yes.

After five years the £10 a month was raised. How was the money paid to you? There wasn't any particular way. He just handed me the money. It was too easy.

Witness was questioned by his Honor as to evidence he had given on the previous day regarding the directors of the council.

His Honor: Have you overheard the word "gang" used about the Town Hall? Yes, and a great many other things worse than that.

Do you know whom the word gang referred to? Merely suspicion, what I heard people saying which might have been true and might not have.

Before you handed the money over to Maling at his house had you spoken about the disposition of the money? No. I would not ask Maling, and if I had he probably would not have told me.

Mr. Shand: Have you heard about the "big four" in the council? No, but I have heard about the "big three" now.

To Mr. Shand: The amount of money he mentioned to Gray was £750-not £600.

With regard to the Bulli contract witness told Mr. Shand that It was this that he complained about. "That," declared witness, "was a 'single' cross."

Mr. Shand: What do you mean by that?

Witness: That is when they keep from you that there is bribery going on.

His Honor: But when does It become a double cross?

Mr. Shand: When you take more than you are entitled to.

Witness: You take all you can get. (Laughter)

Charles W. Richards, commercial traveller, of Artarmon, gave evidence In denial of a statement made by witness Moore on the preceeding day. He said that he had never had any conversation with Moore with reference to a payment of £500 to secure a City Council contract. Witness was a brother of the Alderman Richard Richards, ex-Lord Mayor of Sydney.

The further hearing was adjourned till 10 a.m. on Monday.<sup>[124]</sup>

#### **21 August, 1928. Quarter Sessions – (Before Acting Judge Maxwell)**

Crown Prosecutor, Mr V.H. Treatt – Serious Offence

Ernest Vale, 18, was charged with having committed a serious offence upon a girl 11 years and four months of age, at Balmain on July 1. Mr Kinkead (instructed by Mr Mervyn Finlay, appeared for the accused who pleaded guilty.

Evidence was given by the police that girl was a sexual pervert, and in binding over the prisoner in his own recognizance in £50 to come up for sentence if called upon within two years. His Honor said that there was a law to protect young girls from seduction, but he thought from this case that there should be a law also to protect boys from being seduced by girls.<sup>[125]</sup>

#### **22 August, 1928. Quarter Sessions – (Before Acting Judge Maxwell)**

Crown Prosecutor, Mr L.J. McKean

##### **Larceny**

Frank Allen, 28, yardman, was charged with having stolen four rings, the property of Wilfred Charles Taylor, at Sydney, on May 7.

Mr. Kinkead (instructed by Mr. G. A. Prendergast) appeared for the accused, who was convicted and remanded for sentence.<sup>[126]</sup>

#### **22 August, 1928. Grounds of Appeal – Prohibition Sought – Rule NISI Granted.**

On July 31 last, Silas Young Mailing, formerly deputy general manager of the Electricity Department of the City Council was sentenced by Mr. Gates, C.S.M., at the Central Police Court, to six months' imprisonment, with hard labor, and fined £500 (In default, 12 months' Imprisonment), on a charge, under the Secret



Figure 14 - Frank Allen - 1928

Commissions Prohibition Act, for having corruptly received £10,600 from Babcock, Wilcox, Ltd., in connection with the Bunnerong Power-House contracts.

Dr. H. V. Evatt, counsel for Maling, then unsuccessfully applied to the magistrate to extend to Maling the provisions of the Crimes Act, relating, to first offenders, but succeeded in securing the release of Maling on a recognisance of £200, pending appeals to the Quarter Sessions Appeals Court and the Supreme Court.

#### Various Grounds

Maling to-day applied to Mr, Justice Campbell, In Chambers, for a writ of prohibition to restrain Mr. Gates from further proceeding upon his conviction and sentence, upon a number of grounds, which included that on the undisputed facts, the offence charged was not punishable under the N.S.W. Secret Commissions Prohibition Act, but only, if at all, under the Federal Secret Commissions Prohibition Act; that Mr, Gates wrongly refused to allow the cross-examination of the witness Arnot, with regard to certain material facts, and that the magistrate was in error in allowing In evidence alleged conversations between Detective-Sergeant Mackay and the defendant Maling, at Wellington (N.Z.), as Maling's statements- were not voluntary; that no evidence was given to prove the source of the alleged payment from England to the account of F. Buckle; that, on the uncontradicted evidence, the alleged payments were not, as alleged, in respect of the defendant Maling's recommendation of Babcock and Wilcox, Ltd.

After the grounds of appeal were argued by Dr. Evatt, Mr. Justice Campbell granted a rule nisi for a writ of prohibition, and made It returnable before the Full Court on Wednesday next. Dr. H. V. Evatt and Mr. J. J. Kinkead (instructed by Messrs. R. D. Meagher, Sproule and Co.) appeared for Maling in support of the application.<sup>[127]</sup>

#### 24 August, 1928. Graft Inquiry – Premier's Evidence – For Mr Mostyn – Alderman's denials.

At yesterday's sitting of the Commission which is investigating City Council coal contracts, the Premier (Mr. Bavin) gave evidence of an interview with ex-Lord Mayor Mostyn and the Town Clerk (Mr. Layton), respecting the acceptance of tenders.

John Harold Mostyn, ex-Lord Mayor of Sydney, stated that during the State election campaign in September last he spoke at Lithgow on two occasions. He was accompanied by ex-Alderman English. He described a visit to the Spring Vale colliery at the invitation of O'Halloran. He did not discuss with O'Hallorann anything connected with the supply of coal to the City Council. When he was asked by O'Halloran what he thought of the mine witness replied that in his opinion would never supply the coal requirements of the council. O'Halloran said, "We are not looking towards that."

Mr. Hall: On October 10 tenders were called for coal. Did you have anything to do with the form of the tender?

Witness: No, it was a departments matter.

Witness said that a conference took place respecting the supply of coal to the council. Mr. Layton said that Mr. Forbes Mackay was "raving about the necessity for the supply of coal." Mr. Mackay said that he was not concerned with political parties. He was concerned with the running of the power-house, and he wanted coal. He objected to bringing the coal, which was at grass at Bunnerong, to the power-house because it would be a waste of the citizens' money. Mr. Mackay wanted them to deal with the coal tenders.



**No Monetary Consideration.**

Replying to further questions by Mr. Hall witness strongly denied that he had ever received any consideration whatsoever in respect of coal contracts.

Mr. Hall: Did you at any time give authority to anyone to negotiate on your behalf to get 2d per ton or any sum in consideration of any coal purchase?

Witness: Never.

Did anybody ever report that he had negotiated on your behalf? Never.

Did O'Halloran ever go to you to get £1? No, I would not trust O'Halloran with a pound myself.

Did your wife ever sign any documents during your Lord Mayoralty except official invitations? No.

It is alleged that a document with your wife's name in it was put in an envelope and sent to you? I never received anything. Mr. Burrell looked after all my correspondence.

Witness described an interview which he, in company with Mr. Layton, had with the Premier (Mr. Bavin) after the council was abolished in respect of coal contracts. He said that Mr. Forbes Mackay had urged that unless a contract was accepted there would be a shortage of coal for the power-house. It was proposed that a temporary supply of 24,000 tons from Byrnes should be accepted. Mr. Bavin advised that in view of the fact that he (witness) and Mr. Layton had no apprehensions of a shortage he should not sign any contract.

Did you ever try to influence Mr. Layton or Mr. Bavin to accept any tender? No. On the contrary, I was not in favour of accepting any tender.

**Premier Gives Evidence.**

At this stage the Premier (Mr. Bavin) was interposed.

Mr. Hall: You are Premier of the State?

The Premier: I am at present. (Laughter.)

The witness went on to describe the interview Mr. Mostyn and Mr. Layton had with him in regard to coal contracts. Both Mr. Mostyn and Mr. Layton, despite the opinion of Mr. Forbes Mackay, stated that they had no apprehension of any shortage of coal. Mr. Mostyn explained the matter regarding the tenders, and gave him the impression that he did not desire the Premier to authorise him to sign any contracts.

"Mr. Mostyn mentioned to me," said witness, "that there had been rumours about improper conduct about coal contracts, and he asked me to advise him whether he should accept tenders. I asked the grounds of Mr. Mackay's anxiety, but Mr. Mostyn did not share that anxiety. I therefore advised Mr. Mostyn that he should not accept any tender."

Mr. Hall: While the appointments of the City Commission were being made, did Mr. Mostyn give any real assistance to the Government?

Witness: He undoubtedly did.

So far as you know, he received no payment? I do not know anything about that.

He got nothing from the Government? Oh, no.

Mr. Mostyn, resuming his evidence, told Mr. Shand that he could give no reason for O'Halloran paying £1 to register the alleged agreement between Austral Investments, Ltd., and his wife (Laura Mostyn) unless O'Halloran was in financial difficulty, and used the document in the endeavour to get out of that difficulty.

Judge Thomson: And the same conclusion will apply to ex-Alderman English?

Witness: Yes.

**"Best Tender Submitted."**

Mr. Forbes Mackay, general manager of the electricity department and city electrical engineer, testified that he recommended the acceptance of the Austral Investments, Ltd., tender, which, in his judgment, was the best tender submitted. His recommendation was based on figures of tests carried out by his staff. That tender for Spring Vale coal was for 186,000 tons, over a period of three years. During the council recess, just prior to the appointment of the Commissioners, witness urged the Lord Mayor to put an order for the supply of 20,000 tons in hand as a "stop gap" until the tenders were dealt with. The Town Clerk said it would be inadvisable for the Lord Mayor to take that action.

In reply to Mr. Kinkead (for Mr. Maling) witness said that B. Byrnes, Ltd., for a number of years was the main contractor, and for some years the solo contractor for coal. To the best of his belief all contracts accepted for the supply of coal were the most economical for the council's use.

To Mr. Hall witness said that Mr. Mostyn had never seen him about any coal contracts.

To Mr. Sproule (for certain aldermen) witness said that he recollected Mr. Moore of William Laidley interviewing him, and complaining that he had had not a fair deal. It was very common for unsuccessful tenderers to suggest that they had not had a fair deal regarding tests. He held the opinion that Byrnes and Peacock's tenders were the ones that should have been accepted. The possibility of coal tenders being tampered with was never out of his mind. He trusted to laboratory tests against boiler tests.

**Mrs. Mostyn's Denial.**

Laura Mostyn, formerly Lady Mayoress of Sydney, next gave evidence. She denied, in reply to Mr. Hall, that she had ever been approached by anyone in regard to an agreement to receive 2d a ton on coal at any time. She never saw such an agreement, nor had she put her name to any document.

Ex-Alderman John English, replying to Mr. Sproule, said that he had known O'Halloran since boyhood.

Mr. Sproule: Has he ever spoken to you about Spring Vale colliery?

Witness: Not to the best of my recollection.

Did he ever tell you what he was trying to do about tenders with Spring Vale coal? He would speak about it, but not directly.

Did you know of the agreement in which he was to pay Mrs. English 2d per ton? No.

Did you receive any agreement purporting to come from him? No.

Did you ever give him a pound to pay stamp duty? No.

Replying to Mr. Shand witness said that he could give no reason why O'Halloran should register an agreement which would be detrimental to his character. He had on frequent occasions given money to O'Halloran.

### Talk Of "Phiz-Gigs"

Continuing, witness said that he had seen O'Halloran in Kegwell's Hotel this week. O'Halloran was standing at the bar, and he asked him to have a drink.

Mr. Shand: And you asked this man who had sworn that he had borrowed a pound from you for stamp duty to have a drink?

Witness: Yes. I would not allow any man to stand at the bar counter, no matter how bitter enemies we were. One of the reasons why I shouted for O'Halloran was that I had been warned over the telephone that "phiz gigs" were about.

What is a "phiz-gig"? Well, I take him to be a sort of police pimp.

Who warned you? I don't know. Someone rang me on the telephone and gave me the warning, and then rang off.

The Commission was adjourned until this morning.<sup>[128]</sup>

### 26 August, 1928. "If I Don't Pay, I'll Get Nothing!"

The Pit In The Coal Seam Of Alleged Graft Gets Deeper As The Commission Digs In  
Paddy Stokes Says That Woof Is A Liar!

The pit deepens. For another whole week inroads have been made by the Civic Coal Commission into the seemingly limitless field of underground graft that is alleged to have been worked during the regime of the defunct City Councils.

Shafts have been struck in all directions, and charges laid to undermine well-known names. Even the ladies have not escaped, the Commission being honored with the presence and examination of Laura Mostyn, wife of the last Lord Mayor.

Presiding Judge Thomson is a model of patient perseverance. Mr. A. B. Shand, K.C., with him Mr. J. Cassidy (instructed by the City Solicitor, Mr. Waldron), assists the Commissioner; Mr. E. A. Barton (instructed by Messrs. Magney and Magney) appears for Richard Woof; Mr. W. J. Curtis, K.C., for B. Byrnes, Ltd.; Mr. J. F. Millington for J. W. Johnston; Mr. E. Sproule (of R. D. Meagher, Sproule and Co.) for ex-Ald. Holdsworth; Dr. H. V. Evatt (instructed by R. D. Meagher, Sproule and Co.) for ex-Lord Mayor Stokes; Mr. J. Kinkead (instructed by the same firm) for Maling; Mr. D. R. Hall for ex-Aldermen Farrell and Bramston; Mr. Markell, K.C., assisted by Mr. J. Leaver (instructed by Mr. F. Arnott), for the South Clifton Co. and its manager.

Knox Macafee, outside manager for B. Byrnes, Ltd., told of special commissions payable to him appearing in the company's books.

He said that in 1921 or 1922 Johnson told him he wanted some commissions for the City Council or members of it — he did not mention any particular person. Vouchers were made out and Macaffe signed them.

Asked if the cheques had been drawn by him, Macafee said he had never hand-led a farthing of the money in his life.

Old Richard Woof was again in the box. He was examined by Mr. R. Sproule (for ex-Ald. Holdsworth). Woof stated that portion of his wealth of about £12,000 was the property of his wife. Mr. Sproule: Would £10,000 of that £12,000 be graft money? — Good heavens, no!

Alfred Edgar Ivatt's evidence was a trail of "declines" on his part and objection on that of his counsel, Mr. Curtis. He said he was chairman of directors of B. Byrnes, Ltd., since 1917.

The Commissioner wanted to know Ivatt's qualifications for the position.

Mr. Curtis: I object to your Honor putting that question to the witness.

The Commissioner: If he declines to answer I can only draw my own conclusions. I will take no notice of you. Then (to witness): Will you answer my question? What qualifications had you?

Evatt: I had no special qualifications. I was elected by my co-directors.

Arthur Earnshaw, coal merchant, reported paying 3d per ton and 4½d per ton commission on contracts, and told Mr. Shand that his idea in forking out was to get the business, though his was the lowest priced and best quality coal.

Mr. Shand: Why could you not let it go on its merits? — It could not be done. I was hearing reports about the thing, and I said, "If I don't pay up something I will get nothing, no matter how good the coal is."

Richard Thomas Vivian O'Halloran, secretary of Austral Investments, Ltd., said he was advised to give 2d a ton each to ex-Alderman English and the ex-Lord Mayor, Mr. Mostyn, out of the 8d a ton he was to receive from Spring Vale Colliery on certain contracts. O'Halloran stated that after the agreements had been made out he saw the ex-Lord Mayor (Alderman Mostyn) and ex-Alderman English, and asked them for the names to insert. Mostyn said to insert the name of Laura Mostyn, his wife; English gave him the Christian names of his wife. Witness filled in the names. He told them that the agreement would have no effect unless it was stamped, and they paid stamp duty of £1 each to him. The agreements were dated November 8, 1927, and were made out in respect of the Austral Investments, Limited, and V. R. English.

Mr. Shand: What did you do with the documents after they were stamped?

Witness: I think I sent my typist up to the Town Hall with envelopes addressed to the Lord Mayor and ex-Alderman English.

The Commissioner: Were any payments made under the contract? — No. The contract was rejected.

Ex-Lord Mayor Stokes' evidence amounted to his most emphatic statement — that Woof was a liar. He said it was absolutely untrue that he had ever made any arrangement with Woof under which he was to get, either for himself or any other person, a sum of money out of coal contracts. Stokes was then subjected to what his counsel, Dr. Evatt, termed "an impossible type of examination."

Mr. Shand wanted to know if Stokes was not a poor man when he entered the council, and if, in 1921 or 1922, his cheques had not been dishonored for as low as £1, but the ex-Lord Mayor was not telling.

"I decline," he said hotly, "because you can trace nothing, I will defy you or Woof or anybody else to do that."

John Harold Mostyn, ex-Lord Mayor of Sydney, strongly denied that he had ever received any consideration whatsoever in respect of coal contracts, or that his wife had ever signed any documents during his Lord Mayoralty except official invitations.

The Premier, Mr. Bavin, was brought in.

Mr. Hall: You are Premier of the State? The Premier: I am— at present. (Laughter.) Concerning payments to Mostyn, Mr. Bavin said he knew nothing about that, though he was sure he had received nothing from the Government. Laura Mostyn said she had never been approached by anybody in regard to an agreement to receive 2d. a ton on coal at any time. Indignant denial was also given by ex-Alderman William Holdsworth to allegations that he had participated in graft transactions. He held that the present proceedings were by way of political propaganda. The Commission was adjourned till September 3, when it is hoped that Mr. J. W. Johnston will be well enough to attend.<sup>[129]</sup>

**29 August, 1928. Appeal to Full Court – Clash of Acts – Objection to Inspector’s Evidence.**

Points of law arising out" of the conviction of Silas Young Maling, formerly Deputy-General Manager of the Electricity Department of the City Council, were, to-day argued before the Full Court.

On July 31 last Maling was sentenced by MK Gates C.S.M., at the Central Police Court, to six months' imprisonment, with hard labor, and fined £500 (in default, 12 months' imprisonment), on a charge, under the Secret Commissions Prohibition Act, of having corruptly received £10,600 from Babcock and Wilcox, Ltd., in connection with the Bunnerong Power-house contracts. Last week Maling was granted a rule nisi for a prohibition by Mr. Justice Campbell, in Private Chambers, and to-day counsel for Maling asked the Full Court to make absolute that rule nisi, restraining Mr. Gates from further proceeding upon the conviction and sentence of Maling.

The Bench consisted of the Chief Justice (Sir Philip Street), the Senior Pulsne Judge (Mr. Justice Ferguson), and Mr. Justice Campbell.

The grounds relied upon by the appellant for the making of the rule nisi absolute for a prohibition were:—

That the evidence properly admissable against Maling failed to establish the offence with which he was charged.

That there was no evidence that the source of the alleged payment to Maling was Babcock and Wilcox Ltd.

That certain elements of the alleged offence occurred more than two years before the date of summons.

That it was established by the evidence that the alleged payments to Maling were not made to him as a reward for having recommended his principal to accept the alleged offer.

That the magistrate was in error in holding that the witness Arnot was entitled to refuse to answer certain questions put to him.

That on the undisputed facts the offence charged was punishable under the Federal Secret Commissions Act (1905), and not under the New South Wales Secret Commissions Prohibition Act (1910).

Other grounds relied upon were:—

That if on the true construction of the New. South Wales Secret Commissions Prohibition Act that Act applied to the present case, it was inconsistent with the Commonwealth Secret Commissions Act, and void to the extent of the inconsistency.

That the magistrate was in error in allowing in evidence the conversations between Inspector of Police Mackay and Maling alleged to have taken place in New Zealand, and documents shown to Maling at the police station in Wellington (N.Z.).

That minutes of meetings of the Electricity Committee were wrongly admitted in evidence.

#### **C.I.D. Chief's Evidence**

"We also say," said Dr. Evatt, "that the whole or the conversations between Inspector Mackay (chief of the C.I.D.) and Maling in New Zealand, were inadmissible, in as much as they were, not made voluntarily by Maling. We also challenge the ruling of the magistrate with regard to denial of the right to cross-examine Arnot as to credibility relative to his marriage at Los Angeles."

Dr. Evatt submitted that the whole of the evidence taken at the Lower Court should not be read, because it included that of Inspector Mackay, which was now objected to, as one of the grounds of appeal on behalf of Maling.

Mr. Shand submitted that the evidence must be read, and, the court concurring, Mr. Kinkead read it.

The reading of the evidence occupied several hours.

Dr. Evatt then submitted that Inspector Mackay's evidence, with regard to what took place between himself and Maling in New Zealand, was vitiated by threats to Maling because Inspector Mackay was intent upon getting a statement. Maling, he said, did not make his statements voluntarily. He did not wish to criticise Inspector Mackay's methods, but submitted that his evidence was not admissible against Maling. He submitted that at the commencement of the interview between Inspector Mackay and Maling, in New Zealand, no warning whatever had been given Maling and, in addition, Maling was in bad health. At the police station at Wellington (N.Z.) Maling was interrogated by Inspector Mackay for about two hours, and then there were further questions at Maling's hotel.

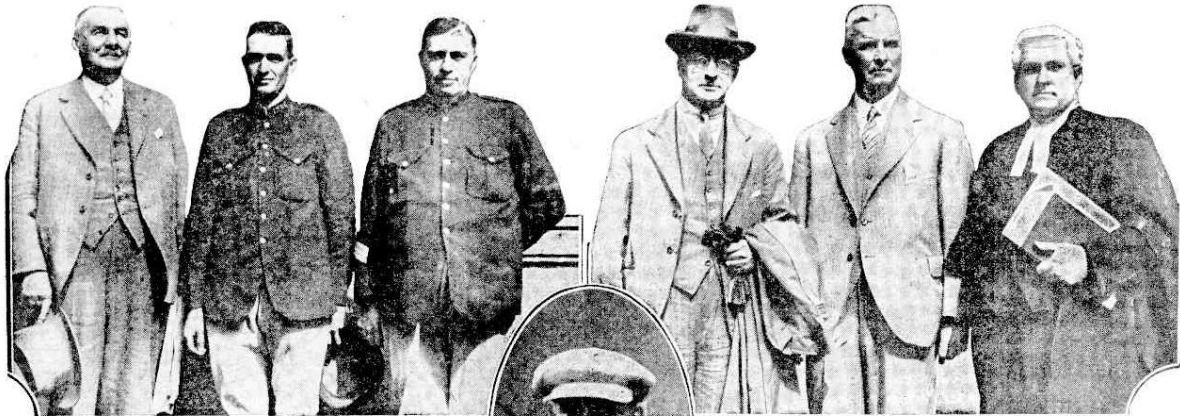
Dr. Evatt had not concluded his argument when the court rose;

Dr. H. V. Evatt and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule and Co.), appeared for the appellant Maling; and Mr. A. B. Shand. "K.C., and Mr. Shortland (instructed by the State Crown Solicitor), to oppose.<sup>[130]</sup>

[5 September, 1928. Sentence of Death for Newcastle Murder.](#)<sup>[131]</sup>



## SENTENCE OF DEATH FOR NEWCASTLE MURDERER



**CROWN WITNESSES**—From left: Dr. J. B. Meredith, Constable W. C. Giddings, and Sergeant A. C. Ireland, all from Raymond Terrace.

**COUNSEL AND SURGEON**—From left: Dr. Holloway, visiting surgeon to Long Bay Gaol; Mr. James, Newcastle solicitor, watching interests of Dent; Mr. Kinkead, barrister.



### 5 September, 1928. Williamtown Murder Trial – Jackson Convicted – Death Sentence.

Long queues waited at the entrance to the Central Criminal Court and the public gallery of the court was crowded yesterday morning when the trial was commenced, before Mr. Justice Campbell, of Charles Henry Jackson 21, labourer, who was charged with having on June 15 feloniously and maliciously murdered Richard Moxey, 34, a farmer, at Williamtown, near Newcastle.

Jackson was found guilty, and was sentenced to death.

Mr. L. J. McKean prosecuted on behalf of the Crown: and Mr. W. S. Hinton, instructed by Mr. A. O. Philip, appeared for the accused. Mr. Kinkead, instructed by Mr. A. H. James, appeared to watch the interests of James Dent.

Jackson stared straight in front of him as the charge was read over, and his lips twitched nervously as he pleaded not guilty.

The accused challenged three jurymen before the jury was empanelled.

### Case Outlined.

The Crown Prosecutor, in outlining the case, said it was alleged by the Crown that the crime was committed with the utmost callousness, and that it was a case of murder or nothing at all. The





Figure 15 - Charles Henry Jackson - 1928

accused had no defence to offer, because he had made two statements in writing and one verbal statement, admitting that it was his hand that held the gun and his finger that pulled the trigger.

The accused was committed for trial with a man named Dent, but although Dent's name would be mentioned, the jury should disregard anything that might be said about Dent. Moxey at the time of his death carried on a mixed farm at Williamtown. On one occasion he had employed Dent on the share-farming principle, and accused was employed by Dent to assist him. June 15 was a wet day, and Moxey went to the beach fishing. He returned home about 4.30 p.m.. After tea, about 6.30 p.m., he was bending over the wireless set in the kitchen, and Mrs. Moxey and an employee named Fullerton were present, when a shot was fired, and Moxey fell dead.

Nobody saw who fired the shot. Next morning

Dent called at the house. Following a conversation with him and Mrs. Moxey, the police interviewed accused at his place some distance away. At first accused denied all knowledge of the crime, and said he went to bed early that night, but later he broke down, and told the police all about the crime. He took them to a water-hole, where the gun was secured, and also to a shed, where he gave them an empty cartridge, and then made a statement.

Continuing, Mr. McKean said that accused later made another statement. Accused later made a third statement. All his statements were inconsistent in some respects, but were not inconsistent as far as his own participation in the crime was concerned. The third statement was made on July 12 to Detective-sergeant Ryan.

#### **The Evidence.**

Elma Sarah Moxey, widow of Richard Moxey, gave evidence that her husband was sitting in the kitchen of their home about 6.30 p.m. on June 15 at a table near the wireless set, with his back to a window. Witness was sitting at the end of the table, and Fullerton, an employee, was bathing his foot, which was sore. Witness was facing the window. Her husband stood up to tune the wireless, and as he leaned over it she heard a noise, and her husband fell back. She went to her husband, who was lying on his back, and lifted his head. With Fullerton's help she carried her husband into the dining-room, and then went to the neighbour's place for help. In reply to Mr. Hinton, witness said her husband was of temperate habits and never offered her any violence. On one occasion she left her husband owing to something she had heard; but she forgave him and went back to him.

Arthur William Fullerton and Detective-sergeant G. A. Emmett also gave evidence.

Detective-sergeant Thomas G. Ryan, of Newcastle, said that on the morning of June 18, as accused was being placed in the cell, he said: "I want to alter my statement. It is not true where I said Dent was with me when I shot Moxey." Accused then wrote another statement. On July 12 accused told witness, in the presence of the governor of the Long Bay Gaol: "I only want to say I did not see Mrs. Moxey on the night of the murder. I was not with her in the shed. I did not see Mrs. Moxey at all. I

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was standing at the cow bails for about 20 minutes. I had not seen Mrs. Moxey for about a month before I went to the kitchen window, where I shot Moxey."

In reply to Mr. Hinton, witness said that ever since a tiny child accused had been under the Child Welfare Department, and had not been looked after by a mother or a father. He had been a hard-working man.

This closed the case for the Crown.

#### **Accused's Statement.**

Accused, in a statement from the dock, said that when he worked at Moxey's farm he used to accompany Moxey to the beach. He alleged that at the beach Moxey committed abominable offences against him.

"He would not let me alone," accused continued, "and on one occasion got away from him, and ran home from the beach. On the following Saturday we were in the hayshed, and Moxey threatened me. I said, "If you do anything to me I will tell your wife what you have been doing to me." He said "You won't get very far if you do tell the wife." He grabbed up a gun that was in the shed. I grabbed at it, too. It went off. After that I left. On the Thursday night before the shooting happened I met Moxey on the road. He said, "I hear you have been putting it all over the town what I used to do at the beach." I was frightened to stay in the town after that. I went to Raymond Terrace. I had a couple of pounds in my pocket, and I went into a pub and started drinking. One of the chaps with me borrowed some money off me. Later on I left. I was drunk in the afternoon when I left there. I had been to another pub. I do not know how I got home. I must have gone to Moxey's and fired the shot. I don't remember it. One of the chaps that had been with me all the day before came home in the morning, and he told me that Dick Moxey had been shot. I then had a recollection that I had been up to Moxey's, and had done something like that. I got frightened and planted the gun. I am very sorry for what I said about Mrs. Moxey, because it is not true. That is all I have to say."

Mr. Hinton tendered the report of the medical officer at Long Bay Penitentiary, who stated that although the accused was of low mentality, he was capable of appreciating right from wrong.

The jury retired at nine minutes past 12, and returned at 3.35 p.m. with a verdict of guilty, and asked, owing to the low mental state of the accused, that he should be shown some consideration.

His Honor: That is a matter which, concerns the Executive. You may rest assured that it will be conveyed to the Executive, who will give attention to it.

When asked whether he had anything to say why sentence of death should not be passed upon him accused answered in a low voice, "No, your Honor."

His Honor, in passing the sentence of death upon the prisoner, said that the Jury had arrived at the only possible conclusion.

Jackson appeared to be quite calm, and walked from the dock with a firm step.

#### **Dent Released From Custody.**

At the request of the Crown Prosecutor Dent was then placed in the dock. The Crown Prosecutor said that he did not propose to ask that the plea of Dent be taken. He would abstain from proceeding with the indictment against Dent, and asked that his Honor order his release from custody.

His Honor thereupon ordered that Dent be released from custody.<sup>[132]</sup>

**6 September, 1928. "Too Virtuous" - Parents And Children Effect Bad, Says Judge**

When Mr, Kinkead, at Darlinghurst Sessions to-day submitted that a youth, convicted of housebreaking, was more likely to- reform under the influence of home life than in gaol, where he would have to associate with criminals, Judge Curlewis said, "No doubt some parents are so respectable that they make their children's home life dull. Parents who are too virtuous towards their children are nearly as bad as those who are not. Children are entitled to amusement. If they don't get it at home they will go elsewhere for it."

The judge then passed sentence of three years, and recommended that it be served at Emu Plains. He said that once it was reported to him that the prisoner's conduct was satisfactory, and that he had become proficient In agricultural pursuits, he would recommend his release.

"City life is no good for you," the judge added.<sup>[133]</sup>

**7 September, 1928. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr. V.H. Treatt.

**Breaking and Entering**

Patrick Francis Cass, 18, labourer, pleaded guilty to breaking and entering the pavilion of Gilbert Storey, at Balmain, on August 13, and stealing 42 knives, 2/3, a kitbag, and other goods.

Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the prisoner, who was sentenced to three years hard labour, His Honor recommended that the prisoner be sent to the Emu Plains Prison Farm, and added that if it was reported to him that the prisoner's conduct was satisfactory, and that he had gained sufficient agricultural knowledge to obtain employment in the country, he would recommend his release.<sup>[134]</sup>

**8 September, 1928. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr. V.H. Treatt.

**Opening Letters**

Donald McCauley Vial, 18, labourer, was charged with opening eight letters sent by post, the property of the Postmaster-General, at Waverley, on August 1, with fraudulent intent.

Mr. Kinkead (instructed by Mr. W. M. Nlland) appeared for the accused, who pleaded guilty, and was bound over in his own recognisance in £10 to come up for sentence if called upon within two years.<sup>[135]</sup>

**14 September, 1928. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr. V.H. Treatt.

**Acquitted**

John Robertson Linscott, a youth, 18 years of age, was charged with maliciously shooting at Francis Donald Barlow, at Marrickville, on July 15, with intent to do grievous bodily harm. He was further charged with maliciously wounding Barlow, with intent to do grievous bodily harm.

Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused.

The allegation by the Crown was that Barlow and about a dozen other youths were on the Wardell road bridge, Marrickville, when Linscott, with a companion, came down Cook's River in a canoe. Stones were thrown at the boat, but did not strike it. One of the youths in the boat called out, "I have a gun here, and it will shoot half a mile." About 20 minutes later, the canoe returned, and was caught by a submerged tree at the bridge. Stones were again thrown, a large stone dropped near the canoe,

and Linscott, the Crown alleged, picked up the pea-rifle, which was a single-loader, and fired 20 or 30 shots, one of the bullets striking Barlow in the head, while another struck another boy on the hand.

In the witness-box, Barlow admitted that the boys on the bridge, of whom he was one, separated into two parties, each party going to a different portion of the bridge, and whilst the attention of Linscott and his companion were drawn to one party, the other threw stones at him, thus keeping up a continuous fusillade Linscott was firing continually at them.

At the conclusion of the Crown case, the Jury intimated that it did not wish to hear anything further, and acquitted the accused without leaving the box.

#### **Alleged Assault And Robbery.**

Jack Hayes, 30, salesman, was charged with having assaulted Frederick Wallace Leahy, at Raeburn Flats, Bayswater-road, Darlington, on May 5, and robbed him of £12.

Mr. Kinkead (instructed by Mr. G. A. Prendergast) appeared for the defence.

The allegation by the Crown was that there had been a fight, in which Leahy was hit over the head by Hayes with a bottle, and the accused, with a man named Wallace, robbed him.

The matter stands part heard.<sup>[136]</sup>

#### **15 September, 1928. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr. V.H. Treatt.

#### **Acquitted**

The hearing was concluded of the charge against Jack Hayes (30) salesman, of having assaulted and robbed Frederick Wallace Leahy, at Raeburn Flats, Bayswater-road, Darlington, on May 6. Mr. Kinkead (instructed by Mr. G. A. Prendergast) appeared for the accused, who was acquitted and discharged.<sup>[137]</sup>

#### **22 September, 1928. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr. V.H. Treatt.

#### **Character Unstained.**

Patrick Hunter, 35, labourer, was charged with breaking and entering the shop of Arthur Patrick English, at Sydney, on July 27, with intent to steal.

At the close of the Crown case Mr. Kinkead, who (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused, suggested that perhaps the jury was satisfied that there was no evidence on which to convict the accused, and the foreman intimated that such was the fact, and returned a verdict of not guilty without leaving the box. His Honor suggested that the jury might add a rider to its verdict saying that the accused left the Court without a stain upon his character. This was done, and the accused was discharged.

#### **Acquitted By Direction.**

James Thomas Douglas, 35, boilermaker's helper, was charged with having made the wilful false statement in a solemn declaration at Redfern on June 27, that he, on June 20, 1928, at the Chullora boiler shop, while walking to his job, stepped on a rail outside the shop and slipped, spraining his ankle.

The case arose out of a claim under the Workmen's Compensation Act. It was alleged by the Crown that the accused had sprained his ankle while playing football during the dinner hour.

While Mr. Kinkead (who was instructed by Messrs. R. D. Mengher, Sproule, and Co.) was addressing the jury his Honor stopped him, and intimated that he did not think any jury would convict upon the evidence. The Jury then returned a verdict of not guilty without leaving the box, and the accused was discharged.<sup>[138]</sup>

#### **26 September, 1928. Liquor Blamed – Manslaughter Charge**

Following an altercation at the Rooty Hill Hotel on Saturday, James Henry Stubbings, 23, a laborer, was charged at the Parramatta Court today with having feloniously slain Harold Sherwood, and was remanded till October 17.

The police alleged that Stubbings struck Sherwood, who died in the Nepean District Hospital, Penrith, yesterday. When applying for a reduction of the £200 bail, Mr. Kinkead, who appeared for Stubbings, said that the defendant was the sole support of his mother, and his father was ill and not expected to live. The police, he understood, would not proceed with the charge, after the inquest, as the two men were very good friends, and liquor was the sole cause of the trouble.

Mr. Williams, S.M., reduced the bail to £100, on the condition that the defendant report daily at the Rooty Hill Police Station.<sup>[139]</sup>

#### **27 September, 1928. Robbed Of £20 - Punter's Experience at Rosehill - Bishop As Bookie's Clerk**

For a Bishop to be operating as a bookmaker's clerk-well, it's uncommon. Equally uncommon is it for a Bishop to rob a poor punter of £20. But uncommon things do happen sometimes.

At Rosehill racecourse on September 15, a Bishop was given in charge, having been taken by force to the nearest constable.

The sequel was at the Parramatta Police Court on Monday, when Albert Edward Bishop was charged with having stolen a wallet and £20 from the person of James Douglas.

Mr. J. B. Kinkead appeared for the defendant.

Constable Schmitzer, according to the case for the prosecution, was in the Leger reserve at Rosehill about 1.30 p.m. when Douglas approached him, holding Bishop by the lapels of his coat.

"I want to give this man in charge," said Douglas. "He stole a wallet and some notes from my pocket and gave them to a man."

Questioned as to who he was, Bishop gave his name and said that he was "clerking for a bookmaker."

The constable asked him what he did for a living through the week. "I won't tell you," Bishop replied. "I want to talk to someone with sense."

A little later, Bishop was handed over to Constable Sly and was taken to Parramatta police station, where he was charged.

That's what Constable Schmitzer had to say about it.

Mr. Kinkead: Didn't the defendant say, "I want you to search me"?-- No.

James Douglas, a carpenter, who lives at Bondi, went into the box and related how he lost his twenty notes, to say nothing of the wallet. Prior to that, he explained, he had invested £3 on three different horses. The wallet containing the £20 was in his inside coat pocket.

"I was making a bet with a bookmakler on the Camellia Stakes," said Douglas, "when the defendant came along, put his hand in my pocket, and took out my wallet. At the time, there was a tall dark

chap standing beside me. He was wearing a hard-hitter, and had neither collar nor tie. The defendant went a couple of steps and then handed the wallet to the chap with the hard-hitter. I caught the defendant by the lapels of his coat and gave him in charge."

In reply to Mr. Kinkead, Douglas denied that he had been drinking on the day in question.

Mr. Kinkead: Why didn't you grab the defendant's hand?— Because I was busy with my betting tickets.

Further questioned, Douglas said that the tall dark man was jostling him about.

Mr. Kinkead: Did you hear someone call out, "You have got the wrong man"? — No.

When you accused the defendant, didn't he say to you, "We'll go to a policeman"?

Constable Sly said that the defendant, when searched, had in his possession the sum of fourpence, a receipt for registration for a bookmaker's clerk in the name of Bishop, and two tickets in the name of Cook for admission to racecourses.

Mr. Kinkead: Didn't the defendant say that he didn't want the name of the bookmaker brought in, the bookmaker he was running for?— He said that two days later.

Do you know the man he was running for?— No.

Bishop elected summary jurisdiction, and pleaded not guilty.

He described himself as a bookmaker's clerk and a motor bus driver, and said that he lived in Carrington-road, Randwick.

"On the day in question," he said, "I was working for a man named Brown. I was backing horses for him through the fence in the Leger. Brown was in the Paddock."

The defendant explained that he backed the winner for Brown in the first race, at five to one. After paying the money to Brown, he was instructed to price Sion for the second race.

"I saw a bit of a scuffle in front of me," said the defendant. "Then Douglas came over and grabbed me by the coat. He said, 'Give me back my money.' I replied, 'I haven't got your money, old chap.' "

The defendant added that people were singing out, "Let him go; he's not the man."

Sergeant Williamson: how long since you drove a bus?— About nine months.

What other work do you do besides being a bookmaker's clerk?— That's all I do.

By whom are you employed?— I work for Cecil Hughes at the pony meetings every Wednesday, and for Mr. Brown every Saturday at the suburban racecourses.

Arthur Brown, formerly a publican, and now a bookmaker, said that he was punting at Rosehill on the day in question, and that the defendant was working for him.

John Michael Dwyer, poulterer, at Liverpool, said that it was not possible for the defendant to have taken the wallet from Douglas' pocket.

Bishop, who had three previous convictions of stealing from the person, was sentenced to three months' hard labor. He intimated that he would appeal.<sup>[140]</sup>



**27 September, 1928. Manslaughter Charge - Sequel To Hotel Fight.**

James Henry Stubbings, 23, a labourer, was charged at the Parramatta Court yesterday with having feloniously slain Harold Sherwood, a railway employee, at Rooty Hill last Saturday.

The police alleged that defendant struck Sherwood in the Rooty Hill Hotel, and that Sherwood died on Tuesday as a result of the injury.

Mr. Kinkead, who appeared for the defendant, asked for a light bail, as defendant was the sole support of his mother, and his father was in a dying condition. The two men were very good friends, and liquor was the whole cause of the trouble.

Accused was remanded till October 17. Bail was fixed at £100.<sup>[141]</sup>

**28 September, 1928. Quarter Sessions – (Before Judge Curlewis)**

Crown Prosecutor Mr L.J. McKean

**Bound Over**

Ruby May Dawson, 30 years of age, who had been convicted on February 5, 1926, on a charge of shopbreaking, and bound over by Judge Edwards to come up for sentence if called upon within three years, having been convicted at the Central Police Court on August 18, 1928 on three charges of stealing and shoplifting, was called up for sentence, and again bound over in her own recognisances in £10 to come up for sentence if called upon within three years.

Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the prisoner.<sup>[142]</sup>

**30 September, 1928. Land Agent Charged.**

Following upon 'Truth's introduction of Patrick O'Donnell, a Pitt-street land agent, to the public on Sunday last, the police this week had occasion to interview that gentleman concerning an alleged transaction between himself and one Daniel Walker.

O'Donnell, together with two other men, Philip Smith and Martin Hamilton, subsequently appeared at the Central Police Court on Friday. They were charged by warrant with having, on September 25, conspired to cheat and defraud Daniel Walker of sums of money.

Granting the request of Mr. J. B. Kinkead, who appeared for the three men, Mr. Shepherd, S.M., remanded them to October 12.<sup>[143]</sup>

**2 October, 1928. "No Shame" – Civic Corruption – Hectic Nights Pocket Full of Notes**

In the continuation of the proceedings of the Coal Commission this morning, addresses were entered upon.

Mr. Hall said, one of the outstanding features was the evidence of a state of corruption in civic affairs by men whose sense of moral turpitude was such as to cause amazement. These witnesses appeared to be devoid of all shame. It was well known that bribes had been offered, accepted and paid in more instances than in these matters.

There had been great discrepancies between the amounts collected and the amounts paid to aldermen. The amount actually put up was £1850, about 2s 7d in the £. Nichol Peacock gave £300. He put up £200, but "he knew his Johnston," and did not give it until he saw Maling approach and collect it from Johnston and pocket it. Johnston said he collected £300 and paid £300, but could not be believed.

Then there was the larger amount of £1100. Woof took £300 and handed it back to Maling. The £900 was supposedly given to the aldermen, but his Honor might say whether, after it passed through the hands of Johnston Maling and Co. any of it got to the aldermen at all.

Peacock, in a hotel, said to a friend, Richard, most of this money goes into Jimmy Johnston's pocket. All the witnesses, who gave evidence gave it in a most friendly spirit. Johnston, they said, was the best shouter they ever knew. His pocket was always full of notes and he spent it like water. In cross-examination they had spoken of hectic nights at Johnston's expense. So hectic that a witness could not pick out the most brilliant night.

### **£3000 A Year**

Earnshaw had spoken of Johnston's generosity and that he lived at the rate of £3000 a year. Yet he had never received more than half that sum per year.

Yet Johnston's evidence was the main evidence against Bramston and Farrell. What weight could be attached to it? If Johnston had been cross-examined it probably would have been discovered that he never even knew Mr. Farrell and in regard to Mr. Bramston if tested probably would not have been able to pick out Bramston as having received £200. Johnston had been a most dangerous man in social life. He loved corruption for its own sake. Johnston said the £200 was given by the Central Shipping and Agency Co. Yet this money, he said had been paid in 1920, two years after Farrell had left the Council. The books had proved Johnston a liar.

### **Money For Business**

None of the men who put up the money had any idea the money was to be put up for dishonorable purposes. They were of opinion that the money was to further reputable business. What he (Mr. Hall) had said in regard to Mr. Farrell applied to Mr. Bramston. Woof had contradicted Johnston. He had appeared a pathetic figure who symbolised sorrow. Still he has seen betrayers who had not simulated sorrow, but expressed it plainly.

It was an injustice that such disreputable men should be backing up reputable men. It did not only affect this case; it might be in the future that accusations should be made against Sir James Murdoch or Mr. Brooks themselves, and who could believe such contradictory stuff? Could his Honor believe that at a time when the death rattle was actually in the throat of the council and the photos of the new Civic Commissioners had been published, that four men would then meet and divide up spoil provided for the accomplishment of underhand work in the matter of a contract for the Springville Colliery. And this was alleged to have been put up in the front bar of the Gresham Hotel at 5.30 p.m.

Mr. Hall maintained that the evidence pointed strongly to the fact that the clients were not parties to any of the illicit agreements.

### **Not Compatible With Guilt**

Mostyn had been criticised for accepting some hospitality and for paying visits here and there instead of leaving matters to be reported upon by his officers; but why should all amenities be excised from public life? It should not and could not be done.

When reports came in concerning coal contracts in which he was supposed to have a £2000 interest, Mostyn did not open them, but replied to Mr. Layton, who brought them, "I don't think I should open them." That action was not compatible with any indication of guilt.

Mr. Barton, for Woof, said Woof's evidence if it implicated anyone implicated himself, but it did not implicate him of perjury. He consulted his solicitor, who told him to tell the truth, and when the police came he told them the truth.

He had deliberately disclosed facts that would not have been disclosed at all otherwise; they would never have seen the light of day. His desire had been to tell the truth and nothing but the truth. Woof had said he had received not 1d a ton as Johnston said, but £10 a month. That was a discrepancy that did not lessen Woof's wrongdoing, but went to show that Woof was telling the truth.

### **Not Graft Money**

Woof did receive £750 from the South Clifton Colliery, he admitted that, but it was not graft money, it was paid, according to Mr. Gray, the manager, for watching their interests and the books of the company had been falsified to justify it.

Mr. Sproule traversed the evidence as it affected his clients. On behalf of Patrick Stokes, Dr. Evatt said the case against him depended entirely on the evidence of Woof. Criminality must be strictly proved, and, secondly, the law looked for corroboration. There was nothing whatever of corroboration of Woof's story, except by Carrick, and he had forgotten it, and recalled something that was suggested by Woof's evidence. Woof had made the charge to cover his own tracks. Stokes denied the charge of graft, and, despite a close examination, nothing to the contrary was brought out against him. Mr. Curtis, for Byrnes and Co., Ltd., said there was nothing in the sworn evidence that implicated the directors. They had not received any benefit for any payment which Johnston alleged he made the City Council.

Mr. Sproule, of Messrs. R. D. Meagher, Sproule and Co. appeared for Holdsworth and English. Mr. Kinkead, of the same firm, for Maling. Dr. Evatt for Stokes. Mr. Shand and Mr. Cassidy for the Crown. Mr. Barton for Woof. Mr. Curtis for Byrnes, Ltd. Mr. Markell and Mr. Lever, for the South Clifton Collieries. Mr. B. Fuller for Curtis and Earnshaw. Ltd., and for Mr. Earnshaw. Mr. Letstor Johnston and Peacock.<sup>[144]</sup>

### **3 October, 1928. Coal Contracts – Counsels' Addresses – Strong Criticism Of Witnesses.**

Counsels' addresses began yesterday when the inquiry into alleged graft in civic coal contracts was resumed by Judge Thomson.

One of the outstanding features of the inquiry, said Mr. D. R. Hall (who appeared for Messrs. Mostyn, Bramston, and Farrell) was that the evidence of corruption in civic affairs had been given by men who seemed almost unaware of moral rectitude. Men like Johnson and Peacock had apparently lost all capacity for shame. To find against anyone on the uncorroborated evidence of Johnson would be to do so on the unconfirmed evidence of a self-confessed "crook." It would be an injustice for anyone to be charged because of the evidence of a disreputable man without the corroboration of reputable witnesses. Although nothing could be shown against O'Halloran, he could not accept his evidence. Every company with which he had been associated had been unsuccessful. After a contract for coal supplies was rejected, he had retained £100. For a sample of coal he had received £80, which he had never returned. He was in acute financial difficulties. The only conclusion, he submitted, was that Mostyn was never a party to any agreement.

Mr. Hall invited his Honor to regard the evidence against Mostyn as the uncorroborated testimony of a co-conspirator and to consider how utterly inconsistent with guilt his whole demeanour had been. His record of service and his conduct throughout the inquiry must protect him from the accusations of a discredited man of the type of O'Halloran.

For Woof, Mr. B. A. Barton said that his client had given evidence which showed him guilty of highly wrong conduct, and had no interest now but to have his Honor believe that he was not guilty of

perjury. Woof I was an old man, sick, dreadfully worried about the whole business, and a pathetic figure. And he had given his evidence with complete candour.

Mr. Sproule (for Messrs. Holdsworth and English) submitted that there could be no finding adverse to Holdsworth or English on the reference before the Commission.

On behalf of Stokes, Dr. Evatt submitted that the law required strict proof of criminality, particularly when a person had been incriminated by another, who admitted criminality. The law looked for corroboration. There was none in regard to Woof's story so far as Stokes was concerned. There could be no reasonable doubt of the innocence of Stokes.

Mr. Curtis submitted that there was no evidence which implicated Byrnes and Co. There was no evidence of any favour being received by the company in any contract. If money passed from Johnson to members of the City Council, the evidence showed blackmail and not bribe. Nowhere in his evidence did Johnson suggest that the directors were parties to the transactions. The Commission had to start with the assumption that Johnson was a crook. The amounts he received were hugely in excess of his disbursements. Crooked as he is, nothing he could say could implicate the directors of the company.

Mr. Kinkead (for Maling) described Johnson as a cheat, a crook, a liar, and a falsifier of books. He double-crossed his own friends. And yet his Honor had been asked to act upon his evidence! As for Woof, he was anxious to say anything to keep out of gaol. He was also a liar and had been given the lie by Stokes, Holdsworth, Grey, and his own statements. In every transaction Maling acted in the best interests of the City Council. There was no independent evidence of any wrong-doing on Maling's part, except that of a pair of grafters, cheats, and liars.

Mr. B. Fuller (for Kirton and Earnshaw, Ltd., and for Mr. Earnshaw) said that to sell coal to the City Council it was essential to pay something to someone, Kirton and Earnshaw, Ltd., had paid a commission, but it was for no bad purpose.

The Commission adjourned until 10 o'clock this morning.<sup>[145]</sup>

#### **7 October, 1928. In Debtors' Prison**

When the name of 'Matthew' Biggar, aged 47, 'cattle breeder,' and also pickpocket, thief, and confidence-man, was called at the Central Police Court last week, on a charge of vagrancy, the said gentleman did not lounge languidly into the dock, as he had done before — he was at Long Bay Debtors' Prison, and is likely to stay there until he produces £10,000.

Mentioned again at 2 p.m., Mr. Kinkead (instructed by R. D. Meagher, Sproule and Co.) sought the discharge of his client, and Sergeant Stinson then remarked, 'The defendant is not before the court, and we have no evidence to offer. He is now being detained on another financial matter.'

Ex parte, the 'cattle breeder' was then 'discharged.'<sup>[146]</sup>

#### **9 October, 1928. "Tassie" Had White Eye-Balls - He is no Longer "Billy" — Squabble for Possession of a "Pom"**

Called "Tassie" by one party, repeatedly referred to as "Billy" by the other, a "pom" puppy strutted, yapped, and slept in turn, through the turmoil of an all-day squabble for his possession yesterday, at the Central Summons Court.

He was paraded, with another "pom," which was alleged by one witness to be his mother. He was said to have a mottled mouth. His peculiarity was white eye-balls and white eye-lashes, the outcome of in-breeding.

Someone declared that his father was his mother's son. In other words, he was brother to his own father. Through this barrage of personal reference the pup remained indifferent. Cyril Gaby, seaman, said he brought the puppy from Tasmania, and gave it to his fiancée, Agnes Pachalli. They called it "Tassie."

According to Mrs. Stocker, the puppy was given her by a friend, on July 14. A month later it disappeared. On September 17 she recognised it in the arms of Miss Pachalli. She was positive the so-called "Tassie" was her "Billy." "'Billy' is the only company I have," she added.

Mr. Kinkead (for complainant): What about your husband? Mrs. Stocker: He is not always home.

Mr. Kinkead: Do you prefer the company of the dog to that of your husband?

Mrs. Stocker: I don't know which I prefer.

Mr. Shepherd, S.M., found in favor of Miss Pachalli. "Tassie" nestled closely in her arms as he was borne from the court. His masquerading days as "Billy" were over.<sup>[147]</sup>

#### **16 October, 1928. Lawyer and Lady.**

The judge smiled, the jury smiled, and even the ghost of a smile flickered across the faces of the two girls in the dock charged with stabbing, at the swift repartee between Mr. J. Kinkead, for the defence, and Madame Marionette Paulo, a pretty, vivacious Frenchwoman, chief Crown witness, at the Darlinghurst Sessions yesterday.

Madame was in turn demure, coquettish, witty, and angry, under cross-examination.

"Will you admit that you have a temper?" asked Mr. Kinkead, after both parties had shown exasperation. "No, monsieur, not even with you," replied Madame, smiling sweetly.

Court officers roared "Silence" several times before the laughter subsided, and Mr. Kinkead proceeded, on another tack.<sup>[148]</sup>

#### **16 October, 1928. Quarter Sessions - (Before Judge Armstrong)**

Crown Prosecutor, Mr. V. H. Treatt.

#### **Acquitted.**

Mona Nicola, 21, domestic, and Ellio Nicola, 19, nursemaid, were charged with having maliciously wounded Marionette Paulo and Kenneth McQuade, at Sydney, on August 11. Mr. Kinkead (instructed by Mr. F. Fanker) appeared for the accused.

The Crown case was that Madame Paulo, a French woman, who kept a boarding-house in Cathedral-street, Woolloomooloo, had a birthday party in her honour, at which both of the accused were present. A complaint was made that one of the accused had taken some money out of the pocket of a guest. The girl, however denied the charge, and, at Paulo's request both of the girls left, but returned later. A quarrel ensued, during which it was alleged Paulo and McQuade were stabbed.

Valentine Macorig said that Paulo struck Mona Nicola in the face, and also spat on her. Mona retaliated by striking Paulo. Then McQuade entered and pushed Mona against the wall. There was some confusion, and later he saw McQuade bleeding. He saw Ellio with a nail file in her hand.

McQuade was quite drunk. He alleged that McQuade had said to him that unless the witness gave him £25 he would speak badly of Mona In the Court.

The accused, who denied having stabbed Paulo and McQuade, were acquitted and discharged.<sup>[149]</sup>

### **17 October, 1928. Quarter Sessions - (Before Judge Armstrong)**

Crown Prosecutor, Mr. V. H, Treatt.

#### **Acquitted.**

Sydney Thomas Osterland, 19, storeman, was charged with having committed a serious offence upon a girl 15 years and 9 months of age, at Balmain, on March 25.

Mr Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused who was acquitted and discharged.

#### **House-Breaking**

Keith Percy Kenyon, 20 fruit hawker, was charged with breaking and entering the dwelling-house of John McMahan at Marrickville, on September 15, and stealing a coat, vest, and coat-hanger There was an alternative count of receiving.

Mr Kinkead (instructed by Mr R F Stuart Robertson) appeared for the accused, who was convicted on the first count, and bound over in recognisances of himself and one surety in £20 each to come up for sentence it called upon within two years.<sup>[150]</sup>

### **21 October, 1928. Bloodstained Shirt From The Party Where Aussie And Dago Revelled**

Did Stiletto or Nail-file Do the Damage? Is Query for Jury as 'Nicola' Sisters Lend Brief Adornment to the Dock

'Look at that man's shirt— it is filled with gore — one cannot say whether it is red or white,' said Judge Armstrong at the Darlinghurst Quarter Sessions. As he spoke he gingerly lifted between his thumb and forefinger a rag of a shirt, soaked in dried blood.

The jury glanced at it with interest. Two young girls in the dock also looked at it with white faces, then averted their eyes. His Honor dropped it on the judicial bench, right under the pale light from his green reading lamp, where it lay in an ugly crumpled heap. For twenty minutes the ghastly exhibit was the centre of interest to spectators in court.

The two young girls in the dock were there on account of the shirt. The Crown alleged that the stains were made by the blood of one Kenneth McQuade, a shipping clerk, who was said to have been stabbed three or four times in the back and in the head with a stiletto by one of the girls. The girl was said to be Ellio Nicola, aged 18, of Cook-road, Marrlckville.

Beside her in the dock sat her sister; Mona Nicola, aged 21, of the same address. She was there because of an allegation that she had stabbed Madame Marionette Paulo, a Frenchwoman who keeps a large residential and boardinghouse at 102 Cathedral-street, East Sydney, east of St. Mary's Cathedral.

The real names of the two accused is Nicholls, and they are not French or Italian, as the name Nicola would imply, but just plain, ordinary Australian natives. They do not look like foreigners, either.

Mona, the elder, wore a huge scarlet picture hat, a pink frock, and white stockings and shoes. She has large, dark eyes, an oval face, and dark brown hair. The younger sister, Ellio Arabella, wore a black beret, a light navy-blue frock, white silken hose and black shoes, and a huge, flamboyant scarf round



her shoulders. They nestled close together in the dock, holding each other part of the time, and occasionally they wept in unison.

At the rear of the court sat their mother, Mrs. Jessie Mona Nicholls, a tired-looking, oldish woman, in a brownish costume.

A score of Italians, Greeks and Frenchmen hung about the court all day, either to watch the progress of the case or to give evidence.

When charged with maliciously wounding Kenneth McQuade and Madame Paulo the girls pleaded not guilty, and Mr. Kinkead (instructed by Mr. Fauker) attended to see that they got justice from the jury of 12 which tried the issue.

Mr. Vernon Treatt, Crown Prosecutor, watched the case on behalf of the Crown, and briefly summarised the evidence he proposed to offer in support of a conviction. Madame Paulo has a nine-roomed residential and seven boarders at Cathedralstreet, and on August 11, 1925, she acted as hostess at a hectic birthday party given in her honor by her friends.

Madame said there were only a dozen present, but many witnesses declared that there were over a score. There was drinking and singing and dancing, the majority of those present being foreigners, but the women and girls were natives of the soil.

The Nicola sisters were there. They had arrived, so Madame stated in her evidence, with a man named Charles D. Smith, of Narani Crescent, Northbridge. Where they met Smith was not definitely settled, Smith declaring that he met them in an hotel, where they had some drinks, and Mona stating that she met him in Pitt-street.

Anyhow, the trio eventually found their way to Madame's birthday party, where the sisters danced with Smith, and Madame gave him a few swings in a waltz.

Madame entered the box to tell all about it. A radiant creature, with flashing black eyes, a ravishing ensemble, an eau-de-nil smart pull on hat, and expensive fur thrown rakishly across one shoulder, and tortoise shell ear-rings that hung to her shoulders and had pendants as large as Mexican dollars.

She leaned negligently on the rail of the stand, smiled at the jury, made speaking eyes at Mr. Kinkead, and glanced from time to time at her French friends, male and female, in the body of the court.

Counsel asked Madame what time did the two sisters arrive at Madame's home. 'It wuz about half - past nine; it wuz my berz-day, and Jimmy and Teddy they come in wuz Mr. Smith.

It may be explained right here that Mona is known as 'Jimmy' and her sister, Ellio, as 'Teddy' in the 'Latin Quarter' of East Sydney. Others among their intimates are known as 'Bobby,' and 'Bert' and 'Tommy.' Girlish names appear to be taboo.

Mr. Treatt: Did Smith dance with Jimmy and Teddy?— Oo, yes, Monsieur.

Mr. Treatt: Well, what happened? —Mr. Smith, he say to me that he lose £2. I go to Jimmy and say Mr. Smith he lose £2. You dance with him. Jimmy say, 'I did not take it.' I say, 'You ask your sister. I see her dance wuz Mr. Smith, and she put her hand like this.' (putting her hand inside her coat lapel).

Madame went on to tell Jimmy that she made too much trouble in her house, and never to put her feet inside the door again. Jimmy went away, and about 10 o'clock that night returned with Teddy, her sister, and a young Italian named Valentino Cacorig, who occupies a residential at Riley-street, Sydney.

Valentino, who resembles the late lamented movie Valentino only insofar as he appears to be cultivating a set of side-levers, is claimed as Jimmy's fiancée.

When the trio arrived, Madame said she stayed them at the door, and they expressed their great sorrow, and said they would make no more trouble for her. So they entered the house, but she told them they must stay in the sitting-room away from the other guests and the dancing. The trio sat in the room, and soon Madame heard high words, and returned to expostulate with Jimmy, whose voice was loudest. As soon as Madame appeared Jimmy said, 'I'd like to knock you.'

'You knock me, I say to Jimmy, then out you come right out with me. Then I feel something in my head. I put up hand up, and the blood I see run down.'

Mr. Treatt: Did you see anything in Jimmy's hand? — I see the stiletto in the hand of Jimmy. She takes it from the bag; I see the stiletto two months in that bag.

Well, what followed that?— Yes, Monsieur. Je vous remercie. I then see Mr. McQuade take hold of Jimmy, and hold her hands. Then Teddy stabs McQuade in the back. McQuade he sees Jimmy stab me in the head. Yes, Monsieur, I feel the pain in my head and my back. She stabs me in the back, too.

Followed a rush of the members of the birthday party into the sitting-room and the separation of the brawlers.

Mr. Kinkead next measured his forensic skill against Madame's battery of smiles, bows, and continuous 'Je vous remercie, Monsieur.'

His first shaft disturbed Madame. 'Show His Honor your head,' he suggested. 'Show your head and let the jury see the wound.'

Madame fenced, but at last doffed the eau-de-nil chapeau, and revealed a wild, tumbled mass of reddish-brown hair. 'Go on,' said counsel remorselessly, 'show the jury!'

'Oo, Monsieur, it is just a little one by now, and you would have to look close. Do you want me to take my hair off, Monsieur?' And Madame ran her jewelled fingers through her brown mop.

Mr. Kinkead smiled. Have you a temper? — Non, Monsieur.

Did you have any drinks that night— a little whisky? — Oo! Que voulez vous dire? You insult me now Monsieur. That is my business . . . You are very silly to ask me.

Kenneth McQuade, of Kellet-street, King's Cross, who had allegedly gone to Madame's assistance when 'Jimmy' was attacking her, told 'of his adventure at the international gathering.

When Smith reported that he had lost his money, and Madame had spoken to Teddy and Jimmy, he saw them get ready to leave the house. When they returned later he heard some argument, and going to the room saw Jimmy, he said, striking at Madame's head.

He seized her by the wrists and rushed her into a corner of the room. She calmed down, and he let her go. As he turned away, Teddy came at him, he averred, with a cry of 'Leave my sister alone!' Teddy stabbed him in the temple with a knife, and as she did so she said, 'I've got you in the back, too!'

Then he felt the warm blood running down his skin. He lost a lot of blood, and two men took him to the hospital, where he lay for five days. Some of the wounds were 1½ inches long and an inch deep.

Mr. Kinkead extracted from this witness the admission that at one time he had been 'sweet' on Jimmy, and had even indited love-letters to her, but she had shown no interest in the passion he expressed. Counsel made an effort to show that McQuade's love had turned to hatred.

Valentino Macorig was called into court. He is a sallow, sickly-looking man, under medium height, and McQuade was asked if he knew him. 'I have seen him at Madame's place,' she said. 'He is Jimmy's sweetheart.'

Mr. Kinkead: Now, didn't you approach Valentino and offer to make it easy for Jimmy and her sister at the court if he would give you £25?— Never; there's not a word of truth in the statement.

You know that there is a mistake about the names of these girls— that they are not foreigners?— Yes, their name is Nichoils, and the place they attend is frequented by foreigners.

McQuade denied that he was drunk the night he was stabbed so badly.

Charles David Smith, of Narani Crescent, Northbridge, whose lost roll, had allegedly led to the argument, scuffle, and all at the birthday party, is a glazier, and on August 11 he met in the lounge bar of a city hotel, he said, the beautiful Jimmy, in her flaring scarlet hat, and Teddy in her sable beret.

Charles and the sisters adjourned to Madame's joyous menage, to drink, sing, dance and laugh the merry hours away. He lost his £2 while he was Tooting It to 'Maybe I'll Baby You.'

A study in pale blue — frock, ribbons and hat— was a very small and very young lady. Dr. Vernon Sydney Hunter, of Sydney Hospital, who had examined the stabs in Madame's head and back and similar wounds in the temple and back of McQuade. Both victims had several wounds varying from 1½ inches to 1 inch in depth, and an inch in length. McQuade had lost a lot of blood.

A small nail-file was produced. It was about 2 to 3 inches in length, and it was alleged by the defence that the six or seven stabs were inflicted by the small file.

The doctor looked at it quizzically and smiled. 'Some of the wounds might be caused by it, but there was a fourth wound— 1½ inches in depth, and 1 inch in length, which could not have been thus caused.'

His Honor handled the little nail-file — they cost sixpence in any shop— and handed it back to counsel. It lay beside the three yards of blood-soaked shirt on the Bar table.

Followed the evidence of a number of other witnesses. Detective Frank Almond and Sergeant Lynch, both testified that when they were called in to investigate the stabbing charge, they visited the home of the Nicholls sisters at Cook-road, Marrickville, and there were told by Elvio, otherwise 'Teddy,' that she had done the stabbing with a knife, which someone had taken from her in the excitement. She denied that, her sister Jimmy, had stabbed either Madame or McQuade. The police evidence was that Teddy said, 'I stabbed them with a knife.'

Then followed a trio of attractive little girls. Nola Dean, small, quiet-spoken, all in brown, with only the tip of a brown nose visible under her closely-pulled-on toque, was present on the right of the party, and she saw something of the scuffle which followed the protest made by Madame concerning the vanishing of Dave Smith's roll. To

Mr. Kinkead: He was in the kitchen drinking. I was standing at the door of the sitting-room, when Madame came in and asked Jimmy and Teddy to get out. She struck Jimmy, and Jimmy raised her

hand and struck her. Then McQuade rushed into the room, and pushed Jimmy over to the wall. Teddy was cleaning her nails with a nail-file, and she rushed at McQuade, and I did not see anything else, as a crowd rushed into the room. There was about 20 people there.

Had Madame a bad mood that night?

His Honor (vigorously): A bad mood! I'm in a bad mood myself this very moment. (Laughter.)

Mr. Kinkead: Was Madame cool?— No.

Veronica Courtney, who looked a school-girl, arrayed all in blue, with a riot of curls, round blue eyes, but an air of womanly assurance, said she was a saleswoman employed at Jacobson and Sons, B.M.A. Buildings, Elizabeth-street She never went to school with Jimmy and Teddy, but she knew them well, she said, having seen them at Madame's house.

She did not see any blows struck that night, although she was there and enjoyed herself at the birthday party.

Valentino Macorig, residential-keeper, of Riley-street, Sydney, the 'fee-ong-say' of Jimmy, had to have an interpreter to put his evidence before the jury, but he told of an interview he had in English with McQuade, who had allegedly offered to let the girls down lightly if Valentino would give him £25. He had told McQuade, he said, that he would give the story to the jury when the case came on.

After John Arena, a bald-headed Italian, had told the Court that he knew nothing. Jimmy entered the box. Statuesque, dramatic, emotional, one moment smiling, the next weeping, full of 'foreign' gestures, she made a general denial of the charge.

Madame had charged her with annexing Smith's roll, which she denied, and then Madame had spat in her face, and struck her. She merely retaliated, when McQuade seized her. She knew nothing of the stabbing affray.

Mr. Treatt: What are you? — A housekeeper.

At the Cafe Felix? — No: but I know it.

She stated that she saw McQuade drinking from a large bottle in the kitchen. She denied that she met Smith in an hotel lounge. It was in Pitt-street.

Ellio Arabella Nicholls, other-wise Nicola, better known as 'Teddy,' made a general denial of all the allegations against her. She denied the detectives' evidence concerning her alleged admissions at her mother's home that she had 'stabbed them with a knife.'

'I was cleaning my nails previously to the 'row,' she said, 'and I was excited and I had my hand raised when McQuade turned quickly, and ran his head against the nail-file. I only struck him once.'

Mr. Treatt: Why do you go under the name of Nicola?— Just to abbreviate the name Nicholls. Teddy was more subdued than her sister, and took a very serious view of her position, both in the box, and in the dock. She wept at intervals.

The mother of Jimmy and Teddy, Jessie Mona Nicholls, said she was living apart from her husband, and did canvassing for a living, but had not done any work for months. She did not know that her daughters sailed under the name of Nicola, but she knew they had many respectable Italian friends.

Mr. Kinkead made a vigorous appeal for the acquittal of the two young girls in the dock. He denounced Madame Paulo's house as a 'menace to the city.'

Judge Armstrong held up the gory shirt, the nail-file, and the doctor's certificate, and asked the jury to take them into the jury room, and determine the matter themselves.

After 20 minutes' retirement, the jury returned to Court with a verdict of not guilty In both cases.

Only the prompt aid of Jimmy saved Teddy from falling in a fainting condition before his Honor discharged them. Then they were escorted in triumph to a waiting taxi by a score of young girls and Italians and Frenchmen, who fairly buzzed with excited conversation.<sup>[151]</sup>

### **21 October, 1928. Oranges! - Hawker Kenyon Gets a Lemon - Lifted Coat**

Oranges! Oranges! They lay upon the ground outside a suburban home, their bright coloring striking a note of beauty where before had been only the dull brown earth.

No, not windfalls! They had been dropped there by a hawker of the fruit, one Keith Percy Kenyon by name, and not because he was drunk, but because he was in a hurry.

At least, that's what the jury thought when Kenyon appeared at Darlinghurst Sessions last week to answer a charge of breaking and entering the dwellinghouse of John McMahon in Marickville, and stealing a coat and vest complete with hanger.

When interviewed by the police, Kenyon told them that he was to drunk on the day of the offence that he didn't remember going into the premises. The stolen property was found in his possession, and he failed to give a satisfactory explanation of how he came by it. He repeated to the Jury what he had told the police, and brought one or two witnesses to prove just how shockingly 'shot' he was.

The Crown brought Mrs. Cockling, who lived opposite the McMahon abode, to tell how she had seen Kenyon leaving the premises hurriedly.

Mr. Kinkead (instructed by Mr. Stuart Robertson) told the jury that, from the evidence, his client could not be deemed capable of forming an intent, and, referring to the oranges which had been scattered about the pathways, he said that they, too, showed how drunk the man must have been.

The Jury returned a verdict of guilty.

As It was Kenyon's first lapse, Judge Armstrong bound him over to be of good behavior, and allowed the hawker to go at large with the knowledge that if he slips again within two years he will have to come up and set his term for the offence<sup>[152]</sup>

### **22 October, 1928. Assault Charge – McDonald in Court**

Norman McDonald, aged 21, a laborer, was charged at the Redfern Court to-day with having unlawfully assaulted John Thomas Baxter oh October 18.

The Police Prosecutor (Sergeant Stinson) said it was alleged that McDonald had maltreated Baxter by hitting and kicking him.

When Mr. Perry, S.M., remanded McDonald to appear at the Central Police Court on November 6, Mr. Kinkead (for defendant) asked for bail.

Sergeant Stinson pressed for heavy bail, McDonald was at present on ball on another serious charge. He was



Figure 16 - Norman McDonald - 1929

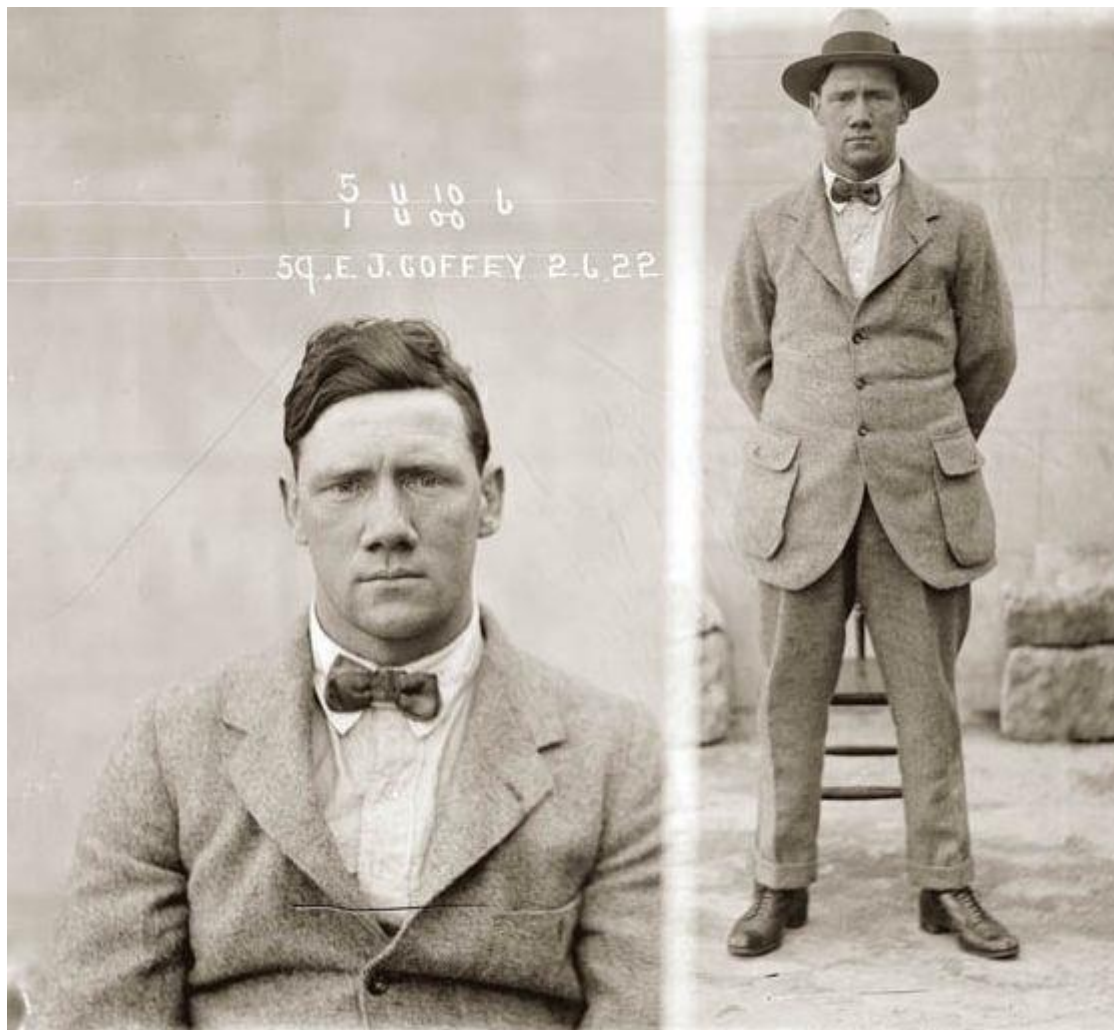
granted bail on certain conditions which had not been observed.

Mr. Perry, however, granted ball, self in £20 with one surety of £20.<sup>[153]</sup>

**1 November, 1928. Ernest Coffey – Four Years' Gaol – Sequel to Sensational Arrest**

Ernest Joseph Coffey, who, about five months ago, was supposed to have been drowned at Bondi, and later figured in an exciting arrest, during which revolvers were fired, was yesterday sentenced to four years' imprisonment.

Coffey, who is a motor driver, aged 30, appeared before Judge Armstrong at the Quarter Sessions on three counts: (1) Shooting at Detective-Sergeant Bowie with intent to murder him; (2) maliciously shooting with intent to do grievous bodily harm; and (3) maliciously shooting with intent to prevent his lawful apprehension. The jury returned a verdict of guilty on the third count.



*Figure 17 - Ernest Joseph Coffey - 1928*

Detective-Sergeant Bowie recounted the exciting circumstances of the arrest at Mascot on August 10. After some firing Coffey called out to witness: "You've got me, Lionel. I'll give in." As witness approached him accused promised that he would not shoot; but when told to drop the revolver to the ground he raised it and fired a shot in the direction of the detective. It was not until later, when witness threatened to fire against him, that Coffey relinquished his hold on the revolver. Coffey afterward explained that he tried to shoot himself, but the gun jammed. It was discovered that Coffey had been shot in the leg and he was taken to South Sydney Hospital. On his way to the

hospital Coffey said: "It's not for myself that I care, for I don't care what becomes of me; it is my wife and two kiddies." To this the detective replied: "You did not consider my wife and kiddies when you fired that last shot. That was absolute treachery. You tried to coax me up to you." Coffey said: "I fired that because one of your mates fired at me while I was on the ground," Witness replied: "That is a lie. There was no shot fired while you were on the ground, except the one you fired at me."

Constable McDermott stated that after Coffey had fired four shots, he had fired three in return, and then finding that his revolver was empty, he threw it at Coffey. The revolver missed Coffey. Then he saw Coffey put his pistol to his right temple, but there was no report.

The accused, in a statement from the dock, said that he had never aimed directly at any one of the constables, nor had he any intention to murder any of them. He had no animosity against Detective-Sergeant Bowie.

The accused was sworn, and repeated his statement as evidence. He stated that he was a good shot with a revolver. He did not take aim at the police. He denied that he had ever said that he would never be taken alive, neither had he boasted to *Tilly Devine* that he would shoot Bowie. His wife had sworn that he had been washed off the rocks at Bondi, and she thought that that was true at the time. He had been living with his wife all the time that the detectives were searching for him.

Coffey was also charged with stealing four motor cars. He pleaded guilty in each case.

Detective-sergeant Bowie stated that Coffey had been an inveterate motor thief - he might be described as a "motor crank." He had been a most devoted husband and father of two children, the youngest being about seven or eight months old. He was a man that knew no fear. He had been several times in employment, but had generally lost his position by his recklessness in driving. He was willing enough to work, and his wife was a respectable woman.

Mr. Kinkead, speaking on behalf of the prisoner, said that Coffey had been wounded in a bayonet charge at Gallipoli, when he was only 16 years of age. He had been invalided, but on recovery he had re-enlisted, and had been again wounded in France. Again he was invalided, and again upon recovery he tried to enlist, but was passed as at for home service only.

His Honor said that the matter was a very serious one, and for the shooting charge imposed a sentence of four years' hard labour in Bathurst Gaol. On the charges of stealing motor cars, he sentenced the prisoner to 12 months' imprisonment on each charge. His Honor complimented Detective-sergeant Bowie and his companions for their actions.<sup>[154]</sup>

### 3 November, 1928. Court of Criminal Appeal

(Before Sir Philip Street, C.J., Mr Justice Ferguson and Mr Justice James.)

#### Rex v Sindel.

The applicant for leave to appeal in this case, Leslie Robert Sindel, was convicted at Parramatta Quarter Sessions of larceny or receiving stolen cattle, and sentenced by Acting-Judge Sheridan to 18 months' imprisonment with hard labour. The grounds of appeal set out that there was no conclusive evidence before the jury that the accused had ever been in possession of the stolen cattle, and that the trial Judge's directions to the jury were inadequate on the doctrine of recent possession and the value of circumstantial



Figure 18 - Leslie Robert Sindel - 1928



evidence. Mr. J. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the appellant.

The Court reserved judgment.<sup>[155]</sup>

**8 November, 1928. Quarter Sessions Appeal (Before Judge Edwards.)**

**Fine Reduced.**

A fine of £50, which had been imposed on Reuben Holmes for carrying an unlicensed pistol, was reduced to £20. The appellant, for whom Mr. J. J. Kinkead appeared, was ordered to pay the fine at the rate of £5 monthly. It was explained by counsel that the life of Holmes had been threatened, and that was the reason he was carrying the weapon.

Mr. Treatt appeared for the Crown.<sup>[156]</sup>

**10 November, 1928. Quarter Sessions Appeals (Before Judge Edwards.)**

**Appeal Allowed By Consent.**

The appeal was allowed by consent and the conviction quashed in the matter of Evelyn Price and Eileen Earle. The conviction was for assault.

Mr Kinkead appeared for Evelyn Price; Mr. Leary for Eileen Earle; and Mr. Browning for the Crown.<sup>[157]</sup>

**10 November, 1928. Court Of Criminal Appeal**

(Before Sir Phillip Street, C.J., Mr. Justice Ferguson, and Mr. Justice James.)

**Rex v Sindel.**

The applicant for leave to appeal in this case Leslie Robert Sindel was convicted at Parramatta Quarter Sessions of larceny or receiving stolen cattle and sentenced by Acting Judge Sheridan to 18 months imprisonment with hard labour. The grounds of appeal set out that there was no conclusive evidence before the jury that the accused had ever been in possession of the stolen cattle and that the trial Judge's directions to the jury were inadequate on the doctrine of recent possession and the value of circumstantial evidence. Mr J. Kinkead (instructed by Messrs. R. D. Meagher, Sproule and Co.) appeared for the appellant.

In dismissing the appeal the Chief Justice said that in the opinion of the Court there was no necessity for the Judge to have directed the jury that the circumstantial evidence must preclude every other reasonable hypothesis except guilt when the question they had to decide was one of recent possession of stolen property and the proper direction on that point had been given.<sup>[157]</sup>

**12 November, 1928. Quarter Sessions Appeals (Before Judge Edwards.)**

John and Douglas Olive, labourers, who had been convicted of assaulting a police constable, appealed against their sentence of three months' imprisonment. The assault took place at a Pymble hotel on September 28.

His Honor dismissed the appeal against the conviction, with costs, but reduced the sentence by ordering the appellants to come up for sentence within three years, provided they were of good behaviour and did not drink any intoxicating liquor.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.), appeared for the appellants, and Mr. R. J. Browning for the Crown.<sup>[158]</sup>

**13 November, 1928. Maling Case - High Court Action - Constitutional Question - Validity Of State Act.**

Important questions relative to the conviction of Silas Young Maling, for an offence under the Secret Commissions Prohibition Act, 1919, and his sentence of six months' hard labour, came before the Full Bench of the High Court yesterday on the application of Maling for a rule nisi for a statutory prohibition of further proceedings. The main question at issue was a constitutional one, involving the validity of the State Act under which Maling was convicted.

Two other grounds were argued. On the first the Court decided that there was no suggestion that a statement had been extracted from Maling by threat or promise, and on the second the Court upheld the magistrate in refusing to allow questions to be put to witness Arnott tending to show that when he was warned at Los Angeles in April last year he had made a false declaration.

The third ground was whether the New South Wales Secret Commissions Prohibition Act, 1919, was in conflict with the Commonwealth law. Dr. Evatt, when the case was before the Full Court, said that the most important question was that of the constitutional power of the State Parliament to impose punishment as to transactions in "Trade and commerce with other countries" in respect of which the Commonwealth Parliament was empowered to legislate under Section 51 (1) of the Constitution. He argued that the City Council, and all the tenderers for the Bunnerong contract, definitely contracted for the supply of goods from other countries to Australia. That being a necessary part of the contract, it was "trade and commerce with other countries," and it was quite immaterial where the contract was made. He referred the Court to the judgment of the High Court in the Queensland profiteering case, and in *Hume v Palmer*.

Before the High Court yesterday the Chief Justice asked Dr. Evatt if he went so far as to show that the State Parliament could not make it an offence for any person to receive a secret commission, to which counsel replied that he would not go so far as that. Dr. Evatt contended that the punishment should be by the Commonwealth law.

His Honor: Who signed the tender?

Dr. Evatt: It was signed by the attorney, Arnott.

Counsel proceeded that the contract provided for the bringing to Australia of a very large quantity of material from other countries. Counsel contended that Section 3 of the State Act was inconsistent with Section 4 of the Commonwealth Act, and was, therefore, void.

Argument had not concluded when the Court rose.

The Bench was occupied by Sir Adrian Knox, C.J., Sir Isaac Isaacs, J., Mr. Justice Gavan Duffy, Mr. Justice Powers, and Mr. Justice Starke.

Dr. Evatt and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the appellant; Mr. Flannery, K.O., with him Mr. Shortland (instructed by Mr. J. V. Tillet, State Crown Solicitor) appeared for the Crown. Mr. Maunsell Turner (instructed by Messrs. Creagh and Creagh) was present to watch proceedings on behalf of Babcock and Wilcox, while Mr. Mack, K.C., with him Mr. Hutchinson (instructed by the same firm), also watched proceedings on behalf of Mr. A. J. Arnott.<sup>[159]</sup>

#### **14 November, 1928. Maling Case – Before High Court – Constitutional Point - What is Foreign Trade"**

Questions affecting the conviction of Silas Young Maling, of an offence under the Secret Commissions Prohibition Act, and his sentence of six months' hard labour, were again before the Full Bench of the High Court yesterday.

Maling applied for a rule nisi for prohibition of further proceedings, on the ground that the transaction, in connection with which the offence occurred, was a transaction of foreign trade and commerce; and that, therefore, it belonged, under section 51 of the Federal Constitution to the Commonwealth Jurisdiction, and could not be dealt with by the State authorities.

Other grounds were put forward by Maling in support of his application; but yesterday his counsel, Dr. Evatt, devoted his argument to showing that the contract made between the City Council and Babcock, Wilcox, and Co. (in connection with which Maling accepted a bribe), for the installation of plant at Bunnerong, was actually a purchase of goods from overseas, and therefore was overseas trade.

Dr. Evatt, in order to show how the parties to the contract understood the arrangement, quoted from a letter from the town clerk to the contractors, stipulating that the plant must be inspected and passed before leaving the factories in Britain.

Mr. Flannery: There is no evidence as to supply.

Dr. Evatt: It is perfectly clear that both parties understood that the goods were to come from overseas.

Mr. Justice Gavan Duffy: But who imported from overseas? Was it the council or the contractors? That is the point.

Dr. Evatt argued that the contract clearly showed that certain specified goods were to be supplied from overseas, and manufactured under certain specified conditions. Subsequently, the plant was to be erected.

Mr. Justice Gavan Duffy: There is a contract to make a certain installation. The contractor has to supply certain materials and put them up in Sydney and keep them in order for one year.

Dr. Evatt still contended that it was essentially a contract for the sale of goods in England, to be supplied from England.

The Chief Justice: Would an order given here for the building and delivery of a ship from overseas according to specifications be a sale of goods?

Dr. Evatt: Yes, I contend that would be a sale of goods.

Mr. Justice Gavan Duffy: Do you suggest that if one buys here a tin of sardines, which had to be canned in Europe, that would be classed as overseas trade?

Dr. Evatt said that if the goods had yet to be manufactured and imported, at the time of the contract, the transaction could be classified as overseas trade.

Mr. Justice Starke: If I say I want an American car, at a certain price, is that overseas trade?

Dr. Evatt: No, I should not say that.

Mr. Justice Gavan Duffy: If I say I want a car, to be made in Ohio, is that foreign trade?

Dr. Evatt: Yes, because that involves a direct overseas transaction. I think an interpretation of section 51 is needed. What is "foreign trade and commerce?" Is it not the flow and passage of goods from one country to another?

The Chief Justice: But you put a purchaser here in the same position as an indentor, which he is not. When a car which I order has been imported by the dealer, and handed over to me, that is, according to you, an act of foreign trade.

Dr. Evatt argued that the very minimum of the Commonwealth power extended to that otherwise "trade and commerce" would be limited to the actual carriage of goods to Australia.

The Chief Justice said that the contract for the erection of the Harbour Bridge was of the same character as the contract under review. That could not be called a purchase of goods or foreign trade. One must look at the matter in a commonsense way.

Mr, Justice Gavan Duffy: Unfortunately this is not a matter of commonsense, but what is in the Constitution - a very different matter!

The Chief Justice: So far as I am concerned, it is hopeless to contend that this is a sale of goods. It is a contract for the erection of plant, and not for the sale of goods at all.

Dr. Evatt: Then I have yet to know why the council, from beginning to end of the contract, is referred to as the "purchaser."

The Chief Justice: A crucial thing is the position of the present applicant's principal. Was the principal engaged in the transaction in connection with which the bribery took place; and was that principal engaged in foreign trade?

During the afternoon Dr. Evatt went over the evidence given in the lower courts, to produce argument in support of his contention that a statement had been extracted from Maling by Inspector Mackay in New Zealand by a threat or promise.

### **Crown's Reply**

Mr. Flannery, K.C., replying on behalf of the Crown, said that his argument would be in two parts. The first part was that the principal (the City Council) was not engaged in foreign trade and commerce when the offence charged in this case was committed. The second contention was that, even if the City Council was engaged in foreign trade and commerce, the New South Wales legislation dealing with the particular transaction that was charged as an offence was not inconsistent with Commonwealth legislation. There was nowhere in the contract any stipulation that the City Council should be responsible for importations. The essential contract was that the contractors were to supply, for a certain sum, a certain plant, fully assembled.

Sir Isaac Isaacs: It is provided in the contract that the City Council shall have the right to inspect and reject the plant in England. In view of that, for whom are the goods being imported?

Mr. Flannery argued that the provision for inspection abroad, rather than after shipment to Australia, was made merely for the convenience of both parties. The arrangement also facilitated progress payments.

Argument had not concluded when the Court rose.

The Bench was occupied by Sir Adrian Knox, C.J., Sir Isaac Isaacs, J., Mr. Justice Gavan Duffy, Mr. Justice Powers, and Mr. Justice Starke.

Dr. Evatt and Mr. Kinhead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the appellant: Mr. Flannery, K.C., with him Mr. Shortland (instructed by Mr. J. V. Tillett, State Crown Solicitor) appeared for the Crown. Mr. Maunsell Turner (instructed by Messrs. Creag and Creag) was

present to watch proceedings on behalf of Babcock and Wilcox, while Mr. Mack, K.C., with him Mr. Hutchinson (instructed by the same firm), also watched proceedings on behalf of Mr. A. J. Arnott.<sup>[160]</sup>

**15 November, 1928. Maling Case - Constitutional Issue - Judgment Reserved.**

Argument was concluded in the High Court yesterday In the ex parte application by Silas Young Maling for a rule nisi for writ of prohibition to restrain further proceedings upon his conviction by the magistrate under the Secret Commissions Prohibition Act. The defence was that that Act is inconsistent with the Commonwealth Act.

Mr. Flannery, K.C., continuing his reply to Dr. Evatt, said that, assuming that the principal was engaged in foreign trade, the legislation in New South Wales, being applicable to him, was not inconsistent with the Federal legislation. There was the added ingredient In the State legislation of "corruption," and there was nothing inconsistent in the State dealing with that. It was quite conceivable that one could have the same facts dealt with by the State as well as by the Commonwealth. The Commonwealth said that it could punish for taking money secretly, and the State said that it could also punish for taking money secretly, plus corruption.

In reply to the Chief Justice and Mr. Justice Isaacs, Dr. Evatt said that the contract was for the supply of hundreds of thousands of pounds of material from overseas. It was immaterial whether the contract was an entire contract for the sale of goods, the supply of material, or for work and labour done.

Judgment was reserved.

The Full Bench consisted of Sir Adrian Knox, C.J., Sir Isaac Isaacs, J., Mr. Justice Cavan Duffy, Mr. Justice Powers, and Mr. Justice Starke.

Dr. Evatt and Mr. Kinkead (instructed by Messrs. H. D. Meagher, Sproule, and Co.) appeared for the applicant; Mr. Flannery, K.C., with him Mr. Shortland (instructed by Mr. J. V. Tillett, State Crown Solicitor) for the Crown; Mr. Maunsell Turner (instructed by Messrs. Creagh and Creagh) watched the proceedings on behalf of Babcock and Wilcox; Mr. Mack, K.C., with him Mr. Hutchinson (instructed by the same firm) also watched the proceedings ou behalf of Mr. A. J. Arnot.<sup>[161]</sup>

**17 November, 1928. Quarter Session's Appeals (Before Judge Curlewis)**

**Conviction Quashed.**

Richard Moynahan appealed against his conviction by Mr. Longfield, S.M., at the Central Police Court on September 27 last, when he was sentenced to three months' imprisonment on a charge of having assaulted Hector Mackay by striking him with a beer bottle. The appeal was upheld, and the conviction quashed. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for appellant.<sup>[162]</sup>

**18 November, 1928.**

Ernest Joseph Coffey, who was recently sentenced to four years' imprisonment for his share in a gun fight with the police, was on the list at the Appeal Court last week, in connection with two convictions for having unlicensed pistols. When the matter was mentioned, Mr. J. B. Kinkead said that they did not object to the fine of £100, with a default of six months' imprisonment, for the pistol which Coffey had at the time of the fight. But, after Coffey's arrest, another pistol was found at his home, and the magistrate fined him £100 on the second charge. He was of opinion that the maximum fine for such an offence was £50. Judge Curlewis agreed, and reduced the second fine as asked.<sup>[163]</sup>

**25 November, 1928. Dot's Dash - Her Reputation Is Not Good - Sent To Quod**

A married woman was convicted on a charge of being a low woman at the Central Police Court last Thursday. She is Dorothy Quinn, and according to police opinion her husband enjoys the name of 'Bad Bill,' but they do not think he is nearly as dangerous as the 'bad' part of it infers.



*Figure 19 - Dorothy Quinn - 1925*

Sergeant McCleod and Constable Dunning were the boys in blue who laid the serious charge at the lady's door. They corroborated a story with meticulous care, and stated that, on November 13, they had observed Dorothy accost men in Goulburn-street. The first man simply moved on when she appeared to speak to him, but the second stopped, had a conversation, and then walked with her to a house in Goulburn-street.

Later the police saw Dorothy emerge, apparently to show the gentleman the way out.

When she spied Sergeant McCleod she tried to slam the door in his face, but he managed to plant his regulation Number 9 in the way, and prevented her doing so.

'We are police,' announced the sergeant, and followed up by asking Dorothy what the man was doing there. Her reply, from what the

sergeant said, was plain and straight to the point.

The man in the case gave his name as C. Kingsley, and said he did not know Quinn.

After a little more conversation, the sergeant said, I cautioned you four or five months ago for stopping men in the street, and then told her that he was going to charge her with being a low woman.

When she got into the witness box, Quinn stated that she was a married woman, living with her husband at Victoria-street, Darlinghurst.

She denied everything Sergeant McCleod and Constable Dunning had said about the man Kingsley, and stated that there was no such man in the house in Goulburn-street.

In fact, she had been there only about half an hour when the police arrived. She went there with the woman who owns the property, and found the place in great disorder. Buckets of water had been emptied on the beds, the back window was smashed, and a sideboard door torn off.

She blamed the police for the rough and tumble of the place, as they had paid a visit there earlier in the day.

It was true that she was a married woman. The ceremony was performed in Victoria, and her husband was an engineer, although he wasn't always employed at that trade.

'Isn't it a fact that you keep him?' asked the prosecuting sergeant.

'No,' replied Dorothy; 'he gets plenty of money himself.'

Dorothy, it was said, had been before the Court fourteen times before this year.

'Six weeks' imprisonment,' said the magistrate, and Dorothy tripped across the court on her way to the cells, stopping on the way to mention something about an appeal to her counsel, Mr. J. Kinkead.<sup>[164]</sup>

**27 November, 1928. Maling Case - High Court Judgment - Constitutional Plea Rejected.**

The High Court yesterday dismissed the application by Silas Young Maling, made ex parte, for a writ of prohibition against the Judgment of Mr. Gates, S.M., who had ordered Maling to pay a fine of £500, and had sentenced him to six months' imprisonment on a charge of having corruptly received from Babcock and Wilcox, Ltd., money as a reward for having recommended acceptance of a tender.

Mr. Maling will remain on bail pending the hearing of his appeal to the Quarter Sessions Appeal Court.

Maling's appeal to the High Court was based on the ground that the transaction with which the offence occurred was a transaction of foreign trade and commerce; and that, therefore, it belonged, under section 51 of the Federal Constitution, to the Commonwealth Jurisdiction, and could not be dealt with by the State authorities. Other grounds were put forward by Maling in support of his application, but when the matter was argued before the High Court his counsel (Dr. Evatt) practically confined his argument to an attempt to show that the contract made between the City Council and Babcock and Wilcox, Ltd. (in regard to which Maling accepted payment of £10,000) for the installation of steam-raising plant at Bunnerong, was actually a purchase of goods from overseas, and, therefore, was overseas trade.

In a conjoint judgment of the Chief Justice, Sir Isaac Isaacs, Mr. Justice Gavan Duffy, and Mr. Justice Powers their Honors, in giving their reasons, said: "The first question for decision was whether the contract between the council and Babcock and Wilcox, Limited, came within the description 'trade and commerce with other countries or among the States.' In our opinion this contention cannot be sustained. The contract on its true construction is not a contract for the supply in New South Wales of parts necessary for the construction and erection of a steam boiler and mechanical draft plant, but an entire and indivisible contract to do the necessary work and to provide the necessary materials, bring into existence, complete and ready for commercial use, a distinct unit - a steam-raising plant, affixed to the soil of New South Wales. This being the character of the contract we think it is clear that it is not 'trade and commerce with foreign countries or among the States.' It follows that the council in relation to this contract was not engaged in such trade or commerce and that the Federal Secret Commissions Act has no application. For these reasons we think the rule nisi for prohibition should be discharged "

Mr. Justice Starke, in giving his reasons, said: "The tender of Babcock and Wilcox to the Municipal Council of Sydney merely offered to erect a plant in the power-house at Botany Bay. The offer was made in Australia, and was to erect a plant here. That offer was purely local, and the fact that Babcock and Wilcox would itself engage in an act of foreign trade in bringing plant to Australia in no way altered the local character of the offer, nor rendered it an act or transaction in foreign trade."

Dr. Evatt and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the applicant; Mr. Finnery, K.C., with him Mr. Shortland (instructed by Messrs. J. V. Tillett, State Crown Solicitor) appeared for the Crown.<sup>[165]</sup>



**6 December, 1928. S. Y. Maling - Appeal Dismissed - Judge Emphatic "Sentence Should Be Heavier."**

In the Quarter Sessions Court yesterday Silas Young Maling, formerly deputy manager of the City Electricity Department, appealed against his conviction by Mr. Gates, S.M., at the Central Police Court, on July 30, on a charge of accepting a secret commission in respect of a contract by Babcock, Wilcox, Ltd. Defendant had been sentenced to six months' imprisonment, with hard labour, and fined £500, in default 12 months imprisonment, with hard labour.

Mr Kinkead (for the appellant) contended that the £10,000 paid to Maling did not affect the price quoted in the contract.

Judge Curlewis: It needs only the intelligence of a child of seven to see that if the £10,000 had not been paid to Maling the contract price would have been reduced by that amount.

Mr. Kinkead quoted Mr. Justice Harvey's report on the contract that "no harm was done against the interests of the citizens of Sydney."

Judge Curlewis: I am sorry I cannot agree with that.

Mr. Kinkead urged that Maling had been "terrifically" punished, and all that he had prized most had gone. He could never again make good. He was "done for" for the rest of his life. In addition, he was being sued by the Taxation Commissioner, and was threatened with bankruptcy proceedings. The Court would not be giving anything away if it bound him over and suspended sentence.

"The man who suggested the bribery," said Mr. Kinkead, "goes scot free."

Judge Curlewis: You are putting it to me that because some people are walking about scot free, Maling should also be free.

Mr. Kinkead: I don't make that suggestion.

Judge Curlewis: Then, I don't understand you. The uncontradicted evidence is that Arnot did not first approach Maling on this matter. Arnot swears that Maling made the suggestion, and his evidence is uncontradicted. The evidence is that Maling made it so glibly and in such a confident manner that there appealed to him to be no risk. If a man has not done anything of that nature before he would not be so confident about making such a suggestion. There was less temptation for him than in the case of a man whose children were starving, because he was drawing a big salary, but he was not satisfied with it. This was a most contemptible form of stealing, and I am sorry, indeed, that I have not the power to make the sentence two years, not because I have any personal feeling in the matter, but because everybody must learn that this sort of thing must be stopped. The appeal is dismissed, and the magistrate's order is confirmed.

Mr. A. B. Shand, K.C. (instructed by the Crown Solicitor) appeared in support of the magistrate's finding; and Mr. Kinkead (instructed by Messrs. Meagher, Sproule, and Company) for the appellant.

His appeal having failed. Maling was taken to the Long Bay Penitentiary to serve his sentence.

**Divorce Decree.**

It is reported in our law columns that Mrs. Olive Eileen Maling was yesterday granted a decree nisi for a divorce from Silas Young Maling, on the ground of his adultery with Hillas Eugene Pittock.<sup>[166]</sup>

**8 December, 1928. Quarter Session Appeals (Before Judge Curlewis.)**

**Theft Of Slippers.**

Edward Emmert Lawson, against whom were several convictions, appealed against conviction for the



Figure 20 - Ivers Edward Emmert Lawson - 1928

theft of a pair of slippers, on the Sydney waterfront. He also asked for a reduction of the sentence of six months imprisonment, with hard labour, inflicted by the magistrate. His Honor upheld the conviction but reduced the sentence to one months' hard labour. Mr. Kinkead appeared for the appellant; and Mr. Weigall, K.C Solicitor-General, for the Crown.<sup>[167]</sup>

**12 December, 1928. Bribery Case - Babcock and Wilcox - To Pay £11,600 - Scenes in Court.**

Dramatic episodes occurred in the Central Summons Court yesterday during the hearing of the corruption charges against Babcock and Wilcox, Ltd., and ex-Alderman Frank Green, in connection with City Council contracts.

Mr. Oates, C.S.M., who occupied the bench, fined Babcock and Wilcox, Ltd., £1000, and ordered them to pay to the City Council within six months £10,500, the amount of the bribe, which he found

the company had paid to secure a contract from the council.

The charge against Green, alleging that he had accepted £7500 from Babcock and Wilcox, Ltd., as a reward for having himself voted for the acceptance by the council of a certain contract was dismissed. Maling, the only witness called by the Crown, having declined to give evidence.

Silas Young Maling, for having declined to answer any questions, was ordered to be committed to prison for contempt of Court for seven days.

This order was subsequently revoked by the magistrate.

The information against Babcock and Wilcox, Ltd., was laid under the Secret Commissions Act, and alleged that Babcock and Wilcox, Ltd., corruptly gave to Silas Young Maling, then an agent of the City Council, £10,600 as a reward for having recommended the council to accept an offer by defendant company for a steam-raising plant for Bunnerong power station.

Mr. Shand, K.C., and Mr. Shortland (instructed by the Crown Solicitor), appeared for the Crown: and Mr. Mitchell, K.C., and Mr. Mansell Turner (instructed by Messrs. Creagh and Creagh) for the defendant company.

The only witness for the Crown yesterday was Miss Alice Gordon, and the evidence she had tendered in the Maling trial was read over to her and affirmed by her.

No evidence was called for the defence.

**Thumbscrews applied.**

Mr. Mitchell, K.C. contended that no offence in law had been proved against the company. Alternatively, if it was held that an offence had been committed, he would ask that section 11 of the Act be applied and the information dismissed. It was clear that the money was extorted under pressure, and was obtained by organized blackmail. Whatever may have been done to redeem

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Arnot's promise to pay the money had been done from London, apparently without the consent of the board of directors, and, therefore the company had not in law committed an offence in the State.

If, however, the company had done anything corrupt in a highly technical sense, it was not corruption under the popular acceptance of the term.

"It was a matter of common knowledge, said Mr. Mitchell, "that if a tenderer for City Council contracts was honest it was utterly impossible for him to do business with the council. The present case was an instance of the thumbscrews being applied to Arnot, who, anxious to secure the contract, had succumbed to the blackmailing demands made upon him.

#### **Not A Trifling Offence.**

Mr. Shand said that the matter could not be glossed over as a trifling or technical offence as had been suggested. In fact, he could not conceive a worse case of bribery, and owing to the difficulty in establishing the guilt of person in such cases he considered that the punishment should be such that it would be a strong deterrent. He suggested that the penalty in the case of a conviction be that the company be ordered to refund to the city council £10,600, the amount of the bribe. The Court, he said, was permitted by the Act to make such an order, and also had the power to deal with Arnot, its general manager, as well as impose a fine on the defendants.

Mr. Gates, in finding the defendant company guilty, said he should have thought that a company with a World-wide reputation such as Babcock and Wilcox, Ltd., would never have been associated with such an offence. Only the maximum penalty would be fitting in the circumstances.

Mr. Mitchell announced that there probably would be an appeal.

#### **Maling In Court.**

The charge against Frank Green was then dealt with. The information alleged that Green, between September 6, 1926, and February 28, 1917, he, being an agent of the City Council within the meaning of the Secret Commissions Act, corruptly received from Babcock and Wilcox, Ltd., the sum of £7500 as a reward for having recommended the council to accept, and having himself voted for the acceptance by the council, of a certain offer made by Babcock and Wilcox, Ltd., in connection with the steam-raising plant for Bunnerong power station.

Mr. W. M. Niland represented Green, and Mr. J. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) watched the proceedings on behalf of Silas Young Maling, formerly deputy general manager of the electricity department of the City Council, who is now serving a sentence of imprisonment for corruption.

There was a stir in court when Mr. Shand announced that he wanted Maling called as a witness.

Escorted by a detective, Maling, dressed immaculately in mufti, and looking much thinner than when he began his imprisonment in Long Bay, entered the chamber, and stepped into the witness-box.

Green's Case Dismissed.

His voice breaking above clattering sounds issuing from the typewriter of the deposition clerk, Mr. Shand said to the Witness: "Your name, please?"

Maling instantly turned towards the magistrate, and, speaking in a quiet, firm voice, said: "I refuse to answer any questions in this case while such scoundrels as Arnot and Albert are at liberty."

Mr. Shand: You have not told us your name yet. Do you refuse to give it?

Maling: I do.

Mr. Shand: Then you refuse to answer any questions at all?

Maling: I do.

Mr. Shand (to Mr. Gates): Your Worship has power to deal with Maling by ordering him to prison for contempt. It will not, however, have much effect in this case, as Maling is now serving a sentence.

Mr. Gates (to Maling): As you persist in refusing to answer questions, I will commit you to prison for seven days. If in the mean-time you make up your mind to answer the questions, the sentence will be revoked.

Mr. Shand: The principal evidence which I have to offer against Green would come from Maling, and without his evidence I must admit that I cannot proceed with the case. In the circumstances, I have no option but to ask that the case be dismissed.

Mr. Gates thereupon dismissed the case.

While Maling was still standing in the witness box Mr. Gates said that, in view of the dismissal of the case, he did not think it would be of any use allowing the order for Maling's imprisonment to stand.

Mr. Shand: The order is of little use, as Maling is already serving a sentence.

Mr. Gates: I will therefore revoke the order against him.

#### **Tense Moments.**

The tense moments experienced while Maling was in the box were heightened when Mr. Shand made his application to have the case against Green dismissed. From all quarters of the court came excited murmurs, and when Mr. Gates, after granting Mr. Shand's request and revoking Maling's sentence, rose and walked briskly from the bench to his chamber, many spectators and officials, too astonished to observe the adjournment of the Court, did not rise from their seats, as is customary.

Maling, too, became infected with the atmosphere, and remained standing stiffly in the witness-box, apparently unable to realise what had occurred, until his escort signalled him to step down. He then walked into the corridor of the building, where he was met by some friends, but he declined to be interviewed by Press representatives.<sup>[168]</sup>

**14 December, 1928. Quarter Sessions (Before Judge Armstrong.)**  
Crown Prosecutor, Mr. V. H. Treatt

#### **Stealing From A Dwelling.**

Frank Stacey, 25, carpenter, was charged with having stolen three rings, valued at £160, a purse, and £5, from the dwellinghouse of Clara Bousche, at Sydney, on October 22. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused, who was convicted. He Pleaded guilty to a further charge of stealing goods valued at £55 from another house.

Stacey was sentenced to two years' imprisonment with hard labour in Bathurst Gaol, and his Honor made an order for the restitution to Mrs. Bousche of £50, to be paid out of the property found upon the prisoner.<sup>[169]</sup>

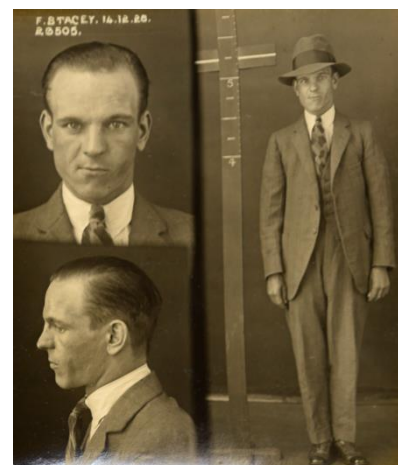


Figure 21- Frank Stacey - 1928

**15 December, 1928. In Divorce - (Before Mr. Justice James.)**

**Carberry v Carberry.**

This was a suit in which Frank Carberry petitioned for a decree for restitution of conjugal rights to be directed to Helen Maude Carberry (formerly McIntosh), to whom he was married on February 2, 1924, at Paddington, according to the Methodist rites. Respondent did not appear, and his Honor granted a decree ordering her to return to petitioner within 21 days of the date of its service upon her. Mr. Kinkead (instructed by Mr. F. A. Finn) appeared for petitioner.<sup>[170]</sup>

**20 December, 1928. Razor Gang - Smiley Appeals Darlington Brawl**

An appeal was heard before the Full Court of Criminal Appeals to-day on behalf of William Smiley, 26, who was convicted before Judge Cohen at Darlington Sessions on November 12, on a charge of having inflicted grievous bodily harm on two men, and sentenced to five years' penal servitude.



Figure 22 - William Smiley - 1928

Exception was taken by the accused to the summing up of Judge Cohen, and also to the admission of certain evidence. A brawl took place in a lane at Darlington on September 19 last, during which two men, William Scott and William George Lloyd, were assaulted, and the accused was arrested as the assailant.

Judge Cohen, in his report, stated that accused was said to be one of the razor gang, and a dangerous criminal. The evidence was to the effect that the assault was a particularly brutal one.

**"The Wrong Man"**

Mr. Windeyer, K.C., informed the Court that he had affidavits by three witnesses, Alexander Lyons, William Heard, and Richard Smith. The latter said he was the man who committed the assault. As Smith was not present for cross-examination, the appeal was allowed to stand over until tomorrow. Mr.

Windeyer K.C. and Mr. Kinkead instructed by Mr. Fanker appeared for the accused and Mr Weigall Solicitor-General for the Crown.<sup>[171]</sup>

**20 December, 1928. Court Op Criminal Appeal -**

(Before Sir Phillip Street, C.J., Mr. Justice Ferguson, and Mr. Justice James.)

**Under Sentence Of Death - Rex v Littler and others.**

Bertie Charles Littler, Walter Harold Littler, and Arthur Callaghan, who were convicted before Mr. Justice Halse Rogers on November 13 last of a capital offence upon a young woman at Parkes in September, for which they were each sentenced to death, appealed against their conviction. The principal ground argued was that the trial Judge's directions to the jury on the question of corroboration were inadequate. Mr. Mack, K.C., and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the appellants; and Mr. Weigall, K.C., for the Crown.

The Court reserved Judgment.<sup>[172]</sup>



**21 December, 1928. New Trial - Death Sentence Appeal Wins Parkes Case  
Court Finds Jury Was Misdirected**

Reserved judgment was to-day delivered by the Full Court of Criminal Appeals in the appeals on behalf of Arthur Callaghan (26), Walter Harold Littler (32) and Bertie Charles Littler (38), laborers, against their conviction at the recent sitting of the Central Criminal Court on a charge of having committed a capital offence against a girl at a park in Parkes, on September 21 last.



*Figure 23 - Walter Harold Littler & Bertie Charles Littler - 1928*

The convictions were quashed and a new trial was ordered.

On the application of Mr. Kinhead, the court granted bail. £200 in each instance, to be taken before any magistrate.

The court held that it was a misdirection in law for the trial judge to tell the jury that if they came to the conclusion that McCarroll (who was acquitted) was frightened, they would ask themselves why he was frightened and on their answer to that question would probably depend their finding in the case.

The court further said that it was not open to the jury to draw inferences or speculate on the reasons for McCarroll's fear which might have been quite consistent with the story told by the other accused that the girl had consented.

Sentence of death on each prisoner was passed by the trial judge, Mr. Justice Halse Rogers, and the appeals were based on the ground that the convictions were against evidence and the weight, of evidence, and that there was no corroboration of the girl's story of the alleged offence.

The bench consisted of the Chief Justice (Sir Philip Street), the Senior Puisne Judge (Mr. Justice Ferguson), and Mr. Justice James.

The Chief Justice, in delivering the judgment of the court, said that the girl in question was 17 years of age only. The outrage alleged took place in Woodlands Park, Parkes, and she declared in her evidence that the offence alleged against the accused was without her consent and against her will.

### Two Conflicting Stories Told

The accused, however, declared that the girl was a consenting party. In cases of this nature, it was customary to warn the jury that they must not act upon uncorroborated evidence. In the present case it was not suggested that the trial judge had not directed the jury on the question of corroboration, but that he had misdirected, the jury with regard to certain evidence.

The jury had to deal with the case on the evidence, and the evidence alone. The case was one in which two conflicting stories were told.

The Chief Justice said that as there had been a misdirection to the jury by the trial judge, the conviction must be quashed, and a new trial ordered.

Mr. S. Mack, K.C., and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule and Co.) appeared for the appellants, and the Solicitor-General (Mr. Weigall, K.O.) for the Crown.<sup>[173]</sup>

### 21 December, 1928. Quarter Sessions (Before Judge Armstrong.)

Crown Prosecutor, Mr. V. H. Treatt.

#### Alleged Larceny.

James Pearce Pascoe was charged with having stolen two suits of clothes on some day in July, and four suits of overalls on October 26, the property of Anthony Hordern and Sons, Limited.

Mr. Mack, K.C., with him Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.), appeared for the accused.

The allegation by the Crown was that the accused had been manager of the clothing factory of Anthony Hordern and Sons, Limited, and, although, he was not expressly authorised, he had been permitted to make a suit of clothes for another employee. It was alleged that the accused repeatedly made suits for persons who were not employed by the firm, for which he was paid, but the money had never been accounted for. It was also alleged that he endeavoured to persuade an employee to destroy certain dockets which were records of these transactions, but the employee did not do so, and it was found that no payment had been made in respect of them. The Crown alleged that these transactions were part of a system for defrauding the firm. Three cheques which had been paid over to the accused by customers were alleged to have been paid into his own account.

The accused gave evidence, and stated that he was still in the employ of the firm. He had not been dismissed, although he was under suspension. He had been given no notice that proceedings were being taken. The first intimation he had was when the police interviewed him. The overalls mentioned in the charge were not for sale. One was for his son and another for himself.

The matter stands part heard.<sup>[174]</sup>

### 21 December, 1928. Court Of Criminal Appeal

(Before Sir Phillip Street, C.J., Mr. Justice Ferguson, and Mr. Justice James.)

#### Rex v Smiley.

An application for leave to appeal was made on behalf of William Smiley, who was convicted before Judge Scholes at Sydney Quarter Sessions in November last of assault occasioning actual bodily harm, for which he was sentenced to five years' penal servitude. The ground of the application was that fresh evidence was available which would throw fresh light upon the actual participants in the fracas following a drinking bout, when the assault was committed.

Mr. Windeyer, K.C., and Mr. Kinkead (instructed by Mr. F. Fanker) appeared for the applicant.



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The appeal is part heard.<sup>[175]</sup>

**22 December, 1928. Court Of Criminal Appeal**

(Before Sir Phillip Street, C.J., Mr. Justice Ferguson, and Mr. Justice James.)

**Rex v Smiley.**

An application for leave to appeal was made on behalf of William Smiley, who was convicted before Judge Scholes at Sydney Quarter Sessions in November last of assault occasioning actual bodily harm, for which he was sentenced to five years' penal servitude. The ground of the application was that fresh evidence was available which would throw new light upon the actual participants in the fracas following a drinking bout, when the assault was committed. Mr. Windeyer. K.C.. and Mr. Kinkead (instructed by Mr. F. Fanker) appeared for the applicant

An affidavit was filed, in which another man confessed to having committed the assault, but, as he could not be produced in court, counsel for the appellant asked for an adjournment of the hearing of the appeal until next term. Mr. Weigall. K.C., who appeared for the Crown, opposed the adjournment, stating that, in the opinion of the authorities, the evidence on affidavit was perjured.

The Court, however, granted an adjournment until next term,<sup>[176]</sup>

**22 December, 1928. Quarter Sessions (Before Judge Armstrong.)**

Crown Prosecutor, Mr. V. H. Treatt.

**Acquitted.**

The hearing was concluded of the charge of larceny against James Pearce Pascoe, manager of the clothing factory of Anthony Hordern and Sons, Limited.

Mr. Mack, K.C., with him Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused, who was acquitted and discharged.<sup>[176]</sup>

## Barrister – 1929

### Overview

The major case for this year was the Timber Workers Strike that took up several weeks.

Date	Accused	Action	Offence	Result
19 January 1929	May Smith	Defended	Drug Trafficking	Convicted
27 January 1929	Roy Anderson	Defended	Conspiracy	
27 January 1929	Lionel Mardet	Defended	Conspiracy	
27 January 1929	John McMahon	Defended	Theft	Acquitted
30 January 1929	Samuel Lampard	Defended	Conspiracy to Defraud	
8 February 1929	Joseph Henry Ellison	Defended	Appeal	Upheld
9 February 1929	Charles William Bickley	Defended	Break & Enter	Convicted
9 February 1929	James Joseph Burke	Defended	Assault	Convicted
12 February 1929	Alice Randall	Prosecuted	Civil - Defamation	Convicted
13 February 1929	John Baker	Defended	False Pretences	Acquitted
14 February 1929	Edward Ford	Defended	Murder	Acquitted
14 February 1929	Marie Hickman	Defended	Theft	Convicted
14 February 1929	William McNamara	Defended	Assault	Acquitted
17 February 1929	Walter Keogh	Defended	Conspiracy to Defraud	
17 February 1929	Cecil Clarke	Defended	Conspiracy to Defraud	
17 February 1929	Edward Barrett	Defended	Conspiracy to Defraud	
17 February 1929	John Power	Defended	Conspiracy to Defraud	
22 February 1929	William Smiley	Defended	Appeal	Refused
22 February 1929	Dennis Patrick Finn	Defended	Appeal by Crown	Refused
22 February 1929	Thomas Bede	Defended	Appeal by Crown	Refused
26 February 1929	Edith Roma	Defended	Assault	Acquitted
26 February 1929	Elsie Kay	Defended	Possession of Cocaine	
28 February 1929	Alexander Thomas Hart	Defended	Assault & Robbery	Convicted
15 March 1929	William Stanley Taylor	Defended	Indecent Assault Minor	Acquitted
15 March 1929	Stanley George Hartland	Defended	Assault	Acquitted
16 March 1929	Cecil Joseph Burns	Defended	Indecent Assault	Dismissed

22 March 1929	Robert James Heffron	Plaintiff	Libel (Civil Case)	
28 March 1929	David Allan Mills	Defended	Theft	Acquitted
3 April 1929	Arthur Callaghan	Defended	Indecent Assault	Acquitted
3 April 1929	Walter Harold Littler	Defended	Indecent Assault	Acquitted
3 April 1929	Bertie Charles Littler	Defended	Indecent Assault	Acquitted
11 April 1929	Percy Cyril Garlick	Defended	Trespass	Committed
12 April 1929	Silas Young Maling	Defended	Bankruptcy	
12 April 1929	Thomas Garvey	Defended	Murder	Acquitted
16 April 1929	Albert George Dunn	Defended	Break & Enter	Acquitted
16 April 1929	George Dowling	Defended	Break & Enter	Acquitted
16 April 1929	Robert Rogers	Defended	False Pretences	Acquitted
16 April 1929	Laura Helena Rogers	Defended	False Pretences	Acquitted
16 April 1929	Matilda Devine	Defended	Theft	Acquitted
17 April 1929	Percy Walton Smith	Defended	Assault	Acquitted
17 April 1929	George Ernest Kennedy	Defended	Break & Enter	Acquitted
19 April 1929	Raymond Floyd	Defended	Larceny	Convicted
23 April 1929	Stanley Watson	Defended	Break & Enter	Convicted
23 April 1929	Frank Hardy	Defended	Break & Enter	Convicted
30 April 1929	Reginald Martin MacAdam	Defended	Theft	Convicted
2 May 1929	William Joseph O'Brien	Prosecuted	Theft	Acquitted
2 May 1929	Arthur Maxwell Wilson	Prosecuted	Theft	Convicted
6 May 1929	John Brewer Cable	Defended	Assault	
6 May 1929	Cecil Albert Jobson	Defended	Assault	
14 May 1929	James Gordon McLaren	Defended	Make False Statement	
15 May 1929	Harry Gascoigne	Defended	Sexual Assault	Acquitted
16 May 1929	Sydney Hayes	Defended	Posses unlicensed firearm	Convicted
17 May 1929	John Perry	Defended	Malicious Wounding	Acquitted
18 May 1929	James Edward Semple	Defended	Appeal	Dismissed
18 May 1929	James Herbert Christian	Defended	Appeal	Dismissed
21 May 1929	Walter Keogh	Defended	Conspiracy to Defraud	Convicted
21 May 1929	John Power	Defended	Conspiracy to Defraud	Convicted

23 May 1929	Henry Bernard Hall	Defended	Conspiracy to Defraud	Committed
24 May 1929	Guy Kingsbury	Defended	Drunk Driving	Convicted
5 June 1929	Robert Searl Ashton	Defended	Appeal	Dismissed
5 June 1929	Harold Carmont Cookson	Defended	Appeal	Dismissed
11 June 1929	Frederick Fontaine	Defended	Conspiracy to Defraud	Convicted
14 June 1929	Edward Phillip Whelan	Defended	Malicious Wounding	Acquitted
15 June 1929	Albert David Prosser	Defended	Manslaughter	
21 June 1929	George Arthur Lillie	Defended	Break & Enter	Acquitted
25 June 1929	Trevor Mervyn Doyle	Defended	Forge & Utter	Acquitted
27 June 1929	Nena Eileen Hamer	Defended	Conceal Birth	Convicted
27 June 1929	James Rioalo	Defended	Break & Enter	Convicted
3 July 1929	Dagmar Helene Drewett	Defended	Receiving	Committed
4 July 1929	Albert Ernest Smith	Defended	Fraud	Convicted
5 July 1929	Edith Marla White	Defended	Receiving	Acquitted
5 July 1929	John Robert Carey	Defended	Assault & Robbery	Acquitted
6 July 1929	Elsie Kay	Defended	Theft	Acquitted
6 July 1929	William George Durie	Defended	Assault	Acquitted
10 July 1929	John Gibbons	Defended	Appeal	Dismissed
10 July 1929	John Patrick Cassidy	Defended	Appeal	Dismissed
11 July 1929	Allan Foster Webster	Defended	Break & Enter	Acquitted
11 July 1929	George Little	Defended	Break & Enter	Acquitted
17 July 1929	John McGaughey	Defended	Conspiracy to Defraud	Acquitted
20 July 1929	Norman Hector Elliott	Defended	Forgery	Convicted
20 July 1929	John Yorke	Defended	Theft	Convicted
20 July 1929	Edmond Robert Thomas Galleghan	Defended	Break & Enter	Convicted
20 July 1929	Edward Weirick	Defended	Break & Enter	Convicted
20 July 1929	Cecil Albert Jobson	Defended	Assault Police	Acquitted
25 July 1929	John Wearing	Defended	Break & Enter	Convicted
25 July 1929	William Morrison	Defended	Receiving	Convicted
30 July 1929	Ernest Frederick Leggo	Defended	Fraud	Acquitted
30 July 1929	William Alfred Gleeson	Defended	Fraud	Acquitted
3 August 1929	Charles Hopner	Defended	Appeal	Dismissed

13 August 1929	Dagmer Helen Drewitt	Defended	Larceny	Acquitted
13 August 1929	William Moore	Defended	Assault	Convicted
13 August 1929	Mervyn Boyce Carmichael	Defended	Assault	Convicted
13 August 1929	Rose Thompson	Defended	Theft	Acquitted
20 August 1929	Matilda Devine	Defended	Appeal	Dismissed
20 August 1929	John Smith Garden	Defended	Conspiracy by Violence	Acquitted
20 August 1929	Charles Reeves	Defended	Conspiracy by Violence	Acquitted
20 August 1929	John Kavanagh	Defended	Conspiracy by Violence	Acquitted
20 August 1929	Michael Patrick ryan	Defended	Conspiracy by Violence	Acquitted
20 August 1929	Edward Wallace Paton	Defended	Conspiracy by Violence	Acquitted
23 August 1929	James Edward Devine	Defended	Watched out for interests	
30 October 1929	William Morris	Defended	Make False Statement	Acquitted
5 November 1929	Sydney Colley	Defended	Appeal	Upheld
6 November 1929	Bruce Bell	Defended	Break & Enter	
6 November 1929	Alfred Herbert McKaig	Defended	Break & Enter	
9 November 1929	Reuben Holmes	Defended	Theft	Acquitted
9 November 1929	James Roy Rogers	Defended	Theft	Acquitted
20 November 1929	Alexander MacQueen	Defended	Conspiracy to Defraud	Convicted
20 November 1929	Sidney Hogen	Defended	Larceny	Convicted
26 November 1929	George Ross	Defended	Assault	Committed
26 November 1929	Richard Moreton	Defended	Assault	Committed
29 November 1929	Joseph Ward	Defended	Assault	Bailed
13 December 1929	Jack Cooper	Defended	Break & Enter	Convicted
14 December 1929	Lacey Bradbury	Defended	Appeal	Upheld
17 December 1929	George Robinson Caris	Defended	Assault	Convicted
17 December 1929	Colin Leslie Sterling	Defended	Forge & Utter	Convicted
17 December 1929	Thomas Laurence Christian	Defended	Assault	Acquitted
17 December 1929	Joseph O'Neill	Defended	Assault	Acquitted
19 December 1929	Percy Bellomi	Defended	Appeal	Dismissed

19 December 1929	George Robinson Caris	Defended	Assault	Convicted
20 December 1929	Morris Abraham Kutner	Defended	Conspiracy to Defraud	Remanded
20 December 1929	Daniel Joseph Rogers	Defended	Conspiracy to Defraud	Remanded
20 December 1929	Albert Monroe Cameron	Defended	Conspiracy to Defraud	Remanded
20 December 1929	Albert Arthur Ellisdon	Defended	Conspiracy to Defraud	Remanded
20 December 1929	Harry Roden	Defended	Conspiracy to Defraud	Remanded
20 December 1929	Harry Levy	Defended	Conspiracy to Defraud	Remanded
24 December 1929	Sydney Alfred Matthews	Defended	Receiving	Convicted

## Articles

19 January, 1929. **Twelve Months' Gaol And £250 Fine - Drugs Case at Central Court**



Figure 24 - May Smith - 1929



Twelve months' gaol without the option was a supplementary sentence to one of £250, or 12 months' hard labor, imposed on May Smith (48), alleged drug trafficker, of Terry Street, Surry Hills, yesterday, at the Central Police Court.

Detective Sergeant Thompson told Mr. Shepherd, S.M., that defendant was a distributor of drugs.

"Say nothing about this; the doctor ordered it for me for bad feet," was a request alleged to have been made to Policewoman Armfield by Smith.

Dr. Walter Rees, called by defendant's counsel, Mr. Kinkead, said that he advised Smith to take morphia and cocaine to relieve pains in her legs and feet.<sup>[177]</sup>

#### **27 January 1929. Unusual And Serious Charge Against Man and Woman.**

Unusual was the charge levelled against a man and a woman who appeared at the Central Court during the week. The pair were of an appearance much superior to that of persons who usually occupy the dock down there.

They were Roy Anderson, or Lionel Mardet, 42, commercial traveller, and Eugean Spalding 21, saleswoman, and they had been arrested by Detectives Roy Baker, and McDermott on a charge of having conspired together between January 14 and 20, 1929 to falsely accuse one Phillip Ryan of a capital offence. The conspiracy was alleged to have taken place at Sydney and Werris Creek.

Mr Kinkead (instructed by Messrs. R. D. Meagher Sproule and Co.) appeared for the duo, and asked for an adjournment to enable them to prepare their defence. He suggested February 8 as a convenient date.

Sergeant Napper said that the offence with which the man and woman were charged was a most serious one, and on conviction carried with it a sentence up to 14 years' penal servitude under the Crimes Act. The police would agree to an adjournment as a number of inquiries had to be made. He thought that February 8 was a suitable date.

Mr. Gates agreed to grant reasonable bail. He remanded the accused until February 8, 1929, and fixed bail at £100 each, or four sureties in £25 each.<sup>[178]</sup>

#### **27 January, 1929.**

When John McMahon was called up at the Central Court, to answer a charge of having attempted to steal a wrist watch from the shop of Flavelle Bros and Sankey, Ltd., of Hunter-street, Sergeant Stinson intimated that the police had no evidence to offer.

Mr J.B. Kinkead, who had been briefed to defend McMahon, protested.

'If this is a police prosecution, I have nothing to say,' he began, 'but I understand that the charge was signed by a private person. My client was arrested on the flimsiest evidence, and I claim that I have a right to have the prosecutor put into the box, so that I may ask him a question or two.'

'The police say they have no evidence to offer,' said Mr. Camphin, S.M., soothingly, 'and pleased as I am, at all times, to hear you, Mr Kinkead, I must discharge the defendant.'<sup>[179]</sup>

#### **30 January, 1929. Land Deal - Alleged Conspiracy - Three Men Charged.**

A remarkable story of dealings in suburban land was told at the Central Police Court yesterday morning, when Ernest Slater (23), agent, Robert Hardy (48), agent, and Samuel Lampard (33), salesman, were charged with having conspired with two other men named Roberts to cheat and

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defraud Alfred John Charles Talbot of large sums of money, at Quandialla and Sydney, between January 1 and October 15, 1928.

It was stated in evidence that the two men named Roberts, who were supposed to be father and son, had not yet been found by the police, although a warrant had been issued for their arrest.

Alfred John Charles Talbot, farmer, of Quandialla, said that while on a visit to Sydney in January, 1928, he was approached in King-street by a young man, who asked to be directed to the "Daily Telegraph" offices. The man, who gave his name as Roberts, said that he was a stranger to the city, and asked Talbot to accompany him while he transacted some business. Witness agreed. In an office of the building he met two men named Hardy and Slater. Roberts asked him if he would care to speculate in land in the Coronation Estate, in which his father held a number of blocks, saying that it would be possible to resell at a profit of £20 a block. Witness at first refused, but was persuaded to buy two blocks, for which he paid a deposit of £5. On his return to Quandialla he posted to Hardy and Slater a cheque for £40.

About a fortnight later, Talbot continued, Roberts, Hardy, and Slater visited him at his farm at Quandialla, and offered to sell his two allotments in the Coronation Estate at a profit of £30 a block. Witness agreed. Hardy then said that he had 30 allotments for sale in the Hillside Estate at Pendle Hills, which he described as the centre of a busy suburb. Hardy claimed that the land in the immediate vicinity of the estate was already built upon, that an electric train service to Blacktown would shortly be in operation, that there was a good omnibus service from the city, and that the land was an excellent speculation. It was worth, he said, £7000. Witness said he would pay £300 as a deposit, if he were allowed £100 credit on the two blocks he had agreed to sell, and this was agreed upon. The contract was drawn up and signed, and witness gave Hardy a cheque for £300.

A few weeks later, Talbot went on, Lampard, Roberts, and a man who was introduced as Roberts' father, called to see him. His own son was present at the interview, Roberts, sen., urged him to sell the land he had just bought in the Hillside Estate, saying that he was anxious to sell his own holdings in the same estate, and that if the two sales were made together it would be possible to obtain a profit of £30 a block. Witness agreeing, a contract of sale was accordingly made out. Witness asked for his money, and was told that certain documents would first have to go "through the Titles Office," in Sydney, but that £1800 would be paid into his bank at Temora within a fortnight. Lampard then proposed that he should buy more land in another estate, but this witness refused to do.

The £1800 had not been paid, said witness, and he had consequently consulted his lawyer.

Cross-examined by Mr. Dovey (who appeared for Hardy and Slater), witness admitted that he was "no scholar." The documents placed before him he identified mainly by his own signature. He had not previously rehearsed his evidence.

Ernest William Talbot, a grazier, of Quandialla, corroborated his father's evidence concerning the interview with Roberts and Lampard.

David Kennedy Telfer, shire engineer at Blacktown, gave evidence concerning the Pendle Hills Estate. There were every few buildings in the vicinity, he said, and there was no omnibus service to it. The estate was still in a developmental stage.

The case was adjourned until 2 p.m. on Monday next.

Mr. Lionel Dare (instructed by Messrs. Dibbs and Farrell, of Temora) appeared for the prosecution; Mr. Kinkead (instructed by Mr. Prendergast) for Lampard; and Mr. Dovey (instructed by Mr. Hickey) for Hardy and Slater.<sup>[180]</sup>

#### **1 February, 1929. Congested Court Business.**

Another urgent appeal for an additional magistrate or two on the city benches was made by Mr. J. J. Kinkead at the Kogarah Court yesterday.

Mr. Kinkead, who was appearing in a case that could not be reached by the presiding magistrate, and had to be adjourned, said that the congestion of business at the present time was experienced in almost every suburban court. He had had to appear three times at one court recently, because, although the parties were ready to proceed with the case, it could not be taken, owing to the congestion. It was most distressing to both the legal profession and the parties to have their cases adjourned time after time, while a serious charge was involved.

"I think it is time that an extra magistrate was appointed to relieve the congestion," he said.

Mr. McMahon said that he was sorry to have to adjourn cases. The present magistrates were doing their best to relieve the congestion.<sup>[181]</sup>

#### **6 February, 1929. Police Must Sleep.**

Very few magistrates, perhaps, are more considerate toward police officers than is Mr. Laidlaw, S.M. At the Central Police Court yesterday. Mr. Kinkead asked for the adjournment of a case in which he was interested, and in which he was having some difficulty in getting in touch with certain witnesses. "I would ask your Worship," he said, "to adjourn this matter until after the luncheon hour.", The S.M. turned to Police Prosecutor Napper. "Any objection?" he inquired, "Yes." replied the sergeant, "several police in charge of the case are on night work and I would like to let them go as soon as possible." "Quite right," agreed the S.M. heartily, "the police must not lose too much sleep. I am sorry Mr. Kinkead, but the case must be heard as soon as possible."<sup>[182]</sup>

#### **8 February, 1929. Quarter Sessions Appeals - (Before Judge Edwards.)**

##### **Publican's Appeal Succeeds.**

Joseph Henry Ellison, licensee of the Empire Hotel, appealed against his conviction at the Central Police Court on December 5, 1928, when he was fined £6, with costs, on a charge of having sold liquor during prohibited hours. Appellant admitted the offence, but stated that when the men were served he honestly believed they were bona fide travellers. This was not disputed by the Crown, and his Honor upheld the appeal, and quashed the conviction. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.), appeared for appellant.<sup>[183]</sup>

#### **9 February, 1929. Quarter Sessions - No. 1 Court - (Before Acting Judge Rowland.)**

Crown Prosecutor, Mr. V. H. Treatt.

##### **House-breaking**

Charles William Jordan Bickley, 20, clerk, was charged with breaking and entering the dwelling-house of Thomas Charles Morgan, at Punchbowl, on January 10, and stealing £3/8/8, a watch, and other goods.

Mr. Kinkead (instructed by Mr. W. H. Woodward) appeared for the accused, who pleaded guilty, and was bound over in recognisances of himself and one surety in £10 each to come up for sentence if called upon within two years. A condition of his release was that he should pay



Figure 25 - Charles William Bickley - 1929

to the cleric of the Court the sum of £5/0/2 for Mr. Morgan within two months, or he called up for sentence.

### **Alleged Assault And Robbery**

James Joseph Burke, 31, hairdresser, was charged with having assaulted Ruby Bates at Sydney, on December 7, and robbed her of a purse, key, and four shillings. There was an alternative charge of common assault.



Figure 26 - Joseph James Burke - 1929

Mr Kinkead (instructed by Messrs. R.D. Meagher, Sproule, and Co.) appeared for the accused, who was convicted on the major charge and remanded until next Tuesday for sentence.<sup>[184]</sup>

**12 February, 1929. District Court - (Before Judge Armstrong and Juries.) - Alleged Slander.**

#### **Randall v Evans.**

In this case Alice Randall, of Richards Avenue, Surry Hills, claimed £400 damages for alleged slander from Florence Theresa Evans, of Park-road, Moore Park. The slander was alleged to have been made in a statement made by defendant that plaintiff "was reeking with consumption," as

the result of which, defendant said, she had lost her position. The Jury returned a verdict for £10 in favour of plaintiff, and His Honor entered judgment for that amount. Mr. Kinkead (instructed by Messrs. R. D. Meagher. Sproule, and Co ) appeared for plaintiff, and Mr. Redshaw (instructed by Messrs. G. G. Maddocks Cohen and Son) for defendant.<sup>[185]</sup>

**13 February, 1929. Quarter Sessions - No. 1 Court - (Before Acting Judge Rowland.)**  
Crown Prosecutor, Mr. V. H. Treatt.

#### **Assault And Robbery.**

James Joseph Burke, 31, hairdresser, was convicted on a charge of having assaulted Ruby Bates, at Sydney, on December 7, and robbed her of a purse, key. and 4/.

Mr. Kinkead (instructed by Mr. W. H. Woodward) appeared for the prisoner, who was sentenced to 12 months' imprisonment, with hard labour, and was recommended to be kept under medical observation.

#### **Acquitted.**

John Baker, 27, contractor, was charged with havlng obtained £70 from Edward Paul Angus by false pretences. Mr. Kinkead (instructed by Mr. G. A. Prendergast) appeared for the accused, who was acquitted and discharged.<sup>[186]</sup>

**14 February, 1929. No. 2. Court - (Before Judge Curlewis.)**  
Senior Crown Prosecutor, Mr. L. J. McKean.

#### **Manslaughter Charge.**

Edward Ford. 36, ship's fireman, was charged with having maliciously slain Stanley Patrick Rigney, at Sydney, on November 2. Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared far the accused.

Frederick Gitshan., a seaman, stated that he was sitting on the doorstep of the Seamen's Union, and saw both the deceased and the accused enter the building. Subsequently they both came out, and he saw the accused strike the deceased on the face, and knock him down; he did not see Rigney do anything. He saw the accused next morning, and said to him: "You did a fine thing last night; that young fellow was taken to the hospital in an ambulance." The accused replied: "Who, me?" Witness then said, "Well, it was a man like you." The accused answered, "Here is sixpence, go and get yourself, a drink," and walked on. The witness admitted that the man he identified at the police station was very like the man, but he could not positively swear that it was.

The jurors having failed to agree were locked up for the night.

### Larceny.



Figure 27 - Marie Hickman - 1930

Marie Hickman, 22, domestic, was charged with having stolen £34/10/, the property of Frederick Thomas.

Mr. Kinkead (instructed by Mr. F. Fanner) appeared for the accused, who was convicted, and bound over in her own recognisance in £60 to come up for sentence if called upon within two years.

### Acquitted.

William McNamara, 19, tilelayer, was charged with having assaulted Sidney George Galvin at Sydney on December 24, occasioning him actual bodily harm. He was alternatively charged with common assault.

Mr. Kinkead (instructed by Mr. W. X Niland) appeared for the accused, who was acquitted and discharged.<sup>[187]</sup>

### 17 February, 1929. 'Go-Getting' Alleged - Blocks At Blacktown Salesman Keogh and Three Others Sent For Trial on Conspiracy Charge Strangers And A Land Deal

Practically the whole of Friday in Mr. Gates, C.S.M.'s No. 2 Court at the Central was occupied in



Figure 28 - Walter Keogh - 1929

hearing charges of conspiracy to cheat and defraud lodged against four men associated with the sale of land by what is called 'Go-getting' methods.

The four men were: Walter Keogh, salesman, 28; Cecil Clarke, 27; Edward Barrett, 87, and John Power, 50. All were described as salesmen. They were arrested on warrants charging them with conspiring together to cheat and defraud two young men, Ralph Sinfield and Patrick Kerlln, both residing at the Salvation Army Hostel, of 'divers large sums of money.'

Sergeant Dennis, prosecuted on behalf of the police, and Mr. Kinkead (instructed' by Mr. Prendergast) represented the men.

After police evidence concerning the arrest, Sinfield and Kerlln told an interesting story of the method by which they alleged they were fleeced of their hardwon savings.



'Keogh and Clarke have carried on business for some time at Gladstone Chambers 90 Pitt-street,. City. They were salesmen, amongst these Barrett and John Young. Stated to the Bench that he was working on a sheep station west of Sydney for some years, and he came down to Sydney about Christmas-time, 1928, with a sum of about £70 or £80 in the State Savings Bank.



Figure 29 - Cecil Clarke - 1929

On January 2, 1929, he was in the street, when Barrett came up to him and asked him if he knew, where Gladstone Chambers were located. 'I'm a stranger and I don't know,' said Sinfield. Barrett, he sald, suggested that they pal in and look for the place. He was down from Condobolln on behalf of his father to fix up the purchase of some blocks of land in the St. Kilda Estate, Blacktown. He. told Sinfield that his name was Ted Barrett.

Along they went to Gladstone Chambers, after getting directions, and on the third floor they found an office with Keogh's name on the door. Here, Sinfield said, he was Introduced as my friend from Condobolin.'

Followed some discussion about Barrett's father's blocks of land. Clarke, who was in charge, said, according to Sinfield, that the draft sent down from Condobolin by Barrett's dad was for £500, but it was not sufficient to cover all the blocks, and the option of purchase expired that afternoon. He must see Barrett sen.

Barrett, Sinfield went on to say, said that rather than lose land, which had increased in value by £10 already, and which a building firm was prepared to take at once, he would let Sinfield, 'his friend,' have it. So Sinfield, according to evidence, took the blocks, as he was assured that the blocks could be sold at a profit almost next day. He paid £5 deposit, told them he had more money in the bank, went and drew it out, and paid £75 in all for three blocks, which an expert, Mr. Arthur M. Francis, estate agend, Blacktown, president of the Blacktown Shire Council, said were worth about £5 each.

The price Sinfield was to pay was £100 for each block. There were 128 blocks in the estate, which was sold by order of the Melbourne Trustees to Home Sites Ltd. some time ago for about £600, and later bought by a man named Milgate for a little more.

The Valuer-General's Department had valued the entire estate last year at £400. The 128 blocks in the estate were being sold by Keogh and Clarke at £100 each, or over £12,000. That was the evidence of the expert.

When Sinfield found that they could not, or would not, sell his lots, he told them he had been had and wanted his money back. He was told that he could not get it.

When the police, Detective Constable Alford and Detective-sergeant Kennedy, called upon the firm in connection with the matter, the principals declared that the transaction was perfectly in order; contracts were signed, receipts given, and the papers sent along to the solicitors of the vendor, Mr. Milgate.



Figure 30 - Edward Barrett - 1926



Patrick Kerlln, a young North of Ireland native, had a similar tale to tell.

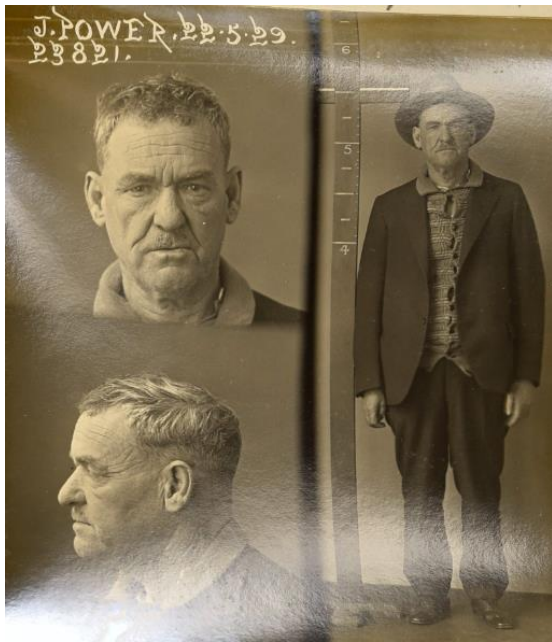


Figure 31 - John Power - 1929

He had come from Queensland after being three years in Australia. He came down about the New Year with some £40 odd pounds in the bank. He met Power, he said, another salesman of the firm, who also had some difficulty in finding Gladstone Chambers, where he worked.

Kerlln helped him to find it, and he went through a similar process, drawing out every penny he had saved.

He got two blocks through the intervention of Power, who posed as the brother of a Queensland squatter, he went on, and who had sent him down to fix up the purchase of land that was rising at the rate of £10 at a time.

Mr. Gates said that he was satisfied there was a case to answer. He regarded Barrett as nothing else but a confidence man. He felt sure that Clarke and Keogh

knew very well that the land they were selling to these men was not of the value represented. The way Barrett went about selling the land convinced him that they knew it was not of the value described. As for Milgate, the vendor, he was not sure that he ought not to send him along also to Sessions for trial, with the others. He was not above suspicion in being connected with such a gang. He committed the four men for trial.<sup>[188]</sup>

#### 22 February, 1929. Razor Gang – Smiley's Appeal is Refused – Judge's Report

William Smiley was convicted, at the Darlinghurst Quarter Sessions on November 12 last, on a charge of inflicting grievous bodily harm, and he was sentenced to five years' penal servitude by Judge Cohen.

Smiley to-day appealed to the Full Court of Criminal Appeals against conviction and sentence.

The grounds for the appeal set out that the judge misdirected the jury in certain respects and wrongly admitted certain evidence.

The judge, in his report, said that the prisoner had been reported to him as being one of the "razor gang" and a dangerous criminal.

Smiley was convicted on a charge of having, on September 19 last, at Sydney, assaulted William Scott and William George Lloyd, during a fight, occasioning actual bodily harm.

The appeal was refused, and the conviction and the sentence confirmed.

Mr. R. Windeyer. K.C., and Mr. Kinkead (instructed by Mr. Fanker) appeared in support of the appeal and the Solicitor-General (Mr. Weigall, K.C.) for the Crown.<sup>[189]</sup>

#### 22 February, 1929. Crown Fails - Full Court Decision - Unusual Appeal

An unusual case occupied the attention of the Full Court of Criminal Appeals this afternoon. The Crown appealed against the fine of £20 imposed on Dennis Patrick Finn, and the fine of £8 imposed

on Thomas Bede, salesmen, by Judge Armstrong, at the DarlInghurst Quarter Sessions in December last.



Figure 32 - Dennis Patrick Finn - 1928

They had been charged with inducing John Alexander Sutherland to abstain from giving evidence in a judicial proceeding at the Central Police Court in December last, Sutherland having been subpoenaed to attend the court.

During the course of his summing-up at the trial, Judge Armstrong informed the jury that if the accused were convicted, he intended to impose a fine instead of imprisonment, inasmuch as the offence was a minor one, comparable to the refusal of a person to assist a constable in the execution of his duty.

The Full Court of Criminal Appeals, consisting of the Acting Chief Justice (Mr. Justice Ferguson), Mr. Justice James, and Mr. Justice Halse Rogers, refused to interfere with the fines, instead of imprisonment, imposed by Judge Armstrong, but the Court unanimously dissented from Judge Armstrong's remarks, that the offence of inducing a person not to attend to give evidence, in a judicial proceeding was only comparable to that of a person refusing to assist the constable in the execution of his duty.

### "Not Compellable"

The court further expressed the opinion that subpoenas issued by the Court of Petty Sessions, calling upon witnesses to give evidence, were not compellable instruments; but, as the offence in the present case was at Common Law, the court did not feel disposed to interfere with Judge Armstrong's, ruling that it was competent to impose a fine instead of imprisonment.

Mr. R. Sproule took the point before Judge Armstrong, at the Quarter Sessions, that Courts of Petty Sessions had no authority to issue subpoenas calling upon witnesses to attend and give evidence in a judicial proceeding.

Mr. Weignell, K.C. appeared for the Crown, in support of the application, and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule and Company) for the respondents.<sup>[190]</sup>

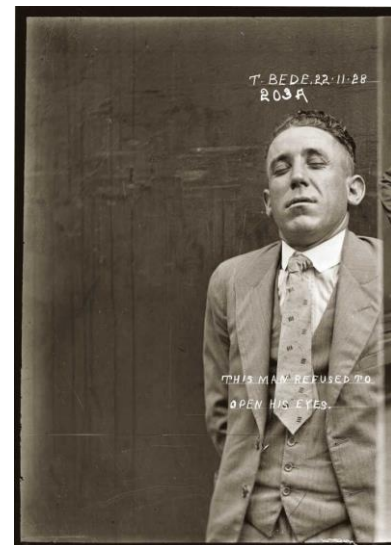


Figure 33 - Thomas Bede - 1928

### 23 February, 1929. Court Of Criminal Appeal

(Before Mr. Justice Ferguson, Acting C.J., Mr. Justice James, and Mr. Justice Halse Hogers )

#### Member Of The Razor Gang.

#### Rex v Smiley.

An application for leave to appeal was made by William Smiley, who was charged before Judge Cohen at DarlInghurst Quarter Sessions on November 12 with having assaulted William Scott and William George Lloyd, causing actual bodily harm. He was convicted, and sentenced to five years' penal servitude, the maximum penalty allowed for the offence. The appellant asked for a new trial, on the grounds that fresh evidence was available which should have been given at the trial, and that the sentence imposed was excessive.

Judge Cohen, in his report to the Court, said that he agreed with the jury's verdict, and was influenced by the police evidence, which was to the effect that the accused had a bad record, that he belonged to the razor gang, carried a gun, and was a most dangerous criminal.

Mr. Windeyer, K.C., and Mr. Kinkead (instructed by Mr. F. Fanker) appeared for the appellant.

The Court dismissed the application, the Acting Chief Justice remarking that the fresh evidence referred to was available at the trial, and in the absence of a satisfactory reason for not calling it the Court would not interfere. Nor did their Honors feel disposed to interfere with the sentence, as the offence was a bad one of its kind.

### **Crown Appeal Dismissed.**

#### **Rex v Finn and Bede.**

Dennis Patrick Finn and Thomas Bede were jointly charged before Judge Armstrong at Darlinghurst Quarter Sessions on December 11 with endeavouring to prevent a witness from giving evidence. Both accused were convicted, and fined respectively £20 and £8. The Crown appealed against these sentences as inadequate. Mr. Weigall, K.C., appeared for the Crown, and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for the accused.

The trial Judge in his report said that the offence was charged under section 336 of the Crimes Act, and for such an offence the punishment might be two years' imprisonment if treated under the Act, or imprisonment for any time, or a fine if treated as an offence at Common Law. He took the view that the case was analogous to a person refusing to assist the police in making an arrest, and in putting that view before the jury informed them that in the event of a conviction he proposed to punish by fine only.

The Acting Chief Justice, in delivering judgment, said the offence was one in respect of which it was not competent for a Judge to impose a fine. The penalty imposed by the Act was one of imprisonment. But apart from that, even if the conviction was not one which would stand under the section, the Court would be faced with the difficulty raised by his Honor's statement to the jury. He thought it was unfortunate that his Honor made any statement to the jury as to what form of sentence he proposed to impose while the guilt of the accused was yet undetermined. It certainly might have acted as an inducement to some members of the jury to convict in a case in which they might otherwise not have convicted. He wished himself also to express a most emphatic dissent from his Honor's view that the offence was comparable to that of a man called upon to assist a policeman to effect an arrest and not doing so. He thought this a very much more serious offence. The men were charged not merely with abstaining from assisting justice, but with a deliberate attempt to defeat justice by inducing a witness who was bound to attend to abstain from attending. That seemed to his Honor a very serious offence, and he would be very sorry to give his assent to any expression of opinion which would tend to give rise to a belief in the minds of the public that it was anything else than a grave offence. He regretted, in view of those circumstances, that the Court could do nothing. The appeal must be dismissed.

Mr. Justice James and Mr. Justice Halse Rogers concurred.<sup>[191]</sup>

### **26 February, 1929. No. 2 Court - (Before Judge Curlewis.)**

Senior Crown Prosecutor, Mr. L. J. McKean.

#### **Acquitted.**

Edith Roma, 29, married woman, for whom Mr. Kinkead (instructed by Mr. W. M. Niland) appeared, was charged with having assaulted Marie Colenso, at Spring-street, Paddington, on November 7,

occasioning her actual bodily harm. There was an alternative count of common assault. At the conclusion of the evidence the jury intimated that it did not wish to hear further evidence, and acquitted the accused without leaving the box. The accused was discharged.

Edward Ford, 36, ship's fireman, was charged with having feloniously slain Stanley Patrick Rigney, at Sydney, outside of the Seamen's Union office, on November 2, by knocking him down. Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused. The Jury acquitted the accused, who was discharged.<sup>[192]</sup>

#### **26 February, 1929. Talk Of Feud In Cocaine Case - Woman Before Court**

Elsie Kay, 37, appeared at the Central Court to-day on a charge of having had cocaine in her possession. At the conclusion of the evidence, Mr. Gedies. S.M. adjourned the case until Monday in order further to consider the legal aspect.

Constable Mackie said that about 8.30 p.m. on February 9 he went to premises in Ninthsdale-street, City, and climbed over the back wall. He saw defendant in the dining room and said "I have reason to suspect that you have cocaine in this house." On top of the sideboard in the dining-room he found a packet of cocaine. There were three other packets in an oven in the kitchen. Defendant was shown some of the cocaine, and said "*Tilly Devine's* - put it there."

Defendant said she knew nothing about cocaine being in the house.

About eight or nine other girls had admittance to the house.

When Constable Mackie came in she added. 'I thought it was the Kelly gang. He pulled a gun on me.'

Mr. Kinkead, who appeared for defendant, suggested that the cocaine had been planted by certain persons with whom defendant had a feud. "She has had to take a warrant out against out against one of them", he said.<sup>[193]</sup>

#### **28 February, 1929. Quarter Sessions - No. 1 Court - (Before Acting Judge Rowland.)**

Crown Prosecutor, Mr. V. H. Treatt.

##### **Assault And Robbery**

Alexander Thomas Hart, 24, contractor, was charged with having assaulted Charles Alfred Spong at Glebe on December 24, and robbed him of a watch, comb, knife, and £5. There was an alternative count of common assault.

Mr. Kinkead (instructed by Messrs, R. D. Meagher, Sproule, and Co.), appeared for the accused, who was convicted on the major charge, with a strong recommendation to mercy, and bound over in recognisances of himself and one surety in £50 each to come up for sentence if called upon within three years.<sup>[194]</sup>



Figure 34 - Alexander Thomas Hart - 1929

#### **15 March, 1929. No. 2 Court - (Before Judge Curlewis.)**

Crown Prosecutor, Mr. P. V. Stacey.

##### **Acquitted.**

William Stanley Taylor, 28, railway porter, was charged with having indecently assaulted a girl 13 years of age at Marrickville railway station on November 27. Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused. At the conclusion of the Crown case the jury intimated that it did

not wish to hear any more. And, without leaving the box, acquitted the accused, who was discharged.

Stanley George Hartland, 21, labourer, was charged with having assaulted Albert Janies Lousde at Rozelle on February 16, occasioning him actual bodily harm. There was an alternative count of common assault. Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused, who was acquitted by the jury without leaving the box or hearing addresses, and he was discharged.<sup>[195]</sup>

**16 March, 1929. Court Of Criminal Appeal**

(Before the Acting Chief Justice (Mr. Justice Ferguson), Mr. Justice James, and Mr. Justice Campbell.)  
Mr. Weigall, K.C., appeared for the Crown

**Appeals Dismissed - Rex v Burns.**

This was an appeal by Cecil Joseph Burns, who pleaded guilty to a charge of indecent assault on a boy and was sentenced by Judge Curlewis at Sydney Quarter Sessions to four years' imprisonment, with hard labour. The accused complained of the severity of the sentence. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the appellant.

The appeal was dismissed.<sup>[196]</sup>

**22 March, 1929. Queen's Square Jury Court - (Before Mr. Justice Davidson and juries.)**

**£5000 Claimed For Alleged Libel - Heffron v Foley and others.**

The plaintiff, Robert James Heffron, sued John Allan Foley, Michael James Eather, Ernest Edward Judd, and John James Easterbrook, claiming £5000 for alleged libel. The defamatory matter complained of was contained in a publication called the "Revolutionary Socialist," in issues circulated in May and June, 1928. References were made to the plaintiff, who was the endorsed Labour candidate for Botany at the last general election. Heffron was accused as posing as a "fake Communist party candidate, disguised as a Labour party candidate," and it was suggested that the subterfuge was adopted to placate the large Catholic vote in this constituency. The articles accused him of accepting capitalistic pay for betraying Labour interests in Victoria, and of being a "Labour taker," a "boot licker," a coward, and an enemy of the working classes.

The defendants filed a general plea of not guilty.

Mr. Kinkead (instructed by Messrs. Tietyens, McLachlan, and Co.) appeared for the plaintiff; and Mr. Windey, K.C., and Mr. Collins instructed by Mr. A. C. Roberts) for the defendants.

The case is part heard.<sup>[197]</sup>

**23 March, 1929. Queen's Square Jury Court - (Before Mr. Justice Davidson and juries.)**

**£5000 Claimed For Alleged Libel - Heffron v Foley and others.**

The plaintiff Robert James Heffron sued John Allan Foley, Michael James Eather Ernest Edward Judd and John James Easternbrook, claiming £5000 for alleged libel The defamatory matter complained of was contained in a publication called the "Revolutionary Socialist" in issues circulated in May and June 1928. References were made to the plaintiff who was the endorsed Labour candidate for Botany at the last general election. Heffron was accused as posing as a "fake Communist party candidate disguised as a Labour party candidate" and it was suggested that the subterfuge was adopted to placate the large Catholic vote in this constituency. The articles accused him of accepting capitalistic pay for betraying Labour interests in Victoria and of being a "Labour faker", a "boot-licker," a coward, and an enemy of the working classes.



The defendants filed a general plea of not guilty.

Mr Kinkead (instructed by Messrs Tietyen, McLachlan, and Co.) appeared for the plaintiff and Mr Windeyer KC and Mr Collins (instructed by Mr. A.C. Roberts) for the defendants.

When the case was called on for resumption of hearing Mr Windeyer informed his Honor that during the adjournment one of the jurymen empanelled interviewed one of the counsel in the case. It appeared that the matter discussed had no reference to the issues being tried, but it was thought that the matter should at least be mentioned. Under the circumstances his Honor thought it was his duty to discharge the jury and stand the case over for trial at a later date.<sup>[198]</sup>

### **28 March, 1929. Quarter Sessions - (Before Acting Judge Markell.)**

Crown Prosecutor, Mr. P. V. Storkey.

#### **Acquitted.**

David Allan Mills, 30, ship's fireman, was charged with having stolen a case containing four rolls of woollens, from the steamship Katoomba, on July 30, 1927, while in Port Jackson.

Mr, Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused, who was acquitted by direction of his Honor, and discharged.<sup>[199]</sup>

### **2 April, 1929. Comedy In Court - Real Chinese Puzzle**

Mr Geddes S.M., Mr. Kinkead, Sergeant Fogarty, and an interpreter had a puzzling few minutes at the Central Court today, when six Chinese appeared to answer a charge concerning opium.

Mr. Kinkead appeared for five Chinese, but six were ushered into court. 'There appears to be one over,' he said, but as six names appeared on the charge sheet he accepted the extra client.

The trouble started with the calling of the names of the defendants. Two answered to the name of Ah Chong, which only one should have claimed, and only one responded to the name of Ah Deck, whereas two should have done so. The roll was called again, with a similar result.

After several minutes of strained silence one of the Ah Chongs said something to the interpreter, and the puzzle was solved. His name was Ah Jeck, not Ah Chong or Ah Deck.

A further hitch occurred, when the interpreter asked them how they pleaded to the charges against them. He had a long conversation with several as to their plea, and then informed Mr. Geddes that they did not plead at all. He cleared the air, however, by adding that they said they did not do the things they were charged with.

'Well, we can take that as a plea of not guilty,' said Mr. Geddes, and they were remanded until April 11.<sup>[200]</sup>

### **3 April, 1929. Second Trial - Three Men In Court - Parkes Girl's Story**

Today commenced a new trial after their conviction November last of a capital offence on a Forbes girl, Bertie Charles Littler, aged 30; his brother, Walter Harold Littler, aged 32, and Arthur Callaghan; aged 20, appeared to-day at the Central Criminal Court on the same charge. The Acting-Chief Justice (Mr. Justice Ferguson) presided.

At the end of the previous trial, which, lasted three days, the three men were sentenced to death.

The allegation against them is that, on the night of September 21, in a park at Parkes, they outraged the girl, who was then 16 years of age.



The girl, of short and robust build, giving her evidence calmly, said she had been assaulted by four men.

She was alone in the street, about 10 p.m., she went on, when Callaghan asked her to go with him for a walk. She refused. Later she met McCarroll, and was dragged into the park, and assaulted by him.

She was assaulted then by Callaghan, and afterwards by Walter Littler, who, she declared, posed as a policeman. A fourth man also assaulted her. She could not identify the fourth man.

#### **"I Fainted"**

She fainted, and when she regained consciousness the men had disappeared.

Dr. Henderson, of Parkes, who examined the girl, said he found no injuries which would indicate that she had been grasped by the wrists and thrown on her back.

#### **Statements From Dock**

At the close of the Crown case, Callaghan, in a statement from the dock, said he had been intimate with the girl, but with her consent. He denied having assaulted her.

Walter and Bertie Littler, from the dock, each declared there had been no violence, the girl having been a consenting party.

The girl, recalled, said it was not true that she had been intimate with Callaghan on any occasion previous to the alleged assault.

Mr. Mack opened his address to the jury at 3.15 p.m. Counsel had not concluded their addresses when the Court adjourned until tomorrow.

The Senior Crown Prosecutor (Mr. L. J. McKean, K.C.), instructed by Mr. W. P. Sheehen, of the Crown Law Department, representing the Crown Solicitor, appeared for the Crown; and Mr. S. Mack, K.C., with Mr. J. J. B. Kinhead (instructed by Messrs. R. D. Meagher, Sproule and Co.) appeared for the defence.<sup>[201]</sup>

#### **7 April, 1929. Free After Awful Ordeal**

**"Outraged," Says Girl, But This the Three Parkes Men Strongly Denied.**

#### **Grim Looks Removed By Smiles.**

Having heard the dread sentence of death in November last, Arthur Callaghan, 26, Walter Harold Littler, 32, and Bertie Charles Littler, 36, walked, out of the shadow of the gallows into the sunshine of freedom at the Darlington Criminal Court last week.

Granted a re-trial on the charge of having committed a capital offence on a young girl at Parkes, they experienced a nerve-wracking ordeal while their counsel and the Crown Prosecutor bared sordid details and stressed facts to the jury.

On the second day the jurymen retired at 11.25 a.m., and they had been out for 22½ weary hours before they filed in to render their verdict at 10 o'clock on Friday morning.



MR. J. **KINKEAD**, who appeared with Mr. Mack, K.C., for the defence, and objected very strongly to the Crown Prosecutor referring to the three men as beasts."

The strain of the interminable waiting and the fearful apprehension was plainly obvious in the faces of the three men as they watched the jurors return. They peered anxiously into the faces of the 12 men seeking some indication of the finding. There was a hush in the court and then the foreman announced that each man had been found not guilty of the charge. The tension taxed immediately. In that eventful half minute the six months of wondering and waiting faded away from the minds of the three men.

They were free; no more had they to descend the narrow darkened stairway from the dock to cells, and they were at liberty to go where they willed. Outside the court their relatives and friends congratulated them wildly, some of them laughing and crying at the same time in their excitement.

The men themselves were rather quiet and loth to say much. No doubt the seriousness of the whole affair was still weighing on their minds.

'Well it's all over now,' 'Truth' remarked to Callaghan, and he turned with a smile— possibly the first real smile he had enjoyed for months —

to say, 'Yes It's over, and we're glad.'

#### Stay In Parkes

They were simple words, but the change in the man's demeanor since his acquittal left nothing to doubt of the feeling that was behind them. 'Six months the thing had been going on,' continued Callaghan, 'and during that time we were once under the sentence of death. 'And,' he went on with a wry smile this time, 'I've got a Job to go to in Sydney, and I'm starting right away.' 'What of the others?' he was asked.

'I've lived all my life in Parkes,' said Walter Littler, 'and I'm going to live the rest of it there.' 'Me too,' said Bertle Littler, and after shaking Mr. Kinkead, who worked with Mr. Mack, K.C., for their defence, heartily by the hand they joined their relatives and walked away.

At the first trial a fourth man stood charged with them on the same count— Edward McCarroll. He was acquitted on that occasion and was present during the whole of the re-trial. There was talk, that he would be called as a Crown witness, but he made no appearance in the witness-box.

In his address to the jury, Mr. Mack, K.C., scorned the idea that the girl had struggled, screamed and resisted as she claimed to have done. He also quoted legal authority to the effect 'that It was highly dangerous to convict in such cases on uncorroborated evidence, and stated that McCarroll was previously charged and acquitted on the same evidence.

Crown Prosecutor McKean, K.C., stated in his address that capital had been made of McCarroll's acquittal at the last trial, but that had nothing to do with this one.

### Protests

"It is a question, gentlemen" he said, 'of whether you believe these three here', (and he waved, his hand in the direction of the dock) 'who are not human beings at all on their own showings. The 'brute beasts would not do what they did.' 'They are three monsters in human form.'

At this stage Mr. Kinkead objected very strongly to the Crown Prosecutor's remarks. 'Mr. McKean,' he said, has three times, appealed to the jury to treat these men as beasts. . . -'

The evidence in general was almost identical with, that of the first trial, and the whole outline of the case, was given, by the girl, who appeared in a short white frock with blue trimmings and a small blue felt hat.

She moved, slowly into court, but in a self-possessed manner, and gave her evidence in audible tones all through; indeed, several times, in answer to Mr. Mack, who, appeared with Mr. Kinkead for the defence, she was quite haughty and indignantly positive of her denials to some of his questions.

Recalling the night of September 21 last, she said that, on the evening in question she left Forbes— where she lives with her people — in a motor car with her sister-in-law and two other men and departed for Parkes, arriving there at about 8.30 p.m.

### Walked Away

The object of their trip, was to visit her sister-in-law's mother who had been ill, and after doing so they went along to the Institute where a dance was being held. They waited there for the men, who had promised to drive them home.

Her sister-in-law went into the hall, but she remained outside in the car. After a while her sister-in-law came out, and she asked her for some money to buy sweets.

With the money she walked down Clarinda-street, and on the way met Callaghan, who said to her, "How about coming for a walk with me, Miss - ?"

She refused him, and also turned down the offer to go for a run in a car.

"I walked away from him then," said the girl. "But he stated that he would wait for me until I came back."

A little further on she met McCarroll, she said, and walked with him as far as the park.

"What happened there?" asked Mr. McKean, K.C., Crown Prosecutor.

"He dragged me through the gate." Said the girl, "and then pulled me under the oval fence.

"It was without my consent and he threw me on to the ground."

Here she described the offence she alleged took place against her will, and while it was happening she stated that Callaghan came along, and sat down on the grass beside them.

According to her story he said to McCarroll, "Nick, your missus is down at the gate."

Then, she said, he pulled McCarroll away and repeated the offence without her consent also.

'After that,' she repeated, 'I got up and fixed my clothes and walked towards the gate and met McCarroll and another man. I know him as Walter Littler.

'He said, 'What is the meaning of this What's your name?' and I said ...

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He then asked me if I was married, and I said no. He caught me by the arm, and said that he wanted to talk to me, saying, 'Do you know you can get six months for this. I'm a policeman. I caught you here with a man.'

'Then he said that if I would let him do what the other two men had done I would hear no more of it and he would let the case drop.

'I said to him, if you are a policeman why don't you do your duty. . .

'He then knocked me in the stomach with his fist and repeated the offence.

'I was crying and struggling, and he said. 'Never mind, the police will know nothing about it'.

I replied, "Won't they, I am going to give you all in charge!"

'Another man then came along.'

'Did you know him?' asked Mr. McKean.

'No,' she replied.

Do you know him now?— Yes.

Mr. Justice Ferguson here asked the girl if she could see the man, and she indicated Bertie Littler in the dock.

Mr. Mack then interposed a question and elicited from the girl that she did not actually know the man, but had been told he was Bertie Littler.

This man, she said, tried to kiss her and then everything went black before her. When she woke up the men had gone.

She tried to walk but fell down, and then McCarroll returned and asked her if she was all right. He went away again and she crawled out of the gate and across the road to a fence, where she was found by Mr. Fred Cowell.

She told him she had been outraged by four men, and asked him to get the police. Later a doctor was called and she was examined by him at the house of Mr. McGregor, that was nearby, and removed to hospital for a day.

Replying to Mr. Mack's cross-examination the girl said that her mother knew she went to Parkes, saying that she went home from her work, at a fish shop during the afternoon and her sister-in-law asked her if she would like to go.

'And while you were waiting at the Institute for' the men to take you home you went for a walk with another man,' said Mr. Mack.

'No,' answered the girl.

But you went with McCarroll? — Yes, but I did not know we were going to the park until we got there.

Why didn't you run away? — I couldn't. He grabbed hold of me. He pulled you through the gate? — Tee. You screamed I suppose?— Yea, and he put his hand over my mouth. But he has got only two bands, yet you say he held your mouth and pulled you through the gate? — Oh! He's stronger than me.

'You charged McCarroll with outraging you, said Mr. Mack, continuing his cross-examination.

'Yes, I did-' she answered with a little emphasis.

He, has been acquitted?— Yes.

You knew Callaghan? — Yes. Have you been out with him?— No, I have not. (Indignantly).

Are you sure you never borrowed money from him? — Him! (With more than a touch of scorn this time).

Do you know a man named Spicer? — No. '

Have you ever misconducted yourself with, other men?— No, I have not. (Again Indignantly).

### **Called Police**

Dr. William Henderson said that he saw the Girl at Mr McGregor's house in Bushmen-street, Parkes, and said she was nervous and hysterical when he saw her on the verandah.

He examined her, and from his observations said that misconduct had taken place. Next day he further examined her, and, he said, in answer to questions, that it was his opinion that she had been previously interfered with.

Mr. Frederick Cowell, who found the girl hanging on to the fence on the night of September 21, stated that he said to him, 'I have been outraged by four men.' He communicated with the police and then went for Dr. Henderson.

Sergeant Ferris, of Parkes, handled the case in that district, and said that he went to McGregor's house just after midnight on September 21, where he saw the girl.

Later he visited Callaghan's place and found him sitting on a bed in his shirt. When questioned concerning his movements by the sergeant, Callaghan said that he had arrived home about nine o'clock.

But when told by the sergeant that he had been seen in town at 10.20 he said he had been knocking round with several fellows.

'Were you at the Cricket Ground?' asked Sergeant Ferris.

'No,' he replied, and went on to state that he had not been with any girl during the evening, and did not know a girl named -.

'We then went to a house in Foster-street.' said Sergeant Ferris, 'where Walter Littler answered the door. Bertie Littler was inside.

'I asked them if they had been with McCarroll and Callaghan during the night and Bertie Littler replied that he was not going to answer any questions, but his brother said that they had been out together all night, and had returned together.

'I then took them to the police station, and later charged them with committing an offence.

'The next day they were lined up with other men for identification. The girl walked up to Callaghan, put her hand on his shoulder, and then said that Walter Littler was the man who said he was a policeman. McCarroll was next picked out by her, but she could not identify Bertie Littler as one of the men.'

Mr. Mack then cross-examined Sergeant Ferris regarding some photographs that were taken, of the men.

'Who took them?' he asked.

'Constable Hart,' said the sergeant.

Your son took some photos too— Yes, of the police.

What right had he to take them?— Every right.

Those photos appeared In a newspaper? — I believe they did. '

Here Mr. Mack submitted that there was no case against Bertie Littler as the girl had failed to swear that he was the fourth man, but Mr. McKean replied that he admitted they all had been together that night.

Each of the men then made a statement from the dock, and denied any guilt in the matter of assaulting the girl against her will, though they admitted having misconducted themselves with her on the night in question.

Callaghan, pale and obviously suffering from the strain of the terrible ordeal, said: 'Gentlemen, I am not guilty. I did misconduct myself with the girl, but with her consent and also on three previous occasions.

'I remember the night of September 21, was with the Littlers and others and McCarroll came up. ? . -I saw the girl and said to her 'Good night, Ivy.'

'She said, 'Good night, Tiddly.'

'She came back and agreed to go for a walk. I said, 'I've got a couple of mates, what about them?' She said, 'All right, bring them along'

#### **"Her Free Will"**

'McCarroll was there and offered to take the girl to the park, while the others followed... McCarroll said he was going first and then came back to me and said, Tiddly, . she's waiting for you. . . . Walter Harold Littler wiped his hands nervously with his handkerchief as he rose to speak. He admitted the misconduct, but said it took place 'absolutely of her own free will,' and that she afterwards said to him, 'Send your brother over.'

Bertie Littler, biggest and burliest of the trio, and a trifle more phlegmatic, spoke in loud, clear tones.

'I am not guilty,' he said. 'All I can say is that you have heard what my brother and Callaghan said, which is quite true . . . There was no violence of any kind used.'

The defence then called Hubert Spicer, and he said that he knew the girl.

'Did you ever see her with Callaghan?' asked Mr. Mack.

'About 12 months ago.' he said, 'a girl was with us, and she asked Callaghan if he would give her her fare home, and he got 2s from me, which he handed to her.'

'You swear on oath that this is the girl?' asked Mr. McKean.

'No,' said Spicer.



Did you not tell Constable Ryder In the train coming down that you could not swear to the girl? — Yes.

After addresses and the judge's summing up, the jury retired;<sup>[202]</sup>

*11 April, 1929.* Anticipation - At the Parramatta Police Court

Mr. Klnkead (to the defendant, his client): When do you go away again?

The defendant: On Friday.

The Magistrate: At least, you hope to. (Laughter.)

Mr. Klnkead: It's a reasonable anticipation.

The defendant will he able to go all right-wlth the disconcerting memory of having been fined £10.<sup>[203]</sup>

*11 April, 1929.* **Intruder At Girl's Bedside - Early Morning Scene at Mental Hospital**

**"Only Stickybeaking" His Explanation**

In the early hours of March 24, at the Rydalmere Mental Hospital, a nurse saw a man beside the bed of one of the female patients, a girl of seventeen, on a verandah. A little later, Percy Cyril Garlick was found crouching under a seat near an outhouse.

Questioned by the superintendent, Garlick's explanation was that he was "only stickybeaking." Emphatically he declared that he had not interfered with the patient in any way.

Another man, apparently asleep, was found in a motor car on the road outside the hospital grounds.

Garlick appeared at the Parramnatta Police Court yesterday, and was committed for trial at the Parramatta Quarter Sessions on May 20. He reserved his defence.

Garlick, a motor mechanic, is thirty-two years of age.

The patient in question, Laurel Kelly, has only the mental development of a child of five. Six other patients were sleeping on this particular verandah that night.

The charge against Garlick was that of having been found in the Rydalmere Mental Hospital with intent to commit a felony.

Mr. W. A. H. Rogers appeared for the prosecution; Mr. J. B. Kinkead, for the defendant.

Ivy Whitehall, nurse, at the institution, said that she was on duty in No.3 Female Ward, in which there were 133 patients, on the night of March 23.

"About 2 am.," she said, "I was coming along the verandah from No. 4 Female Ward. On opening the door I saw a man coming from the third bed on the verandah, which was occupied by Laurel Kelly. When I first saw him, he was in a bending position. On seeing me, he turned round very quickly, jumped over the railing of the verandah, and ran towards the boundary of the hospital yard. Laurel Kelly was sitting up in bed, and the bedclothes were, disarranged."

After reporting the matter, the witness said, she returned to No.-3 ward with Attendant Coffey, and the searched for the intruder.

"I found the defendant in an outhouse", she said, "curled up under the seat. I had never seen him before that night."

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Nurse Whitehall added that there were no lights on the verandah. There were lights in the ward, but they were very dim. She was carrying a hurricane lamp at the time.

Mr. Kinkead: How far was the lad from the door you mention? --About, twenty feet.

Would it be possible for you to distinguish anyone at the bed from where you were-I saw his face.

Do you say it was the defendant you saw at the bed? - I couldn't say it was him at the bed.

Further questioned, she said that the man vaulted over the railing. It was a moonlight night.

Mr. Kinkead: 'Is the gate leading from the yard into the hospital grounds usually kept locked? It is always locked.

Do you know if that gate has ever been left open? Not to my knowledge.

Do you know if the keys have ever been mislaid? Not to my knowledge.

How long have you been there? Ten months.

The Magistrate: When were you last on the verandah before you saw the man. About an hour before.

Nurse Eva Williams said that, after Nurse Whitehall had called her and told her something, she saw Laurel Kelly sitting up in bed with the blankets thrown right back. A little later she heard Nurse Whitehall screaming, and saw Attendant Coffey with a man.

In reply to Mr. Kinkead, the witness said that she did not know how far the gate was the outhouse. This gate, which opened into the hospital grounds, was a good distance--she couldn't say how far from the outside fence.

Mr. Kinkead: Do you know of any occasion when the key of this gate has been lost and the gate left open?--No.

William Edward Coffey, attendant, gave evidence of having accompanied Nurses Whitehall and Williams to No. 3 Female Ward. While searching the yard in the vicinity, he said, he heard Nurse Whitehall call. He went down to the women's lavatory, where he found the defendant underneath a seat. He got the defendant out, and subsequently handed him over to Dr. Sampson.

Coffey said that the defendant did not answer at first when asked what he was doing there. Later he said that he was "only sticky-beaking."

The Magistrate: Was he sober? As far as I could judge, he was.

"On the way to the office", said the witness, "he asked me if I couldn't do anything else instead of giving him in charge. He said to me, 'This is Rydalmere Hospital, isn't it?' I said, 'Yes'"

Mr. Kinkead: Did you smell any liquor about him? I can't say I did.

Do you know of any occasion when the keys have been lost? I think the keys have been lost.

How far from the lavatory is the roadway? About three hundred yards.

Are the outside gates kept open? Yes, anyone can get through there at night.

Attendant Thomas Joseph Norris said that he got over the fence into No. 3 yard when he heard a woman scream. He then saw Coffey, Nurse Whitehall, and the defendant.

“The defendant said he had a mate with him in a car,” said the witness. “Dr. Sampson and I went down to the gate and saw a man in a car, apparently asleep.”

Mr Kinkead: Was the man in the car under the influence of liquor? He smelt of drink, but I wouldn't say he was under the influence.

There was not attempt to conceal the car? No.

Did this man tell you he had had some trouble with the car? Yes.

And did he tell you his mate had gone into the grounds for certain necessary purposes? No

How far was the car from where you saw this man in the yard? Fully a quarter of a mile.

Dr. B.M Sampson, medical superintendent at the hospital, gave evidence of having questioned the defendant in the office.

“When I asked him why he was on the premises,” the doctor said, “he stated that he was passing in a motor car, and came inside the fence for a certain purpose. The he saw lights in the distance, wondered what they were, and proceeded in that direction. Then he saw beds on a verandah, and, sticky-beaking, went closer. He then saw there were women in the beds, and he again stickybeaked.”

The witness added that he said to the defendant, “you know perfectly well that you have no right here, and I shall have to give you in charge.” The defendant said, “Oh, don't do that! Think of my mother.” He (witness) replied. “My duty is quite plain. Being in charge of this institution, I am responsible for my patients and staff.” He then rang the police.

“I told him,” Dr. Sampson continued, “that it would depend largely on my examination of the patient whether the charge would be a serious one. He said, ‘My God! Not that. I swear I never touched her!’ The defendant had a smell of alcohol about him. The patient was sitting with her back against the wall, and with the blankets huddled up around her.”

The witness said that this particular patient's mentality was that of a child of five. His examination showed that she had not been interfered with.

Mr Kinkead submitted that there was no case on which to send the defendant for trial.

“The worst that can be said about him,” Mr Kinkead said, “is that h was a very nasty stickybeak, and shouldn't have been where he was found. But what evidence is there of any intent to commit a felony?”

The Magistrate: If a man is found in such a place at two o'clock in the mning, I certainly think that the inference is strong enough to call upon him for an explanation.

Garlick, who reserved his defence, was committed for trial at the Parramatta Quarter Sessions on May 20. Bail was fixed at £30.<sup>[204]</sup>

### **12 April, 1929. Story of Bribe - S. Y. Maling Examined**

Silas Young Maling, formerly Deputy General Manager of the Electricity Department of the Sydney City Council, who will be released from Long Bay Gaol on Wednesday next after having completed a term of imprisonment arising out of the Royal Commission which inquired into the acceptance of tenders for the Bunneroug power-house, was examined before the Registrar in Bankruptcy, in the Bankruptcy Court, on Wednesday. Maling adhered to the statement made by him during the Police

Court proceedings that he had handed ex-Ald. Frank Green £7500, and had retained £2000 for himself.

In reply to the Official Receiver, Mr Palmer, Maling said he could not dispute the statement contained in a letter from Messrs R. D. Meagher, Sproule & Co., that he had paid them about £1300 for legal costs, incurred in connection with his criminal prosecution. That included counsels' fees to Dr. Evatt and Mr Kinkead. The money was paid in cash and by cheque. On 1 August 21, 1928, he drew £1000 out of the bank.

Mr Palmer: What caused you to draw that money out?— I was in a worried state of mind and thought it would be safer to have the cash than to leave it in the bank.

Bankrupt said he had also drawn a cheque to self for £250 on October 22, and had spent the money. While in New Zealand he drew two cheques on his account in the E.S. and A. Bank, Sydney, each for £150. That money was spent in New Zealand. On April 12, 1928, he drew a cheque for £100 in favour of Mrs Pittock, as his cheque book showed, but did not remember doing so.

Mr Palmer: What was the amount you were found to have received as a bribe?

Maling: Leaving out the word "found," the amount I received was £9500.<sup>[205]</sup>

*12 April, 1929. Central Criminal Court – (Before Mr Just James)*

Senior Crown Prosecutor, Mr L.J. McKean.

#### **Murder Charge – Accused Acquitted.**

Thomas Garvey, 25, labourer, was charged with having murdered Robert Prophett, an exalderman, at Waterloo on December 9.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused.

The allegation by the Crown was that about 6.46 p.m. on the date in question there was the usual crowd in the George Hotel at Waterloo. The accused had been considerably hustled and knocked about by someone, and he fired a revolver, killing the deceased.

The defence was that accused attempted to stop a disturbance, but he was knocked about and was hustled out of one door of the hotel and was later hustled back through another door, when the patrol waggon appeared. While inside the bar the accused saw a man who he thought was one of his assailants. The man turned round and lifted his arm, and the accused, thinking that he was going to be the victim of a further attack, drew a revolver from his hip pocket, intending to fire a shot into the ground to frighten his assailants. Just as he was pulling out the revolver someone bumped into him, the weapon exploded, and the bullet struck Prophett. The whole affair was an accident, as he and Prophett had been the best of friends, and he had no intention whatsoever to shoot anyone.

The accused was acquitted and discharged.<sup>[206]</sup>

*16 April, 1929. Quarter Sessions (Before Judge Armstrong)*

Crown Prosecutor, Mr V.H. Treatt.

#### **Acquitted.**

Albert George Dunn, 50, basket-maker, and George Dowling, 40, pointer, were charged with having broken and entered the factory of L. J. Bowen, Ltd., at St. Peters, on February 20, and stealing 117 pairs of boots and snoop. There was an alternative charge of receiving.

Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for the accused, who were both acquitted and discharged.

#### **Alleged False Pretences.**

Robert Rogers, 29, labourer, and Laura Helena Rogers, 34, dressmaker, were charged with having obtained £20 from Percy Mitchell at Leichhardt on August 17 by falsely pretending that the male accused was Roderic Cowburn, the husband of Helena Cowburn, of Claremont Street, Rozelle, and that all the effects then in the premises were his bona fide property and had been paid for.

Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for both of the accused.

The matter stands part heard.<sup>[207]</sup>

#### **17 April, 1929. Quarter Sessions (Before Judge Armstrong)**

Crown Prosecutor, Mr V.H. Treatt.

#### **Acquitted.**



*Figure 35- Matilda Devine - 1925*

Robert Rogers, 29, labourer, and Laura Helena Rogers, 34, dressmaker, were both charged with having obtained £20 from Percy Mitchell, at Leichhardt, on August 17, by falsely pretending that the male accused was Roderic Cowburn, the husband of Helena Cowburn, of Claremont-street, Rozelle, and that all the effects then in the premises were his bona fide property, and had been paid for. Both of the accused were acquitted and discharged. Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused.

*Matilda Devine*, 29 years of age, was charged with having stolen £15, the property of Robert Powell, at Sydney, on January 27. The jury, after a short retirement, acquitted the accused, who was discharged. Mr. Kinkead (instructed by Mr. G. A. Prendergast) appeared for the accused.<sup>[208]</sup>

#### **17 April, 1929. Quarter Sessions (Before Judge Armstrong)**

Crown Prosecutor, Mr V.H. Treatt.

#### **Acquitted.**

Percy Walton Smith, 19, boilermaker, was charged with having, in company with another man whose name was unknown, assaulted Henry William Cooney, at Balmain, on December 20, and robbed him of £6/10/. Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused, who was acquitted and discharged.

George Ernest Kennedy, 22, was charged with having broken and entered the dwellinghouse or William Keith Yuill, at Killara, on January 21, and stolen a very large quantity of household effects, clothing, cutlery, and other goods. There was an alternative charge of receiving. The accused was acquitted and discharged. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused.<sup>[209]</sup>

**19 April, 1929. Quarter Sessions (Before Judge Armstrong)**

Crown Prosecutor, Mr V.H. Treatt.

**Larceny.**

Raymond Floyd, 21, plasterer, pleaded guilty to having stolen five wallets and other goods, the property of Dymock's Book Arcade, at Sydney, on March 14, and was sentenced to 12 months' hard labour in Goulburn Gaol; the sentence was suspended on the prisoner entering into recognizances of himself and one surety in £20 each to come up for sentence if called upon within 12 months.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the prisoner.<sup>[210]</sup>

**23 April, 1929. Quarter Sessions (Before Judge Armstrong)**

Crown Prosecutor, Mr V.H. Treatt.

**Alleged Shop Breaking.**

Stanley Watson, 40, salesman, and Frank Hardy, 32, optician, were charged with having broken and entered the shop of Lillian Rhoda Cook, at Cremorne, on December 23, and stolen 84 frocks, eight dozen hose, and a dozen handkerchiefs. There was an alternative count of receiving.

Mr. Kinkead (instructed by Mr. F. G. Sherwood) appeared for both of the accused.



Figure 36 - Stanley Watson - 1929

The matter stands part heard.<sup>[211]</sup>

**24 April, 1929. Quarter Sessions (Before Judge Armstrong)**

Crown Prosecutor, Mr V.H. Treatt.

**Alleged Shop Breaking.**

The hearing was concluded of the charge against Stanley Watson, 40, salesman, and Frank Hardy, 32, optician, of having broken and entered the shop of Lillian Rhoda Cook, at Cremorne, on December 23, and stolen 84 frocks, eight dozen hose, and a dozen handkerchiefs, There was an alternative count of receiving.

Mr. Kinkead (instructed by Mr. F. G. Sherwood) appeared for both of the accused, who were convicted. Watson was remanded for sentence until this morning. Hardy was bound over in his own recognisance in £25 to come up for sentence if called upon within three years, a condition of his release being that he abstain from drugs and intoxicating liquor for the period.

**Alleged Conspiracy.**

Walter Keogh, 28, Cecil Clarke, 27, John Power, 50, and Edward Barrett, 37, all sales-men, were charged with having conspired to defraud Ralph Slnfield and Patrick Kerlin of large sums of money, at Sydney, on various days in January.

Mr. Kinkead appeared for Keogh and Mr. T. P. MacMahon for Clarke and Barrett (both counsel being instructed by Mr. G. A. Prendergast), and Mr. E. R. Abigail appeared for Power.

The Crown Prosecutor said it was alleged that the accused were members of a firm of "go-getters," who sold to simple country people at high values land which was not worth the money. The Crown alleged that Slnfield was induced to buy three blocks of land for £25 each, and Kerlin was induced to pay £50 for two blocks. The Crown alleged that the land was only worth about £10 a block. It was



stated that Barrett met Sinfield and Kerlin at different times in Sydney, and, telling them that he was from the country, took them to an office in Pitt-street, where the purchases of land were made in the presence of the other accused.

Leslie Mulgate, a labourer, who stated that he had been living at Parkes, said that he was the owner of the St. Kilda Estate at Blacktown, and had placed the property in the hands of Keogh to dispose of at £100 a block.

On cross-examination, the witness stated that he had paid £200 as a deposit on the land, it was his own money, and he did not receive it from Keogh.

The matter stands part heard.<sup>[212]</sup>

#### **25 April, 1929. Quarter Sessions (Before Judge Armstrong)**

Crown Prosecutor, Mr V.H. Treatt.

#### **Alleged Tampering with Jury.**

The hearing of the charge of conspiracy against Walter Keogh, 28, Cecil Clarke, 27, John Power, 50, and Edward Barrett, 37, all salesmen, was continued.

Mr. Kinkead appeared for Keogh, and Mr. T. P. MacMahon for Clarke and Barrett (both counsel being instructed by Mr. G. A. Prendergast), and Mr. E. R. Abigail appeared for Power.

On the cast being called the Crown Prosecutor said that he made no reflection against the jury, but undoubtedly an attempt had been made by friends of the accused to tamper with it. There had been deliberate "go getting" among the jurors, and in view of the evidence he proposed to offer, in the interest of the smooth working of justice, it was a matter which should be ventilated, and he would make application that the jury be discharged from giving a verdict. The trial should be free from any suggestion of tampering with the jury.

Detective Alford said that on the previous morning when the case was started he saw a man who had been arrested some time ago on a similar charge as that on which the accused were before the Court, sitting among the jurors in waiting. This man was an associate of the accused, and was at present out on bail. Witness thought that he represented himself as being a jockey, but he was not a jockey. At the request of the witness the man was removed, but later he again saw the man there. He also saw two other men, one of whom was a brother of Keogh, sitting among the jurors in waiting. The man who was in company with Keogh's brother was also out on bail on a similar charge.

Later in the day, just prior to the jury being released, he saw Keogh beckon to his brother, and together they looked towards the jury box. A brother of Clarke then slipped across to the dock and Keogh spoke to him, and these two also looked towards the jury box. He and two other detectives followed the jury from the Court, and they observed one juror standing at the gate. There were about 20 or 30 associates of the accused outside. The witness and his colleagues moved away out of sight, and as soon as they did so the men outside the Court walked across and gathered round the juror who was talking to Keogh's brother. The witness and his colleagues then went across and intercepted them. The juror, on being questioned, stated that he did not know the man. He said that Keogh's brother had called him on one side and said: "I think I remember you at St. Joseph's College."

His Honor said that in the circumstances he would discharge the jury without giving a verdict. The accused were remanded to a future sitting of the Court, bail being allowed.<sup>[213]</sup>

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**30 April, 1929. Alleged Larceny – Cheque in Wrong Account – Circuit Court Case**

How a cheque for £854/5/, drawn in favour of Dalgety and Co. Ltd, Cootamundra, in payment for sheep by Arthur John McLaren, was alleged to have found its way to the wrong account, was told at the Goulburn Circuit Court today, before Mr. Justice James.

Reginald Martin Macadam, a stock and station agent, of Young, was charged with stealing the cheque, a valuable security, the property of Arthur John McLaren, by paying it to the credit of his own bank account.

Macadam, who pleaded not guilty was allowed to leave the dock on account of deafness and to sit near the witnesses in order to hear the evidence. He challenged four jurors before the required number were empanelled. Mr E.F. Thomas appeared on his behalf, and Mr J.J.B. Kinkead, LL.B., instructed by Mr W.H. Hall of the Crown Solicitor's Office, appeared for the Crown.

Arthur John McLaren, a farmer and grazier, of Young and Grenfell, told the court that on the morning of Monday, November 19, he met Macadam, whom he asked to post a letter for him. It contained a cheque (produced), made payable to Dalgety and Co., Cootamundra.

He asked Macadam to be careful not to lose the letter as it contained a cheque. He gave no permission to Macadam to put the cheque to his own use. But a day or two later a man named Flanagan, an agent for Dalgety and Co., spoke to him and in consequence of what he was told McLaren rang Macadam on the telephone regarding the cheque.

Macadam told him he had put the cheque to his own account but that he would make it all right. He did not do so, and McLaren had not received any payment from him since. He had to pay Dalgety again for the sheep.

**“Could Not Remember”**

In reply to Mr. Thomas, McLaren said he could not remember the judge in a civil action recently saying that his evidence was unbelievable. He had been non-suited in that action.

Mr Thomas: Weren't you served with a summons in respect to the sheep you bought from Dalgety's? Yes, on the Monday, when the cheque should have been posted.

Macadam was charged at the lower court with false pretences wasn't he? Yes.

You were asked in that court about stamping the letter, weren't you? Yes.

Did you ask Macadam to put a stamp on the letter? I may have forgotten.

Hadn't you any stamps at home: No.

Couldn't you have got some at the post office? It was closed, otherwise I wouldn't have given Macadam the letter at all.

Isn't this what you said to Macadam: “This is a cheque for Dalgety's; hold it for a day or two and see how much grace you can get:?” No: nothing like that.

Didn't Macadam say to you: “I'll pay this into my own account and send Dalgety's my own cheque?” No.

Witness said he had not had repeated applications for the payment for the sheep during that month. He had two accounts in respect to the sheep and received a summons on the morning of November 19.

Mr Thomas: When you found the cheque had not reached its destination you decided to proceed against the bank? Yes.

Why didn't you proceed against Macadam? I was acting on my solicitors advice.

Replying to Mr. Kinkead, McLaren said he had received a document stating that he had no title to the cheque paid to his account from Macadam through his (McLaren's) solicitor in respect to the cheque. That was on January 14.

Mr Thomas objected to the submission of the document, but agreed to question witness regarding it.

McLaren said he did not have any conversation with Macadam since receiving the document. He had not told Macadam that he intended suing the bank.

Sidney John Bishop, manager of the Bank of Australasia at Grenfell, said that the cheque was paid by his bank on November 20. He saw McLaren on November 21 in respect to the matter.

Replying to Mr Thomas, Bishop said that funds were available in McLaren's account on November 6. McLaren had told him that he might receive a writ in respect to the payment for the sheep and he made arrangements to meet the cheque.

George Eric Bennett, accountant at the Australian Bank of Commerce at Young, said that Macadam made a deposit at that bank on November 19. The credit note produced was the deposit which was made and consisted of a cheque drawn by McLaren.

Witness questioned Macadam regarding the cheque and Macadam replied that McLaren had given his permission to put the cheque to his own credit.

Mr Thomas: About this time you were expecting the sack, weren't you – I didn't know just how things were going.

Did you give this document (referring to Macadam's use of the cheque) to Macadam, saying, "Sign this; it will save my skin and won't hurt you"? – No, I didn't say that.

Didn't you say you did in the lower court? – I said I may have done, but on thinking it over I know I didn't say it.

### **Signing of Document**

Witness in reply to his Honour said he may have asked Macadam to sign the document, saying it would help him and would not harm Macadam.

Mr Thomas: Didn't you say to Macadam, "If you sign you will throw McLaren and his crowd over"? – Yes, I think I said that.

Mr Thomas submitted that the document was not permissible as evidence as the admission was not given voluntarily.

His Honour said he would admit it.

Bennet said that following the receipt of a letter from Head Office he went to see Macadam and asked him if he would give witness a letter indemnifying him in the matter.

He again saw Macadam on December 28, when Macadam signed a type written letter to the effect that he had McLaren's permission to place the cheque to his account.

Bennett said that he again saw Macadam and asked him to sign a declaration that he had McLaren's permission to use the cheque. When Macadam read the document he said he would not sign it in that form. He said he would sign to the effect "that he led Bennett to believe" that he had McLaren's permission to use the cheque.

Witness said to him, "Didn't you have permission?" to which Macadam replied, "No; not exactly."

Macadam subsequently signed the document to that effect. Bennett did not see him sign it.

In reply to Mr Thomas, Bennett said that he queried the cheque because he had instructions to query all cheques paid into Macadam's account.

Mr Thomas: You are more interested in your own position than in the result of this case, aren't you?  
– Naturally I am interested in my own position.

Hasn't your attitude been to get Macadam to explain matters so that you wouldn't get into trouble? – Yes.

Arthur John Furness, relieving bank manager at the Australian Bank of Commerce Ltd, at Young, said in last November, he interviewed Macadam regarding the cheque and asked him if he had any title to it.

Macadam replied that he had not. He said he had been given the cheque by McLaren and had used it because he was pressed for money and worried.

Mr Thomas: Did you know that proceedings were being instituted against your bank by Mr McLaren? – I knew that the action was being considered.

After you received a letter from McLaren's solicitor you spoke to Bennett didn't you? – Yes.

And in consequence of that conversation Bennett saw Macadam? – No; I saw Macadam.

Do you know Macadam? – Yes, I remember him on a previous occasion when I was relieving at Young.

### Good Character

You know him for a man of good character? – As far as I can say, yes.

Frederick Seldon, manager of the Australian Bank of Commerce at Young, said that the copy of Macadam's account (produced) covered the dates from August to December. Before the cheque was paid in the account showed a debit balance of £800.

Witness interviewed Macadam regarding the cheque and Macadam admitted that he had not title to it. At a subsequent interview Macadam agreed to sign a declaration after making an alteration that he had given Bennett, the accountant, to understand that he had permission from McLaren to use the cheque.

(Proceeding)<sup>[214]</sup>

### 1 May, 1929. Missing Money – Cheque Misappropriated – Agent Remanded for Sentence

After a retirement of half an hour, the jury returned a verdict of guilty of fraudulent misappropriation, at the Goulburn Circuit Court today, against Reginald Martin Macadam, who was charged with larceny of a cheque for £854/5/, the property of Arthur John McLaren, a farmer and grazier of Young.

Macadam was remanded for sentence until tomorrow.

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Mr J.J.B. Kinkead, L.L.B., instructed by Mr W.H. Hall of the Crown solicitor's Office appeared for the Crown. Mr E.F. Thomas appeared for Macadam.

### **Case for Defence**

During the hearing of the case for the defence the Crown Prosecutor, Mr J.J.B. Kinkead, L.L.B., sought to prove that if Macadam's story were true there was no apparent need for any alteration to the declaration which he had been asked to sign by the manager of the Australian Bank of Commerce at Young (Mr. Selden), and that if he had McLaren's permission to use the cheque, as he claimed, he had a legal title to the cheque.

Macadam called by Mr Thomas, said that he enlisted in 1914 and had two and a half years service at the war. He had many business dealings with McLaren. On November 5 McLaren came to his office and told witness that he had to take delivery of the sheep which he had bought from Dalgety, but he hadn't the money to pay for them. He asked Macadam to help him out.

Macadam said he (witness) agreed to do this, and went to Cootamundra to take delivery of the sheep. Macadam was asked about the payment of the sheep and he told the manager to give him the account which he would give to McLaren. When the witness returned to Young McLaren was absent and he gave the cheque to Mrs McLaren.

"The next day," said Macadam, "I received a phone call from Dalgety's asking me about the cheque. I replied that I had not been able to see McLaren, as he was buy sheering.

### **Called at Office**

"On November 19, at about half-past 12, McLaren came to my office and handed me a letter containing the cheque and asked me to hold it for a day or two if I could."

Macadam said he replied that the best thing to do was to pay the cheque into his (Macadam's) account and he would send a post dated cheque to Dalgety's. In that way he might have a week as the cheque would be returned.

McLaren said he that that was the best thing to do. Macadam then took the cheque from the envelope and in McLaren's presence he tore the letter and the envelope up.

"On the Tuesday of the following week", said Macadam, "Mr Furness (the relieving manager) came to see me and asked if I had any title to the cheque. When I replied that I had not Mr Furness said that it was a serious matter."

In reply to his Honour, Macadam denied any conversation with Furness regarding how he came by the cheque.

### **In Hot Water**

Replying to Mr Thomas, witness said that Bennett came to see him, saying he was in hot water on account of the cheque, and he intended going to Sydney about it, as it might mean the sack to him. Later he again saw Bennett, who asked him to go to the bank to see the manager, which he did.

Witness was asked there to sign a document stating that McLaren had given him authority to use the cheque. He signed it, but altered it to read that he had given Bennett to understand that McLaren had given him permission to use the cheque. McLaren had never telephone him and asked what he had done with the cheque. Witness had said nothing to McLarent about being short of money.

Mr Kinkead (to Macadam): If what you say is true you had a legal title to the cheque? – No reply.

Several of your cheques were dishonoured about that time? – There were two cheques dishonoured.

What about a cheque for £374/18/2 in favour of Sloane? Wasn't that dishonoured? – I do not know.

Didn't you know the state of your account? – No.

His Honour: But you must have known whether you had funds to meet it? – No, your Honour, I did not.

Questioned regarding certain other cheques for large amounts which were dishonoured, Macadam said he knew nothing about them and did not know they were dishonoured.

His Honour: Do you mean to say you hadn't any idea of the state of your bank account? – No, your Honour, I didn't, because I was so much away from my office.

### **Altered Declaration**

Referring to the declaration which Macadam had been asked to sign and which he had altered, Mr Kinkead pointed out that if his story regarding McLaren's agreement with him was true there was no reason for him to alter the document as he did.

Mr Kinkead: Why did you alter it if McLaren gave you permission to use the cheque as you did? – I have no reason.

Other witnesses called by the defence gave testimony of Macadam's good character and straightforwardness in business dealings. It was shown that Macadam was secretary of the Young Race Club and he had always done his duty by the club faithfully and well.

McLaren (recalled by Mr Kinkead) denied any conversation with Macadam regarding deferring payments of the cheque.

In reply to Mr Thomas, McLaren said he had arranged with the manager of his bank for the cheque to be met on November 7 or 8.

Mr Thomas: Then why didn't you pay Dalgety's until November 19 if they were worrying you? – They were not worrying me.

Mr Justice James: He said he had received only two accounts, Mr Thomas.

Selden recalled said that he had occasion from time to time to draw Macadam's attention to the state of his account when it was overdrawn.<sup>[215]</sup>

### **2 May, 1929. Charged With Stealing Cheque Valued At £845/5/.**

#### **R. M. Macadam Remanded For Sentence.**

R. M. Macadam, of Young, who was charged at the Goulburn Supreme Court, before Mr Justice James, with stealing a cheque for £845/5/- drawn in favor of Dalgety and Co., Cootamundra, by Arthur John McLaren, pleaded not guilty and was defended by Mr. E. F. Thomas, of Goulburn.

Mr. J. B. Kinkead, instructed by Mr. W. H. Hall, of the Crown Solicitors' Office, appeared for the Crown. McLaren told the court how he had met Macadam on the morning of November 19th and requested him to post a letter, which, he said, contained a cheque. He later found the cheque had not reached Dalgety's, and questioned Macadam, who said he had put the cheque to his own use, but that he would make it all right. He had not done so, and witness had to pay Dalgety again. In answer to Mr. Thomas, McLaren denied that he had given Macadam the cheque telling him to hold it for a day or



two to see how much grace he could get. He denied that he had repeated applications for payments by Dalgety's, prior to sending the cheque. He had had two accounts from them.

He later received a document from Macadam through his (witness) solicitor, stating that he had no title to the cheque. Sydney John Bishop, manager of the Bank of Australasia, Grenfell, said that the cheque was paid by his bank on November 20th. He saw McLaren on November 21st, in respect to the cheque. George Eric Bennett, accountant at the A.B.C. Bank, Young, gave evidence of having taken a deposit from Macadam, consisting of a cheque drawn by McLaren. He asked Macadam about the cheque, and Macadam replied that he had McLaren's permission to use the cheque. Arthur John Furness, who was relieving bank manager at Young at the time, stated that in November last he interviewed Macadam and asked him if he had any title to the cheque. He replied that he had no title, and added that he had been given the cheque by McLaren and had used it because he was pressed for money and worried. Macadam's defence was that McLaren went to see him at midday on November 19th, saying that he had a cheque for Dalgety's in payment for sheep. McLaren asked Macadam to hold it for a day or two, to see what grace he could get. Macadam said, the best thing to do was for him to pay it into his (accused's) account and to send a post-dated cheque to Dalgety. In that way they might save a week. McLaren agreed to this and left his cheque with Macadam.

In summing up, Mr. Justice James drew the jury's attention to this aspect of the case. The jury returned a verdict of fraudulent misappropriation against Macadam, after a retirement of half an hour. Macadam was remanded until to-day for sentence.<sup>[216]</sup>

#### **2 May, 1929. Skin Stealing Case - Crookwell Youth Convicted**

The jury acquitted William Joseph O'Brien, of Crookwell, in the Goulburn Circuit Court yesterday afternoon, of the charges of stealing and receiving skins which were taken from Nathaniel Churchill's store at Crookwell on March 4.

O'Brien was implicated in the theft by Arthur Maxwell Wilson (18), who pleaded guilty to stealing the skins. Wilson alleged that O'Brien had suggested stealing the skins to him and that on the night when Wilson stole the skins O'Brien waited outside the store while Wilson went in and got them. The idea, Wilson said, was that they should sell the skins and divide the proceeds.

O'Brien denied any knowledge of the affair, and said that he went straight to his home on the night of the theft. He was defended by Mr. E. F. Thomas.

Mr. E. J. Darcy appeared to plead guilty for Wilson, who was to-day sentenced to six months' imprisonment, which was suspended under the provisions of the First Offenders Act on Wilson entering into a surety, of self in £50 and one surety of £50, to be of good behaviour for 12 months.

A condition of the suspension was that Wilson should report regularly to the Crookwell police and that he should not associate with his uncle, Carmichael Thurlow, or any bad characters, during the period.

Mr. E. J. Darcy said that Wilson was a youth who was easily led. Simon, to whom Wilson sold the skins, was prepared to go surety for him and his mother would see that he would keep out of bad company in future.

Mr J. J. B. Kinkead, LL.B., instructed by Mr. W. H Hall, of the Crown Solicitor's office, conducted the Crown case.<sup>[217]</sup>

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**6 May, 1929. Two Men Charged - Newtown Assault Sequel**

Two men who were arrested during an attack on a timber worker in Newtown on Saturday morning appeared at the Central Police Court to-day.

John Brewer Cable (27). and Cecil Albert Jobson (23), sawyers, were charged with having assaulted William Maxwell, with intent to prevent him working. They were also charged with having assaulted Albert James Hope, and Cable was charged with having occasioned Constable Brownette actual bodily harm on April 22. The police prosecutor (Sergeant Napper) said that Maxwell was on his way to work at 7 a.m. when he was unmercifully knocked about by the defendants and other men.

In the case of the assault on the constable on April 22, it was alleged that he was pulled off a lorry loaded with timber and knocked about savagely. Cable had been identified as one of the men who assaulted the constable.

Mr. Kinkead (instructed by Messrs. Meagher, Sproule and Co.), appeared for the defendants and complained that the police had refused to allow anyone to see the men. The newspaper propaganda about assaults on timber workers did not apply to the defendants, added Mr. Kinkead.

The magistrate (Mr. McMahan) said he had nothing to do with the administration of the Police Department and he did not propose to discuss it.

On the charge of assaulting Maxwell and Hope, defendants were remanded to Newtown Court on May 19, each on £100 bail.

Cable was remanded on £50 bail on the charge of assaulting the constable.<sup>[218]</sup>

**7 May, 1929. Attack On Timber Workers - Five Men Charged.**

As a sequel to the alleged attack on a timber worker at Newtown on Saturday John Brewer Cable, 27, and Cecil Albert Jobson, 23, sawyers, appeared before Mr. McMahan S.M. at the Central Police Court yesterday, charged with having assaulted William Maxwell, with intent to prevent him from exercising his occupation.

The defendants were further charged with having assaulted Albert James Hope on the same occasion, while Cable was also charged with having occasioned actual bodily harm to Constable R F. Brownette on April 22.

Sergeant Napper, prosecuting, alleged that Maxwell was unmercifully knocked about by the defendants and other men at Newtown early on Saturday morning, when he was on his way to work at a timber mill. It was further alleged that Brownette had been pulled off a timber lorry and viciously attacked. Cable had been, identified as one of the men who assaulted the constable.

For the defendants, Mr Kinkead (instructed by Messrs. Meagher, Sproule, and Co.) asserted that the police had refused permission to anyone to see the men. Newspaper propaganda concerning recent cases of assaults on timber workers did not apply to the defendants, counsel added.

Mr. McMahan, S.M., declined to discuss the administration of the police department.

On the charges relating to Maxwell and Hope defendants were remanded to Newtown Court on May 19, each on bail of £100. Cable was remanded to the Central Court on the charge of having assaulted Brownette with £50 bail.

Together with Albert William Pliegan, 30, labourer, and Frederick Isiah Perkins, 28, labourer, Cable was charged with having assaulted Edward Randolph Ester at Leichhardt on May 2. They were remanded to appear at Balmain Court to-day on bail of £60.

Thomas Brisbane, 28, labourer, was remanded to Ryde Court on bail of £100 on a charge of having assaulted Edward Randolph Ester at Ryde on March 18.

Perkins was also charged with assaulting William Maxwell at Newtown on May 4, and, in company, assaulting Albert James Hope on the same date. A remand to Newtown Court on May 10 was ordered, with bail of £100.<sup>[219]</sup>

#### **10 May, 1929. Judge And Counsel – A Remarkable Clash**

Sydney Thursday. A remarkable clash at the Darlinghurst Sessions between Acting Judge Sheridan and Mr. J. Kinkead ended in the Judge telling counsel that he refused to listen to him.

The trouble arose over Mr. Kinkead's application for an adjournment of the case in which he appeared on the ground that he was not ready to proceed. It was stated by the Crown that a previous adjournment had been granted on the application of the defence and Mr. Kinkead intimated that he was prepared to make an affidavit as to the reasons for the adjournment application.

His Honor: I don't want your affidavit, but I will take your client's affidavit. When Mr. Kinkead attempted to argue the matter further, Acting Judge Sheridan said, 'I refuse to listen to you.'

His Honor then adjourned the Court to allow the affidavit to be made by Mr. Kinkead's client. When the Court resumed Mr. Kinkead put in the affidavit and the Judge granted the adjournment. However, he again told Mr. Kinkead that he did not want to listen to further argument.<sup>[220]</sup>

#### **14 May, 1929. Company Director Charged - Alleged Publication of False Statement.**

"The allied companies under his control owe my client something like £10,000," said counsel for James Gordon McLaren, 29, clerk, who appeared before Mr. Gates, C.S.M., at the Central Police Court yesterday on a charge of having published a false statement and account as director of the N.S.W. Land and Building Co., Ltd., with intent to deceive the company's creditors.

The prosecution alleged that the written account circulated by McLaren had falsely stated that the company's assets included 5000 £1 shares in Anti-Glare Lense, Ltd.

It was pointed out by counsel for the defence (Mr. Kinkead) that bail had been fixed at £1000, a sum which McLaren had found it impossible to obtain. "We say there was no intent in this matter at all. It is a case that could be adjusted. I ask for a reduction of bail to permit, the accused to assist in the preparation of his defence. He has found that when anyone cries 'Wolf!' the majority of his friends disappear."

According to Mr. Prendergast (for the prosecution), certain securities standing in McLaren's name should be in the company's name. It might very well be that the accused could show that the company was indeed indebted to him, but that was not the information at present possessed by the prosecution.

Mr. Gates, C.S.M.: It is a question of what bail would induce the accused to appear here.

"McLaren was arrested on a boat when leaving for South Africa under an assumed name" declared Sergeant Napper (police prosecutor).

The accused was remanded to June 4, on bail of £500, and ordered to report twice daily to the C.I.B.<sup>[221]</sup>

**15 May, 1929. Quarter Sessions – No 1 Court (Before Judge Cohen)**

Senior Crown Prosecutor, Mr. L. J. McKean K.C.

**Alleged Serious Offence.**

Harry Gascoigne, 21, motor garage assistant, was charged with having committed a serious offence upon a girl 16 years of age, at Gladesville, on December 13.

Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused, who denied the whole charge.

The matter stands part heard.<sup>[222]</sup>

**16 May, 1929. Unlicensed Firearms - A Barrowman's Fears.**

For having had an unlicensed pistol in his possession. Sydney Hayes, 39, a barrowman, was fined £20 by Mr. Camphln, S.M., at the Central Police Court yesterday.

"I was cleaned up the other night," Hayes told a constable, adding that a doctor had inserted 20 stitches in a wound inflicted by his assailants.

Mr. Camphin: He should Seek the protection of the police.

Mr. Kinkead (for defendant): If he did, his life would not be worth twopence!<sup>[223]</sup>

**15 May, 1929. Quarter Sessions – No 1 Court (Before Judge Cohen)**

Senior Crown Prosecutor, Mr. L. J. McKean K.C.

**Acquitted.**

The hearing was concluded of the charge against Harry Gascoigne, 21, motor garage assistant, of having committed a serious offence upon a girl 15 years and 11 months of age, at Gladesville, on December 13.

Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused, was acquitted and discharged.<sup>[223]</sup>

**17 May, 1929. Quarter Sessions – No 1 Court (Before Judge Cohen)**

Senior Crown Prosecutor, Mr. L. J. McKean K.C.

**Acquitted.**

John Perry, 21, labourer, was charged with having maliciously wounded Charles Schlpp at Sydney on October 28. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.), appeared for the accused. At the conclusion of the Crown case, the jury intimated that It did not wish to hear anything further and acquitted the accused without leaving the box.<sup>[224]</sup>

**18 May, 1929. Appeal Dismissed – Against Death Sentence.**

In the Court of Criminal Appeal yesterday, before Mr. Justice James, Mr. Justice Campbell, and Mr. Justice Halse Rogers, an application was made by James Edward Semple, under sentence of death, for leave to appeal against his conviction.

The accused was tried before the Acting Chief Justice, Mr. Justice Ferguson, at the Central Criminal Court on March 27 on a charge of criminally assaulting a young woman at night in a park near Surry Hills. The Crown evidence connected a number of young men with the crime, relating how an assault

had been made upon the young woman's male companion, and the offence charged subsequently committed with brutality and violence. The young woman soon afterwards was rescued by a police patrol, and, being joined by her male companion, a search was made in neighbouring streets, and two arrests were made. The second youth charged was acquitted, but Semple, who pleaded an alibi, was convicted and sentenced to death.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the appellant.

The Court, after hearing evidence and argument, expressed the opinion that the identification was complete, and that the evidence of guilt before the jury was amply sufficient to justify the verdict. The application was accordingly dismissed.<sup>[225]</sup>

**18 May, 1929. Law Report - Court Of Criminal Appeal.**

(Before Mr. Justice James. Mr. Justice Campbell, and Mr. Justice Halse Rogers.)

**Misleading Police Report - Rex v Christian.**

James Herbert Christian pleaded guilty, before his Honor Judge Curlewis, at Sydney Quarter Sessions, on February 15 last, to eight charges of receiving stolen property. He was sentenced to three years' imprisonment, with hard labour, and declared an habitual criminal. The accused applied for leave to appeal against the severity of the sentence. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the appellant. It appeared that a police report upon which the trial Judge admittedly acted, stated that Christian had been living for a considerable time upon the proceeds of robberies, and that a large number of suburban thefts were traced to him. Affidavits were produced which showed that during the period the accused was known as a steady workman by various employers.

The Court confirmed the sentence of three years, but taking the view that the trial Judge was probably misled by the police report, cancelled the addendum to the sentence declaring Christian an habitual criminal.<sup>[226]</sup>

**21 May, 1929. Quarter Sessions – No 2 Court (Before Judge Cohen)**

Senior Crown Prosecutor, Mr. L. J. McKean K.C.

**Alleged Conspiracy.**

Walter Keogh, 28, Cecil Clarke, 27, Edward Barrett, 37, and John Power, 60, talesmen, were charged with having conspired on some day in January to cheat and defraud Ralph Sinfield and Patrick Kerlln of large sums of money.

Mr. T. P. McMahon (instructed by Mr. O. F. Osborne) appeared for Clarke and Barrett; and Mr. Kinkead (instructed by Mr. G. A. Prendergast) appeared for Keogh, and (instructed by Mr. E. R. Abigail) for Power.

In opening the case for the Crown. Mr. Treatt said that Keogh and Clarke were carrying on business as estate agents, while Barrett and Power were engaged by them as salesmen. "Their business was," said Mr. Treatt, "to sell 'dud' land to 'mugs' from the country."

Patrick Kerlln stated that he had come to the city from Kandos. He met Power in Pitt street. Power said that he had come from West Queensland, and suggested that the witness should take a walk with him to look for Gladstone Chambers. When they arrived Clarke came to the door, and Power said, "Good morning, Mr. Keogh." Clarke said, "I can't place you", and Power replied, "I am Mr. Power from West Queensland." Clarke then shook hands, and the witness was introduced by Power, who said that he had come to do business for his brother. Clarke said, "Your brother should have been

here himself," and Power explained that his brother was at "Charleville, in West Queensland." They talked about 50 blocks of land in the St. Kilda Estate, Blacktown, that his brother had bought, and Clarke showed him the map and said, "Are you aware, Mr. Power, that your option expires at 4 o'clock this evening?" Power said "No." Clarke then said that when the land was surveyed there were five blocks over and above the 60. Power replied that sooner than let the vendors get the land he would have the witness get the blocks. Witness said that he did not have sufficient money to buy land, and Clarke asked how much money he had, to which witness answered that he had £40 odd. Clarke told him that the electric train was going through the land. Power asked if he could pay the deposit on the land. He said to witness that it was a good chance, and witness paid a deposit of £1 on each of the five blocks. He met Power next morning, and he drew the £43 out of the bank. When they arrived at the office Clarke asked if he had come to square up for the land, and Power asked if he might finance witness. Clarke said, "No, we want cash." He said that the only thing he could do was to give witness two blocks of ground, £26 deposit on each. Before he left he signed some contract papers. The blocks were said to be worth £100 each.

Ralph Sinfield said that upon his arrival from Bourke he met Barrett in Pitt-street, and after some conversation Barrett said that he had come from Condobolin to do some business for his father, and wished to know where Gladstone Chambers were. Together they went to the chambers, where Clarke was introduced to witness as Mr. Keogh. Barrett signed some papers, and then Clarke said: "Your father sent only £600, which covers only 20 blocks at £25 deposit on each. The section your father purchased was made up in 23 blocks, and your father's option expires at 3 o'clock." Barrett asked for a week in which to communicate with his people, but Clarke said he was sorry that he did not think he could do that. Barrett then said to witness "sooner than let the vendors get the land I will let you take it." The witness paid a deposit of £5, and signed the papers. Witness sent to Bourke for his money, and subsequently paid £75. Later he again saw Clarke, who wanted some money for stamp duty, and the witness asked how it was he did not speak about that when he paid the £75.

Arthur Leonard Francis, president of the Blacktown Shire Council, and an estate agent, said that he valued three of the blocks of the St. Kilda Estate at about £10 each, and two of them he valued at about £30 a block.

The matter stands part heard.<sup>[227]</sup>

#### **22 May, 1929. Convicted – Four 'Go-Getters' Remanded for Sentence.**

Four men, of the class known as "Gogetters," were convicted at Quarter Sessions yesterday of conspiracy to inveigle purchasers of land into transactions by which the latter became owners of land far below the value represented by the accused. Three of the men had had records. They were remanded by Acting-Judge Sheridan till Friday for sentence.

The accused were: Walter Keogh, 28, estate agent, Cecil Clarke, 27, sales manager, Edward Barrett, 37, and John Power, 60, both landsalesmen, and they were charged with having conspired to cheat and defraud Ralph Sinfield and Patrick Kerlin of large sums of money in connection with certain blocks of land in the St. Kilda Estate, Blacktown, which were sold for £100 each, the allegation being that the land was not worth more than from £10 to £30 a block.

It was alleged that Barrett and Power inveigled Sinfield and Kerlin to the office of Keogh, in Gladstone Chambers, Pitt-street, and posing as strangers to Sydney represented that they were paying for land that had been purchased by relations, inducing Sinfield and Kerlin to purchase blocks also.

Mr. T. P. MacMahon (instructed by Mr. G. F. Osborne) appeared for Clarke and Barrett; and Mr. Kinkead (instructed by Mr. O. A. Prendergast) for Keogh; and Mr. E. R. Abigail for Power.



In statements from the dock, Keogh said that he had only seen Sinfield once at the office after he had made the purchase of land. He asked Sinfield if he was satisfied with his purchase, and Sinfield answered in the affirmative, and refused his offer to drive out and see the land.

All the other accused denied that there had been conspiracy or fraud.

Keogh and Clarke were convicted on the counts of conspiring to cheat and defraud both Sinfield and Kerlin. Barrett and Power were convicted on the counts of conspiring to cheat Sinfield and Kerlin respectively.

With the exception of Clarke, each of the prisoners had previous convictions. Power had a long list. Detective-Sergeant Alford stated that all the prisoners were associates of the worst class of men in Sydney. Barrett, he stated, was a harmless individual, who was easily led.

The four prisoners were remanded until next Friday for sentence.<sup>[228]</sup>

### **23 May, 1929. Sale Of Estate - Charges Of Conspiracy.**

Further evidence for the prosecution was heard at the Central Police Court yesterday. In the case in which Henry Bernard Hall, 30, and Thomas Lee, 36, agents, were charged with having conspired to cheat and defraud Oliver Fowler, a carrier, of Wingham, Manning River, of large sums of money.

Recalled by Mr. McMahon, S.M., Fowler stated that he could not recollect whether he signed any contract in respect of his first purchase of five blocks from Hall. The defendants had not mentioned the locality of the land.

A retired merchant William George Easy, of Lang-road, Centennial Park, gave evidence that Hall paid a visit to his office in September, 1928, and represented that he was employed by the City and Suburban Investment Co., Ltd. Witness agreed to allow him to sell twelve blocks of land at May's Hill

Paramatta, the price was not to exceed £125 per block, including £25 as Hall's commission. When witness remarked that the rate of commission appeared excessive, the defendant pointed out that expenses for motor cars and travelling were very high. A few weeks after this Hall brought him four contracts, having disposed of the land at Paramatta. The defendant remarked: 'Those blocks were good value. If I had any more land in that district I would have no trouble in selling it.' Later Hall sold approximately 40 blocks in the Merrylands Park estate, on behalf of witness, the price having been fixed at £100 a block'

Cross-examined by Mr Sproule (for Lee). Easy said that he paid £80 a block for the Merrylands Park estate "I consider £125 a fair price," witness added.

Replying to Mr Kinhead (for Hall). Easy stated that in January he received a cheque for £130 from Fowler in payment of the first quarterly instalment due under the contract. At Fowler's request witness extended the terms of the contract from three to five years later, witness cancelled the contract, returning £120 to Fowler. On January 31, he terminated his transactions with Hall.

The hearing was adjourned until Monday, for the production of certain contracts in the possession of Easy's solicitors.<sup>[229]</sup>

### **24 May, 1929. Ways of the Underworld.**

Sydney Hayes, charged last week at the Central with possession of a revolver without a license, has been assaulted twice since Christmas. Once he was gashed and had 20 stitches inserted. Later he was badly beaten. By whom he refused to tell the police, or even his counsel. "He should seek the protection, of the police," remarked Mr. Campbell, S.M. "If he did his life would not be worth

'tuppence,'" replied Mr. Kinkead (his counsel). "Hayes is a property owner, and underworld acquaintances who know this ask him to go bail for them. He refuses, and there is trouble. Is it any wonder he carried a gun?" Hayes was fined £20.<sup>[230]</sup>

**24 May, 1929. Gaoled Driver Shakes Witness's Hand - Ran Over Two Greyhounds on Anzac Parade**

A witness who had been waiting outside to give evidence at Central Police Court yesterday was asked how much he had lost through attending. "Eight shillings", he said.

At once his hand was gratefully grasped by the defending counsel, Mr. Kinkead, and the defendant Guy Kingsbury.



*Figure 37 - Guy Neville Kingsbury - 1922*

In court a minute before, a greengrocer had put a value of 30/ on himself, and a taxi driver 17/, to the disgust of counsel and defendant.

And the 8/ witness was a house agent!

Kingsbury was sent to gaol for a month for having driven a car while drunk, and fined £5 for unlicensed driving.

It was stated that he drove along Anzac Parade at 30 m.p.h. A woman screamed, a man jumped out, and the car hit a taxi, knocked down a pedestrian, and ran over two greyhounds.<sup>[231]</sup>

**25 May, 1929. "Go-Getters" - Heavy Sentences - Judge's Stern Remarks.**

Walter Keogh, 28, estate agent, Cecil Clarke, 27, sales manager, Edward Barrett, 37, and John Power, 60, both salesmen, who had been convicted on a charge of having conspired to cheat and defraud

two young men from the country, named Sinfield and Kerlin, by inducing them to purchase blocks of land in the St. Kilda Estate, Blacktown, at what was alleged to be an exorbitant price, were called up for sentence before Acting-Judge Sheridan at the Quarter Sessions yesterday.

Mr. V. H. Treatt appeared for the Crown. Mr. T. P. McMahon (instructed by Mr. Q. P. Osborne) appeared for Clarke and Barrett; Mr. Kinkead (instructed by Mr. O. A. Prendergast) for Keogh; and Mr. E. R. Abigail for Power.

Detective-Sergeant Alford stated that Keogh had been engaged in that class of work for 15 months. There had been nine complaints about the business, involving the total sum of £685. He was associated with racecourse urgurs and touts, and with men who had criminal records. The men whom he employed were generally to be found hanging about the People's Palace or the General Post Office. The worst that could be said about Barrett was that he followed racecourses for a living.

Addressing the prisoners, his Honor said: "You have been engaged in dishonest purposes, setting traps for people from the countr. Men who are the backbone of the country-who had saved a bit of money." His Honor said that that class of offence was more despicable than picking pockets. He intended to inflict an adequate form of punishment to teach those people who were engaged in similar practises.

Keogh was sentenced to two years' hard labour, which would be reduced to 18 months if he made restitution of £70 before May, 1930. Clarke was sentenced to 21 months, to be reduced to 16 months on restitution of £40 being made before April 1, 1930; Barrett received a sentence of 12 months, to be reduced to nine months on making restitution of £10 before December 31; and Power was sentenced to 15 months.

On restitution being made, Sinfield was to be given five-eighths and Kerlin three-eighths of the amount.<sup>[232]</sup>

#### **28 May, 1929. Conspiracy Charge - Agents Committed For Trial.**

The hearing of evidence for the prosecution was concluded before Mr. McMahon, S.M., at the Central Police Court yesterday, in the case in which Henry Bernard Hall, 36, and Thomas Lee, 36, agents, were charged with having conspired to cheat and defraud Oliver Fowler of large sums of money. The defendants were committed for trial.

On behalf of Hall, Mr. Kinkead contended that there was no evidence to support a charge of conspiracy.

Mr. Sproule, for Lee, said that Fowler was evidently quite satisfied with the transaction until he became scared through reading reports of "go-getter" cases in the Sydney newspapers.

"The Press," added counsel, "can influence public opinion in Australia in a marvellous manner, whether it is a beauty competition or a craze for drinking milk in Martin-place. The papers have certainly inflamed the public mind and created an atmosphere of excitement where so-called go-getters are concerned."

Mr. McMahon, S.M., said it seemed to him that no land transaction should be valid unless prepared by a solicitor or some other responsible person.<sup>[233]</sup>

#### **5 June, 1929. Law Report – Court of Criminal Appeal**

(Before Mr Justice James, Mr Justice Halse Rogers and Mr Acting Justice Stephen)

### Convicted Of Receiving - Rex v Ashton and Rex v Cookson

Applications for leave to appeal were made by Robert Searl Ashton and Harold Carmont Cookson who were convicted before Judge Armstrong at Sydney Quarter Sessions In April last of charges of receiving Ashton being sentenced to four years hard labour and Cookson to two years. The grounds taken in support of the application were that the jury was not adequately directed by the Judge as to possession of stolen property and guilty knowledge. Mr Kinkead (instructed by Messrs F G Sherwood and Co ) appeared for the appellants and Mr Weigall for the Crown

The applications were dismissed Mr Justice James remarked in the course of his Judgment that he would be averse from allowing counsel to raise objections to a Judges summing up before the Court of Appeal which might or should have been raised at the trial



Figure 38 - Harold Carmont Cookson  
- 1929

### Appeal Dismissed

#### Rex v Watson

The Court dismissed an application for leave to appeal in the case of Stanley Watson who was convicted before Judge Armstrong at Sydney Quarter Sessions on April 23 of breaking and entering and stealing for which he was sentenced to two years and five months imprisonment with hard labour. Mr Kinkead (instructed by Messrs F G Sherwood and Co ) appeared for the appellant.<sup>[234]</sup>

#### 6 June, 1929. Law Report – Court of Criminal Appeal

(Before Mr Justice James, Mr Justice Halse Rogers and Mr Acting Justice Milner Stephen)

#### Rex v Watson

The Court adjourned till next term an application for leave to appeal in the case of Stanley Watson who was convicted before Judge Armstrong at Sydney Quarter Sessions on April 23 of breaking and entering and stealing for which he was sentenced to two years and five months imprisonment with hard labour. Mr Kinkead (instructed by Messrs F G Sherwood and Co) appeared for the appellant.<sup>[235]</sup>

#### 11 June, 1929. Quarter Sessions (Before Judge Curlewis.)

Crown Prosecutor, Mr. V. H. Treatt.

### Alleged Conspiracy.

Frederick Fontaine, 48, Francia Fenton Dwyer, 48, and James Jacobs, 51, all agents, were charged with having conspired together at Sydney on February 4, 1928, to cheat and defraud Hugh Percival Kean.

Mr Kinkead (instructed by Mr William Patterson and Co) appeared for Fontaine, and Mr Neil McTague (instructed by Messrs McTague and Kirby) appeared for Jacobs Dwyer appeared in person The accused challenged 20 jurors

The case for the Crown was that Kean, who was an elderly grazier, came to Sydney from Little Firest on January 16, 1928. He met Jacobs opposite the Commonwealth Bank, and told him that he had come to Sydney to sign an agreement about some land, but Jacobs advised him not to do so. He saw Jacobs later



Figure 39 - Frederick Edward Fontaine -  
1929

in the day, and told him that he had signed the agreement, and Jacobs took him to an office in Pitt-street, where he was introduced to Fontaine and Dwyer. Being shown the agreement, Fontaine said he wanted a guarantee as to costs and Kean signed four blank promissory notes. Subsequently Kean asked to have the notes back. He did not get them then, but on the following day he returned to the office and saw Dwyer, from whom he requested the return of the notes. One of the notes was given to Kean, and Dwyer purported to tear up the other three. Subsequently, however, three promissory notes, signed by Kean for £50 each, were negotiated.

The matter stands part heard.<sup>[236]</sup>

#### **12 June, 1929. Conspiracy - Against Old Man - Three Men Convicted.**

At the Quarter Sessions yesterday, before Judge Curlewis (Crown Prosecutor, Mr V H Treatt), the trial was concluded of Frederick Edward Fontaine 48, Francis Fenton Dwyer, 48, and James Jacobs, 51, all agents, on a charge of having conspired to cheat and defraud Hugh Percival Kean a grazier, of Little Forest, of large sums of money.

Mr Kinkead (instructed by Messrs William Patterson and Co ) appeared for Fontaine, and Mr Neil McTague (instructed by Messrs McTague and Kirby) for Jacobs Dwyer appeared in person.

The Crown case was that Kean had been induced to sign three promissory notes for £50 each to pay the legal expenses in rescinding an agreement respecting some land. Kean saw a solicitor, and as a result he called at the office of Fontaine and Dwyer in Pitt-street and demanded the notes to be returned to him, stating that he did not wish to have anything more to do with the business. Dwyer took the promissory notes and after tearing them threw them into the waste paper basket. Subsequently three promissory notes signed by Kean for £50 each were discounted.

In a statement from the dock, Fontaine said that he had instructed Dwyer to return the notes. Kean informed him later that Dwyer had given him the promissory notes and had torn them up. He had never discounted any promissory notes nor had he instructed anyone to do so. He was quite innocent of the charge.

Dwyer said that he handed three promissory notes to Kean, who had handed them back and he had torn them up.

Jacobs said that he had been a stock buyer for 30 years, and had supplied the Government, as well as Governors and Governors-General, with stock. He had been employed by the Government during the war to supply horses. Fontaine had asked him to get three promissory notes discounted for him. He took them to a man for that purpose and received a cheque for £135, which he cashed, and gave the money to Fontaine.

Arthur Lewis, a retired superintendent of police, gave Jacobs a good character. All the accused were convicted.

#### **Police Report.**

Detective Sergeant James stated that Fontaine and Dwyer were both looked upon as clever, cunning, artful criminals. Fontaine had been concerned in a number of bogus companies. One of the men was a very clever forger. A cheque which had been given by an old man had been altered to a very much larger amount. Jacobs was an artful man, who was supposed to have received about £70 or £80 from Fontaine to square an old man named Clifton and keep him from appearing at the court to give evidence in a case. Jacobs went away with the money, and there was trouble in consequence between him and Fontaine. Fontaine and Dwyer swindled an old man and his wife and the old man died. A will was found leaving everything to "My dear old friend Francis Dwyer." That will, however,



the police took care, was not acted upon Fontaine, continued Detective Sergeant James was the leader, and in police-circles he was considered more dangerous than 60 burglars. It had taken a long time to run him to earth.

Jacobs was bound over in his own recognisance in £150 to come up for sentence if called upon within three years, a condition of his release being that he pay to the Clerk of the Peace the sum of £150 for Hurh Percival Kean at the rate of £10 a month, or be called up for sentence.

His Honor, addressing the prisoner, said that he was letting him at liberty for the sake of Kean. He advised the prisoner that he had better cut the acquaintance of Fontaine and Dwyer, and live an honourable life in future.

His Honor said that Dwyer, who was receiving a sentence of four years' hard labour, had borne the brunt of their mutual dishonesty. He passed a sentence of three years' hard labour, which he ordered should run concurrently with the sentence he was serving at present.

Fontaine was sentenced to three years' hard labour.<sup>[237]</sup>

#### **14 June, 1929. Grazier Stabbed - Residential Proprietor Sent For Trial.**

On a charge of having maliciously wounded Vivian Kay Murray, a grazier, on June 4, Edward Phillip Whelan, 57, a residential proprietor, was committed for trial from the Central Police Court, yesterday, by Mr. Gates C.S.M.

Murray, who gave his address as Victoria-street, Potts Point, said he was staying with his wife at defendant's residential in Victoria-street, Darlinghurst, on June 4. On returning from a shopping excursion in the evening, he rebuked defendant, who was intoxicated, for having used bad language in the presence of women and children.

Mrs Murray suddenly called out: "There is something in his hand. He has a revolver!" The next moment, Whelan attacked witness with a pocket-knife, inflicting 14 gashes in his shoulders and back.

"He kept stabbing away at my back," said Murray. "I felt the knife cutting into the bone. I jumped in and struck him on the temple with my fist. He then ran into the room and shut the door."

Replying to Mr. Kinkead (for defendant), Murray said he was the owner of 1351 acres in Riverina, 20 miles from Holbrook.<sup>[238]</sup>

#### **15 June, 1929. Manslaughter Charge.**

Albert David Prosser, 50, a taxi-driver, who appeared before Mr. Gates, C S.M., at the Central Police Court, yesterday, on a charge of having feloniously slain Oswald Jack Cuneen at Lindfield, on Thursday, was remanded to June 21, on bail of £150.

Mr. Kinkead, for defendant, said that Prosser's taxi struck a post in avoiding another vehicle. As a result, Cuneen was killed and another man sustained a fractured skull. Defendant drove to the police station to report the fatality.

Sergeant Napper (police prosecutor) said he understood that the car was driven at "a terrific speed."<sup>[239]</sup>

#### **21 June, 1929. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr V.H. Treatt.



**Acquitted.**

George Arthur Lillie, 19, labourer, was charged with having broken and entered the shop of Ferdinand Laudáis at Marrickville on April 10 with intent to steal.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused, who was acquitted and discharged.<sup>[240]</sup>

**25 June, 1929. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr V.H. Treatt.

**Alleged Forgery**

Trevor Mervyn Doyle, 43, who had been assistant secretary to the New South Wales branch of the Teachers Federation, was charged with having forged and uttered a cheque on January 12, 1927, also with having falsely entered under the date of January 12, 1927, the sum of 17/4 in the cash book as having been drawn by cheque No. 489.

It was stated that the general secretary of the Teachers' Federation, Mr. Hendry, when he went on leave, had signed a number of blank cheques. It was necessary that on any cheque being drawn it should also be signed by Mr Arthur Cousins, one of the trustees. The cheque No. 489 had the name of Cousins on it, which was alleged to have been a forgery.

Mr. Kinkead (instructed by Messrs R D. Meagher, Sproule, and Co.) appeared for the accused, who was acquitted on the charges of forging and uttering, and bound over in his own recognizances in £10 to come up for trial when called upon on the charge of falsifying a cash book.<sup>[241]</sup>

**27 June, 1929. Central Criminal Court (Before Mr Justice James)**

Senior Crown Prosecutor, Mr L.J. McKean K.C.

**Concealment of Birth**

Nena Eileen Hamer was charged with having wilfully concealed the birth of a child at Canowindra on May 25.

Mr. Kinkead (instructed by Mr. F. A. Finn) appeared for the accused, who pleaded guilty.

His Honor said that the prisoner had been more sinned against than sinning, and the man that was the cause of all the trouble went free.

The prisoner was bound over in her own recognisance in £50 to come up for sentence if called upon within 12 months.<sup>[242]</sup>

**27 June, 1929. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr V.H. Treatt

**House Breaking**

James Rioalo, 18, labourer, was charged with having broken and entered the dwellinghouse of Isabel Marcia East at Ashfield, on May 1, and stolen a ring.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused, who was convicted. He pleaded guilty to a further charge of a similar nature, and was called up in respect of his recognisance, in which he had been bound over upon three charges of stealing. He was sentenced to 23 months' hard labour on each charge, the sentences to run concurrently.<sup>[242]</sup>

**3 July, 1929. Warehouse Robbery – Charges Against Woman and Two Men**

When Dagmar Helene Drewett, 28, a married woman, appeared at the Central Police Court on three

charges of receiving, the prosecution alleged that detectives had found the proceeds of several recent warehouse robberies in the basement of her home.

In the dock with the woman were Ralph Alexander, 32, and James William Charles Robinson, 35, who were charged with breaking and entering the warehouse of A. G. Morris and Co., Ltd., Elizabeth-street, and stealing three rolls of linen, worth £20.

There were further charges against Alexander and Robinson of having stolen 28 dozen pairs of socks, valued at £24, the property of the Betawear Hosiery Company, and 16 shirts, valued at £10/16/, the property of the Prospect Shirt and Pyjama Company.

Evidence was given to the effect that when detectives visited her house in Kippax-street Mrs. Drewett admitted that there was a quantity of stolen property in a cupboard in the basement, adding that Alexander and Robinson had brought it there. "I told them that they would get me into trouble," she said, "and that my husband would kill me." Later she told the detectives that she was taking the linen out in her motor cycle and sidecar and selling it in the city.

Mr. Fletcher, S.M., committed the three defendants for trial at the Quarter Sessions on August 1.

Mr. Kinkead appeared for Mrs. Drewett.<sup>[243]</sup>

#### **4 July, 1929. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr V.H. Treatt

##### **Fraudulent Omission**

Albeit Ernest Smith 62 estate agent was charged with having fraudulently omitted to account for £60 which he had received upon terms requiring him to do so to Sylvanus Mansour at Sydney on April 30. Mr Kinkead (instructed by Messis Emanuel and Pearce) appeared for the accused.

It was alleged that the accused collected rents for Mansour and that he collected more money than he showed in his returns.

The accused was convicted and sentenced to six months' imprisonment with hard labour.<sup>[244]</sup>

#### **5 July, 1929. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr V.H. Treatt

##### **Acquitted**

Edith Marla White, 43 years of age, was charged with having feloniously received 10 frocks, a jumper, and a costume which had been stolen from Olga Bowman, at Sydney, on April 11.

Before the evidence was concluded, the jury intimated that it did not wish to hear anything further and acquitted the accused without leaving the box, and she was discharged.

Mr. Kinkead (instructed by Mr. G. A. Prendergast) appeared for the accused.

John Robert Carey, 27, labourer, was charged with having assaulted Clarence Theodore Snelling at Sydney, on May 9, and robbed him of £3/18/ and a bunch of keys. There was an alternative charge of common assault. Mr. Kinkead (instructed by Mr. G. A. Prendergast) appeared for the accused, who was acquitted and discharged.<sup>[245]</sup>

#### **6 July, 1929. Prefers Street Girst to Wife – Startling Admission – Sudden Acquittal**

"I suppose you have no respect for girls of the street," asked Mr. Kinkead of Frederick George

Higham, who alleged at the Darlinghurst Sessions yesterday that Elsie Kay (37) had stolen £380 from him after he had gone" to her place following a casual meeting in the street.

"I respect them more than my own wife," was the startling reply.

The jury, without leaving the box, acquitted Kay.<sup>[246]</sup>

#### 6 July, 1929. Quarter Sessions (Before Judge Curlewis)

Crown Prosecutor, Mr V.H. Treatt

#### Acquitted

William George Durie, 22, taxicab driver, was charged with having done bodily harm to Edgar Charles Bond at Rozelle on February 16, by the wanton driving of a motor car. Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for the accused, who was acquitted and discharged.

Elsie Kaye, 37, was charged with having stolen £380 from Frederick George Higham at Sydney on May 12. At the conclusion of the Crown case, the jury intimated that it did not wish to hear anything further and acquitted the accused, who was discharged. Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for the accused.<sup>[247]</sup>

#### 10 July, 1929. Sentences Varied – Imprisonment in Lieu of Fine – Judge's Caustic Remarks

At the Sydney Quarter Sessions Appeal Court, presided over by Judge Thomson, yesterday, John Gibbons and John Patrick Cassidy appealed against sentences imposed by Mr. H. W. Fletcher, S.M., at the Balmain Police Court, on May 14 last, when they were convicted of assaulting Harold Sylvester Raftery, in company. Cassidy was fined £20, in default three months' imprisonment, and ordered to pay compensation and costs amounting to £17/10/, or serve another three months' imprisonment in default such payment. Gibbons was sentenced to three months' imprisonment, and also ordered to pay compensation in the same amount, with an alternative of three months' imprisonment. Mr. J. J. B. Kinkead (instructed by Mr. G. F. Osborne) appeared for the appellant.



Figure 40 - John Gibbons & John Patrick Cassidy - 1929

After hearing evidence and argument, his Honor said he was satisfied the magistrate had fully considered all the matters now put before the Court of Appeal in extenuation of the accuseds' conduct and he had no hesitation in saying that he had come to a right decision.

Mr. Kinkead suggested that the sentences were anomalous, and might be varied.

His Honor said he thought so too. He thought that both prisoners should go to gaol and that it was time people who congregated to assault innocent passers-by should be taught a lesson. He therefore varied the sentences by ordering both men to prison for three months, and directed them each to pay or find security of £17/10/, in default of which they must serve a further sentence of three months.<sup>[248]</sup>

### **11 July, 1929. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr V.H. Treatt

#### **Alleged Shopbreaking**

Allan Foster Webster, 35, taxi-cab driver, George Little, 32, taxi-cab driver, Jack Hardacre, 24, ironmoulder, Charles George Brame 28, musician and Frederick Harris, 23, labourer, were charged with having broken and entered the store of Allen Robert Love at Burwood on May 5, and stolen 200 sweaters, 202 yards of suiting, 108 half hose, and a large quantity of other goods, the total value being about £400 There was an alternative charge of receiving.

Mr Kinkead (instructed by Messrs R D Meagher, Sproule and Co ) appeared for Webster and Little, Mr E R Abigail for Brame, and Mr P Roach for Harris Hardacre pleaded guilty, and was remanded for sentence.

Sergeant William James Watkins stated that he was driving along Burwood-road, accompanied by Constable Thompson, and on passing Park-avenue they noticed a motor car with its lights out standing in the avenue, which runs at the rear of Love's store. After proceeding some distance they stopped and backed down the road when they saw the car, which was a blue taxi-cab, with its lights on, going along the road with two men in the back seat in a crouching position. They took the number of the cab, and later interviewed Webster, who admitted that he had driven a fare to Burwood. They also examined the store and discovered that it had been broken into. On May 10 the police visited a house at Redfern. They saw four men enter the house and when they came out again they got into a taxi-cab and drove to an unoccupied house in Newtown, from which they collected a number of bundles and returned to Redfern. The house was rushed by the police, who arrested Hardacre as he was attempting to leave by a window and Brame as he was about to slide down a verandah post.

Webster gave evidence, and admitted having taken a fare to Burwood on the night of May 5, but denied having seen or known the other men.

Hardacre also gave evidence, and stated that he had broken into the store with another man, who was not one of the accused. He and his colleague had left in a private motor car which the latter had furnished.

Webster, Little, Brame, and Harris were acquitted and discharged. Hardacre, who had pleaded guilty, was sentenced to two years' imprisonment, with hard labour.<sup>[249]</sup>

### **13 July, 1929. Quarter Sessions - No. 2 Court - (Before Judge Armstrong.)**

Crown Prosecutor, Mr. B. V. Stacey.

**Acquitted**

Edward Phillip Whelan, 57, keeper of a residential in Victoria-street, Potts Point, was charged with having maliciously wounded Vivian Kay Murray, a grazier, on June 4.

Murray's story was that he was staying at the residential kept by Whelan. They had quarrelled and he closed with Whelan, who had a revolver, and held one of the accused's hands under his armpit. The accused struck him in the back with a clasp-knife, inflicting 14 wounds. He then drew away and struck Whelan several times.

Medical evidence was given that only one wound required attention. Mrs. Murray corroborated the evidence of her husband.

At the conclusion of Mrs. Murray's evidence, the jury intimated that it did not wish to hear any more, and acquitted the accused without leaving the box, and he was discharged.

Mr. Kinkead (instructed by Messrs. R. D Meagher, Sproule, and Co.) appeared for the accused.<sup>[250]</sup>

**17 July, 1929. Quarter Sessions – No. 1 Court - (Before Judge Curlewis)**

Crown Prosecutor, Mr C.E. Weigall, K.C., Solicitor General

**Alleged Conspiracy**

Alfred Overlie, 44, a fireman, Harold Biffin labourer, John McGaughey, lorry driver, Henry William Smith night watchman, were charged with having conspired to cheat and defraud the Sydney Lead Works of a large quantity of lead. They were further charged with having stolen 4 tons 11cwt and 2qrs weight of lead.

Mr. T. P. MacMahon (instructed by Messrs A. O. Boyle and Co) appeared for Overlie, Mr. John Clancy (instructed by Mr. W. N. Niland) for Biffin; Mr. Kinkead (instructed by Messrs. Harry Brown and Co.) for McGaughey; and Mr Sproule (for Messrs. R. D. Meagher. Sproule and Co.) for Smith.

Overlie pleaded guilty, and was remanded for sentence.<sup>[251]</sup>

**18 July, 1929. Quarter Sessions - No. 2 Court - (Before Judge Armstrong.)**

Crown Prosecutor, Mr. B. V. Stacey.

**Two Men Convicted of Theft.**

The trial was concluded of Harold Biffin, labourer, John McGaughey, lorry driver, and Henry William Smith, night watchman, who, with Alfred Oveilie, a labourer, were charged with having stolen a large quantity of lead from the Sydney Lead Works at Glebe

Mr T P McMahon (instructed by Messrs A C Boyle and Co) appeared for Overlie, Mr. John Clancy (instructed by Mr W. M Niland) for Biffin, Mr Kinkead (instructed by Messrs Harry Brown and Co) for McGaughey, and Mr Sproule (for Messrs R D Meagher, Sproule, and Co) for Smith.

Biffin and Smith were convicted of theft, and remanded for sentence. McGaughey, who stated that he had been engaged in the usual way of business to attend with his lorry and remove the goods, was acquitted and discharged. Overlie was bound over in recognizances of himself and one surety of £25 each to come up for sentence if called upon within three years. Detective-Sergeant Thompson stated that Overlie had been employed by the lead company for 12 or 15 years, and had hitherto borne an unblemished character. He was the main support of a widowed mother and sister, and there was no doubt that he had been the catspaw of the other men.<sup>[252]</sup>



**20 July, 1929. Quarter Sessions - No. 2 Court - (Before Judge Armstrong.)**

Crown Prosecutor, Mr. B. V. Stacey.

**Forgery**

Norman Hector Elliott, 26, clerk, pleaded guilty to five charges of forging orders for the payment of money. It was stated that there were 36 charges altogether, the others being withdrawn.

Mr Kinkead (instructed by Mr B. T Heavener) appeared for the prisoner, who was remanded for sentence.

**Illegally Using A Car**

John Yorke, 21, labourer, was charged with having stolen a motor car, the property of Arthur William Smyth, at Sydney, on May 24.

Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for the accused, who pleaded guilty to illegally using the car, which plea was accepted by the Crown, and the prisoner was remanded for sentence.

**Housebreaking.**

Edmond Robert Thomas Galleghan, 19 labourer, and Edward Weirick, 20, labourer, were arraigned upon four charges of house breaking at Ashfield, Concord, and Burwood Weirick was also arraigned under the name of Johnson.



Figure 41 - Edmond Robert Thomas Galleghan - 1929 - Edward Mervyn Weirick - 1927

Galleghan pleaded guilty to the four charges, and Weirick to two charges under his own name, and one under the name of Johnson.

Mr Kinkead (instructed by Messrs R. D Meagher, Sproule, and Co ) appeared for both of the prisoners, who were remanded until Monday for sentence

**Acquitted**

Cecil Albert Jobson 23, timber worker, was charged with having assaulted Constable Albert James



Herbert Crosbie, at Sydney, on May 4, occasioning him actual bodily harm. There was an alternative count of common assault.

Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for the accused, who was acquitted and discharged.<sup>[253]</sup>

**25 July, 1929. Quarter Sessions - No. 2 Court - (Before Judge Armstrong.)**

Crown Prosecutor, Mr. Weigall, K.C.

**Breaking, Entering, and Stealing**

John Wearing, 18, labourer, pleaded guilty to having broken and entered the shop of Sydney Barker, at Bankstown on May 21, and stolen five razor strops and other goods. Also to having broken and entered the warehouse of Arnold Woolnough, at Redfern, and stolen 3/ worth of postage stamps and an overcoat.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.), appeared for the prisoner, who was bound over in recognisances of himself and one surety in £15 each to come up for sentence if called upon within two years on each charge.

**Receiving.**

William Morrison, 18, labourer, pleaded guilty to having feloniously received a quantity of goods which had been stolen from the shop of Sydney Barker, at Bankstown, on May 21, and was bound over in recognisances of himself and one surety in £15 each to come up for sentence if called upon within two years.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.), appeared for the prisoner.<sup>[254]</sup>

**30 July, 1929. Two Kinds – S.M. and Records - There are records, and— records.**

Mr. Camphin, S.M., hears so many of one, that he doesn't want to hear the others.

Mr. Kinkead, the counsel for one of two men charge in the Central Police Court to-day with stealing a phonograph, suggested that as they had a record in court, they should try it on the instrument.

"No, thank you," replied' Mr. Camphin, "I hear enough records in this court as it is."<sup>[255]</sup>

**30 July, 1929. Quarter Sessions - No. 2 Court - (Before Judge Armstrong.)**

Crown Prosecutor, Mr. P. V. Storkey.

**Acquitted**

Ernest Frederick Leggo, 40, contractor, was charged with having obtained £40 from Kathleen Pettitt, at Sydney, on March 8, by means of a valueless cheque on the Australian Bank of Commerce, Limited. Mr Kinkead (instructed by Messrs. A. S. Henry and Co.) appeared for the accused, who was acquitted and discharged.

William Alfred Gleeson, a Jockey, was charged with having fraudulently omitted to pay £41/16/3, which he had collected for William Laffan, at Sydney, on May 27 Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co.) appeared for the accused, who was acquitted and discharged.<sup>[256]</sup>

**3 August, 1929. Court Of Criminal Appeal**

(Before the Acting Chief Justice (Mr. Justice Ferguson), Mr. Justice James, and Mr. Justice Halse Rogers.)

Mr Weigall, K C (instructed by Mr W. O Lacey, Deputy Clerk of the Peace), represented the Crown)

### Timber Workers' Appeal - Rex v Hopner

Charles Hopner was charged, before Judge Curlewis, at the Sydney Quarter Sessions with aiding and abetting in the commission of a felony and sentenced to 12 months' imprisonment. The Crown evidence at the trial was that Hopner was the driver of a motor car in which four persons travelled to one of the suburbs, and assaulted a non-union timber worker named J Stephenson. The police court depositions stated that one of the men attempted to break Stephenson's arm. Hopner appealed against this sentence, declaring that he was not guilty and protesting that there was no evidence to convict him under the indictment charging the felony of inflicting bodily harm. If there was any evidence at all it was merely evidence of intent to commit assault.

Mr Kinkead (instructed by Messrs R D Meagher Sproule, and Co ), appeared for the appellant.

The court declined to interfere with the conviction or sentence The Acting Chief Justice said that Hopner had been charged with aiding and abetting other men in the commission of a felony. It certainly was a felony. There was ample evidence to show that the man had been told of the contemplated attack, and that he deliberately drove them out to commit the offence.<sup>[257]</sup>



Figure 42 - Charles Hopner - 1929

### 13 August, 1929. Quarter Sessions (Before Judge Curlewis)

Crown Prosecutor Mr V.H. Treatt

#### Larceny

Ralph Alexander, 32, labourer, James William Charles Robinson, 35, baker, and Dagmer Helen Drewitt, 28 years of age, were charged with having stolen 334 pairs of socks, the property of Stanley White, at Sydney on June 18. There was an alternative count of receiving.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Drewitt, who, at the close of the Crown case, was acquitted by direction of his Honor, and discharged. Robinson pleaded guilty, and was sentenced to 23 months' hard labour to run concurrently with a sentence he is at present serving. Alexander was acquitted and discharged.<sup>[258]</sup>

### 13 August, 1929. Basher Gang – Two Men Convicted – Judge's Trenchant Remarks

Two alleged members of the "Basher Gang", named William Moore, 25, a timber worker and Mervyn Boyce Carmichael, 22, machinist were charged before Judge Curlewis at the Quarter Sessions at Darlinghurst yesterday with having assaulted Joseph Latham an elderly man, at Annandale, on June 24 occasioning him actual bodily harm. There was an alternative count of common assault.

Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for the accused, and Mr V H Treatt prosecuted for the Crown.

Latham was a volunteer worker at Hudsons timber yard, and left there for home at about 5.00 pm on June 24. He arrived at his house at about 5 30 pm, and had just stepped inside his side gate and was about to close it when the two accused came up. Moore struck him on the side of the head, and put

his arm around his neck. Carmichael caught him by the leg, and both dragged him on to the footpath. He struggled gamely, but was knocked down and both of the accused kicked and punched him. Moore caught him by the throat and bumped his head on the ground. Latham said that he was still suffering from the effects of the assault.



Figure 43 - William Moore - 1929

In a statement from the dock, Moore said that he saw Latham, and asked him for a job Latham lifted up his arm, as though he were going to strike him, and, said Moore: "I did my nut there and then and went him." There had been another man with him, but it was not Carmichael.

Carmichael gave evidence, and said that he had never seen Moore until his arrest. He had arrived upon the scene after the police.

Both the accused were convicted, Moore of occasioning actual bodily harm, and Carmichael of common assault. The latter was bound over in his own recognisance in £50 to be of good behaviour, and to come up for sentence if called upon within two years.

Detective-sergeant Barrett said that he had known Moore since the beginning of the timber strike. He

had been responsible for many assaults on free labourers, and was one of the leaders of the "Basher Gang." Moore had been a preliminary pugilist at the Stadium. Carmichael had never been concerned in any other assault.

His Honor said that in considering the case of Moore, the brutality and cowardice made him ashamed to think that he was a member of the same community. "I think," said his Honor, "that many men concerned in this dispute are ashamed of such brutes as Moore and others, whom we have here lately, who disgraced the names of decent working men. It is a pity that such decent men have not the courage to say so."

Moore was remanded for sentence.<sup>[259]</sup>

#### **13 August, 1929. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor Mr V.H. Treatt

#### **Acquitted.**

Rose Thompson, 23 years of age, was charged with having stolen £60 from Joseph Stanley Taylor at Sydney on April 30.

Mr. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for the accused, who was acquitted and discharged.<sup>[260]</sup>

#### **15 August, 1929. "Basher Gangster" – 12 Months' Imprisonment – Assaulted Old Man**

William Moore, a timber worker, 25 years of age, who was said to have been a pugilist, and who was described by the police as a member of the "Basher Gang," was sentenced at the Darlinghurst Sessions yesterday to 12 months' imprisonment with hard labour.

Moore had been convicted on a charge of having assaulted Joseph Latham, a timber worker in the employ of George Hudson, Limited.

Mr. Kinkead, who was (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the prisoner, said that Moore had borne a good character before the timber strike.

His Honor, Judge Curlewis, replied that Moore had been a party to attacks in which several men had attacked one.

Moore - I deny that.

His Honor: According to the evidence, Moore told the police that he was justified in assaulting Latham because he was working during an industrial dispute. He had not the courage to say that here, but told a lot of ridiculous falsehoods.

Referring to a remark by Mr. Kinkead, who mentioned another case of a similar nature which had come before the Court, his Honor said that the action of Moore and his companion was heroic in comparison because they were only two against one.

Mr. Kinkead: In the case of Cable there were five against one.

His Honor: Five! More like 500. There was a whole crowd of them. I let Carmichael off because I think he had some spark of manhood in him and was ashamed. I am not concerned with the industrial dispute and will say nothing about it, but if two men, one of whom is a boxer, assault a man 65 years of age, they must take the consequences. Had any serious injury been done to Latham, I would have passed a sentence that would express my opinion, and the opinions of decent people, about such actions.<sup>[261]</sup>

#### 15 August, 1929. Football in Court

Football obtruded itself upon the Quarter Sessions Court at Darlinghurst yesterday.

In dealing with a convicted "basher," Judge Curlewis mentioned attacks on football referees.

"Oh, not in Sydney, your Honor," from Mr. Kirikead. "In Melbourne, perhaps."

"In Sydney, Mr. Kinkead."

"Probably Australian Rules, your Honor."

"Rugby."

"There are two codes of Rugby."

"Well. I'm saying nothing," said the judge, smiling.<sup>[262]</sup>



Figure 44 - Matilda Devine - 1925

#### 20 August, 1929. Quarter Sessions Appeals (Before Judge Edwards)

##### Conviction Upheld

*Matilda Devine* 29, domestic, appealed against her conviction at the Central police Court on June 20, by Mr McMahon, S.M., on a charge of having used indecent language. The magistrate imposed a fine

of £5 in default 10 days' imprisonment and ordered her to enter into a recognisance to be of good behaviour for 12 months.

Mr Kinkead who appeared for Devine said that she had been in trouble owing to her husband having been charged with murder. Having been drinking, her mind was disturbed she had since repented of the use of the bad language.

The appeal was dismissed.<sup>[263]</sup>

### **20 August, 1929. Strike Leaders Charged - Wild Statements Alleged - Reference To "Street Of Blood."**

Extraordinary evidence regarding alleged attempts at intimidation was given during the hearing yesterday of the charges against the seven trade union officials who have been directing the timber strike.

Charles Reeves, John Smith Garden, Michael Patrick Ryan, William Terry, Edward Wallace Paton, John Culbert, and John Kavanagh were charged with conspiring to prevent by violence persons engaged in the timber trade in Sydney from exercising their lawful occupation; conspiring to molest and intimidate workmen employed by George Hudson, Ltd., and force them to depart from their employment; and with conspiring to riotously assemble and to assault workmen employed by George Hudson, Ltd.

References to a new policy which would result in "smashed bodies and broken heads" were alleged against Garden, and a statement that he would "walk through a street of blood" to gain his ends was also attributed to him. The defendants gave an undertaking that while they were allowed bail there would be no mass picketing. They followed the evidence closely, but seemed unperturbed.

Remarkable public interest was shown in the case. Long before the Court opened a curious crowd was waiting, and later in the day the courtroom was so crowded that it was impossible to admit other spectators. Throughout the day police, standing at the entrance to the court building, closely questioned anyone who sought to make his way inside. The case is to be continued to-day.

Mr. Camphln, S.M., presided. Mr. S. E. Lamb, K.C., and Mr. Wesche, appeared for the prosecution; Dr. J. V. Evatt and Mr. J. Kinkead (instructed by Messrs. R. D. Meagher Sproule, and Co.) for the defendants Garden, Kavanagh, Paton, Ryan, and Reeves; and Mr. T. McMahon (instructed by Mr. V. Ackerman) for the defendants Terry and Culbert.

#### **Counsel's Address.**

In his opening address Mr. Lamb, K.C., said that there was no doubt that the charges against the accused men were serious. The strike had caused endless misery, and had meant a loss in wages of £50,000. Mass picketing had been defended as legal, but if it meant the intimidation of free labourers, if it meant men going in hordes to threaten other men, then the Court would have to decide whether the law was feeble enough to allow it. It would be proved in evidence, Mr Lamb asserted, that Garden, Reeves, Kavanagh, and Paton had all uttered threats against volunteer timber workers. In bringing forward his witnesses he asked that their addresses should not be announced in court, and that no record be made of them. He had a good reason for the request.

#### **Works Manager's Evidence.**

Harold Russell, works manager for George Hudson, Ltd., Glebe, timber merchants, gave an account of events which he said had occurred during the strike. On July 15, the witness said, he had an interview with Garden and Culbert. Garden said that he had the names and addresses of all workers in Hudson's yards, and that what had happened at the commencement of the strike would be



nothing to what would happen. He was going to employ new tactics, which would mean smashed bodies and broken heads. Culbert said, "When we are finished with the employees we are going to start with the employers, and you being one of the worst we'll fix so that you won't be in charge of any of the men in our union."

"I laughed at him," said the witness, "and Garden said, I would walk through a street of blood to dish it up to you. If it had not been for you this strike would not have lasted three weeks."

Russell was closely questioned by Mr. McMahon, but maintained his story was correct. He said that he had regarded the interview largely as a joke.

After the luncheon interval Mr. Kinkead drew Mr. Camphin's attention to a placard displayed by an evening newspaper, which, he claimed, prejudiced his clients.

"I have not seen it," Mr. Camphin replied, "and know nothing about it. I have no jurisdiction over the Press."

Inspector J. C. Farley said that on the afternoon of July 10 Kavanagh and Reeves had been conversing with the pickets outside Hudson's Glebe yards. Garden was also present, and exhorted the volunteers to join the strikers.

The case was adjourned until 10 o'clock this morning. A charge against Kavanagh of having an unlicensed revolver in his possession was also adjourned.<sup>[264]</sup>

#### **21 August, 1929. The Evidence.**

Continuing his evidence from the preceding day, Inspector J. O. Farley said that he was the police officer in charge of the district in which the mass demonstrations of strikers had taken place. He had been present at such demonstrations outside the timber yards of George Hudson, Ltd, at Glebe, on July 15, 10, 17, 18, and 19, on which days the strikers had escorted the volunteers to or from work. On the evening of July 18 a very large crowd of pickets-the largest he had seen-assembled outside the yards. Only the usual number of police were in attendance, and they were insufficient to cope with the crowd. Garden, Kavanagh, Paton, Ryan, Culbert, and Teiry were present. Witness was talking to Detective-Sergeant Gallagher when a stone came from a crowd of pickets a few yards away, and struck Gallagher on the breast and witness on the arm. It was not thrown with much force. Kavanagh came over at this moment, and Gallagher said to him. "That game is no good. You ought to cut that out." At this Kavanagh smiled, and walked away. As he did so, Garden came up, and Gallagher made the same remark to him, whereupon Garden, turning to the crowd, called out: "Cut that out, boys." When the volunteers came out of the yards, and marched up Bridge-road to Glebe-road, the pickets accompanied them.

#### **Volunteers Accosted.**

"While employees from Hudson's were boarding a tramcar," continued the witness, "Paton was standing on the footboard. He caught hold of one workman and said- 'You scabs have got your last chance of coming with us. Why don't you be men?' Paton also caught hold of two other men. I said, 'Get off that footboard' Paton answered, 'You mind your own business' I said, 'This is my business, and told him to get off the tram. Other police came to my assistance, and Paton was taken off in the direction of the Glebe Police Station. When he was about 50 yards down Bridge-road, Garden came on the scene, and called out, 'Let that man go,' and then "I blame the Inspector for all this"

"Excitement ran very high at the time," witness went on "The workmen who were proceeding to the trams appeared to be in a highly nervous state. Conditions were very serious-



Mr. Kinkead: I object Mr Farley can only say what he saw and heard.

Mr Camphin, S.M.: He is a police officer, used to dealing with crowds. I think he is entitled to give the evidence.

Mr. Lamb, KC (to witness): Did you apprehend breaches of the peace?

Witness: Yes. Breaches of the peace were occurring.

Was Paton subsequently charged?- He was. Was he convicted?- He was.

Mr Kinkead again objected, but the objection was overruled.

Continuing, witness said that there was another demonstration the following day. This time many more police were present. Garden and Paton broke through the lines of police who were escorting the volunteers and Garden said to one of the men, "Why don't you be men." Witness said, "Cut that out. Get back on the other side of the footpath." Garden refused, and witness pushed him away. Garden appealed to Inspector Mackay, who witnessed the incident, and Mackay said, "Go on, get about your business."

#### **A Fusillade Of Stones.**

As the crowd proceeded up Bridge-road stones were thrown at the volunteers and at the police.

Mr. Lamb: Suppose there had not been a body of police there, what would have happened.

Witness: In the absence of police there would undoubtedly have been bloodshed.

What was the effect on the employees of Hudson's: It was very serious.

In answer to Mr Kinkead, Inspector Farley said that he had paid special attention to Garden whenever he was present at mass demonstrations, because the disturbances were always more serious when Garden was present. It was true that some of those arrested for throwing stones were not strikers.

Mr Kinkead: Did not Garden, every time he was there, ask for order among the pickets?

Witness: Yes, and said something else under his breath.

Could you hear him. – No.

Then others could not hear him? - Oh, yes, others were closer to him than I was.

To Mr. McMahon: witness said that he had never seen Terry resort to any act of violence. As far as he knew, Culbert was a man of excellent character.

Mr Mahon: As a matter of fact, he is a very quiet man, Isn't he? Witness: Yes, one of the silent workers.

#### **Mr Mackay's Evidence.**

William John Mackay, Chief of the Criminal Investigation Department, said he was present at Hudson's timber yards on July 19. There was a crowd of approximately 1500 people there. Numbers of men in the crowd were wearing a brass metal badge, resembling a miner's lamp. Garden addressed the crowd, and the men wearing these badges removed them and put them in their pockets or on the inside of their coats. When the police were escorting the volunteers, Garden and others attempted to break through the police lines.

Mr Lamb: In what condition was the crowd?

Witness: They were in a very excited condition, "boo-hoolng," yelling, and groanng.

Continuing, witness said that he saw a number of stones thrown from among the pickets. The police made a number of arrests.

Mr. Lamb: Did you see any of the defendants?

Witness: Yes. When stones were thrown near Bridge-road I saw Garden and Reeves standing near the point whence the stones were thrown.

Describing another disturbance on July 27, Inspector Mackay said a crowd of about 2500 people gathered outside Hudson's yards, shouting, "Scab." "The police were about to take out the volunteers," said witness, "but on account of the threatening attitude of the crowd and the fear of a breach of the peace being committed, and persons being assaulted, I directed the uniformed police and plain-clothes men to endeavour to push the crowd back on to the footpath. While they were so employed I took the workers out of Hudson's yard by a rear exit, and conflict was thus avoided."

#### **Saturday's Clash.**

Mr. Mackay then gave an account of a serious clash between the police and the strikers on Saturday last.

"I arrived at Hudson's at 11.30 a.m.," he said, "and in Bridge-road, near Wentworth Park I saw about 700 men, almost all armed with stakes similar to these."

Here were produced a number of stout wooden stakes, sharpened at one end, and about four feet long, and carrying placards, such as, "A 44-hour week we'll have," "Solidarity for ever," "Spot every vicious policeman."

Mr. Kinhead: You mean these men were carrying these stakes - I object to the word "armed."

Mr. Lamb: How were they carrying these sticks?

Witness: They were being carried upright, in a position similar to that in which a spear would be carried.

Would you say that stick in your hand was a formidable weapon? - I would. It is similar to a javelin, and could be used in the same manner.

"The defendant Garden, continued witness, "was near a police patrol motor waggon, and was engaged in a struggle with Sergeant Connor for the possession of a stake. I said to him: 'Cut that out. Don't interfere with the police in the execution of their duty. You appear to be looking for trouble, and if you carry on like this you will get trouble.' Garden replied, 'These stakes belong to us. The police have no right to take them. The police can be prosecuted for stealing as well as other people.' Garden was very excited. Almost everyone in the crowd was armed with one of the stakes. A number of men were arrested and a man named Darsch said in a loud voice to me. 'You're all right now. The Nationalists are in power. Wait till Labour gets in. We'll fix you.'

Mr. Lamb: What did you do?

Witness: I said: "You're mine," and put him in the patrol waggon. "Garden said to me, 'There was no necessity for that action,' and I replied, 'If you or anyone else think that by making threats like that you are going to deter me from doing my duty, you are very much mistaken.'

### Inspector Struck With Stake

"All this," said the witness, "went on before the men emerged from the yards. They came out at 11.45 am and proceeded up Bridge-road. As they did so the crowd surged towards them in an excited and threatening manner, and members carrying their stakes endeavoured to enter the ranks of the workers. I heard the word's 'scabs' frequently used. Garden, Kavanagh, and Reeve were present. The workers got on a tram at Glebe-road. I saw a stake hurled towards a tram, and hit it in the manner of a javelin. I saw Inspector O'Brien struck on the head with one of these stakes, and saw his cap knocked off. I saw a man arrested, and heard him shout out, 'Have a go at them,' and others say, 'Don't let them take it'. A riot ensued. I saw members of the police force struggling with members of the crowd for possession of the stakes."

Mr Lamb, K.C., tendered photographs of the disturbance.

Dr Evatt: There are women and children in that crowd.

Witness: Outside the crowd.

There's a woman there in the front of the crowd – Yes. She is always there, and she's always making trouble. She's a bad woman.

Can you show me in the photograph one instance of the sticks being raised in a threatening manner, or being held as a weapon?

The witness marked a photograph and handed it to Dr. Evatt.

Cross-examined further, Inspector Mackay said that it was not possible to see from the photographs exactly what happened.

Dr Evatt: Photographs can't make mistakes.

Witness: Oh, yes, they can, when they are taken from the wrong angle.

It is not a fact that, in this photograph in the majority of instances the sticks are held as are banners in a procession. - Yes

The proceedings were adjourned until 10 am today.

Dr H V Evatt, Mr J J Kinhead and Mr P W Brine (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for the defendants, Garden, Kavanagh, Paton, Ryan and Reeves, and Mr T McMahon (instructed by Mr. V Ackerman) for Terry and Culbet. Mr S E Lamb, K C, and Mr Wesche appeared for the the prosecution.<sup>[265]</sup>

### 23 August, 1929. Seven In a Row

It was the fourth day of the hearing. Evidence and cross-examination had a familiar ring. But for large numbers of his Majesty's subjects the drama seemed enthralling. They crowded the limited space reserved for the public at the Central Summons Court. Young fellows most of them, many with shock hair, some with foreign-looking faces, they leaned over the balustrade dividing them from the court. Seven men sat behind the lawyers' table. Seven alert individuals who missed nothing. Mr. Kinhead fired question after question at the police witness, Detective Sergeant Gallagher. And industriously Mr. J. Garden, one of the accused seven, rose from his seat to prompt the questioner.

### In Leading Parts

Some of the actors in the drama afforded interesting contrasts. Mr. Camphin, S.M., mild and philosophic, with the serene outlook of a man whom nothing can surprise; Mr. Lamb, K.C., for the

Crown, keen-faced and watchful, inclined from long habit to say "Y'r Honor" instead of "Y'r Worship"; and Dr. Evatt, black-haired, meticulous, described by Mr. Lamb as "Greek chorus" and looking the part. Last, but not least, Mr. Kinkead and Mr. M'Mahon, prepared, if necessary, to argue against the procession of the Equinoxes.

### What Are "Breaches"?

"Haven't there been many breaches of the law since these proceedings started?" Mr. Kinkead asked Detective-Sergeant Gallagher in the witness-box.

"What do you mean by breaches of the law?" asked the witness.

Mr. Kinkead (surprised): You are a detective-sergeant, aren't you?

Witness (cautiously): There are so many breaches of the law.

Mr. Kinkead: Well, if you don't know what are breaches of the law I am not here to instruct you. (Smiles from the back of the court).<sup>[266]</sup>

### 23 August, 1929. Devine Case - Tomlinson Charged Maroubra Fray

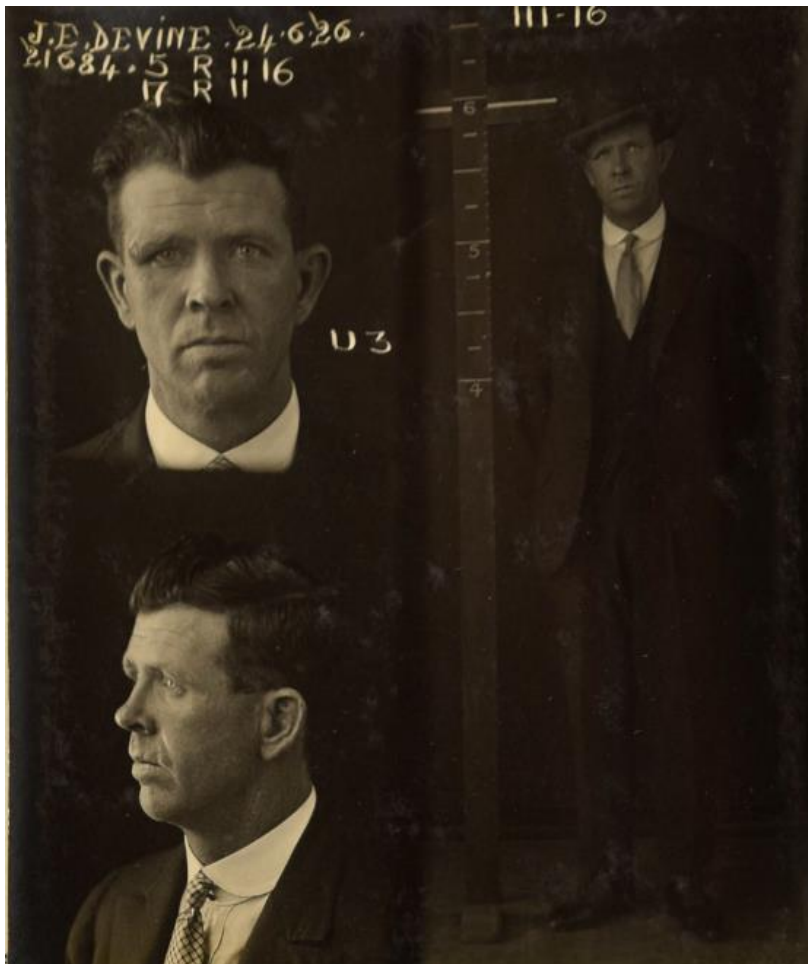


Figure 45 - James Edward Devine - 1926

Walter Tomlinson, 31, wharf laborer, was remanded until September 16 by Mr. Gates, C.S.M., at the Central Court today, on a charge of having, at Maroubra, on July 18, shot at James Edward Devine, with intent to murder him.

Mr. J. J. Kinkead, instructed by Messrs. R. D. Meagher, Sproule and Co., who appeared in order to watch Devine's interests, told Mr. Gates that Devine had been charged with murder, and that his case was under consideration by the Attorney-General. As Devine would be the chief witness against Tomlinson, it would obviously be unfair for him to have to give evidence, while a capital charge was hanging over his head. He asked that the case against Tomlinson should stand over until after the Central Criminal Court sittings, at which Devine would

appear if he were to be charged. The police prosecutor, Sergeant Napper, said the application was a fair one, and he would not oppose it. Bail was allowed in £400.<sup>[267]</sup>

### **23 August, 1929. Strike Leaders - Conspiracy Charges - Wild Threats - Ascribed to Mr. Garden.**

At the Central Summons Court yesterday the hearing was resumed of the charges against seven trade union officials who are alleged to have conspired together to molest and intimidate workmen employed in the timber industry and to prevent them from carrying on their employment. The defendants are Edward Wallace Paton, William Terry, Charles Reeves, John Kavanagh, John Smith Garden, Michael Patrlck Ryan and John Culbert.

#### **Criticism Of Police**

Continuing his evidence from the preceding day Detective Sergeant William Gallagher said that he attended mass picketing demonstrations outside Hudson's timber yards. At these demonstrations Reeves, Paton, Kavanagh, Ryan and Culbert repeatedly said to the volunteers as they went to and from work, "Come on boys and join us. It's your last chance." At a mass meeting of pickets in Wentworth Park on the morning of July 17 said witness, Garden addressed the crowd and said I resent very much the attitude of the police towards me. I am not going to allow any member of the police force, officer or otherwise to instruct me or put hands on me. I have seen the Commissioner of Police and he has no objection to mass picketing. It is easily seen which side the police are on. It was I who during Mr Langs regime got that body of men the 44 hour week and also their last increase in pay. Yesterday I counted 318 police on duty in the strike area while the papers show extensive robberies are being committed. It must be clear to the general public that there are 318 too many police in the service."

"The same afternoon," said witness, "when the workmen at Hudson's came out. The pickets who numbered between 700 and 800 mingled with them. On the way to the tram they were heckled and jostled. There was a crowd of 2000 or 3000 people there and excitement ran very high. The following morning I saw Garden and said to him, 'What's the result of yesterdays operations' and he replied 'I don't know yet, but even if our methods are not effective the manager, will sack those that don't leave by the end of the week'. Later Garden addressed the assembled pickets saying if our new tactics are not effective we will have to try other methods. We are fighting for the rights of the workers."

"The next morning," said Detective Sergeant Gallagher, "about 1000 pickets formed up outside Hudson's. Garden and Kavanagh too marched up and down in front of the men after the fashion of a company sergeant major. I was talking to Inspector Farley when a stone about a pound in weight was thrown from among the pickets. It hit me on the chest but I was not injured. I protested to Kavanagh but he smiled and walked away. I told Garden and he told the crowd to cut that out. As he walked away one of the pickets said it was one of the bosses who threw that stone."

Detective Sergeant Gallagher corroborated Inspector Farley's evidence regarding the disturbance that afternoon and the arrest of Paton.

Were there many police there asked Mr Lamb K C - No not nearly sufficient replied witness.

On the following morning said witness Culbert and Paton stopped two workmen who were going into Hudson's yards. Witness warned them that their behaviour was offensive. Paton said, 'We have a right to reason with these men and the police can't interfere'. To which witness replied, 'The police have a perfect right to interfere in certain circumstances and control traffic as they think proper'. Witness then spoke to Reeves asking how long he thought the strike would last. Reeves answered that it should be over in a few weeks. The manager of Hudson's he said was dissatisfied with the volunteers.

**Stone Thrown At Commissioner**

That afternoon said witness the Commissioner of Police, Mr Child was watching the mass demonstration. I saw a stone thrown - it came from behind me from amongst the pickets - which narrowly missed the Commissioner. A piece of iron piping was thrown and it struck a stationary motor car. This occurred just as the men left Hudsons. There were about 4000 or 5000 people in Bridge road and they were in a very excited state. I said afterwards to Garden, Things were a bit excited this afternoon and he said The result has been good. Six of them came out to-day and they won't return on Monday.

The witness described the arrest of the seven defendants. After the charges against him had been read said witness, Garden smiled and said God Save the King.

Mr Kinhead: You have not heard Garden say a single thing to the pickets to inflame or excite them in anyway.

Witness I can't say that I have.

Does that equally apply to Paton Kavanagh and Reeves. - As far as saying anything goes yes.

Was the stone thrown at you thrown with much force - No not viciously.

Darcy Nolan Smith, now an employee of the Water and Sewerage Board said he was employed as a bullder's labourer at George Hudson's yards. In June and July I left Hudson's about 5pm on July 17 said witness and as I walked up Bridge-road, a bus came along. The pickets rushed it and I was carried along in front of them. The bus was loaded with pickets and one of them hit me on the nose. I walked away and 'Jock' Garden came up, caught me by the arm, and said, 'Why don't you join the boys?' I said 'Take your hands off me or I'll give you in charge.' He said 'You're nothing but a scabby'.

When I was going home the next day, said witness, Garden came to me again and said, 'You have had your last chance. If you don't leave and come and join the boys, Bridge-road will be covered with corpses. We've tried other tactics, we'll try cold steel now'. I made no answer. Paton then said, 'You have had your last chance, take warning'. I got in the tram in Glebe-road. Paton got on the footboard of the tram put his head in the door and said 'You scabs have had your lost chance.'

Mr Lamb K.C.: Did you go back to work the next day?

Witness I did not.

Have you been to work at Hudson's since? No

Cross-examined by Dr Evatt witness said he had made a statement for Detective-Sergeant Gallagher who called on him and had kept a copy. Dr Evatt demanded the copy and witness said that he had burned it.

**Witness Refuses to Answer.**

Dr. Evatt. Where did Detective-Sergeant Gallagher call on you?

Witness: At my home.

Where Is that? - I refuse to answer that question.

Dr Evatt: Why?

The witness appealed to Mr. Camphin, S M., who said: "I won't ask him to give it, because It would go in the depositions, and anyone might get hold of it."



Dr Evatt: Can you identify Paton? Witness pointed him out.

Dr. Evatt: I suppose you know Garden, too? Witness. I ought to, in view of what he did to me.

Is there anyone you know who could substantiate your story about Garden using foul language to you? - No

How did you know the man who hit you on the nose was a picket? - He must have been a picket, or he wouldn't have assaulted me. (Laughter.)

Did you treat Garden's remark about corpses and cold steel seriously? - No

Did Paton frighten you? - No

Dr Evatt, at this stage, demanded that he should be given a copy of the statement which the witness made to Detective-sergeant Gallagher. Mr Lamb refused to give it up. Dr Evatt cited a case in South Australia, in which a Government official was ordered to go to gaol for not producing a document bearing on the case.

Mr Lamb: Are you threatening me? Dr Evatt- The cases are parallel.

### **Counsel Argue**

Heated argument between counsel over this point ensued, and continued for nearly half an hour. Dr Evatt contended that it was only fair to his clients that the document should be produced and threatened to take out a subpoena, to which Mr Lamb replied that it was in the interests of justice that the statement should not be produced.

Eventually, Mr Camphin, S.M. in reply to an appeal by Dr Evatt, said that he would not insist on the document being produced.

Dr Evatt: You make it impossible for me to cross-examine.

Mr Camphin: Oh, not impossible.

Dr Evatt: Very difficult. Your worship is creating a precedent.

Mr Camphin: I never heard of the prosecution being forced to produce a statement in such circumstances.

The magistrate then adjourned the case until 10 am to-day.

Mr S E Lamb K C, and Mr Wesche appeared for the prosecution; Dr H V Evatt, Mr J Kinkead and Mr F W Berne (instructed by Messrs R D Meagher, Sproule, and Co ), appeared for the defendants, Garden Kavanagh Paton, Ryan, and Reeves, and Mr T P MacMahon (instructed by Mr. V Ackerman) for Terry and Culbert.<sup>[268]</sup>

### **28 August, 1929. Strike Leaders - Conspiracy Charge - Further Police Evidence.**

Arguments between opposing counsel and, occasionally exchanges between counsel and a witness were the principal features of the proceedings when the hearing was continued at the Central Summons Court yesterday of the case in which John Smith Garden, Edward Wallace Paton, William Terry, Charles Reeves, John Kavanagh, Michael Patrick Ryan and John Culbert have been charged with conspiring to prevent volunteer timberworkers from carrying on their employment.

Constable John Schroeder, attached to the Detective Office said that he had been engaged on special strike duty since March 15. On July 24, witness said he heard Garden say to a crowd of between 200

and 300 men, "Comrades there will be no mass picketing tonight" and later "We intend to protest against the police digging up a Guy Fawkes law which dates back to Charles I to prevent us from carrying on mass picketing. Now comrades don't forget mass picketing is off for a few days."

The witness then described disorderly scenes at mass picketing demonstrations.

Mr Lamb KC: "Was there any difference in the behaviour of the pickets when the accused were present".

Witness: At the various timber yards the pickets have always conducted themselves that is when I was present - in the most orderly manner except when Garden Reeves Kavanagh Paton and other men connected with them were present.

Mr Kinkead: I object. The witness has no right to draw conclusions. He can only say what he saw and heard.

Mr Camphin, S M: I'll allow it. I don't think he is giving conclusions at all but facts.

On July 17 continued Constable Schroeder, he saw Garden and Kavanagh handing out to members of a crowd sticks bearing placards. He saw a crowd many of whom were brandishing sticks, rush towards an unloaded timber lorry while Garden Kavanagh Paton and Reeves were in the vicinity. When he was arresting a man named Olson and was taking him towards the police patrol wagon, the crowd rushed towards him and he was pushed against a wall at one side of the street. Another constable finally came to his assistance.

#### **Assaults On Police**

While they were waiting for Sergeant Conlon to open the door of the patrol said the witness, the crowd surged round some of them making thrusts at the policemen with their sticks. Sergeant Conlon was struck on the head, and an arrest was made. The defendant Garden then rushed through the crowd, and seized a stick, which Constable Pugh held, claiming that it "belonged to the union." After argument he let it go, and seized a stick held by Sergeant Conlon.

"I caught hold of Garden and pulled him back," the witness went on "I said, 'Don't be silly. You know we are entitled to keep anything found on a prisoner, and you are only inciting this crowd to riot. Have a bit of sense and go away.'" All the time I was speaking to Garden he was throwing his arms about and talking. Other police then arrived on the scene, and the crowd was pushed back from the patrol waggon. Garden stood on the kerbstone on the footpath and said in a loud voice, "The police will have their way, but our turn is next. Our time is coming."

Describing other events on that day, the witness said that he had seen Inspector O'Brien struck on the head with a stick, and when a man was arrested for the assault, had heard people in the crowd urging him and other prisoners in the patrol waggon to endeavour to escape.

Mr Kinkead: How many arrests did you make that day?

Witness: Four.

It has been suggested that you cause as much trouble when you get among these people as a dozen pickets. You don't go looking for "stoush" do you? – No.

To Mr Lamb, witness said that he had never known Garden do manual labour. He had heard that about 150 men employed at Hudson's yards had been thrown out of work through the strike (Mr Kinkead objected to this statement and it was not allowed in evidence).

Mr Kinkead: That question about manual labour was unfair. Don't you know that Garden has been secretary of the Labour Council for 14 years – No.

Mr Kinkead: Did you ever know Mr Lamb do any manual work?

Mr Lamb: I've done some good work occasionally.

### **Witness's Mistake**

Robert James Francis, employed by George Hudson, Ltd, said that he had been stopped by Garden on one occasion. Garden was the only one of the defendants he knew really well.

Asked to point out Garden, the witness pointed to Paton.

Mr Lamb protested that it was difficult for witness to identify the defendants when they had their hands to their faces. Mr Camphin instructed the defendants to stand up, and the witness pointed out Garden as the man he meant.

Continuing, the witness said that Garden had asked him to "come out," promising him 50/ and his keep, and had said, "This is the last chance you will get. I won't tell you again. You'll get dishd up, as all the pickets know where you live."

To Mr Kinkead, the witness said that he usually saw Garden with his hat on. So attired Garden and Paton would be alike. Also, Mr Kinkead, sitting between Garden and himself, prevented his seeing Garden properly.

Cross-examined by Mr MacMahon, the witness admitted that he had not immediately informed the Court when he made his mistake in identification. He heard Mr Lamb ask the magistrate that the defendants should stand up.

Mr MacMahon: Was it conveyed to you by the action of Mr Lamb before Mr Garden stood up that you made a mistake.

Mr Lamb: I don't understand, Mr MacMahon.

Mr MacMahon repeated the question. The witness's answer was almost inaudible, as Mr. Lamb here interjected with some heat, "You stand up there and say that. You ought to be ashamed of yourself "

"I am not casting any aspersions on Mr Lamb, as he well knows." said Mr MacMahon, "I merely asked if the witness knew by the actions of Mr Lamb that he had made a mistake."

"Well, he says 'no,'" remarked Mr Camphin S M.

Francis Webster an employee of George Hudson Ltd, also testified to having been asked by Garden to leave his employment. On one occasion he said, a man had shouted to him that the union was stronger than the police. He was not sure of the identity of the man but he appeared very much like Reeves.

Percival Leonard Eden a tractor driver, employed at Hudsons yards, said that on the afternoon of July 18 he was walking up Bridge-street with a companion when a man sprang out of a doorway and hit his companion in the face. The man was arrested and the crowd surged round the arresting officer shouting, "Pull him away" and "Let him go." Subsequently the policeman was hit on the leg by a piece of iron thrown at him from the crowd.

Eden identified Garden at once when asked to do so and said that his view of him was not obstructed in anyway.

While being cross-examined by Mr Kinkead and Mr MacMahon, Eden frequently endeavoured to argue sometimes after he had been asked a question putting a question to counsel in reply. He protested to the magistrate several times that he was being unfairly treated. The use by the witness of the word absolutely in answer to questions seemed to amuse the crowd in attendance at the Court with the result that twice order had to be called for the witness refused pointblank to answer several questions saying that they were of a personal nature and at one time startled the Court by telling Mr MacMahon to mind his own business. Eventually Mr Camphin S M interrupted Mr MacMahon's cross-examination on the grounds that the matter he sought to elicit was immaterial to the case.

The proceedings were adjourned until 10 am to-day.

Mr S E Lamb KC and Mr Wesche appeared for the prosecution, Mr J Kinkead and Mr F W Berne (instructed by Messrs R D Meagher Sproule and Co ) appeared for the defendants Garden Kavanagh Paton Ryan and Reeves and Mr T P MacMahon and Mr G H Coningham (instructed by Mr V Ackerman) for Terry and Culbert.<sup>[269]</sup>

### **3 September, 1929. Timber Workers - The Glebe Disturbance - Three Men Charged.**

Before Mr. McMahon. S.M., at the Central Police Court, yesterday, Arthur Chas. Smith, a timber worker, aged 18, was charged on two counts, with having used indecent language, and with having assaulted a police officer. Sergeant Hart was in charge of the prosecution.

Detective-Sergeant Sadler said that at 11.30 am on Saturday, August 17, several men were arrested near Hudson's yard, Glebe. As one of the men was being placed in the police patrol van, the defendant said, "Get into the -." He had a sharp-pointed stick, about 4ft in length, and with this he struck Sergeant Henry James Conlin on top of the head. He then ran away, but witness chased him and arrested him. When witness was previously making an arrest in Glebe-road defendant had used bad language.

Sergeant Conlin, in reply to Mr. Kinkead, who appeared for the defendant, stated that if defendant had not been jostled considerably by the crowd witness would have received a serious blow.

Defendant, in giving evidence, said that he tried to look into the van to see who had been arrested. He was carrying a stick with a cardboard placard on it, but dropped the stick owing to his being jostled by the crowd. Witness denied using the language complained of, or striking Sergeant Conlin.

Mr. McMahon. The assault upon the police appears to have been without any provocation on the part of Sergeant Conlin, and without any excuse on the part of defendant. The whole thing was without any excuse and was cowardly in the extreme. In the interests of law-abiding citizens, and for the good of the community generally, it is the time for plain speaking. I feel the position of having to deal with such a young man. Defendant will be sentenced to three months', with hard labour, but sentence will be deferred upon defendant entering into a recognisance to be of good behaviour for two years, in one personal surety of £40 and two other sureties of £20 each.

A charge of having behaved in a riotous manner at Bridge-road, Glebe, on August 17 was preferred against another timber worker, Lester Buckland, aged 26 years.

Detective-Sergeant Sadler said defendant, among numerous other men, took part in the disturbance near Hudson's yards. Defendant ran up to one of Hudson's lorries and called out in a loud voice, "You dirty scabs."

Defendant denied ever having used the words alleged. He said that although he was a picket, he was not on picket duty that day, but was only "sticky-beakling" at Hudson's yards.

Mr. Kinkead, who appeared for defendant, submitted that there was no definite evidence against defendant.

Mr. McMahon: I hold the view that any man who takes part in anything that tends to disturb the peace is guilty of riotous behaviour. Defendant is found guilty, and will have to enter into a recognisance to be of good behaviour for 12 months on a surety of £20.

Inspector William Jno. Mackay, in giving evidence in a case in which Frederick John Darch, fitter, 31 years of age, was charged with having used threatening words to the police, said that during the disturbance near Hudson's yards on August 17 defendant said to witness: "You are all right now that the Nationalists are in power, but wait until Labour comes in, and we'll fix you." Defendant was a decent man, and witness thought that he had been led away by excitement. He had been forced to arrest him as an example.

Mr. McMahon found the charge proved, but said that in view of the defendant's good character, as testified by the police, a conviction would not be recorded. He hoped that defendant would not be led into making any further statements that were stupid in the extreme, but would take his appearance before the Court as a warning to behave himself in future.<sup>[270]</sup>

#### **5 September, 1929. Quarter Sessions Appeals - (Before Judge Armstrong.)**

##### **Appeal Upheld.**

Mary Jane Kelligan appealed from a decision of Mr. T. W. Cohen, S.M., on July 18, at Central Police Court, when she was sentenced to six months' imprisonment on a charge of having in her possession goods reasonably supposed to have been stolen. In support of the appeal evidence was given by Owen Glendwr Evans, who is known to the police as the "Lone Wolf," that he engaged a room at the appellant's residence in Campbell-street, and without her knowledge he brought the property, the subject of the charge, to her residence. He also said that the goods found in his room were the proceeds of several robberies for which he had been committed for trial.

The appeal was upheld, and the conviction quashed. Mr. Kinkead appeared for the appellant.<sup>[271]</sup>

#### **5 September, 1929. S.M. Knows - Customs Of Breweries - Stolen Tobacco**

Mr Gates, S.M., admitted to-day that he knew something about breweries.

While Royston Cozens, assistant factory manager of W. D. and H. O. Wills and Co., was giving evidence in the Central Police Court about the manufacture of tobacco, Mr. Gates wanted to know if certain stolen weed, produced in court, was ready for the pipe, or if it had to go through another process.

Mr. Kinkead (counsel for defendant in the case) said that he understood that the tobacco company treated its employees the same as a brewery did. They were allowed to have what they wanted for their own use.

##### **Free Beer**

The brewery allows its employees a certain quantity only each day, a couple of drinks or so, I don't know anything about tobacco, but I do know something about the brewery," said Mr. Gates, amid laughter.

Maxwell Crane, 27, a laborer, was sentenced to three months' hard labor for stealing 10lb. of tobacco from Wills's factory, but the sentence was suspended on sureties for good behavior for two years.

#### **For His Friends**

It was stated that Crane was carrying a bag containing the tobacco, when he was intercepted by the acting-manager. He said he took it to send to his brother and some friends in the country who were out of work. He had been employed by the firm for 10 years as a fitter's laborer, and had a wife and two children. He had lost his job, his bonus shares, and his insurance as a result of his dishonesty.<sup>[272]</sup>

#### **13 September, 1929. "Under the Influence" - Case Dismissed**

William Strachan Hardie was before Liverpool Court this Thursday on a charge of driving a motor car on Southern-rd., Cabramatta, while under the influence of intoxicating liquor, and incapable of properly controlling the vehicle.

Mr. J. Kinkead appeared for Hardie, who denied the charge.

Constable Sattler said that at 8 p.m. on September 9, he received information and went to a spot on Liverpool-rd. There he saw two motor cars, one facing north, one south; stationary on the side of the road.

A Mr. Conroy told him something. His car had one mudguard damaged. He saw tracks swerving from the left side of the road to the right side and back to the left. The other car was 40 paces away, and tracks led to the first car, Hardie was sitting at the wheel. He said nothing had happened. He did not know who hit Conroy's car, or who hit his car, which had a bent mudguard also.

Defendant drove erratically to the police station. He was sleepy and muddled. He said he had been on night work and was sleepy on that account, and asked for a doctor.

Dr. Pirie examined him an hour and a half later.

To Mr. Kinkead: Hardie was dopey and thick in speech. He said he'd had four beers. I didn't know Hardie was slightly deaf and was a Scotsman with a thick accent.

Dr. James Pirie, of Liverpool, said he examined Hardie at 9.30 p.m. He seemed stupid, his speech slurry; he forgot the name in a telephone book 3 or 4 times, and was unsteady on his feet. Slight deafness may account for some of that condition. He was not drunk, but was under the influence of liquor. He stood on one leg unsteadily.

The P.M.: would these conditions, doctor, be consistent with a man who had been working late and was sleepy ?

Doctor: They might.

Albert Conroy, plasterer, said he and his wife and family, were in his car, travelling 20 feet behind another car of the party, when defendant's car swerved round the car in front and collided with witness' car. Hardie denied having bumped into him; but his car had a bent mudguard .

Conroy said he was a strict teetotaler and had never had a drink in his life.

Alice Maud Conroy corroborated the evidence of her husband.

Hardie, in evidence, said he lived at Granville, this was his first charge of drunkenness. He bought a motor car at Easter. On this day he had his fourth drink at Springwood, between 3 and 4 o'clock. After the accident, he pulled up because he considered his car had been hit.



To Sgt. Taylor: I didn't work on the Saturday, night; but all night Friday.

The case was dismissed.<sup>[273]</sup>

#### **20 September, 1929. Official Acquitted**

Joseph William Cade, who has been a postal official for 18 years, was acquitted at the Darlington Sessions to-day on a charge of having misappropriated postal funds. His counsel (Mr. James Kinkead) said that the defendant had bought a rifle and cartridges, fishing tackle, a hammer, nails and screw-driver, two cameras, tins of beef, and other odds and ends, without any recollection of having bought them.<sup>[274]</sup>

#### **16 October, 1929. Love And Gaol - Unusual Plea Picking His Prison**

George Bryan, 22, who pleaded guilty at Darlington Sessions to-day to a charge of attempted housebreaking asked Judge Armstrong to send him to Parramatta gaol in order that the woman he loved might be able to see him.

He was sentenced to a years' hard labor, and His Honor recommended that the sentence be served in Parramatta gaol.

Mr. Kinkead for the prisoner, said he had been out of work during the past few months. He called at a Rose Bay house, trying to obtain work as a gardener, but, the occupants were away, and he attempted to enter. By then realised what a fool he was, and left. Starvation was staring him in the face, and his object was to obtain food for the woman and himself.

Bryan had numerous convictions, and it was stated that he had been in trouble since he was nine years of age.<sup>[275]</sup>

#### **17 October, 1929. Quarter Sessions (Before Judge Armstrong)**

Crown Prosecutor, Mr. V. H, Treatt.

#### **False Pretences.**

Robert Howie, 40, salesman, pleaded guilty to seven charges of false pretences. It was alleged that he had obtained money and goods by means of valueless cheques. The amount involved was said to be about £2000, and it was stated that the prisoner had been concerned in a series of frauds during the past 12 months.

Mr, Kinkead (instructed by Mr. Mervyn Finlay) appeared for the prisoner, who was sentenced to two years' imprisonment with hard labour. His Honor said that after the prisoner had served 12 months he would consider making a recommendation for his release.

#### **Attempted Housebreaking.**

George Bryan, 22 years of age, pleaded guilty to a charge of attempted housebreaking. Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for the prisoner.

Want of work and the lack of food was the prisoner's explanation of his lapse, but there was a long list of previous convictions recorded against him, his Honor pointing out that they had started when the prisoner was only 9 years of age. "The poor old State, although it has made many efforts, has failed to reform you," said his Honor, who sentenced Bryon to 12 months' hard labour, recommending that he should be sent to Parramatta Gaol.

#### **Acquitted.**

Joseph Ryan, 20, motor driver, was charged with having maliciously shot at Henry Rennie Weale, at White Bay, on July 31, with intent to do grievous bodily harm. He was also charged with having

assaulted Weale, while being armed with a revolver, and robbed him of £22/10/, the property of Harry Hepur Walters, Mr. Kinkead (instructed by Messrs, R. D. Meagher, Sproule, and Co.) appeared for the accused.

Weale, in his evidence, stated that he was sitting with two boys in the service station when the accused came in. He was dressed in a grey suit of clothes, and had a handkerchief tied over the lower portion of his face. He also wore red rubber gloves, and had a revolver, which he pointed at them, ordering them to put up their hands and face the wall. Weale walked over to him and told him to "cut it out, and not to be silly." Ryan pointed the revolver and threatened to "drill" him, Witness then thought that discretion was the better part of valour and took his place beside the boys facing the wall. After robbing the till, Ryan took his leave, politely saying: "Thank you, gentlemen." Witness ran after the accused, who fired a shot, the bullet striking a glass door about four feet from him. He identified the accused by his manner, his voice, and general deportment.

Ryan, in a statement from the dock, said that at the time the robbery was said to have occurred he was having dinner with two friends at the Kookaburra Cafe, in Darlinghurst-road, and afterwards accompanied his friends to the Stadium.

Sydney Franks, who stated that he had at one time employed the accused as a change clerk when he was a bookmaker, and Lawrence Cohen, a second-hand collector, gave corroborative evidence, and the accused was acquitted and discharged.<sup>[276]</sup>

#### **17 October, 1929. His Honor Was Critical**

Mr. Kinkead, who is well-versed in criminal jurisdiction, did not get along particularly well with Judge Armstrong yesterday. In a space of five minutes he was told not to be ridiculous, to try and be sensible, and "for goodness sake, talk English."

Mr. Kinkead took it all smiling, and had the satisfaction of securing an acquittal for his client, Joseph Ryan, who was charged in connection with the White Bay hold-up.<sup>[277]</sup>

#### **22 October, 1929. On Trial - Union Officials – Timber Strike - Indictments Opposed.**

The trial of John Smith Garden (secretary of the Trades and Labour Council), John Kavanagh (chairman of the Disputes Committee of the Trades and Labour Council) Charles Reeve, Michael Patrick Ryan, Edard Wallace Paton, William Terry, and John Culbert, MLC (members of the Disputes Committee of the Trades and Labour Council), was begun before Mr Justice Stephen at a special sitting of the Criminal Court yesterday. The action arose out of the timber strike.

At the outset Dr Evatt, who, with Mr F W Berne, appeared for Garden, Paton Ryan and Kavanagh, moved to have the indictment for the conspiracy quashed. He put in a letter from the Clerk of the Peace, received on October 16. He also handed in a document and told the Judge that the Crown intended to substitute it for the original Indictment.

#### **Two Indictments**

One indictment alleged that the accused with other evil disposed persons whose names to the Senior Metropolitan Crown Prosecutor (Leslie John McKean K C ) are unknown did amongst themselves unlawfully conspire by violence to prevent persons employed in the timber trade in Sydney from exercising their lawful trades or occupations.

The second indictment charged the accused with having unlawfully conspired by violence and threats of violence to prevent persons employed in the timber trade in Sydney from exercising their lawful trades or occupations unlawfully conspired combined confederated and agreed together by unlawfully molesting and intimidating the workmen hired and employed by George Hudson Ltd, to

force and endeavour to force the said workmen to depart from their said hiring employment and work to the great damage of George Hudson Limited and further with having unlawfully conspired, unlawfully and tumultuously to assemble in a manner calculated to cause a breach of the peace, with the intent to induce workers in the employment of George Hudson Limited to leave such employment.

Mr S Ernest Lamb K C with Mr Wesche (instructed by the State Crown Solicitor) conducted the case for the prosecution Mr W A Holman, KC and Mr T McMahon and Mr Coneybeer (instructed by Mr Val Akerman) appeared for Culbert and Terry. Dr H V Evatt and Mr F W Berne (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for Garden Paton Ryan and Kavanagh. Mr J B Kinkead (instructed by the same firm) for Reeve.

The court was crowded. All the approaches to it were packed and police were compelled to prevent several hundred people from entering. Even the accommodation in the dock in which the seven accused men were seated was taxed to its full capacity. The lack of accommodation prompted Dr Evatt to make a request to the Judge for seats for legal assistants of the counsel engaged in the Trial.

The first indictment must be disposed of by being quashed or a nolle prosequi entered before the Court can proceed with the second declared Dr Evatt.

Dr Evatt after quoting the law on the subject proceeded, "If the Crown with the consent of the Attorney-General intimates its willingness not to proceed with the first indictment well and good. On the other hand I submit that it must be quashed and disposed of. The Crown at a late stage on Friday made a verbal alteration to the first indictment. The expression 'unlawfully conspire by violence to prevent persons employed in the timber trade exercising their lawful trade or occupation.' This has been added to by the words 'threats of violence'. To the second count the words 'conspire by threats of violence' have been added. The indictments are directed to the same subject to the same defendants, and to the same action.

#### **"Intimidation."**

Dr. Evatt sought, further, to have the second indictment quashed. His Honor, he said, was in an impossible position owing to the term "Intimidation" having been widened in the indictment to include certain matters which were not in the original indictment. This term, he contended, should be defined so that relevant evidence could be obtained.

His Honor: My view is that the terms "molestation" and "Intimidation" includes anything which in the ordinary reading of the English language would be evidence in common or civil law.

Dr. Evatt maintained that the third count was bad. It was an allegation of an unlawful assembly. The object of that agreement "with the intent to induce workers to leave their employment" was obviously not unlawful. The mere assembling of people in a manner calculated to cause a breach of the peace was not an unlawful assembly.

Both Mr. Kinkead and Mr. Holman adopted, the argument of Dr. Evatt. Mr. Holman said that if one of the defendants was found guilty on the first count, and proceedings were taken before the Court of Criminal Appeal, it would be impossible to say whether he had been found guilty of violence or of threats to conspire to achieve a certain object by means of violence or by means of threats. There were two separate charges in the one count.

Mr. Lamb, in reply, referred to the first indictment.

His Honor: The first indictment is not before me in any way at all. It has not been filed in this Court. It is the duty of the Attorney-General to say whether he will file a bill; and if he does not, I can take no cognisance of it.

Mr. Lamb: It is the practice of the Crown every day to proceed on one indictment or the other. A great deal of misconception arises from not bearing in mind the charge against these men. The crime charged against them is not that they committed acts of violence, or threatened violence, but conspired to do certain things.

Mr. Lamb pointed out that the second indictment was based on an Imperial Act of Parliament, which brought all the Acts applicable to New South Wales into force in New South Wales. He quoted a great number of legal decisions. When he quoted the coal vend case, Dr. Evatt remarked, "That is the John Brown case." Mr. Lamb replied, yes, he was one of the defendants," but added, "we have nothing whatever to do with politics in this Court."

His Honor interposed: "I would sooner not have any comments between counsel, even at this very early stage."

Replying to his Honor, Mr. Lamb said that the conspiracy consisted of unlawful assembly with intent to induce people to leave their employment.

Dr. Evatt said the word "Intimidation" was not a technical word, and could not properly be used in the indictment. It was interesting to know that the Crown in this case relied upon an Act of Parliament to prevent the combination of workmen, which was passed in the year 1825, in the time of George IV, and, moreover, relied upon a section of the Act, which had been repealed in England.

His Honor: And something else substituted.

Dr. Evatt: Yes. This was not a criminal Act but an Act affecting the combination of workmen.

His Honor held that the third count in the indictment relating to unlawful assemblies was bad.

Dr. Evatt objected to its being amended.

Argument had not concluded when the Court adjourned till 10 a.m. to-day.<sup>[278]</sup>

### **23 October, 1929. Union Officials - Conspiracy Charge - Indictment Amended.**

Hearing was continued in the Central Criminal Court yesterday, before Mr. Justice Stephen, of the trial of John Smith Garden (secretary of the Trades and Labour Council), John Kavanagh (chairman of the Disputes Committee of the Trades and Labour Council), Charles Reeve, Michael Patrick Ryan, Edward Wallace Paton, William Terry, and John Culbert, M.L.O. (members of the Disputes Committee of the Trades and Labour Council) on three charges arising out of the timber strike.

Dr. Evatt continued argument against an amendment of the third count of the indictment (relating to unlawful assemblies), and said that the matter was one of great importance to the whole of the industrial affairs of the State.

His Honor said he thought the third count should be amended as asked for by the Crown. He held that the first and second counts (conspiracy to prevent persons from working and conspiracy by molesting and intimidating workmen) were good, but that the third was bad, the fault in the indictment being one which, in the circumstances, was a defect within the meaning of the Act. He, therefore, ordered the third count to be amended from "in a manner calculated to endanger the public peace" to "in such a manner as to endanger the public peace."

After the defendants had been arraigned Dr. Evatt submitted that the prosecution should indicate the one count of the indictment on which it was intended to proceed. The three counts, he said, were substantially different, and in this case the combination of the three would operate in a manner to prejudice the defendants.

Mr. Lamb, K.C., held that the three counts were substantially the same, amounting actually to a charge of preventing men from working who were entitled to do so under a Federal award.

His Honor: It seems to me that the counts can hardly be said to be substantially different.

### **Many Challenges.**

The empanelling of the Jury took longer than half an hour, each of the defendants exercising to the limit his right to challenge Mr. Lamb, on behalf of the Crown, challenged four, and 72 were called before the jury panel was completed.

In outlining the Crown case to the Jury, Mr. Lamb said the case was of the greatest importance to the whole community. Every workman had the right to pursue his calling free from molestation, intimidation, or threats of violence, and it was alleged by the Crown that the defendants had conspired to interfere with this right. Evidence would be called to show that they had deliberately interfered with men working at Hudson's timber yards, in order to make them leave their employment. The evidence would show a deliberate, sustained, and organised attempt in this direction. Such a thing must have far-reaching effects on the whole community.

The storm centre of the timber strike had raged around Hudson's yards, and one of the accused would be shown to have said that had it not been for Hudson's the strike would not have lasted three weeks.

Abundance of evidence would be called to show that workers had been insulted, heckled, and jeered at, that there had been stonethrowing, and that, on one occasion, the workers had been threatened with stakes. Mr. Lamb went on to refer to language which, he said, had been used to terrorise the workers.

Dr. Evatt: It is not right that the Crown Prosecutor, as an advocate, should open such matters which are based on the evidence of witnesses whose credibility and memory we propose to challenge.

The objection was over-ruled. On a subsequent objection, by Dr. Evatt, Mr. Lamb refrained from referring to matters which had transpired after the defendants had been arrested and charged.

### **The Word "Strike."**

Harold Russell, works manager at Hudson's, Ltd., was asked by Mr. Lamb about a strike early in the year.

Dr. Evatt: I object to the word "strike." Mr. Lamb! I press It.

His Honor: I do not think you can use the word "strike" until you prove there was a strike.

Mr. Lamb (to witness): Well, was there a strike?

Dr. Evatt: I object to that, too. This witness cannot say that.

His Honor: I think it will be easier to call it a dispute.

On Monday, July 15, witness said, Garden and Culbert came to his office. Garden asked him if he was "going to be sensible and work 44 hours." Witness told them his firm would abide by the award.

Garden said he was going to have a new attack made on witness's firm, and things that had happened in the past would be slight in comparison with what would happen in the future.

### "Street Of Blood."

Culbert said that when they had finished with the employees they would turn to the employers. They would fix witness so that he would not be in charge of their men again. Garden declared that broken heads and smashed bodies would result. He would walk through a street of blood to "dish it up" to witness. Only for him, the strike would not have lasted three weeks.

After legal argument between council over the admissibility of certain evidence, the hearing was adjourned until 10 a.m. to-day.

Mr. S. Ernest Lamb, K.C., with Mr. Wesche (instructed by the State Crown Solicitor), conducted the case for the prosecution. Mr. W. A. Holman, K.C., and Mr. T. McMahon, and Mr. Coneybeer (instructed by Mr. Val Akerman) appeared for Culbert and Terry; Dr. H. V. Evatt and Mr. F. W. Berne (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Garden, Paton, Ryan, and Kavanagh; Mr. J. B. Kinkead (instructed by the same firm) for Reeve.<sup>[279]</sup>

### 24 October, 1929. Union Officials - Conspiracy Charge - Evidence Continued

At the Central Criminal Court yesterday the trial of the seven men committed on a conspiracy charge was continued before Mr. Justice Stephen.

The accused are John Smith Garden (secretary of the Trades and Labour council), John Kavanagh (chairman of the Disputes Committee of the Trades and Labour Council), Charles Reeve, Michael Patrick Ryan, Edward Wallace Paton, William Terry, and John Culbert, M.J.C. (members of the Disputas Committee of the Trades and Labour Council). The prosecution arose out of the timber strike.

In order to save time during the trial it was suggested by his Honor to allow witnesses to finish their evidence in chief. Then, if any substantial added overt acts had been included, counsel for the defence could object and if the objection were upheld the matters in question would be struck out of the evidence.

Some discussion then arose over the meaning of the term "particulars."

His Honor: It is not for the purpose of excluding overt acts outside that particulars given.

Mr. Lamb, K.C. (for the prosecution): No, the purpose is to expand the generalities of the count. The depositions are general particulars, and evidence in support is not part of the particulars.

After argument lasting nearly an hour his Honor reaffirmed his ruling.

Harold Russell, works manager of Hudson's. Ltd., continuing his evidence, described the behaviour of the crowds which, he said, gathered round Hudson's yards on July 17, 18, and 19. There was booing and shouting. He heard Garden say to some men on a lorry, "Be men, and come out. We will look after you."

He saw a piece of iron piping thrown by one of the strikers hit Mr. Harold Hudson's car. He also saw stones thrown while the crowd was singing such songs as "We'll hang old Lukin to a sour apple tree."

Cross-examined by Dr. Evatt, witness said the interview which Garden and Culbert had with him was partly of a friendly nature. He admitted that he did not regard any statements made at that interview seriously at the moment, and made no statement to the police until 10 days after. He knew the State



award provided for a 44-hour week all the time he had non-union labour working, but his firm had always worked under the Federal award.

Dr. Evatt: But you know that the Federal award does not apply, except to members of the Timber Workers' Union? - I did not know that.

In argument with his Honor over the relevance of a question, Dr. Evatt said that proceedings were being taken by the timber merchants in the High Court to get rid of the State award, witness's firm was one of the parties concerned.

To Mr. Holman, K.C, witness said the threats of Garden and Culbert were made in the last five minutes of a half-hour interview. Most of the interview was of a friendly nature.

Inspector Parley said that on July 17 there were "many pickets outside Hudson's yards. Garden, Ryan, Paton, Kavanagh, and Culbert were among the pickets. When the workmen left the yard some of the accused said, "Why don't you be men? Why don't you come out with us? We will see you right."

Next day there were several hundred pickets there, including some of the accused. The workmen were approached by Garden. Stones were thrown from the direction of the crowd, striking witness and Detective-sergeant Gallagher. When Garden was told about it he said to the crowd, "Cut that out, boys."

When the workmen left the yard in the afternoon things were "willing," continued witness. As they were attempting to board the tram Paton got on the footboard, and said, "You scabs, you have got your last chance. Why don't you come with us?" He pulled Paton off the tram and arrested him.

Inspector Mackay, chief of the Criminal Investigation Branch, said that on July 19 he saw several stones thrown from the picket lines, one of them striking a worker who was on his way to the tram.

After argument between counsel over the admissibility of evidence relating to matters which occurred after the defendants were arrested and charged, the Court adjourned until 10 a.m. to-day.

Mr S. Ernest Lamb, K.C, with Mr. Wesche (instructed by the State Crown Solicitor), conducted the case for the prosecution. Mr. W A. Holman, K.C, and Mr. T. McMahon, and Mr. Coneybeer (instructed by Mr. Val Akerman) appeared for Culbert and Terry; Dr. H. V. Evatt and Mr. P. W. Berne (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Garden, Paton, Ryan, and Kavanagh; Mr. J. B. Kinkead (instructed by the same firm) for Reeve.<sup>[280]</sup>

#### **25 October, 1929. Conspiracy Charge - Union Leaders on Trial**

After hearing further argument by counsel, Mr. Justice Stephen, at the Central Criminal Court yesterday, ruled that evidence relating to matters which transpired after the seven men, committed on a conspiracy charge, had been arrested and charged, should be admitted.

The accused are John Smith Garden (secretary of the Trades and Labour Council), John Kavanagh (chairman of the Disputes Committee of the Trades and Labour Council, Charles Reeve, Michael Patrick Ryan, Edward Wallace Paton, William Terry, and John Culbert, M.L.C. (members of the Disputes Committee of the Trades and Labour Council). The prosecution arose out of the timber strike.

Continuing his evidence, Inspector MacKay told of seeing a crowd of several hundred people outside Hudson's on August 17 bearing stakes with placards inscribed with slogans.

Witness saw Garden trying to pull a stake away from Sergeant Conlin, who was in charge of the police patrol. He also heard Garden say "These stakes belong to us. The police can be charged with stealing the same as anyone else." When witness remonstrated, Garden released his hold. Witness saw a man throw a stake javelin fashion at a tram, and later he saw Inspector O'Brien hit on the head with another stake. Voluntary workers from Hudson's were on the tram.

Detective-Sergeant Kennedy, describing happenings outside Hudson's yards, said he saw nothing to show that Garden was inciting anyone to violence. Many stones were thrown by the crowd.

Detective-Sergeant Gallagher said that on July 17 he saw several hundred men lined up outside Hudson's yard. Garden walked up and down in front of the picket line and said to workers as they went into the yard, "Come out and join us. You won't lose anything. We'll give you £2/10/ a week and 30/ of rations."

Questioned by Dr. Evatt, Sergeant Gallagher said that some witnesses had failed to identify certain of the accused, about whom they had given evidence. Some of them had had four attempts to do so.

Dr. Evatt: Would it not have been fairer to the accused to have had a line-up for identification? Was not the method you adopted defective?

Witness: No.

Re-examined by Mr. Lamb, K.C., Sergeant Gallagher said there was no necessity for a line-up in the present case, as the accused had been seen by 20 witnesses. There was no doubt about the accused's presence in that locality on these occasions.

Thomas Freeman, a crane driver, employed at Hudson's. Ltd., since the strike began, said that on July 17 he saw about 600 pickets outside the yard. Garden, Reeve, Kavanagh, and Paton were there, and said to the workers: "Come with us boys, it's your last chance. If you don't, we cannot be responsible for what the crowd does." With other workers, witness entered a taxi-cab. The crowd gathered round, and shouted: "Don't take them, driver. They are scabs. If you do, we'll turn the car over." Witness and his workmates then tried to board a tram, but were prevented by the massed pickets from doing so.

The Court adjourned until 10 a.m. to-day.

Mr. S. Ernest Lamb, K.C., with Mr. Wesche (instructed by the State Crown Solicitor), conducted the case for the prosecution. Mr. W. A. Holman, K.C., and Mr. T. McMahon, and Mr. Coneybeer (instructed by Mr. Val Akerman), appeared for Culbert and Terry; Dr. H. V. Evatt and Mr. P. W. Berne (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Garden, Paton, Ryan, and Kavanagh; Mr. J. B. Kinkead (instructed by the same firm) for Reeve.<sup>[281]</sup>

#### **26 October, 1929. Conspiracy Charge - Trades Hall Meeting - Witness Says Violence Was Advocated**

Another legal argument between counsel occurred yesterday, when the trial of the seven union leaders entered upon the fifth day of hearing before Mr Justice Stephen at the Central Criminal Court.

The accused are John Smith Garden (secretary of the Trades and Labour Council), John Kavanagh (chairman of the Disputes Committee of the Trades and Labour Council), Charles Reeve, Michael Patrick Ryan, Edward Wallace Paton, William Terry and John Culbert, MLC (members of the Dispute Committee of the Trades and Labour Council) The prosecution arose out of the timber strike.

Argument concerned the admissibility of certain evidence relating to the arrest of four persons near Hudson's timber yards on the Friday on which mass picketing was carried out. His Honor ruled that

the arrests should be omitted from the evidence, but that the circumstances of two of them should remain.

Thomas Freeman, a crane driver, employed since the timber strike at Hudson's yards, admitted, under cross-examination by Dr Evatt, that when a crowd gathered round the taxi previously mentioned in evidence, he was not molested in any way. He had seen four of the defendants together outside the yard on three different days.

In reply to a question asked by the Jury, witness affirmed that the defendants were together and not among the crowd.

When Roy Bartlett, an employee of Wallace Bros was questioned by Mr Lamb, K C, about a meeting at the Trades Hall a further argument between counsel took place. The jury and the witness left the court while the point was being argued. Dr Evatt, Mr Kinkead, and Mr Holman, K C, joined in an objection to the admission of the evidence, Mr. Holman declaring it to be dangerous and prejudicial to all the accused.

"This is a very difficult matter," said his Honor when argument was concluded. "I have come to the conclusion that I should admit the evidence. Evidence as to what took place on the day of the general meeting I do not think should be admitted. As far as the latter occasion in February is concerned the nature of the allegation is more serious than that of the counts of the indictment. Nevertheless, in the circumstances, I think the evidence is admissible."

When the Jury returned his Honor warned them that the evidence about to be tendered concerned the defendant Reeve. The Jury must consider whether Reeve was connected up with others by a common design to do something by unlawful means.

Bartlett then went on to give evidence concerning a meeting in Room 27 at the Trades Hall, at which defendant Reeve was present. Reeve said it was a secret meeting for the purpose of forming a gang to do away with free labourers. He told the men that they would have iron bars and that when they came into contact with free labourers, they were not to waste time over a drop of blood that could be patched up and the men back at work on the morrow. Reeve also urged them to break the free labourers' bones.

Some of the men present, continued witness, were urged to get employment in the timber yards, "bust" up the machinery, and dislocate the business.

Under cross-examination by Dr Evatt witness said half the discussion at the meeting was "tomfoolery". He was not challenged when he entered the room where the meeting was held. It did not matter to witness if other men were injured as long as witness was not hurt.

After the credibility of witness had been tested by Mr Kinkead the jury intimated they desired to hear no further questions bearing on witness's private life. It would make no difference to the opinion they had already formed about witness.

At this stage Dr Evatt suggested that the jury should see Room 27 at the Trades Hall. His Honor suggested that a plan of the place should be prepared, but the jury intimated their desire to see the actual room, and also the vicinity of Hudson's yards.

The Court adjourned 3.30 pm to enable this excursion to be made. Hearing will be resumed at 10 am on Monday.

Mr Lamb, KC, with Mr Wesche (instructed by the State Crown Solicitor), conducted the case for the prosecution. Mr Holman, KC, and Mr T McMahon, and Mr Coneybeer (instructed by Mr Val Akerman), appeared for Culbert and Terry, Dr Evatt and Mr F W Berne (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for Garden, Paton, Ryan, and Kavanagh, Mr J B Kinhead (instructed by the same firm) for Reeve.<sup>[282]</sup>

### **29 October, 1929. Union Leaders - Conspiracy Charge - "Aspect Of Bias."**

#### **Crown Witness's Evidence.**

There was a remarkable development during the trial of the seven union leaders in the Central Criminal Court, before Mr. Justice Stephen, yesterday.

A witness testified that during the collection of evidence for the trial a promise was made to the loyal workers by the works manager of George Hudson, Limited, who said: "If you stick to us we will stick to you."

Dr. Evatt (for the accused) declared that an intimation had been conveyed to the workers that they would be favoured by the firm if they gave evidence detrimental to and affecting the union leaders.

An application by Mr. Lamb, K.C., to have the Crown witness treated as hostile was disallowed.

The accused are John Smith Garden (secretary of the Trades and Labour Council), John Kavanagh (chairman of the Disputes Committee of the Trades and Labour Council), Charles Reeve, Michael Patrick Ryan, Edward Wallace Paton, William Terry, and John Culbert, M.L.C. (members of the Disputes Committee of the Trades and Labour Council). The prosecution arose out of the timber strike.

#### **The Evidence.**

Michael Schofield, formerly employed by George Hudson, Limited, as a builder's labourer, described the mass picketing. In which accused Paton said to witness and others at work: "Now. you chaps, this is your last chance. Come out with us." Witness replied: "If you threaten me there are police behind who will lock you up." Witness denied that he used a piece of wood similar to a policeman's baton, though, he said, some of the workers had them.

In reply to Dr. Evatt, witness said his baton was a bar of iron rolled in a newspaper. The square hardwood baton (produced) was of a type used by men working in the timber mills during the strike.

Darcy Nolan Smith, an employee of the Metropolitan Water and Sewerage Board, formerly a builder's labourer at George Hudson, Ltd., was examined by Mr. Lamb, K.C. He recalled a conversation with accused Garden on July 17, but said that he did not remember the details of it. Since he gave evidence in the lower court he had had an attack of influenza.

Sergeant Carl Thomas Ferguson, officer in-charge of the Glebe subdistrict, in reply to Dr, Evatt, said that he did not see any policeman dressed as workmen at a mass picketing outside Hudson's on July 18. Police had been drawn from all districts, including a number of young men who did not possess local knowledge of Glebe Point.

Roy Joseph Bartlett, who testified that a speech was given by accused Reeve in room 27 at the Trades Hall at a meeting of the Disputes Committee, was recalled at the request of the Jury.

The foreman of the Jury (to witness) : You have sworn three times that room 27 was a small one, holding about 20 or 30 people.

Witness made no reply.

The foreman: We have seen room 27. It will hold about 200 people, and has a stage in it.

Dr. Evatt proceeded to cross-examine the witness, but the foreman of the jury intimated that they desired to hear nothing further. Witness then left the box.

Sergeant Charles Albert Dein, of No. 2 Police Station, who was on strike duty outside Hudson's mill on July 17, said that the accused Garden, Terry, Paton, Ryan, and Kavanagh went to Wentworth Park, accompanied by pickets, women, and children, where a meeting was held. In a speech Garden said: "There is to be no violence used. Those scabs have got to be persuaded to come out." After knock-off time at the timber mills there was a melee, in which stones were thrown.

Replying to Dr. Evatt, witness said that a small section of the crowd caused all the trouble. From first to last Garden did nothing either to advocate or incite violence.

### **"A Job Is A Job."**

Peter Frank Watson, a timber worker, cross-examined by Dr. Evatt, said: "I would not have given evidence in the first instance, but a job is a job." The works foreman at George Hudson's, Ltd. (Mr. Russell), declared witness, had said to the loyal workers: "If you stick to us, we will stick to you." "I have given evidence now," testified witness, "and I have to put up with it. I could say a lot more. Three days after I gave my evidence I got put out."

Dr. Evatt said that the evidence relied upon by the Crown in this case was offensive conduct and threats by one or all of the defendants, and consisted of evidence of this type of witness employed at Hudson's. There was not a single timber worker outside of Bartlett who was not employed at Hudson's at the relevant time. These witnesses had an intimation made to them that they would be favoured if they gave evidence detrimental to and affecting the union leaders in question. In substance, there was a common design amongst Russell and a number of these men to injure the defendants.

His Honor said that it bore the aspect of bias.

Dr. Evatt (to witness): Did Russell indicate his hostility towards defendants when they were arrested?

Witness: He said, "As long as I am manager of this yard none of the men outside (pointing to the strikers) will ever get back."

Did he say anything further? - He said, I have got these - in a certain place, and I am going to fix them."

Before mass picketing began quite a number of these men were armed? - Yes, with "waddies" as well as revolvers.

Is it a fact that Russell provided money for the revolvers? - Yes, he paid for them.

Mr. Lamb made application that witness should be treated as hostile.

Dr. Evatt contended that witness's attitude had not been hostile or adverse.

His Honor: He has actually said in the box, "I could say lots more if I chose."

After argument, his Honor decided that witness, under the Act, could not be treated as hostile.

Mr. Lamb: When was the first statement made by Russell?

Witness: A week after the men were arrested. At the same time that they were looking round for evidence.

How many workmen had revolvers? - One in every ten.

Why were revolvers carried? - To give confidence to them.

Constable Ernest John Schroeder said that while on special duty he heard Garden call upon the timber workers to come out in a body, and not be branded as "scabs."

The hearing was adjourned till 10 a.m. to-day.

Mr. Lamb, K.C., with Mr. Wesche (instructed by the State Crown Solicitor), conducted the case for the prosecution, Mr. Holman, K.C., and Mr. T. McMahon, and Mr. Coneybeer (instructed by Mr. Val Akerman), appeared for Culbert and Terry; Dr. Evatt and Mr. F. W. Berne (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Garden, Paton, Ryan, and Kavanagh; Mr. J. B. Kinkead (instructed by the same firm) for Reeve.<sup>[283]</sup>

### **30 October, 1929. Quarter Sessions (Before Judge Armstrong.)**

Crown Prosecutor, Mr. V. H. Treatt

#### **Acquitted.**

William Morris, 33, salesman, was charged with having wilfully made a false statement on oath on December 27, 1928, that he was never indebted to Mortons, Limited, and that he had satisfied the firm by certain payments. The accused was acquitted and discharged!

Thomas Reginald Hannan, 33, carpenter, was charged with having attempted to steal £16 from the person of James Napier at Sydney on August 31. The accused was acquitted and discharged. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused.<sup>[284]</sup>

### **30 October, 1929. Union Leaders - Conspiracy Charge – Further Evidence - Carrying of Stakes.**

When hearing was resumed before Mr. Justice Stephen at the Central Criminal Court yesterday of the charge of conspiracy against seven union leaders, evidence was given concerning a demonstration at Glebe on August 11, when stakes were carried by the crowd.

The accused are John Smith Garden (secretary of the Trades and Labour Council), John Kavanagh (chairman of the Dispute committee of the Trades and Labour Council), Charles Reeve, Michael Patrick Ryan, Edward Wallace Paton, William Terry, and John Culbert, M.L.C. (members of the Dispute Committee of the Trades and Labour Council).

Continuing his evidence, Constable Schroeder described a procession of men on Saturday, August 17, at Glebe. Some 600 men were marching in fours, he said, carrying placards nailed to stakes and bearing inscriptions Witness saw defendants Garden and Kavanagh hand out stakes to the crowd. A motor car which had followed the procession carried about 200 of these stakes and placards. Later in the morning two loaded lorries came out of Hudson's yards The crowd, carrying stakes and placards, surged towards them, brandishing the stakes, jeering, and using indecent language. Defendants Garden, Reeve, Kavanagh, and Paton were among the crowd. After a similar incident a little later, witness arrested a man. He saw a man, who was carrying a stake, attack Sergeant Conlin.

Defendant Garden had an argument with two police over the possession of some stakes. He said "Give me that. It is the property of the union." More police arrived and pushed the crowd back from the patrol waggon. Garden then stood on the pavement and cried out in a loud voice: "The police will have their way now. Our turn is next. Our time is coming."



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At this stage Dr. Evatt objected to the admission of this evidence, on the ground that all the incidents referred to took place before the employees at Hudson's had left the yard. His Honor said he would consider the point and give a direction to the Jury later.

Schroeder described how one man in the crowd that surged round a bus when the workers were being escorted away struck Inspector O'Brien on the head with a stick.

To Dr. Evatt, witness said it was rather tactless to send lorries out from the yard while the crowd was waiting for the employees to emerge.

#### **Witnesses' Identifications.**

Arthur Bennett, an employee at Hudson's, was called by Mr. Lamb, K.C., the Crown Prosecutor, the examination-in-chief being confined to a question about witness's name.

Witness, in reply to Dr. Evatt, admitted that during the police court proceedings he had wrongly identified the defendants.

James Robins and Robert Parke admitted similar errors. Parke said that before going into the police court there had been a discussion between several witnesses about the way in which the defendants were placed in Court. A policeman in plainclothes had taken several witnesses down the yard and told them where the defendants were sitting. He could identify the constable as Constable Schroeder.

Schroeder was recalled, and denied telling any witnesses where the defendants were sitting.

#### **Regarded As Bribe.**

Percival Eaton, also employed at Hudson's, told the Court he regarded as a bribe the offer made to him by Garden, of £2/10/ a week and his "tucker." to leave his job.

Harold Russell, works manager at Hudson's, was recalled. He denied having said to any employees that the firm would stick to the men who stuck to the firm. He told the men that those who did their work would have work to do. He said something to that effect before the mass picketing started.

Alexander Gunn, a former employee at Hudson's, said that he had been sent by Mr. Newman to see Mr. Russell and arrange about evidence. After witness returned from the police court, Newman said to him, "What sort of evidence did you give? They'll kill me when I go outside."

Witness replied: "That's all right, but what about me? I don't carry a revolver or a lump of iron, or anything."

Witness told the Court that he had a wife and three children, and was "down and out." Otherwise he would never have gone inside Hudson's yard. None of the accused had ever said anything out of place to him. "One of the accused asked me would I kindly come out," continued witness. "I just explained the position I was in."

After having his memory refreshed with the police court depositions, witness said he was approached by a man, who, the police said, was Culbert. This man offered him 50/ a week to come out.

Francis Webster, another employee at Hudson's, said that two men asked him to give evidence against Paton and Culbert. He did not want to disclose their names.

Dr. Evatt: Have they given evidence? Witness: At the police court-yes.

Then who are they? - Moloney and Strong. Moloney and Stewart, isn't it? - Yes, that's right.

To Dr. Evatt, the next witness, Lewis Andrew Stewart, denied having asked Webster to give evidence against Paton or Culbert. He did not know Paton from Culbert.

Mr. Lamb, K.C., with Mr. Wesche (instructed by the State Crown Solicitor), conducted the case for the prosecution: Mr. Holman, K.C., and Mr. T. McMahon, and Mr. Coneybeer (instructed by Mr. Val Akerman) appeared for Culbert and Terry; Dr. Evatt and Mr. F. W. Berne (instructed by Messrs. R. D. Meagher, Sproule, and Co,) appeared for Garden, Eaton, Ryan, and Kavanagh. Mr. J. B. Kinhead (instructed by the same firm) for Reeve.

Hearing will be resumed at 10 am to-day.<sup>[285]</sup>

### **31 October, 1929. Acquitted - Union Leaders - Conspiracy Charge - Insufficient Evidence.**

Shortly after the Crown case against the accused was completed at the Central Criminal Court yesterday the seven union leaders, who had been committed from a lower Court on a charge of conspiracy, were acquitted by the jury on all three counts of the indictment. No evidence for the defence was heard.

The accused were John Smith Garden (secretary of the Trades and Labour Council), John Kavanagh (chairman of the Disputes Committee of the Trades and Labour Council), Charles Reeve, Michael Patrick Ryan, Edward Wallace Paton, William Terry, and John Culbert, M.L.C. (members of the Disputes Committee of the Trades and Labour Council). The prosecution arose from the timber strike.

#### **Document As Evidence.**

When Mr. Lamb, K.C. (Crown Prosecutor), tendered a document alleged to contain a statement by defendant Reeve. Dr. Evatt objected on the ground that it was entirely new evidence. He was joined in this objection by Mr. Holman, K.C., and Mr. Kinhead, other counsel for the defence.

Mr. Justice Stephen: This could only be admitted with a definite warning to the jury that it is not evidence against this particular accused unless an agreement between him and other persons is proved.

Mr. Lamb intimated that he would not press it if his Honor asked him not to.

His Honor: I think it is too dangerous, Mr. Lamb.

After Detective Lawrence gave evidence relating to demonstrations outside Hudson's yards, Mr. Lamb recalled Constable Schroeder, who, he said, wished to make an explanation concerning a statement he made in the previous day's evidence.

Schroeder said that, after looking at his diary, he found he had brought five witnesses to the police court in a police car. The witness, Parke, was not one of them.

Dr. Evatt: I object. He doesn't want to make a correction at all.

His Honor: That is hardly a correction.

Schroeder said that his corrected statement was that he had been in the police car with witnesses on two occasions, and that on one occasion Parke might have been present.

Further evidence was given by Detective McDermott and Detective-Sergeant Sadler.

Mr. Lamb then announced that certain witnesses who had appeared at the lower court, and who had been subpoenaed for the present trial, were not in attendance at the court, and could not be found.

**The Jury Retires.**

At this stage the foreman of the Jury intimated that the jury would like to retire for ten minutes or so for a special reason. They would like his Honor to outline to them the nature of the conspiracy charge before they retired.

Declaring that the Jury was not to regard his remarks as a summing up, his Honor said that on the first count they had to consider whether the unlawful means charged was violence or threat of violence.

"On the second count," he continued, "you must consider whether there has been such interference as would cause fear of violence, or loss, or such grave insult as would fairly deter persons of reasonable courage from carrying on their work.

"On the third count of unlawful assembly you must consider whether it was an assembly under such circumstances as would be expected to cause a breach of the peace."

The jury understood, of course, added his Honor, that the element of agreement had to be established beyond reasonable doubt.

After a retirement of ten minutes the jury returned, and after a conversation with his Honor retired for a further five minutes. On returning to court the foreman announced that the Jury was of the opinion that there had not been sufficient evidence produced to convict the accused on any of the three counts.

His Honor: I think that can be taken as an indication of a verdict of acquittal.

The Jury then gave a formal verdict of acquittal, and the accused were discharged.

An attempt at cheering in the public gallery was quickly suppressed, but outside the court members of the public crowded round the discharged officials, and congratulated them.<sup>[286]</sup>

**5 November, 1929. Quarter Sessions Appeals (Before Judge Cohen)****Conviction Quashed.**

The Court quashed the conviction of Sydney Colley, 31, machinist, who had been convicted by Mr. Shepherd, S.M., at the Balmain Police Court on October 1 for having assaulted William Alfred Chandler on September 23, also for having thrown a missile and damaged a windscreen, the property of D. Hardy and Sons. For these offences the appellant had been sentenced to three months' imprisonment.

His Honor said he was not satisfied with the evidence of identification, and quashed the conviction.

Mr. Kinkead (instructed by R. D. Meagher, Sproule, and Co.) appeared for the appellant; and Mr. Vernon Treatt for the Crown Law Office.<sup>[287]</sup>

**6 November, 1929. Bank Robbery - Three Men Charged - £2700 Mentioned In Court.**

Bruce Bell, 32, motor mechanic, Alfred Herbert McKaig, 26, plumber, and Donald John McDonald, electrician, were charged before Mr. Macdougall, S.M., at the Newtown Police Court yesterday, with having, on or about October 6, broken and entered the Enmore-road branch of the Commercial Bank of Australasia, Ltd., and stolen about £2700.

The hearing lasted all day, and at the close the defendants were remanded till to-day, each on £ 1000 bail.

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Bell and McKaig were represented by Mr. Kinkead (instructed by Mr. F. A. Newnham), and McDonald was represented by Mr Sproule, of R. D. Meagher, Sproule, and Co.

Constable Toms said that he was In Enmore-road about 11.25 on the night of October 6, when Bell, accompanied by his wife, drove up in a motor car, and said: "Come with me to the bank up the road; it has been robbed." Bell, who was the caretaker of the bank, then drove him to the bank, where it was found that the premises had been entered and the safe opened. On the counter was a sheet, and on the floor was a partly burned tent-fly. During a conversation, Bell mentioned to witness that he had been away at the Mountains for the day. Witness mean-while had sent for assistance, and the night patrol and other police were soon on the scene.

Answering Mr. Kinkead, witness said that Mrs. Bell was in a highly nervous state.

Detective-sergeant Thompson described the safe, and the condition in which he found it. A piece of steel, he said, about 18 inches square, had been removed from the back. He saw Bell later in the day and asked him about an oxy-acetylene plant In his workshop, and some white marks on the piping, which Bell said looked like duco. These white marks, however, were similar to a substance used In the packing of the safe. Bell was subsequently taken to the detective office, where he made a statement.

Continuing, witness said that on October 16 he went to Wollongong police station, where he was shown a number of bank notes, some partly burned, and others bearing traces of a whitish powder. At Wollongong he also saw McDonald, who volunteered a statement that he had cashed certain notes.

Mr. Kinkead: Bell is a man who has never been in trouble in any shape or form whatever.

Witness: I don't want to answer that question.

I want to know. Has he been in trouble before? - Yes. He was convicted of stealing, some years ago.

Constable Beveridge said that he went to the bank on October 7 and asked Bell If he had seen the fly of the tent. Bell replied, "No, they must have brought it with them." With regard to the sheet, Bell said it was his, and had been taken off a bed upstairs. Witness went on to say that he next questioned Bell on his statement made to the police, and asked him if he had ever seen a cutter at work. Bell replied that he had not, and was then informed that an Alexandria firm had stated that they had demonstrated a cutter to him.

Referring to two gas-cylinders, "exhibits" in the case, witness said that one, No. 1172, had been supplied by the Oxygen Supply Co. of Alexandria, and the other had been reported as having been stolen from a Botany firm. They were recovered from Cook's River, near the bridge. When he mentioned the matter to Bell, defendant replied, "I know nothing about them." Bell was shown his signature on a receipt for a cylinder No. 1172, but refused to say anything.

William James Hyland, a carter employed by the Oxygen Supply Company, said that he had delivered cylinder No. 1172 to Bell, who signed for it.

Among witnesses who deposed to McDonald's having paid for goods with scorched bank-notes was Hugh Settree, who is employed by a Corrimal butcher, and who stated that on two occasions he delivered meat to McDonald, who paid with paper money showing traces of damage by burning.

Constable Jonas, of Wollongong, said that he asked McDonald how certain paper money in his possession came to be damaged, and was informed that the clothing in which the notes were placed

had been hung up to dry, and had fallen into the fire. McDonald subsequently produced 27 £1 notes, some of which had white powder on them. In a bedroom witness found six £5 notes, of which McDonald denied all knowledge.

About 20 witnesses have still to be examined.<sup>[288]</sup>

**7 November, 1929. Bank Robbery - "Not an Expert's Job." - Three Men Charged.**

"How long do you think it took to do that particular job?" asked Mr. Kinkead, of an expert witness at the Central Police Court yesterday, with reference to the forcing of the safe in the Enmore-road bank robbery case.

"Two to three hours," replied the witness, who had previously stated that it had not been an "expert's job."

"And," asked the prosecutor (Sergeant Leonard), "how long would it take you to do it?" "Ten to fifteen minutes," was the answer.

Bruce Bell, 32, motor mechanic; Alfred Herbert McKaig, 26, plumber; and Donald John McDonald, 49, electrician, stood charged with having, on or about October 8, broken and entered the Enmore-road branch of the Commercial Bank of Australia, Ltd., and stolen about £2700. The hearing had not concluded when the Court rose, and the accused were remanded, each on £1000 bail. Thirty-three witnesses had been summoned to give evidence.

William Anderson, a clerk, employed by the Oxygen Supply Company, of Belmont street, Alexandria, said that on September 20, Bell asked to see an oxy-acetylene cutter, and was given a demonstration, but did not purchase the apparatus. Continuing, witness said that on September 19 a man, whom he now knew to be McKaig, came to his company's office with a cutter which required repairing, and asked for the loan of another while the repairs were being effected. Witness asked McKaig about the ownership of the apparatus he had brought, and was told that it belonged to the Southern Cross Welding Company. He accordingly lent a cutter to McKaig, who signed for it, the signature resembling "McArthur."

Questioned by Mr. Kinkead, who is appearing on behalf of Bell and McKaig, about a remark to the effect that he was suspicious of McKaig, witness said that Mr. Duncan, of the Southern Cross Company, was not in the habit of sending men for goods, and that the fact of the damaged cutter being warm was not consistent with the story that it came from the Southern Cross premises, which were on Taverner's Hill, on the Parramatta-road.

Detective Lawrence said that at 2 o'clock in the morning on October 13, he overheard a conversation in the Detective Office between Bell and McKaig with reference to a man named Russell, who had been in the room. Speaking of Russell, McKaig said to Bell: "Has he told them anything?" To which Bell replied, "No, I think he is pretty solid. I don't think he told anything." McKaig then said, referring to Russell: "What did he say just now?" Bell's answer being, "He said I was not the man."

Robert John Russell, a motor-driver, said he had known McKaig for six or eight years. On October 8, with McKaig and two other men, he went to McKaig's car to Jubilee Park, where McKaig got out of the car. Witness noticed him "rake around" on the ground. He and McKaig subsequently went to the Traffic Office, where he registered McKaig's car in his (witness's) name, witness paying the fee with seven £1 notes which McKaig had given him for the purpose. The notes were not scorched in any way.

Answering Mr. Kinkead, witness said that he had been kept at the Detective Office from a Friday morning till Saturday afternoon, being under examination practically all the time.

"Someone would let you go, and then someone else took you up again?" suggested Mr. Kinkead.

"Yes," answered the witness.<sup>[289]</sup>

#### **9 November, 1929. Quarter Sessions (Before Judge Curlewis)**

Senior Crown Prosecutor Mr McKean K.C.

##### **Acquitted.**

Reuben Holmes, 36, dealer, and James Roy Rogers, 32, iron merchant, were charged with having stolen 30 feet of 33,000 volt cable, the property of the Municipal Council of Sydney, at Mascot, on August 31. Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for both of the accused.

Mr. Denman, of the City Council, stated that having received certain information, he went out to Mascot and found that 33 feet of electric cable was missing. He traced its conveyance to a paddock, where he saw a fire on which was the cable, and three men, one of whom had been acquitted at the lower Court, standing there with their hands black with the rubber compound. He brought the police to the scene, and the men were arrested.

At the conclusion of the Crown case, the jury intimated that it did not wish to hear anything further, and acquitted both of the accused.<sup>[290]</sup>

#### **15 November, 1929. Counsel Absent - Case Struck Out.**

John Joseph Brennan, salesman, 41, was charged at the Central Police Court yesterday with having obtained about £250 and jewellery to the value of £70 by false pretence.

The Information alleged that defendant represented himself as Myles Clifton, a major in the 6th Hussars, that he was the owner of a mansion on the shores of Lake Winnipeg, Canada; that his mother had left him a legacy of £8000 under her will, and that payment of the legacy was wrongly delayed by the members of the family, and that he was an astronomer by profession.

Mr. Moffitt, the prosecuting counsel, was engaged in another court and, in his absence, Mr. Kinkead applied for an adjournment. He explained that he knew nothing of the facts and that he was not in a position to present the case.

Mr. Shepherd, S.M.: You cannot offer any evidence then.

Mr. Kinkead: No, I cannot.

The Magistrate: The case is struck out. The defendant was then discharged.<sup>[291]</sup>

#### **20 November, 1929. People Who Luxuriate Must Be Prepared To Pay Counsel's Fees Are Often High, but They Know All About It**

Are counsel's fees too high? On more than one occasion Mr. Justice Harvey, Chief Judge in Equity, has expressed the opinion that they are. In the course of a judgment this week, he said that if senior counsel were to be encouraged to come into his court on Fridays, on originating summonses, they would have to come at moderate fees.

Mr. Curtis, K.C.: Whatever may be said about counsel's fees, it must be remembered that they are governed by the ordinary laws of supply and demand, and counsel who can demand large fees will always get them. Fees cannot be fixed. Litigation is a luxury, and people have to pay, for their luxuries.



Mr. Kinkead (criminal barrister) : It would be ridiculous to think of fixing counsel's fees. It is a matter which is adjusted between solicitor and client. If a client wants a certain barrister, a solicitor, knows what it will cost to get him. Do I think the fees are too high?— well, now I ask you.

Mr. Mack, K.C.: Mr. Justice Harvey's comment simply refers to a matter of law. As for counsel's fees generally, it is a matter to be arranged by the client with his solicitor.<sup>[292]</sup>

#### 20 November, 1929. Quarter Sessions (Before Judge Curlewis)

Crown Prosecutor, Mr V.H. Treatt

#### Alleged Conspiracy

Alexander Macqueen, 26, manager; James Simpson, 28, company manager; and William Thomas Corson, 42, printer, were charged with having conspired amongst themselves and with other persons whose names were unknown, to cheat and defraud Maurice Biermann and others of large quantities of goods and sums of money.



Figure 46 - Alexander MacQueen - 1929

Mr. Shortland (instructed by Messrs. Cowper, Stayner, and Wilson) appeared for Corson; Mr, Robert M. Kidston (instructed by Messrs. Seabrook and Co.) appeared for Simpson; and Mr. Kinkead (also instructed by Messrs Seabrook and Co.) for Macqueen.

The allegation by the Crown was that the three accused carried on a business of which the title was New South Wales Cash Orders, which was registered as a firm in July last. They knew that the firm had neither assets nor money, and they were earning on a business which entailed large liabilities. The Crown alleged that the three accused had represented their assets to be £13,000, and that there was an expectation of raising another £50,000.

Maurice Biermann, of the firm of D. Black, man and Sons, tailors, in Park-street, said that he had been approached by Corson, who gave the

name of Jackson, and asked him if he accepted cash orders. He returned next day with an order of the New South Wales Cash Orders Company and ordered a suit of clothes which cost £7/15/. He also ordered an overcoat, the price of which was £4/4/. He went to the office of the company in Pitt-street, where he saw MacQueen to whom he said that as it was the first transaction with the company he would deem it a favour if he would give the cash for the orders. Macqueen said that he would have to go into the matter with Simpson. Later he saw Simpson at the office, who told him that he would have to see MacQueen. The latter just then made his appearance, and both men promised to go into the matter and let him know later. One of his firms branch establishments had also supplied goods on the company's order.

Robert Moulang, a jeweller, carrying on a business in Oxford-street, stated that a man who gave the name of Wilson, came into his shop and produced an order. He supplied him with a three-stone diamond ring, a wrist watch, a fountain pen, and an ever-sharp pencil. He saw Macqueen at the office of the company in Pitt-street, and asked him if the order was all right, and received the reply that it was. He asked Macqueen when he might expect payment, and was told that he would be paid on the 28th of the following month (September). When he cavilled at the delay, Macqueen promised to pay him on 28th of August. A man named Martin had also been supplied with goods to the amount of £17.

Other witnesses gave similar evidence.

In a statement from the dock, MacQueen said that he had made arrangements with a Mr. Harris at North Sydney to finance the company. The only benefit he had had was £6 a week salary. There were no debts.

Cecil Rupert Harris, of a firm of financiers at North Sydney, stated that he had agreed to loan the company £1500 on furniture and shares in the company. He Intended to charge 15 per cent.

Simpson said that the liabilities of the firm when he took possession were £25. He discussed the prospects of the company with several financiers, and he thought they were good. He had intended to float it into a compahy with 15,000 shares, with a nominal capital of 50,000 shares at £1 each.

Corson said that he was not guilty, that Mr Biermann had made a mistake when he said that he (Corson) purchased a suit of clothes from him.

The matter stands part heard.<sup>[293]</sup>

### **21 November, 1929. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr V.H. Treatt

#### **Bogus Cash Orders – Conspiracy Charge**

The trial was concluded of Alexander Macqueen, 28, manager, James Simpson, 28, company manager, and William Thomas Corson, 42. printer, of having conspired to cheat and defraud a number of persons of large quantities of goods and money.

Mr. Shortland (instructed by Messrs. Cowper, Stayner, and Wilson) appeared for Corson; Mr. Robert M. Kidston (instructed by Messrs. Seabrook and Co.) for Simpson; and Mr. Kinkead (also instructed by Messrs. Seabrook and Co.) for Macqueen.

The allegation by the Crown was that Macqueen and Simpson were carrying on a business known as the New South Wales Cash Orders, and that the firm had neither assets nor money.

Corson was acquitted and discharged, and Macqueen and Simpson were convicted.

In pleading for leniency in respect of his client, Mr Kinkead suggested that his Honor might bind him over and tell him to make restitution.

His Honor: What is he going to make restitution with - Cash orders?

Mr Kidston also pleaded for his client, suggesting that he was not really guilty, but his Honor passed down a letter written by Simpson in which he had told Detecvive Wylie that he was prepared to turn Kings evidence and betray his accomplices and saying that he had only been a tool. Mr Kidston also suggested that his client might be ordered to make restitution, to which his Honor replied, How is he going to do it? Has he a rich grandmother?

Both prisoners were sentenced to 23 months' hard labour.

### **Larceny And Receiving**

Allen Lingard, 41, blindmaker, and Sidney Hogden, 24, blindfitter, were charged with having stolen 1082 pulleys, 367 blind-shoes, and a very large quantity of other material on some day in September, from Samuel Walder, Limited, the value of the goods being about £57.

Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for Hogden, who pleaded guilty to larceny, and was bound over in his own recognisance in £2 to come up for sentence if called upon within two years. Mr Edgar Cohen (instructed by Mr. E R. Abigail) appeared for Lingard, who was convicted of receiving, and sentenced to six months' hard labour. <sup>[294]</sup>

### **26 November, 1929. Peculiara Assault Charge – Sydney, Tuesday.**

At the Central Court George Ross, aged 35, agent, was charged with having assaulted Edna Denning, aged 8½ and Richard Moreton with having assaulted Rosa Denning. The Police Prosecutor said it was alleged the two defendants, with the father of the child, drove up in a taxi and seized the child from its mother and drove away. Mr. Kinkead, for the defence, said the circumstances would disclose a most extraordinary case of immorality. The men were remanded on trial. <sup>[295]</sup>

### **27 November, 1929. Labour Organiser Breaks Recognisance.**

Charles Reeve, labour organiser, appeared before Mr. Perry, S.M., at the Central Police Court yesterday with regard to a breach of the conditions of a recognisance.

On July 11 last Reeve was charged at the court with having collected money in the Domain on June 2. He was discharged conditionally upon his entering into recognisance of £10 to be of good behaviour for twelve months, and to appear for conviction and sentence when called upon at any time during that period.

Reeves was fined £5 on September 19 last for having addressed an assemblage in the Domain and with having used language on that occasion that would be likely to cause a breach of the peace.

Mr. Kinkead, who appeared for the defendant, said Reeve had given up collecting.

Sergeant Cummins, Police Prosecutor: Will defendant give an undertaking that he won't break these regulations in future?

Mr. Kinkead: Yes.

The magistrate inflicted a fine of 10/ with costs totalling 8/. <sup>[296]</sup>

### **29 November, 1929. Assault Charge – Woman Still In Hospital**

Before Mr. McMahan, S.M., at the Central Police Court yesterday, Joseph Ward, labourer, aged 57 years, was charged with having assaulted Vera Ryan on November 13, causing actual bodily harm.

In applying for a remand until December 12, Sergeant Dennis, Police Prosecutor, said the woman was still in hospital, and it was thought she would not be in a fit state to leave the institution for a fortnight. It was alleged that defendant had hit her over the head with a bottle.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) said he would not oppose a remand. It was said his client and the woman lived in the same residential, and on the date in question they were drinking together. Argument arose and the woman is believed to have thrown boiling water over Ward, and he retaliated by hitting her with a wine bottle. Ward had not been able to get bail, and whilst in gaol had been treated by the gaol doctor for severe burns, and he was still

bandaged. It was essential to defendant's case that one witness should be got, and this witness had not been traced. He asked for a reduction of bail to enable him to leave gaol so that this witness could be found.

The remand to December 12 was granted by the magistrate, and bail was reduced to £40.<sup>[297]</sup>

#### *13 December, 1929. Young Housebreaker – Theft of Jewellery*

Jack Cooper, or Larry Edwards, an apprentice, aged 18 years, was charged before Mr. McMahon, SM, at the Central Police Court yesterday with having broken and entered the dwelling-house of Michael Mansour at Coogee on December 3, and stolen therefrom jewellery and liquor to the value of £90.

Constable H. A. Smith said that when searched at Darlinghurst Police Station defendant was found to have in his pockets a watch, a brooch, and two necklets. Later defendant said that he was with a boy named Norman North when he committed the theft. When asked what he had done with a bottle of whisky and a bottle of champagne, which were among the items stolen by defendant, he said "we didn't like it so we threw it in the gutter." The defendant had not previously been known to the police. He was apprenticed to an engineering firm at Waterloo, but had lately been off duty owing to an injured finger.

Mr. Kinkead, who appeared for the defendant, said it was difficult to find a reason for the boy's lapse except in the absence of parental control. The defendant's mother, a respectable woman, had married again, and the lad had missed the influence of a father. He asked that defendant be dealt with as a first offender.

Mr. McMahon, S.M.: There is only one reason for the boy's lapse and that is that he is inherently dishonest. He has not been pressed into stealing for want of money, because he has been in constant employment. Certainly lack of parental control may lead to dishonesty. Young people seem to go where they like and do what they like. Sympathy is often misplaced. I am not lacking in sympathy but I am placed in a position where I have to see that the community gets a fair deal. I am always willing to help culprits, but sickly sentiment towards these young criminals is misplaced. In the hope that this experience will prove to be the turning point of his career I shall sentence defendant to six months' imprisonment, and the sentence will be suspended subject to a bond for £40 being entered for defendant to be of good behaviour for three years. In addition he will have to pay compensation for the loss of the whisky and champagne totalling £1/10/.<sup>[298]</sup>

#### *14 December, 1929. Quarter Sessions Appeals (Before Judge Edwards.)*

##### **Policeman's Appeal Upheld.**

Lacey Bradbury, a police constable, appealed against his conviction by Mr. W. J. Camphin, S.M., at the Kogarah Police Court on November 12 last, when he was fined £5 and costs on a charge of having assaulted one Herbert Hayes. After hearing further evidence and argument, his Honor upheld the appeal, and quashed the conviction. Mr. Kinkead appeared for the appellant; and Mr. R. M. Sturt and Mr. A. H. Ferguson (instructed by Messrs. W. H. Hill and Truman) for the respondent.<sup>[299]</sup>

#### *17 December, 1929. Quarter Sessions No. 1 Court (Before Judge Armstrong.)*

Crown Prosecutor, Mr. V. H. Treatt.

##### **Assault.**

George Robinson Caris, 30, labourer, was charged with having assaulted Alfred John Shirt, at Sydney, on October 18, occasioning him actual bodily harm. There was an alternative count of common assault. Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for the accused.

Shirt said that he was a saw-sharpener, and was walking along the street, carrying a number of saws in each hand, when he accidentally bumped the elbow of the accused with his own elbow. He apologised and passed on, but the accused came after him, and, calling him "a scab," struck and kicked him, fracturing his jaw. He was not a timber worker.

The accused said that Shirt, when passing him, cut his coat with his saws, and witness spoke to him, telling him not to be so clumsy. Shirt, he alleged, used bad language, and raised his hand to strike him; therefore, in self-defence, he struck Shirt, and knocked him down.

The accused was convicted of common assault, and remanded for sentence.

#### **Forgery And Uttering.**

Colin Leslie Sterling, 17, who had been employed as a clerk in the Commercial Bank of Sydney, pleaded guilty to having forged and uttered a number of cheques, for sums varying from £5 to £35. The total amount was said to be £110.

Mr. Kinkead (instructed by Mr. R. F. Stuart-Robertson) appeared for the accused, who was bound over in recognizances of himself and one surety in £20 each, to come up for sentence if called upon within three years, a condition of his release being that he paid into Court forthwith the sum of £110, or be called up for sentence. The money was paid into Court.

#### **Alleged Assault.**

Daniel Patrick Joseph O'Connor, 24, rammer; Thomas Laurence Christian, 25, labourer; and Joseph O'Neill, 34, labourer, were charged with having assaulted Constable Deery, at Pymont on August 17 occasioning him actual bodily harm. There was an alternative charge of common assault.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for Laurence and O'Neill; Mr. F. A. Newnham appeared for O'Connor.

The case stands part heard.<sup>[300]</sup>

#### **18 December, 1929. Quarter Sessions No 1 Court (Before Judge Armstrong)**

Crown Prosecutor, MR V.H. Treatt.

#### **Acquitted.**

Daniel Patrick Joseph O'Connor, 24, rammer, Thomas Laurence Christian, 25, labourer, and Joseph O'Neill, 34, labourer, were charged with having assaulted Constable Charles Harold Deery at Pymont, on August 17, causing him actual bodily harm. There was an alternative count of common assault.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for Christian and O'Neill; and Mr. F. A. Newnham for O'Connor.

The constable said that he had been on duty in Fig-street, Pymont, about 10.45 p.m. on August 17, when he saw the three men, who were drinking beer and using indecent language. He told them to go home. He returned later, and found them sitting in the same place, engaged as before, and again he told them to go home. Christian rose and struck him over the forehead with a bottle. He struggled with Christian and O'Connor, and was gradually getting weaker, when Christian again struck him and got away. O'Connor was arrested.

Christian and O'Neill each pleaded an alibi, while O'Connor said that the constable had attacked him.

The three accused were acquitted and discharged.<sup>[301]</sup>

**19 December, 1929. Court Of Criminal Appeal**

(Before the Acting Chief Justice (Mr. Justice Ferguson), Mr. Justice James, and Mr. Justice Halse Rogers.)

Mr. Weigall, K.C., appeared for the Crown.

**Wanton Driving - Rex v Bellomi.**

Percy Bellomi was charged and convicted before Judge Curlewis on November 29 of wantonly driving a motor car on October 11 in Lane Cove-road, and inflicting bodily harm on a motor cyclist named Butler, for which he was sentenced to two years' imprisonment with hard labour. Bellomi appealed, alleging that the conviction and sentence were against the weight of evidence, that the trial Judge had inadequately directed the jury upon a plan as to the relative positions of certain vehicles at the time of the accident, and that the sentence was excessive. In view of the jury's recommendation to mercy. Evidence was given at the trial that the appellant passed the police station on the night of the accident travelling at a speed of 45 or 50 miles an hour, and that at a later stage of his progress pedestrians who saw him coming refrained from crossing the road, preferring to remain on the footpath to "see what happened." The trial Judge reported that he had decided to inflict the full penalty allowed, irrespective of the jury's recommendation.

Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co.) appeared for the appellant.

The documents filed under this appeal, revealed the fact that the appellant had a long record of convictions for various offences, including reckless driving, In New Zealand, Victoria, Queensland, and New South Wales.

The Court declined to interfere with the conviction and sentence, and dismissed the appeal.<sup>[302]</sup>

**19 December, 1929. Quarter Sessions No 1 Court (Before Judge Armstrong)**

Crown Prosecutor, MR V.H. Treatt.

**Assault.**

George Robinson Caris, 30, labourer, who had been convicted of committing an assault on Alfred John Shirt, was bound over in recognisances of himself and one surety in £25 each to come up for sentence if called upon within two years, a condition of his release being that he pay £25 to the Clerk of the Peace for Shirt at the rate of 10/ a week, or be called up for sentence.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for the prisoner.<sup>[303]</sup>

**20 December, 1929. Cheapleys, Ltd. - Alleged Conspiracy - Six Men In Court.**

Before Mr. Laidlaw, S.M., at the Central Police Court yesterday. Morris Abraham Kutner, auctioneer, aged 37 years: Daniel Joseph Rogers, auctioneer, 65; Albert Monroe Cameron, auctioneer, 27; Albert Arthur Ellisdon, merchant, 60, Harry Roden, auctioneer, 39, and Harry Levy, broker, 67, were charged with having between July 1 and November 30 last conspired together, and with other persons unknown, to defraud such persons as should be induced to give credit to Cheapleys, Ltd, or to A. A. Ellisdon, by the false representation that Cheapleys, Ltd., was a company in a sound financial position, and that Ellisdon was a man possessed of a large amount of property, and that he was in such a sound financial position that promissory notes given by him might be accepted and regarded as a good security to persons giving credit.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Coy.) appeared for defendants.



Sergeant Napper, Police Prosecutor, said it was alleged that goods to the value of £65,000 were involved. Of that amount it was further alleged all that was left was £15,000 in stock and £3,000 in the bank.

Mr Laidlaw, S.M.: What about the conspiracy? What did they do?

Sergeant Napper: It is alleged that the defendants disposed of the goods at half price or at any price they could get. Some of the goods were missing. The Crown was prosecuting, he said, in applying for an adjournment.

Mr Kinkead applied for a reduction bail in respect to Ellisdon and Roden, this having been fixed, he said when they were arrested, at £1,000 each. The men, he stated, were not likely to attempt to leave the State or otherwise abscond. Ellisdon had been in Sydney for the past twenty years.

Mr Laidlaw: In view of what you say, I will reduce bail substantially.

The defendants were remanded to February 10th, bail in each case being fixed at £200.<sup>[304]</sup>

#### **24 December, 1929. Quarter Sessions (Before Judge Armstrong.)**

Senior Crown Prosecutor, Mr. McKean, K.C.

#### **Receiving.**

Sydney Alfred Matthews, 28, taxi-cab driver, Arthur Norman Dawes, 22, labourer, Ernest Claude Dawes, 19, mechanic, and Leo William King, 24, taxi-cab driver, were charged with having received £12, six suits of clothes, and a very large quantity of other goods, consisting of cutlery, clothing, and other articles, the property of Charles Schultz and Emily Schultz, at Lane Cove, on September 22.

Mr. Kinkead (instructed by Mr. Mervyn Finlay) appeared for Matthews; Mr. Sproule (of Messrs. R. D. Meagher, Sproule, and Co.) for King; and Mr. P. Roach for Arthur and Ernest Dawes.

Matthews and King were convicted, with a strong recommendation to mercy. Arthur Dawes, against whom there was a long list of previous convictions, was convicted. Ernest Dawes was acquitted. Matthews was sentenced to six months' hard labour, Arthur Dawes to two years' hard labour in Bathurst Gaol, and King was bound over in recognisances of himself and one surety in £20 each to come up for sentence if called upon within two years.

Several other charges were preferred against all the accused, who pleaded not guilty, Ernest Dawes, who had been acquitted on the charge before the Court, was allowed his liberty on his entering into his own recognisance in £40 to appear for trial when called upon.<sup>[305]</sup>



Figure 47 - Sidney Alfred Matthews - 1929

## Barrister – 1930

## Overview

Date	Accused	Action	Offence	Result
17 January 1930	James Edward Devine	Defended	Murder	Remanded
17 January 1930	Beckett's Newspaper Ltd	Defended	Indecent Publication	Convicted
25 January 1930	Peggy Thomas	Defended	Appeal	
25 January 1930	Dorothy Simms	Defended	Consorting	
25 January 1930	Jean Wilson	Defended	Consorting	
25 January 1930	Ada Baker	Defended	Consorting	
25 January 1930	Matilda Divine	Defended	Consorting	
8 February 1930	John Hamilton Emblem	Defended	Break & Enter	Convicted
8 February 1930	Alexander Lyle	Defended	Break & Enter	Convicted
8 February 1930	Sidney Smith	Defended	Break & Enter	Convicted
8 February 1930	Frank Johnson	Defended	Break & Enter	Convicted
11 February 1930	Albert Munro Cameron	Defended	Conspiracy to Defraud	
22 February 1930	Alexander Cunningham	Defended	Perjury	Convicted
28 February 1930	William La Rue	Defended	Receiving	Convicted
28 February 1930	Herbert Wilson	Defended	Receiving	Convicted
11 March 1930	Alfred Fitch	Defended	Break & Enter	Convicted
12 March 1930	Leslie George Mitchell	Defended	Robbery	
12 March 1930	James Richard Morgan	Defended	Robbery	Acquitted
20 March 1930	Arthur T.D. Ryan	Defended	Drink Driving	Convicted
27 March 1930	Vincent Thomas Hughes	Defended	Assault	Acquitted
27 March 1930	Charles Toner	Defended	Break & Enter	Convicted
28 March 1930	John O'Connor	Defended	Break & Enter	Acquitted
11 April 1930	William Henry Shervey	Defended	Larceny	Convicted
11 April 1930	Arnot Henry Johnson	Defended	Larceny	Convicted
29 April 1930	Thomas Edward Hannan	Defended	Assault	Acquitted
5 May 1930	Andrew Percy Matthewson	Defended	Civil Matter	Convicted
7 May 1930	William Gurney	Defended	Receiving	Convicted
7 May 1930	Stanley Gurney	Defended	Receiving	Convicted
14 May 1930	Jennie Bowen	Defended	Appeal	Upheld
14 May 1930	Robert Davis	Defended	Theft	Convicted

20 May 1930	Reginald Amory	Defended	Theft	Convicted
20 May 1930	Eric Newlyn	Defended	Theft	Convicted
23 May 1930	Adam Baronowsky	Defended	False Pretences	Acquitted
28 May 1930	J.R. Shepherd	Defended	Assault	
30 May 1930	Alexander Johnson	Defended	Break & Enter	Convicted
30 May 1930	John Charles Edwards	Defended	Break & Enter	Convicted
7 June 1930	Jacob Bloomfield	Defended	False Pretences	Convicted
13 June 1930	George Vincent	Defended	Theft	Acquitted
14 June 1930	Walter Wallis Rogers	Defended	Larceny	Convicted
14 June 1930	Reginald Victor Sulis	Defended	Larceny	Convicted
18 June 1930	Sydney James Lucas	Defended	Receiving	Convicted
18 June 1930	Michael Keith Koni	Defended	Receiving	Convicted
18 June 1930	William Thomas O'Brien	Defended	Break & Enter	Acquitted
20 June 1930	Thomas Keith Boyd	Defended	Embezzlement	Acquitted
24 June 1930	Frederick Leslie Clissold	Defended	False Pretences	Convicted
25 June 1930	Carl Rudolph Nitschke	Defended	Perjury	Convicted
28 June 1930	Jack Chapman	Defended	Theft	Convicted
28 June 1930	Noel Melene	Defended	Break & Enter	Convicted
11 July 1930	Alfred Herbert McKaig	Defended	Break & Enter	Convicted
18 July 1930	Robert George Wade	Defended	Break & Enter	Acquitted
18 July 1930	Charles Henry Searle	Defended	Break & Enter	Convicted
18 July 1930	Frederick Arthur Petersen	Defended	Malicious Damage	Acquitted
25 July 1930	John Stanley McDonald	Defended	Manslaughter	Acquitted
26 July 1930	James Joseph Roach	Defended	Receiving	Acquitted
29 July 1930	Patrick Francis Roache	Defended	Assault ABH	Acquitted
29 July 1930	Thomas William Law	Defended	Assault ABH	Acquitted
15 August 1930	Leslie Salmon	Defended	Break & Enter	Convicted
15 August 1930	Francis Field	Defended	Receiving	Acquitted
16 August 1930	Gerald Vincent English	Defended	Forge & Utter	Convicted
16 August 1930	Raymond Friselle	Defended	Forge & Utter	Convicted
16 August 1930	Albert David Rothwell	Defended	Larceny	Convicted
16 August 1930	Thomas Christian	Defended	Break & Enter	Acquitted
19 August 1930	Bruce Bell	Defended	Break & Enter	Convicted
21 August 1930	Maurice Stewart Cobcroft	Defended	Manslaughter	Acquitted
29 August 1930	Herbert Oswald Baker	Defended	Larceny	Acquitted

29 August 1930	Henry Duncan Gardner	Defended	Larceny	Convicted
5 September 1930	Charles Frederick Laurence	Defended	Murder	Convicted
24 September 1930	Francis Reginald Norman Earnell	Defended	Forge & Utter	Convicted
24 September 1930	Alfred Hayes	Defended	Fraud	Convicted
4 October 1930	Leonard Bartlett	Defended	Appeal	Upheld
14 October 1930	Albert Gammel	Defended	Receiving	Acquitted
14 October 1930	George Jepson	Defended	Break & Enter	Acquitted
14 October 1930	Arthur Joseph Rudge	Defended	Embezzlement	Acquitted
14 October 1930	Charles Thomas Farrell	Defended	Break & Enter	Convicted
14 October 1930	Arther Palmer	Defended	Break & Enter	Acquitted
14 October 1930	Vero Aston	Defended	Break & Enter	Acquitted
25 October 1930	Thomas Jarrett	Defended	Assault GBH	Acquitted
30 October 1930	Dyra Ellen Salway	Defended	Divorce (Civil)	Dismissed
5 November 1930	John Thomas Law	Defended	Break & Enter	Committed
11 November 1930	Percy James Sheppard	Defended	False Pretences	Convicted
11 November 1930	John Andrew Davidson Pugh	Defended	Armed Robbery	Convicted
11 November 1930	Jack Couani	Defended	Break & Enter	Convicted
11 November 1930	Frank McGowan	Defended	Stealing	Convicted
11 November 1930	Leslie George Knight	Defended	Break & Enter	Acquitted
14 November 1930	Cecil Francis McCue	Defended	Appeal	Allowed
19 November 1930	William Henry Rogers	Defended	Malicious Damage	Convicted
19 November 1930	Harry Crawford	Defended	Malicious Damage	Convicted
19 November 1930	Ellis Mourer	Defended	Malicious Damage	Convicted
19 November 1930	John Sylvester	Defended	Malicious Damage	Convicted
19 November 1930	Sydney Andrew Huxter	Defended	Malicious Damage	Convicted
19 November 1930	Robert Charles Williams	Defended	Malicious Damage	Convicted
19 November 1930	Frank Bailey	Defended	Malicious Damage	Convicted
19 November 1930	Kelson William Long	Defended	Malicious Damage	Convicted
19 November 1930	James Lance Fairfax	Defended	Malicious Damage	Convicted
19 November 1930	Joseph Thomas Carr	Defended	Malicious Damage	Convicted
19 November 1930	George Nesbitt	Defended	Malicious Damage	Convicted
19 November 1930	Percy Joshua	Defended	Malicious Damage	Convicted
19 November 1930	Timothy Fenton	Defended	Malicious Damage	Convicted

19 November 1930	Arthur William Davey	Defended	Malicious Damage	Convicted
19 November 1930	Clarence Dawes	Defended	Malicious Damage	Convicted
19 November 1930	Cecil Joseph Phillips	Defended	Malicious Damage	Convicted
19 November 1930	Walter Henry Lawson	Defended	Malicious Damage	Convicted
19 November 1930	Joseph Collins	Defended	Malicious Damage	Convicted
19 November 1930	William Roer	Defended	Malicious Damage	Convicted
19 November 1930	Augustus John Trump	Defended	Malicious Damage	Convicted
19 November 1930	Wilfred Mountjoy	Defended	Malicious Damage	Convicted
17 December 1930	Doreen May Flanagan	Defended	Manslaughter	Acquitted
17 December 1930	Isabella Foreman	Defended	Manslaughter	Acquitted
19 December 1930	John Gentles	Defended	Theft	Committed
21 December 1930	Doreen May Flanagan	Defended	Manslaughter	Acquitted
23 December 1930	Joseph Morris	Defended	Attempted Murder	Committed

## Articles

### *17 January, 1930. Alleged Murder – Green and Devine Again Remanded*

*Francis Donald Green, 27, and James Edward Devine, 27, charged with having murdered Bernard H. Dalton, have been again remanded.*



Figure 48 - Francis Donald Green - 1923

Green is also charged with having maliciously wounded Walter Tomlinson and Edward James Brady.

The charges arise out of a shooting affray outside the Strand Hotel at the corner of William and Crown streets, East Sydney, on November 9.

At the Central Police Court yesterday Sergeant Dennis asked for a remand until Monday next, as the Coroner had arranged to hold his inquiry on that date.

Mr. Moseley, who appeared for Green, asked that bail be granted his client, but the application was refused.

Mr. Kinkead, instructed by Messrs. R. D. Meagher, Sproule, and Co., who appeared for Devine, asked that the terms of bail, which was fixed at £700, be altered.

Devine was required to report to the police station daily, and his movements

were under constant surveillance. He could not go away for a day, even to Cronulla.

Mr. Williams, S.M., varied the terms of bail to permit Devine more freedom, but he will be required to report his movements to the police. He will have to report his arrival at any destination.

The accused were remanded till Monday next.<sup>[306]</sup>

**17 January, 1930. Office Raided - Indecent Publication Confiscation, £20 Fine**

In the Central Summons Court today; Beckett's Newspaper, Ltd., was called on to show cause why certain articles seized by the police should not be destroyed or forfeited.

Mr. Laidlaw ordered the forfeiture of the articles (matrices and blocks) and imposed a fine of £20. Mr. Laidlaw said he understood there had been some liquidation proceedings against Beckett's newspaper.

Mr. Kinkead (for the defence): That is right. The liquidator is at present In court, but the paper is still Beckett's Newspaper, in liquidation.

The S.M. expressed doubt as to whether or not the liquidator should have been proceeded against in the name of the company. If an order were made against the paper, and a penalty imposed, he might apply for an injunction, and refuse to pay.

Mr. Rogers (for the Crown): I am not concerned about the fine, so long as I get the order. We have very cogent means of compelling them to pay.

After further argument the magistrate made an order for the forfeiture of the articles (matrices and blocks). There was a second information, charging defendants with being the occupiers of premises where an indecent publication was found.

Detective Lawrence said that on January 15 he purchased six copies of the paper. Later he entered the premises, by virtue of a special warrant, and seized 250 copies of the paper, one of which he produced.

Mr. Laidlaw said he would not impose a fine without having first carefully examined the paper. He adjourned the hearing until 2 p.m. for that purpose.

After the lunch adjournment the magistrate said he had made an inspection of the issue complained of.

"Apart from the objectionable advertisement about certain books." said Mr. Laidlaw. "the printed matter is not as bad as that which was contained in the issues put before me on a previous occasion."

"In view of the previous conviction, however, I must impose a substantial penalty," he added. A fine of £20 was imposed.

Mr. Rogers (Crown Law Officer, appeared for the prosecution: Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule and Co.), for the defendant newspaper.<sup>[307]</sup>

**25 January, 1930. Drunken Drivers and Medical Men's Fees**

When, at the Central Police Court yesterday, a man was charged with having driven a motor car while under the influence of liquor. Mr. Kinkead, who appeared for the defendant, said that the police should have called a doctor immediately to examine the man.

Mr. Williams, S.M., said that the Act did not require that of the police. The man charged, however, was entitled to call a doctor.





Figure 49 - Matilda Devine - 1925

Sergeant Dennis (police prosecutor): Who would pay the doctor's fee if he was called by the police and the defendant was discharged?

"I don't think there would be much trouble about that," suggested Mr. Williams. "If a doctor got me out of a charge I would not mind paying him."

"But there are some ungrateful men about," murmured the sergeant, out of his wide experience.<sup>[308]</sup>

#### 25 January, 1930. Consorting Law – Appeal Against Conviction Lodged.

One of the unsuccessful applicants to the Supreme Court on Thursday for an order restraining Mr. H. H. MacDougal, S.M., and the police, from proceeding further upon convictions under the consorting Act, Peggy Thomas, 29, appeared at the Central Police Court yesterday on a charge of offensive behaviour in Elizabeth-street on January 6.

Mr. Kinhead, who appeared for the defendant, said that an appeal had been lodged against the sentence of three months' imprisonment imposed upon her by Mr. MacDougal. The appeal would be heard at the Quarter Sessions next month. The defendant was remanded until February 21 by Mr. Laidlaw, S.M.

Dorothy Simms, a waitress, aged 21; Jean Wilson, 18; Ada Baker, 18; and *Matilda Devine*, 29, who were charged with having consorted with known women of the streets, were also remanded by Mr. Laidlaw, the hearing being fixed for February 4.

Referring to the case of *Devine*, Mr. Kinhead said that his line of defence would be to show that the defendant had no unlawful purpose in the street at the time. He had asked to be supplied with the particulars concerning the actual dates and times at which the offences were alleged to have taken place, and the names of the known women with whom the defendant was supposed to have consorted. The sergeant had undertaken to supply those particulars.<sup>[309]</sup>

#### 8 February, 1930. Quarter Sessions No. 1 Court (Before Judge Armstrong)

Crown Prosecutor, Mr V.H. Treatt

#### Sentences.

The following persons, who had either pleaded guilty or had been convicted during the week, were dealt with as stated:

John Hamilton Emblem, 19 labourer, two charges of housebreaking three years' hard labour, at Emu Plains Prison Farm. His Honor said that he would allow the prisoner to petition at the end of 12 months. Mr Kinhead (instructed by Mr F A Newnham) appeared for the prisoner.

### Shopbreaking

Alexander Lyle 21, carter, and Sidney Smith 22, labourer, were charged with having broken and entered the shop of Ernest Sydney Steele, at Earlwood, on December 15, and stolen 153 packets of cigarettes and other goods.

Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for both of the accused who each pleaded guilty, and were bound over-Lyle In recognisances of himself and one surety in £30 each to come up for sentence if called upon within two years and Smith In recognisances of himself and one surety in £20 each to come up for sentence if called upon within 12 months.

No 2 Court - (Before Judge White ) - Senior Crown Prosecutor, Mr McKean, K C  
Sentences

The following persons, who had either been convicted or had been convicted during the week, were dealt with as stated:

Frank Johnson, 28 hoist driver, warehousebreaking, 12 months' hard labour in Goulburn Reformatory. Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for the prisoner.<sup>[310]</sup>

### **8 February, 1930. Interjection Altered Everything - Judge Changed Mind in Youth's Favor**

Forgetfulness by a constable nearly had serious results for Sidney Smith (22), who was charged yesterday at Darlinghurst Sessions with breaking and entering.

Constable Steele, of Earlwood, said that Smith associated with motor thieves, and had been arrested in a stolen car. He forgot to add that Smith had been acquitted. Only an excited interjection by Smith, when Judge Armstrong told his counsel, Mr. Kinkead, that the youth could not be treated as a first offender, brought the fact out. "That alters the whole thing," said the judge, and accepted the surety of Smith's mother for 12 months. "I'm very sorry, madam," he said. "So am I," she replied.<sup>[311]</sup>

### **11 February, 1930. Cheapley's, Ltd. - Conspiracy Charges - Evidence Of Losses £40,000 In Five Months.**

Seven men appeared at the Central Police Court yesterday before Mr. Shepherd, S.M., on charges of conspiracy connected with the firm of Cheapley's, Ltd.

The charges were that Benjamin Newburg, 30, broker, Joseph Wilson, 45 auctioneer, Morris Abraham Kutner, 38, auctioneer, Harry Roden, 39, auctioneer, Harry Levy, 67, broker, Albert Munro Cameron, 27, auctioneer, Albert Arthur Ellisdon, 60 merchant and Nathan Mandelson 69 broker, on divers days between July 1 and November 30, 1929, conspired together to defraud such persons as thereafter should be induced to give credit to Cheapleys, Ltd, or to A A Ellisdon, for goods supplied to Cheapley's, Ltd , or Ellisdon, by false representation, that Cheapley's, Ltd , was a company in a sound financial position, that Ellisdon was a man possessed of a large amount of property, that he was in a sound financial position, and that promissory notes given by him might be accepted and regarded as good security.

It is expected that more than 50 witnesses will be called, and a special Court is dealing with the cases.

At the beginning of the case Daniel Joseph Rogers, 65, auctioneer, who had been listed as one of the defendants, was discharged, the Crown Prosecutor stating there was no evidence against him.

During the evidence it was stated that for the last five months of its existence the operations of the company resulted in a loss of more than £40,000.

Charles Allen Law, chartered accountant and co-liquidator of the company, said that in January, 1928, Roden, whom he met in 1927, approached him regarding the auctioneering business of L Marks, which he desired to buy for the purpose of forming into a company, to be registered as Cheapley's, Ltd. The company was registered and 300 shares were purchased for cash by Mrs Roden.

#### **Capital Of £507.**

Early in 1929 the paid-up capital of the company was £507, and in June of the same year Roden told witness he had interested Ellisdon in the company, saying that he was reputed to be a wealthy man, and that if Ellisdon entered the company it would probably do larger business. Witness said he told Roden that that would be a good thing for the company, as it had very little working capital. Later witness had an interview with Ellisdon, who agreed to take 4000 shares. At a meeting of the company witness resigned his position as its secretary, Mrs Ruby Roden resigned as a director, and Ellisdon was appointed as chairman of directors in her stead Roden was appointed as manager of the company at a salary of £20 a week and 2½ per cent on turnover, subject to an agreement with the company, which was later entered into. Subsequently Ellisdon was invested with the full power of a board of directors. The paid-up capital of the company was about this time £507, comprising the shares held by Ellisdon and Mrs Roden. Witness said shops were opened at 338 and 104 and 112 Pitt-street and at 418, 604, and 706 George-street, Sydney. The sales at each shop were recorded on loose sheets, and the amounts banked were checked with the sheets at the head office. The stock came to the head office, from which it was distributed to each shop. At the shop at 418 George-street, for six weeks the takings totalled £932/6/10, but, after deducting various charges for stock, etc, there was a loss of over £111/18/6 on the sale of the goods while the other losses amounted to about £50 a week. Following upon a financial report which was placed before the directors, they decided to take stock at the warehouse, with a view to arriving at the financial position of the company and ascertaining its profit or loss. Subsequently the auditor reported to the company that as it was unable to continue its business it would be justified in going into voluntary liquidation. At a meeting of the company on September 27 it was decided that it should be wound up. Witness produced a balance-sheet of the affairs of the company.

#### **Creditors Of The Company.**

This showed there was a loss of £40,079/6/4 in the last five months of its operations. Amounts due to various creditors of the company totalled £57,615/3/3. This sum was made up of liabilities by Cheapley's, Ltd. £7793/17/, and guaranteed by Ellisdon, £49,621/6/3. Between July 1 and November 26, 1929, the company's bank deposits were £26,836/2/4, representing sales. During the same period the goods purchased cost £73,000 odd, and of this amount £12,562 had been actually paid. Stock in hand at the date of the company going into liquidation was £11,885/7/2. Trading losses amounted to £31,207/18/10. Some of the loss could be accounted for by underselling. A line of slippers purchased at 1/6 to 1/8 a pair were sold on an average at 1/1 a pair. The purchases and sales respectively in 1929 for August were £12 828/9/5 and £5378/13/; September, £15 860/13/7 and £6991/3/4, October, £30,578/13/2 and £10 339/3/1; and November, £6814/16/10 and £6720/10/1.

At the date of Cheapley's liquidation, said witness, Ellisdon was shown to be liable for £3800 as a contributory to the company. The balance-sheet presented to the shareholders showed that at October 31, 1929, the stock in hand was £13,394, the sales for that month were £10,339/3/7, the losses £6845/8/3, and the purchases were £30,578/13/4. When witness told Ellisdon that the company was going into liquidation and that he was liable under his guarantees, Ellisdon said he was not in a position to fulfil them, and later assigned his estate to witness and E S Spooner. Witness said that so far the company had only been able to realise £200 on the stock. Cheapley's held 1500 shares

in Lincoln Records, Ltd, of which witness and Spooner were also the liquidators. The value set against these shares was £500, but it was not anticipated that Lincoln Records, Ltd, would pay 20/ In the £.

Cross-examined by Mr Bradley, who appearing for Ellisdon, witness said that when Roden ran Cheapleys, Ltd, as a "one-man" shop he made £2700 in one year.

Mr Bradley: So that it was a pretty good thing for Ellisdon to come into?

Witness: Yes.

The hearing of the case will be continued to-day at 10 am.

Mr Sproule of Messrs R D Meagher, Sproule, and Co, appeared for Roden, Mr. W J Bradley (instructed by Messrs R D, Meagher, Sproule and Co) for Ellisdon, Mr, Kinkead (instructed by Messrs R D Meagher, Sproule and Co) for Cameron, Mr H E. Mcintosh for Kutner Mr Asche for Mandelson and Mr Berne (instructed by Messrs R D Meagher, Sproule and Co ) for Wilson and Levy, and Mr N McTague (instructed by P. McTague) for Newburg.

Mr Barry, of the Crown Solicitor's Office, conducted the case for the prosecution.<sup>[312]</sup>

12 February, 1930. Cheapley's, Ltd. - Conspiracy' Charges - Eight Men Before Court.

Hearing was continued yesterday at the Central Police Court, of the charges of conspiracy arising out of the affairs of Cheapley's, Ltd.

The charges were that Benjamin Newburg, 30, broker, Joseph Wilson, 45, auctioneer, Morris Abraham Kutner, 38 auctioneer, Harry Roden, 39, auctioneer, Harry Levy, 67, broker, Albert Munro Cameron, 27, auctioneer, Albert Arthur Ellisdon, 60, merchant, and Nathan Mandelson, 69, broker, on divers days between July 1 and November 30, 1929, conspired together to defraud such persons as thereafter should be induced to give credit to Cheapley's, Ltd, or to A A Ellisdon, for goods supplied to Cheapley's Ltd , or Ellisdon Charles Allen Law, chartered accountant, formerly secretary of Cheapley's, Ltd, and now a co-liquidator of the company with Mr E S Spooner, was cross-examined by Mr Bradley, who appeared for Ellisdon.

Witness said it was obvious in October last that there was trouble in the business. There were 10 branches in the city, and four in the country. Sales sheets, showing the money and goods handled at each shop, were sent to the head office daily.

Mr Bradley: As a result of your stocktaking at the George-street shop, did you find that the stock was disappearing? - I could not say that definitely.

What was the rent of that shop? - The cash book shows £45 a week.

At the time of your stocktaking it was shown that Ellisdon was liable under his guarantee for £50,000? – Yes.

In addition, he was liable for the 4000 shares he had taken up in the company? – Yes.

So that Ellisdon is the biggest Individual loser? - Yes.

#### **Ellisdon's Position.**

Witness, in reply to further questions by Mr Bradley, said that Ellisdon had claimed at one time that if his interests in Tuggerah Estate Ltd, were realised it would provide sufficient to pay the whole of his own and Cheapley's Ltd liabilities. The estate referred to comprised 328 acres. So far as witness knew the estate had not been subdivided. Ellisdon had never been bankrupt before. When the business of

Cheapley's Ltd, was extended the sales increased considerably over the first four months. In July the sales were about £1800 and in September they had reached £6900. The stock in Cheapley's, Ltd sold on behalf of the liquidator of the company, realised 12/10 in the £1 on the invoiced price, and produced between £7000 and £8000. The wholesalers who had originally sold their goods to Cheapley's were the 'urgers' in the matter. "How," said witness, smiling, "they are ranking as creditors.

Cross-examined by Mr Sproule on behalf of Roden, witness denied that he induced Ellisdon to join Cheapley's, Ltd. He denied saying to Ellisdon that it was a "good thing". His object when he saw Ellisdon was merely to give him any information in respect of the accounts of the company, and to explain its position before he came into it. It might have been Roden's object to get Ellisdon into the firm. When Ellisdon was about to Join the company witness did not think it was good or bad, just a fair thing. It was a "good thing" for one man in one shop if properly managed.

From your experience of business you know that all the shops have "draw" lines and sell things really under cost in order to continue with something else? – Yes.

In reply to Mr Berne, who appeared for Wilson and Levy, witness said that where a cashier was employed at the shops the auctioneers would not probably have any control of the money received for the sale of the goods. There was no record in the books of the company of any payment for commission or other remuneration to Levy.

To Mr McIntosh witness said that Wilson and Kutner did not hold any shares in Cheapley's. Their only interest was as employees.

Replying to Mr Kinhead, witness said there was one transaction by the Austral Costume Co with Cheapley's-on bills to Newburg, who ranked as a creditor of Cheapley's for £65/5/, which was the amount of the transaction with the Austral Costume Co. Witness did not know if Newburg was the proprietor or manager of the Austral Costume Co Cameron had an account with Cheapley's for £307/11/4. Witness did not know whether the business at 706 George-street, city, at the time it was sold by Ellisdon to Cameron, was paying. Records of the company showed that following upon a report by a director that the shop at 706 George-street was showing a loss. It was decided at a meeting of the directors to sell the business to Cameron at the stock valuation of £500.

Re-examined by Mr Barry, witness said that Tuggerah Estates, Ltd, had been valued at £47,000, and he had been informed that when it was put up for auction there was not a bid for it.

After lunch, Mr McIntosh submitted no offence could be alleged against Mandelson.

Mr Shepherd, S M: Remember, there are 85 witnesses.

In answer to further questions witness said Lincoln Records, Ltd, was showing a profit until the trade slumped. The climax came when a duty of 1/3 a record was imposed. Ellisdon had said he placed no value on the 15,000 shares held by him in Lincoln Records Ltd.

Mr Law concluded his evidence after being in the box for over 8 hours.

#### **Purchase Of Goods.**

William O'Reilly, clerk employed by Law, produced invoices for goods sold to Cheapley's, Ltd, from July 1, 1929 until November 27, 1929 (the date of liquidation). Only one firm, that he knew of, had sold slippers to Cheapley's, consisting of 12,858 pairs of these, 1846 pairs had been sold by the

company. At the date of liquidation there were 2787 pairs in stock, leaving 8225 pairs unaccounted for.

Julius Bult, manager of the Commonwealth Finance Co 136 Pitt-street, Sydney, said he knew Ellidson, who told him that Roden had put about £300 into Cheapley's and that he, Ellidson, intended to invest £2000 in it, 'to give it a fly'. Ellidson said he was chairman of directors of the company. Witness said at the time, that he did not know Cheapley's. Ltd and would not trust them. Ellidson then asked witness if he would trust him if he endorsed a promissory note. He told witness he had about £50,000 invested in mortgages on property and that witness could rest assured the money would be safe. On July 10 1929, when witness delivered some flannels to Cheapley's for £ 122/3/, Ellidson gave him a pn for the amount.

Cross-examined by Mr Sproule witness said that when Ellidson told him he had £50,000 invested he considered it reasonable to accept his pn for £100 for six months. Witness was a moneylender.

Suppose I went to you and said I was worth £100,000, would you lend me £5? (Laughter ) - Do you want it? (Laughter)

What do you finance? - Anyone with good security.

Charles Frederick Vinerhall proprietor of Vine and Hall Clarence-street Sydney said Ellidson told him that Cheapley's business was a good one that a £5000 company was better formed and that he was at the back of the business. He asked witness to indent 500 cabinets of cutlery for the company. A contract for 100 a month was entered into. He had previously told Ellidson that his firm did not do business with auctioneers on credit. An indent order for prompt cash was made out and one shipment had been executed. The goods had not been delivered and were still in bond.

Further evidence will be taken to-day at 10 am.<sup>[313]</sup>

#### **19 February, 1920. Cheapley's, Ltd. - Conspiracy Charge - Mandelson Discharged.**

Twenty-eight witnesses were still to be examined when the hearing of the charge against eight men associated with Cheapley's, Ltd., was continued before Mr. Shepherd, S.M., at t Central Court yesterday.

Mr. Barry said that, in view of what the magistrate had said about Nathan Mandelson on the previous day, he proposed to call two witnesses.

Reginald Paige, secretary of Commercial Importers, Ltd., Clarence-street, said he knew Mandelson. On August 29 witness had an interview with him regarding watches. Mandelson asked the best terms he could get for the purchase of watches, that his client would not pay cash. He was told 60 days would be allowed, and returned a day or two after with a letter signed Cheapley's, Ltd. Witness asked Mandelson if it was a good account, and was told he could make his own inquiries.

Mr. Barry: You subsequently handed some gold and silver watches to Mr. Ellidson? Yes.

And you handed him a promissory note for £497/7/8, and an invoice? - Yes; Mr. Ellidson signed the note.

To Mr. McIntosh: Witness made inquiries regarding Ellidson, and was perfectly satisfied with what he heard. Mandelson asked, in the presence of another man, if he had influenced the sale of the watches, and he said, "No."



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**Sale Of Goods.**

Godfrey Israel Levy, section manager for Keep, Macpherson, Ltd., George-street, said he knew Mandelson, with whom he had done business. He told Mandelson he would supply any goods on an order signed by Ellisdon or Roden, provided it was O.K.'d by his own office.

Mr. Barry: What is the total amount of money now owing to your firm? - £676.

Mr. Sproule: Roden made no representation as to Ellisdon's standing? - None whatever.

You invariably made inquiries before goods were supplied, no matter who approached you? - Yes.

To Mr. McIntosh: I knew Mandelson as general broker. Mandelson made no false statements in placing orders for Cheapley's.

The magistrate asked Mr. Barry if he could carry the case against Mandelson any further and if he could advance any reason why he should not be discharged.

Mr. Barry explained that Mandelson had introduced people to Cheapley's, Ltd., and arranged sales.

The magistrate was informed that Mandelson was a general broker, and had done business for others. He then said he thought he should be discharged.

Mr. McIntosh asked his Worship to say that Mandelson left the court without a stain on his character; and was told by Mr. Shepherd that until a man was convicted he should not be considered to have a stain on his character. "I will go further, and say he never should have been here," said Mr. Shepherd.

Mandelson was discharged.

**Purchases And Payments.**

Frederick Oswald Williams, a traveller spoke of a conversation he had had with Ellisdon last year. Ellisdon asked, "What would you say if you heard I was going in with Roden in the auctioneering business again?" Witness replied, "I would be very much surprised. Didn't you lose enough before?" Ellisdon added that he thought the auctioneering business was coming good again. Afterwards he met Roden, who said, "Ellisdon is coming into the business with me and I should now be all right." Roden placed an order for teasetts and clocks, the condition being cash in seven days. On September 10 witness called at Cheapley's and saw Roden and Ellisdon. "What do you want?" the latter asked. "I have called for a cheque, the goods were sold at cash on seven days. Ellisdon turned to Roden and asked if it were correct, and, being informed that it was so, drew a cheque for the amount. Ellisdon subsequently said that if witness wanted to do business with them it would have to be on 60 or 90 days.

Mr. Barry: What is the total amount owing to your firm? - £108/6/.

"Subsequently," said witness, "I saw Roden and said to him, 'I understand the business has failed,' and Roden replied, 'Yes.' Roden added, 'I cannot understand how the losses have been so big. Ellisdon has taken charge of the business, and has practically let me know nothing. He has done all the banking and I can't really say how the losses have occurred.' "

To Mr. Sproule: When Roden told me Ellidson was willing to guarantee the accounts and endorse the p.ns. I did not bother about it. I told Roden that Ellidson was reputed to be wealthy. Roden never boasted or made any representations about Cheapley's, Ltd., finances.

To Mr. McIntosh: I never saw Kutner selling there at any time, to the best of my knowledge.

Alfred Emil Schoefel, representative of the Wurtemberg Electroplate Company, York-street, said that he knew Newburg, who called at his place in September last. Newburg said he was representing a very substantial concern, and that before divulging the name he wanted to know if he could get 10 per cent, on any sale.

"The name he gave was A. A. Ellisdon," said witness, who added that he had done many thousands of pounds' worth of business with that firm.

#### **Tea Sets For Newcastle.**

Newburg had a look round, and came to what he considered a suitable line-nickelplated teaset. Then he asked the terms of payment, and was informed that their only transactions were for cash. The next visit was from Ellisdon and Roden. Ellisdon informed witness that they wished to see the goods shown to Newburg. They were shown these goods, which were sent to Newcastle. The value, including brokerage, was £119. Ellisdon told witness, when asked about payment, that it would be made on the last Friday of November. "The next thing I heard was that about the time for payment the firm had gone into liquidation," added witness.

To. Mr. Bradley: Up to the time of this transaction witness had no knowledge of any of the men. He obtained a report from the Merchants and Traders' Association regarding Ellisdon, and was satisfied with it. When Ellisdon and Roden came in to inspect the goods he did not tell them he was adding 10 per cent, on to the cost.

Joseph Tonkin deposed to the sale of fountain pens at 78/ per gross to Cheapley's, Ltd., and to having heard 14 days later that a man named Levy had sold them to another man named Beardsmore at 52/. He called on Ellisdon, and said, "Come down to Beardsmore and let us find out about these fountain pens." Ellisdon's explanation was that Levy was probably short of money, and was making a quick sale. Witness told him it was spoiling the market.

The hearing will be resumed this morning.

Mr. W. J. Bradley, instructed by Messrs. R. D. Meagher, Sproule, and Co., appeared for Ellisdon; Mr. Sproule, of Messrs. R. D. Meagher, Sproule, and Co., for Roden; Mr. Kinkead, instructed by Messrs. R. D. Meagher, Sproule, and Co., for Cameron; Mr. Borne, instructed by Messrs. R. D. Meagher, Sproule, and Co., for Wilson and Levy; Mr. Sproule, of Messrs. R. D. Meagher, Sproule, and Co., for Newburg; and Mr. H. E. McIntosh for Mandelson.<sup>[314]</sup>

#### **21 February, 1930. Cheapley's, Ltd. - Conspiracy Case - Witness Tells Of Threat.**

Comparatively slow progress is being made in the Cheapley's, Ltd., conspiracy case at the Central Police Court, and many witnesses are still to be called. Seven persons are answering the charge. Mr Shepherd SM, is the presiding magistrate. The ninth day of hearing was entered upon yesterday.

Julian Miren manufacturers' manager, of Parker-street, Sydney, testified that he knew Newburg, and had lunch with him last July. Levy, one of the defendants, was present. Levy said he represented Cheapley's, Ltd, a firm which ran businesses in town and country. The principal of the firm was Mr Ellisdon, Levy said, a wealthy man, who owned a lot of property. Witness was afterwards introduced to Ellisdon who said he did business on six months' bills but witness said he could only do business on four months' bills.

"Later on," said witness, "I got an order for 3500 bags, costing about £2000." The bags were delivered between August and October. While they were in Mockbell's Cafe, either Levy or Newburg said, "Any business we do with Cheapley's Ltd, we want 10 per cent commission." Later on witness

paid them jointly £35, and following that another £10. He also gave Newburg £55. Witness subsequently gave a bill for £111 in payment of commission.

To Mr Bradley: Witness said he had known Newburg for three years as an honest and truthful man "I am satisfied that in this business he acted honestly and truthfully," he added.

### **Missing Slippers**

Detective-sergeant Wilson said that on December 5, he saw the defendant Cameron at 706 George-street, Sydney, and asked him if he owned the auction room. Cameron replied that he did, and that he had purchased it from Cheapley's, Ltd, for £650. Cameron denied that since taking over the business he had received any goods from Cheapley's. Witness informed him that a motor lorry was seen loading goods from Cheapley's, Ltd, since he (Cameron) had taken over the business. A tarpaulin had been put over the goods, and it was followed to the auction room and unloaded. Cameron replied, "The only goods that came here covered with a tarpaulin were from another firm". On December 18 witness saw Ellisdon in the street, and said to him, "I would like you to accompany me to the detective office, I have a warrant for your arrest " At the office he told Ellisdon that he had a list referring to slippers bought from a city company for 1/8½ per pair, and hold for 1/1½ per pair. "There are thousands missing," witness said, "can you account for them?" Ellisdon did not answer.

"There were 2100 pairs on hand at the time of the liquidation," witness next said to Ellisdon, "and 8912 pairs are unaccounted for." Ellisdon offered no explanation. Roden, when he was arrested, gave no information either.

Mr Kinkead: Do you know that Cameron told the police a case of goods was returned from the country, that it was at Darling Haibour, and that Cameron said his carter would not take delivery because it had been interfered with?

Witness: Yes.

If Cameron had not told you that there was a case there you would not have known anything about it? - That is so.

Witness said that cases of goods had been returned from the country. He knew that Cameron had bought from other people.

### **An Alleged Threat**

Leonard Richard Simpson was called.

Mr Berne objected to the witness giving evidence. This man, he said, had been in court during the proceedings, and for that reason his evidence was not admissible.

Mr Shepherd: You don't seriously suggest that because a man does not go out of court he should not give evidence in the case.

Mr Berne: I suggest the Crown should not call him. Other counsel objected also.

Mr Shepherd S M: I admit the evidence on the grounds of public policy - not on the question of the establishment of a prima facie case. I admit it to ventilate a charge that has been made that a witness was threatened with something if he give evidence in the case.

Mr Bradley and Mr Kinkead objected.

Simpson said that at 4 pm on Friday he was walking down Pitt-street from the court after the hearing of evidence had concluded for the day. He received a tap on the back and heard someone say, "I

want to see you." Turning round he noticed a man named Herbie Jackson, who once worked for Cheapley's Ltd Jackson said, "What are you doing at court?" Being informed that that was his business, Jackson said "I - well want to know if you are for the Crown or for Roden?" Simpson replied, "That's my business, if you want to hear the evidence go to the court." "I want to know now what you are going to say," Jackson replied "If you do not tell me and I hear you are going for the Crown your life won't be worth 2d after the case."

"I was walking away," continued Simpson, "when Jackson said "In the meantime hold this," at the same time aiming a blow at me, I saw it coming and took it on the back of the neck." He reported the matter to a policeman on duty and to Detective-sergeant Smith.

Mr Shepherd: You have no reason to believe Jackson was instigated by any of the defendants in this case?

Witness: No it was just personal bias.

Examined by Mr Barry, Simpson said that during the second week in November he had occasion to go to Cheapley's and saw a van being loaded with various things. That was the week Cameron started his business in George-street. He afterwards saw the lorry being unloaded outside the George-street shop. Roden and Cameron were in the shop at the time.

To Mr Berne: He remembered looking in at the court during the hearing of evidence, but he was not inside for more than 10 or 20 seconds.

"I was told by Detective Wilson to look in," said Simpson, "to ascertain whether the man who assaulted me was in court. I did not stay."

The case will be resumed at 10 am to-day.<sup>[315]</sup>

#### **22 February, 1930. Cheapley's, Ltd. - Conspiracy Charge - Newburg Discharged.**

The list of remaining witnesses in the Cheapley's, Ltd., conspiracy case had been narrowed down to 13 when the taking of evidence was resumed at the Central Court yesterday morning.

Oscar Blau, managing director of Parker, Low, and Co., said that an order was received through Levy, and as the result of an interview bills for payment, signed by Cheapleys, Ltd, and endorsed by Ellisdon, were handed over. These bills were returned un-paid by bank.

In answer to Mr. Bradley, witness said that having made inquiries from outside sources, he decided to do business with Cheapley's, Ltd.

To Mr. Barry: Witness paid brokerage to the amount of £50 as part of the commission, and said the balance of £18 would be paid when the first bill was met.

Percy Andrews, acting manager for Louis A. Scott, a manufacturers' agent, carrying on business in Pitt-street, told of a visit from Newburg, who arranged for the sale of 125 glass bowls, claiming at the same time 10 per cent, commission on the transaction. Cheapley's, Ltd, bought the articles, which witness informed Ellisdon was to be a cash transaction. The amount owing was £61.

Mr. Sproule asked the Court to discharge Newburg, since no evidence had been adduced which would convict him with any wrong-doing.

Mr. Shepherd, S.M.: Mr. Barry, can you carry the case against Newburg any further?

Mr. Barry: No, your Worship.

Mr. Shepherd: Well, I order his discharge.

Catch Prices.

Thomas Joseph Brown, a traveller employed by Hill Bros, Ltd., carrying on business at Lee-street, Chippendale, as underwear manufacturers, said that on September 12 he received an order from Ellisdon for goods to the value of £936. A guarantee was prepared by solicitors and signed by Mr. Ellisdon, and £800 worth of goods were delivered. At the end of November £149 worth of goods were sent in, but were not taken delivery of. He did not see Ellisdon again till November 25, when he asked for a cheque, and Ellisdon replied, "No, the money is not due till the end of November - it will be fixed up then." Towards the end of the week Ellisdon told witness they were going into liquidation.

To Mr. Barry: The total indebtedness of Cheapley's, Ltd., to his firm was £805/2/3.

Michael Speigel, a merchant, carrying on business at 160 Castlereagh-street, said he submitted an offer of carpets to Ellisdon at a price of £700. They were sold to him, and a shipment from Melbourne of approximately £300 value was also delivered.

To Mr. Bradley: I was selling the carpets cheaper than usual. I made inquiries from three banks, and one of them said they would discount Ellisdon's bills. Mr. Ellisdon told me to make my own inquiries.

John Elsen, an indent agent, with last witness, said he was present at an auction sale in Pitt-street, and saw some carpets disposed of. Wilson was the auctioneer, - he thought. Carpets of various sizes were sold at between 25/ to 37/6. They were sold to Cheapley's, Ltd., for from 30/ to £4/5/. Witness saw one carpet about 11 x 13 sold for 37/6. He was surprised to see it sold at that price.

Mr. Sproule: These carpets are very shoddy? - They are made out of Jute.

#### **Auction Room Manners.**

Leonard R. Simpson, who gave evidence on the previous day, was examined by Mr. Bradley, and said that he saw Ellisdon stop a sale in the auction room because goods were being sacrificed. Ellisdon was very upset at what was being done. People who bought some goods were asked to return them, and their money was refunded.

Mr. Kinkead: Cameron objected to your language before you were put off? - That's a lie.

And he objected to your hours of attendance? - Yes.

And to your insulting manner towards him and his customers' - I was not insulting to him; he was insulting to me.

Witness denied having come in contact with the police in Adelaide.

Mr. Berne said that he understood Mr. Barry had no further evidence to call regarding Levy. He proposed to address his Worship on the matter if his Worship had not made up his mind.

Mr. Shepherd thought it better to wait till some evidence concerning Cameron had been taken.

Alice May Roberts, cashier and bookkeeper, residing at Annandale, explained the system of bookkeeping adopted in Cheapley's auction rooms. The returns and sheets always went to head office at the end of the day. When Cameron took over the George-street shop he engaged her at a salary of £2 per week. She remembered one case of goods being sent to Taree. When she first went to Cheapley's she was told to watch all the men and report if anything went wrong.

Mr. Berne, addressing the Bench, said he thought the time appropriate to ask for the discharge of Levy, against whom, he declared, there was no evidence whatever of conspiracy.

Mr. Shepherd, S.M., in adjourning the case till Monday, said that he did not hold out much hope of doing what Mr. Berne asked. He would hear him further on Monday.

Mr. Kinkead asked his Worship if he had made up his mind with regard to Cameron, now that all the evidence against him appeared to have been tendered.

Mr. Shepherd replied that he would hear Mr. Kinkead on this matter on Monday also.

The case was thereupon adjourned till Monday, at 10 a.m.<sup>[316]</sup>

*22 February, 1930.* Quarter Sessions No. 1 Court (Before Judge Armstrong.)  
Senior Crown Prosecutor, Mr. McKean, K.C.

#### **Sentenced.**

The following persons, who had either been convicted or had pleaded guilty during the week, were dealt with as stated:

Alexander Cunningham, 48 years of age, perjury, bound over in recognisances of himself and one surety in £30 each, to come up for sentence if called upon within two years. Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for the prisoner.<sup>[316]</sup>

#### *25 February, 1930.* **Cheapley's Ltd. Conspiracy Charge Nearing the End**

The Cheapley's, Ltd., conspiracy case was continued at the Central Police Court yesterday. It is expected that the hearing will be concluded today.

Mr Berne continued his argument yesterday in support of the application for the discharge of Levy.

The magistrate refused the application.

William James Payne, manager and part proprietor of the Variety Chocolate Co, carrying on business at Eveleigh-street Redfern, was examined. He said that with a man named Papworth he went to Lincolns buildings and was introduced to Ellisdon, Papworth said, "This is the man who is behind me and will guarantee your account" Ellisdon said nothing.

Mr Barry: Did you have a guarantee drawn up by solicitors?

Witness: Yes.

Did Ellisdon sign it? - Not till next day.

After receiving that guarantee, did you supply any chocolates to Papworth? – Yes.

Witness added that he obtained a second guarantee and subsequently visited the Square and Compass Auction Rooms where he saw chocolates which he had sold for 12/6 per dozen boxes being disposed of at 1/ each. Witness asked why the chocolates were being sold at that price and was told that they were being disposed of as a "business getter".

To Mr Shepherd: The amount owing to witness under the guarantee was £1340.

#### **Money For The Business**

James Lisson, an adviser in the employ of the Merchants and Traders' Association Ltd, carrying on business at 17 Martin-place said he had asked Ellisdon how Cheapley's were doing. Ellisdon said the indications were very satisfactory, and very favourable. He said "We are entering into a new phase of



it, and are putting a lot of money into it, expenses are high but I am hopeful we will make a success of it". Ellisdon said he had purchased an interest in the company to the extent of £4000. He said they were £1 shares, on which he said he had paid application money of about £200, and the balance to be paid as required. Ellisdon told him he was interested in various properties in several suburbs and said that on a fair market he probably would be worth £30,000 or £40 000.

Sydney Joseph Van Gelder, city traveller for H Wolfson and Co, York-street, said that Roden had said to him, "My troubles are now over, I have a very financial man going into the business. At the present time I cannot divulge his name." Witness's firm supplied goods from time to time. Witness some time later complained to Ellisdon that Wilson, an auctioneer at the Square and Compass, was selling goods below cost, and Ellisdon said he would have to get rid of Wilson if that was the case. Roden said, about this time, "The business has practically been taken out of my hands, I can find out very little that is doing at the present time." Roden went to Orange, and when he returned he found the Square and Compass business had been disposed of to a man named Cameron. Roden told witness that if he had been in Sydney at the time he would have bought the business, as in his opinion, it was one of the best branches.

To Mr Kinkead: When he saw Wilson selling he seemed to be doing his work in a proper manner.

Detective-sergeant Royal stated that he saw Levy on December 9 and told him he had a warrant for his arrest. Levy had come to the detective office himself, and when questioned said he knew both Ellisdon and Roden. He added that whatever business he had done was on commission. Beyond that he refused to discuss the matter.

Archibald Beatty, one of the managing directors of Richardson and Wrench, Ltd, stated that on June 25, 1926, he made a valuation of Budgewoi Estate, near Tuggerah Lakes for A A Ellisdon and William Walker. His estimate was that in subdivision form subject to the construction of roads, clearing and preparing for sale, with a margin of profit for sale on terms, the gross total would be £47,027/10/, an unimproved valuation of the property was fixed at about £ 12,000.

Two witnesses are to be cross-examined this morning, and addresses of counsel will be entered upon.<sup>[317]</sup>

#### **26 February, 1930. Cheapley's, Ltd. - Conspiracy Charge - Hearing Of Evidence Ended.**

The taking of evidence in connection with the Cheapley's, Ltd , conspiracy case was concluded at the Central Police Court yesterday, when one new witness was examined and several persons who had previously given evidence were re-examined.

About 50 witnesses have been called since the opening day. The length of time occupied in the hearing constitutes a record for the court.

Mr. Berne asked for the production by the Crown of certain books. Entries contained therein would throw considerable light on Levy's transactions with Cheapley's, he said. These transactions, so far as his client was concerned, were perfectly innocent.

Samuel Watkin, an auctioneer and valuator, carrying on business at Martin-place, said that in September, 1926, Ellisdon called upon him. Ellisdon wanted to know whether witness would take charge of the Budgewoi Estate, Tuggerah Lakes, on their behalf, and hold auction sales if witness considered it an estate that would readily sell. The estate comprised 320 acres. An arrangement was made to inspect the estate. Witness informed both Mr. Ellisdon and a Mr. Walker, who was also present, that the estate would appeal to the public if the water-front blocks were put up for sale at a reasonable price and given anything from three to five years' terms of payment. Witness's first

valuation was for £72,000, but that was withdrawn, as it included land already dealt with. He informed the vendors and prepared another valuation of £56,000, provided a boarding-house was built on the estate, and a motor boat and bus service arranged. It was very doubtful whether the estate would realise £25,000 at the present time.

Mr. Kinkead submitted that there was no case for Cameron to answer. "If there is one man who should never have been before the Court it is Cameron," he urged.

David Llsson, re-examined by Mr. Bradley, said he had known Ellisdon for 25 or 26 years, during which time Ellisdon's reputation was good. He believed that he had associated with some of the best business people in Sydney; and was connected at various times with some very large concerns. Witness remembered him buying Falmouth Chambers, a very valuable property, and selling it again. Witness also knew that Ellisdon formed the Lincoln Records Company, which was a fine thing until the duty spoiled it. "Ellisdon is the last man I would expect to be associated with a conspiracy," he said.

This closed the Crown case.

Mr. McIntosh said that there was no case against Kutner. All his transactions had been proved to be those of a straight-forward, honest man. The only thing that could be urged against him was that he had sold some goods under value; but this was a common practice with many business people to make trade for other articles. There was no suggestion that an arrangement existed between Kutner, Roden, and Ellisdon for Kutner to sell under value.

Mr. Bradley addressed the Court at some length on behalf of Ellisdon, and directed the attention of the magistrate to the fact that many witnesses for the Crown had testified to his client's straightforwardness and honesty. On the evidence, he said, there was no case against Ellisdon.

Mr. Bradley had not concluded his address when the Court adjourned until 10 o'clock this morning.<sup>[318]</sup>

#### **28 February, 1930. Quarter Sessions No. 2 Court (Before Judge White)**

Senior Crown Prosecutor, Mr. McKean, K.C.

##### **Receiving.**

William La Rue, 23, and Herbert Wilson, 25, both labourers, were charged with having received a gramophone, 45 records, a pair of field glasses, and two boxes of chocolates, which had been stolen from Leslie John Herron at Homebush on December 27. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for both of the accused.

Both men were convicted. La Rue was sentenced to 18 months' hard labour in Bathurst Gaol, and Wilson was bound over in recognizances of himself and one surety in £40 each to come up for sentence if called upon within 18 months.<sup>[319]</sup>

#### **11 March, 1930. Quarter Sessions No. 2 Court (Before Judge White)**

Crown Prosecutor, Mr. T. S. Crawford.

##### **Store-Breaking.**

Alfred Fitch, 23, and George Leslie Humphries, 26, both labourers, were charged with having broken and entered the store of Union Theatres, Limited, at Sydney, on February 6, and stolen 20 yards of carpet and a sports pin, belonging to Charles Donovan.

Humphries pleaded guilty, and was remanded for sentence. Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co) appeared for Fitch, who was convicted, and was also remanded for sentence.<sup>[320]</sup>

**12 March, 1930. Quarter Sessions No. 1 Court (Before Judge White)**

Crown Prosecutor, Mr. T. S. Crawford.

**Alleged Demand With Menace.**

Alexander Elliott, 21, Leslie George Mitchell, 21, James Richard Morgan, 21, and Frederick Joseph Hendricks, 37, all labourers, were charged with having demanded money from a Chinese named Ah Hee at Sydney on October 27, with menace and by force. There was an alternative count of common assault.

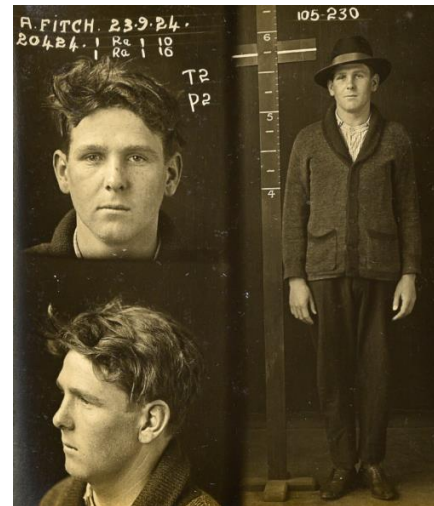


Figure 50 - Alfred Fitch - 1924

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for Mitchell and Morgan; Mr. B. T. Heavener appeared for Elliott and Hendricks.

The allegation by the Crown was that Ah Hee, who has a vegetable stall at the markets, was at his home In O'Sullivan-street, Surry Hills, about 3 p.m. on October 27, when he heard the glass of a window being broken. He opened the front door and saw four or five men there. They forced their way inside and demanded money. Being told that he did not have any, one of the men, who was alleged to be Hendricks, caught hold of him by the arm. One of the men suggested that they smash up the house, and another picked up a chair, which he threw at the Chinese. They all chased him as he ran through the house and he picked up a meat chopper and chased the men out. In doing so, he struck something, but did not know what. Hendricks was afterwards treated at the hospital for a wound.<sup>[321]</sup>

**13 March, 1930. Juror Injured - Trial Proceeds Without Him**

For the first time in the history of Sydney Sessions a trial proceeded today with only 11 Jurymen empannelled. The case was commenced yesterday with a full panel of jurors and was part heard when the Court rose.

Today only 11 jurors returned, the twelfth man, Stanley Edmund Cavanaugh, of Willoughby, having been injured in a motor accident in the city last night when he suffered a fractured skull. He is likely to be in hospital for a week or 10 days. The Crown Prosecutor, Mr Crawford, said that under the provisions of section 19 of the Crimes Amendment Act, the trial would proceed if the accused or their representatives and the Crown Prosecutor gave written consent. Mr. Heavener and Mr. Kinkead, representing the four accused, said they had no objection to such a course being adopted and the statement was prepared and signed by them and the Crown Prosecutor.<sup>[322]</sup>

**13 March, 1930. Quarter Sessions No. 1 Court (Before Judge White)**

Crown Prosecutor, Mr. T. S. Crawford.

**Alleged Demand With Menace.**

The hearing was continued of the charge against Leslie George Mitchell, 21; Alexander Elliott, 21; James Richard Morgan, 21; and Frederick Joseph Hendricks, 39, of having demanded money from a Chinese named Ah Hee, at Surry Hills, on October 27, with menace and by force.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for Mitchell and Morgan; and Mr. B. T. Heavener appeared for the other two accused. One of the jurors having met with an accident on the previous evening, it was decided to continue the trial with 11 jurors.

The allegation by the Crown was that the four accused had gone to the home of the Chinese in O'Sullivan-street, Surry Hills, and forcing their way into the house, had demanded money with threats. They chased him through the house, but Ah Hee picked up a meat chopper and turned the tables, chasing them out of the house.

All the accused, with the exception of Morgan, who said that he had never been to the house of the Chinese, admitted having been there to mark pak-a-pu tickets. They alleged that Elliott had won and should have received £21, which the Chinese refused to pay. The latter then picked up a meat chopper and "ran amuck," wounding Hendricks, who had to be treated at Sydney Hospital.

Morgan was acquitted and discharged. In respect of the other accused, the jurors, having failed to agree, were locked up for the night.

#### **Storebreaking.**

George Humphries, 26, who pleaded guilty during the week to a charge of breaking and entering the store of Union Theatres, Ltd., and stealing 20 yards of carpet and other goods, and Alfred Fitch, 23, who was convicted at the same time for the same offence, were called up for sentence.

Humphries was sentenced to six months' hard labour in Bathurst Gaol, cumulative upon a sentence he is at present serving. Fitch, against whom there was a long list of previous convictions, which included 15 charges of illegally using motor cars, was sentenced to 18 months' hard labour in Bathurst Gaol.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Fitch.<sup>[323]</sup>

#### **14 March, 1930. Quarter Sessions No. 1 Court (Before Judge White)**

Crown Prosecutor, Mr. T. S. Crawford.

#### **Jurors Disagree**

The jurors empanelled to try Alexander Elliott, 21 Leslie George Mitchell. 21, and Frederick Joseph Hendricks, 39. all labourers, who had been arraigned upon a charge of demanding money with menace and by force from a Chinese named Ah Hee in O'Sullivan-street Surry Hills having failed to come to an agreement after having been locked up all night were discharged. The accused were remanded for trial to a future sittings of the Court.

Mr Kinkead (instructed by Mr FA Newnham) appeared for Mitchell and also for a man named Morgan who was acquitted by the Jury on Wednesday and Mr B T Heavener appeared for the other two.<sup>[324]</sup>

#### **18 March, 1930. Police Object To Honorary Justices Sitting With P.M.**

#### **Remarkable Scene in Court - West Maitland, Monday.**

Strong objection to the presence of two honorary magistrates on the Bench, on the ground that it was a scheme to defeat the ends of justice, was taken by the police at West Maitland Court today, when Tradeusz Wlodarczyk, 27, who described himself as a journalist, on remand from Sydney, was charged with having at Rothbury, on or about December 15, 1929, stolen a hat, watch, medal, and clock, valued at £9, from Richard Butler, and with having stolen at the same time a wallet, clock, two shirts, a pair of braces, six handkerchiefs, a pocket knife, and fountain pen, valued at £7, the property of Frederick Butler.

Mr. J. J. B. Kinkead (instructed by Mr. V. M. Pike) appeared for defendant.

Before proceeding with the case, the police magistrate (Mr. D. W. Reed) left the Bench, and was in consultation for some time in his room with two persons. When he returned he was accompanied by Messrs. G. Crawford, secretary of the local branch of the Federated Engine Drivers and Firemen's Association and the president of the local Labour League, and Mr. A. W. McLagan.

Sergeant H S. Turner immediately asked who were the two men on the Bench with the police magistrate.

Mr. Reed replied that they were two Justices of the Peace, who desired to sit on the Bench with him during the hearing of the case.

Sergeant Turner: Can they produce their appointments?

He added that he thought that in this case it was necessary for appointments to be produced. If they could not produce them he would ask them to leave the Court.

Mr. Reed said that they had informed him that they had taken an oath as Justices of the Peace before Judge White at East Maitland Courthouse.

#### **Alleged Confidential Talk.**

Sergeant Turner said that one of the men sitting on the Bench was seen having a confidential talk with the accused.

Mr. Reed asked which of the two gentlemen he was referring to.

Sergeant Turner: The one on your right, your worship (indicating Mr. Crawford).

"That is not true," interjected defendant. Sergeant Turner: You hold your tongue.

Mr. Reed said the magistrate had informed him that he was not talking to accused that morning. He said he had been talking to a reporter.

Sergeant Turner: I have proof, your worship. I would not say it if I had no proof.

Mr. Reed: The magistrate assures me that he was not talking to accused this morning.

#### **Seeking Experience.**

Sergeant Turner said that the attitude adopted was most unusual. Such a thing had never happened in that court before.

Mr. Reed: The magistrates have assured me that they are quite unbiassed. They have no interest in accused, but are sitting on the Bench more for experience.

Sergeant Turner: Oh! In this case, if the men desire to sit on the Bench, I will ask for an adjournment. I am not prepared to go on under present conditions. The men are there with no other purpose but to defeat the ends of justice. There is not the slightest doubt about it.

Mr. Reed. That is your application for an adjournment?

Sergeant Turner: I ask for an adjournment to consult with the Attorney-General regarding the matter.

Mr. Kinkead said that this was the first occasion on which such an insult had been handed out to him during his association with the legal profession, either for the Crown or the defence, and he thought

that the sergeant should apologise to him and the Bench. If he thought that there was anything of a political nature about the matter he would not go on with it.

Mr. Reed: The sergeant should not have made the remark, and should withdraw it.

Sergeant Turner said that, in view of what Mr. Reed had said, he would withdraw it.

Mr. Reed: What length of time is it alleged that the magistrate was talking to the accused?

Sergeant Turner: For several minutes.

Mr. Reed: The magistrate says definitely that he was not speaking to accused. He says he was talking to a reporter, who was in court.

Sergeant Turner said that he was willing to put a person in the box whom, he alleged, saw the magistrate talking to defendant.

"I am prepared to go that far," he added.

#### **Police Evidence.**

Mr. Reed said that in a British community they prided themselves on the purity of their administration of justice. The magistrate said he had not spoken to defendant.

Constable A. R. Bonney, who was called by Sergeant Turner, said that he saw Mr. Crawford speaking to defendant.

Mr. Reed: How long?

Constable Bonney: Five or ten minutes. He was speaking to him in a very confidential manner.

Mr. McLagan: Was I speaking to him? Constable Bonney: You were present.

Mr. Crawford: As a matter of fact, I asked a reporter who the accused was.

A reporter in the Press box stated it was a fact that he had been speaking to Mr. Crawford for some time.

"On my honour I never did speak to him," said defendant.

The magistrate announced that an adjournment would be refused, and that the case would be proceeded with.

Sergeant Turner said that he did not intend to call any witnesses while honorary justices remained on the bench. The police, in any case, would not be a party to it. They intended to get in touch with the Attorney General on the matter.

Mr. Reed: There being no evidence to offer accused is discharged.

Defendant was further charged with stealing one suit case, the property of Daniel O'Neill, valued at £1. Defendant pleaded not guilty.

Sergeant Turner asked for a remand for 14 days. The police, he said, were not prepared to go on today.

Mr. Kinkead said he was opposed to the application. He was of opinion that the police were prepared to go on with the charge. The application was not bona-fide, although he was sorry to say it.



Sergeant Turner said that the police had not completed their inquiries.

Mr. Reed: Why do you ask for 14 days?

Sergeant Turner: There is a probability of the police inquiries not being completed in that time.

Detective-sergeant Sadler stated that the police would not offer any evidence in the case.

Sergeant Turner: Why should we give our case away?

Mr. Reed: It is not a question of giving your case away.

As there was no evidence to offer, defendant was discharged.<sup>[325]</sup>

#### **20 March, 1930. Drunken Drivers**

Arthur T. D. Ryan, garage proprietor, was fined £18, with £2/2/ costs, at Central Police Court yesterday for driving a motor car in Crown-street whilst in such condition as not to be able to properly control the vehicle. Mr Kinkead, instructed by Mr F A Newman, appeared for defendant, who was also disqualified by Mr Laidlaw, S M, from holding a driver's license for 12 months.<sup>[326]</sup>

#### **27 March, 1930. Quarter Sessions (Before Judge Curlewis.)**

Crown prosecutor, Mr T S Crawford

##### **Acquitted**

Vincent Thomas Hughes, 22, news agent was charged with having assaulted James Henry Webster, at Redfern, on November 13 occasioning him actual bodily harm There was an alternative count of common assault. The jury indicated that that it did not want to hear the addresses, and the accused was discharged. Mr. Kinkead appeared for the accused, instructed by Mr. W. M. Niland.

##### **Shopbreaking.**

Charles Toner, 53, and Sidney Asquith Reilly, 28, were charged with having broken and entered the shop of Henry Bazile Josephs at Annandale, on November 22, and stolen 108 packets of tobacco and a large quantity of other goods. Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for Toner.

Reilly pleaded guilty, and Toner was convicted. Both of the prisoners were sentenced to 18 months' hard labour, to be accumulative upon a sentence of 12 months passed in respect of their breach of recognizances, upon which they had been called up to receive sentence.<sup>[327]</sup>



Figure 51 - Charles Toner - 1919

#### **28 March, 1930. Quarter Sessions (Before Judge Curlewis.)**

Crown prosecutor, Mr T S Crawford

##### **Acquitted**

John O'Connor, 28, barman, was charged with having broken and entered the storeroom of Askey's, Limited, at Waverley, on some day in October, and stolen 300 bottles of whisky, 100 bottles of gin,

and 208 bottles of brandy; also with having stolen a bottle of whisky and bottle of gin on November 14, and on the same day with having attempted to break and enter the store with intent to steal.

Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for the accused.

John Amor, the principal Crown witness, who is at present serving a sentence for his participation in the robbery, described how he and accused had taken an impression of the key with carbon paper. His evidence purported to describe how they had conducted the robberies.

At the close of this witness's evidence the jury intimated that it did not wish to hear anything further, and acquitted the accused without leaving the box, and he was discharged.<sup>[328]</sup>

#### *11 April, 1930. Quarter Sessions (Before Judge Curlewis.)*

Crown Prosecutor, Mr T S Crawford

##### **Alleged Larceny**

William Henry Shervey, 47, clerk, Arnot Henry Johnson, 49, salesman, and Henry Thomas Goldsmith, 34, specialist were charged with having stolen 12 dozen cricket balls and 100 tennis balls, from Mick Simmons Ltd, at Sydney, on October 23. There was an alternative charge of receiving.

Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co) appeared for Shervey and Johnson; and Mr T P MacMahon (instructed by Mr W M Niland) for Goldsmith.

Owing to a juror being a near relative of one of the principal Crown witnesses, he was asked by his Honor to retire, and the trial was carried on with 11 jurors.

The allegation by the Crown was that Shervey and Johnson were both employed at Mick Simmons Ltd, and that they stole the goods. Goldsmith was alleged to have been the receiver who purchased the goods.

The matter stands part heard.<sup>[329]</sup>

#### *11 April, 1930. Quarter Sessions (Before Judge Curlewis.)*

Crown Prosecutor, Mr T S Crawford

##### **Alleged Theft And Receiving**

William Henry Shervey, 47 clerk, Arnot Henry Johnson, 49, storeman and Henry Thomas Goldsmith, 34, specialist, were charged with having stolen 12 dozen cricket balls and 100 tennis balls, the property of Mick Simmons Ltd on October 23. There was an alternative count of receiving.

Mr Kinkead (instructed by Messrs R D Meagher Sproule and Co ) appeared for Shervey and Johnson; Mr T P MacMahon (instructed by Mr W M Niland appeared for Goldsmith.

Raphael Joseph Simmons managing director of Mick Simmons Ltd, stated that Detective-sergeant James had shown him a statement made by Shervey and another by Johnson admitting the thefts. He spoke to Shervey and asked him why he had committed the thefts and he replied that a member of his family had been ill and he wanted to send her to a private hospital. When asked why he did not send the patient to the public hospital, he answered that there had been no time. Witness told him that if he had been short of money he should have applied to the firm and if it would not assist him, that he (the witness) would have done so. Johnson told witness that Shervey had made the proposition to him. At first he would not listen to it but he had a large family to keep and he fell for it.

Both Shervey and Johnson made statements from the dock and admitted their guilt. They both asked for a chance to make restitution.

Goldsmith also made a statement from the dock. He said that he had purchased the goods in all good faith, not knowing that they had been stolen. He said that he was entirely innocent of the charge.

At the conclusion of addresses, the Court was adjourned. His Honor will sum up this morning.<sup>[330]</sup>

*12 April, 1930. Quarter Sessions (Before Judge Curlewis.)*

Crown Prosecutor, Mr T S Crawford

**Larceny**

The trial was concluded of William Henry Shervey, 47, clerk, Arnot Henry Johnston, 49, storeman, and Henry Thomas Goldsmith, 34, specialist, who were charged with having stolen 12 dozen cricket balls and 100 tennis balls from Mick Simmons, Limited, on October 23.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Shervey and Johnston; and Mr. T. P. MacMahon (instructed by Mr. W. M. Niland) for Goldsmith.

Shervey and Johnston were both convicted, with - strong recommendation to mercy, and were remanded for sentence to Tuesday.

The jury acquitted Goldsmith, on the charge of stealing, but failed to agree on a count of receiving. He was remanded to a future sitting of the Court, and released upon bail, self and one surety of £50 each.<sup>[331]</sup>

*17 April, 1930. Quarter Sessions (Before Judge Curlewis.)*

Crown Prosecutor, Mr T S Crawford

**Larceny**

William Henry Shervey, 47, clerk, and Arnot Henry Johnston, 50, storeman, who had been convicted on a charge of stealing a quantity of cricket and tennis balls, were both called up for sentence.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the prisoners, who, because of a strong recommendation to mercy by the Jury, were each bound over in his own recognisance in £50 to come up for sentence if called upon within three years.<sup>[332]</sup>

*29 April, 1930. Quarter Sessions No. 2 Court (Before Judge Armstrong)*

Crown Prosecutor, Mr. Weigall, K.C., Solicitor General.

**Constable Charged with Assault – The Accused Acquitted**

Thomas Edward Hannan, a police constable, for whom Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared, was charged with having assaulted Herbert Breen at Mascot on February 28, occasioning him actual bodily harm. There was an alternative count of common assault.

Breen alleged that he was standing watching three men playing "Rummy," a card game, in an archway at Mascot, when the constable came, and, without any provocation, struck him four times over the head with his baton. He had to be taken to the hospital, where four stitches had to be inserted.

Hannan's story was that Breen and three other men were playing cards in the archway and he spoke to them, reminding them that he had warned them before about playing cards, but they had taken no notice. He asked for their names and addresses, which were given by the other three men, but Breen kept continually interrupting, and refused to give his name and address, at the same time he

attempted to strike the witness, who warded off the blows. A hostile crowd had gathered, and witness drew his baton and struck Breen twice, as the first blow had no effect upon him.

The accused was acquitted and discharged.<sup>[333]</sup>

#### **5 May, 1930. Farmers In Court - Trouble Over Sheep - £761 Allowed**

Before Sir Phillip Street in the Circuit Court on Friday, Frederick Henry Heckendorf, a grazier, of Girilembone, sought to recover £1486, the value of promissory notes, from Andrew Percy Matthewson, a Miendelta grazier, who put in a cross action for £726/R/., being the loss which he said he had suffered through sheep, which had been represented by Heckendorf as being dry, dying when lambing. After an hour's retrial, the jury returned a verdict to the plaintiff for £781. Mr. Stuckey (instructed by Messrs Flashman and Dawes (Nyngan), by their agents Booth and Nelson (Dubbo), appeared for the plaintiff, while Mr. Kinkead, of Meagher, Sproule & Co. (Sydney) represented Matthewson.

Andrew Percy Matthewson, a farmer and grazier of Miandetta, and the defendant in the case, was the first to enter the witness-box. He told the court that on February 14, he had gone to plaintiff's property, where he saw a mob of sheep, which he inspected, and eventually purchased at 18/6 a head. An agreement was signed by both he and Heckendorf.

Victor Morath, an employee of Lyne and Co, Nyngan, said that In February, plaintiff notified that he had a line of ewes which he wished to sell. These ewes, he told witness, had been joined with rams that month.

Witness later communicated with Matthewson and took him to Heckendorfs property on February 14. After seeing the sheep, defendant agreed to purchase 1,482 at a cost of 18/6 a head. A document was drawn up and signed by both plaintiff and defendant.

On April 30, Matthewson informed witness that the sheep were lambing, so he immediately got In touch with Heckendorf. There was nothing in the signed agreement to indicate that the ewes were In lamb, said Morath.

In reply to Mr. Stuckey, witness said that Heckendorf, who had originally bought the sheep from Wumboyne station was under the impression that they were dry. Heckendorf later mentioned in a letter, said witness, that he was endeavouring to line the ewes with Womboyne rams. He could not remember Heckendorf saying, "I don't want you to take Matthewson out to see these sheep under the impression that they are dry.

Matthewson was then recalled to tell his Honour that he had taken delivery of the sheep, which he travelled to his station in 10 days. It was during that time that he gave Heckendorf the promissory notes.

On April 25, he noticed that some of the ewes had lambs, so after waiting a few more days, during which time other sheep lambled, he communicated with Morath.

Until the end of July, he said, the sheep continued to lamb, and it was impossible to move them. He had to supplement the animals' rations with bran, molasses, oil cakes and salt. When he purchased the sheep, they were carrying six months wool, and it was impossible to tell that they were in lamb.

His wife, son, two daughters and an employee named O'Brien helped him to look after the sheep, said Matthewson, who also stated that about 700 sheep died.

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Continuing his evidence on Friday morning, Matthewson said that when shearing time came in December he had only 577 left of the sheep purchased from Heckendorf to shear. About 883 of the Womboyne flock had died through their inability to lamb, owing to the dry season.

About 1100 lambs had been born, but these had either died or been killed. Defendant himself had killed about 400.

The lambs had been slaughtered in order to try and save the ewes, which were in such an impoverished condition that they could not rear their progeny. He valued the ewes at 186 and the lambs at 12/0.

When he had purchased the sheep he distinctly understood that they had been joined to rams on February 1. He would have been a lunatic to take them on his property if he had known they were joined to the rams in November, which, judging by the time they lambed, they must have been.

On July 3, defendant received a letter from Heckendorf, who asked for the payment of £1400 to liquidate the promissory notes.

Matthewson said he later visited plaintiff, and told him that owing to the sheep lambing, he was in a fix and could not pay. He asked for another 12 months in which to pay.

In reply, Heckendorf was alleged to have refused the request, saying, "I'm not going to carry the baby."

Questioned by Mr. Stuckey, defendant admitted that when he had seen Heckendorf, he had made no claim for the dead sheep. About 700 sheep died between the time he had purchased them in February, and July 3.

If the sheep had been joined to the rams on February 1, there would have been no lambing before June. He decided that he had asked Heckendorf for 12 months' extension of the time to pay the bill but admitted that he owed £500 to a Tottenham storekeeper. At Heckendorf's request, he sent 19 bales of wool, shorn from the Womboyne sheep, to the Farmers and Graziers'. That wool had not yet been sold.

From July, until he knew a writ had been issued against him, said defendant, he had endeavoured to persuade Heckendorf to take the sheep back.

William Richard Lindsay, farmer and Grazier of "Panjee," Miandetta, said he lived about 1 miles from Matthewson, who he accompanied to Heckendorf's property when he looked at some Womboyne sheep. He later saw the same animals at defendant's property in May, when they were lambing. Owing to the dry feed, the sheep were in bad condition, and consequently the lambing mortality was heavy, both ewes and lambs dying.

In reply to Mr. Stuckey, witness said that most of the sheep died in July, and the majority of the lambs were dropped before July.

Sidney George Draper, a grazier, who said his property adjoined defendant's, told the court that he remembered Matthewson buying some Womboyne sheep, which he saw on defendant's station in May when they were lambing. He saw 300 to 400 sheep, in fair condition, with lambs. Matthewson had plenty of dry feed, which however, was not beneficial to lambing ewes. There was no green feed anywhere in the district at that time, witness told Mr. Stuckey and defendant had better dry feed than the majority of farmers. Had the sheep lambed later than June, conditions might have been worse for lambing, as there was less dry feed.

This concluded the case for the defendant.

Mr. Stuckey submitted that there was no representation made in the contract that the sheep were dry. His was no evidence of warranty. His Honour failed to agree, however, and the case proceeded.

### **Plaintiff's Story**

Frederick Henry Heckendorf, the plaintiff who said he was a grazier, of "Glenliegh," Girilambone, told the court that in December, 1928, he had purchased some station bred "Womboyne" ewes. Before he bought the ewes, he knew nothing about them and when he offered them for sale through Lyne and Co. he said that as far as he knew they were dry ewes and not crossed with rams. Plaintiff later purchased some rams from Tamworth, and put them with the ewes on February 1, 1929. Up till that time, as far as plaintiff knew, no rams had been with the ewes. Mr. Morath, of Lyne and Co., told him that Matthewson wanted some dry ewes, whereupon plaintiff said that he had some Womboyne ewes which, as far as he knew, had only been crossed with lambs on February 1. That was best he could do, but he told Morath that as the sheep would be lambing in July, when there would be better feed available, it would be quite a safe proposition for Matthewson to buy them. Plaintiff told Morath that he would not guarantee that the sheep were dry, for as he had only purchased them from Womboyne station, it would not have been safe for him to do so. Matthewson subsequently bought the ewes, a contract being signed for 1182 sheep at 18/6 per head. Promissory notes, a stock mortgage and a stock lien, were the terms of payment offered by Matthewson and accepted by plaintiff.

Early in July defendant rang him up, said plaintiff, and, stating that many of his sheep were dying, asked for an extension in the time to meet the promissory notes. Heckendorf refused, unless Matthewson gave him a mortgage on his land. Defendant would not do that, saying that a Tottenham storekeeper to whom he owed £400, wanted it. Heckendorf then offered to let him sell his wool over which he held a lien, and give the proceeds to the storekeeper, provided, of course, that Matthewson gave him the mortgage over his land. That offer was also refused, said plaintiff, who also stated that defendant had asked him to take back the sheep, which were no good to him. Plaintiff said he refused to "carry the baby."

If a lick was supplied to sheep which were on dry feed, there would be no difficulty in lambing, he said. If no lick was fed, however, the constitution of the sheep would be considerably affected, and lambing would probably be attended with heavy mortality.

The same year he had carried 1760 ewes through the same weather and food conditions as Matthewson and had only lost 200.

Cross-examined by Mr. Kinkead, plaintiff admitted that he had a good green picking over the property he had mentioned. He also admitted that he had told Mr. Morath that the ewes were supposed to be dry.

Mr. Matthewson told him during a phone conversation that he did not want to take the sheep on to his property if they were going to lamb earlier than July. Plaintiff said he could not guarantee them.

Heckendorf admitted that he had been in litigation over sheep two years ago. He also admitted that it was very important that Matthewson should know if the sheep were dry before he purchased them. He thought that defendant's main idea was to secure either dry sheep or ewes that would not be lambing until after June.

As the sheep started to lamb in April, Heckendorf admitted to Mr. Kinkead they must have been crossed with rams in November.



Richard John Charleston, stock overseer for Heckendorf, remembered when Matthewson had inspected the sheep. As far as he knew no rams had ever run with the ewes. Witness told defendant that the ewes were dry, but that Heckendorf would not guarantee them, not knowing enough about

In reply to Mr. Kinkead, witness said that plaintiff had told him that he had also informed Mr. Morath that although he had bought the ewes as dry sheep, he would not guarantee them to be so.

That concluded the case for the plaintiff.

After a retired of an hour, the Jury returned on Friday afternoon and gave a verdict to Heckendorf for £1486 and to Matthewson for £725/6, which means that the latter has to pay £761/15/- to plaintiff.<sup>[334]</sup>

#### **7 May, 1930. Quarter Sessions No. 1 Court (Before Judge White)**

Crown Prosecutor, Mr T.S. Crawford

##### **Alleged Theft of Butter**

William Gurney, 35, carter, Stanley Gurney, 22, driver, and George Levitt Lees, 53, grocer were charged with having stolen 50 boxes of butter, the property of the Producers' Co-operative Distributing Company, Limited, also a motor lorry and a tarpaulin, the property of Harry Raymond Forsyth, at Sydney on March 5.

Mr Mack, KC, with him Mr F C Stephen (instructed by Mr S G Sommers) appeared for Lees, and Mr Kinkead (instructed by Messrs R D Meagher, Sproule, and Co) for the two Gurneys.

The allegation by the Crown was that Forsyth who was a driver of his own motor lorry, brought 30 boxes of Stubble butter from the wharf to the Producers Distributing Co where they were received by a Mr Yates. Another 20 boxes of Allowrie butter were then added to the load on the lorry for distribution at North Sydney. While Forsyth was in Sussex-street a man asked him if he would call at Nock and Kirbys for a wireless set to be delivered at North Sydney, at the same time handing him a docket from Nock and Kirbys, which purported to be for a wireless set, but which was in reality only for a hasp. While Forsyth was in the shop of Nock and Kirby making inquiries his motor lorry with the butter was stolen. It was alleged that Lees was the receiver of the butter.

The matter stands part heard.<sup>[335]</sup>

#### **8 May, 1930. Quarter Sessions No. 1 Court (Before Judge White)**

Crown Prosecutor, Mr T.S. Crawford

##### **Alleged Theft of Butter**

Evidence was continued in the charge against William Gurney, 35, carter, Stanley Gurney, 22, driver, and George Levitt Lees, 53, grocer, of having stolen 50 boxes of butter, the property of the Producers' Co-operative Distributing Company, Limited, also with having stolen a motor lorry, and a tarpaulin, the property of Harry Raymond Forsyth, at Sydney, on March 5. There was an alternative charge of receiving.

Mr Mack, K.C., with his Mr. F. C. Stephen (instructed by Mr S. G. Sommers), appeared for Lees; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for the two Gurneys.

Harry Raymond Forsyth stated that he delivered goods for the Producers' Distributing Company with his own lorry. On March 5 he had collected 50 boxes of butter, and, proceeding to Dawes Point, he was spoken to by a man, who handed him a piece of paper. As a consequence, he went to the

warehouse of Nock and Kirby, leaving his lorry standing outside. When he came out of the shop his lorry had disappeared. He valued the vehicle at £150.

Constable John Buchanan stated that he had shadowed the Gurneys for some days, and on March 5 he saw them drive up to Lees' grocer shop in Percival-street, Stanmore, where they were making a deal. He arrested the two Gurneys, and Lees was arrested later in the shop. Ten boxes of butter were recovered.

Detective-sergeant Bowie stated that Forsyth's lorry had been found stripped of certain parts in Charlotte-avenue, Strathfield. He had had a conversation with the two Gurneys and was told by one of them that a man had asked him to deliver the butter to Lees' shop, and had given him £1 for the job. Lees, when questioned as to how five boxes of butter had come to be in his shop, replied that a man had asked him to mind them for him.

The matter stands part heard.<sup>[336]</sup>

#### **9 May, 1930. Quarter Sessions No. 1 Court (Before Judge White.)**

Crown Prosecutor, Mr. T. S. Crawford.

#### **Alleged Theft Of Butter.**

Evidence was concluded in the hearing of the charge against William Gurney, 35, carter, Stanley Gurney, 22, driver and George Levitt Lees, 53, grocer, of having stolen 50 boxes of butter, the property of the Producers' Co-operative Distributing Company, Limited; also a motor lorry and a tarpaulin, the property of Harry Raymond Forsyth, at Sydney, on March 5.

Mr Mack, K.C., with him Mr. F. C. Stephen (instructed by Mr. S. G. Sommers) appeared for Lees; and Mr Kinkead (instructed by Messrs, R. D. Meagher, Sproule, and Co.) for the two Gurneys.

The allegation by the Crown was that Forsyth was carting the butter on his lorry when he was accosted by a man in the street and asked to call at Nock and Kirby's for a wireless set to be delivered at North Sydney. There was no wireless set, and when Forsyth came out of the shop he found that his lorry had been removed. The lorry was subsequently discovered at Strathfield minus the tarpaulin and other accessories. The two Gurneys were found by Constable John Buchanan with Lees outside the latter's grocer shop in Percival-street, Stanmore, where 10 boxes of butter were recovered.

In defence William Gurney gave evidence and said that he had not been in the vicinity of Nock and Kirby's that day, neither had he anything to do with the theft of the lorry. On March 4 his own lorry broke down near the Ashfield Town Hall and a man came and offered him a job to shift 10 cases of butter the following day at Enfield. He and his brother took the butter to Mr Lees' shop at Stanmore. Cross-examined witness said that he had never seen Lees before that morning, and did not know that the butter had been stolen. A man named Ross had had the use of his lorry on several occasions.

Lees also gave evidence and said that on March 4 a young man had walked into his shop and asked if he might leave 10 boxes of butter for a couple of hours, and next morning the two Gurneys came about 7 o'clock with the butter. He had not asked the young man who called his name. He had not purchased the butter and knew nothing further about it.

Constable Allen stated that he had known Lees for about 10 years at Dulwich Hill, and had had dealings with him. He had always found him a man of good character, and had never heard anything against his reputation.

Counsel had not completed their addresses when the Court adjourned.<sup>[357]</sup>

**10 May, 1930. Quarter Sessions No. 1 Court (Before Judge White.)**

Crown Prosecutor, Mr. T. S. Crawford.

**Alleged Theft Of Butter.**

The trial was concluded of William Gurney, 35, carter, Stanley Gurney, 22, driver, and Levitt Lees, 53, grocer, who were charged with having stolen 50 boxes of butter, the property of the Producers' Co-operative Distributing Company, Limited; also a motor florry and tarpaulin, the property of Harry Raymond Forsyth, at Sydney, on March 5.

Mr. Mack, KC, with him Mr. F. C. Stephen (instructed by Mr. S G Sommers) appeared for Lees, Mr Kinkead (instructed by Messrs R D. Mcagher, Spioule, and Co.) appeared for the two Gurney's.

Both the Garneys were convicted of receiving, and remanded for sentence.

Lees was also convicted of receiving, with a strong recommendation to mercy on account of his previous good character, and was bound over in recognisances of himself and one surety in £100 each to come up for sentence if called upon within two years, a condition of his release being that he should pay £45 to the Clerk of the Peace within seven days for the Producers' Co-operative Distributing Co, Ltd, as compensation for the deterioration of the butter, or be called up for sentence.<sup>[358]</sup>

**13 May, 1930. Quarter Sessions No. 1 Court (Before Judge White.)**

Crown Prosecutor, Mr. T. S. Crawford.

**Receiving Stolen Butter.**

William Gurney, 36, carter, and Stanley Gurney, 22, driver, who were convicted last Friday on a charge of having feloniously received 50 boxes of butter, the property of the Producers' Co-operative Distributing Company, Limited, on March 5, were sentenced - William Gurney to two years, and Stanley Gurney to 18 months' hard labour in Goulburn Reformatory.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for both of the accused.<sup>[359]</sup>

**14 May, 1930. Quarter Sessions Appeals (Before Judge Armstrong.)****Liquor Conviction Quashed.**

Jennie Bowen appealed against her conviction at the Central Police Court on March 4 last, when she was fined £30 by Mr. G. S. Shepherd, S.M., the alternative being three months' imprisonment, on a charge of having sold liquor without being the holder of a licence. His Honor, in quashing the conviction and upholding the appeal, said that It had not been proved to him beyond reasonable doubt that the alleged sale of liquor had taken place. Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for the appellant.<sup>[360]</sup>

**14 May, 1930. Led Him Astray? - "Strong-Willed Woman"**

Pleading, at the Quarter Sessions today for leniency for Robert Davis, aged 24, traveller, who was convicted of the theft of a motor car, Mr. J. J. B. Kinkead said that Davis had met with an accident and his will had been dominated by "a particularly vrle, strong-willed type of young woman."

Davis, it was stated, had become associated with this woman since he ceased to live with his wife. He was living beyond his means, and in Melbourne sold a motor, car that was not his property.

Judge White sentenced Davis to 18 months' imprisonment, and told him that a remission of part of it would be recommended if restitution were made.<sup>[361]</sup>

**20 May, 1930. Quarter Sessions No. 2 Court (Before Judge Curlewis)**

Crown Prosecutor, Mr. V.H. Treatt

**Receiving**

Reginald Amory, 48, timber merchant, for whom Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared, was charged with having stolen a motor van and tarpaulin, the property of Frederick Goodman, at Sydney, on August 14. There was an alternative count of receiving. The accused was convicted on the second count, and sentenced to one month's hard labour.

Eric Newlyn, 24, motor driver, pleaded guilty to having feloniously received a motor van which had been stolen from Percy James Juchau, and was bound over in his own recognisance in £20 to come up for sentence if called upon within two years. Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the prisoner.<sup>[362]</sup>

**23 May, 1930. Quarter Sessions No. 2 Court (Before Judge Curlewis)**

Crown Prosecutor, Mr. P.V. Storkey

**Acquitted**

Adam Baronowsky, 29, carpenter, was charged with having obtained a player piano from James Watson, at Marrickville, on February 24, by having falsely pretended that he had been authorised by John Alexander Smirnoff to remove it.

Mr Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused, whom the jury acquitted without leaving the box, and he was discharged.<sup>[363]</sup>

**28 May, 1930. Court Interludes**

Magistrate: Pass the document to Mr. Kinkead to read.

Mr. Kinkead: It's no good, I've left my glasses at home.

Witness: Here try mine.

Mr. Kinkead: Well, alls fair in love and law— they fit nicely; now I'll cross-examine.<sup>[364]</sup>

**28 May, 1930. Federal Inquiry - Charge Against Police Sergeant - Alleged Violent Methods.**

Acting as a commissioner under the Commonwealth Police Ordinance, Sir John Quick commenced an inquiry today into charges against Sergeant J R Shepherd, of the Commonwealth Police Force, that he used violence and threats to secure a confession of guilt from an accused person. The statement said to have been obtained by duress was given by F. J. McNaughton Gifford, a youthful postal official, who was convicted of having stolen £5 from a letter.

"It is tolerably plain that Gifford would never have been convicted if it had not been for that written confession," said Mr H Shelton, who appeared for the Attorney-General to prosecute.

Mr G A Maxwell (instructed by Mr J. J. Kinkead) appeared for Sergeant Shepherd.

Francis James McNaughton Gifford admitted having taken the money in respect of which he was prosecuted in May last year. He said that he was taken to the Acton police station by Sergeant Shepherd and a constable Shepherd repeatedly questioned him about a letter given him for posting, and he replied that he had not interfered with it. Shepherd became a little excited, but presently he stopped walking up and down the room and struck witness on the chest.

After they had had some tea, said Gifford, he was again alone with Shepherd, who took off his overcoat and said they could not stay there all night. Then he struck witness a second time. Shepherd

put his arms around witness, who fell to the floor. Constable Biesnan came to the door with a black object resembling a ruler or a baton Brosnan said, "You -" Witness cried out, "Don't hit me again I took the money and will tell you all about it" He gave a statement, and the attitude of Shepherd changed. The day after his release on ball he saw Mr Green at Parliament House.

Five or six weeks ago, Gifford continued, he saw Mrs Shepherd at Holbrook, where he lived. She spoke to him about a statement which he had given to Mr Yates, a Commonwealth Inquiry officer. His father came up, and said he would give a statement intimating that he did not desire that the previous statement should be used at the inquiry.

In reply to Mr Maxwell, Gifford said that before he saw Mr Green he never thought of looking for marks of violence Francis James Gilford, a commission agent, of Holbrook, and father of the previous witness, gave evidence in an interview with Sergeant and Mrs Shepherd at Holbrook about two months ago. His son gave Mrs Shepherd a statement, in which he said, referring to Sergeant Shepherd's part in the prosecution, "I feel that your action in that particular case was fair and you acted quite justly". Witness said that he assisted his son to prepare the statement. The conduct of Sergeant Shepherd at the court was very fair, and after the case he thanked Sergeant Shepherd for what he had done. The treatment his son had received from Sergeant Shepherd was one of the reasons why he did not want any further action taken.

The Inquiry was adjourned.<sup>[365]</sup>

#### **29 May, 1930. Federal Inquiry - Violence and Threats - Alleged Against Police Sergeant.**

Sir John Quick, a Commissioner under the Federal Police Ordinance, continued his inquiry today into allegations against Sergeant J. R. Shepherd, of the Commonwealth police, of having used violence and threats against F. J. McNaughton Gifford, an accused person, to secure a confession relating to the theft of £5 from a letter.

Mr. H. Shelton appeared for the Attorney General to prosecute; and Mr. G. A. Maxwell. K.C. and Mr. J. J. Kinkead (instructed by Mr. H. W. Y. Deane, of Queanbeyan) for Sergeant Shepherd.

Constable W. O. Fellowes, a member of the Commonwealth police, said that about 6 p.m. on May 7 Constable Perriman brought Gifford to the station. Sergeant Shepherd took Gifford to the office of the officer-in-charge, Sergeant Cook, who was on leave. As witness was preparing to leave the station he heard loud voices. He looked into Sergeant Cook's room. Sergeant Shepherd, who was walking to and fro, said to Gifford, "There is no use you telling a lie. There was a trap set for you." Gifford said that he did not know anything about the letter. Shepherd then struck Gifford with his left arm. Gifford sagged forward and said, "You hit me." Shepherd said, "You are a liar. I did not touch you."

Constable Fellowes explained that he did not make a report voluntarily, because of his knowledge of the unfortunate experiences of constables in other police forces. These men, after being in conflict with superior officers, usually "led a life of hell."

"Some of the younger constables apparently regarded the interrogation of Gifford as a joke," said Constable Fellowes. "They referred to Sergeant Shepherd's attitude, and to the constable running into the room with a ruler over Gifford's head. I pointed out that if such things got out to the public they would get the police into bad grace. Apparently that information was carried to Sergeant Shepherd, for his attitude to me changed."

Constable Edwin Bresnan, of the Commonwealth Police, said that Gifford denied the theft, and jumped to his feet, whereupon Shepherd thrust him back in the chair. After further conversation,

Gifford jumped up again and Shepherd grabbed at him. The next thing witness saw was Gifford on the floor. Shepherd put him back in the chair. Gifford then said: "All right, I will tell you."

Witness still thought that the interrogation was on orthodox lines.

The Inquiry was adjourned.<sup>[366]</sup>

### **30 May, 1930. Quarter Sessions No. 2 Court (Before Judge White)**

Crown Prosecutor Mr T.S. Crawford

#### **Shop Breaking.**

Alexander Johnson, 38, labourer, and John Charles Edwards, 40, labourer, were charged with having broken and entered the shop of David Robertson, at Balmain, on October 7, and stolen 40 bottles of wine.

Mr. Kinkead (instructed by Messrs. M. F. Finlay and Jennings) appeared for both of the accused, who were convicted and remanded for sentence.<sup>[367]</sup>

### **31 May, 1930. Quarter Sessions No. 2 Court (Before Judge White)**

Crown Prosecutor Mr T.S. Crawford

#### **Shop Breaking.**

Alexander Johnson, 38, labourer, and John Charles Edwards, 40, labourer, who had been convicted on the previous day on a charge of having broken into a wine saloon at Balmain and stolen 40 bottles of wine, were each sentenced to 12 months' hard labour in Goulburn Gaol. Mr Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for the prisoners.<sup>[368]</sup>

### **7 June, 1930. Quarter Sessions No. 1 Court (Before Judge Armstrong)**

Crown Prosecutor Mr. T.S. Crawford

#### **Larceny**

William Gurney, 36, carrier and Reginald Benjamin Amory, 48, contractor, both pleaded guilty to having stolen a lorry and the goods upon it the property of Frank Johnson and others.

Gurney was sentenced to two years' hard labour to run concurrently with a sentence he is at present serving : Amory was sentenced to one month's hard labour.

Mr Kinkead (instructed by Messrs R. D. Meagher Sproule and Co.) appeared for both of the prisoners.

#### **False Pretences**

Jacob Bloomfield, a native of Poland was charged with having obtained goods from Wilfred Robert Balley at Sydney during last December by having falsely pretended that he had a new shop at Rawson Chambers and had paid six weeks' rent.

Mr Kinkead (instructed by Mr Abram Landa) appeared for the accused who was convicted and remanded for sentence.<sup>[369]</sup>

### **12 June, 1930. Quarter Sessions No. 1 Court (Before Judge Armstrong)**

Crown Prosecutor Mr. T.S. Crawford

#### **False Pretences**

Jacob Bloomfield, a native of Poland, who had been convicted on a charge of false pre-tences, was bound over in recognisances of himself and one surety in £50 each, to come up for sentence if called upon within 12 months, a condition of his release being that he should pay £92 to the Clerk of the



Peace for Bran Ross Pty., Ltd., within nine months. The sum of £74/16/10, which is in the hands of the police, to be paid to the Clerk of the Peace until the claim thereon by the official assignee is settled.

Mr. Kinkead (instructed by Mr. Abram Landa) appeared for the accused.<sup>[370]</sup>

**13 June, 1930. Quarter Sessions No. 1 Court (Before Judge Armstrong)**

Crown Prosecutor Mr. T.S. Crawford

**Alleged Theft**

George Vincent, 43, cutter, was charged with having stolen 46 pieces of suiting from David Jones, Limited, at Sydney on April 4. There was an alternative count of receiving.

Mr. Kinkead (instructed by Messrs. Rowley, Roseby, and Co.) appeared for the accused.

The matter stands part heard.<sup>[371]</sup>

**13 June, 1930. Two Kinkeads**

Officials at the Quarter Sessions yesterday sat up and took notice when two Mr. Kinkeads were concerned in the one case, one in the jury and the other at the Bar table.

Mr. Kinkead, counsel for the accused saved any misunderstanding, however, by hastening to explain to Judge Armstrong that the juryman was "no relation of mine." "If he had been, your Honor, I would have stood him down immediately," he concluded. Judge Armstrong was satisfied.<sup>[372]</sup>

**14 June, 1930. Quarter Sessions No. 1 Court (Before Judge Armstrong)**

Crown Prosecutor Mr. T.S. Crawford

**Sentences**

Walter Wallis Rogers, 49, storeman, and Reginald Victor Sulis, 34, lorry driver, larceny, each bound over in recognisances of himself and one surety in £15 each to come up for sentence if called upon within 12 months. Mr. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for both prisoners.

**Acquitted**

George Vincent, 43, cutter, was charged with having stolen 46 pieces of suiting from David Jones, Limited, at Sydney, on April 4. There was an alternative charge of receiving.

Mr. Kinkead (instructed by Messrs. Rowley, Roseby, and Co.) appeared for the accused, who was acquitted and discharged.<sup>[373]</sup>

**18 June, 1930. Quarter Sessions No. 1 Court (Before Judge Armstrong)**

Crown Prosecutor Mr. T.S. Crawford

**Breaking and Entering Charge**

Sydney James Lucas, Michael Keith Koni, and William Thomas O'Brien pleaded not guilty to a charge of breaking and entering a warehouse of Eric Spooner, and another on December 6, 1929, and stealing therefrom 625 watches and other articles. A second count charged the accused with having received the goods, knowing them to be stolen.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused.

At the close of the Crown case Mr. Kinkead, who appeared for the accused, asked his Honor whether there was any case against O'Brien. His Honor agreed that there was not, and by direction O'Brien was acquitted.

The jury found Lucas and Konz guilty of receiving, and they were remanded for sentence.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the defence.<sup>[374]</sup>

#### **19 June, 1930. Silent Parent**

Mr Kinkead at Quarter Sessions. : "Do you mean to say that you have never spoken of this case to your son, even though he is directly concerned?"

Father: "Never."

Mr. Kinkead: "Not even when you were both coming in today to give evidence?"

Father: "No. He is only a lad of 17, and should not discuss such matters."<sup>[375]</sup>

#### **20 June, 1930. Quarter Sessions No. 1 Court (Before Judge Armstrong)**

Crown Prosecutor Mr. T.S. Crawford

##### **An Acquittal**

Thomas Keith Boyd, who was charged with having on February 8 embezzled £10 from the Marine Shell Products, Ltd., Cronulla, was acquitted. Mr. Kinkead (Instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the defendant.<sup>[376]</sup>

#### **21 June, 1930. Quarter Sessions No. 2 Court (Before Judge White)**

Mr P.B. Storkey Crown Prosecutor

##### **Theft of Scrap Iron**

William Paul Lorgier who was found guilty on the previous day of stealing a quantity of scrap-iron at Balmain on April 15, was released on bond, provided that he made restitution of £10 to the owner of the property.

Mr Loxton, instructed by Mervyn Finlay and Jennings, appeared for Lorgier The same firm of solicitors instructed Mr Kinkead, who appeared for Thomas Keith Boyd, who was acquitted on the previous day.<sup>[377]</sup>

#### **24 June, 1930. Child Endowment Case – Postal Official's Lapse.**

In the summons division of the Central Police Court yesterday, William James Mitchell, senior inquiry officer, Postmaster-General's Department proceeded against Frederick Leslie Clissold on a charge of false pretences. Mr Kinkead (instructed by Mr F A. Newnham) appeared for defendant.

The evidence was that defendant, who had been a postman at Broken Hill, had been receiving money for two children under the Child Endowment Act. He subsequently went to Randwick, and the allegation was that he had failed to account to his wife for £38/9/ of a total of £78/9/3, which had been drawn for the support of the children. Defendant had been 22 years in the service, and had been receiving endowment for 11 years in respect of one child, and for seven or eight years in respect of another.

Mr Kinkead contended that there was no case to answer, and called no evidence.

Mr Camphn SM , convicted defendant, but released him without passing sentence, upon his giving security of recognisance of self in £40 that he would be of good behaviour for a period of 12 months and pay to the Postmaster-General's Department the sum of £38/9/3 on or before July 21.<sup>[378]</sup>

#### **25 June, 1930. Quarter Sessions (Before Judge Armstrong & Juries)**

Mr T.S. Crawford, Crown Prosecutor

### Convicted Perjury

Carl Rudolph Nitschke was charged with perjury. It was alleged that he had sworn that on October 19 he did not sell a bottle of wine at a wine shop then conducted by him In Anzac-parade, South Kensington, to Constable Jupp, but that he gave a bottle of wine to a woman.

The jury found accused guilty, with a strong recommendation to mercy on the following grounds:-(1) That the jury was not convinced that Nitschke realised the gravity of the offence; (2) because arising out of the same set of circumstances Nitschke had already been fined £100 and deprived of his licence in another court.

Nitschke was remanded for sentence.

Mr. Kinkead (instructed by Mr. F. .A. Newnham) appeared for Nitschke.<sup>[379]</sup>

#### 26 June, 1930. Quarter Sessions (Before Judge Armstrong & Juries)

Mr T.S. Crawford, Crown Prosecutor

### Bound Over

Carl Rudolph Nitschke, who had been found guilty of perjury in that he had sworn that on October 19 he did not sell a bottle of wine to Constable Jupp at a wine shop then conducted by him In Anzac-parade, South Kensington, but that he gave a bottle of wine to a woman, was bound over in his own surety of £50 and another of the same amount to come up for sentence if called upon within two years. His Honor stated that in view of the jury's strong recommendation to mercy on two grounds he had decided not to pass any sentence.

Mr. Kinkead (instructed by Mr. F. A, Newnham) appeared for Nitschke.<sup>[380]</sup>

#### 28 June, 1930. Quarter Sessions (Before Judge Armstrong & Juries)

Mr T.S. Crawford, Crown Prosecutor

### Bound Over

Jack Chapman, 20, a salesman, pleaded guilty to stealing five motor cars, the property of T M Burke Pty, Ltd, Frank E Bucknall, Bilan R Beston, Henry A. Ridler, and James Crockett and Co Ltd.

Mr Kinkead (instructed by Messrs Hobbs and Stonham), who appeared for Chapman said that owing to the depression he had lost his employment. Instead of telling his parents, he came into town daily, and stole the cars.

Detective-sergeant Bowie said that Chapman came of very fine parents. When witness interviewed accused's father, he advised him to leave his son in Long Bay and "give him a taste of what gaol is like." The father had accepted that advice.

Mr. Kinkead said that if his Honor would bind Chapman over, his father, who had made good all the losses to the people concerned, would secure a position for him as his chauffeur and deduct amounts from his wages until the money had been repaid to him.

His Honor: I am glad the father is doing that.

Chapman was bound over in his own surety of £20 and another of a like amount to come up for sentence if called on within three years.<sup>[381]</sup>

Quarter Sessions (Before Judge Curlewis) – Mr McKean K.C. Senior Crown Prosecutor  
Abstain From Liquor

Noel Melene, 22, an ironworker, pleaded guilty to breaking and entering Cawsey's cordial factory, Pyrmont, on June 8, 1930, and stealing four jars and 22 dozen bottles of cordials.

Melene was bound over in his own surety of £40, and one other of a similar amount, to come up for sentence if called upon within two years, further conditions being that he should abstain from intoxicating liquor for that period, and pay £30 to the Clerk of the Peace within 12 months for Cawsey's, Ltd.

On the question of restitution, Mr. Kinkead stated that eight others were said to be concerned, and he did not think Melene should have to make good the whole amount.

Mr. Browning: If this man is taking the whole blame on his shoulders and the other young men are what is known as "decent sports," surely they will come along and help.

His Honor told Melene that if he were seen drinking he would be liable to be called up for sentence.

Mr. Kinkead (Instructed by Mr. F. A. Newnham) appeared for Melene.<sup>[382]</sup>

#### **11 July, 1930. Bank Robbery – Two Men Charged – Alleged Theft of £2477.**

At Darlinghurst Quarter Sessions yesterday, before Judge Curlewis Bruce Bell 32 a motor mechanic and Alfred Herbert McKaig 20 a plumber were charged with having in October 1929 broken into the Commercial Bank of Australia at Enmore and stolen £2477.

Mr Kinkead (instructed by Mr FA Newnham) appeared for both accused.

The Crown Prosecutor (Mr Stacy) said that at the time of the robbery the bank manager was away. The accused Bell who was the caretaker went to the police about 11 p m on the Sunday and said that the bank had been broken into. Holes on the front of the safe showed that an attempt had been made there to open it. That not having been successful the safe was moved out from the wall to allow someone to get behind it. A hole was then cut out of the back of the safe. A white powder known as infusorial earth was on the floor. The accused Bell had a garage not far from the bank and he owned an oxy welding plant. When that plant was examined a white powder was found on the tubing. That powder was identical with the powder found in the bank. Three or four weeks before the robbery, Bell had borrowed an oxy cutter. That cutter was taken by McKaig to another man who lent another cutter. The only evidence about the bank notes was that certain notes were taken to the traffic office to pay for the registration of a car. The constable noticed a white powder on these notes but all he could remember was that they were handed in by someone with a Rockdale address. There were three amounts paid in from Rockdale that day. Two persons would say that there was nothing wrong with the notes they paid. It was alleged with regard to the other notes that they were obtained from McKaig. Two oxygen cylinders were found in Cooks River. The Crown alleged that one of these cylinders was purchased by Bell shortly before the robbery. Bell stated that he and his wife spent the Sunday at the Mountains. McKaig was with Bell on the Saturday afternoon.

Constable A W Toms stated that Bell had asked him to go to the bank as there had been a robbery. Mrs Bell was nervous and hysterical.

Mr Kinkead: Did not Bell arm himself with a revolver before you went upstairs?

Witness: No he did not.

Asked by Mr Kinkead whether he was aware that Bell had conducted an oxy-welding business in Enmore for four years Detective sergeant Thompson said he was not, but he understood that it was a fact.

Owen Bailey who was accountant at the bank when the robbery occurred and is now at head office stated that the only obligation on the caretaker was that he must sleep on the premises.

His Honor: So that the bank is content to leave £3000 in notes without any protection?

Witness: So long as the caretaker comes back to sleep at night it is all right.

The hearing had not concluded when the Court adjourned till to-day.<sup>[383]</sup>

#### **11 July, 1930. Judges Test of Value**

Much attention focussed on seven bank notes at the Quarter Sessions yesterday, when inquiries were made into a bank robbery.

"Would you call a burnt note all right?" asked Mr. Kinkead of a witness.

"No, I would not," was the reply.

"I would consider a note all right so long as I got 20 shillings for it," said Judge Curlewis.<sup>[384]</sup>

#### **12 July, 1930. Quarter Sessions (Before Judge Curlewis)**

Mr B.V. Stacy prosecuted for the Crown

#### **Enmore Bank Robbery**

The hearing was continued of the charge against Bruce Bell, 32, a motor mechanic, and Alfred Herbert McKaig, 26, a plumber, of breaking into the Commercial Bank of Australia at Enmore in October, 1929, and stealing £2477.

Mr. Kinkead (instructed by Mr. P. A. Newnham) appeared for both accused.

The accused Bell, giving evidence, stated that he was caretaker of the bank, a condition being that he slept at the bank at night. Two or three times he had made representations to the bank officials as to the insecurity of the premises, and he was told that he could do what was required at his own expense. The statement he had made to the police was correct. On Saturday, October 5, he left the bank premises between 1 and 2 p.m., and went to a garage a few doors from the bank. McKaig came in while he was there. Witness said he finished at the garage about 5 p.m. and he and McKaig went to a hotel a short distance away and stayed there until 6 o'clock. He returned home, and left about 8 p.m. with his wife to attend a dance at La Perouse. He was there until midnight, when he returned home. Between 7 am and 8 am on the Sunday he went in his car to Katoomba and returned about 11.30 p.m. He then found the back door of the bank wide open. There was a smell of burning, and thinking that a robbery had been committed he drove off for a constable. When he returned with the constable he went inside the bank and found that the safe had been interfered with. He obtained the bank's revolver and with the constable made a search upstairs, but did not find anybody. "I know nothing of the robbery," added Bell, "and did not get out of the road while somebody else did the job."

Alfred Delve, a plumber, said that he lived next door to the bank. On the Sunday heard a child calling out. On looking outside he did not see a child, but there was a man looking through a hole in a fence into the bank.

Alfred Herbert McKaig, one of the accused stated in evidence that on the Saturday afternoon he was at Bell's garage and at an hotel. After tea he went to the Palais Royal, and after driving a girl home, reached his own home about midnight. He left home early on Sunday morning, and went to

Brighton-le-Sands for a swim. On the Sunday night after returning home from Brighton-le-Sands he was not out again. He knew nothing of the bank robbery.

During the afternoon the jury inspected the bank premises.

The hearing had not concluded when the Court rose till Monday.<sup>[385]</sup>

#### *12 July, 1930. Quarter Sessions (Before Judge Curlewis)*

Mr B.V. Stacy prosecuted for the Crown

##### **Enmore Bank Robbery**

The hearing was continued of the charge against Bruce Bell 32, motor mechanic, and Alfred Herbert McKaig, 26, plumber, of having in October, 1929, broken into the Commercial Bank of Australia at Enmore and stolen £2477.

At 3.20 pm the jury retired to consider its verdict. At 5.52 pm the jury was locked up for the night.

Mr Kinkead (instructed by Mr PA Newnham) appeared for both accused.<sup>[386]</sup>

#### *18 July, 1930. Quarter Sessions (Before Acting Judge Rowland)*

Mr T.S. Crawford, Crown Prosecutor

##### **Prosecution Fails**

Robert George Wade, 38, was charged with shopbreaking at Balmain, with intent to steal.

After the Crown evidence, Mr. Kinkead submitted that there was no case to go to the jury.

His Honor said he was not prepared to say that there was no case, but he would direct the jury that the only evidence was circumstantial.

The jury stopped the case and returned a verdict of not guilty. Wade was acquitted and discharged.

##### **Coachbuilder Convicted.**

Charles Henry Searle, 31, a coachbuilder, was convicted of housebreaking, and was remanded for sentence.

Mr. Kinkead (instructed by Messrs. Higgins, Holden, and Co.) appeared for Searle.

##### **Not Guilty.**

Frederick Arthur Petersen, 27, was charged with having maliciously damaged a plateglass window, the property of D. A. Robertson.

At the close of the Crown case, and without leaving the box, the jury returned a verdict of not guilty. Petersen was acquitted and discharged.

Petersen was further charged with breaking and entering Robertson's shop and stealing ten bottles of wine.

He pleaded not guilty, and was bound over, in his own surety of £10, to come up for trial if called upon at any time within three months.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Petersen.<sup>[387]</sup>

#### *19 July, 1930. Quarter Sessions (Before Acting Judge Rowland)*

Mr T.S. Crawford, Crown Prosecutor



### **To Make Restitution**

Charles Henry Searle, 31, a coach builder, who had been convicted of housebreaking, was bound over to come up for sentence if called upon within two years, to pay £21 to the owner of the property and to abstain from intoxicating liquor during the period.

Mr Kinkead (instructed by Messrs Higgins, Holden, and Co) appeared for Searle.<sup>[388]</sup>

### **25 July, 1930. Alleged Fight – Young Man's Death**

The Parramatta District Coroner (Mr. H. Richardson Clark) yesterday commenced an inquiry into the death of Arthur John Frame, 29. John Stanley McDonald, a dentist, of Ashfield, was present in court.

Dr Brooks said that Frame died from an extensive fracture of the skull, which was exceptionally thin.

Cecil Trefry said that on July 12, the deceased his father and brother, and two others, were travelling in a car. At Ashfield, another car, driven by McDonald, speeded from an intersection at a fast rate, and a collision was narrowly averted. Both vehicles were stopped and the deceased and McDonald alighted. McDonald rushed towards Frame, and struck him. Frame fell to the ground. The deceased's father then came to his assistance, but McDonald punched him, and knocked him down. Deceased's brother approached, and there was a scuffle, and he fell back against a car. McDonald cried, "I have knocked three of them, now I'll get the others" and rushed at witness, who dodged. Frame was taken to hospital and outside the institution McDonald said, "I am a doctor. One doctor will not go against another. I won the middleweight amateur championship at the university for three years in succession." McDonald was very drunk at the time.

Richard Frame, the father of the deceased, said that McDonald said to him outside the hospital, "I am sorry It is a terrible thing." He appeared to have gone mad at the time he struck the deceased.

The further hearing was adjourned till August 1, at the Glebe Court.

Mr Kinkead (instructed by Messrs O'Neill, Lorton and Links) appeared for McDonald, and Mr Halse Rogers for the Crown.<sup>[389]</sup>

### **26 July, 1930. Quarter Sessions (Before Judge Curlewis)**

Mr V.H. Treatt, Crown Prosecutor

#### **Receiving Charge Fails.**

James Joseph Roach 38 a draper was charged with receiving nine rolls of flannel 264 shirts and 28 pairs of trousers the property of M J Hanna.

The jury returned a verdict of not guilty. Roach was acquitted and discharged.

Mr Kinkead (instructed by Mr F A Newnham) appeared for Roach.<sup>[390]</sup>

### **29 July, 1930. Quarter Sessions (Before Acting Judge Rowland)**

Mr T.S. Crawford, Crown Prosecutor

#### **Alleged Assault**

John Finnie, Walter Harrison, Patrick Francis Roache, Wilson McRitchle, and Thomas William Law were charged (1) with an assault occasioning actual bodily harm to J. L. Fraser, (2) with assaulting Constable J. L. Fraser during the execution of his duty.

The hearing had not concluded when the Court rose till to-day.

Mr. Sproule, of Messrs. R. D. Meagher, Sproule, and Co., appeared for Finnie; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.), for Roache and Law. Harrison and McRitchle were undefended.<sup>[391]</sup>

### **30 July, 1930. Quarter Sessions (Before Acting Judge Rowland)**

Mr T.S. Crawford, Crown Prosecutor

#### **Acquitted**

The trial was concluded of Thomas William Law 25 a labourer, John Finnie 28 a hodcarrier, Walter Harrison 29 a wharf-labourer, Patrick Francis Roache 27 a labourer, and Wilson McRitchie 29 a dealer. They were charged with an assault occasioning actual bodily harm to J L Fraser and assaulting Constable Fraser during the execution of his duty.

The five accused were found not guilty on both counts. Law, Finnie, Harrison, and Roache were discharged. McRitchie was remanded to his former custody.

Mr Sproule of Messrs R D Meagher Sproule and Co appeared for Finnie. Mr Kinkead (instructed by Messrs R D Meagher Sproule and Co ) for Roache and Law, Harrison, and McRitchle were undefended.<sup>[392]</sup>

### **13 August, 1930. Judge Hamilton – Tributes in Court**

Before commencing proceedings in the Quarter Sessions in No 1 Court yesterday, Judge White paid a tribute to the late Judge Hamilton. Judge Hamilton he said had a great reputation and had served his country well.

Mr T S Crawford on behalf of the Bar and Crown Prosecutors, said that the profession had suffered a severe loss by Judge Hamilton's death.

Mr L R Abigail also added his tribute.

In No 2 Court Judge Armstrong also referred to the great public services Judge Hamilton had rendered.

Mr Weigall KC Solicitor-General, and Mr Kinkead also spoke.<sup>[393]</sup>

### **15 August, 1930. Quarter Sessions No. 1 Court (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

#### **Guilty of Housebreaking**

Leslie Salmon, 21, and John Percival Campbell, 19, were charged with house-breaking. There was a second count of receiving. The Crown alleged that on April 9 the accused broke into the dwelling of Cyril Daniel Armstrong, at Marrickville, and stole clothes and jewellery. The accused were found guilty on the first charge, and were sentenced to 18 months' imprisonment.

Mr. Kinkead (instructed by Mr. P. A. Newnham) appeared for Salmon, and Campbell was undefended.

#### **Acquitted.**

Francis Field, 27, a tailor, pleaded not guilty to a charge of receiving 19 suit lengths of material, the property of Jonn Leslie Westacott, knowing them to be stolen. Without leaving the box the jury returned a verdict of not guilty, and the accused was discharged.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for the accused.<sup>[394]</sup>

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**16 August, 1930. Quarter Sessions (Before Judge Armstrong)**

Mr McKean K.C., Crown Prosecutor

**Grazier Bound Over.**

Gerald Vincent English, 32, grazier, pleaded guilty to having forged a promissory note of £5500 with intent to defraud.

Evidence was given that accused had handled huge sums of money for Victorian firms with honesty. When arrested he had said that he was almost off his head. People had owed him money and his wife was ill. Accused was bound over for five years in £100, and a surety of £100.

Mr. Kinkead (instructed by Messrs. J. J. Carroll and Son) appeared for the defendant.

**Forged Treasury Bond.**

Raymond Friselle, 29, dairyman, pleaded guilty to having forged a Treasury bond.

There were previous convictions recorded against accused. He was sentenced to a year's imprisonment with hard labour, and his Honor recommended that he be sent to the reforestation camp at Tuncurry.

Mr. Kinkead (instructed by Mr. W. M. Nlland) appeared for accused.

**Theft Of £740.**

Albert David Rothwell, 31, manager pleaded guilty to three charges of larceny of softwoods valued at £740, the property of Andrew Bros. Pty., Ltd.

Detective Arantz said that accused had been driven to crime in order to obtain medical expenses for his wife, who was suffering from an incurable disease. Witness would not have been able to charge accused had he not confessed to his crime.

His Honor said that the detective's evidence moved him deeply. Rothwell was bound over in £100, and one surety of £100, to be of good behaviour for five years. He was also ordered to make restitution of the £740 by a scale of payments. Mr. Kinkead (instructed by Mr. C. P. Dignam) appeared for accused.

**Wharf-Labourers Charged.**

Norman Urquhart, 33, wharf-labourer, Joseph O'Toole, 33, wharf-labourer, and Thomas Christian, 27, wharf-labourer, pleaded not guilty to a charge of having broken and entered the shop of John Solomon, at Mortlake, with intent to commit a felony. O'Toole and Christian were found not guilty. Urquhart was sentenced to eight months' imprisonment, with hard labour, the sentence to date from July 15 last. Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for Christian.<sup>[395]</sup>

**19 August, 1930. Quarter Sessions No. 2 Court (Before Judge Armstrong)**

Mr McKean K.C. Crown Prosecutor

**Alleged Bank Robbery**

Bruce Bell, 32, a motor mechanic, and Alfred Herbert McKaig, were charged with having in October, 1929, broken into the Commercial Bank of Australia, Ltd. at Enmore, and stolen £2477.

Mr. Kinkead (instructed by Mr. P. A. Newnham) appeared for the accused.

After the Crown Prosecutor had opened the case the jury was taken to view the premises.

The case is part heard.<sup>[396]</sup>

**19 August, 1930. Quarter Sessions No. 2 Court (Before Judge Armstrong)**

Mr McKean K.C. Crown Prosecutor

**Bank Robbery**

The taking of evidence, mainly on the lines of that tendered at last hearing, was continued in the case against Bruce Bell and Alfred Herbert McKaig of having broken and entered the Commercial Bank of Australia, Ltd., Enmore, and stolen £2477. The offence was alleged to have been committed in October of last year.

Both accused gave evidence in denial of the charge. McKaig was in the box when the Court adjourned till the morning.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for the accused.<sup>[397]</sup>

**20 August, 1930. Prosecutors Promise.**

Bottom, the Weaver, favorite Shakespearean character of Allan Wilkie, flashed across a stormy court at the Quarter Sessions yesterday, "leaving peace and calm in his wake. Mr. L. J. McKean, K.C., was hotly attacking a row of witnesses for the defence, bringing forth a vigorous objection from Mr. J. Kinkead. Like magic was Mr. McKean's soothing reply, sotto voce: "All right, Jim, I will treat them 'gently as any sucking dove'."<sup>[398]</sup>

**21 August, 1930. Crown Prosecutor's Hope.**

A case in Quarter Sessions this week provided Mr. McKean (prosecutor) and Mr. Kinkead, for the defence, with good sparring practice. A witness described how his wife had fainted when a telephone bell rang in Mr. Kinkead's chambers.

The jury was doubled up when Mr. McKean came back. "I hope Mr. Kinkead was not the cause of her fainting."<sup>[399]</sup>

**21 August, 1930. Quarter Sessions No. 2 Court (Before Judge Armstrong)****Conviction for Bank Robbery**

Bruce Bell and Alfred Ernest McKaig were charged with having at Enmore, in October, last year, broken and entered the premises of the Commercial Bank of Australia. Ltd., and stolen £2477.

At a previous trial, the jury failed to agree.

The Crown case showed that during Eight hour week, the banking premise had been entered, the back of the safe cut out with an oxy-welder, and the money taken.

The defence was an alibi.

After two hours' retirement the jury returned the following verdict "Both accused guilty, with a recommendation to mercy in view of the lax methods of the bank, which placed serious temptation in their way."

The accused were remanded till Friday for sentence.

Mr. McKean, KC, appeared for the Crown; and Mr Kinkead (instructed by Mr. P. A Newnham) for the defence.<sup>[400]</sup>

**21 August, 1930. Quarter Sessions No. 2 Court (Before Judge Armstrong)**

Mr McKean, K.C., Crown Prosecutor.

### Acquitted

Maurice Stewart Cobcroft was charged with having been concerned in causing the death of Anthony James Petersen. When the case for the defence was half way through the Judge stopped it.

Petersen met his death as the result of a collision between a horse drawn vehicle in which he was sitting and a motor cycle.

His Honor told the jurors that there was no evidence of recklessnes on the part of accused and instructed them to acquit Cobcroft.

Mr Kinkead (instructed by R H K Wood and Bartley) for accused.<sup>[401]</sup>

### 23 August, 1930. Bank Robbery – Two Men Sentenced – Four Years Imprisonment.

At Quarter Sessions yesterday, before Judge Armstrong, Bruce Bell and Alfred Herbert McKaig, who had been convicted of breaking and entering the Commercial Bank of Australia, Ltd, at Enmore, during October last year, and stealing £2477, were called up for sentence. Each was sentenced to four years imprisonment.

Detective Thompson said that McKaig associated with convicted thieves and safebreakers, and was living with a woman who was the sister of a safebreaker, who had been convicted about 2½ years ago and was due for release this year. Bell had been a trusted servant of the bank, and enjoyed the confidence of his employers and while the manager was at the mountains entertained safebreakers on the premises. As a result a high official was dismissed.

His Honor: And I would say he got no more than he deserved.

Detective Thompson: The wife of one of the accused told me that her father was a parson and that she thought she was doing quite right In uplifting this class of man.

Mr Kinkead, referring to the large sum of money mentioned in the indictment said that there was no evidence that either Bell or McKaig had much money in his possession. Each had had to sell property to pay for his defence. Bell certainly had not benefited by one penny piece by the robbery.

McKaig was sentenced to four years' imprisonment with hard labour. "The recommendation of the jury in your favour. I have given consideration to," said his Honor.

There were looseness and carelessness at the place. The care of the premises was exceedingly poor and gave an opportunity and practically an invitation to men like you to commit the robbery. According to the evidence, the cleaner did the work on Saturday, Sunday, or Monday, the key of the front door being left in a peg bag hanging at the door. Anybody who knew of the fact could have entered the bank with the greatest ease.

Later in the morning Bell was sentenced to four years' imprisonment, the Judge stating that he had given full consideration to the recommendation of the jury, and could see no reason why he should make the punishment any lighter.

Mr Kinkead (instructed by Mr. P. A Newnham) appeared for the accused.<sup>[402]</sup>

### 29 August, 1930. Kogarah Police Court (Before Mr McMahon S.M.)

#### Wild Telephone Talk

Serious allegations against a police constable were made by Henry Duncan Gardner, 19, during the hearing of a case in which Gardner was charged, together with Herbert Oswald Baker, 19, with

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having at Sutherland on July 18, stolen a telephone receptacle, valued at £8/2/- the property of the Postmaster General.

Constable Payne deposed that at 6 p.m. on August 8, he saw Baker at the Sutherland Police Station, and informed him that a telephone had been stolen from the bureau in front of the local post office, on July 18; also that he had been told that Baker and a young man named Bud Gardner had stolen that telephone. To this Baker replied: didn't take it. I was standing on the corner, when Bud Gardner and another chap named Ashwood came over to me and said they were going to take the telephone, and asked me to keep watch. They walked over to the bureau, and I saw Gardner take the telephone, cover it with a chaff bag, and walk down Flora Street. I only kept watch, didn't take the telephone."

Witness added that he saw Gardner who denied knowing anything about the matter, but afterwards he made a statement (produced) in which it was alleged that he admitted taking the telephone, from which 2/- was obtained, and this sum was "whacked" with the others. The telephone was found on the railway line by some person, the constable said, and it was handed to Constable Murphy.

For the defence, Mr. Kinkead claimed that Baker was weak in intellect, and did not know right from wrong, but after questioning Baker, His Worship ruled that defendant was not so green as he made out, and he knew right from wrong.

Baker told the magistrate that he did not understand the oath although he once attended a Sunday School. He heard about Heaven and Hell, and the Bible, but he didn't know what they were. He couldn't read, but could copy words, and sign his name. His evidence was taken on an affirmation dictated by the magistrate.

Mr. McMahon: You went to school, for some years.—"Yes, I went to St Joseph's College."

When you left school, what class were you in?—In fifth class.

And you can't, read or write?—No, Sir.

Baker said he played tennis and billiards, but he had no books, and didn't go out at night.

Baker's mother gave similar evidence, and that her son played with little children. He was dull-witted, and played "trains" and "mud pies."

His worship, while agreeing that Baker was of low mentality, declared he was not as green as he tried to make out. "According to his statement he watched the others, and that is all the evidence against him. Perhaps he did not know that keeping watch made him guilty. I'm prepared to give him the benefit of the doubt. He is discharged."

Gardner, in his evidence, alleged that when he was taken to the police station he was questioned by Constable Payne. He denied all knowledge of the theft, and said Payne took him into a room, caught him by the hair and hit him on the head. He admitted making the statement, but declared that he was forced to admit his guilt, but it was absolutely untrue. He called out for help while he was being roughly handled, but nobody answered him. He did not complain to other policemen, as he thought that would be useless, but he told his father, who was waiting outside.

Mrs Gardner said her son was at home reading all the afternoon in question. She remembered the date, as she was making a birthday cake.

"Gardner, I think, is a wicked liar," the magistrate said, "and a very wicked and dangerous young man, to make these charges against the constable. I don't believe his story about being knocked about."



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Gardner promised to leave the City and find employment in the country, after which the magistrate sentenced him to three months' hard labor, but suspended the sentence under the Amended Crimes Act, and bound him over to be of good behaviour for 12 months.<sup>[403]</sup>

#### **5 September, 1930. Death Sentence – The Berry Murder – Laurence Convicted**

Before Mr. Justice Ferguson In the Central Criminal Court yesterday, Charles Frederick Laurence, 36, was found guilty of the murder of Arthur Robert Wornes, on May 27 at Berry.

Laurence was sentenced to death.

The Crown Prosecutor (Mr. McKean, K.C.), in outlining the case to the jury, said that apparently Laurence and the murdered man, who were fellow-labourers, were on friendly terms. Accused had been In the habit of visiting Wornes's home, both when Wornes was there and when his wife only was there.

On the day of the tragedy Laurence, it was alleged, bought some rum and strychnine, poisoned the rum with the strychnine, and when he met Wornes returning to his home gave him a drink of the poisoned rum. Wornes rode home, but his wife hardly had time to help him into the house before he was dead.

Mrs. Wornes, the widow, in evidence, said that Laurence was at her home that day about 4.30 p.m. He asked her what time her husband would be home from work. Laurence called at her home once a week. Her husband had been kind to her.

Sergeant McRae, in evidence, said that after warning the accused he questioned him, and accused replied: "The thing has been worrying me. I want to get it off my mind. I will tell you the lot." After showing the police where the bottle that contained the rum was, accused made a statement.

After the jury had been empanelled accused's counsel objected to a statement made by the accused being tendered on the ground that it was not made voluntarily. The jury retired while evidence was taken. Sergeant McRae and Constable Jonas gave evidence that the statement was made by the accused without any promise or threat being held out by them. Jonas said that accused was below normal mentally.

The accused, in evidence, said that he was In the cells at Berry Police Station when Constable Jonas told him that it was either he or Mrs. Wornes "for it," and added that he had better make a statement. He then made the statement.

His Honor held that there had been no inducement, and admitted the statement as evidence.

After a short retirement the jury returned a verdict of guilty.

Mr. Justice Ferguson, before pronouncing the death sentence, said: "You have been found guilty of the gravest crime that a man can commit. In my opinion the verdict is the only one the jury could have arrived at. You have killed a man who, you stated, was one of your best friends, and you killed him not in the heat of passion but with deliberation and treachery."

Mr. J. J. B. Kinkead (instructed b; Messrs R. D. Meagher, Sproule, and Company) appeared for the defence.<sup>[404]</sup>

#### **6 September, 1930. Central Criminal Court (Before Mr Justice Ferguson)**

Crown Prosecutor, Mr L.J. McLean K.C.

### **Alleged Manslaughter**

John Stanley McDonald, dental surgeon, was arraigned on a charge of the manslaughter of Arthur John Frame, at Summer Hill on July 15.

The case for the Crown was that the accused nearly collided with a car in which the deceased and other men were travelling at the intersection of Wetherill-street and Liverpool-road, Croydon. The accused, deceased, and his companions alighted from their respective cars and a quarrel ensued, during which Frame was knocked down by McDonald and fatally injured.

The accused admitted having struck Frame, but declared that the blow was struck in self defence.

After a short retirement, the jury returned a verdict of not guilty.

Mr. Kinkead (instructed by Messrs, Morgan J. O'Neill, Lorton, and Links) appeared for the defence.<sup>[405]</sup>

### **24 September, 1930. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr T.S. Crawford

### **Forged Promissory Note**

Francis Reginald Norman Earnell, 35, was found guilty of a charge of forging a promissory note with intent to defraud.

His Honor said that the offence had not caused harm to anyone, and accordingly bound accused over in his own recognisance of £10, to be of good behaviour for 12 months.

Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for the accused.

### **Guilty of Fraud**

Alfred Hayes, 72, was found guilty of a charge of having fraudulently omitted to account for money received by him in respect of the purchase of a business.

His Honor said that the accused was one of those scoundrels who took advantage of ignorant and foolish women who, in some cases, bought small businesses for the support of their children.

The accused was sentenced to two years' imprisonment.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for the defence.<sup>[406]</sup>

### **4 October, 1930. Quarter Sessions Appeals. (Before Judge Armstrong)**

#### **Alleged Unlicensed Pistol.**

Leonard Bartlett appealed against his convictions and fines of £50 imposed upon him by Mr Fletcher SM at the Paddington Police Court on July 30 last on each of two charges of having had an unlicensed pistol in his possession at Bondi. He also appealed against his conviction and fine of £10 on a charge of having had certain goods in his possession reasonably suspected of being stolen.

His Honor allowed the appeals and quashed the convictions.

Mr J J B Kinkead (instructed by Mr F A Newnham) appeared for the appellant, and Mr McKean, K C, for the Crown.<sup>[407]</sup>

### **14 October, 1930. Quarter Sessions (Before Judge Armstrong)**

Mr McKean K.C., Senior Crown Prosecutor

**Not Guilty**

Albert Gammel, 36, a butcher, was charged with receiving a bag of sugar. Without leaving the box the Jury returned a verdict of not guilty. Gammel was discharged.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Gammel.<sup>[408]</sup>

**14 October, 1930. Quarter Sessions (Before Judge Armstrong)**

Mr McKean K.C., Senior Crown Prosecutor

**Not Guilty**

George Jepson 51 a dealer who by direction of the Judge was found not guilty on a charge of breaking and entering and in alternative charge, of receiving was defended by Mr Kinkead (instructed by Messrs Mervyn Finlay and Jennings)

**Charge Fails**

Arthur Joseph Rudge 45 a clerk was charged with having embezzled sums of £1/7/ £1 and £3 the property of the Tell Associated Oil Co Ltd.

Rudge was found not guilty on the three counts and was discharged Mr Kinkead (instructed by Messrs R D Meagher Sproule and Co ) appeared for Rudge.<sup>[409]</sup>

**14 October, 1930. Quarter Sessions (Before Judge Armstrong)**

Mr McKean K.C., Senior Crown Prosecutor

**Labourer Found Guilty.**

Charles Thomas Farrell, 33, labourer, was charged with breaking and entering a factory at Alexandria with intent to commit a felony.

In a statement from the dock, accused said that, having seen the police patrol there, he entered the factory merely out of curiosity.

The jury found Farrell guilty. He was remanded for sentence.

Mr. Kinkead (instructed by Mr. J. A. Newnham) appeared for Farrell.

**Fired Three Shots.**

William George Morton. 19, labourer, and John Arthur Palmer, 22, plumber, were charged with breaking and entering a shop with intent to steal.

It was stated in evidence by the police that two men were seen bending over an open safe. One was arrested in the street, but the other escaped. The police fired three shots at the second man.

Morton was found guilty and remanded for sentence. Palmer was found not guilty and discharged.

"I am sorry that I cannot say one word in Morton's favour," said Plainclothes Constable Robinson. "Since childhood, he has followed a criminal career." Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Palmer.

**Not guilty.**

Vero Aston, 39, tobacconist, was charged with breaking and entering and stealing 203 golf balls and five pairs of shoes, the property of Thomas Popplewell. There was an alternative charge of receiving.

The Crown Prosecutor said that the Crown had no evidence against accused on the charge of breaking and entering.

Aston was found not guilty on both counts. He was discharged.

Mr. Kinkead (instructed by Messrs. E. G. Sayegh and Co.) appeared for Aston.<sup>[410]</sup>

**17 October, 1930. Everyday and Everybody – Hard on Ma-in-Law**

Addressing the jury on behalf of an accused at the Darlinghurst Sessions yesterday, Mr. J. Kinkead drew attention to the fact that the mother-in-law had spoken for defendant.

"And instead of exaggerating anything in his favor, also has told you the unvarnished truth," he added.

Mr. McKean, K.C. (Crown Prosecutor): She wants to get rid of him.

Mr. Kinkead: I am speaking about this lad's mother-in-law and not my learned friend's!

This retort was taken in good spirit. The two attorneys are close friends, Mr. Kinkead having been senior instructing counsel to Mr. McKean before going into private practice.<sup>[411]</sup>

**21 October, 1930. Quarter Sessions (Before Judge Armstrong)**

Mr McKean K.C., Senior Crown Prosecutor

**Clovelly Case**

Twenty-two men were listed to appear before his Honor, charged with malicious injury to property at Clovelly. Special arrangements had been made to accommodate the accused; but they were not called upon to plead.

Mr. Kinkead, who (instructed by Miss C, Jollie Smith and Co.) appeared for the defence, said: "There are sixteen of the accused present, and six are absent. Three are shearing; one is a fisherman, who is away on a cruise, and will not be back in Sydney this week. The Crown prosecutor will not consider my proposal to proceed with the trial of the sixteen, and I quite appreciate his reasons for refusing. There are also witnesses for the defence absent, one of them being Senator Rae, who will not return to Sydney until Sunday next. Once we commence the case there will be 70 witnesses for the defence, and the trial should last 10 days.

Mr. McKean: I strongly object to eleventh hour applications for adjournment.

Miss Jollie Smith said that the cases were to have been in the list last Monday when all the accused were available. She had not been informed until Wednesday last that the cases would be in the list for the following Monday.

The Crown Prosecutor: It is likely that there will be 100 witnesses during this trial. I think that a special court should be arranged on a date to be fixed between the Crown and the defence. I ask that the recognisances of these six men be forfeited.

Mr. Kinkead: If your Honor does that, I ask you to direct that the recognisances be allowed to lie in the office and when the case is listed if the accused appear the order be vacated.

The Crown Prosecutor agreed to this course being adopted.

His Honor made the order accordingly.<sup>[412]</sup>

**25 October, 1930. Quarter Sessions (Before Judge Armstrong)**

Mr McKean K.C., Senior Crown Prosecutor

**Not Guilty**

Thomas Jarrett, 25, a labourer, was charged with inflicting grievous bodily harm on William Philliss at Daceyville on September 13.

It was stated by the Crown Prosecutor that Philliss, who was a police constable, was in plain clothes at the time of the alleged assault. Two stitches were inserted in Philliss's wrist, and he was off duty for 11 days.

The Jury returned a verdict of not guilty.

Jarrett was discharged.

Mr. Kinkead (instructed by Mr. F. C. Newnham) appeared for Jarrett.<sup>[413]</sup>

**30 October, 1930. In Divorce (Before Mr Justice Stephen)****Salway v Salway**

Samuel Edward Salway petitioned for divorce from Dyra Ellen Salway (formerly Little), on the ground of misconduct, which was alleged to have taken place with David Edgar Connors, who was joined as co-respondent. The allegations were denied. The parties were married at Sydney in October, 1916, according to the rites of the Church of England. Mr. B. T. Heavens appeared for petitioner; Mr. Toose and Mr. Kinkead (instructed by R. D. Meagher, Sproule, and Co.) for respondent; and Mr. Kinkead (instructed by R. D. Meagher, Sproule, and Co.) for co-respondent.

The suit is part heard.<sup>[414]</sup>

**31 October, 1930. In Divorce (Before Mr Justice Stephen)****Salway v Salway**

Samuel Edward Salway petitioned for divorce from Dyra Ellen Salway (formerly Little), on the ground of misconduct, which was, alleged to have taken place with David Edgar Connors, who was joined as co-respondent. The allegations were denied. The marriage took place at Sydney in October, 1916, according to the rites of the Church of England. Mr. B. T. Heavener appeared for petitioner; Mr. Toose and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for respondent; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for co-respondent.

The petition was dismissed.<sup>[415]</sup>

**5 November, 1930. Alleged Theft Of Socks - From Knitting Factory.**

At the Central Police Court yesterday, John Thomas Law, 51, poulterer was committed for trial on a charge of breaking and entering the store of Winslow Knitting company, Ltd., at 30 Buckland-street, Chippendale, and stealtag 1476 pairs of socks, 228 vests, and 205 pairs of ladies' hose, valued at £134.

Detective Fleming said that with Detective Godwin he searched defendant's house in Glebe on October 13 and found three pairs of socks under the dining-room table. Defendant said they were not his and he did not know how they got under the table.

Robert Betty, manager of the Winslow Knitting Company Limited, stated that he could identify two pairs of socks alleged to have been found in defendant's house as having been stolen from the factory.

Mr. Kinkead, who appeared for the defendant, said there was no evidence to prove that defendant had stolen the goods.

Mr. MacDougal, SM., stated that the case was one for a jury.<sup>[416]</sup>

### **11 November, 1930. Quarter Sessions (Before Judge White)**

Mr Treatt, Crown Prosecutor

#### **False Pretences.**

Percy James Sheppard 42 a collector pleaded guilty to falsely pretending to Norman Jesse Clyde Brown that William Alexander Carpenter, who died on January 26, 1930 at Newcastle was a member of the Independent Order of Rechabites and that his relatives were entitled to £100 from the funds of the society by means of which he obtained £100, the property of Irvine Greenstreet and another with intent to defraud.

Mr Kinkead stated that Sheppard had borne an excellent character.

Mr J H Wise MLC, said that all the money had been refunded to the society and Sheppards employers had undertaken to keep him in their employment.

Detective Clifford stated In evidence that Sheppard had borne an unblemished character owing to the miners strike he had become Involved In financial difficulties and had spent part of the money in liquidating his debts and the other in an endeavour to raise other money to satisfy his debts.

Mr Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for Sheppard who was remanded till Wednesday for sentence.

#### **Robbery Whilst Armed**

John Andrew Davidson Pugh 19 a steward, was charged that on August 15 1930, whilst armed with an automatic pistol he assaulted Dulcie Jean Walsh and robbed her of £12.

Mr Kinkead stated that Pugh had an excellent upbringing, and affidavits in support of his previous good character were now on their way from Canada.

Mr Kinkead stated that Pugh was not In possession of the revolver at any time when any offence was committed.

Mr Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for Pugh who was remanded till Friday week for sentence.

#### **Breaking And Entering**

Jack Couani, 18, a labourer, pleaded guilty to breaking and entering the shop of Nicholas Demos and stealing 12 boxes of cigarettes and 201b of lollies. He was remanded till tomorrow for sentence.

Mr Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for Couani.

#### **Not Guilty By Direction**

Frank McGowan 27, a dealer, was charged with stealing. There was an alternative charge of receiving.

By direction the jury returned a verdict of not guilty on both counts McGowan was discharged.

Mr. Kinkead (instructed by Mr. F. C. Newnham) appeared for McGowan.

#### **Alleged Housebreakeng.**

Leslie George Knight, 18, a labourer, was charged with breaking, entering, and stealing. There was an alternative charge of receiving.



The hearing had not concluded when the Court rose till to-day.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Knight.<sup>[417]</sup>

*12 November, 1930. Quarter Sessions (Before Judge White)*

Mr Treatt, Crown Prosecutor

**Acquitted**

Leslie George Knight, 18, charged with breaking, entering, and stealing, with an alternative charge of receiving, was found not guilty on both counts, and discharged.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Knight.<sup>[418]</sup>

*14 November, 1930. Quarter Sessions Appeal (Before Judge Edwards.)*

**Alleged False Pretences.**

Cecil Francis McCue appealed against his conviction and sentence of six months' imprisonment imposed upon him by Mr. Camphin, S.M., at the Central Police Court on August 28 last, on a charge of false pretences.

At the lower court it was alleged that McCue had falsely pretended to Corinna M. Muir at Drummoyne, on October 4, 1929, that he had been authorised to obtain from her £4/10/, for the purpose of obtaining a quantity of sheet lead.

His Honor allowed the appeal.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for the appellant, and Mr. Weigall, K.C., for the Crown.<sup>[419]</sup>

*15 November, 1930. Court Of Criminal Appeal - Rex v Bell And McKaig.*

Bruce Bell, 34, engineer, and Alfred Herbert McKaig, 27, plumber, appealed against their conviction before Judge Armstrong, at the Sydney Quarter Sessions, in August, on a charge of breaking and entering the Enmore branch of the Commercial Bank of Australia, and stealing the sum of £2700. Each was sentenced at the trial to four years' imprisonment. The substantial ground of appeal was that the defence was not properly put to the jury by the trial Judge.

The appeal is part heard.

Mr Windeyer, K.C., and Mr. J. B. Kinkead (instructed by Mr Fred A. Newnham) appeared for the appellants; and Mr. Weigall. K.C. (Crown Solicitor) for the Crown.<sup>[420]</sup>

*18 November, 1930. Court Of Criminal Appeal*

(Before Mr. Justice Ferguson, Mr. Justice James, and Mr. Justice Stephen.)

**Enmore Bank Robbery - Rex v Bell and McKaig.**

The Court unanimously dismissed the appeals of Bruce Bell, 34, engineer, and Alfred Herbert McKaig, 27, plumber, against their conviction before Judge Armstrong, at the Sydney Quarter Sessions, in August, on a charge of breaking and entering the Enmore branch of the Commercial Bank of Australia, and stealing the sum of £2477. Each was sentenced at the trial to four years' imprisonment.

Mr. Justice Ferguson said there was nothing in the summing up which could be pointed to as having been likely to mislead the jury or to withdraw from them any consideration in favour of the accused to which they were entitled to have the attention of the Jury directed.

Mr. Justice James said it seemed to him that a trial Judge should summarise the defence as set up by the accused or his counsel. He believed that the Judge should put before the Jury what the defence really was. However, he agreed with Mr. Justice Ferguson that there could not have been any miscarriage of Justice in this case.

Mr. Justice Stephen concurred.

Mr. Windeyer, K.C., and Mr. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for the appellants; and Mr. Weigall, K.C. (Crown Solicitor) for the Crown.<sup>[421]</sup>

**19 November, 1930. Raid On House - 21 Men Charged - Senator Rae's Evidence.**

Twenty-one men, William Henry Rogers, Harry Crawford, Ellis Mourer, John Sylvester, Sydney Andrew Huxter, Robert Charles Williams, Frank Bailey, Kelson William Long, James Lance Fairfax, Joseph Thomas Carr, George Nesbitt, Percy Joshua, Timothy Fenton, Arthur William Davey, Clarence Dawes, Cecil Joseph Phillips, Walter Henry Lawson, Joseph Collins, William Roer, Augustus John Trump, and Wilfred Mountjoy were charged at the Quarter Sessions yesterday, before Judge Armstrong, with malicious injury to property at Clovelly on July 28. The accused pleaded not guilty.

Another accused, Benjamin Watts, did not appear, and his Honor ordered his recognisances to be forfeited and a Bench warrant to issue.

Mr. Kinkead (instructed by Miss C. Jollie Smith and Co.) appeared for all the accused.

The Crown Prosecutor, in outlining the case, said it was alleged that the accused and a number of others damaged a house at Clovelly to the extent of £40. An unemployed meeting had been held at the Trade Hall that day, and the chairman of the meeting had intimated that a house occupied by one of their comrades had the bailiff in. Indignation was expressed, and the accused and others adjourned to the Communist Hall where an examination was made of the credentials of men who were to go out to the house. Two police officers were present at the Trade Hall meeting in plainclothes. One of them went in the same tram as the demonstrators to Clovelly and was present when the attack was made. Some of the accused threw stones, some damaged the premises, while others encouraged the men.

Constable Neville said that at the meeting at the Trades Hall the chairman said that he had just been informed that a workers furniture was to be sold up for arrears of rent. The chairman asked those present at the meeting what they were going to do about it. There were shouts from the audience, "We will kick the bailiffs out and smash the house." One of the accused said he had been sold up that they should go out to the house and demonstrate, and if they caught the bailiff "he would not be a bailiff any more." Another man not one of the accused, said that the time had arrived to "make an example of those capitalists. Witness travelled by the same tram as the men to Clovelly and was present when the attack was made on the house.

Shearers Strike Committee.

Senator Arthur Rae was called as a witness by Mountjoy, who denied that he was at the Clovelly house. Senator Rae said that as chairman of the shearers strike committee he was present at a meeting in Mountjoy's room at the Communist Hall on July 28. Witness saw Mountjoy in the room from 2.30 until 4.30 p.m.

Replying to Mr. Crawford, Senator Rae denied that he was a member of the Communist party. A room in the Communist Hall had been made available that day for the shearers' strike committee meeting.

Mr. Crawford: I put it to you that you are over-sympathetic with these men?

Witness: I don't know what you mean by over-sympathetic.

You went bail for a number of them? - Yes. How many? - I could not say.

His Honor: Well, in the rough, how many? I can't remember.

Mr. Crawford: Were not prominent Communists taking a definite part in the shearers' strike?

Witness: Not to my knowledge - there may have been one or two.

On a Sunday evening you addressed a meeting from the Communist platform? - No.

You did address a meeting? - Yes, of the International Class War Prisoners' Aid Association.

At the meeting on the steps of the Town Hall you told us that a Mr. Hannett was in the chair. Was he not just returned from Russia? - I believe he did some time ago.

Did you advocate violence on the coalfields? - No, I advocated their standing out.

Your sympathies are with these men who are before the Court? - I don't sympathise with them sufficiently to concoct a lie on their behalf.

Senator Rae told Mr. Crawford that the shearers' strike meeting was held at the Communist Hall because the Trades Hall was not available.

The case was adjourned until to-day.<sup>[422]</sup>

#### **21 November, 1930. Malicious Damage to Clovelly House – 21 Men Convicted.**

The trial was concluded at the Quarter Sessions yesterday of 21 men who were charged with malicious damage to property at Clovelly.

The charge arose out of a demonstration on July 28, when, following a meeting at the Communist Hall, a party of men went to Clovelly and damaged a house which was tenanted by one of their comrades, and which the bailiff had entered.

The accused were:- William Henry Rogers, Harry Crawford, Ellis Maurer, John Sylvester, Sydney Andrew Huxter, Robert Charles Williams, Frank Bailey, James Lance Fairfax Nelson William Long, Joseph Thomas Corr, George Nesbitt, Percy Joshua, Timothy Fenton, Arthur William Davey, Clarence Dawes Cecil Joseph Phillips, Walter Henry Rawson Joseph Collins, Willem Roer, Augustus John Trump, and Wilfred Mountjoy.

They were all found guilty.

His Honor, Judge Armstrong, imposed the following sentences; Long, six months' imprisonment; Fenton, six months, to date from July 29; Rawson, eight months; Mountjoy, eight months; and Fairfax, six months.

Bailey, Dawes, Nesbitt, and Joshua were remanded for sentence.

Hunter, Roer, Crawford, Williams, Corr Davey, Phillips, Collins, Trump, Rogers, and Maurer were each bound over in £20 to appear for sentence if called upon within two years.

Sylvester, who refused to enter into a bond, was sentenced to six months imprisonment.

"The jury thinks highly of your action in this matter," said his Honor to Constable Neville, and wishes to have that placed on record."

Mr. Kinkead (instructed by Miss C. Jollie Smith and Co.) appeared for all the accused, Mr. T. S. Crawford prosecuted for the Crown.<sup>[423]</sup>

### *22 November, 1930. Hunger Strike – Threat by Communists*

Four men who were sentenced yesterday at the Quarter Sessions by Judge Armstrong, after having been convicted of maliciously damaging property at Clovelly, declared that they would commence a hunger strike at Long Bay Penitentiary.

Frank Bailey, Clarence Dawes, George Nesbitt, and Percy Joshua were each sentenced to six months' imprisonment.

George Nesbitt told the Court that he was "entirely innocent of the charge."

His Honor: The Jury gave very careful consideration to the matter.

Nesbitt: We are going on a hunger strike as a protest against this awful outrage.

With regard to Dawes, Sergeant Coombes stated that accused's parents had approached him, and stated that they would find him work immediately and get him away from the influence of the Communists.

His Honor: I intended to sentence him, but, after hearing that, I will bind him over.

Dawes: I refuse to be bound.

His Honor: Some noble principle you have?

Dawes: Yes, to prove my innocence. I will refuse to eat at Long Bay. Another reason is that I would not be outside the court door for five minutes before I would be grabbed again, because I am a Communist. The police sabotage the Communist party.

His Honor: I regret passing sentence, because I had intended to bind you over.

Dawes: I don't regret it.

Joshua alleged that there had been a "frame up" on the part of the police.

Bailey claimed that he was not guilty. He declared that he had been convicted and was being sentenced because he was a Communist.

His Honor (to Bailey) : You have not been sentenced yet. I intend to put your case over till Monday for further consideration. Supposing I were to let you out under a bond, would you accept it?

Bailey: You need not worry. I would not accept it. We know we were convicted before we started. You are all too class-biassed, and a Communist could never get fair treatment from a capitalistic Court.

As Bailey would not enter into a bond he and the three other accused were each sentenced to six months' gaol.

Mr. Kinkead (instructed by Miss C. Jollie Smith and Co.) appeared for the accused.<sup>[424]</sup>

*29 November, 1930. Brothers in Arms*

Yesterday at Campsie Court, Mr. J. J. Kinkead, when defending a man, appeared to infuse even more energy than usual into the task. However, after his client had been convicted and his list of convictions read, he explained the reason he had fought so hard. This man, he said, "was a Digger under me at the war. He did not have a blemish till he came back, and" continued. Mr. Kinkead regretfully, "he has got himself into a heap of trouble now."<sup>[425]</sup>

*17 December, 1930. Quarter Sessions (Before Judge White)*

Mr McKean K.C., Senior Crown Prosecutor

**Acquitted by Direction.**

Doreen May Flanagan, 20, and Isabella Foreman, 62, were charged with manslaughter.

The Crown Prosecutor said that there was only a very slender case against the accused. It was alleged that Dorothy May Thornton had met her death through an illegal operation. She left her home some time after her husband had gone to work, but it was not known where she went. When deceased returned home she was accompanied by Flanagan. Mrs. Thornton was taken to the Coast Hospital, Little Bay, where, after an operation had been performed, she died.

By direction of his Honor the jury found both accused not guilty and they were discharged.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Flanagan; and Mr. Sproule, of Messrs. R. D. Meagher, Sproule, and Co., for Foreman.<sup>[426]</sup>

*18 December, 1930. Quarter Sessions (Before Judge White)*

Mr McKean K.C., Senior Crown Prosecutor

**Armed Robbery**

John Andrew Davidson Pugh, 23, had pleaded guilty to two charges in connection with armed robberies. It was stated that he was concerned in hold-ups in Clovelly and William-street, city.

In William-street accused was caught by a woman and thrown to the footpath, where she held him.

Mr. Kinkead stated that accused was not a strong-minded man, and had been led astray by another. His father held a responsible position in Canada, and his grandfather was at one time a Cabinet Minister there. Apparently Pugh's role was that of a "cockatoo, keeping watch for others who did the work."

His Honor (to Pugh) : It seems that you were led into this enterprise by others. The offence is too serious to be passed over without some corrective. The sentence of the Court is that you be imprisoned for two years.

Mr. Kinkead: Will your Honor at the expiration of six months consider an application for Pugh's deportation?

His Honor said that after six months he would consider an application for Pugh to be sent to his people in Canada if arrangements could be made to that end.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Pugh.<sup>[427]</sup>

*19 December, 1930. Old Employees in Court – Charges of Theft.*

Three employees of Messrs Lazarus, Rosenfeld, and Co., of Clarence-street, Sydney, and others yesterday appeared at the Central Police Court to answer charges of theft from the firm.

Sydney Chapman, 52, clerk, was fined £5, in default 10 days' imprisonment, for having stolen articles valued at £4. On a further charge of having stolen goods valued at £25 he was sentenced to six months' imprisonment, the sentence being suspended on his entering into a bond to be of good behaviour for two years.

Mr. Lazarus said that Chapman had been in the firm's employ for about 33 years, and had the keys of the warehouse.

Alexander O'Keefe, 34, storeman, was charged with having stolen articles valued at £4/13/6. He was discharged.

Richard Monahan, 34, storeman, with 16 years' service in the firm, was charged with having stolen goods valued at £150, and remanded until to-day.

John Gentles, 31, barman, who was charged in conjunction with Monahan, with the theft of goods valued at £90, and with having had goods in his possession suspected of having been stolen, was remanded until to-day.

Frederick Richardson, 46, storeman, and Mary Richardson, 49, domestic duties, were charged with having received goods valued at £150, and John Ernest Mason, 44, hotelkeeper, was charged with having received goods valued at £20. Their cases will be proceeded with to-day.

Mr. Sproule appeared for O'Keefe and the Richardsons, Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Gentles, Mr. Thomas for Mason, and Mr. J. H. McClemens (instructed by Messrs. Cleary and Callachor) for Monahan.<sup>[428]</sup>

#### **19 December, 1930. Court of Criminal Appeal**

(Before Mr Justice Davidson, Mr Justice Halse Rogers and Mr Justice Stephen)

Mr C.E. Weigall, K.C., appeared for the Crown.

#### **Rex v Couani**

In this case the appellant, Jack Couani, a lad about 16 years of age, had pleaded guilty before Judge White, at the Quarter Sessions, at Darlinghurst, in November, to two charges of breaking and entering a shop and stealing therefrom. He was sentenced to 18 months at a prison farm, and Mr. J. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings), who now appeared on his behalf, stated that, except for these lapses, which were the result of bad companionship, Couani had borne an excellent character, and had good credentials from previous employers.

The Court set aside the sentence on terms that the appellant should enter into a recognisance to be of good conduct for two years, and that his father should enter into a bond of £50 for the lad's good conduct. It suggested that the lad be placed on a farm at the Bellinger, or some other Government farm, so as to keep him away from Sydney during the two years' term. He was also directed to report at the nearest police station every month.<sup>[429]</sup>

#### **20 December, 1930. Stealing and Receiving – Five Committed for Trial**

Hearing of the charges of stealing and receiving large quantities of crockery and glassware from Lazarus, Rosenfeld, and Company, Limited, of Clarence-street, Sydney, was concluded yesterday at the Central Police Court.

Richard Monaghan, 34, salesman, John Gentles, 31, barman, Frederick Richardson, 46, storeman, Mary Richardson, 49, domestic duties, and Joseph Ernest Mason, 44, hotelkeeper, were committed for trial at Quarter Sessions.



Monaghan was charged with stealing £150 worth of goods. Monaghan and Gentles were charged, in conjunction, with stealing £90 worth. Frederick Richardson and Mary Richardson were charged with receiving £150 worth of crockery and glassware, and Mason was charged with receiving £20 worth.

Evidence for the prosecution stated that Monaghan was an employee of the company. Richardson was employed in the same building on the next floor, and Mason owned the hotel where Gentles resided. The police stated that a large quantity of the goods, valued at hundreds of pounds, had been recovered. The courtroom was packed with cases of exhibits.

Mr. Sproule appeared for the Richardsons; Mr. Kinkead for Gentles; Mr. Thomas for Mason; and Mr. J. McClemens for Monaghan. Sergeant Stinson prosecuted for the police.<sup>[430]</sup>

### **21 December, 1930. Only Exhibit Was a Pair of Read Slippers**

#### **Not Sufficient Evidence to go to Jury – Illegal Operation sends Alexandria Woman to Early Grave Young Woman and Grandmother Acquitted of Grave Charge**

The spectacle of the Senior Crown Prosecutor (Mr. McKean, K.C.) metaphorically throwing in his brief on behalf of the Crown for lack of evidence, was witnessed at Sydney Quarter Sessions last week when Doreen May Flanagan (20), and Isabella Foreman (62), her grandmother, stood their trial for the manslaughter of Mrs. Dorothy May Thornton at Little Bay on October 19.

When Mr. McKean intimated to the court that he could carry the case no further, a brief discussion ensued between him, Judge White, and counsel for the defence, after which his Honor directed the jury to bring in a verdict of not guilty, and the two women were discharged.

Instructed by Messrs. R. D. Meagher, Sproule and Co., Mr. J. Kinkead appeared on behalf of Flanagan, and Mr. R. M. Sproule for Foreman. Both accused were perfectly self-possessed, and it seemed as though they had anticipated the result of the trial, as neither gave the slightest evidence of in any way fearing its ultimate outcome.

Flanagan, whose age was given as twenty years, looked considerably older. Otherwise, she is a handsome and striking-looking woman. She wore a black silk coat, "pearls," and a close fitting felt hat.

The older woman was more simply dressed in a long yellow coat. Mr. McKean gave a broad hint as to the way he expected the hearing to conclude and pointed out that although it had been established that the woman had died as the result of an illegal operation, "putting it candidly," there was very little evidence with which to implicate the two accused with the case. The first evidence for the Crown was put in in the form of sworn depositions by Drs. Cameron, Russell and Palmer, Government Medical Officer. The first of these witnesses explained that the condition of the woman when he saw her alive was quite compatible with a fall, while Dr. Russell, R.M.O., at the Coast Hospital, who stated that he examined Mrs. Thornton there on October 12, said that she was suffering from an incomplete event. She was operated upon, he added, but her condition did not improve and she died on the 19th.

Dr. Palmer's opinion was that the unfortunate woman had succumbed to septicaemia. Looking hollow-eyed and grief-stricken, Charles Thornton, of Brandling-street, Alexandria, the dead woman's husband, could shed little light upon the circumstances surrounding Mrs. Thornton's untimely end. All he could say was that when his wife came home one morning he found her to be ill. She did not volunteer where she had been and the next day she entered hospital, to die there a few days later. "I asked Mrs. Thornton if she knew the cause of her sickness and she said she had eaten some fish." I deposed Detective constable Norman Nelson Hay (Water Police) when detailing a visit he paid to

Mrs. Thornton while she was in the Coast Hospital. "She could throw no further light on the matter," the officer added. A sister of the deceased, Miss Florence Vera Downes, of Jennings-street, Alexandria, recalled that on October 11 she came home and found Flanagan in the company of her sister.

"I asked my sister what was the matter with her and she simply nodded her head," swore Miss Downes. "Flanagan put her on the bed and told me to give her plenty of oil, saying to watch between midnight and 4 a.m. for a certain event to take place. This did at 3.30 a.m. My sister was wearing a pair of red slippers at the time and these Flanagan later wrapped up and took away with her." The dead woman's sister-in-law, Kathleen Thornton, then more or less corroborated the previous witness, as did pretty Rene Fitzsimmons, of Green street, Kogarah.

Speaking of a visit he paid to the home of Flanagan and Foreman in Henderson road, Alexandria, on October 22, Constable Lindsay Brown stated that they were grandmother and granddaughter, and that when he told them the facts of the case Foreman replied, "I don't know the woman; she was not here." When Flanagan was questioned separately she explained, "I don't know the woman; I never accompanied her home."

### **Red Slippers**

In a front room, went on the constable, he found a pair of red slippers which were claimed by Foreman as her property. A search of the premises revealed no instruments which might have been used to bring about an unlawful event.

This evidence concluded the Crown case, whereupon Mr. Kinkead submitted that there was no case at all against Foreman. "There is no evidence that the deceased was interfered with by either of the accused," he told his Honor. "There is no evidence of the performance of any act by either of the accused or at all," he added. "The evidence is as consistent with innocence as with guilt?"

### **No Answer**

Mr. McKean: All I can say is that this is as far as I can carry the case. I have no answer to Mr. Kinkead's submissions — I don't think it could be answered."

His Honor: There seems to me to be too many gaps. The evidence is as consistent with the deceased as with the accused. It seems to me that I cannot let the case go to the jury.

His Honor then directed the Jury to find Foreman and Flanagan not guilty and they were immediately discharged.

With their dismissal went the pathetic and only exhibit in the case — a pair of red leather slippers.<sup>[431]</sup>

### **23 December, 1930. Youth Charged – Alledged Intent to Murder**

Joseph Morris, 19, linotype mechanic, appeared at the Central Police Court yesterday on a charge of having wounded Richard Larkin with intent to murder.

Robert Benhame, confectioner, of 56 Anzac parade, Kensington said that on the evening of November 15 last a party was in progress at his home in honour of his sisters birthday. About 40 persons attended including defendant, who had not been invited. After some disturbance Morris and a young woman were asked to leave and witness followed them to the street. Morris drew a revolver from his pocket and said, "I will not go away. I will drill you." Two shots were fired. Morris shortly after fired three more shots, inflicting two wounds in Larkin's right leg .

Morris was committed for trial, bail being allowed in £80.

Mr J J B Kinkead (instructed by Mr F A Newnham) appeared for defendant. Sergeant Napper prosecuted for the police.<sup>[432]</sup>

## Barrister – 1931

## Overview

Date	Accused	Action	Offence	Result
21 January 1931	Annabel Hamilton Griffiths	Defended	Conspiracy to Defraud	Committed
14 February 1931	Leonard Edwards	Defended	Larceny	Convicted
17 February 1931	Daisy Delaney	Defended	Appeal	Dismissed
18 February 1931	Patricia Day	Defended	Larceny	Acquitted
18 February 1931	George Jepson	Defended	Break & Enter	Acquitted
18 February 1931	William Edward Wincote	Defended	Sexual Assault (Minor)	Acquitted
18 February 1931	Robert John George Morrison	Defended	Sexual Assault (Minor)	Acquitted
18 February 1931	Albert Edwards	Defended	Receiving	Convicted
18 February 1931	Violet Taylor	Defended	Receiving	Acquitted
19 February 1931	John Boyle	Defended	Assault ABH	Acquitted
21 February 1931	William Wellesley Lansdowne	Defended	Embezzlement	Convicted
5 March 1931	Alma Francis Bruce	Defended	Theft	
5 March 1931	Stephen James Corbet	Defended	Assault Police	Acquitted
6 March 1931	Leonard Edwards	Defended	Embezzlement	Convicted
10 March 1931	Reginald Auld	Defended	Assault & Robbery	Convicted
13 March 1931	Raphael Weingott	Defended	Larceny	Acquitted
14 March 1931	Robert Roy Cotter	Defended	Assault & Robbery	Convicted
17 March 1931	Ronald Langsford	Defended	Civil Matter	Acquitted
17 March 1931	Noah Pulham	Defended	Civil Matter	Acquitted
21 March 1931	Joseph Morris	Defended	Malicious Wounding	Acquitted
31 March 1931	George Ashton Davis	Defended	Larceny	Acquitted
3 April 1931	Cecil Francis McCue	Defended	Appeal	Dismissed
14 April 1931	George Lynne Weaver	Defended	Appeal	Dismissed
15 April 1931	Edward James Frain	Defended	Manslaughter	Acquitted
16 April 1931	Francis Clinton Pelham	Defended	Breach of Promise	Settled
24 April 1931	Robert Berford Sercombe	Defended	Break & Enter	Acquitted
6 May 1931	Thomas Joseph Davis	Defended	False Pretences	Acquitted
7 May 1931	Francis Anthony Molin	Defended	Appeal	Altered
13 May 1931	John O'Donnell	Defended	Assault	Acquitted

15 May 1931	Edward Withers	Defended	Embezzlement	Convicted
19 May 1931	John Bowthorpe	Defended	Break & Enter	Convicted
19 May 1931	Thomas Gardiner Hutchison	Defended	Indecent Assault	Acquitted
19 May 1931	Edward Vercoe	Defended	Larceny	Convicted
21 May 1931	Joseph Harold Ryan	Defended	Bail Application	Refused
21 May 1931	Annie Hughes	Defended	Application for Divorce	Refused
26 May 1931	Harry Cooper	Defended	Receiving	Acquitted
28 May 1931	Joseph Harold Ryan	Defended	Theft	Remanded
30 May 1931	John Peckham	Defended	Appeal	Dismissed
4 June 1931	Frank Woods	Defended	Appeal	Dismissed
4 June 1931	Leonard Ernest Richards	Defended	Appeal	Dismissed
5 June 1931	Annabel Hamilton Griffiths	Defended	Accessory After the Fact	Acquitted
20 June 1931	James Ernest Brown	Defended	Assault	Convicted
23 June 1931	George Lynne Weaver	Defended	Appeal	Dismissed
26 June 1931	Charles Cadet	Defended	Theft	Acquitted
30 June 1931	Joan Gentles	Defended	Receiving	Convicted
7 July 1931	Roy Gray	Defended	Larceny	Acquitted
7 July 1931	Thomas William Law	Defended	Assault	Acquitted
8 July 1931	Cecil Ambrose	Defended	Larceny	Acquitted
14 July 1931	William Frederick Cruickshank	Defended	False Pretences	Acquitted
18 July 1931	Alexander James Windibank	Defended	Armed Robbery	Acquitted
21 July 1931	Lancelot Verne Lynch	Defended	Larceny	Convicted
25 July 1931	Thomas George Medicott	Defended	Indecent Assault	Convicted
28 July 1931	John Kellerman	Defended	Larceny	Committed
1 August 1931	Joseph Edward Warner	Defended	Appeal	Dismissed
5 August 1931	W.R. Moran Ltd	Defended	Appeal	Allowed
20 August 1931	Thomas Craig	Defended	Assault & Robbery	Acquitted
2 September 1931	William Frederick Cruickshank	Defended	Make False Statement	Committed
2 September 1931	Stanley Watson	Defended	Break & Enter	Committed
4 September 1931	Richard Roach	Defended	Break & Enter	Convicted
4 September 1931	Frederick Thomas Smith	Defended	Break & Enter	Convicted

4 September 1931	Ernest George Thompson	Defended	Break & Enter	Convicted
19 September 1931	Beatrice Croft	Defended	Divorce	
23 September 1931	Guy Neville Kingsbury	Defended	Bail Application	Refused
3 October 1931	George Lynch	Defended	Assault	
3 October 1931	Frederick Sullivan	Defended	Assault	
7 October 1931	William Crofts	Defended	Unlicensed Pistol	Convicted
15 October 1931	Guy Neville Kingsbury	Defended	Bail Application	Granted
17 October 1931	Matilda Devine	Defended	Consorting	Convicted
23 October 1931	William Bede Williamson	Defended	Fraud	Convicted
27 October 1931	Olive Grewcoe	Defended	Abortion	Remanded
27 October 1931	Pamela Manning	Defended	Abortion	Remanded
28 October 1931	Leo Yeats	Defended	False Statement	
4 November 1931	Edwin John Gardner	Defended	Assault ABH	Acquitted
4 November 1931	John William Bonner	Defended	Assault ABH	Acquitted
5 November 1931	Jessie Connell	Defended	Civil Matter	Acquitted
7 November 1931	Allan Dubois	Defended	Break & Enter	Convicted
10 November 1931	Dudley Taylor Howard	Defended	Malicious Wounding	Acquitted
11 November 1931	Charles George Brame	Defended	Attempted Murder	
11 November 1931	Richard Hamilton Long	Defended	Break & Enter	Acquitted
12 November 1931	William Frederick Cruickshank	Defended	Make False Statement	Acquitted
14 November 1931	Edward McNamara	Defended	Assault & Robbery	Convicted
17 November 1931	Cyril Francis Bodeker	Defended	Break & Enter	Acquitted
17 November 1931	John Ferrier	Defended	Break & Enter	Acquitted
18 November 1931	John Cecil Ridley	Defended	Illegally use Motor Vehicle	Convicted
20 November 1931	Eileen Earle	Defended	Appeal	Dismissed
20 November 1931	Francis Berry	Defended	Counterfeiting	Convicted
21 November 1931	Orlando Boyd Dedman	Defended	Larceny	Convicted
27 November 1931	George Edward Leigh	Defended	Theft of Motor Vehicle	Acquitted
2 December 1931	Alexander Cunningham	Defended	Disclosing Telegrams	Acquitted
2 December 1931	Morris Abraham Kutner	Defended	Indecent Assault	Convicted
8 December 1931	Lancelot Verne Lynch	Defended	Larceny	Acquitted
15 December 1931	John Joseph Lawler	Defended	Indecent Assault	Convicted
15 December 1931	Violet Rose McLean	Defended	Bigamy	Convicted



19 December 1931	Frederick Thomas Smythe	Prosecuted	Embezzlement (Civil)	
22 December 1931	Guy Neville Kingsbury	Defended	Attempted Murder	Committed

## Articles

### **1 January, 1931. The Clovelly Case – Inquiry Opened – Conviction of Alleged Communists**

A preliminary sitting of the commission to inquire into the conviction of a number of men alleged to be Communists for having maliciously damaged property at Clovelly, was held at the Central Police Court yesterday.

Mr. Gates, former C.S.M., read his commission to inquire into certain affidavits which had been published, and which claimed that some of the men convicted were not at Clovelly at the time the offence was committed.

Mr. Kinkead, who appeared for the convicted men, read the list of names:- William Henry Rogers, Harry Crawford, Ellis Maurer, John Sylvester, Sydney Andrew Huxter, Robert Charles Williams, Frank Balley, James Lance Fairfax, Nelson William Long, Joseph Thomas Carr, George Nesbitt, Percy Joshua, Timothy Fenton, Arthur William Davey, Clarence Dawes, Cecil Joseph Phillips, Walter Henry Rawson, Joseph Collins, William Rover, Augustus John Trump, and Wilfred Mountjoy.

A warrant for the arrest of another man had been issued, but, said Mr. Kinkead, he had left in an oversea vessel.

Mr. Kinkead asked that the inquiry proper should commence on Monday. It was desired that Senator Rae, who wished to leave the State shortly, should give evidence. About eight of the men whose names had been read were at present in gaol. Twelve or thirteen had been released to be called up if required. Senator Rae's evidence would be that Mountjoy could not have been present when the offence was alleged to have been committed. Mr. Kinkead also said that if it were found that the damage complained of did not exceed £5 no offence had been committed under the section, and the men had been improperly convicted.

Mr. Gates: The Inquiry will open on Monday, at 11 a.m.

Mr. T. S. Crawford, instructed by the Crown Solicitor, appeared to assist the commissioner; and Mr. Kinkead, instructed by Miss C. Jollie Smith and Co., for the convicted men.<sup>[433]</sup>

### **6 January, 1930. Clovelly Case – Senator Rae's Evidence – Attitude on Coalfields**

When the inquiry into the conviction of 21 men, alleged to be Communists, for having maliciously damaged property at Clovelly on July 28 last year, was continued before the Commissioner (Mr. Gates, formerly C.S.M.) at the Central Police Court yesterday evidence regarding the movements of Wilfred Mountjoy, one of the convicted parties, was given by Senator Arthur Rae.

To Mr. Kinkead (for the convicted men) Senator Rae said that on July 28 he attended a meeting of the shearers' strike committee, held at the Communist Hall. The meeting commenced at 2.15 p.m., and during its progress Mountjoy was present in the hall. He was not out of witness's sight for more than five minutes until the meeting closed between 4 and half-past 4 o'clock.

Senator Rae told Mr. Crawford (assisting the Commissioner) that he was not in close touch with the Communist movement. He did not know whether Mountjoy was a member of the Workers' Defence Army. Witness had been a member of that body, and still believed in its aims of self-defence. He knew Mountjoy only casually.

Mr. Crawford: It aims at meeting police intervention by force?

Senator Rae: Not unless they start bludgeoning men. No attempt to take aggressive action is urged.

Questioned about a Mr. Pally, he said that he did not know that he was the direct representative of the Soviet Government. All he knew about Pally was that on two or three occasions he had come to witness asking him to bail out men charged with "working class offences."

Witness stated that he was a member of the Friends of the Soviet Union, and had been a member of the Workers' International Relief Organisation. He was in sympathy with its objects, and did not think it was an auxiliary of the Communist movement.

**"Testing His Sympathies."**

Mr. Kinkead objected when Mr. Crawford asked witness if he thought the matter was a "police frame-up."

Mr. Crawford: I am merely testing his sympathies.

Mr. Kinkead: I object. The Senator seems to be placed on a grid-iron to see whether he should be expelled . . .

Mr. Crawford: I demand that that insinuation be withdrawn.

Mr. Kinkead: There seems to be a suggestion that the Senator is a Communist, and not a Labour man. If my friend gives me an assurance, I withdraw the imputation.

In reply to further questions, Senator Rae denied that his attitude on the coalfields had been aggressive, or that he had urged the strikers to resist the police.

Mr. Crawford: Did you urge the workers to form a defence army, with the object of over-throwing the police force? - I don't think I said anything in those terms.

Did you describe the police as tools of the master class, out to down the workers?- I don't recollect using those words, but probably said that a section of the police force were brutal in their methods.

To allow as many police as possible to attend the funerals of the victims of the Waverley tragedy, the inquiry was adjourned until 10.15 a.m. to-day.

Mr. T. S. Crawford, instructed by the Crown Solicitor, appeared to assist the Commissioner; and Mr. Kinkead, instructed by Miss C. Jollie Smith and Co., for the convicted men: William Henry Rogers, Harry Crawford, Ellis Maurer, John Sylvester, Sydney Andrew Huxter, Robert Charles Williams, Frank Bailey, James Lance Fairfax, Nelson William Long, Joseph Thomas Carr, George Nesbitt, Percy Joshua, Timothy Fenton, Arthur William Davey, Clarence Dawes, Cecil Joseph Phillips, Walter Henry Rawson, Joseph Collins. William Rover, Augustus John Trump, and Wilfred Mountjoy.<sup>[434]</sup>

**7 January, 1931. Clovelly Case - Magistrate's Inquiry.**

Mr. Gates, ex-C.S.M., yesterday continued his inquiry regarding the convictions at Quarter Sessions by Judge Armstrong of several men on charges of having maliciously damaged property at Clovelly on July 28 last. The men were alleged to be Communists.

Norman Jeffrey, a wicker-worker, of Creekstreet, Forest Lodge, said he (witness) was industrial organiser for the Communist party. He was connected with the shearers' strike committee and attended a meeting held on July 28 in Mountjoy's office in the Communist Hall. Those present

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included Senator Rae, Messrs. Richmond, Mulhearn, Bellamy, Monaghan, and other active comrades of the Communist party.

To Mr. Crawford (assisting the Commissioner) witness said that in his opinion Constable Cook was a liar, a perjurer, and absolutely unreliable. He had seen him kick and assault innocent people in the streets.

Do you respect law and order? - What do you mean by that?

Do you recognise that the streets of Sydney are not to be used for processions without authority? - Naturally, being a Communist, I believe in the education of the working class as to the meaning of Communism. In the course of our agitation it may be necessary to hold demonstrations and processions in the streets.

But getting permission is of no account with you? - Oh yes, we point out that it is necessary on occasions to get permission.

When did you really do any work? - That is an old question of Sergeant Coomes. I am working now. I have a trade. I am a wicker-worker, but I am an organiser at present.

Did you advocate the formation of an army by the miners? - We always believe in the formation of the Workers' Defence Army by the working class.

George Bellamy, shearer, of Nixon-street, Moore Park, said he attended the meeting on July 28. Senator Rae would be chairman.

Frederick Charles Richmond, insurance agent, formerly a shearer, of Darlinghurst-road, King's Cross, said that he was not a member of the Communist party. About 1.15 p.m. on July 28 he saw Sylvester, one of the convicted men, at a house at Waverley. Witness attended the meeting at Mountjoy's office. Mountjoy was there throughout. He (Mountjoy) could not have been absent from the meeting for any one period of more than five minutes.

Mrs. Phyllis Clare Woods, of Wills-avenue, Waverley, said she had known John Sylvester for about seven years. On July 28 Sylvester was working for her, being at her place from 12.30 p.m. until 5 p.m. He was engaged attending to a wireless set and repairing an ice chest. Her husband at the last election stood as Communist candidate for Balmain.

Patrick Cronin, ironworker, of Lithgow, said that, on July 28, Frank Bailey was in his company in Sydney from 2.15 p.m. until 3.30 p.m. He knew nothing about any move "to go and deal with the people that were selling up a comrade."

Henry Ernest William Barrett, of Lithgow, described himself as a Journalist. He said that Bailey, Cronin, and another man left the Communist Hall with him after lunch on July 28, and went to Circular Quay. They were together until about 3.30 p.m. Bailey remained with him until 4 p.m. They then separated but saw each other about half an hour later.

Senator Rae, recalled, was shown an article in the "Labor Dally" entitled "A Miscarriage of Justice," which he admitted writing. The words about the accuracy of which he was questioned were: "I have positive proof that the charge is a wicked police frame-up."

Mr. Crawford: Do you still adhere to that? - Certainly.

Will you tell the Commission why you say it is a wicked police frame-up. - The fact remains that, having been present that afternoon, and having seen Mountjoy there, I knew that he could not have been at Clovelly at the same time. The police must have sworn falsely.

You say that the police swore falsely? - Well, someone must have sworn falsely. Somebody was not telling the truth.

Do you stand by that now? - I do.

You say that the police have manufactured deliberately this charge against Mountjoy? - I cannot in any way further elucidate what I said. I do not know whether it was done deliberately or not. Is it not a wicked thing to deprive men of their liberty by a false charge?

Do you say that the police, knowing that they were lying, have deliberately put that charge against Mountjoy? - In my opinion.

The inquiry was adjourned until 10 a.m. to-day.

Mr. T. S. Crawford, instructed by the Crown Solicitor, appeared to assist the Commissioner; and Mr. Kinkead, instructed by Miss C. Jollie Smith and Co., for the convicted men: William Henry Rogers, Harry Crawford, Ellis Maurer, John Sylvester, Sydney Andrew Huxter, Robert Charles Williams, Frank Bailey, James Lance Fairfax, Nelson William Long, Joseph Thomas Carr, George Nesbitt, Percy Joshua, Timothy Fenton, Arthur William Davey, Clarence Dawes, Cecil Joseph Phillips, Walter Henry Rawson, Joseph Collins, William Rover, Augustus John Trump, and Wilfred Mountjoy.<sup>[435]</sup>

#### **8 January, 1931. Clovelly Case – Magistrates Inquiry**

Inquiry was continued yesterday by Mr. Gates, formerly Chief Stipendiary Magistrate, into the convictions at Quarter Sessions, by Judge Armstrong, of 21 men, alleged to be Communists, on charges of maliciously damaging property at Clovelly on July 28 last.

Constable Jack Edward Joseph Neville said that before July 28 he was on duty in the vicinity of the Trades Hall and saw Mountjoy several times from May to July last. He (witness) took particular notice of him, because every time he saw him Mountjoy would look witness up and down and grin.

Mr. Kinkead: Why did you say to the Commissioner that you had seen Mountjoy on the previous Saturday at a meeting in the Trades Hall? - I said at the Trades Hall.

To Mr. Crawford (assisting the Commissioner) : He had seen Sylvester two or three times about the Trades Hall prior to July 28.

To Mr. Kinkead: He could not be sure if he had seen Sylvester on July 26.

Why did you not arrest Sylvester until six weeks afterwards? - I was on other duties.

Sergeant Henry Coombes said that Sylvester was not arrested earlier because he could be found at any time.

Mr Kinkead: Was not Constable Neville removed from the area after an inquiry into a complaint by the Consul-General for Norway? - I could not say.

Constable Leslie Cook said that he saw Mountjoy at meetings at the Communist Hall on various dates, and on several occasions at the Trades Hall. With a number of Communists witness went to Camperdown to meet hunger-strikers from Cessnock. He saw Balley. At the time of the shearers' strike he was at about three meetings of the committee, but he had not seen Senator Rae at them.

To Mr. Kinkead: He was not at shearers' meetings on July 28, 29, and 30. Since he had been among the Communists he had charged several of them with various offences.

To put it kindly the magistrates have not accepted your version? - Yes, they have.

You denied that you were a member of the Communist party? - Yes, but I corrected that.

But convictions were not recorded on charges before two magistrates and Judge Curlewis? - That is so.

To Mr Crawford: He was a policeman, not a Communist. He joined the Communist party under instructions.

The Commissioner stated that he would forward the depositions through the Minister of Justice to his Excellency the Governor.

Mr T S Crawford, instructed by the Crown Solicitor, appeared to assist the Commissioner, and Mr Kinkead, instructed by Miss C Jollie Smith and Co for the convicted men, William Henry Rogers, Harry Crawford, Ellis Maurer, John Sylvester, Sydney Andrew Huxter, Robert Charles Williams, Prank Bailey, James Lance Fairfax, Nelson William Long, Joseph Thomas Carr, George Nesbitt, Percy Joshua, Timothy Fenton, Arthur William Davey, Clarence Dawes Cecil Joseph Phillips Walter Henry Rawson Joseph Collins William Rover, Augustus John Trump, and Wilfred Mountjoy.<sup>[436]</sup>

#### **8 January, 1931. Constable who posed as Communist – Lie on Oath – Clovelly Raid Startling Police Admissions – Sgt's Outcry**

Most of the attention of Mr Gates, sitting as a Commission of Inquiry into the conviction of twenty-one alleged Communists arising from a raid in a Clovelly house on July 28, was taken up yesterday by cross-examination of police witnesses prominent at the trial.

Mr Kinkead, appearing for the convicted persons, elicited some extraordinary evidence affecting these policemen.

Constable Neville was questioned as to his statement that he had seen Mountjoy, one of the convicted men, now serving an eight months sentence at a meeting on July 26. It was established at the inquiry on Monday that Mountjoy was in Long Bay Gaol on July, 26.

During yesterday's sitting Sergeant Coombes came into conflict with Mr Kinkead for having accused counsel of playing to the gallery.

#### **Easily Identifiable**

Constable Jack Edward Joseph Neville, of Regent Street, said that he had seen Mountjoy before July 28. He had seen him twice in May; also about the Trades and Communist Halls. "Every time he saw me he used to look me up and down and grin." Said witness, who added that Mountjoy was a man easily identifiable.

Witness would not remember what he had said at the trial about having seen Mountjoy on a Saturday near July 28.

Mr Crawford said there was some confusion as to whether Mountjoy in evidence at the trial had made a reference to his having been seen by witness on the Saturday week previous to July 29.

Mr Kinkead: I don't want to be forced to say something about Mr Crawford that I would be very sorry for. That reference to Saturday week occurred. In the notes a few lines further down you will see that I had the definition of time corrected to "last Saturday." You make no mention of that.

Mr Crawford: We quite admit that Mountjoy was in Long Bay Gaol on July 26. (To Mr Kinkead): Don't interrupt.

Mr Kinkead: You will hang yourself in a moment. I feel very strongly about this. You know the position full well and you are doing what you can to cloud the issue.

Mr Kinkead referred to the notes of the trial. Neville had said he would stick to his statement that he had seen Mountjoy in the city on the Saturday previous to July 28.

Mr Crawford suggested there had been some misapprehension as to the two Saturdays previous to July 29. What had been running through Neville's mind when he said he had seen Mountjoy on the 'previous Saturday' had to be left to conjecture.

#### **Clear on Point**

Mr Kinkead (to witness): Was there any confusion in your mind as to the Saturday on which you had seen Mountjoy? – None.

You were referring to the previous Saturday, July 26? – As far as I remember. I was referring to July 26. There was confusion about the Saturday.

Mr Kinkead: You made a deposition at the Police Court? – I don't think so.

Counsel produced deposition of police court proceedings wherein Neville had stated he had seen Mountjoy at a meeting on Saturday, July 26.

Who asked you to remember all about this?

Mr Crawford: I did.

Mr Kinkead: When did Mr Crawford ask you? – I don't know.

The Inquiry has only been going on a few days. Was it yesterday? – No.

Do you remember being asked on August 12, whether you had seen Mountjoy prior to July 28? – I don't. I had never seen Mountjoy in the Trades Hall before July 28.

Mr Kinkead: How do you account for (indecipherable) on August 12 that you saw Mountjoy at a meeting of the unemployed at the Trades Hall? – It is six months ago since this happened.

Witness couldn't remember being cross-examined on August 12 about what he knew of Mountjoy.

Mr Kinkead: And didn't you swear that you had seen him once in Goulburn Street, and didn't know his name? – If it is there, I must have said it.

When did you think up these other occasions on which you now say you saw him?

#### **Sergeants Comment**

Sergeant Combes, sitting beside the Crown Prosecutor remarked: "Playing to the gallery."

Mr Kinkead (heatedly to the Commissioner): I protest. I demand the courtesy due to me in my profession, and from a sergeant of police, too.

Mr Crawford (to witness): What do you say about having seen Mountjoy on the Saturday previous to July 28? – I was being pressed for an answer, and my have said it.

Mr Kinkead: Did you see Sylvester on July 26? – I can't remember whom I saw on July 26.



And yet you can remember having seen Mountjoy on occasions as far back as May?

Counsel referred to witness having had a warrant for Sylvester's arrest for six weeks after July 28, and not executing it. "Why didn't you arrest him?" he asked.

Witness: I was on other duties.

What other duties? – I don't remember.

Did you ever tell Miss Jollie Smith's Clerk that if you saw her at the Communist Hall you would "vag" her? – No.

Sergeant Henry Combes, of Regent Street Division said Neville had supplied certain names and warrants had been issued for these people. They were not arrested because the police knew these people could always be picked up.

### **Consul's Complaint**

Mr Kinkead: Constable Cook was not removed from that district until October. – You know that the Consul-General for Norway made a complaint? – I know Neville was removed following the Consul's complaint.

Constable Leslie Cook, of Regent Street police station, recalled occasions on which he had seen Mountjoy. Witness had attended meetings at the Communist Hall at which Mountjoy was present. On one occasion Cook had accompanied Mountjoy to a Chamber Magistrate to take out a summons against Sergeant Coombes.

Mr Crawford: You mixed freely with the men there. Do you remember men coming from Lithgow? – I met the hunger marchers in Parramatta Road. I went out with the Communists.

Witness remembered the shearers' strike committee. He did not know Senator Rae as a member of it. Most of the meetings were held in a corner of the main hall. He did not know of any meetings held in Mountjoy's room.

### **Argument Over Note Book**

Mr Kinkead procured from witness a note-book from which he had been refreshing his memory. Miss Jollie Smith and he had been examining the book for five minutes before Mr Crawford demanded that the book should be returned to witness immediately on grounds of public policy.

"It may contain matter useful to these people in an adverse way," said Mr Crawford.

The Commissioner: The point should have been raised before.

Mr Kinkead (to witness): Does this book contain references to matters other than the Communist Party? – No.

Mr Crawford submitted Mr Kinkead had no right to examine the book. Mr Kinkead, off-hand, quoted an authority to say that he had. The Commissioner, turning up the authority, declared mildly: "You are right, Mr Kinkead."

Witness denied that the entries in his book were all written at the same time.

Mr Kinkead: How many magistrates are there before whom you have taken proceedings against these people, and – put it kindly – have not recorded a conviction? – Two.

A man was acquitted by Mr Justice Curlewis? – Yes.

Mr Crawford complained that questions relating to Cooks membership in the Communist Party were asked to damage Cook as a witness.

Mr Kinkead: He has damaged himself.

#### **What Deps. Show**

Mr Kinkead read a deposition of a police court case on August 26 in which Cook was interested. In it Cook, he saie had admitted he had told a like on oath.

Cook: I never said that.

The Commissioner read the deposition again. "There is no doubt about it being there" he said.

Cook to Mr Crawford, denied he had made such an admission. He had joined the Communist party under police instructions.

Mr Kinkead: "Did you say in the witness box on August 26, 'That was a lie on oath?'" – No. I was asked by Mr Clancy was it a like on oath, and I didn't answer.

Mr Kinkead: Those words appear a few lines above your signature. Didn't you see them? – No.

You mean to say a deposition clerk put that in? – I didn't say it.

At this stage the inquiry was adjourned sine die.<sup>[437]</sup>

#### **14 January, 1931. Commission Investigates Clovelly Convictions**

The inquiry into the conviction of 21 men, alleged to be Communists, for having maliciously damaged property at Clovelly, near Sydney, on July 28 last year, was continued at Sydney last week. The twenty-one men convicted were: William Henry Rogers, Harry Crawford, Ellis Maurer, John Sylvester, Sydney Andrew Huxter, Robert Charles Williams, Frank Bailey, James Lance Fairfax, Wilson William Long, Joseph Thomas Corr, George Nesbit, Percy Joshua, Timothy Fenton, Arthur William Davey, Clarence Dawes, Cecil Joseph Philiips, Walter Henry Rawson, Joseph Collins, Wiliam Power, Augustus John Trump, and Wilfred Mountjoy

Mountjoy's case was taken first.

#### **Senator Rae At The Communist Hall.**

Labor Senator Arthur Rae said he had given evidence at the trial that on July 28 he had attended a meeting at the Communist Hall, at which Mountjoy was present. Jeffrey Bellamy; P. Monahan, P. Richmond and a man named Mulheron were there. The meeting began at 2.15 p.m. Mountjoy was there at 2.20 p.m. Mountjoy may have been out of witness' presence five minutes, but not more. He could not have been absent half an hour without witness' knowledge. The meetings ended between 4 p.m. and 4.30.

Mr. Crawford: You met to discuss the shearers' strike?

Senator Rae: Yes. Sometimes we had held meetings at the Communist Hall and sometimes at the Trades Hall. I remember telling you that the Trades Hall was not available that day.

#### **Shearers' Strike Committee Meetings.**

Mr. Crawford: You said you went to Mountjoy's office to sign documents.

Witness: What actually happened was that we all went to Mountjoy's office because there was more privacy in Mountjoy's office. Mountjoy had no official connection with our meeting or business with me personally.

Witness said he had no recollection of two tables being in the room as marked on a plan submitted by the Crown Prosecutor.

Who gave you permission to hold your meeting at the Communist Hall?— We had a general permission. I couldn't be sure if my committee had met in Mountjoy's room on previous occasions. I didn't know it then, but I have heard that Mountjoy is District Secretary of the Communist Party.

Would you deny that every meeting of the Shearers' Strike Committee was held in Mountjoy's room?

Mr. Kinkead:- I object. The Crown Prosecutor is attempting to cross-examine the witness on another man's affidavit.

#### **Organising The Workers' Defence Army.**

Had you any close association with the Communist Movement?— Neither then nor at any other time.

Did you know that Mountjoy was associated with the Communist Movement?—

I saw him writing there. I simply asked him if it would inconvenience him if we held our meeting there.

Do you know that Mountjoy was a member of the Workers' Defence Army? — I couldn't say.

Were you a member?— Not at that time. I had been. In the preliminary stages I had taken part in the organisation of that Army.

#### **Aims And Objects Of Army.**

Witness could not recollect ever having said he had had nothing to do with the Workers' Defence Army. For months before November he had not been an active member of the Defence Army. It didn't necessarily mean that his nonmembership meant he was not in sympathy with its aims.

Wasn't one of the aims to meet police intervention with force? — Only if men were bludgeoned.

Do you say the police are employees of the capitalist class?— They are employees of the Government of the day. I believe they have rendered service to the capitalist class.

Mr Kinkead objected to witness being questioned as to what purported to be the aims of the Workers' Defence Army.

#### **Rae's Connection With A Communist Body.**

Mr. Crawford: I wish to show that the witness' association with the Communists in view of his forgetfulness in several directions this morning indicates the strength of his forgetfulness— or I might say his liability to confusion. Answers to questions I put to him at the trial showed an over-sympathy with these men. I have several questions to ask along these lines, and would like a ruling on the point.

Mr. Kinkead: My friend has been reading slabs of what is said to be the platform of the Workers' Defence Army. How can that be relevant to witness' credit? Witness admits he had been on the committee of the Army. He had had no association with it for months.

Mr. Crawford (to witness) : Do you know that the Workers' Defence Army was connected with the Communist Party?— I don't know that it is, or was. I know it was connected with the workers as a body, irrespective of their political views.

You were here cheek by jowl the other morning with a Mr. Palley. Did you know that he is a Soviet representative? — I don't know. I know that he has arranged bail for people associated with working class matters.

Are you serious?— That is all I know of him.

Sitting next to him was Norman Jeffrey. To your knowledge isn't he the most prominent Communist in this State?— He is a well-known Communist.

#### **'Friends Of Soviet Union.'**

Witness said he was a member of the Friends of Soviet Union. He did not know that Palley was an organiser for that body.

Mr. Crawford: How did you come to be here with him? — I am not an exclusive person. I could even have a friend among your own Nationalists.

Witness said he was not an executive officer of the Workers' International Relief Organisation. He had been a member months ago. He had never before seen a document shown to him by Mr. Crawford and bearing his name as a member of the organisation. He couldn't remember having been asked to join. He sympathised with its aims.

Isn't a man named Hannett president? Isn't he a well known Communist?— I think he belongs to the A.L.P. He can't be both. It is formed of people who sympathise with workers plunged into distress.

#### **Activities During Coal Lockout.**

Questioned as to his activities on the coalfields during the lockout, Senator Rae denied that he had advised the strikers to attack the police. The Workers' Defence Army might have been represented there. He had no knowledge of its activities. Did you urge the workers to form themselves into defence armies to overthrow the police force?— I may have advised them to organise for self-defence.

Did you say the police were tools of the capitalist class?— Not in those terms. I probably said the police were acting brutally on occasions.

Witness remembered having told a meeting on the day after Norman Brown's death that they, the miners, would be foolish to face as a rabble well-armed and drilled forces. He had never advocated violence.

How could you connect the International Class War Prisoners' Aid Society's meeting in Sydney Domain in April, 1930, with happenings at Meerut, in India? What are your sentiments?— Witness said he thought the Meerut prisoners had been harshly treated.

Mr. Crawford read an extract from a pamphlet. Witness complained that his name might be linked up with any document that might be read.

#### **Alleged Frame-Up.**

Later in the case, Senator Rae, recalled, said he wrote an article in the 'Labor Daily' on December 10, in which he said he 'had positive proof that the charges were a wicked police frame-up.' He still adhered to what he had written. Having been present at the meeting on the afternoon of July 28 with Mountjoy, he knew that he could not have been at Clovelly. Consequently, if the police swore falsely, that was a frame-up.

Mr. Crawford: You say the police swore falsely?

Senator Rae: I testified one way and the police in another way. Someone was telling a lie. It was not I.

Mr. Crawford: You do not admit any possibility of any mistake? You stand to that?— I do.

Mr. Crawford: You say the police have deliberately manufactured?

Senator Rae: I do not know, whether they did it deliberately. I cannot any further elucidate what I have said. If one man says something and another says something else, one is telling a lie. I cannot say whether it was done deliberately. Is it not wicked to deprive men of there liberty by a false charge?

Mr. Crawford: You realise that frameup does not admit of a mistake? - Do you still stand to it that the police knew that lies had been told in the charge against Mountjoy?— That is my opinion.

At the conclusion of the evidence, the Commissioner, in adjourning the inquiry sine die, said he would forward the depositions through the Minister of Justice to the State Governor.<sup>[438]</sup>

### **21 January, 1931. Charges of Fraud – On Railway Department**

Four persons were brought before the Central Police Court yesterday charged with frauds on the Railway Department.

Albert Wiggins, 28, salesman, was put forward on ten charges of having forged consignment notes for bags of beans with intent to defraud. Hyman Silk, 40, merchant, David Cassin, 40, salesman, and Annabel Hamilton Griffiths, 36, a clerk, were charged with having conspired to defraud the Railway Commissioners of various large sums of money. The charge against the latter three was adjourned until Jan. 23, bail being granted In £100 each.

Sergeant Dennis said that Wiggins took consignments of beans to the Railway Department for shipment to Melbourne. It was alleged that after various consignments had been weighed and the weight entered on a form by a porter which was handed to defendant, defendant altered the entries in some instances before handing the form to the cashier for payment. In other instances, the number of parcels had been altered. It would be shown that many consignments of beans had gone to Melbourne with only half the actual freight charges being paid on them.

Henry Herbert Watson, a railway Inspector, said that Wiggins was in the employ of J. Moss and Sons, and had told him that he was in charge of the business while his employer was away sick in Melbourne. Defendant admitted having consigned bags of beans to J. Moss and Sons, Melbourne, but declared that he knew knowing of any alterations on the consignment notes. Witness held an inquiry into the matter at the Railway Investigation Office, in Castlereagh-street, at which Wiggins appeared though he had not received any instructions to do so. It was conducted according to his ideas of the requirements of the situation.

Mr. Mack, K.C.: Did it occur to you that it would be a fair thing he should have a solicitor's services? - No.

Is that what you call fair play? - I put the onus on Wiggins. I realise that in a criminal court the onus is on the Crown.

Witness denied that the inquiry had been for the purpose of frightening a confession out of defendant.

Mr. Perry, S.M.: Do you say that your system is so rotten that anybody can take away the consignment note for an hour or so and aller it? - Yes.

The hearing was adjourned until this morning at 11 o'clock.

Mr. Mack, K.C., and Mr. Sheahan appeared for Wiggins; Mr. Windeyer, K.C., and Mr. Little for Silk; Mr. Sproule for Cassin; and Mr. Kinkead for Griffiths. The instructing solicitors for the defence were Messrs. R. D. Meagher, Sproule, and Co.<sup>[439]</sup>

#### **28 January, 1931. Conspiracy Charge – Alleged Frauds on Railways.**

Further allegations of fraud against the Railway Department were made at the Central Police Court yesterday when charges of conspiracy to cheat and defraud the Railway Commissioners of various large sums of money were made against Hyman Silk, 40 merchant, David Cassin 40, salesman, and Annabel Hamilton Griffiths 36 clerk.

Outlining the prosecution Mr Rex Chambers said that it was alleged that false representations were made in the weights of goods Cassin, with the assent and connivance of Silk and Griffiths procured the acceptance by the Railway Commissioners of certain freights on goods less than the amounts properly payable. Silk and Griffiths, with the knowledge of the false representations and pretences and being privies to the same drew cheques and kept books, records, and documents relating thereto the records had been altered destroyed, and removed.

William Ernest Clements, parcels agent in the Railways Department cross-examined by Mr Sproule, said that there was nothing in the system at present in operation to prevent the consignment of goods in excess of the weight on the consignment note after payment for the noted weight to the cashier. A person could pay for one ton and put five ton through. The methods had not been altered since the present charge had been laid. He did not know that it was the practice of the cashier to receive blank cheques for payment of freight amounts.

The hearing will be continued to-day.

Mr Rex Chambers and Mr W J V Windeyer (instructed by the railway solicitor) appeared for the prosecution. Mr Windeyer, K C and Mr E Little appeared for Silk. Mr R Spioule for Cassin and Mr Kinkead for Mrs Griffiths. The instructing solicitors for defendants were Messrs R D Meagher, Sproule, and Co.<sup>[440]</sup>

#### **13 February, 1931. Alleged Conspiracy – Long Hearing Concluded**

The case at the Central Police Court in which Hyman Silk, 40, merchant, David Cassin, carter, and Annabel Griffiths, 36, clerk, were charged with having conspired to cheat and defraud the Railway Commissioners, was concluded yesterday after a hearing of 13 days.

Mr Fletcher, S.M., committed defendants for trial, fixing bail in each case at £80.

Mr Rex Chambers and Mr. W. J. V. Windeyer (instructed by the Railway Solicitor) appeared for the prosecution; Mr. Windeyer, K.C., and Mr. Little appeared for Silk; Mr. Sproule for Cassin; and Mr. Kinkead for Griffiths. The instructing solicitors for defendants were Messrs. R. D. Meagher, Sproule, and Co.<sup>[441]</sup>

#### **14 February, 1931. Quarter Sessions (Before Judge Curlewis)**

##### **Remanded for Sentence**

Leonard Edwards, 35, described as a business proprietor, pleaded guilty to stealing a motor car, and was remanded for sentence.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Edwards.<sup>[442]</sup>

*17 February, 1931. Quarter Sessions Appeals (Before Judge White)*

**Fines Reduced**

Daisy Delaney appealed against her conviction and fine of £20, in default three months' imprisonment, imposed upon her by Mr. Shepherd, S.M., at the Balmain Police Court on November 11 last for having used a room for betting. His Honor upheld the conviction, but, heeding the plea that it was defendant's first offence, reduced the fine to £10. Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for the appellant; and Mr. P. V. Storkey for the Crown.<sup>[443]</sup>

*18 February, 1931. Quarter Sessions (Before Judge Curlewis)*

Mr McKean K.C., Senior Crown Prosecutor.

**Acquitted.**

Patricia Day, 23, was charged with stealing £18, the property of George Walter Crosby. The Jury stopped the case and returned a verdict of not guilty. Day was discharged.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for accused.

George Jepson, 51, a dealer, was charged with breaking, entering, and stealing. There was an alternative charge of receiving.

Accused was found not guilty on both counts. He was discharged.

Mr. Kinkead (instructed by Mr. Fred Newnham) appeared for Jepson.

William Edward Wincote, 19, a dairy hand, was charged with unlawfully having assaulted a girl aged 15 years and one month.

The jury returned a verdict of not guilty, and Wincote was discharged.

Robert John George Morrison, 19, a sheetmetal worker, was found not guilty of unlawfully having assaulted a girl aged 15 years and four months. He was discharged.

Mr. Kinkead (instructed by Messrs. Mervyn, Finlay, and Jennings) appeared for both accused.

**Conviction And Acquittal**

Albert Edwards, 38, a dealer, and Violet Taylor, 23, a domestic, were charged with receiving.

The Jury found Edwards guilty and Taylor not guilty. Taylor was discharged; Edwards was sentenced to one month's imprisonment, concurrent with a previous sentence of four months.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for both accused.<sup>[444]</sup>

*19 February, 1931. Charge of Assault – Five Years' Imprisonment.*

At the Sydney Quarter Sessions yesterday, before his Honor Judge Curlewis, Thomas Craig, 24, William Kingston, 23, and John Boyle, 21, were charged with having assaulted Albert George Beehag, occasioning actual bodily harm.

Beehag, a tram conductor, stated in evidence that one man came along and practically demanded a free tram ride on a tram from Sydney to Botany. On being refused, he left the tram, but later returned with three others. The men used vile language, and while Beehag was changing the points he was assaulted. Later he was taken to Sydney Hospital in an unconscious condition for treatment.

Craig and Kingston were found guilty, and Boyle not guilty.



Craig was sentenced to five years' imprisonment, and Kingston to 12 months' imprisonment. Boyle was discharged.

Mr. Heavener appeared for Kingston and Craig. Mr. Kinkead (instructed by Mr. F. A. Newham) appeared for Boyle.<sup>[445]</sup>

#### **21 February, 1931. Quarter Sessions (Before Judge Armstrong)**

Mr T.S. Crawford, Crown Prosecutor

##### **Embezzlement**

William Wellesley Lansdowne, 44, a collector, pleaded guilty to embezzlement. The Crown Prosecutor stated that accused had been employed by the Producers' Co-operative Distributing Society, Ltd, and the amount involved was £149/10/9.

Mr Kinkead stated it was a very pathetic case. Accused had taken money because his wife was ill and had to undergo an operation. Then he took more money and lost it at the races.

His Honor, in remanding Lansdowne till Monday for sentence, said that if he could find a surety for £50 he would bind him over to be of good behaviour and make restitution.

Mr Kinkead (instructed by Messrs P. D Meagher, Sproule, and Co ) appeared for Lansdowne.<sup>[446]</sup>

#### **24 February, 1931. Quarter Sessions (Before Judge Armstrong.)**

Mr. T. S. Crawford, Crown Prosecutor.

##### **Bound Over**

William Wellesley Lansdowne, 44, a collector, had pleaded guilty to embezzlement, the amount involved being £149/19/9.

He was bound over, self in £50, and another surety of £50, to be of good behaviour, and appear for sentence if called upon within four years; and to pay to the Clerk of the Peace £150 for the Producers' Co-operative Distributing Society, Ltd., at the rate of 10/ a week for three months, then £1 a week till £100 be paid; and then £2 a week till the whole amount be paid; the surety to be responsible for £50 of the compensation. Mr. Kinkead, instructed by Messrs. R. D. Meagher, Sproule, and Co., appeared for Lansdowne.<sup>[447]</sup>

#### **5 March, 1931. Alleged Defalcations – Alma Bruce Remanded**

When the charge against Alma Francis Bruce, 40, of having, between December 7, 1927, and January 25, 1928, stolen £365/17/1 in money, the property of Reckitt's (Oversea), Ltd., was called at Redfern Police Court yesterday, defendant did not appear in person.

Mr. Kinkead (instructed by Messrs R. D. Meagher, Sproule, and Co.) for defendant, asked for a further adjournment, and produced a medical certificate, explaining defendant's absence. She would be unable to attend for at least 14 days, he said.

Mr. T. P. McMahon (instructed by Messrs. J. Stuart Thom and Co.), who appeared for the prosecution, protested against any remand, and said that in his opinion the medical certificate was very unsatisfactory and indefinite.

The defendant was remanded until March 18, the recognisance of £1000 to lie in the office in the meantime.<sup>[448]</sup>

#### **5 March, 1931. Charge Dismissed.**

Stephen James Corbet, 22, labourer, was charged by warrant at the Central Police Court yesterday

with having assaulted Constable Archinal while in the execution of his duty, at Sydney, on May 10 of last year. He pleaded not guilty and was defended by Mr. Kinkead, instructed by Mr. F. Newnham.

Constable Archinal said while struggling with another man on the night of May 10 defendant came behind him and hit him on the head with a beer bottle, which broke and bruised his head. Witness let the other man go and went to arrest defendant, who ran away, and as he would not stop when called upon, witness fired four revolver shots in the air.

Defendant ran all the faster, and disappeared up a lane. Witness was treated at St. Vincent's Hospital and was off duty for a week, and had headaches for about three months afterwards. Last month he saw defendant in a hotel and arrested him.

The defence was an alibi. Defendant gave evidence on his own behalf and called several witnesses.

Defendant was discharged.<sup>[448]</sup>

#### **5 March, 1931. Voice That Travelled**

In the Central Police Court yesterday Mr. J. B. Kinkead sent his deep basso voice rolling across the court with such volume that he was not only heard by the magistrate he was addressing, but also by Mr. Laidlaw in the Marine Court next door.

Accordingly he was asked to tone his voice down so that the Marine Court hearing could go on its way undisturbed.

The outspoken solicitor smilingly obliged.<sup>[449]</sup>

#### **6 March, 1931. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

##### **Convicted of Embezzlement**

Leonard Edwards, 35, was charged that while a servant of Electrolux, Ltd., he embezzled £1/10/, £14, and £5.

Edwards was found guilty on the three counts. He was remanded for sentence till Monday.

Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Edwards.<sup>[450]</sup>

#### **10 March, 1931. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

##### **Two Men Charged**

John McBurnie, 18, a paper seller, and Reginald Auld, 23, a paper seller, were charged with having on September 22 last assaulted Alexia Edna Foggon and robbed her of a handbag containing £15/10/.

The hearing had not concluded when the Court rose till to-day.

Mr. Sproule, of Messrs. R. D. Meagher, Sproule, and Co., appeared for McBurnie; and Mr. Kinkead (instructed by Mr. W. C. Moseley) for Auld.<sup>[451]</sup>

#### **11 March, 1931. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

##### **Assault & Robbery**

The trial was continued of John McBurnie, a paper-seller, and Reginald Auld, a paper-seller, who were

charged that, on September 22 last, they assaulted Miss Alexia Edna Foggon, and robbed her of a handbag contain-ing £15/10/.

The Jury found both accused guilty. McBurnle was recommended to mercy on account of his youth. They were remanded for sentence.

Mr. Sproule (of Messrs. R. D. Meagher, Sproule, and Co.) appeared for McBurnle; and Mr. Kinkead (instructed by Mr. W. C. Moseley) appeared for Auld.<sup>[452]</sup>

### **13 March, 1931. Quarter Sessions (Before Judge Armstrong)**

Mr R.J. Browning, Crown Prosecutor

#### **Radio Mechanic Acquitted**

Raphael Weingott 24 a radio mechanic was charged with larceny as a bailee. It was alleged that while in the employ of the Electric Trading Company he had stolen a wireless set chassis and a loud speaker.

The Jury found Weingott not guilty He was discharged.

Mr J. J. B. Kinkead (instructed by Mr Fred A Newnham) appeared for Weingott.<sup>[453]</sup>

### **14 March, 1931. Quarter Sessions (Before Judge Armstrong)**

Mr R.J. Browning, Crown Prosecutor

#### **Brutal Offence**

The trial was concluded of Robert Roy Cotter, 27, a baker, who was charged with having assaulted Mollie Gaggin, and robbed her of a handbag containing £80, the property of Metals Specialities, Ltd.

It was alleged that Miss Gaggin was punched and her bag stolen. A man was seen to drop the bag on a vacant allotment, and it was returned to her.

Cotter was found guilty. It was stated that he was serving a sentence of 23 months:

In sentencing Cotter to three years' gaol, to date from July 24 last, his Honor said that it was a brutal offence.

Mr. Kinkead (instructed by Mr. P. A. Newnham) appeared for Cotter.<sup>[454]</sup>

### **17 March, 1931. District Court (Before Judge Armstrong)**

#### **Tenders for Dams – Kaye v Langsford and Pulham**

John Edwin Kaye, of Glenmore-road, Paddington, sued Ronald Langsford and Noah Pulham, trading as Langsford and Pulham, of Nattai Creek, Mittagong, for £180/5/1, which, plaintiff alleged, was due to him for preparation of tenders for dams at Cootamundra and Mittagong early last year. The defence was a denial of indebtedness, and, by Pulham, a plea of a get-off of £80 alleged to have been paid or lent to plaintiff. Judgment was given for defendants on plaintiff's claim, and Pulham was awarded 1/ on the set-off. Mr. Parks (instructed by Mr. J. R. Thomas) appeared for Kaye, and Mr. Kinkead (instructed by Messrs, R. D. Meagher, Sproule, and Co.) for Langsford and Pulham.<sup>[455]</sup>

### **21 March, 1931. Central Criminal Court (Before Mr Justice Halse Rogers)**

Mr McKean K.C., Senior Crown Prosecutor

#### **Not Guilty**

Joseph Morris, 19, linotype mechanic, was charged that at Kensington on November 15, 1930, he maliciously wounded Richard Larkin with intent to do grievous bodily harm.

The Crown Prosecutor said that accused went to a birthday party at Kensington. There was a nine-gallon keg of beer at the party, and it seemed that Morris went there with a girl. There was some dispute over a girl. Larkin was told something, and went outside. Morris fired two shots, and later while Larkin was running away he fired two more shots.

Accused stated in evidence that a number of youths "made a murderous attack" on him, and he feared he would have been kicked to death. Many of those from whom he feared attack were drunk, and the rest were "looking for fight." Witness did not approve of what was going on at the party, and decided to take his girl friend away. He went to the front gate with the girl, when he was struck several times, and stumbled twice. After telling those who desired to attack him to "stand back," he fired two shots. Larkin, then tried to encircle him, and he fired two more shots, but not at Larkin, who, said accused, must have rushed into them.

The jury returned a verdict not guilty, and Morris was discharged.

His Honor said that if the Jury had returned a verdict of guilty he would have been very sorry to have sent Morris to gaol because he seemed to him to be a decent and respectable youth. It was necessary, he added, that the public should be warned that the drawing of firearms except under the greatest provocation was a grave danger to the community. His Honor assured the Jury that he agreed with its verdict.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for Morris.<sup>[456]</sup>

### **31 March, 1931. Quarter Sessions (Before Judge White)**

Mr Weigall K.C. (Solicitor-General), Crown Prosecutor

#### **Three Men Charged**

Arthur George Holdstock (42), a storeman, Arthur Paul Clements (30), a metal dealer, and George Ashton Davis (26), a motor driver, were charged that on October 2, 1930, at Alexandria, they stole 18cwt of bolts and nuts, the property of McPherson's Pty Ltd. There was an alternative charge of receiving against each accused.

It was stated that Holdstock was, at the time of his arrest, foreman at the Alexandria store. Clements was a dealer, and Davis a carter.

The hearing had not concluded when the Court rose till to-day.

Mr. Clive Evatt (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Holdstock; and (instructed by Mr. W. M. Niland), for Clements; Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for Davis.<sup>[457]</sup>

### **1 April, 1931. Quarter Sessions (Before Judge White)**

Mr Weigall K.C. (Solicitor-General), Crown Prosecutor

#### **Two Convicted – One Acquitted**

The trial was concluded of Arthur George Holdstock (42), a storeman, Arthur Paul Clements (30), a metal dealer, and George Ashton Davis (26), a motor driver, who were charged with having stolen 18cwt of nuts and bolts, the property of McPherson's Proprietary Ltd. There was an alternative charge of receiving.

After visiting the locality, the Jury found Holdstock and Clements guilty of stealing, and Davis not guilty on both counts. Davis was discharged.

Holdstock and Clements were each sentenced to 12 months' imprisonment in Goulburn Gaol. His Honor said that at any time he would consider an application for remission of portion of the sentence.

Mr. Clive Evatt (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Holdstock; and, instructed by Mr. W. M. Niland, for Clements; Mr. Kinkead (instructed by Mr. W. M. Niland), for Davis.<sup>[458]</sup>

### **3 April, 1931. Judge Abused – Appellant's Strange Outburst**

The decorum of the Quarter Sessions Appeals Court was rudely upset yesterday when an appellant before Judge Curlewis shouted excitedly to his Honor, using an expletive. Court officials, as soon as they had overcome their amazement, bundled the man out of the court.

Cecil Francis McCue, a painter, appealed against his convictions and sentences of six months' imprisonment imposed upon him by Mr. Nott, S.M., at the Campsie Police Court on November 27 last, on each of two charges of false pretences. The sentences were made concurrent by the magistrate.

His Honor decided to dismiss the appeal, and announced that he would increase the sentence to 12 months' imprisonment.

It was immediately upon hearing this that McCue made his extraordinary outburst.

After McCue had been removed from the court his counsel, Mr. Kinkead, told his Honor that he could not understand appellant's action, and he (counsel) could only apologise on his behalf. Appellant had first come under his (Mr. Kinkead's) notice at the war, appellant being one of his own "Diggers," and being then only 15 years old. During the time he had known him he had been a very good boy. McCue had married, but had apparently been unable to pull himself together.

His Honor: I am glad you mentioned these things. Have him brought back.

McCue, on reappearing in court, told his Honor that when he enlisted he was only 14 years 7 months old. He apologised for what he had done. He did not know what had come over him. If he were given a chance he would reform.

His Honor: Will you take the chance if I give it to you?

McCue: Yes; I promise faithfully I will.

His Honor: Very well, I shall not increase the sentence, but will leave it at six months, as imposed by the magistrate.

Mr. J. J. B. Kinkead (instructed by Mr. F. A. Newnham) appeared for appellant, and Mr. Browning for the Crown.<sup>[459]</sup>

### **9 April, 1931. Judge's Experiment – Young Man Bound Over**

Judge Curlewis announced in Quarter Sessions Appeals yesterday that he would try an interesting experiment with an appellant. Cecil Francis McCue, painter, who had appeared before his Honor last Thursday to appeal against his convictions and sentences of six months' imprisonment imposed upon him by Mr. Nott, S.M., at the Campsie Police Court on November 27 last, on each of two charges of false pretences (the sentences being made concurrent), was again before his Honor regarding the matter.

When his Honor decided on Thursday to dismiss the appeal and announced that he would increase the sentence to 12 months' imprisonment, McCue shouted excitedly at his Honor and used an expletive.

Mr. J. J. B. Kinkead (instructed by Mr. F. A. Newnham) who then appeared for appellant, apologised for McCue's extraordinary outburst. Counsel directed attention to McCue's war service record, and stated that appellant was only 14 years and 7 months old when he enlisted. His Honor, accepting McCue's assurance that he would reform if given a chance, decided not to increase the magistrate's sentence of six months.

McCue told his Honor yesterday that his (appellant's) trouble was due to drink. If he was given a chance, he said, he would undertake never to touch drink again.

His Honor: Perhaps I am very simple. I shall try an experiment. It will be an interesting experiment. I shall bind you over to be of good behaviour for two years upon condition that you abstain from intoxicating liquor.

Appellant appeared in person; and Mr. Browning for the Crown.<sup>[460]</sup>

#### *14 April, 1931. High Court of Australia*

(Before Sir Frank Gavan Duffy, C.J., Mr Justice Rich, Mr Justice Starke, Mr Justice Dixon, and Mr Justice Evatt)

#### **Special Leave to Appeal.**

The Crown asked for special leave to appeal from a decision of the Court of Criminal Appeal, which quashed the conviction of George Lynne Weaver (52), a salesman, who had been convicted, with William Charles Stevens, at the Gundagai Quarter Sessions, before Judge Coyle, of conspiracy to cheat and defraud divers persons of sums of money with respect to the sale of land at Blacktown. Weaver had been sentenced to five years' imprisonment, and Stevens to two years' imprisonment. The conviction of Weaver having been quashed, the Executive Council ordered the release of Stevens.

After hearing argument, the Court granted special leave to appeal.

Mr. Weigall, K.C. (Solicitor-General) and Mr. Kinkead (instructed by the Crown Solicitor) appeared for the appellant. There was no appearance for the respondent.<sup>[461]</sup>

#### *15 April, 1931. Central Criminal Court (Before Mr Justice Halse Rogers)*

Mr McKean K.C., Senior Crown Prosecutor

#### **Manslaughter Charge Fails**

Edward James Frain, 25, a taxi-driver, was charged with manslaughter. The charge arose out of the death of Heather Jamieson, aged 2 years.

Mr. McKean stated that a collision took place at Belmore between a car driven by the father of the deceased and a taxi-cab in the charge of accused. The child was thrown out of the car, and received a fracture of the skull. The Crown alleged that Frain's taxi-cab was travelling at a speed of 35 to 40 miles an hour. After the collision accused stopped instantly and reported the matter to the police. Accused was alleged to have said to the police: "It is no use beating about the bush. I was in a hurry going to a wedding at 35 to 40 miles an hour."

The jury returned a verdict of not guilty, and added a rider that in its opinion Frain had approached the intersection at an excessive speed, and should be reprimanded.

His Honor (to Frain) : "I should have been very loth to have had to sentence you if the jury had found you guilty because you certainly are not of a criminal type. I thoroughly agree with what the jury has said. The evidence does show that you approached the intersection in a very negligent manner. If the expression of opinion that you should be reprimanded is conveyed to other people and has the effect it should have, some good will have been done by this case."

Frain was discharged.

Mr. Kinkead (instructed by Mr. C. P. White) appeared for Frain.<sup>[462]</sup>

#### **16 April, 1931. Breach Suit Settled**

The £1000 claim, in respect of alleged breach of promise of marriage, by Ruth Harriett Tomlinson, of Francis-street, Earlwood, from Francis Clinton Pelham, of Anglo-road, Campsle, was settled In No. 3 Jury Court yesterday, before Mr. Justice James.

Messrs. Mervyn Finlay and Jennings were the solicitors for the plaintiff, and Mr. J. J. Kinkead (instructed by Messrs. C.P. White and Co.) appeared for the defendant.<sup>[463]</sup>

#### **24 April, 1931. Quarter Sessions (Before Judge Edwards)**

Mr McKean K.C., Senior Crown Prosecutor

#### **Not Guilty**

Robert Berford Sercombe, 35, a labourer, was charged with having broken and entered a dwelling-house at Naremburn. There was an alternative charge of receiving.

The jury found Sercombe not guilty. He was discharged.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Sercombe.<sup>[464]</sup>

#### **28 April, 1931. Law Report - High Court Of Australia.**

(Before Sir Frank Gavan Duffy, C.J., Mr. Justice Starke, Mr. Justice Evatt, and Mr. Justice McTiernan.)

#### **Criminal Appeal.**

This was an appeal by the Crown from a decision of the Court of Criminal Appeal, which quashed the conviction of George Lynne Weaver (52), a salesman, who had been convicted, with William Charles Stevens, at the Gundagai Quarter Sessions, before Judge Coyle, of conspiracy to cheat and defraud divers persons of sums of money with respect to the sale of land at Blacktown. Weaver was the owner and vendor of the land; the other accused was in his employ. Weaver had been sentenced to five years' imprisonment, and Stevens to two years' imprisonment. The conviction of Weaver having been quashed, the Executive Council ordered the release of Stevens.

The grounds relied upon in the appeal to the High Court are:-(1) That the Court should have affirmed the conviction of Weaver; (2) that the Court was in error in entering a verdict of acquittal on the indictment, (3) that the Court was in error in holding that the trial Judge misdirected the jury; (4) that the Court was in error in holding that if both the accused were not guilty of false pretences there was no evidence upon which they could be properly convicted of the conspiracy charged; (5) that the Court should have held that no substantial miscarriage of justice occurred; (6) that the Court was in error in holding that the conspiracy charged could be proved only by proving false pretences against the accused.

Mr. McMinn asked that the hearing of the appeal should be adjourned. There were 287 pages in the transcript and counsel had not had time to prepare the case for argument.



An adjournment was granted until Wednesday.

Mr. Weigall, K.C. (Solicitor-General) and Mr. Kinkead (instructed by the Crown Solicitor) appeared for the Crown; and Mr. Loxton, K.C. and Mr. McMinn, instructed by Messrs. T. Marshall, Marks, and Jones) for the respondent.<sup>[465]</sup>

*30 April, 1931. Law Report - High Court Of Australia.*

(Before Sir Frank Gavan Duffy, C.J., Mr. Justice Starke, Mr. Justice Evatt, and Mr. Justice McTiernan.)

#### **Criminal Appeal.**

The hearing was commenced of an appeal by the Crown for a decision of the Court of Criminal Appeal which quashed the conviction of George Lynne Weaver (52), a sales-man, who had been convicted, with William Charles Stevens, at the Gundagai Quarter Sessions, before Judge Coyle, of conspiracy to cheat and defraud divers persons of sums of money with respect to the sale of land at Blacktown. Weaver was the owner and vendor of the land; the other accused was in his employ. Weaver had been sentenced to five years' imprisonment, and Stevens to two years' imprisonment. The conviction of Weaver having been quashed, the Executive Council ordered the release of Stevens.

Mr. Loxton took a preliminary objection to the hearing of the appeal. He contended that by reason of what had happened the Crown had lost its right of appeal. It had treated the order applied for as a valid order by releasing Stevens.

Mr. Justice Starke: The conviction of Stevens has not been quashed. The Crown appealed against the conviction of Weaver being quashed. If the conviction of Weaver be restored would not both convictions stand?

Mr. Justice Evatt: Did the Supreme Court enter a verdict of acquittal?

The Chief Justice: It seems that the order of the Court was that the appeal be allowed; that the conviction of Weaver be quashed; and a verdict of acquittal entered. The point is whether after that has been done any further proceedings can be taken.

After hearing further argument the Court decided to reserve the question raised by Mr. Loxton, and hear the appeal on its merits.

The appeal is part heard.

Mr. Weigall, K.C. (Solicitor-General) and Mr. Kinkead (instructed by the Crown Solicitor) appeared for the appellant; and Mr. Loxton, K.C. and Mr. McMinn (instructed by Messrs. Marshall, Marks, and Jones) for respondent.<sup>[466]</sup>

*1 May, 1931. Law Report - High Court Of Australia.*

(Before Sir Frank Gavan Duffy, C.J., Mr. Justice Starke, Mr. Justice Evatt, and Mr. Justice McTiernan.)

#### **Criminal Appeal.**

The hearing was resumed of the appeal by the Crown from a decision of the Court of Criminal Appeals which quashed the conviction of George Lynne Weaver (52), a salesman, who had been convicted, with William Charles Stevens, at the Gundagai Quarter Sessions, before Judge Coyle, of conspiracy to cheat and defraud divers persons of sums of money with respect to the sale of land at Blacktown. Weaver was the owner and vendor of the land; the other accused was in his employ. Weaver had been sentenced to five years' imprisonment, and Stevens to two years' imprisonment.

The conviction of Weaver having been quashed, the Executive Council ordered the release of Stevens.

The Court made the following order:-"The order of the Court of Criminal Appeals should stand, but we do not agree with the reasons stated in the judgment of that Court. We think that the trial miscarried, and will later give our reasons for so holding."

Mr. Weigall, K.C. (Solicitor-General), and Mr. Kinkead (instructed by the Crown Solicitor) appeared for the appellant; and Mr. Loxton, K.C, and Mr. McMinn (instructed by Messrs. Marshall, Marks, and Jones) for respondent.<sup>[467]</sup>

#### **6 May, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C., Senior Crown Prosecutor

##### **False Pretences Charge Fails**

Thomas Joseph Davis, 29, a fruiterer, was charged that on November 26, 1930, he falsely pretended to Guy Robert Gladstone Anderson that a certain stall used in connection with a fruit and vegetable business at Newtown was his property, by means of which he obtained £ 70 with intent to defraud.

Mr, Kinkead (to Anderson) : Isn't it against your principles to take an oath? - No.

Aren't you a Communist? - No.

Didn't you take part In the May Day procession? - No; I was at work.

Mr. Kinkead handed to witness a newspaper photograph, which Anderson denied was his. "It isn't very much like him, anyway," said his Honor.

Without leaving the box, the Jury returned a verdict of not guilty. Davis was discharged.

Mr. Kinkead (instructed by Mr. W. M. Nlland) appeared for Davis.<sup>[468]</sup>

#### **7 May, 1931. Quarter Sessions Appeals (Before Judge Armstrong.)**

##### **Assault On Woman.**

Francis Anthony Molin, 21, mail officer, appealed against his conviction and sentence of three months' imprisonment imposed upon him by Mr. Laidlaw, S.M at the Central Police Court on April 7 last, on a charge of having assaulted a female.

Evidence was given at the lower court that Molin had accosted Mrs. Elsie Cook, of Paine street, Maroubra, in Angel-place, and had struck her on the face and right breast. As a result she had received hospital treatment.

Letters were read from two members of Parliament testifying to appellant's good character, and his Honor acceded to appellant's counsel's request that Moiln should be bound over for a period.

The sentence was suspended upon appellant undertaking to pay Mrs. Cook £15/15/, and entering into a bond to be of good behaviour for two years.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for appellant, and Mr. Weigall, K.C., for the Crown.<sup>[469]</sup>

#### **13 May, 1931. Policemen Charged - Defence Not Called On - Judge Suspects Perjury By Chinese.**

At the Quarter Sessions Court yesterday William Patrick Jennings, a police sergeant, and John

O'Donnell, a police constable, were found not guilty of having assaulted Kum Choon, a Chinese, thereby occasioning him actual bodily harm.

The Senior Crown Prosecutor (Mr. McKean, K.C.) said it was alleged that in their search for opium at premises in Dixon-street, city, Jennings and O'Donnell deliberately dealt out extreme violence to a small Chinese. The whole case against the accused depended upon the evidence of Chinese. No Europeans witnessed the alleged assault. After the alleged assault Kum Choon was taken to Dr. Maxwell, who found that two of his ribs had been fractured. Kum Choon was later admitted to St. Vincent's Hospital, where he remained for three weeks.

Kum Choon gave his version of the alleged assault, and said that O'Donnell had also hit Willie Goo Gan.

Dr. Edwards, who took an X-ray photo-graph of Kum Choon's ribs, said that slight violence could produce such a fracture. He had known of hundreds of cases of fractured ribs through a person falling against a chair. Kum Choon's bones were very brittle, and would break the more easily.

Willie Goo Gan gave evidence of the alleged assault.

Cross-examined by Mr. Curtis, he admitted that he had served many sentences of up to five years.

Without hearing the defence, the Jury returned a verdict of not guilty.

His Honor: I absolutely agree with your verdict. I am very glad indeed for the reputation of the police force and for the sake of these two men you did not even want to hear them make an answer to such a charge. I shall consider very seriously whether I won't commit some of these men for perjury. I have not the slightest doubt that there has been a mass of perjury in this case.

Jennings and O'Donnell were discharged.

Mr. Curtis, K.C. (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Jennings, and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for O'Donnell.<sup>[470]</sup>

#### **15 May, 1931. Quarter Sessions (Before Judge Curlewis.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

#### **Guilty Of Embezzlement.**

Edward Withers (28) a butcher's carter, pleaded guilty to having embezzled £1/0/3, while a servant of W. H. Jackson. Withers was bound over in his own recognisance of £100 to be of good behaviour and appear for sentence if called upon within three years. Mr. Kinkead (instructed by Messrs. Harry A. Green and Co.) appeared for Withers.<sup>[471]</sup>

#### **19 May, 1931. Quarter Sessions (Before Judge Coyle)**

Mr T.S. Crawford, Crown Prosecutor

#### **Bound Over.**

John Bowthorpe, 18, was charged with having broken into the shop of Ernest William Walesby, at Balmain, on April 19, and stolen eight batteries and other articles. He pleaded guilty, and was bound over in his own recognisance of £50 to be of good behaviour and appear for sentence if called upon within 12 months.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Bowthorpe.

**Electrician Acquitted.**

Thomas Gardiner Hutchison, 20, an electrician, was charged with having assaulted a female, with an act of indecency on January 15. The girl, 19 years of age, gave evidence that she went on a motor cycle to Brighton-le-sands with Hutchison, who caught her by the throat and then committed the act of indecency. Hutchison was found not guilty and discharged.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Hutchison.

**Remanded For Sentence.**

Edward Vercoe, 33, a dealer, was charged with having stolen 8cwt of solder, the property of the Austral Bronze Co., Ltd., on November 19, 1930. Vercoe was found guilty, and remanded for sentence. Mr. Kinkead (instructed by Mr. W. C. Moseley) appeared for accused.<sup>[472]</sup>

**21 May, 1931. In Chambers (Before Mr. Justice Halse Rogers.)****Application For Bail.**

His Honor refused an application that bail should be granted to Joseph Harold Ryan, 31, who was remanded at the Central Police Court on Tuesday on a charge of having stolen £10,000 in Commonwealth bank notes, the property of the Postmaster-General. He said that a magistrate was invested with discretion, and if he refused bail, it took a very strong case to cause a Judge to interfere with his decision.

His Honor said the only ground put forward in the application was that applicant's attendance was necessary for the preparation of his defence. His Honor believed that if he expressed the opinion that the Comptroller General of Prisons should have applicant brought in to his solicitor, that would be sufficient. If such an application was refused Mr. Kinkead might renew the application for bail.

Mr. Kinkead (instructed by Mr. G. F. Osborne) appeared for the applicant; and Mr. Hayes (instructed by the Crown Solicitor) to oppose the application.<sup>[473]</sup>

**21 May, 1931. In Divorce (Before Mr. Justice James.)****Hughes v Hughes.**

Thomas Hulbert Hughes petitioned for dissolution of his marriage with Annie Hughes (formerly Murphy), against whom he alleged drunkenness and desertion. The parties were married in Sydney in May, 1908, according to the rites of the Roman Catholic Church. His Honour found that neither of the issues had been sustained, and dismissed the petition.

Mr. Toose (instructed by Mr. William G. Payne) appeared for the petitioner; and Mr. Kinkead (instructed by Mr. Fred A. Newnham) for the respondent.<sup>[474]</sup>

**23 May, 1931. Quarter Sessions (Before Judge Coyle)**

Mr T.S. Crawford, Crown Prosecutor

**18 Months' Gaol.**

Edward Vercoe, 33, a dealer, had been found guilty of stealing. He was sentenced to 18 months' imprisonment. Mr. Kinkead (instructed by Mr. W. C. Moseley) appeared for Vercoe.<sup>[475]</sup>

**26 May, 1931. Quarter Sessions (Before Judge Curlewis.)**

Mr. McKean, K.C, Senior Crown Prosecutor.

**Alleged Receiving.**

Harry Cooper, 32, a boot merchant, was charged with having received 600 pairs of shoes, the property of Elizabeth Hill. The hearing had not concluded when the Court rose till to-day.

Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for Cooper.<sup>[476]</sup>

**27 May, 1931. Quarter Sessions (Before Judge Curlewis.)**

Mr. McKean, K.C, Senior Crown Prosecutor.

**Not Guilty of Receiving**

The trial was continued of Harry Cooper, 32, a boot merchant, who was charged with having received 600 pairs of shoes, the property of Elizabeth Hill. By direction, the Jury returned a verdict of not guilty. Cooper was discharged.

Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for Cooper.<sup>[477]</sup>

**28 May, 1931. Alleged Robbery – Notes' and Jewellery – Three Men Charged**

At the Central Police Court yesterday, Arthur Collins, 35, salesman, and James Caffery, 30, were charged:- (1) With having broken and entered the shop of Solomon Cohen, at 89 King-street, Sydney, on May 6. and stolen jewellery and money of the total value of £3536/18/1, the property of Solomon Cohen; (2) with having assaulted Cohen and robbed him of articles and money of the value of £8/10/; (3) with having in their possession on May 12 a motor car, reasonably suspected of having been stolen; (4) with receiving on or about April 30 the sum of £200 in Commonwealth notes, the property of the Postmaster-General, well knowing that they had been stolen.

Joseph Harold Ryan, 51, motor driver, was charged with the theft of £10,000 in Commonwealth notes (part recovered) at Sydney, on or about April 30.

The Police Prosecutor (Sergeant Napper) applied for a week's adjournment.

Mr. J. Kinkead (instructed by Mr. a. F. Osborne), who appeared for Ryan, objected to the remand on the ground that his client, having been refused bail because certain moneys had not been recovered, was not in a position to prepare his defence. If bail was granted he would offer no objection to the adjournment.

Sergeant Napper, in answer to Mr, MacDougal, S.M., said there was still £2100 to be recovered, and £600 in jewellery.

Mr. W. C. Moseley (for Collins and Caffery) said his clients had been refused bail only on the charge of receiving the notes. Detective-sergeants Bowie and McCarthy, two experienced officers, were now in Melbourne, and one of the reasons given why the case could not proceed that day was that they had not returned.

"Surely the Commissioner of Police or Superintendent Mackay is in daily touch with the two detectives, and both officially know that these notes are being circulated in Melbourne and not in Sydney," said Mr. Moseley. "Therefore, how can it be said that the defendants will get away with the notes that have not yet been recovered?"

Mr. Moseley urged that at the time bail was granted in the jewellery case, the value involved was greater than that of the notes alleged to be missing.

"I am informed that a certain man in whose possession certain notes were found was taken to Melbourne for the purpose of seeing if he could trace the people that have got the notes, and is coming back today, and so are the detectives," added Mr. Moseley.

Mr. MacDougal said as the position was the same the decision would be the same-he would refuse bail.

All the defendants were remanded until June 3.<sup>[478]</sup>

### **30 May, 1931. Court Of Criminal Appeal**

(Before the Chief Justice, Sir Philip Street, Mr. Justice Ferguson, and Mr. Justice James.)

(The Solicitor-General, Mr. Weigall, K.C., instructed by Mr. Lacey, for the Crown.)

#### **Rex v Peckham.**

The appeal of John Peckham (52), who was found guilty of manslaughter at the Central Criminal Court, and was sentenced to five years' imprisonment by Mr. Justice Halse Rogers, was dismissed. In giving judgment the Chief Justice emphasised the principle of law that where an accused person had entrusted his defence to a legal adviser, he must, as a general rule, be bound by the conduct of his advocate at the trial. The Court would not entertain the view that there was evidence to be left to the jury on the question of insanity, or that the sentence was excessive.

Mr. Kinkead (instructed by Mr. R. D. Meagher, Sproule and Co.) appeared for appellant.<sup>[479]</sup>

### **2 June, 1931. Court Of Criminal Appeal**

(Before the Chief Justice, Sir Philip Street, Mr. Justice Ferguson, and Mr. Justice James.)

(The Solicitor-General, Mr. Weigall, K.C., instructed by Mr. Lacey, for the Crown.)

#### **Rex v Peckham.**

In this appeal case reported in our Issue of May 30, we are advised that Messrs, R. D. Meagher, Sproule, and Co., who instructed Mr. Kinkead, who appeared for the appellant, did not represent the accused at the original trial.<sup>[480]</sup>

### **4 June, 1931. Farm Homes - Value as Reformatories.**

The view of Mr. Kinkead, a barrister practicing largely in the criminal jurisdiction, was sought in the Full Court yesterday by Mr. Justice Ferguson, on the value of the work done by the farm homes controlled by the Prisons Department.

"We see cases here of criminals whose records show that they have been sent to Gosford, Emu Plains, or Mittagong," said his Honor. "Do they represent anything like a fair proportion from these places?"

Mr. Kinkead: My experience is that one very rarely sees at Court anyone who has been at Emu Plains, Gosford, and Mittagong.

The Chief Justice (Sir Phillip Street) : When I was at Emu Plains I was told that very few went through the Court again.

Mr. Justice Ferguson: That is very encouraging.<sup>[481]</sup>

### **4 June, 1931. Court Of Criminal Appeal**

(Before the Chief Justice, Sir Phillip Street, Mr. Justice Ferguson, and Mr. Justice Halse Rogers.)

The Solicitor-General, Mr. Weigall, K.C. (instructed by Mr. Lacey) for the Crown.

**Rex v Woods And Richards.**

These appeals are reported in another column.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for the appellants.<sup>[482]</sup>

**4 June, 1931. Armed Robbers - "Potential Murderers." - Full Court's Warning.**

The Chief Justice (Sir Philip Street) and Mr. Justice Ferguson said, in the Full Court of Criminal Appeal yesterday, that every man who committed robbery under arms was a potential murderer.

The Court, which also comprised Mr. Justice Halse Rogers, indicated that such offenders against the community could expect no leniency from the Courts.

The Chief Justice said that every time leniency was shown encouragement was given to others. Leniency in these cases was misplaced. People who carried firearms with a view to committing crimes, or who associated with people who did, would have to understand that they were doing things that needed to be severely repressed, and would be severely repressed.

The Court was considering the appeals of Frank Woods (22) and Leonard Ernest Richards (21), who were convicted at the Sydney Quarter Sessions last month of assault and robbery while being armed. Judge Edwards sentenced Woods to seven years and Richards to five years' penal servitude. According to the report of the trial Judge the appellants went to the shop of a Chinese, bailed up the Chinese at the point of a revolver, and, under threats, forced him to go from room to room while they robbed the place.

Mr. Kinkead appeared in support of the appeals, which were against the sentences on the ground of undue severity.

The Chief Justice said that Woods had a long record. Only last year he was bound over after conviction for breaking, entering and stealing, and it appeared that only a sharp lesson might stop him from developing into a useless member of society. It appeared that Richards had not been convicted before "In the circumstances," added his Honor, "no case has been made out for interfering with the sentences and I think that the applications should be dismissed."<sup>[483]</sup>

**5 June, 1931. Central Criminal Court.**

(Before the Chief Justice, Sir Phillip Street.) Mr, McKean, KC., Senior Crown Prosecutor.

**Three Persons Charged.**

David Cassin, 40, a salesman, was charged with having forged a certain request for delivery of chattels, with intent to defraud.

Hyman Silk, 40, fruit merchant, and Annabel Hamilton Griffiths, a bookkeeper, were charged with being accessories after the fact.

The hearing had not concluded when the Court rose till to-day.

Mr. Sproule, of Messrs. R. D. Meagher, Sproule, and Co., appeared for Cassin; Mr. Windeyer, K.C., and Mr. Cassidy (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Silk; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Griffiths.<sup>[484]</sup>

**6 June, 1931. Central Criminal Court (Before the Chief Justice, Sir Philip Street.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

**Three Persons Charged.**

The trial was continued of David Cassin, 40, a salesman, who was charged with having forged a



certain request for delivery of chattels, with intent to defraud: Hyman Silk, 40, fruit merchant, and Annabel Hamilton Griffiths, a bookkeeper, were charged with being accessories after the fact.

The female accused was granted bail till Tuesday.

The hearing will be resumed on Tuesday.

Mr. Sproule, of Messrs. R. D. Meagher, Sproule, and Co., appeared for Cassin; Mr. Cassidy (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Silk; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Griffiths.<sup>[485]</sup>

**10 June, 1931. Central Criminal Court (Before the Chief Justice, Sir Philip Street.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

### **Three Persons Charged.**

The trial was continued of David Cassin, 40, a salesman, who was charged with having forged a certain request for delivery of chattels, with Intent to defraud Hyman Silk 40, fruit merchant, and Annabel Hamilton Griffiths, a bookkeeper, were charged with being accessories after the fact.

The hearing will be resumed to-day.

Mr. Sproule (of Messrs. R. D. Meagher, Sproule, and Co.) appeared for Cassin; Mr. Cassidy (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Silk; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Griffiths.<sup>[486]</sup>

**11 June, 1931. Central Criminal Court (Before the Chief Justice, Sir Philip Street.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

### **Three Persons Charged.**

The trial was continued of David Cassin, 40, a salesman, who was charged with having forged a certain request for delivery of chattels, with Intent to defraud Hyman Silk 40, fruit merchant, and Annabel Hamilton Griffiths, a bookkeeper, were charged with being accessories after the fact.

The hearing will be resumed to-day.

Mr. Sproule (of Messrs. R. D. Meagher, Sproule, and Co.) appeared for Cassin; Mr. Cassidy (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Silk; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Griffiths.<sup>[487]</sup>

**13 June, 1931. Central Criminal Court (Before the Chief Justice, Sir Philip Street.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

### **Three Persons Charged.**

The trial was continued of David Cassin, 40, a salesman, who was charged with having forged a certain request for delivery of chattels, with Intent to defraud Hyman Silk 40, fruit merchant, and Annabel Hamilton Griffiths, a bookkeeper, were charged with being accessories after the fact.

The hearing will be resumed on Monday.

Mr. Sproule (of Messrs. R. D. Meagher, Sproule, and Co.) appeared for Cassin; Mr. Cassidy (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Silk; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Griffiths.<sup>[488]</sup>

**16 June, 1931. Central Criminal Court (Before the Chief Justice, Sir Philip Street.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

**Three Persons Charged.**

The trial was continued of David Cassin, 40, a salesman, who was charged with having forged a certain request for delivery of chattels, with Intent to defraud Hyman Silk 40, fruit merchant, and Annabel Hamilton Griffiths, a bookkeeper, were charged with being accessories after the fact.

The hearing will be resumed to-day, when it is expected that the Crown case will be concluded.

Mr. Sproule (of Messrs. R. D. Meagher, Sproule, and Co.) appeared for Cassin; Mr. Cassidy (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Silk; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Griffiths.<sup>[489]</sup>

**17 June, 1931. Central Criminal Court (Before the Chief Justice, Sir Philip Street.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

**Three Persons Charged.**

The trial was resumed of David Cassim who was charged with forging and uttering; also Hyman Silk and Annabel Hamilton Griffiths, who were charged that they were accessories after the fact of forgery and uttering.

A question arose whether an accused person had the right to read a statement Mr. Sproule submitted that an accused person had that right.

The Crown Prosecutor submitted that at the most an accused person could only refer to notes.

The Chief Justice ruled in favour of Mr. Sproule's contention.

The accused Cassin then read the following statement:- "I am not guilty. I did not forge any documents. I did not utter any forged documents. I did not say that I knew heavier weights went through than were paid for. I did not know. I don't know now. I don't believe it. Detective Sherringham made long speeches, saying he had discovered this, that, and everything, and had evidence to prove it. I said 40 to 60 people weighed the beans, and I couldn't say who weighed those beans. I didn't say all but the weight, freight, and Initials was in my writing. I didn't mention 'weight'. I was not often with the carter at the weighbridge. I didn't say the loads went direct from there to the railway. They didn't. Often they were taken to the markets. Many bags were not even tied up. I have found the loads altered and differently packed. I found the general practice was to 'call the weight,' and I remember in some cases writing the weight called and giving the pencil to whoever weighed to initial the paper."

Mr. Kinkead submitted that the evidence adduced by the Crown did not support the Crown case that Griffiths was an accessory after the fact. After hearing argument, his Honor said he would leave the case to the Jury.

The hearing will be resumed to-day.

Mr. Sproule, of Messrs. R. D. Meagher, Sproule, and Co., appeared for Cassin; Mr. Windeyer, K.C, and Mr. Cassidy (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Silk; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Griffiths.<sup>[490]</sup>

**18 June, 1931. Central Criminal Court (Before the Chief Justice, Sir Philip Street.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

**Three Persons Charged.**

The trial was continued of David Cassin, who was charged with forgery and uttering; also Hyman Silk

and Annabel Hamilton Griffiths, who were charged with being accessories after the fact, to forgery and uttering. The case has now entered upon its eleventh day.

Hyman Silk stated in evidence that he knew nothing of any wrong doing, either by Cassin or anyone else.

It is expected that counsels' addresses will be concluded to-day.

Mr. Sproule (of Messrs. R. D. Meagher, Sproule, and Co.) appeared for Cassin; Mr. Windeyer, K.C., and Mr. Cassidy (instructed by Messrs. R. D. Meagher, Sproule, and Co.), for Silk; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Griffiths.<sup>[491]</sup>

#### **19 June, 1931. Central Criminal Court (Before the Chief Justice, Sir Philip Street.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

#### **Three Persons Charged – One Acquitted**

The trial was continued of David Cassin, who was charged with forgery and uttering; also Hyman Silk and Annabel Hamilton Griffiths, who were charged with being accessories after the fact to forgery and uttering.

After a short retirement, the Jury returned a verdict of not guilty in the case of Annabel Hamilton Griffiths, and she was discharged.

The jurors then retired to consider the charges against Cassin and Silk, but, falling to agree, they were locked up for the night.

Mr. Sproule, of Messrs. R. D. Meagher, Sproule, and Co., appeared for Cassin; Mr. Windeyer, K.C., and Mr. Cassidy (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Silk; and Mr. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) for Griffiths.<sup>[492]</sup>

#### **20 June, 1931. Quarter Sessions (Before Judge Armstrong.)**

Mr. T. P. Crawford, Crown Prosecutor.

#### **Bound Over.**

James Ernest Brown, 18, pleaded guilty to having, at Drummoyne, assaulted Ralph Douglas McKnight, causing actual bodily harm.

Brown was bound over in his own recognisance of £20 and a surety of a similar amount to be of good behaviour and appear for sentence if called upon within one year; a condition being that he pay £10 to McKnight at the rate of £1 a week.

Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for Brown.<sup>[493]</sup>

#### **23 June, 1931. Law Report – High Court of Australia**

(Before Sir Frank Gavan Duffy, C.J., Mr Justice Starke, Mr Justice Evatt and Mr Justice McTiernan)

#### **Criminal Appeal.**

The Court published its reasons for its earlier decision in the criminal appeal, *Rex v Weaver*. The appeal was by the Crown from a decision of the Court of Criminal Appeals, which quashed the conviction of George Lynne Weaver (52), a salesman, who had been convicted, with William Charles Stevens, at the Gundagai Quarter Sessions, before Judge Coyle of conspiracy to cheat and defraud divers persons of sums of money with respect to the sale of land at Blacktown. Weaver was the owner and vendor of the land; the other accused was in his employ. Weaver had been sentenced to five years' imprisonment, and Stevens to two years' imprisonment. The conviction of Weaver having

been quashed, the Executive Council ordered the release of Stevens. The High Court had made the following order:—"The order of the Court of Criminal Appeals should stand, but we do not agree with the reasons stated in the judgment of that Court. We think that the trial miscarried, and will later give our reasons for so holding."

In a joint Judgment yesterday, the Chief Justice, Mr. Justice Starke, and Mr. Justice McTiernan said: "It is a disgraceful story. The two accused, in close and constant association, introduced themselves to country people, as sympathisers with them, desirous that they should share in profits to be made on the sales of subdivided suburban properties near Sydney. They appealed to their cupidity by unfolding a scheme whereby the country people should buy land from or through them and then sell it again, and thus double their money, and, indeed, become the wealthiest people in the south of New South Wales. They said they had valuable land for sale, that there was great demand for the land, and that they could resell it, and would guarantee its resale in a very short time at huge profits. Confidential relations were established by the appointment of country people as representatives in the district in which they lived, and promising them remuneration on the land there sold. Anxious regard for the interests of the country people's children was expressed, and 'choice blocks' were reserved for them and quick returns promised.

Amazing as it may seem, the accused, by means such as these, sold a large number of blocks of land to confiding country people, and procured from them some £20,000. There was ample evidence, fit to be submitted to a jury, that the accused conspired together to cheat and defraud and, unfortunately, succeeded in cheating and defrauding many country people. A jury had no doubt that they did conspire and found them guilty of the offence. But the charge to the jury of the learned Judge who tried the case is imperfect, and the conviction cannot, in our opinion, be sustained."

Their Honors considered that the concluding passage of the trial Judge's charge to the Jury was obscure. "The expression, 'civil wrong,' is undefined," they stated, "and the direction wholly fails to state the essence of the charge, namely, an agreement by means of fraudulent statements, tricks, and devices, to obtain the money of divers persons and to defraud them of it. It is inconsistent with the passage that the crime is complete, though the agreement to do a civil wrong involved no such fraudulent means. Consequently, we agree with the result reached by the Supreme Court, that the conviction cannot stand.

In all the circumstances it is undesirable that one only of the two accused should be subjected to a new trial, and consequently the order of the Supreme Court

Mr Justice Evatt dealt with the early history of the treatment of conspiracy to cheat and defraud by the English Courts, and emphasised the fact that before the statute of false pretences became law in England in 1757 conspiracies to defraud had been punished by the Courts.

"It is occasionally said to be an illogical and surprising feature of the law that an individual may do certain acts without criminal liability attaching to him," said Mr. Justice Evatt, "whereas a criminal conspiracy arises as two persons agree to do those very same acts; but the result surprises. It is not illogical, for conspiracy consists in the making of an agreement. The nature and quality of the agreement determine its legality or criminality, and there is no logical reason why certain agreements should not be struck at by the criminal law. What an individual may of himself lawfully do is nothing to the point. One thing he can never do of himself is to make an agreement. ... It must not be forgotten in matters of this kind that grave abuses are associated with the practice of what is called 'go-getting, where agents for the sale of land send out persons to work in teams, in order to compel and to coerce members of the public to buy land of little or no value at extravagant prices,

and often situated at distant or inaccessible places. It is possible that this practice may be conducted without dishonesty, fraud, or criminality, but many cases which have leached the courts during the past ten years have shown that the practice is constantly associated with fraud of a serious description. Often the success of a fraud depends upon the salesmen selling in association. It is well known that two or three are able to effect a cheat or a fraud where one by himself is powerless to do so. This fact has in the past been a feature of many frauds, including the sale of worthless animals and worthless goods. . . It is extremely important to disabuse over-enthusiastic persons out of the notion that they are able to escape the clutch of the criminal law by confining their misrepresentations to statements as to the value of land offered for sale. No doubt the view often entertained is that in making such statements all that is being done is to express an opinion. It is apparently believed by those engaged in land deals of a dishonest or doubtful character that so long as they confine their representations to statements of land value they are safe. ... In the present case I think the learned Chairman of Quarter Sessions should in the circumstances, have emphasised and distinguished the two aspects of conspiracy discussed, for they were certainly both presented by the evidence of statements made by the accused as to the value of the land sold. The last passage in the charge to the Jury should have been accompanied by a direction as to what would have constituted a 'civil wrong.' ... In view of all these circumstances, the opinion has been arrived at by this Court that it would not be proper to order a new trial for conspiracy to defraud as against Weaver alone."

Mr. Weigall, K.C. (Solicitor-General), and Mr. Kinkead (instructed by the Crown Solicitor) appeared for the appellant; and Mr. Loxton K.C. and Mr. McMinn (instructed by Messrs. Marshall, Marks, and Jones) for respondent.<sup>[494]</sup>

#### **26 June, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr T.S. Crawford, Crown Prosecutor

##### **Not Guilty**

Charles Cadet was charged that, at Leichhardt on December 3, 1930, he stole a motor car. There was an alternative charge of receiving.

The Crown Prosecutor said that the Crown did not seriously press the charge of larceny. The car was left in a street, and when the owner returned it had gone. When the car was found, the engine and chassis numbers had been altered, the tyres changed, and the car repainted. The accused at first told the police that he had bought the car from a man at the Woniara Dam for £90. In a subsequent statement to the police, accused had told a different story, and that he had obtained the car for £5.

The Jury returned a verdict of not guilty on both counts. Cadet was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Cadet.<sup>[495]</sup>

#### **30 June, 1931. Quarter Sessions (Before Judge Armstrong.)**

Mr. T. S. Crawford, Crown Prosecutor.

##### **Alleged Receiving.**

Joan Gentles, 31, a bannan, and Joseph Ernest Mason, 44, hotelkeeper, were charged with having received glassware, the property of Lazarus, Rosenfeld, and Co.

The hearing will be resumed to-day. Accused were allowed bail.

Mr. J. J. B. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Gentles; and Mr. W. R. Dovey (instructed by Mr. N. D. Thomas) for Mason.<sup>[496]</sup>

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**30 June, 1991. Quarter Sessions (Before Judge Armstrong.)**

Mr. T. S. Crawford, Crown Prosecutor.

**Conviction and Acquittal.**

The trial was concluded of John Gentles, 31, a barman, and Joseph Ernest Mason, 44, hotelkeeper, who were charged with having received glassware, the property of Lazarus Rosenfeld and Co.

Gentles made a statement to the effect that a man who was now serving a sentence had told him that the glassware was bankrupt stock. Gentles said that he did not know it had been stolen.

Mason stated in evidence that he had not been associated with any glassware transactions. There was never any suspicion in his mind that any of the glassware might have been acquired dishonestly.

Gentles was found guilty, and Mason not guilty.

His Honor (to the jury) I quite agree with your verdict regarding Mason.

The Crown Prosecutor and I agree that it is the proper verdict.

Mason was discharged Gentles was bound over in his own and another surety of £50 to be of good behaviour and appear for sentence if called upon within two years.

Mr J J B Kinkead (instructed by Messrs R D Meagher, Sproule, and Co ) appeared for Gentles, and Mr W R Dovey (instructed by Mr N D Thomas) for Mason.<sup>[497]</sup>

**7 July, 1931. Quarter Sessions (Before Judge Curlewis.)**

Mr. McKean, K.C, Senior Crown Prosecutor.

**Charge Of Theft Fails.**

Roy Gray, 49, was charged with having, at Balmain, stolen £37, the property of Michael Saranakas.

Without leaving the box the Jury returned a verdict of not guilty. Gray was discharged.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Gray.

**Two Men Acquitted.**

Sydney Law and Thomas William Law were charged with having, at Glebe, assaulted Horace Edgar Jeffs and robbed him of £27/10/.

The Jury returned a verdict of not guilty. Accused were discharged.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for Thomas William Law.<sup>[498]</sup>

**8 July 1931. Quarter Sessions (Before Judge Armstrong.)**

Mr. T. S. Crawford, Crown Prosecutor.

**Manager Acquitted.**

Cecil Ambrose, 47, a manager, was charged with having, while a servant of the company, stolen a quantity of cement and lime, the property of the Sydney and North Sydney Lime and Cement Retailers, Ltd.

The jury returned a verdict of not guilty. Ambrose was discharged.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Ambrose.<sup>[499]</sup>

**14 July, 1931. Quarter Sessions (Before Judge White.)**

Mr. B. V. Stacy, Crown Prosecutor.

**Alleged False Pretences.**

William Frederick Cruickshank, 42, a publisher, was charged with having at Paddington falsely pretended to Mary Monaghan West that he was the proprietor of the Hibernian Almanac, by means of which he obtained from her a cheque for £18 and the sum of £2, with intent to defraud.

The hearing had not concluded when the Court rose till to-day.

Mr. Kinkead (instructed by Mr. Sheehy) appeared for Cruickshank.<sup>[500]</sup>

**15 July, 1931. Quarter Sessions (Before Judge White.)**

Mr. B. V. Stacy, Crown Prosecutor.

**Publisher Acquitted.**

The trial was concluded of William Frederick Cruickshank, 42, a publisher, who was charged with false pretences. The Jury returned a verdict of not guilty. Cruickshank was discharged.

Mr. Kinkead (instructed by Mr. Sheehy) appeared for Cruickshank.<sup>[501]</sup>

**18 July, 1931. Quarter Sessions (Before Judge Curlewis )**

Mr McKean KC Senior Crown Prosecutor

**Constable Supports Alibi**

Alexander James Windibank 29 a labourer was charged with having while armed at Woollahra robbed Louis Nathan of four watches and one wristlet watch band.

Mr Kinkead said that Windibank had an alibi which was supported by a constable. He asked that a jury be empanelled to try Windibank so that the matter would not be left to the whim of an officer of the Crown Law Department.

Windibank having pleaded not guilty a Jury was empanelled.

Constable C Light stated that he had boarded at the house of the mother of accused. At the time of the alleged offence witness was at home and playing cards with Windibank. Witness reported the matter to his inspector.

The Jury without leaving the box returned at verdict of not guilty Windibank was discharged.

Mr Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for Windibank.<sup>[502]</sup>

**21 July, 1931. Quarter Sessions (Before Judge Armstrong.)**

Mr. T. S. Crawford, Crown Prosecutor.

**Canberra Mail Robbery.**

A report of the charges against Joseph Harold Ryan, 31, motor driver, and Lancelot Verne Lynch, 31, postal assistant, of having stolen, at Queanbeyan, £10,000 worth of bank notes from the Canberra mail train, appears in another column.

Mr. J. J. B. Kinkead (instructed by Mr. W. M. Niland) appeared for Lynch; and Mr. Brian Clancy (instructed by Mr. G. F. Osborne) for Ryan.<sup>[503]</sup>

**22 July, 1931. Quarter Sessions (Before Judge Armstrong.)**

Mr. T. S. Crawford, Crown Prosecutor.



**Canberra Mail Case.**

The Canberra mail robbery case is reported elsewhere. Joseph Harold Ryan, 31, a motor driver, again failed to appear. Lancelot Verne Lynch, 31, a postal assistant, was present, and was told that the case would not be heard that day. Mr J J B Kinkead (instructed by Messrs R D Meagher, Sproule and Co ) appeared for Lynch.<sup>[504]</sup>

**24 July, 1931. Quarter Sessions (Before Judge White.)**

Mr. V. H. Treatt, Crown Prosecutor.

**Eighteen Months In Gaol.**

Alexander James Windlbank, 28, a labourer, was charged with having broken and entered the house of Esther Sylvester, at Waverley.

The Crown Prosecutor stated that the occupants had left the house on May 30, and when Miss Nada Sylvester returned she saw the light on. When Miss Sylvester entered a man appeared in the doorway of her brother's bedroom. When asked who he was, the man replied. "Oh, it's Teddy." The man then left the house with a parcel under his arm.

Windlbank was identified in a line-up at the police station.

In a statement, Windlbank said that at the time of the alleged offence he was at home. That day was his birthday.

The Jury returned a verdict of guilty.

In sentencing Windlbank to 18 months' imprisonment, his Honor said that if he made good the loss he would consider whether he would recommend a remission of portion of the sentence.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Windlbank.<sup>[505]</sup>

**25 July, 1931. Quarter Sessions (Before Judge Armstrong)**

Mr T.S. Crawford, Crown Prosecutor

**Indecent Assault**

Thomas George Medicott pleaded guilty to an indecent assault.

It was stated by the police that Medicott was a man of excellent character but he had been drinking.

A doctor gave evidence that Medicott had been gassed at the war and in his opinion drink had caused the trouble. Medicott said the doctor should not drink at all. Witness was of opinion that if Medicott abstained from liquor he could be cured.

His Honor said that he would consider the matter. It might be as well to have a surety ready on Monday morning in case he decided to release Medicott.

Mr J J B Kinkead (instructed by Mr Fred A Newnham) appeared for Medicott.<sup>[506]</sup>

**28 July, 1931. Alleged Theft – Employees Society's Funds - £6316 Mentioned**

John Kellerman, 40, fitter, appeared before Mr. Fletcher, S.M., at the Central Police Court yesterday, on three charges of having stolen money, the property of the Australian Gas Light Company Employees' Share Purchase and Co-operative Society, Limited, while employed as financial secretary to the society. The amounts mentioned in the charges were £42, £101/1/. and £95/5/7, a total of £238/6/7.

In opening the case for the prosecution Mr. Betts said that there was a total shortage of £6316 in the accounts of the society. Kellerman had admitted to Mr. Brennan, who was appointed financial secretary in Kellerman's stead, that there was a shortage up to the end of June, 1929, of more than £4000. A balance-sheet submitted to the society in August, 1929, showed that there was £429 in hand in the bank. Books kept by Kellerman showed that there was only about half that amount in the bank.

About August, 1929, said Mr. Betts, new auditors were appointed by the society. They went to Kellerman's house and saw the books. The books had practically no entries for the current year, and the society had a turnover of about £10,000.

The hearing was adjourned until 11 am to-day.

Mr. Selwyn Betts (instructed by Messrs. Allen, Allen, and Hemsley) appeared for the prosecution, and Mr. J. J. B. Kinkead (instructed by Mr. K. R. Tracey) appeared for the defendant.<sup>[507]</sup>

### **28 July, 1931. Quarter Sessions (Before Judge Armstrong)**

Mr T.S. Crawford, Crown Prosecutor

#### **Indecent Assault**

Thomas George Medlicott, 46, a shopkeeper, had pleaded guilty to an Indecent assault.

Mr. Kinkead (for Medlicott) pleaded for leniency. He had been gassed at the war and several years ago was in a serious motor accident.

His Honor (to Medlicott): In spite of the report in your favour I have decided to impose a sentence. You are sentenced to six months' imprisonment, and if at the end of three months you can find a surety to avoid drink for two years I will recommend your release. I will also recommend that you be placed under medical supervision.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for Medlicott.<sup>[508]</sup>

### **30 July, 1931. Alleged Theft - Employees' Society's Money - Charges Against Fitter.**

Further evidence was taken by Mr. Fletcher, S.M., at the Central Police Court yesterday, on the three charges against John Kellerman, 49, fitter, of having stolen moneys from the Australian Gas-Light Company Employees Share Purchase and Co-operative Society, Limited while employed by the society as financial secretary. The amounts mentioned in the charges are £42, £101/1/ and £90/5/ a total of £233/6/.

Arthur Peter Brennan stated that he was financial secretary of the Australian Gas-Light Company Employees' Share Purchase and Co-operative Society. He took over the finances from defendant Kellerman. Witness said that there was some delay in getting out the balance-sheet of the society for the year ended June 30, 1930. A small sub-committee had been appointed of which witness was the president. On August 14, 1930, the committee went to Kellerman's house. When the committee was seated, Kellerman announced that there was a shortage of £4000 in the society's books. Mr Adelard, who was present asked Kellerman if he had known of the shortage when the balance-sheet was presented. Kellerman replied that he had not but found out in September 1929 just after the balance-sheet was presented. Kellerman said that he had kept the matter to himself because he did not wish to create a panic among the members of the society. Witness later totalled up the figures accurately, and found that the deficiency was £4671/10/6.

The following week continued the witness the sub-committee went to Kellerman's house again. Kellerman said "I feel sure that some of the money has gone to members who have been paid twice."

Brennan stated that later Kellerman and Austin, another official of the society were suspended from office.

The case was adjourned until 11 am to-day.

Mr Selwyn Betts (instructed by Messrs Allen Allen, and Hemsley) is appearing for the prosecution Mr J J B Kinkead (instructed by Mr E R Tracey) Is appearing for the defendant.<sup>[509]</sup>

### **1 August, 1931. Supreme Court - Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Philip Street, Mr. Justice Ferguson, and Mr. Justice James.)

The Solicitor-General Mr Weigall, KC, instructed by Mr Lacey, appeared for the Crown.

#### **Rex v Warner.**

The Court disallowed the appeal of Joseph Edward Warner (18) against a sentence of 18 months' imprisonment passed on him at the Sydney Quarter Sessions by Judge Coyle for having received stolen property. The Chief Justice said there was nothing to justify the contention that the sentence was excessive. Leniency that had been extended on two previous occasions had not been effectual in bringing about any reform. The Court would not be justified in taking the course suggested by counsel-that of releasing the appellant on some kind of undertaking to be of good behaviour.

A number of affidavits by prominent citizens and newspaper cuttings were tendered by counsel to show the valuable public services and the high character of the father of the appellant. This was in reply to a police statement at the trial that appellant had been encouraged by his father; although it was not suggested that the father had actually asked him to go out to commit crime.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for appellant.<sup>[510]</sup>

### **5 August, 1931. Quarter Sessions Appeals (Before Judge Edwards.)**

#### **Day Baking Act**

W R Moran, Ltd, appealed against the conviction and fine of £15 imposed upon it by Mr Cohen S M , at the Glebe Police Court in March last on a charge of having made bread for sale at Parramatta-road, Camperdown, between 6 p m on March 11 and 5 30 a m on March 12, contrary to the Day Baking Act. Appellant company submitted that the temperature of the dough had risen unexpectedly from 82 to 88 degrees and that this was a circumstance unforeseen and over which the company had no control. His Honor allowed the appeal. Mr J J B Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for appellant, and Mr H H Marsland for respondent, P G Halliday, of the Sydney branch of the Baking Trade Employees Federation of Australia.<sup>[511]</sup>

### **11 August, 1931. Alleged Theft - Employees' Society's Funds.**

Hearing was concluded at the Central Police Court yesterday of the charges against John Kellerman, 49; fitter, of having stolen moneys from the Australian Gas-Light Company Employees' Share Purchase and Co-operative Society, Limited, while employed by the society as financial secretary. Mr. Fletcher, S.M., committed Kellerman for trial at the September Quarter Sessions. Bail of £300 was allowed.

Mr. Selwyn Betts (instructed by Messrs. Allen, Allen, and Hemsley) appeared for the prosecution, and Mr. J. J. B. Kinkead (instructed by Mr. E. R. Tracey) appeared for the defendant.<sup>[512]</sup>

**13 August, 1931. Barrister And Witness - Tales Out Of School.**

In the Central Police Court yesterday was witnessed the unusual spectacle of a witness appealing to a barrister for confirmation of his evidence. Strangely enough it concerned his conduct while on active service with the Australian Light Horse.

Horace Ridley, who said he was an ex-pollce informer, was giving evidence against Peter McKay on an assault charge. He was being cross-examined by Mr B T Heavener as to his character. Ridley said that he left Walgett (New South Wales) to go to the war. He was absent from Australia for four and a half years in the 6th Light Horse Squadron.

At this stage Mr J J B Kinkead, barrister, entered the court.

“Mr Kinkead will tell you that it's true,” said Ridley. “He was there, too.”

“That's right,” said Mr Kinkead. “You were a groom.”

Mr Heavener: Did you have a clean discharge from the army?

Witness: I broke hospital once and went into Cairo. I had my pay stopped for seven days. I was in the hospital recovering from an operation. Mr Kinkead will tell that that is true too. He has also broken leave. I saw him.

Mr Kinkead smiled broadly, but he did not say anything.

Mr Kinkead enlisted as a private and returned to Australia with the rank of captain.<sup>[513]</sup>

**20 August, 1931. Quarter Sessions - (Before Judge White )**

Mr B V Stacy, Crown Prosecutor

**Alleged Robbery In Company.**

Thomas Craig, 27, was charged with having, in company with a man whose name was unknown, assaulted Harry Hibble, at Glebe, and robbed him of £250.

Evidence was given by Hibble that he had stopped his car when Craig struck him and another man grabbed his bag. The men escaped, and later Hibble attended a line-up of men at a police station. While there Craig rushed up to him and exclaimed "I am not the man." Witness asked Craig to open his mouth, but he declined to do so. Witness then opened Craig's mouth and found a gold tooth in the left upper jaw. The man who struck him had a gold tooth.

Two witnesses, who were in the vicinity at the time of the assault, gave evidence that Craig was not one of the men who assaulted Hibble.

The hearing had not concluded when the Court rose till to-day.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Craig.<sup>[514]</sup>

**21 August, 1931. Quarter Sessions - (Before Judge White )**

Mr B V Stacy, Crown Prosecutor

**Acquitted**

The trial was concluded of Thomas Craig, 27, a labourer, who was charged with having, at Glebe, in company with a man whose name is unknown, assaulted Harry Hibble and robbed him of £250.

Craig was found not guilty. He was returned to his former custody.

Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for Craig.<sup>[515]</sup>

**2 September, 1931. Alleged Inducement To Make False Statement.**

At the Central Police Court yesterday. William Frederick Cruickshank, 41, printer, was committed for trial on a charge of having endeavoured to induce Rupert Eric Kitchen to make a false statement on oath.

Rupert Eric Kitchen, railway porter, at the Central Railway Station, said that early this year he gave evidence against David Cassin and others at the Central Police Court. He received a subpoena to give evidence at the Central Criminal Court. On June 1 defendant offered to give witness £25 if he was prepared "not to be so severe" in his evidence against Cassin. Witness said he would think about it. The next night witness told defendant he did not want to have anything to do with "that business," as it was too dangerous. On the following day defendant gave witness a packet of cigarettes, in the back of which was £5 in notes.

Detective-Sergeant Sherringham said that after watching the defendant and Rupert Kitchen on June 3 outside the Grand Hotel he examined the cigarettes and found five £1 notes in the packet. Defendant refused to make a statement.

Mr J J. B Kinkead appeared for the defendant.<sup>[516]</sup>

**2 September, 1931. Alleged Burglary.**

Stanley Watson, 39. was charged at the Central Police Court yesterday with having broken and entered the dwelling house of Leslie Giddins, at 366 Gardeners-road, South Kensington, about 11 p.m. on August 15. He was committed for trial.

Mrs. Eileen Lambert said that she lived in a flat at 366 Gardeners-road. She was in bed about 10.40 p.m., when she heard a noise at the bottom of the stairs. She went to the window facing the street and signalled to Constable McDonald. She went out of her room and saw Watson standing on the landing of the stairs. Watson said, "It's all right. I am the nightwatchman." He then went down the stairs.

Constable Roy McDonald, of Daceyville, said he saw Watson leave the building by the back door. Watson walked up to him and said, "It's all right; there is nobody here. I have had a good look." Watson passed the same remark to two Italians, who had come from a shop on the corner. Witness walked with Watson to Gardeners-road, when he heard one of the Italians say, "Come, quick." He ran down a lane, but noticed that Watson was not with him. He caught sight of Watson running away. Witness cried, "Stop, or I'll shoot." Watson threw a torch into a back yard. Witness fired a shot from his revolver and Watson submitted to arrest.

Mr. J. J. B. Kinkead appeared for the defendant.<sup>[516]</sup>

**3 September, 1931. Are They A Danger?**

Mr. W. F. Sheahan protested at the Central Criminal Court yesterday against retired police officers being pressed into Jury service, on the ground that they were likely to draw and expound inferences so as to nullify the protection given by the law to accused persons.

Mr. Justice Milner Stephen declined to make representations to the Attorney-General, as the Legislature had made no exception.

Counsel in criminal jurisdiction have decided views on the matter: —

Mr. James Kinkead: I do not think an ex-police officer is a proper person to serve as a juror; not because he is not a decent citizen, but for the same reason that a lawyer is not allowed to serve.

Mr. C.V. Rooney: In my opinion, it is all wrong for ex-police officers to serve. The knowledge they receive while in the force would serve to defeat the object of the Crimes Act in many instances.

Mr. George Amsberg: It seems to me that there is no possible objection to ex-police officers serving on juries, simply because they are ex-police officers. A conscientious retired police officer would be in a much better position to weigh, sift, and value evidence than an ordinary layman.<sup>[517]</sup>

#### **4 September, 1931. Quarter Sessions (Before Judge Coyle)**

Mr P.V. Storkey, V.C., Crown Prosecutor

##### **Three Men Charged.**

Richard Roach, Frederick Thomas Smith, and Ernest George Thompson, were charged with having, at Glebe, broken and entered the shop of William Campbell, with intent to steal.

The hearing had not concluded when the Court rose till to-day.

Mr. Kinkead (instructed by Mr. F. A. Newnham) appeared for the three accused.<sup>[518]</sup>

#### **5 September, 1931. Quarter Sessions (Before Judge Coyle)**

Mr P.V. Storkey, V.C., Crown Prosecutor

##### **Three Men Convicted.**

The trial was concluded of Richard Roach 30, a contractor, Frederick Thomas Smith, 21, a labourer, and Ernest George Thompson, 21, a labourer, who were charged with having broken and entered a shop with intent to steal.

The Jury returned a verdict of guilty. Roach Smith, and Thompson were each sentenced to 18 months' hard labour.

Mr Kinkead (instructed by Mr F. A. Newnham) appeared for the three accused.<sup>[519]</sup>

#### **19 September, 1931. In Divorce (Before the Judge in Divorce, Mr. Justice Owen.)**

##### **Croft v Croft.**

Hearing was concluded of the petition by Charles Edward Croft of Hurstville for a divorce from Beatrice Croft (formerly Christie) on the ground of habitual drunkenness and neglect of her domestic duties. Respondent denied the allegations. His Honor found the issues in favour of the petitioner and granted him a decree nisi returnable in six months. The husband was given the custody of the three elder children, respondent to have reasonable access. The question of the custody of the youngest child was allowed to stand over for a future application.

Mr. V. J. Brady (of Messrs. Vincent J. Brady and Co., ) appeared for the petitioner, and Mr. J. J. B. Kinkead (instructed by Mr. F. A. Newnham) for the respondent.<sup>[520]</sup>

#### **23 September, 1931. Charge of Shooting – Kingsbury Refused Bail**

Guy Neville Kingsbury, 39, of independent means, who is charged with having caused grievous bodily harm to Sydney *Vincent Devine*, at Maroubra, on September 11, with intent to murder him, was again refused bail at the Central Police Court yesterday.

Sergeant Napper, police prosecutor, stated that Devine was still in hospital. It was alleged that the defendant had shot Devine at close range with a shotgun, and Devine was in danger of losing his arm.

Mr. Kinkead, in applying for bail, said that the families of the two men were very friendly. There was no intention on Kingsbury's part to murder Devine. The fact that he shot Devine in the arm with the shotgun bore that out.

Sergeant Napper: He was not only shot in the arm; there were shots in his body also.

Mr. Kinkead said that it would be explained to the Court later that Kingsbury could not possibly avoid the shooting in the circumstances. The only persons in the house at the time were the defendant, the injured man, and a boy 10 years of age.

Sergeant Napper: The police say the boy was removed some time before the shooting.

Mr. Kinkead: We say he ran away from Devine.<sup>[521]</sup>

### **3 October, 1931. Sequel To Wedding - Charge of Assault - "Crockery Thrown."**

Allegations that they had seriously disorganised wedding festivities and smashed crockery and furniture at a house at Surry Hills, were made against George Lynch, 32, dealer, and Frederick Sullivan, 34, at the Central Police Court yesterday. They were committed for trial by Mr Shepherd, SM, on a charge of having assaulted and occasioned actual bodily harm to Alfred Farrell.

Alfred Farrell, who gave his age as 64, said that his daughter was married on the afternoon of September 12, and the wedding was being celebrated at 22 O'Sullivan-street, Surry Hills, that night. Late in the night Lynch punched witness' son-in-law, William Rumsey, on the nose, and knocked him unconscious. Witness told him to get out. The two defendants then threw cups and glasses about the room at the guests. They left, and witness went to the door to see if it was closed. The defendants, however, forced the door open again, and Lynch picked up an armchair, and smashed it over witness's head. He was knocked unconscious and his head was split open. He had to be taken to Sydney Hospital to have his wounds stitched.

Mr Kinkead (for the defendants): Were you not a famous bare-knuckle fighter in the old days.

Witness: I leave that to the other side to judge.

Mrs Eileen Rumsey said that the defendants had been invited to the wedding party. About 18 guests had been invited.

Athol Moore (called for the defence): said that Rumsey struck the first blow at Lynch, and Lynch knocked Rumsey out. Farrell threw a bottle at Lynch, but it missed. The guests were throwing plates and crockery, and Farrell was throwing vases. Lynch did not throw anything.

Sergeant Napper, police prosecutor, stated that Moore was biased.

Sergeant Napper: Did you go looking for the police with the bride, because Lynch had assaulted the bridegroom at your father's hotel?

Witness: No.

Did you not tell the constable that Lynch had broken open the door of the hotel, and had assaulted McLennan, the bridegroom? No.

Did you not say that your father had drawn a revolver to get Lynch out of the hotel? No I drew the revolver.

Witness told Sergeant Napper that Lynch had not broken into the hotel.



Lynch and Sullivan were also charged with having assaulted Eileen Rumsey, and with having caused malicious damage to property. Lynch faced further charges of having assaulted William Rumsey and William McLennan. These charges were adjourned until December 1.

Mr. J. J. B. Kinkead appeared for the defendants.<sup>[522]</sup>

### *3 October, 1931.* Court Interludes

A number of humorous remarks punctuated the hearing at Central Police Court yesterday of a case in which two men were charged with assault arising out of an alleged battle at a wedding party.

Mr. Kinkead, who appeared for the defendants, was cross-examining the complainant, an old man, regarding the affray, and said something, about "after the scrap."

Witness: Don't call it a scrap; It was a massacre. (Laughter.)

Counsel: Only one on the defence, was there?

Witness: Yes, I was the mug.

Solicitor: Was there anything else thrown about?

Witness: Pieces of furniture.

Mr. Kinkead: Oh, some Irish confetti! (Uproar.)

Counsel: You were hit with a rocking-chair were you?— No, it was an arm-chair.

Counsel:.. But it rocked you to sleep? Too right!

To another witness: You apparently are aware that there are various stages of drink. Merry, merrier — what's next?

Witness: Sleep, I suppose!<sup>[523]</sup>

### *7 October, 1931.* Alleged Shooting - Devine Still in Hospital.

Guy Neville Kingsbury, 39, of independent means, who is charged with having caused grievous bodily harm to Sydney *Vincent Devine* at Maroubra, on September 11, with intent to murder him, was further remanded at the Central Police Court yesterday until October 14. Bail was again refused.

Sergeant Napper, police prosecutor, said that Devine was still in danger of losing his arm, as a result of the alleged shooting. He was in hospital, and would be unable to attend court for some time.

Mr. J. J. B. Kinkead (instructed by Mr. F. A. Newnham) appeared for the defendant.<sup>[524]</sup>

### *7 October, 1931.* Police Courts

#### **Unlicensed Pistol**

For having had an unlicensed pistol in his possession on September 18, William Crofts, 26, a bricklayer, was fined £5 at Glebe Police Court yesterday The pistol was forfeited.

Constable Jones stated that he and Detective Williams found the revolver and a belt of 25 cartridges in a room occupied by defendant and his wife, at Glebe-road, Glebe. Questioned later, defendant said the pistol belonged to a man named McDonald, who had a licence. Witness said "It seems a strange thing that since McDonalds arrest you have moved your lodging"; on two occasions, and the revolver was on the mantel-piece, where it could be easily seen." Defendant said he knew nothing about the revolver, and would not carry one. Witness replied, "I am not too sure about that. Isn't this

the revolver that you were going to give to a man named Kay in August last, when you and he were going to blow the safe at the Regent Theatre?" Defendant said he did not know anything about that at all. The cartridge belt, he said, belonged to him, and the bullets were for a rifle that was away being repaired. Witness pointed out that they also fitted the revolver. McDonald was now in gaol, and had been there since last June.

Sergeant Campbell, police prosecutor, said defendant was a well-known interstate criminal. He handed up the police record, which showed that ten years ago defendant was sentenced to four years' imprisonment for assault occasioning actual bodily harm, and was declared a habitual criminal.

Mr J J B Kinkead instructed by Mr. F Newnham, appeared for the defence.<sup>[525]</sup>

#### **15 October, 1931. Devine Recovering - Assault Charge Adjourned.**

The alleged shooting of *Sydney Vincent Devine* at Maroubra on September 11 was again mentioned in the Central Police Court yesterday. Guy Neville Kingsbury, 39, of independent means, who is charged with having caused grievous bodily harm to Devine, with intent to murder him, was further remanded until December 10.

Sergeant Napper, police prosecutor, said that the police were prepared to agree to Kingsbury being allowed out on bail, provided that it was substantial, that Kingsbury gave an undertaking to keep away from Devine, and that he reported daily to the police.

Sergeant Napper said that Devine was still in hospital, but was recovering. Doctors were of the opinion that if his present rate of progress continued it would be six weeks before Devine could attend Court. Devine had told the police that he was afraid of Kingsbury.

Mr. J. J. B. Kinkead (for defendant): Kingsbury will give an undertaking to keep away from Devine.

Mr. Laidlaw, C.S.M., fixed ball at £300, and made it a condition that Kingsbury should report daily at Daceyville police station.<sup>[526]</sup>

#### **17 October, 1931. Matilda Devine - Agrees to be Bound Over.**

*Matilda Devine*, 32, appeared before Mr. Shepherd, S.M., at the Central Police Court yesterday on a consorting charge. She entered a plea of not guilty. Mr. Shepherd, S.M., asked her if she was willing to be bound over and she replied that she was.

Without taking evidence, Mr. Shepherd discharged the defendant under Section 526A of the Crimes Act, on condition that she enter into her own recognisance of £10 to be of good behaviour for six months and to come up for conviction and sentence if called upon within that period.

Mr. J. J. B. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Company) appeared for the defendant.<sup>[527]</sup>

#### **23 October, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C., Senior Crown Prosecutor

#### **Two Men Charged.**

Two agents, Thomas Brown, 50, and William Bede Williamson, 53, described as partners in the firm of Messrs. Marshall and Dempster, estate agents, of Sydney, were charged on three counts, with fraudulently omitting to account for moneys received.

It was alleged that accused, having received £158/16/, upon terms requiring them to account to Ehenriech Phillip Andreas for the balance after an authorised deduction, they fraudulently omitted to account for the balance. The other amounts mentioned were £161/15/1 and £153/6/8.

Mr. McKean, in opening the case to the Jury, said that the only question for the Jury was whether the actions of the accused showed fraudulent intent. It was stated that accused had collected large amounts in rent for various clients. With regard to one particular case, Mr. McKean said that while money had been paid to the accused, they had not paid it over to their client. It was alleged that when interviewed by Detective-Sergeant Gallaghre, Williamson stated that owing to the depression and the fall in rents, they had used some of the money of their clients to pay the staff and keep the business going.

Several witnesses gave evidence as to character. They stated that they would willingly entrust their business to accused.

Brown, in a statement, said that all his dealings were clean and aboveboard. He was neither an investor, gambler, nor drinker, and had never misappropriated anything or done anything fraudulent.

The hearing was not concluded when the Court rose till to-day.

Mr. Mack, K.C. (instructed by Messrs. Morgan J. O'Neill, Lorton, and Links) appeared for Brown; and Mr. J. J. B. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) for Williamson.<sup>[528]</sup>

#### **24 October, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C., Senior Crown Prosecutor

#### **Two Agents Convicted.**

The trial was concluded of two agents, Thomas Brown, 50, and William Bede Williamson, 53, described as partners in the firm of Messrs. Marshall and Dempster, estate agents of Sydney. They were charged on three counts with fraudulently omitting to account for moneys received. Brown and Williamson, were each found guilty, with a strong recommendation to mercy.

It was alleged that accused, having received £158/16/ upon terms requiring them to account to Ehenrlech Philip Andreas for the balance after an authorised deduction, they fraudulently omitted to account for the balance. The other amounts mentioned were £161/15/, and £153/6/8.

After the jury had returned its verdict, Detective-Sergeant Gallagher said that both men had borne an excellent character. They had been in business for years as Marshall and Dempster. The total amount involved was about £8000. Williamson's shortages were said to be about £7000, and Brown's about £1200. Witness had been reliably informed by an ex-employee that the total net profits for the, last eight years averaged £4000 a year, and that they were not running the business at a loss. Some of the clients were well to do people and others were not.

Mr. Mack: They were all property owners. His Honor said that in the case of Horatio Bottomley it was urged that he was a man of good social standing; therefore the disgrace and punishment would be heavier than on another. The court said "Yes, but on the other hand, he had better opportunities of knowing better," and the court laid down the rule that the punishment ought to be the same. His Honor then said that he would defer passing sentence on Brown and Williamson.

His Honor refused to accede to Mr. Mack's request to allow bail. He said that he had never allowed bail to persons who had been convicted.

Mr. Mack: "Will you bind them over to appear for sentence, and they will then be on bail?"

His Honor replied that he would not. But for the recommendation of the Jury, he said, he would have dealt with them with some severity, but he always paid respect to a recommendation by the Jury. "My duty to the community is not to act hastily in this matter," his Honor added.

Brown and Williamson were remanded till Tuesday for sentence.

Mr. Mack, K.C. (instructed by Messrs. Morgan J. O'Neill, Lorton, and Links) appeared for Brown; and Mr. J. J. B. Kinkead (instructed by Messrs. Mervyn Findlay and Jennings) for Williamson.<sup>[529]</sup>

#### **27 October, 1931. Woman's Death – Man and Two Women Charged**

Aubrey Sara, 45, masseur, Olive Grewcoe, 42, domestic, and Pamela Manning 26, domestic appeared at the Central Police Court yesterday on a charge of having conspired together on September 26 to bring about a certain event on Elizabeth Mary Kenetta Bradford by unlawfully using certain instruments.

Sergeant Caban, police prosecutor, said that the woman on whom an illegal operation was alleged to have been performed was dead. When the woman's dying depositions were being taken she made references to the defendants. The police could substantiate a charge of murder. He asked for a remand until October 29 for which date the Coroner had fixed his inquiry.

The defendants were remanded until October 29 by Mr Laidlaw, C S M Each was allowed bail of £200, but ordered to report daily to the Criminal Investigation Branch.

Mr Maddocks Cohen appeared for Sara: Mr W Sheahan and Mr J J B Kinkead (instructed by Messrs R D Meagher, Sproule, and Company) appeared for Grewcoe and Manning respectively.<sup>[530]</sup>

#### **28 October, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr. McKean, K.C, Senior Crown Prosecutor.

##### **Agents Sentenced.**

Two agents. Thomas Brown, 50, and William Bede Williamson, 56, were sentenced respectively to two years and three years' imprisonment. This matter is reported elsewhere.

Mr. Mack, K.C. (instructed by Messrs. Morgan J. O'Neill, Lorton, and Links) appeared for Brown; and Mr. J. J. B. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) for Williamson.

##### **Alleged False Statement.**

Harold William Miller, 39, company manager, and Leo Yeats, 43, company secretary, were charged with having published a false statement.

It was alleged that Miller, being a director and Yeats secretary of the Merron Estate, Ltd., they circulated and published a written statement wherein it was falsely stated that the total amount of assets in the company was £71,117/16/5, then well knowing the statement to be false, with intent to deceive the creditors of the company.

Mr. McKean said that the Merron Estate, Ltd., was formed in 1927, with the main object of carrying on the business of money lending on approved securities. Under section 4 of the Banks and Banks Holiday Act every bank was required at certain periods to submit a statement to the Government Statistician and the prosecution was with respect to the position at December 31, 1930. The allegation was that the two accused with joint knowledge caused to be sent to the Chief Secretary a false return. When interviewed by Detective-Constable Alford and asked about the issue of 10 per cent, bonds, Miller said that the company was in a flourishing condition, but owing to the

Moratorium Act the position would not be so satisfactory, but it was expected that everything would come out all right.

The hearing had not concluded when the Court rose till to-day.

Mr. T. P. MacMahon (Instructed by Messrs. Lionel Dare and B. P. Purcell) appeared for Miller; and Mr. J. J. B. Kinkead (instructed by Messrs. W. H. McCarthy and Co.) for Yeats.<sup>[531]</sup>

### **28 October, 1931. Agents Sentenced – Thefts on a Large Scale**

At the Darlinghurst Quarter Sessions yesterday, Judge Curlewis sentenced two agents. Thomas Brown, 50, and William Bede Williamson, 56, to two years and three years' imprisonment respectively. Brown and Williamson, who were described as partners in the firm of Marshall and Dempster, estate agents, had been found guilty of having fraudulently omitted to account for money received.

Before imposing sentence his Honor said he had received a letter referring to Brown. It was evidently an attempt to influence his Honor's opinion. It was a very wrong thing to do, a very serious offence. His Honor had not read more than a line or two of the letter and did not intend to take any notice of it.

Detective-Sergeant Gallagher said it had been ascertained that Williamson had over-drawn his account to the extent of £6500.

His Honor said that the accused had been consistently robbing their clients and trading on their reputation.

"I certainly shall not bind them over" his Honor went on. They have been guilty of thefts on a very large scale, especially Williamson. But for the recommendation of the jury I would have sentenced Williamson to five years and Brown to three years' imprisonment.

Brown: May I say something, your Honor I have been a Christian for 30 years. I have not done one dishonourable act all my life. I have been a total abstainer and a nongambler. I have not done one immoral act in my life. I have not lived in luxury or extravagance. I am esteemed and respected by hundreds of thousands of men and women, and I have not done anything with intent to be dishonest. If the record of my life, character, and reputation stands for nought, and the only reward I get is to be sent to prison and treated as a criminal, God help any other outside this dock "

His Honor (to Brown) If you had all those virtues, you did not dare to go into the witness-box to give any account to the jury.

Mr. Mack: I was responsible for that.

His Honor: I have a very painful duty to perform. It is always painful to punish men who hitherto have borne an excellent character. I am certainly not going to let it go out to the community that men can indulge in systematic thefts and go free. It would simply make a parody of the law and look as if every man is entitled to steal £6000 once.

Mr Mack, K C (instructed by Messrs Morgan J O Neill, Lorton, and Links), appeared for Brown, and Mr J J B Kinkead (instructed by Messrs Mervyn Finlay and Jennings) for Williamson, Mr. McKean, KC (Senior Crown Prosecutor), prosecuted for the Crown.<sup>[532]</sup>

### **29 October, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr. McKean, K.C, Senior Crown Prosecutor.

### **Alleged False Statement**

The trial was continued of Harold William Miller 39 company manager and Leo Yeats 43 company secretary who were charged with having published a false statement. It was alleged that Miller being a director and Yeats secretary of the Merron Estate Ltd they circulated and published a written statement wherein it was falsely stated that the total amount of assets in the company was £71,117/16/5 then well knowing the statement to be false with intent to deceive the creditors of the company.

Miller stated in evidence that he had had nothing to do with the getting out of the statement on which the prosecution was based.

Mr McKean: I suggest to you that most of the money went in racing?

Accused: No such thing.

Yeats also gave evidence and asserted that he had not done anything wrong.

The hearing had not concluded when the Court rose till to day.

Mr T P McMahon (instructed by Messrs Lionel Dare and B P Purcell) appeared for Miller and Mr J J B Kinkead (instructed by Messrs W H McCarthy and Co ) for Yeats.<sup>[533]</sup>

### **30 October, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr. McKean, K.C, Senior Crown Prosecutor.

### **Jury Locked Up**

The trial was continued of Harold William Miller, 39, company manager, and Leo Yeats, 43, company secretary, who were charged with having published a false statement. It was alleged that Miller, being a director and Yeats secretary of the Merron Estates, Ltd., they circulated and published a written statement wherein it was falsely stated that the total amount of assets in the company was £71,117/16/5, then well knowing the statement to be false, with intent to deceive the creditors of the company.

The jury having failed to agree, was locked up for the night.

Mr. T. P. McMahon (instructed by Messrs. Lionel Dare and B. P. Purcell) appeared for Miller; and Mr. J. J. B. Kinkead (instructed by Messrs, W. H. McCarthy and Co.) for Yeats.<sup>[534]</sup>

### **31 October, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr. McKean, K.C, Senior Crown Prosecutor.

### **Jury Disagreed**

The trial was concluded of Harold William Miller, 39, company manager, and Leo Yeats, 43, company secretary, who were charged with having published a false statement. It was alleged that Miller, being a director and Yeats secretary of the Merron Estate, Ltd., they circulated and published a written statement wherein it was falsely stated that the total amount of assets in the company was £71,117/16/5, then well knowing the statement to be false, with intent to deceive the creditors of the company.

The Jury, which had been locked up for the night, returned into court, and told his Honor that there was no possibility of reaching an agreement.

His Honor discharged the Jury, and remanded Miller and Yeats for trial on bail as may be directed by the Attorney-General.

Mr. Lionel Dare asked that in Miller's case the bail should be reduced.

Mr. McKean said that he strongly opposed the application.

His Honor said that he would not make any alteration in the bail.

Mr. T. P. McMahon (instructed by Messrs. Lionel Dare and B. P. Purcell) appeared for Miller; and Mr. J. B. Kinkead (instructed by Messrs. W. H. McCarthy and Co.) for Yeats.<sup>[535]</sup>

#### **4 November, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr. McKean, K.C., Senior Crown Prosecutor.

#### **Not Guilty**

Edwin John Gardner, 24, a smelter, and John William Bonner, 48, were charged that at Alexandria, on July 27, they assaulted Jimmy Nore, a Chinese, occasioning him actual bodily harm. Bonner was also charged with having assaulted Gew King. It was alleged by the Crown that Gardner at first demanded money, and when it was refused he assaulted the Chinese. Jimmy Nore stated in evidence that Bonner struck him with an iron bar, and Gardner hit him with a crank handle.

The defence was that Gardner, having been told that a man had stolen his horse and sulky, went along to make inquiries. The man went into the residence of a Chinese, and as Gardner followed he was attacked by some Chinese, and retaliated.

The jury returned a verdict of not guilty. Gardner and Bonner were discharged.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for both accused.<sup>[536]</sup>

#### **5 November, 1931. Alleged Libel - Man Sues His Sister.**

In an action for libel in the District Court, Judge Edwards is being asked to decide whether the opening by a wife of a letter sent to her husband by his sister constitutes publication, the wife having been authorised by her husband to open his correspondence.

George Longfield, of Shirley-street, Bexley, yesterday claimed from Jessie Connell, of Peshurst-street, Peshurst, £400 damages for alleged libel. He alleged that he had suffered injury to his character and reputation, and had been held up to ridicule and contempt by a letter "falsely and maliciously written and published" by defendant.

The defence was a denial of publication.

Mr. Barwick (for plaintiff) said defendant wrote the letter to plaintiff, put it in a sealed envelope, and sent it through the post. Plaintiff's wife, being authorised by plaintiff to open his letters, opened the letter and read it.

His Honor: The law is against you on that.

Mr. Barwick: Plaintiff is brother of defendant.

Mr. Studdert (for defendant) said the case depended on whether defendant knew that in the ordinary course of events the letter would be opened by the wife. The wife might have been authorised by plaintiff to open his letters, but it could not be shown that defendant had any knowledge that she (the wife) was so authorised.

The matter is part heard.



Mr. G. E. Barwick (instructed by Mr. Simon Isaacs) appeared for plaintiff; and Mr. H. J. Studdert, with Mr. J. J. B. Kinkead (instructed by Messrs. Makinson and d'Apice) for defendant.<sup>[537]</sup>

*6 November, 1931. District Court (Before Judge Edwards)*

**Alleged Libel – Longfield v Connell**

The hearing was continued of the claim by George Longfield, of Shirley-street, Bexley, against Jessie Connell, of Penshurst-street, Penshurst, for £400 damages for alleged libel. Plaintiff alleged that he had suffered injury to his character and reputation, and had been held up to ridicule and contempt by a letter "falsely and maliciously written and published" by defendant.

The defence was a denial of publication.

His Honor found in favour of defendant. "It is a ridiculous case," his Honor declared. "It should not have come here."

Mr. G. E. Barwick (instructed by Mr. Simon Isaacs) appeared for plaintiff; and Mr. H. J. Studdert, with Mr. J. J. B. Kinkead (instructed by Messrs. Makinson and d'Apice) for defendant.<sup>[538]</sup>

*7 November, 1931. Quarter Sessions (Before Judge Armstrong)*

Mr T.S. Crawford, Crown Prosecutor

**Bound Over.**

Allan Dubois, 23, an ex-naval man, pleaded guilty to breaking and entering.

Dubois was bound over, himself in £10 and another surety of a like amount, to be of good behaviour and appear for sentence if called upon within two years, a condition being that he pay £8 to Mr. Carter at the rate of £1 a month, the first payment to be made on January 6 next.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Dubois.<sup>[539]</sup>

*10 November, 1931. Quarter Sessions (Before Judge Curlewis)*

Mr McKean K.C., Senior Crown Prosecutor

**Boy Acquitted**

Dudley Taylor Howard, 15, was charged with having maliciously wounded Rowland Albert Dunbier, 17, with intent to do grievous bodily harm.

It was alleged that there had been bad blood between the accused and another boy named Dunbier at Burwood for some months.

Dunbier gave evidence that on August 7 they had arranged to have a fight, but when they met during the evening Howard said he was "not going to fight that mob," and produced a loaded revolver, which he pointed at Dunbier. When Dunbier stepped up to him Howard grabbed Dunbier by the tie. Dunbier raised an arm and the revolver exploded.

It was stated that a taxi driver chased Howard, who ran away. When the taxi driver got to within ten yards of him, Howard turned around, and, it was alleged, fired. The bullet, however, did not take effect.

Howard's defence was that the revolver exploded accidentally in the struggle with Dunbier, and that there was no deliberate shooting at the taxi driver.

The Jury returned a verdict of not guilty.

Mr. Kinkead (instructed by Messrs. C. P. White and Co.) appeared for Howard.<sup>[540]</sup>

**11 November, 1931. Shooting Of Frank Green.**

Charles George Brame, 30, musician, was charged at the Central Police Court yesterday with having shot at *Francis Green* on October 26 with intent to murder him. Mr. Gibson, S.M.. remanded Brame until December 8.

In applying for bail, Mr. Kinkead said that Brame was not a member of the underworld of Sydney. On the night of the shooting he had been deliberately "put on the spot," and what he had done was done in self-defence. He was carrying a revolver because he had been previously shot at. Brame had made a full statement of the incident to the Chief of the detectives. He came of a respectable Sydney family.

Sergeant Napper, police prosecutor, said that Green was now out of danger, although it had been expected at first that he would not live. He would probably remain in hospital for another month. In the circumstances, the police would not oppose bail.

Mr. Gibson, S.M.. fixed bail at £500, and made it a condition that Brame should report daily to the Criminal Investigation Branch.<sup>[541]</sup>

**11 November, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C., Senior Crown Prosecutor

**Contractor Acquitted**

Richard Hamilton Long, 28, a contractor, was charged with breaking and entering. There was an alternative charge of receiving. The jury returned a verdict of not guilty on both counts. Long was discharged.

Mr Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for Long.<sup>[541]</sup>

**12 November, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C., Senior Crown Prosecutor

William Frederick Cruickshank, 41, a publisher, was charged with endeavouring to persuade a witness to make a false statement.

It was alleged that on June 3 accused endeavoured to persuade Rupert Eric Kitchen to make a false statement on oath in a judicial proceeding then pending in the Supreme Court to the effect that he (Kitchen) could not definitely identify the handwriting of certain signatures on documentation which were to be tendered as exhibits.

Cruickshank stated in evidence that he placed five £1 notes in a cigarette box and gave it to Kitchen to back a horse. Cruickshank denied that the £5 had anything to do with evidence in an alleged railway conspiracy matter.

Mr. McKean: Why did you put the notes in a cigarette box? At Kitchen's request, as Kitchen was afraid that a detective was watching for starting price bookmaking.

Without leaving the box, the jury returned a verdict of not guilty, and Cruickshank was discharged.

Mr. Kinkead (instructed by Mr, C. L. Sheehy) appeared for Cruickshank.<sup>[542]</sup>

**14 November, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C., Senior Crown Prosecutor

**Two Men Sentenced**

Douglas Cecil Burrell, 24, a labourer, and Edward McNamara, 23, a labourer, were charged that at Sydney on July 13 last they assaulted Albert Peters, and robbed him of £6/17/.

Mr. McKean said that Peters was the proprietor of a mixed business in Crown-street Sydney. It was alleged that the men went to his shop and asked for money. When money was refused, Peters was assaulted and robbed.

Albert Peters stated that the two accused demanded five shillings on a watch. Witness said he could not spare the money. Peter was then grabbed by one of the men while the other held a knife to his body. When the men took the money they threatened violence if he told the police.

The jury returned a verdict of guilty. Burrell was sentenced to three years, and McNamara to 23 months' hard labour. His Honor said that if at the end of twelve months McNamara had a good gaol record, he would consider whether he would recommend that he be released on licence.

Mr. P. N. Roach appeared for Burrell; and Mr. Kinkead (instructed by Mr. P. N. Roach) for McNamara.<sup>[543]</sup>

**17 November, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C., Senior Crown Prosecutor

**Acquittal And Conviction.**

Cyril Francis Bodeker, 32, motor bus proprietor, and Arthur Cotterell, 34, motor driver, were charged with having broken and entered a garage at Lewisham, and stolen motor car tyres. There was an alternative charge of receiving.

Mr. McKean asked the jury to devote their attention to the charge of receiving.

The jury returned a verdict of not guilty in the case of Bodeker. He was discharged. Cotterell was found guilty, and sentenced to 12 months' hard labour, cumulative on his previous sentence.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Bodeker.

**Two Men Charged.**

John Ferrier, 23, a wool washer, and George Patrick Gibbons, 32 a labourer, were charged with having, at Waterloo, on October 7 last, broken and entered a house and stolen dresses.

Ferrier pleaded not guilty, and Gibbons guilty.

Ferrier's defence was that he was drunk at the time, and knew nothing about the stolen articles.

The jury found Ferrier not guilty, and he was discharged.

Gibbons was sentenced to 12 months' hard labour.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Ferrier.<sup>[544]</sup>

**18 November, 1931. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C., Senior Crown Prosecutor

**Illegally Used Car.**

John Cecil Ridley, 25, a ship's officer, was charged that, at Enmore, on June 27 last, he illegally used a motor car, the property of Gustav August Plisen.

Mr. McKean said that accused was alleged to have told Pilsch that he had a buyer for his car, and subsequently both the accused and the car were missing. Accused, it was stated, had gone to Queensland.

Lieutenant-Colonel Ridley, of staff head-quarters, Victoria Barracks, father of accused, said that he had been approached by a couple of men who gave him to understand that the alternative to making recompense would be criminal proceedings against his son. The sum of £120 was mentioned.

Accused stated, in evidence, that the night before he left for Brisbane he purchased a car from a man who said that he had himself bought it from Pilsch. Accused stated that he gave the man two cars and an interest in a garage business in exchange for the car, the subject of the charge.

Accused was found guilty, with a recommendation to mercy on account of his previous good character. He was remanded for sentence till Friday.

Mr. Kinkead (instructed by Messrs. Bradley, Son, Maughan, Hyman, and Kirkpatrick) appeared for Ridley.<sup>[545]</sup>

#### *20 November, 1931. Quarter Sessions Appeal - (Before Judge White.)*

##### **Consorting Sentence Varied.**

*Eileen Earle* appealed against her conviction and sentence of two months' imprisonment imposed upon her by Mr. Camphin, S.M., at the Central Police Court on October 16, on a charge of consorting.

His Honor dismissed the appeal, but varied the sentence by binding over appellant to be of good behaviour for 12 months, and to refrain during that period from frequenting the area bounded by William, Palmer, Liver-pool, and Yurong streets.

Mr. J. J. B. Kinkead (instructed by Mr. F Fanker) appeared for appellant; and Mr. Weigall, K.C, for the Crown.<sup>[546]</sup>

(Note: Eileen Earle was the daughter of Kate Leigh)

#### *20 November, 1931. Quarter Sessions (Before Judge Armstrong.)*

Mr. T. S. Crawford, Crown Prosecutor.

##### **Mould For Coins.**

Thomas Sumner, 35, an iron worker, and Francis Berry, 26, an optician, each pleaded guilty to having been in possession of a mould for the making of counterfeit coins.

It was stated that Sumner had been wounded several times on Gallipoli; had received no pension; and recently through pressure of circumstances lost his house.

His Honor said that the offence was regarded most seriously by the Crown. At the same time, he would bind over Sumner and Berry in £20 each to be of good behaviour and appear for sentence if called upon within 12 months.

Mr. Moors (instructed by Messrs. Biddulph and Salenger) appeared for Sumner; and Mr. Kinkead (instructed by Messrs. Biddulph and Salenger) for Berry.<sup>[546]</sup>

#### *21 November, 1931. Quarter Sessions (Before Judge Armstrong)*

##### **Ex-Bank Clerk Sentenced.**

Orlando Boyd Dedman, 30, a bank clerk, pleaded guilty to larceny as a servant, the amount involved being £3640/15/7. Dedman had been employed in the Bank of New South Wales.

It was stated that the money had been taken in one day. A sum of £1351 had been recovered. A sum of £900 was found in a canvas bag in a yard, and £444 in a camp. The missing money, it was stated, had been lost at the races.

His Honor sentenced Dedman to three years' imprisonment at Tuncurry Prison Farm. If a substantial proportion of the missing money was paid back he would recommend a reduction of the sentence, he said.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Dedman.

**(Before Judge Curlewis.) Mr. B. V. Stacey, Crown Prosecutor.**

#### **Illegally Used Car.**

John Cecil Ridley, 25, had been found guilty of illegally using a motor car, the jury having added a recommendation to mercy on account of his previous character.

Mr. Kinkead said that a steamship company had expressed its willingness to re-employ Ridley.

His Honor, in sentencing Ridley to six months' imprisonment, said that it was a particularly mean theft. Ridley had taken the last piece of property of an unfortunate man, and sent him on the dole. Only for the recommendation of the jury his Honor would have given Ridley the maximum sentence of two years.

Mr. Kinkead (instructed by Messrs. Bradley, Son, Maughan, Hyman, and Kirkpatrick) appeared for Ridley.<sup>[547]</sup>

**27 November, 1931. Quarter Sessions (Before Judge Armstrong.)**

#### **Motor Mechanic Acquitted.**

George Edward Leigh, 22, a motor mechanic, was charged with having stolen a motor car. There was an alternative charge of receiving.

The Crown asked the jury to devote its attention to the receiving charge.

It was stated by Mr. Crawford that it was an intricate case, as apparently the parts of three motor cars, had been mixed.

It was alleged by the Crown that Leigh had a car which had been stolen from a Mr. Keeling in his possession. A Mr. Donkin had brought to Leigh his burnt car to have the body repaired. Leigh, it was alleged, put Donkin's engine into the chassis and body of Mr. Keeling's car, and returned the result to Donkin, keeping Donkin's chassis and body and Keeling's engine. A Mr. Hancock brought his car to Leigh to get a new engine. Leigh put Keeling's engine into Hancock's car, and returned the result to Hancock. Leigh then put Hancock's engine into Donkin's chassis, and the result, it was alleged, was the car found in Leigh's possession by the police.

Accused stated in evidence that he bought a car without knowing that it had been stolen. He was innocent of the charge.

After a short retirement the jury returned a verdict of not guilty. Leigh was discharged.

Mr. Kinkead (instructed by Mr. J. Yeldham) appeared for Leigh.<sup>[548]</sup>

**2 December, 1931. Alleged Divulgence Of Telegram Contents.**

Allegations of the leakage of information contained in telegrams were made at the Central Summons Court yesterday, when Alexander Cunningham, 48, newspaper proprietor, was charged with having

aided and abetted the divulgence of the contents of telegrams. It was alleged by the prosecution that Cunningham, who conducted a racing paper called "Turf Review" had ascertained the particulars of telegrams sent to clients in the country by a rival racing paper, and had then written to the other paper's clients, re-requesting them to patronise his own tipping service.

Phillip James Mitchell, chief inquiry officer, of the Postal Department, said that at an interview with Cunningham at the office of "Turf Review," 12 Castlereagh-street, city, witness related how he had lodged five telegrams bearing fictitious addresses. Later a telegram bearing the stamp of the "Turf Review" and letters addressed with the fictitious names and addresses came into witness's possession. When asked how he got the names in question, Cunningham replied, "The questions are getting too personal. Do you mind if I consult my solicitor?"

Mr Kinkead (for the defendant): Have you any evidence that anything in the telegrams other than the names and addresses was disclosed?

Witness: No

Mr Flynn, SM, adjourned the case until 2pm to-day.

Mr P Gallagher (instructed by the Commonwealth Crown Solicitor) appeared for the prosecution. Mr J J B Kinkead (instructed, by Messrs Hunt and Hunt) appeared for the defendant.<sup>[549]</sup>

### **2 December, 1931. Quarter Sessions (Before Judge Armstrong )**

(Mr Weigall, K C, Solicitor-General, prosecuted for the Crown )

#### **Auctioneer Convicted.**

Morris Abraham Kutner, 38, an auctioneer, was charged that, on October 29, he assaulted a female with an act of indecency. There was an alternative charge of common assault.

It was alleged that the offence occurred in an auction room in George-street, city.

The Jury returned a verdict of guilty. Kutner was remanded for sentence.

Mr. Kinkead (instructed by Mr. P. N. Roach) appeared for Kutner.<sup>[550]</sup>

### **3 December, 1931. Contents Of Telegram - Alleged Divulgence - Newspaper Proprietor Discharged.**

At the Central Police Court yesterday, Mr. Flynn, S.M., dismissed a charge against Alexander Cunningham, 48, newspaper proprietor, of having aided and abetted the divulgence of the contents of a telegram on or about July 18.

In discharging the defendant, Mr. Flynn, S.M., said that he was satisfied that no Jury would convict on the evidence before the Court. There was a reasonable possibility, he said, of the contents of the telegram having leaked out in another way than through postal officials.

Mr. P. Gallagher (instructed by the Commonwealth Crown Solicitor) appeared for the prosecution, and Mr. J. J. B. Kinkead (instructed by Messrs. Hunt and Hunt) appeared for the defendant.<sup>[551]</sup>

### **8 December, 1931. Quarter Sessions (Before Judge Armstrong.)**

(Mr. T. S. Crawford and Mr. W. F. Sheahan, instructed by the Commonwealth Crown Solicitor, prosecuted for the Crown.)

#### **Postal Assistant Charged**

Lancelot Verne Lynch, 31, a postal assistant, was charged that on May 1, at Queanbeyan, he stole

£10,000 in Australian notes, the property of the Commonwealth Bank of Australia. There was an alternative charge of receiving.

Mr. Crawford said that a Bench warrant had been issued for the arrest of Joseph Harold Ryan in connection with the same charge. Ample notice had been given in the Press in case Ryan's absence was due to inadvertence.

Continuing, Mr. Crawford said that the robbery had features which made it positive that it had been carried out with the help of a conspirator inside the Post Office. Lynch had been working on the floor above the despatch room to which there were many avenues of access. The mail bag containing the bank notes had been marked so that it could be easily selected from the rest of the mail. A dummy bag had been made up so that in size and weight it was just like the registered bag. That could only have been accomplished by having a conspirator in the Post Office. Of the £10,000 stolen £7900 had been recovered, including £7600 which had been found on a farm.

The hearing will be resumed to-day.

Mr. J. J. B. Kinkead (instructed by Mr. W. M. Niland) appeared for Lynch.<sup>[552]</sup>

*9 December, 1931. Quarter Sessions (Before Judge Armstrong.)*

(Mr. T. S. Crawford and Mr. W. F. Sheahan, instructed by the Commonwealth Crown Solicitor, prosecuted for the Crown.)

**Postal Assistant Charged**

The trial was continued of Lancelot Verne Lynch, 31, postal assistant, who was charged with having stolen £10,000 in Australian notes, the property of the Commonwealth Bank of Australia. There was an alternative charge of receiving.

Ernest Porch, leading porter at Queanbeyan, said that nobody was about when he left the Canberra mail on the Queanbeyan platform for 2 minutes while he went to the stationmaster's office for a transhipment book. There was not even a fellow-employee to watch the bags. It was exceptional that he should have had to go to the stationmaster's office for a transhipment book on that day.

Guard Irvine, who took the train to Canberra from Queanbeyan, said that the stolen mail bag was not an insured parcel. It was an ordinary mail parcel.

Raymond Robert Reeves, a mail driver at Canberra, said that when one bag was opened it was found to contain rubbish, including telephone directories, newspapers, and ½cwt of stones.

The hearing will be resumed to-day.

Mr. J. J. B. Kinkead (instructed by Mr. W. M. Niland) appeared for Lynch.<sup>[553]</sup>

*10 December, 1931. Quarter Sessions (Before Judge Armstrong.)*

(Mr. T. S. Crawford and Mr. W. F. Sheahan, instructed by the Commonwealth Crown Solicitor, prosecuted for the Crown.)

**Postal Assistant Charged**

The trial was continued of Lancelot Verne Lynch 31 a postal assistant, who was charged with having stolen £10 000 in Australian notes the property of the Commonwealth Bank of Australia.

Edward Percy Jacobs, an ex-driver in the Postal Department, said that when Mr W Webster was Postmaster-General he had frequently acted as his chauffeur. For four or five years he had also driven a car on which postal pay was taken to city and suburban offices.



Jacobs, cross-examined by Mr Kinkead said it was true that he had said at the police court hearing that he had given evidence, not through a sense of duty or from a desire to , save himself, but from a belief that Lynch had given information to the police in an attempt, to blame him for the robbery.

Lynch denied in evidence that he had made arrangements to substitute a mail bag. He had had no conversation with anyone with regard to the taking of a mail bag. The Statement by Jacobs that witness had brought along a new mail bag wrapped in brown paper, was a fabrication. Witness had never at any time given anyone a new mail bag, seals, or mail labels. Witness had never been to Queanbeyan. Picton was the farthest place on the southern line he had visited.

The hearing will be resumed to-day.

Mr. J. J. B. Kinkead (instructed by Mr. W. M. Niland) appeared for Lynch.<sup>[554]</sup>

*11 December, 1931. Quarter Sessions (Before Judge Armstrong.)*

(Mr. T. S. Crawford and Mr. W. F. Sheahan, instructed by the Commonwealth Crown Solicitor, prosecuted for the Crown.)

**Postal Assistant Charged**

The trial was continued of Lancelot Verne Lynch, 31, a postal assistant, who was charged with having stolen £10,000 in Australian notes, the property of the Commonwealth Bank of Australia.

Albert Joseph Lynch, a retired master baker, and an uncle of the accused, was called by the defence. He was cross-examined by Mr. Crawford respecting a bogus racing report that had been sent to the "Herald."

The hearing will be resumed to-day.

Mr. J. J. B. Kinkead (instructed by Mr. W. M. Niland) appeared for Lynch.<sup>[555]</sup>

*12 December, 1931. Quarter Sessions (Before Judge Armstrong.)*

(Mr. T. S. Crawford and Mr. W. F. Sheahan, instructed by the Commonwealth Crown Solicitor, prosecuted for the Crown.)

**Not Guilty**

The trial was concluded of Lancelot Verne Lynch, a postal assistant, who was charged with having stolen £10,000 in Australian notes, the property of the Commonwealth Bank of Australia. The Jury returned a verdict of not guilty. Lynch was discharged. The trial had lasted five days.

There was a demonstration in Court when the verdict was announced. Two youths who had shouted "Hooray" were ordered to leave the Court.

Mr. J. J. B. Kinkead (instructed by Mr W. M. Niland) appeared for Lynch.<sup>[556]</sup>

*15 December, 1931. Quarter Sessions (Before Judge Armstrong.)*

Mr. T. S. Crawford, Crown Prosecutor.

**Recommended To Mercy.**

John Joseph Lawler, 51, advertising traveller, was charged with an assault on a female with an act of indecency. It was stated that the girl was 12 years of age, and that the alleged offence occurred at Deewhy on June 29.

The jury returned a verdict of guilty, with a strong recommendation to mercy. Lawler was remanded for sentence till Friday.

Mr J J B Kinkead (instructed by Mr. B A. McBride) appeared for Lawler.

### **Guilty Of Bigamy.**

Violet Rose McLean, 35, who was charged with bigamy, pleaded guilty.

McLean was bound over, self in £15 and a surety of £15 to be of good behaviour and appear for sentence if called upon within twelve months.

Mr J J B Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for McLean.<sup>[557]</sup>

### **19 December, 1931. Embezzlement Charge Against Former Managing Director.**

Two counts alleging embezzlement were preferred by Frederick Thomas Smythe, director and liquidator of Searl's, Ltd., against Frederick Henry Searl at the Central Summons Court yesterday.

The charges were that Searl had embezzled 17/ which he had received on February 18, 1931, by virtue of his employment by Searls, Limited, and on March 14 (within six months) embezzled a further sum of £5. It was admitted that at the time of the alleged offence the defendant was managing director of Searls, Limited.

Charles Kearsley, a carter employed by Searl's and Jean's, Ltd , said that on March 14, when employed by Searl's, Ltd., he delivered a wedding bouquet to a Mrs. Hardy and was paid £5. He returned to the office and paid the money to Searl personally. Searl had said to him before the delivery of the bouquet, "Bring the money back to the office I want it urgently."

Elizabeth Adeline Fewtrell said that she remembered an order for a bouquet for Mrs. Hardy, of Wahoonga, in March Searl gave her instructions but no address. Searl said, "Keep it to yourself, Bessie, and do not tell anybody else about it."

Miss Agnes Howlison stated that in October 1930, she was placed in charge of the despatch department of Searl's. She kept records after she had been given instructions by Smythe. She did not receive any money for Mrs. Hardy's order on March 14. She did not receive money for certain transactions on February 18.

Mr. Williams, S.M., adjourned the case until noon on Monday next.

Mr. J. J. B. Kinkead (instructed by Messrs Manuel and Pearce) appeared for the prosecution and Mr. W. J. Bradley (instructs by Mr. D. R. Hall) appeared for the defendant.<sup>[558]</sup>

### **19 December, 1931. Quarter Sessions (Before Judge Armstrong)**

Mr T.S. Crawford, Crown Prosecutor

### **Medical Supervision**

John Joseph Lawler, 51, an advertising traveller, had been convicted of an assault on a female.

Lawler was sentenced to two years' and six months' hard labour. His Honor said that Lawler would be placed under medical supervision, and if a favourable report was received, he would recommend that the sentence be reduced to one year.

Mr. J. J. B. Kinkead (instructed by Mr. I B. A. McBride), appeared for Lawler.<sup>[559]</sup>

### **20 December, 1931. Not Done – Vi's Two Husbands Meant Trouble.**

Bigamy, like murder and a pet corn in rainy weather, will out. It's the skeleton in the cupboard, and those bones have to rattle at some time or another, for bigamy isn't done—at least not according to law.

It turned out something like this for Mrs. Violet Rose McLean, who because she had transgressed by taking two husbands, faced Judge Armstrong at the Darlinghurst Sessions the other day. Strangely enough, it was a photo, of herself in bridal array that put Violet away to her second "husband," which goes to show that it isn't always sound sense to keep photos that tell their own stories.



Mr. Kinkead.

After having promised to love, honor and obey Frederick McLean, in England, nine years later Violet gave her hand to Walter Ernest Mears, and said, "I will" once more. She might have "lived happily ever after," as the story books say, but for the fact that Frederick was still her lawful husband, and very much alive. Looking through her "pretties" one day on her return to him after several months separation. Fred happened to come across a photograph of Vi dressed as the conventional bride, but it was not the dress she had worn when he had led her to the altar! Followed some heated questioning, after which Fred footed it post haste for the local police station, where he told the story of his wife's two trips on the stormy seas of matrimony. And that's the reason why Vi, stood up in the dock before Judge Armstrong and pleaded guilty to a charge of bigamy. Vi, had nothing to say, but her counsel Mr. J. B. Kinkead, said a few words on her behalf, which had the effect of Vi, being released on a bond

"Had a Bad Life"

"Accused married Frederick McLean on September 26, 1921, at Kingston-On-Thames, Surrey, and on March 8, 1930, she went through the form of marriage with Walter Mears, McLean being still alive," said Mr. Kinkead. "But, the reason for the second ceremony was because she had given birth to a child, and she wanted to give her a baby a name, but it died a few months after.

"She had a bad life with McLean, and he turned up again after the death of the child, and she went back to him," went on Mr. Kinkead. "He knocked her about and ill-treated her again, and then informed the police that she was a bigamist. But that is not all he did. After she was arrested he did not tell her friends that she was in gaol, where she had to stay for 10 days before she could get bail," added Mr. Kinkead. Vi, had one conviction against her, for selling liquor without having held a license, in 1919, but the judge said he would not treat a police offence as a criminal one. "Therefore, I will release you on your entering into a recognisance in £15 and one surety of £15 to be of good behavior for 12 months," said Judge Armstrong. Vi, agreed to the terms, and left the court with a swish of her skirts.<sup>[560]</sup>

#### **22 December, 1931. Alleged Shooting Of Sydney Devine. Kingsbury Committed For Trial.**

The shooting of Sydney Vincent Devine at Maroubra on September 11 was the subject of a charge heard by Mr Laidlaw, C.S.M., at the Central Police Court yesterday. Guy Neville Kingsbury, 39, described as of independent means, was committed for trial on a charge of attempting to murder Devine. Bail was fixed at £300, and it was made a condition that Kingsbury should report daily at the Daceyville police station.

When asked if he had anything to say, Kingsbury said: "I am not guilty. I shot the man in self-defence."

Sydney Vincent Devine, an ironmoulder, of Glen Ayr-avenue, Bondi, appeared in Court with his right arm in plaster-of-paris. He said that on September 11, about 7.20 p.m., he went to the home of his brother, *James Devine*, in Long Bay-road and Torrington-road, Maroubra. Kingsbury, who was practically a stranger to him, came to the house looking for beer. *Mrs. Devine* told Kingsbury that he

could not get any beer there. Witness and Kingsbury drove to Kensington and Randwick in Kingsbury's car, and returned with six bottles of beer. Four bottles were taken into James Devine's house, where Kingsbury and others in the house drank them. Witness did not have a drink. Later Kingsbury said he would drive witness home to Bondi. Kingsbury drove to his own house in French-road about 10.45 p.m., and invited witness to go in. A little boy was sitting in the breakfast-room, and Kingsbury sent him out of the room. Kingsbury said, "Have a drink?" Witness replied, "I am not drinking." Kingsbury walked out of the room, returned with a shotgun, sat down opposite witness, and put a cartridge in the gun. Kingsbury said, "Now, you dirty —, I have got you where I want you." Witness put his arm up to shield his face and said, "Don't, Guy, don't." Kingsbury was only about two yards away, and he said, "I will give you 'don't'." The next thing witness saw was a long red flame, which came out of the gun, and he felt a sting of pain in his right arm just below the shoulder. Witness said, "You have shot me Guy. You have shot me." Witness grabbed his injured arm and staggered into a front room. In an attempt to leave the house witness broke a gauze wire window with his head and fell out. He staggered down the street calling out, "Murder, murder, police, police." Some people then took him to Dr. Bull's surgery.

To Mr. Kinkead, witness said that he could not understand why Kingsbury had shot him. There was no argument between them. Witness did not drink and did not carry a "gun."

Constable Ernest Schroeder, of Daceyville, gave evidence that he was called to Dr. Bull's about 11 p.m. on September 11. He saw Devine lying on a couch, which was covered with blood. After a conversation with Devine witness went to 5 French-road. In the kitchen, which smelt strongly of burnt gunpowder, Kingsbury was sitting in a chair. Witness said, "What's the matter, Guy?" Kingsbury jumped to his feet and said, "I shot — Devine, and I will shoot you, too." Witness grabbed him, and handcuffed him. Kingsbury was under the influence of drink. There was an automatic shotgun standing against the wall. There were several cartridges in the magazine. Blood was splashed throughout the house. Witness asked Kingsbury where the shooting had taken place, and Kingsbury replied, "Right here; the greasy — broke in and started to clean the 'joint' up."

To Mr. Kinkead (for Kingsbury) witness said that he could not smell liquor on Devine. He found out afterwards that Devine and Kingsbury had been together for more than an hour.

Dr. Walter McGrath, of St. Vincent's Hospital, said that Devine was admitted to the hospital in a serious condition, suffering from a bad gunshot wound in the upper part of his right arm. The bone had been fractured, and there was a possibility of permanent injury. There was no evidence of alcohol on Devine. He was kept in the institution for 48 days.

Mr. J. J. B. Kinkead (instructed by Mr. F. A. Newnham) appeared for Kingsbury.<sup>[561]</sup>

#### **22 December, 1931. Alleged Embezzlement - Firm of City Florists.**

Mr. Williams, S.M., at the Central Police Court yesterday, continued the hearing of the charges of embezzlement against Frederick Henry Searl, formerly managing director of Searl's, Ltd., city florists. Frederick Thomas Smythe, director and liquidator of Searl's, Ltd., alleges that Searl embezzled 17/, which he had received on February 18, 1931, and that on March 14 embezzled a further sum of £5.

Nellie Henderson said that she had been an invoice clerk to Searl's, Ltd., and she had been appointed secretary of the new company of Searl's and Jean's, Ltd. Under cross-examination by Mr. Bradley (for the defendant) she said that on checking the cash returns she frequently found discrepancies. Mr. Fred Searl and his wife were the holders of practically all the shares in Searl's, Ltd., and most of the customers had desired to do business with Mr. Searl personally. An attempt had been made to get

Mr. Searl out of the State to retain those customers for Searl's and Jean's, Ltd., and Mr. Fred Searl's private telephone number had been secured by someone in the new firm.

Witness said that she did not know that the shares to qualify Smythe for a director of Searl's, Ltd., had been given to him by Mr. Searl.

Mr. Williams, S.M., adjourned further hearing of the case until January 20.

Mr. J. J. B. Kinkead (instructed by Messrs Manuel and Pearce) appeared for the prosecution, and Mr. W. J. Bradley (instructed by Mr. D. R. Hall) appeared for the defendant.<sup>[561]</sup>

## Barrister – 1932

## Overview

Date	Accused	Action	Offence	Result
19 January 1932	Charles G. Brame	Defended	Attempted Murder	Acquitted
26 January 1931	William Carnegie Clegg	Defended	Fraud	
5 February 1932	Kate Leigh	Defended	Appeal	Dismissed
6 February 1932	Albert Eric Whitlocke	Defended	Assault ABH	Acquitted
6 February 1932	Isobel Dowling	Defended	False Pretences	Convicted
16 February 1932	George Brennan	Defended	Break & Enter	Acquitted
18 February 1932	Ernest Alfred Silvester Fuller	Defended	Wanton Driving	Acquitted
20 February 1932	John Joseph Lawler	Defended	Appeal	Allowed
23 February 1932	Richard Charles Blake	Defended	Conspiracy to Defraud	Remanded
1 March 1932	George Thomas Lynch	Defended	Assault ABH	Acquitted
1 March 1932	Frederick Sullivan	Defended	Assault ABH	Acquitted
3 March 1932	Gordon Hector Swain	Defended	Embezzlement	Committed
15 March 1932	Leo Yeats	Defended	Make False Statement	Acquitted
18 March 1932	Guy Neville Kingsbury	Defended	Attempted Murder	Convicted
22 March 1932	John Kellerman	Defended	Larceny as a Bailee	Acquitted
13 April 1932	Michael Sarah	Defended	Indecent Assault	Convicted
14 April 1932	Arthur William Murray	Defended	Larceny	Acquitted
14 April 1932	Alfred Thomas Lunnon	Defended	Larceny	Acquitted
14 April 1932	Frank Reynolds	Defended	Larceny	Acquitted
15 April 1932	Dot Tremaine	Defended	Larceny	Acquitted
15 April 1932	Aubrey Taylor	Defended	Larceny	Convicted
15 April 1932	James Arthur Talbot	Defended	House Breaking Implements	Acquitted
15 April 1932	Percival Gordon Gallagher	Defended	House Breaking Implements	Acquitted
19 April 1932	Stanley Watson	Defended	Break & Enter	Convicted
19 April 1932	Frederick Harris	Defended	Break & Enter	Acquitted
19 April 1932	Jean Harris	Defended	Break & Enter	Convicted
21 April 1932	Gordon Hector Swain	Defended	Embezzlement	Committed
29 April 1932	Roy Samuel Burnstein	Defended	Larceny	Acquitted

29 April 1932	Hyman Lehn	Defended	Larceny	Acquitted
5 May 1932	Cecil William Joseph Tyler	Defended	Larceny as a Servant	Convicted
5 May 1932	Alan James Simons	Defended	Embezzlement	Convicted
5 May 1932	Lyle Linwood Eggins	Defended	Larceny	Convicted
5 May 1932	Thomas Donohoe	Defended	Break & Enter	Convicted
6 May 1932	Cecil William Joseph Tyler	Defended	Larceny as a Servant	Convicted
6 May 1932	Alan James Simons	Defended	Embezzlement	Convicted
7 May 1932	Harold MacKenzie	Defended	Appeal	Upheld
17 May 1932	Arthur Coates	Defended	Appeal	Upheld
18 May 1932	Rowley Spalding Burcher	Defended	Arson	Convicted
18 May 1932	William Robinson	Defended	Break & Enter	Convicted
21 May 1932	Michael Sharah	Defended	Appeal	Dismissed
24 May 1932	Matilda Devine	Defended	Appeal	Dismissed
1 June 1932	Thomas Jenkins	Defended	Murder	Acquitted
2 June 1932	John Leahy	Prosecuted	Fraud	Acquitted
2 June 1932	Patrick Burton	Prosecuted	Fraud	Acquitted
8 June 1932	Walter Letheby	Defended	Fail to Appear	Convicted
8 June 1932	Doris Williams	Defended	Larceny	Acquitted
8 June 1932	William Arthur Kelly	Defended	Larceny as a Servant	Convicted
18 June 1932	Bryan Claude Travers	Defended	Assault ABH	Acquitted
21 June 1932	Richard Charles Blake	Defended	Alleged Conspiracy	Acquitted
24 June 1932	Clifton Green	Defended	Larceny	Acquitted
28 June 1932	Sidney Sheedy	Defended	Abduction	Acquitted
30 June 1932	Edward Albert Begaud	Defended	Drunk Driving	Convicted
4 July 1932	Gerald Vincent English	Defended	False Pretences	
8 July 1932	Harry Newberry	Defended	Break & Enter	Acquitted
12 July 1932	John Joseph Lawler	Defended	Indecent Assault	Acquitted
13 July 1932	George Oates	Defended	Larceny	Acquitted
13 July 1932	Leslie John Gillette	Defended	Receiving	Convicted
15 July 1932	Arthur Robinson	Defended	Receiving	Convicted
19 July 1932	Frank Phibbs	Defended	Larceny	Convicted
19 July 1932	George James McMahon	Defended	Larceny	Acquitted
22 July 1932	Mabel Florence Green	Defended	Bigamy	Acquitted
23 July 1932	Lancelot George Blackmore	Defended	Misappropriation	Convicted



23 July 1932	Guy Neville Kingsbury	Defended	Appeal	Dismissed
30 July 1932	Percy John Wince	Defended	Possess Stolen Goods	
3 August 1932	Michael Sharah	Defended	Appeal	Dismissed
9 August 1932	Patrick Burton	Prosecuted	Conspiracy to Defraud	Acquitted
9 August 1932	John Leahy	Prosecuted	Conspiracy to Defraud	Acquitted
11 August 1932	William John Stain	Defended	Sexual Assault	Dismissed
11 August 1932	William Anderson	Defended	Theft of Motor Vehicle	Convicted
12 August 1932	Edward Rankin Gardner	Defended	Break & Enter	Acquitted
12 August 1932	Albert Mackey	Defended	Break & Enter	Acquitted
23 August 1932	Ernest Victor Aston Grimshaw	Prosecuted	Break & Enter	Convicted
23 August 1932	Henry Edwards Messervy	Defended	Appeal	Dismissed
24 August 1932	Donald Buchanan	Prosecuted	Theft of Motor Vehicle	Convicted
1 September 1932	Guy Neville Kingsbury	Defended	Appeal	Allowed
6 September 1932	Richard Charles Blake	Defended	Conspiracy to Defraud	Acquitted
15 September 1932	Thomas Alexander Cupples	Defended	Indecent Assault	Acquitted
15 September 1932	George Granger	Defended	Appeal	Upheld
16 September 1932	Albert James Warren	Defended	Appeal	Dismissed
24 September 1932	Moses Hyams	Defended	Larceny	Convicted
5 October 1932	Albert Beck	Defended	Break & Enter	Convicted
6 October 1932	Kenneth Anderson Raison	Defended	Forgery	Convicted
6 October 1932	Guy Neville Kingsbury	Defended	Malicious Wounding	Acquitted
13 October 1932	Richard Barnard	Prosecuted	Conspiracy to Defraud	
13 October 1932	John Brown	Prosecuted	Conspiracy to Defraud	
15 October 1932	James Graves	Defended	Larceny	Convicted
15 October 1932	Charles Johnson	Defended	Larceny	Convicted
15 October 1932	George Henry Woods	Defended	Larceny	Acquitted
15 October 1932	Stanley Abel Jones	Defended	False Pretences	Convicted
29 October 1932	Jack Douglas Lawrie	Defended	Appeal	Reserved
4 November 1932	Ivy Gladys Mary Thomas	Defended	Malicious Wounding	Acquitted

9 November 1932	John Frederick Hayes	Defended	Assault & Robbery	Acquitted
12 November 1932	Jack Douglas Lawrie	Defended	Appeal	Dismissed
12 November 1932	Tessie Johnson	Defended	Appeal	Upheld
12 November 1932	John O'Connor	Defended	Appeal	Dismissed
14 November 1932	Nathaniel Govett	Defended	Murder	Remanded
15 November 1932	Arthur Daniel Walker	Defended	Assault	Remanded
15 November 1932	George Gibson	Defended	Assault	Convicted
18 November 1932	Guy Neville Kingsbury	Defended	Malicious Wounding	Postponed
18 November 1932	Arthur Daniel Walker	Defended	Assault	Convicted
19 November 1932	Ivy Kennedy	Defended	Appeal	Upheld
19 November 1932	James Graves	Defended	Appeal	Dismissed
19 November 1932	Charles Johnson	Defended	Appeal	Dismissed
22 November 1932	Nathaniel Govett	Defended	Murder	Remanded
26 November 1932	James Wallace	Defended	Counterfeiting	Remanded
26 November 1932	Charles Alfred Ashton	Defended	Counterfeiting	Remanded
27 November 1932	Paul Grierson	Defended	Robbery	Listed
30 November 1932	Nathaniel Govett	Defended	Murder	Proceeding
6 December 1932	Sidney Pike	Defended	Appeal	Dismissed
6 December 1932	Arthur William Smith	Defended	Appeal	Dismissed
6 December 1932	Harry Walker	Defended	Appeal	Dismissed
7 December 1932	Arthur Henry Atkinson	Defended	Appeal	Upheld
8 December 1932	Harold Roy Williams	Defended	Counterfeiting	Remanded
10 December 1932	Francis Percy Shannon	Defended	Sexual Assault	Convicted
13 December 1932	John Charles	Defended	Receiving	Convicted
20 December 1932	Moses Hyams	Defended	Appeal	Upheld
22 December 1932	William Graham	Defended	Break & Enter	Convicted
23 December 1932	Roy Williams	Defended	Counterfeiting	Bailed
23 December 1932	Christopher Salmon	Defended	Stealing	Committed

## Articles

### *19 January, 1932. Shooting of Frank Green*

Charles G. Brame, musician, who is charged with wounding, with intent to murder, *Frank Green* at Sydney, on October 26 last, appeared before Mr. Cohen, S.M.. at the Central Police Court yesterday.

Mr. Kinkead (instructed by Mr. F. A. Newnham), who appeared for Brame, informed the magistrate that Green was still in hospital and was unlikely to come out for sometime. He asked for an adjournment.

Mr. W. C. Moseley, who appeared for Green, said his client would not be out of hospital for at least a month. There was a probability that Green would be operated upon for removal of the bullet, which was still in his back close to the spine.

Brame was remanded to February 15, on his former bail of £500.<sup>[562]</sup>

**26 January, 1932. W. C. Clegg - Charged With Woman Clerk - Further Alleged Frauds.**

Further charges against Leila Beryl Smith 39 law clerk and William Carnegie Clegg 50 solicitor arising out of money transactions between them and certain clients were proceeded with before Mr Shepherd S M at the Central Police Court yesterday. The court was crowded. Clegg who had been brought from Long Bay sat on a form behind the bar table. Mrs Smith occupied a seat at the opposite end of the form.

The charges against the accused were that they received sums of £200, £250 and £200 upon terms requiring them to account to Alfred Henry Wilson, Charles Frederick Harris and John Mitchell Littlejohn respectively for the whole of the money and that they had fraudulently omitted to account for it in violation of the terms upon which they had received it.

Mr Kinkead (instructed by Messrs W Patterson and Co) appeared for Clegg and Mr MacMahon (instructed by Messrs Colquhoun and King) for Smith.

Sergeant Caban prosecuted.

Detective Lawrence said that he and Detective Cartwright interviewed Mrs Smith at her home at Bellevue Hill in regard to a warrant which had been taken out by Wilson. Witness told Mrs Smith that the warrant had been taken out in consequence of a number of persons having written to the Attorney-General asking that further charges should be preferred against her and Clegg. Witness told Mrs Smith that it was alleged that she and Clegg had obtained £200, £250 and £200 from Wilson Harris and Littlejohn for a second mortgage on a cottage for a Mrs Livingstone of Anzac parade Kensington. Mrs Smith then replied I was sick at the time. I was away from the office and had nothing to do with the transactions. They were arranged by Miss Laffin. Subsequently witness told Clegg that three sums amounting to £610 had been paid in circumstances similar to those he had related to Mrs Smith. Witness also directed Clegg's attention to certain page in a trust ledger and an investment ledger which were taken by the police from Clegg's office. Clegg replied that he had seen all these matters before to which he had pleaded not guilty.

Alfred Henry Wilson bookbinder of Belmore said that he handed a cheque for £200 to Miss Laffin at Clegg's office and was given details of property upon which he understood the money was being advanced. He received £11 in interest but no further amount. He had never received the principal which he came due in May, 1931.

In reply to Mr MacMahon witness said that he had made complaints at Clegg's office until he was tired. Cheques he had received were he believed in Miss Laffin's handwriting. He was one of the dissatisfied clients who had interested themselves in securing fresh charges against Mrs Smith.

Charles Frederick Harris clerk employed by the Railway Commissioners and John Littlejohn of Deewhy gave particulars of transactions at Clegg's office.

Mrs Mary A Livingstone of Anzac parade Kensington said that she had not received any money from Wilson Harris or Littlejohn in respect of mortgages on properties owned by her.

Ada Mary Laffin of Roslyn street King's Cross who was employed as a general clerk in Clegg's office from 1928 to 1931 said that she never typed a mortgage in Cleggs office. Certain entries in the investment ledger referring to Wilson were in Mrs Smiths writing. She had also under instructions from Mrs Smith called at the office of Mr Harris and asked him if he would do a mortgage for £200 on Mrs Livingstones property. She had no knowledge and had nothing to do with any mortgage documents in Clegg's business. Mrs Smith did most of the conveyancing.

After hearing further evidence the case was adjourned till Thursday next.<sup>[563]</sup>

**29 January, 1932. Clegg Case – Office Practices – Witness's Admissions**

The hearing of further charges against Leila Beryl Smith, 39, law clerk and William Carnegie Clegg, 50, solicitor, arising out of certain money transactions with clients of Clegg, was concluded before Mr Shepherd, S.M., at the Central Police Court yesterday. The magistrate said that in his opinion a prima facie case had been made out but adjourned the matter till 10 am to-day in order to give Mr MacMahon (for Smltn) an opportunity of addressing him.

The charges are that Smith and Clegg had received sums of £200, £250, and £200 from Alfred Henry Wilson, Charles Frederick Harris, and John Mitchell Littlejohn, respectively, and that they had fraudulently omitted to account for the money in violation of the terms on which they had received it.

Mr Kinhead (instructed by Messrs William Patterson and Co ) appeared on behalf of Clegg and Mr T P MacMahon (instructed by Messrs Colquhoun and King) on behalf of Smith. Sergeant Caban prosecuted.

Ada Mary Laffin of Roslyn-street, Kings Cross, a clerk employed by Clegg, answering Mr MacMahon, said that Clegg's office was in a state of confusion during the last few weeks of its operation. Smith never had authority to sign cheques but had endorsed them without authority.

Mr MacMahon: Would I be correct in saying that the state of the relations between you and Mrs Smith was that she did not like you and you did not like her.

Witness: Yes.

Questioned as to correspondence with a client named Sperring, witness said that she had written to him taking the blame for certain delays.

Mr MacMahon: To allay suspicion?—No.

Answering the magistrate, witness said that Mr Clegg had frequently told her to pay out by cheque only, and not in cash. Mrs Smith, however, had sometimes told her to pay in cash and she had done so.

The Magistrate: I should have thought you would have obeyed Clegg.

Witness: If I had done so I should have been much better off.

Witness went on to say that for three or four weeks after the arrest of Smith and Clegg she, with others in the office, gave assistance to the police. She was paid £20 for giving evidence in the previous case.

Mr Kinhead: Mr Clegg had a large police and Licensing Court practice in addition to conveyancing?—Yes.

That took him away a lot from his office?— Yes.

Would it be correct to say that he left signed blank cheques at the office?—Yes.

Witness, answering the magistrate, said that a lot of money was paid out to mortgagees that did not come in from mortgagers.

The Magistrate: Where did the money come from? It was a good thing for the mortgager wasn't it?— I suppose so.

Smith was admitted to her former bail. Clegg is undergoing sentence.<sup>[564]</sup>

#### *5 February, 1932. Quarter Sessions Appeals (Before Judge Curlewis.)*

##### **Charge Of Consorting.**

Appeal was made by *Kate Barry*, 43, domestic, against her conviction and the sentence of six months' imprisonment imposed upon her by Mr. Laidlaw, C.S.M., at the Central Police Court on January 14, on a charge of habitually consorting with women of ill-repute.

Mr. Kinkead (for applicant) said it was the first time Barry had been convicted of consorting. He asked that she should be given a chance by being bound over.

His Honor: Just peruse the list of her convictions, which date back to 1897. One conviction was for perjury and the sentence was five years.

The appeal was dismissed.

Mr. Kinkead said, if given a week, Barry would undertake to leave Australia.

His Honor said that Barry could apply to the Minister for Justice to be released, and the Minister would probably refer the matter to him (his Honor). If the police thought it advisable, he would certainly recommend Barry leaving Australia, conditionally upon her staying away.

Mr. J. J. B. Kinkead (instructed by Mr. F. A. Newnham) appeared for the appellant; and Mr. P. V. Storkey for the Crown.<sup>[565]</sup>

Note: Kate Barry is Kate Leigh.

#### *6 February, 1932. Quarter Sessions - (Before Judge Armstrong.)*

Mr. McKean, K.C., Senior Crown Prosecutor.

##### **Motor Mechanic Acquitted.**

Albert Eric Whitlocke. 29, a motor mechanic, was charged with assault occasioning actual bodily harm. The Jury returned a verdict of not guilty. Whitlocke was discharged. Mr. Kinkead (instructed by Messrs. D. L. Aitken and Barron) appeared for Whitlocke.

##### **Bound Over.**

Isobel Dowling, 49, who had been convicted of false pretences, was bound over in £60 to be of good behaviour and appear for sentence if called upon within 12 months, a condition, being that she pay to Mrs. Mary Beatrice Reardon £60 at the rate of £8 a month. Mr. Kinkead (instructed by Mr. Maurice J. McGrath) appeared for Dowling.<sup>[566]</sup>

#### *7 February, 1932. 'K-K-Katey..You're the Only 'Girl' That I Abhor!'*

##### **Tilly Devine 'Leighs' Down The Law To 'Truth'**

'Tilly,' otherwise Mrs. Matilda Devine bounced into 'Truth' office on Thursday afternoon. She made

an informal — very informal— call on the Editor and was in the sanctum before messenger boys. typists or secretaries could say a word.

In fact, Tilly arrived like a tornado, poured forth her complaint, which concerned Kate Leigh, like a cyclone, and left like a whirlwind.

Her visit was short, sharp, and snappy. What she said concerning Mrs. Kate Barry, better known as Kate Leigh, would fill columns of 'Truth.' Tilly had been listening to Kate Leigh's appeal against her sentence of six months for consorting. 'In the court,' declared Matilda, 'they said that a certain other underworld woman (meaning me) had been given a chance to go to England after being convicted for consorting. 'I was never convicted of consorting,' emphatically stated Matilda, pulling off her hat and allowing her hair to blow wildly across her face. 'I was never deported. I told the magistrate I would go to England and I went and when I wanted to come, back I came back. 'I'm not a bad woman,' said Tilly, 'waxing confidential. ('Truth' wonders). 'I'm not like Kate Leigh, anyway. I might drink and swear and have a run in with the police now and then, but I don't take dope, and no one can say I have ruined young, girls. Kate Leigh does all this. . 'I'm a lady, I am,' said Tilly proudly. 'I can talk with the best people In Sydney. You might be the Editor of 'Truth (and the Editor blushed), but I have as much education as you.' And before Matilda left the Editor blushed some more, for, despite the fact that he sees all kinds and conditions of people he fully realised that his 'language' education had been sadly neglected. Putting all this aside, the Editor gathered that a certain Mrs. Matilda Devine does not like a certain Mrs. Kate Barry (or Leigh), and when these two 'Queens of the Underworld' meet the Marquis of Queensbury need not hang around, for his rules will not be needed.

#### **Sufficient Address. — State Pen. Long Bay**

Kate Leigh left her charming home in Hall-street, Bondi, last week, to spend the Autumn, and most of the Winter, in recuperating after arduous social duties in slightly less pretentious, if more healthful, accommodation situated a little to the South of Sydney. The locality is a particularly exclusive one, and residence there can be obtained only by invitation. True, the surrounding scenery is a little monotonous and uninteresting, but as most guests affirm that their daily activities take up most of their time, this lack of salubrious atmosphere does not seem so acute as it might be supposed. Coupled with a Spartan diet and regime, together with a care and attention that can exist only in a land famed for its hospitality, Mrs. Leigh should return to Sydney in about six months' time refreshed both in body and mind. The question of Mrs. Leigh's immediate destination came up one day last week, when that lady and Mr. J. J. Kinkead, the well-known barrister. Mr. F. A. Newnham, the prominent solicitor, Captain Storkey, V.C., the eminent Crown Prosecutor. Judge Curlewis, the wittiest of our judiciary, and that competent officer, Constable Victor Gilbert, held an informal conversazione within the precincts of the Supreme Court buildings with a view of arriving at a final settlement of a point which seemingly has given Mrs. Leigh much serious food for thought. It appeared from a word dropped here and there that Mr. J. Laidlaw, Chief Stipendiary Magistrate, had previously made the decision on Mrs. Leigh's behalf that she go South immediately, but the charming object of his solicitude had since 'suffered a sea-change,' as Shakespeare says, and yearned to go any where else but. On Mrs. Leigh's behalf. Mr. Kinkead urged that as this was the first occasion on which any member of the Stipendiary Bench had definitely exhibited a confirmed distaste for Mrs. Leigh's social intercourse, she should not be compelled, willy-nilly, to undergo a change. Even so, his ardor was a little damped when his Honor, after reviewing a record of the lady's activities extending back to 1897, described her as 'a perfect nuisance.' The barrister then intimated that if Mrs. Leigh were permitted to enter into a cash obligation rather than go South, she would be only too glad to shake this Continent's dust from off her stylish heels within a mere week. But this concession was only

advanced after a suggestion that Mrs. Leigh might continue to stay quietly at Bondi while definitely abstaining from social activities amid a certain area in the city, for, in reply to that, his Honor said that he was quite agreeable, providing that the aforesaid area embraced the square mileage between Cape York and Gabo and Sydney and Perth! More in sorrow than anger, Mr. Kinkead pointed out that this step would involve leaving Australia for Mrs. Leigh, but his Honor was most unsympathetic. 'I would say that would be good riddance,' opined he. For the present all Mrs. Leigh's friends, relatives and well-wishers who are anxious to communicate with her should forward their correspondence to an address that is definitely authentic. It is: State Penitentiary, Long Bay.<sup>[567]</sup>

**16 February, 1932. Quarter Sessions (Before Judge Armstrong.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

**Not Guilty**

William Laurence 29 a labourer and George Brennan 29 a labourer was charged with breaking and entering.

The Jury returned a verdict of not guilty Laurence and Brennan were discharged.

Mr Moseley appeared for Laurence and Mr Kinkead (instructed by Mr Fred A Newnham) for Brennan.<sup>[568]</sup>

**18 February, 1932. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

**Alleged Wanton Driving**

Ernest Alfred Silvester Fuller, 33, a labourer, was charged that by wanton driving of a motor cycle at Maroubra on September 1, 1931, he did bodily harm to Doris Eileen Aldridge and Gordon John Aldridge.

During the afternoon the jury visited the scene of the accident, and the hearing had not concluded when the Court rose till to-day.

Mr J J B Kinkead (instructed by Mr W M Niland) appeared for Fuller.<sup>[569]</sup>

**19 February, 1932. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

**Alleged Wanton Driving**

The trial was continued of Ernest Alfred Silvester Fuller 41 a labourer who was charged with the wanton driving of a motor cycle.

The hearing had not concluded when the Court rose till to day Fuller was allowed bail.

Mr J J B Kinkead (instructed by Mr W M Niland) appeared for Fuller.<sup>[570]</sup>

**20 February, 1932. Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Philip Street, Mr. Justice James, and Mr. Justice Davidson.)

**Rex v Lawler.**

This was an appeal by John Joseph Lawler (51), who was convicted before Judge Armstrong at the Sydney Quarter Sessions on December 14, of having committed an assault with an act of indecency upon a girl, and was sentenced to two years and six months' imprisonment. The Court granted the appellant a new trial on the ground that the trial Judge misdirected the jury upon a question of fact in relation to corroboration.



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The Solicitor General (Mr. Weigall. KC appeared for the Crown, and Mr. Kinkead (instructed by Mr. B. A. McBride) appeared for the appellant.<sup>[571]</sup>

*20 February, 1932. Quarter Sessions (Before Judge White)*

Mr T.S. Crawford, Crown Prosecutor

**Not Guilty**

The trial was concluded of Ernest Alfred Sylvester Fuller, 41, a labourer, who was charged with the wanton driving of a motor cycle.

The Jury returned a verdict of not guilty, but added a rider that Fuller's licence should be cancelled for 12 months.

Mr. J. J. B. Kinkead (instructed by Mr. W M. Niland) appeared for Fuller.<sup>[571]</sup>

*23 February, 1932. Quarter Sessions (Before Judge White)*

Mr T.S. Crawford, Crown Prosecutor

**Two Men Charged.**

Richard Charles Blake and Patrick Benedict Power were charged with conspiracy to defraud. It was alleged that accused had induced a woman to invest £200 in a business.

The hearing had not concluded when the Court rose till to-day.

Mr. J. J. B. Kinkead instructed by Mr. Fred A Newnham appeared for Blake.<sup>[572]</sup>

*24 February, 1932. Quarter Sessions (Before Judge White)*

Mr T.S. Crawford, Crown Prosecutor

**Alleged Conspiracy**

The trial was continued of Richard Charles Blake and Patrick Benedict Power, who were charged with conspiracy to defraud. The hearing will be resumed to day. Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for Blake.<sup>[573]</sup>

*25 February, 1932. Quarter Sessions (Before Judge White)*

Mr T.S. Crawford, Crown Prosecutor

**Alleged Conspiracy to Defraud**

The hearing was continued of the charge of conspiracy to defraud preferred against Richard Charles Blake and Patrick Benedict Power.

The hearing will be resumed to-day.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Blake.<sup>[574]</sup>

*26 February, 1932. Quarter Sessions (Before Judge White)*

Mr T.S. Crawford, Crown Prosecutor

**Jury Locked Up**

The trial was continued of Richard Charles Blake, 28, and Patrick Benedict Power, 44, who were charged with conspiracy to defraud.

The Jury, having failed to agree, was locked up for the night.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Blake.<sup>[575]</sup>

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**27 February, 1932. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

**Jury Disagreed**

The trial was concluded of Richard Charles Blake, 28, and Patrick Benedict Power, 44, business agents, who were charged with conspiracy to defraud. The trial had lasted four days.

The jury, which had been locked up for the night, returned into court and informed his Honor that it had failed to reach an agreement. The jury was discharged, and accused were remanded on bail to appear for trial as may be directed by the Attorney-General.

His Honor reduced the bail in each case from £100 to £50.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Blake.<sup>[576]</sup>

**1 March, 1932. Quarter Sessions (Before Judge Armstrong.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

**Not Guilty By Direction.**

George Thomas Lynch, 32, dealer, and Frederick Sullivan, 34, labourer, were charged with an assault occasioning actual bodily harm.

Mr. McKean said that the Crown witnesses had shown a reluctance to give evidence. Some had gone to Victoria and the whereabouts of the others were unknown. He asked his Honor to direct the Jury to acquit the accused.

By direction, the jury returned a verdict of not guilty. Lynch and Sullivan were discharged. Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for Lynch and Sullivan.<sup>[577]</sup>

**3 March, 1932. State Lottery Clerk - Charged With Embezzlement.**

Charged at the Central Police Court yesterday with having embezzled £83/10/, while a clerk in the employ of the New South Wales Lottery, at Sydney, on December 10, Gordon Hector Swain, 26, was committed for trial, bail being fixed at £ 100.

Detective-constable Alford said he had an interview with the defendant, and said to him: "Mr. Whiddon says that you have complained to him that some £300 has been stolen from your cashbox. Will you please tell us the facts?" Defendant said the cashbox was locked up about 12 o'clock on Saturday, and when he got it out on the Monday morning the money was gone.

Defendant told him, added witness, that his financial position was not too good. He owed £5000 to his father, who had financed him in a motor business, which went into liquidation. He owed about £80 to the Vacuum Oil Company, about £50 to the Atlantic Oil Company, and about £50 or £60 to the Texaco Oil Company. All were pressing him, and one sued him and got a verdict, and he was paying it off at the rate of £2 a week.

Later, witness said, he saw defendant, and told him that his father had made an offer to Mr. Whiddon to make good to the Lottery office the £300 odd that defendant said had been stolen, as he considered defendant was at least liable for the loss of the money, on the grounds of his negligence.

Defendant and his father accompanied witness to the detective office. On the way, witness said: "Your father wants to know whether you took this money or not. He says it is not a fair thing that he should pay £300 odd if someone else stole it." Defendant said: "If I said that I stole it, would I be

arrested?" Witness replied: "That is a matter for Mr. Whiddon; we would not charge you without his authority." Defendant said: "Well, I did take it. I lost every penny of it at the races."

Later defendant said he did not take the money, and only said he did because he thought his father could pay it back, and that would save trouble.

Defendant pleaded not guilty, and reserved his defence.

Mr. Kinkead (instructed by Messrs. Lionel Dare and Purcell) appeared for the defence.<sup>[578]</sup>

**15 March, 1932. Central Criminal Court (Before Mr. Justice James.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

#### **Company Officials Charged.**

Harold William Miller, 39, company manager, and Leo Yeats, 43, company secretary, were charged on two counts with having published a false statement.

It was alleged that Miller, while acting as a director of the Merron Estate, Ltd., and Yeats, while an officer of the company, published a statement which was false in certain material particulars in that it represented the assets of the company to be £71,117/16/5. The Crown submitted that the alleged false statement was made with intent to deceive the creditors of the company.

Mr. McKean said it was alleged that the statement was made in accordance with the provisions of the Banks and Banks' Holidays Act. The Merron Estate, Ltd., was in the nature of a financial institution, and a quarterly statement had to be compiled by the company's officials, and filed in the office of the Chief Secretary. It was alleged by the Crown that the accused "put their heads together" to deceive the creditors of the company, which was formed in 1927, with Miller as managing director, and Yeats as secretary.

Miller, in a statement from the dock, said that he was not guilty of any "false presentation of the balance-sheet in any shape or form."

Yeats stated in evidence that he was a brother-in-law of Miller.

Answering Mr. Sheahan, Yeats said that Miller had nothing to do with the preparation of the statement. He (Yeats) had made an error in preparing the statement, but it was unintentional.

The hearing had not concluded when the Court rose till to-day.

Mr. W. P. Sheahan (instructed by Mr. V. M. Pike) appeared for Miller; and Mr. J. J. B. Kinkead (instructed by Messrs. W. H. McCarthy and Co.) for Yeats.<sup>[579]</sup>

**16 March, 1932. Central Criminal Court (Before Mr. Justice James.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

#### **Not Guilty**

The trial was concluded of Harold William Miller 39 company manager and Leo Yeats 43 company secretary who were charged on two counts with having published a false statement.

The allegation was that Miller while acting as a director of the Merron Estate Ltd and Yeats while an officer of the company published a statement which was false in certain material particulars in that it represented the assets of the company to be £71,117/16/5. The Crown submitted that the alleged false statement was made with intent to deceive the creditors of the company.

The Jury returned a verdict of not guilty.

His Honor said that on the evidence he did not think the Jury could have returned any other verdict. Miller and Yeats were discharged.

Mr W P Sheahan (instructed by Mr V M Pike) appeared for Miller and Mr J J B Kinkead (instructed by Messrs W H McCarthy and Co ) for Yeats.

### **Musician Acquitted**

Charles George Brame, 32, musician was charged that at Sydney on October 26 last, he feloniously wounded *Frank Donald Green* with intent to murder him.

Mr McKean said that Green could give no assistance. The only evidence was Brame's own statement admitting he had shot Green, but that he did so in self defence and to frighten Green. The law was that if a man honestly thought his life was in danger he was entitled to take the necessary steps to protect himself.

Green stated in evidence that he would know the man who shot him. Brame was not the man.

Mr Kinkead (to Green): You have a long record haven't you? - Well, not a long record. I came out of gaol in 1925 and have not been in gaol since.

Assault and robbery? – Yes.

His Honor: I think you swore once before me that you did not carry a revolver. - I don't.

Brame who gave evidence told Mr Kinkead that he was at present serving a sentence of nine months' imprisonment for carrying an unlicensed revolver. He carried the revolver for his own protection after he had been shot 2.5 years ago.

During the hearing his Honor said there were two or three sections of the community who had sworn war against each other and there had been much indiscriminate shooting. He had appealed to them several times to drop the revolver business and take to their fists.

After a short retirement the jury returned a verdict of not guilty. Brame was discharged.

Mr J J B Kinkead (instructed by Mr Fred A Newnham) appeared for Brame.<sup>[580]</sup>

### **18 March, 1982. Central Criminal Court (Before Mr. Justice James.)**

Mr. McKean, K.C., Senior Crown Prosecutor.

### **Death Sentence.**

Guy Neville Kingsbury, 39, independent means, was charged, that at Maroubra on September 11, he feloniously wounded *Sydney Vincent Devine* with intent to murder him. The jury returned a verdict of guilty. Kingsbury was sentenced to death. The matter is reported in another column.

Mr. W. J. Curtis, K.C., and Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Kingsbury.<sup>[581]</sup>

### **18 March, 1932. Death Sentence - Attempted Murder - Constables' Contradictory Evidence.**

At the Central Criminal Court yesterday, before Mr. Justice James, Guy Neville Kingsbury, 39, independent means, was found guilty and sentenced to death for having at Maroubra on September 11, feloniously wounded *Sydney Vincent Devine* with intent to murder him. A feature of the trial was the contradictory evidence given by two police constables.

Mr. McKean, K.C. (Senior Crown Prosecutor), said that the crime was one of the underworld; but the jury should devote the same care, attention, and consideration to the charge as if the people

concerned were in a different sphere of society. In outlining the Crown case, Mr. McKean said that the shooting took place at Kingsbury's home. Devine, who was seriously wounded, had been in hospital for 48 days. In arresting Kingsbury, Constable Schroeder had shown great bravery.

Devine gave evidence that he was not carrying firearms, and had had no quarrel with Kingsbury.

Answering Mr. McKean, Devine said that he had worked for the same firm for 13 years. He had never been convicted, and had not even been before a police court.

#### **Constable's Evidence.**

Constable E. J. Schroeder said that when he went to Kingsbury's place, accused said: "I shot Devine, and I'll shoot you." Kingsbury then made a movement as if to get a gun. After a struggle, Kingsbury was handcuffed, with the assistance of Constable Cunningham.

Accused made a statement from the dock. He said that he shot Devine in self-defence.

Constable S. Cunningham, called by the defence, said that when he entered Kingsbury's place accused said to him: "Be careful with that gun. I put some cartridges in it." There was no struggle. Schroeder handcuffed accused, who gave no trouble. On the floor he saw an overturned chair and a jug.

#### **"Absolute Perjury."**

"There is an extraordinary discrepancy between the evidence of Constable Schroeder and Constable Cunningham," said his Honor in summing up. "One of them has committed deliberate perjury and I hope the matter will be taken up by the proper authorities later. There has been absolute perjury on one side or the other. Either Schroeder concocted evidence to convict accused or Cunningham has conveniently forgotten things to help accused."

The jury returned a verdict of guilty.

His Honor (to accused): It is very clear on the evidence that it is the right verdict. Why you did it I have not the slightest idea. People cannot understand why this indiscriminate shooting goes on. It is good to find we have a jury that has the courage to do its duty in accordance with the evidence. I shall have to make a report to the Executive. There appears to be something behind it that no one knows anything about. If there is any fresh evidence—

Kingsbury: Yes, there is fresh evidence.

His Honor: If there is anything you can bring up I will report in favour of a commission to inquire into the whole matter. Surely there is something more behind it than appears at the moment.

His Honor then passed sentence of death.

Messrs. W. J. Curtis, K.C., and Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for Kingsbury.<sup>[582]</sup>

#### **22 March, 1932. Central Criminal Court (Before Mr. Justice James.)**

Mr McKean, K C , Senior Crown Prosecutor

#### **Charge Against Fitter**

John Kellerman 49 fitter, was charged on two counts with larceny as a bailee.

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It was alleged that on some day in May 1928 being then a servant to the Australian Gas Light Company's Employees' Share Purchase and Co-operative Society, Ltd he stole £101/1/ and £95/5/ the property of that society.

The hearing will be resumed to-day.

Mr J J B Kinkead (instructed by Messrs E R Tracey and Co ) appeared for Kellerman.<sup>[583]</sup>

*22 March, 1932. Central Criminal Court (Before Mr. Justice James.)*

Mr McKean, K C , Senior Crown Prosecutor

#### **Not Guilty By Direction**

The trial was concluded of John Kellerman (40), fitter, who was charged on two counts with larceny as a servant.

It was alleged that on some day in May, 1928, being then a servant to the Australian Gas Light Company's Employees' Share Purchase and Co-operative Society, Ltd., he stole £101/1/ and £95/5/, the property of that society.

Mr. Kinkead submitted that the prosecution had brought forward no evidence of theft. What had been shown was that amounts had been entered in the books, and that these books had been audited. Therefore, the auditors must have had before them documents which satisfied them that the entries were correct.

By direction of his Honor, the jury returned a verdict of not guilty. Kellerman was discharged.

Mr. J. J. B. Kinkead (instructed by Messrs. E. R. Tracey and Co.) appeared for Kellerman.<sup>[584]</sup>

*13 April, 1932. Quarter Sessions (Before Judge Curlewis)*

Mr McKean K.C., Senior Crown Prosecutor

#### **Judge on Verdict**

Michael Sarah, 36, greengrocer, was charged with assaulting a female, under 16 years of age, with an act of indecency.

The jury returned a verdict of guilty.

His Honor said that if an appeal were lodged he would report that he entirely disagreed with the verdict.

Sarah was bound over in £10 pending the determination of an appeal, if one is lodged.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Sarah.<sup>[585]</sup>

*14 April, 1932. Quarter Sessions (Before Judge Curlewis)*

Mr McKean K.C., Senior Crown Prosecutor

#### **Dealers Discharged.**

Arthur William Murray 33 and Alfred Thomas Lunnon 46 were charged with stealing 12 sets of harness. There was an alternative charge of receiving. Mr McKean asked the jury to devote itself to the charge of receiving.

By direction of his Honor Lunnon was acquitted Murray was found not guilty and discharged.

Mr Kinkead (instructed by Mr Fred A. Newnham) appealed for Murray and Lunnon.

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**Two Men Charged**

Edward Harold Fox and Frank Reynolds were charged with stealing four sides of bacon the property of the Railway Commissioners of New South Wales.

The hearing will be resumed to-day.

Mr J M Sanders (instructed by Messrs. Shipway and Co) appeared for Fox, and Mr. Kinhead (instructed by Messrs Mervyn Finlay and Jennings) for Reynolds.<sup>[586]</sup>

**15 April, 1932. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C. Senior Crown Prosecutor

**Two Men Charged.**

The trial was concluded of Edward Harold Fox and Frank Reynolds, who were charged with stealing four sides of bacon, the property of the Railway Commissioners of New South Wales.

Fox was found guilty and Reynolds not guilty Reynolds was discharged.

It was stated by the police that Fox had become associated with a gang which had committed robberies on the Illawarra and Bankstown lines.

His Honor said that he had once sentenced a man who had been convicted of a railway robbery to six months' imprisonment The Court of Appeal had increased the term to 18 months, and his Honor would have to follow that precedent.

Fox was remanded for sentence to enable his Honor to peruse the documents in the appeal case.

Mr J M Sanders (instructed by Messrs Shipway and Co ) appeared for Fox, and Mr Kinhead (instructed by Messrs Mervyn Finlay and Jennings) for Reynolds.

**Woman Acquitted**

Dot Tremaine a domestic, was charged with the theft of household goods.

His Honor asked why a case over goods valued at £3/10/ was sent to a jury.

Mr McKean said he supposed the person concerned had a right to insist on such a course.

By direction, the jury returned a verdict of not guilty. Accused was discharged.

Mr Kinhead (instructed by Mr Fred A Newnham) appeared for Tremaine.

**Stealing In Dwelling**

Aubrey Taylor, 38 labourer, was charged with stealing in a dwelling-house.

The jury returned a verdict of guilty. Taylor was bound over in £30 to be of good behaviour for three years, a condition being that he pay £10 to the Clerk of the Peace for Mrs Cunningham, at the rate of 5/ a week, first payment to be made on April 25.

Mr Kinhead (instructed by Mr Fred A Newnham) appeared for Taylor.

**Two Men Acquitted**

James Arthur Talbot 32 labourer, and Percival Gordon Gallagher, 24, cordial maker, were charged with having been found at night with house-breaking implements in their possession.

The jury returned a verdict of not guilty. Talbot and Gallagher were discharged.



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Mr Kinkead (instructed by Mr C P White) appeared for both accused.<sup>[587]</sup>

*19 April, 1932. Quarter Sessions (Before Judge Clancy)*

Mr V.H. Treatt, Crown Prosecutor

**Clerk Convicted.**

Stanley Watson, 39, clerk, was charged that on August 5, 1931, at South Kensington, he broke and entered a shop with intent to steal.

The defence was that Watson heard a woman call out, and went to investigate. He said he did not break into the shop.

The jury returned a verdict of guilty, and commended Constable McDonald for his prompt action.

Watson was remanded till to-day for sentence.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Watson.

**Not Guilty By Direction.**

Frederick Harris, 20, salesman, was charged that at Rozelle, on December 15, 1931, he broke and entered the shop of Michael Duggan and stole tobacco and aspros.

By direction, the jury returned a verdict of not guilty on both counts. Harris was discharged.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Harris.

**Woman Convicted.**

Jean Harris, 32, was charged that on June 3, 1926, she broke and entered a dwelling with intent to steal.

It was alleged that Harris absconded in 1926 and went to Melbourne. Recently she had given herself up to the police.

The jury returned a verdict of guilty.

Mr. J. Morris, assistant gaol recorder, said that Harris had been declared an habitual criminal in Victoria. In 1923, at Melbourne. Judge Wasley, in remanding her for sentence when called upon, said: "I will hold this sentence over you for ever. If you do anything wrong when you come out of gaol after serving the present sentence you will again be declared an habitual criminal."

Harris was remanded till to-day for sentence. Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Harris.<sup>[588]</sup>

*20 April, 1932. Quarter Sessions (Before Judge Clancy)*

Mr V.H. Treatt, Crown Prosecutor

**Judge's Warning.**

Stanley Watson, 39, clerk, had been convicted of breaking and entering a shop with intent to steal.

Watson was sentenced to imprisonment for two years and six months.

His Honor warned Watson that if he again appeared before a Court, it was extremely unlikely that he would be allowed to go without being declared an habitual criminal.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Watson.

**Woman Sentenced.**

Jean Harris, 32, had been found guilty of breaking and entering, with intent. The jury made a strong recommendation to mercy. Harris had been declared an habitual criminal in Victoria in 1923.

His Honor sentenced Harris to three years' imprisonment and warned her that if she again appeared before a Court she would be declared an habitual criminal. In imposing the sentence he had taken into consideration the jury's recommendation.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Harris.<sup>[589]</sup>

**21 April, 1932. Quarter Sessions (Before Judge Curlewis)****Embezzlement Charge.**

Gordon Hector Swain, 25, was charged with embezzlement. It was alleged that on January 16 last, being then employed as a clerk in the State Lottery Office, and having in his custody £316/16/, the property of his Majesty, he stole that amount. It was stated that it was Swain's duty to pay the unemployment tax of 1/ in the £ upon the wages and salaries of the State Lottery Office employees, and the shortage was alleged to be in the taxes paid.

The hearing had not concluded when the Court rose till to-day.

Mr. Kinkead (instructed by Messrs. Lionel Dare and B. P. Purcell) appeared for Swain.<sup>[590]</sup>

**22 April, 1932. Quarter Sessions (Before Judge Curlewis)****Embezzlement Charge - State Lottery Employee – Methods of Checking Cash.**

Before Judge Curlewis, at the Quarter Sessions yesterday, remarkable evidence was given concerning the methods of checking cash handled by employees of the State Lottery office. In the case in which one employee Gordon Hector Swain, 25 clerk was charged with the embezzlement of £316/16/.

It was stated that it was Swain's duty to pay the unemployment tax of 1/ in the £ upon the wages and salaries of employees and the shortage was alleged to be in the taxes paid.

Alexander Collins accountant at the State Lottery office, was cross-examined by Mr Kinkead.

Mr Kinkead: It was your duty to check the accused's work and you did not do it?

Witness: No I was told that the revenue should have my undivided attention.

His Honor: According to your view accused should not have had a considerable amount of cash?

Witness: No, he should not.

Mr Kinkead: He ought to have had on hand £180. Don't you think that was worth while checking?

Witness: No, not when a responsible officer is concerned and one in whom confidence is reposed.

Detective Alford said that he had told accused that his father did not think it a fair thing that he should have to pay £300 if the son had not stolen it. Witness asked accused whether he had stolen it, and accused admitted that he had. On a subsequent occasion accused told witness that he had not stolen the money, but had said that he had so that his father would pay it back and there would be no trouble. Witness said to accused that he could not understand a son allowing his father to pay back over £300 which the son had not stolen. Detective Sergeant Elliott who was present said that it was the only occasion he could remember that a man had admitted that he had stolen money and

later denied it. Witness said that accused told him that he owed his father £5000, and various amounts were owing by him to several companies.

A juryman (to Collins who was recalled): You have in your office more than one cash box? – Yes.

Can you describe any system of regular audit with regard to the cash boxes? - At that time, no.

Collins added that there was such a system in operation now.

From time to time there were unknown quantities of cash in the boxes? – Yes.

Who would be responsible for the key of the safe? - There would be no access other than by responsible officers.

Accused could not have got to this cash box until the safe was opened by a responsible officer? - That is so.

Accused made a statement from the dock. He said that it would not benefit him to take money from his own box. There were thousands of pounds lying about, and to take his own would have been silly. He said he was not guilty, and declared that he had admitted taking the money because Detective Alford had told him that to say he took it was the only way to hush the matter up and close the case, conditional upon his father making restitution. It was agreed that the money should be accounted for as lost at the races. His father disliked his false confession, but the police opposed any retraction, and accused let the matter stand.

Frederick William Swain father of accused, was asked by Mr McKean: "You were trying to influence Mr Whiddon to keep anything about the apparent lax methods of the State Lottery Office away from the publicity of the Press? He replied: "It was suggested by Mr Whiddon and Detective Alford."

Mr Whiddon gave evidence that there was not the slightest truth in the suggestion that he and Mr Swain senior, were conspiring to keep the alleged theft out of the Press.

The hearing had not concluded when the Court rose till to-day.

Mi Kinkead (instructed by Messrs Lionel Dare and B P Purcell) appeared for Swain.<sup>[591]</sup>

### **23 April, 1932. Simple Little Question**

When it comes to a matter of memories, Mr. W. H. Whiddon (State Lottery Director) considers that his is fairly good. As a witness he was asked by Mr. James Kinkead (for an accused) if he could remember the first question asked him by the Crown Prosecutor. Mr. Whiddon could not. "I have a very good memory, and I cannot remember it either," owned up Judge Curlew. The simple little first question was: "Is it a fact that any inducement or promise to stop proceedings against the accused in respect of any charge relating to any shortage in his accounts was made by you to anybody at any time in any place if restitution were made to the department by any person at any time in any place?"<sup>[592]</sup>

### **23 April, 1932. Quarter Sessions (Before Judge Curlew)**

Mr McKean K.C. Senior Crown Prosecutor

#### **Embezzlement Charge**

The trial was continued of Gordon Hector Swain 25 a clerk in the State Lottery Office who was charged with the embezzlement of £316/16/. It was stated that it was Swain's duty to pay the unemployment tax of 1/ in the £ upon the wages and salaries of employees and the shortage was alleged to be in the taxes paid.

During the hearing of the case evidence was given concerning the methods of checking cash handled by the employees in the State Lottery Office. It was also suggested that Mr Whiddon and the father of the accused had entered into a conspiracy with the object of keeping the alleged theft out of the newspapers. An emphatic denial was given to that allegation by Mr Whiddon.

“We have nothing to do with the laxness of the State Lottery Office”, said his Honor in his summing up. “Even if you feel it is lax and even if you feel inclined to say so you have to make allowance for the fact that it is a new department and might not run as smoothly at first as later on”.

“I do not know what you think of Mr Whiddon’s propriety in his efforts to hush up this matter”, his Honor continued. “It may be that you think that several people knew that this money had been taken by somebody”.

“It may be that you will think that it was inadvisable for the head of the department to hush it up because it would be telling everybody if you like to take money for the races you can take it and you can pay it back and you will not be prosecuted. You may think that is a bad example to set in a Government department.

If there are reasonable grounds for thinking a man is guilty if the heads of the department think he is guilty then a prosecution ought to be brought and the Government ought not to refrain from prosecution out of sympathy with the father or if it did it would amount to this that those who have pathetic fathers will not be prosecuted and those who happen to be unfortunate enough to be orphans will be prosecuted.”

The hearing had not concluded when the Court rose until Tuesday.

Mr Kinkead (instructed by Messrs Lionel Dare and B P Purcell) appeared for Swain.<sup>[593]</sup>

#### **27 April, 1932. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C. Senior Crown Prosecutor

##### **Clerk Acquitted**

At the trial of Gordon Hector Swain, 25, who was charged that while employed as a clerk in the State Lottery Office he embezzled £310/16/, the Jury returned a verdict of not guilty. Swain was discharged. Mr. Kinkead (instructed by Messrs. Lionel Dare and B.P. Purcell) appeared for Swain.<sup>[594]</sup>

#### **29 April, 1932. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C. Senior Crown Prosecutor

##### **Three Men Acquitted**

Roy Samuel Burnstein, 33, auctioneer, Jack Cohen, 28, auctioneer, and Hyman Lehn, 26, shop assistant, were charged with larceny. It was alleged that at Sydney on September 15 last they stole 12/, the property of Helena Marie Hides.

The Crown Prosecutor said that there was little or no case against Burnstein. The defence was that the 12/ was a deposit on the purchase of a quilt.

After hearing Mrs. Hides the jury returned a verdict of not guilty. The three accused were discharged.

Mr. J. J. B. Kinkead (instructed by Messrs. E. R. Tracey and Co.) appeared for Burnstein and Lenn; and Mr. W. F. Sheahan (instructed by Messrs. E. R. Tracey and Co.) for Cohen.<sup>[595]</sup>

#### **30 April, 1932. Chatswood Sports Club - Gaming Convictions.**

As the outcome of a visit by the police to the Chatswood Sports Club on January 8, a large number of

men were charged with gaming and betting offences at the North Sydney Police Court. Adjournment after adjournment was granted until about a fortnight ago when the hearing was commenced. Three of the cases were disposed of by Mr Camphin, SM, yesterday Clifford Johnson, 27, manager, was fined £20, with the alternative of 40 days' imprisonment with hard labour, for having conducted a common gaming house. Harold Ellis Lew, 29, hairdresser, was fined £15, or 30 days, for having used the premises for betting, and Roy Whiffen, 40, motor driver, was fined £5, or 10 days, for having acted as doorkeeper.

On the application of Mr Kinkead, who was instructed by Mr John Yeldham, charges of having been found on the premises, which were made against a large number of defendants, were adjourned, pending an appeal.<sup>[596]</sup>

#### **5 May, 1932. Quarter Sessions (Before Judge Armstrong)**

Mr McKean, K.C., Senior Crown Prosecutor.

##### **Larceny As Servant.**

Cecil William Joseph Tyler, 33, clerk, pleaded guilty to larceny as a servant, the amount involved being £532/0/11, the property of John Barnes and others. Tyler was remanded till to-day for sentence.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Tyler.

##### **Clerk Convicted.**

Alan James Simons, 26, clerk, was charged on three counts with embezzlement, the amounts being £13/15/, £4/10/, and £2/11/. The defence was that Simons had entered into an arrangement to purchase a business, and he regarded the money as his own.

The jury returned a verdict of guilty. Simons was remanded for sentence.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Simons.

##### **Guilty Of Receiving.**

Lyle Linwood Eggins, 22, labourer, was charged with stealing a motor car. There was an alternative charge of receiving. Eggins was found guilty of receiving. He was bound over in £15 to be of good behaviour and appear for sentence if called upon within three years.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Eggins.

##### **Remanded, For Sentence.**

Thomas Donohoe, wirevorker, pleaded guilty to breaking and entering with intent to steal. He was remanded till to-day for sentence.

Mr. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Donohoe.<sup>[597]</sup>

#### **6 May, 1932. Quarter Sessions (Before Judge Armstrong)**

Mr McKean, K.C., Senior Crown Prosecutor.

##### **Larceny As Servant.**

Cecil William Joseph Tyler 33 clerk had pleaded guilty to larceny as a servant the amount involved being £532/0/11.

His Honor said that the amount was too large for the time over which the offence extended was too long to allow him to release Tyler on a bond. He sentenced Tyler to three years imprisonment and said that if after serving one year he could obtain permanent employment he would recommend

that he be released if he gave a surety for the repayment of the amount within an extended time. He would recommend that Tyler be sent to a prison farm.

Mr J J B Kinkead (instructed by Mr Fred A Newnham) appeared for Tyler.

### To Be Bound Over

Alan James Simons, 26, clerk had been found guilty of embezzlement.

Simons was ordered to be bound over in a surety of £400 to be of good behaviour and appear for sentence. If called upon within five years a condition being that he make £400 restitution at the rate of £2 a week the first payment to be made on June 1 next.



—Howard Harris.

*MRS. J. J. B. KINKEAD, who is president of the women's committee of the old Ignatians' Union annual ball, which will take place at Mark Foy's on May 18 at 9 p.m. A card party to raise funds towards the expenses of the ball, will be held at the Pickwick Book Club to-morrow at 2.*

Mr Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for Simons.<sup>[598]</sup>

**7 May, 1932. Quarter Sessions Appeals (Before his Honor Judge White.)**

#### Appeals Upheld.

Harold MacKenzie appealed against his conviction and fine of £3 with 5/6 costs and 10/ witness expenses in default eight days imprisonment at the Glebe Police Court on March 17, 1932, before Mr Cohen SM, on a charge of driving a motor car in a manner dangerous to the public.

The appeal was upheld and the conviction quashed.

Mr Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for the appellant, and Mr Storkey (instructed by the Crown Solicitor) for the Crown.<sup>[599]</sup>

**10 May, 1932. Topics for Women<sup>[600]</sup>**

**10 May, 1932. Quarter Sessions (Before Judge Edwards)**

Mr T.S. Crawford Crown Prosecutor

#### Alleged Embezzlement

Frederick Henry Searl 49 company manager and former managing director of Searls Ltd was charged on three counts with embezzlement the amounts involved being 17/ £5 and £3/5/6. It was alleged that Searl embezzled the amounts while a servant of Searls Ltd.

Mr Crawford said that the amounts mentioned in the indictment totalled only £9'2'6 but the charges against the accused were brought because the Crown alleged more serious fraudulent omissions and commissions in regard to the financial side of Searls Ltd. When the firm became a limited company in 1925 Searl was appointed managing director at £20 a week. A meeting of directors was held toward the end of 1930 at which Searl presided. Shortly afterward a special officer was appointed to keep a check on parcels which were sent out. It was alleged that previously no proper record had been kept of parcels. One of the grave features of the case was that according to the report of the special officer between January and March 1931 60 parcels had been sent out without dockets having been made out. Searl ceased to be managing director at the end of March and was given a position in the firm in another capacity at £10 a week. In September Searl left Searls Ltd and started in business as a



florist on his own account. Five months earlier Searl's Ltd had gone into voluntary liquidation and subsequently an amalgamation was effected with Jean's. It was alleged that Searl had given verbal instructions to employees for the despatch of parcels from the shop that no proper dockets were made out for the parcels and that the money for the parcels was received by Searl and was not paid into the firm account.

The hearing had not concluded when the Court rose till to-day.

Mr Curtis, K C, and Mr Louat (instructed by Mr. D. R. Hall), appeared for Searl; Mr. J. J. B. Kinkead (instructed by Messrs. Emanuel and Pearce) appeared to watch certain interests.<sup>[601]</sup>

### **11 May, 1932. Quarter Sessions (Before Judge Edwards)**

Mr T.S. Crawford Crown Prosecutor

#### **Jury Locked Up**

The trial was continued of Frederick Henry Searl, 49, company manager, and formerly managing director of Searl's Ltd. Searl was charged on three counts with embezzlement, the amounts involved being 17/, £5, and £3/5/6. It was alleged that Searl embezzled the amounts while a servant of Searl's, Ltd.

In a statement from the dock Searl said: "This is the first time in an honourable life of 45 years that I have been faced with a criminal charge. On that charge I am absolutely innocent. The business was founded between 75 and 80 years ago by my grandfather, was subsequently carried on by my father right up to the time of his death and after his death I was practically the business. During the period of these transactions my wife and myself held practically all the shares in the company with the exception of those few which we had given to loyal members of the staff, and subsequently 100 shares were given to Mr Frederick Thomas Smythe. I treated the business as my own. Although I received a balance-sheet for the period ended December 31, 1930, it was not received until well on in the month of March. I had not realised the possibility of that business passing out of my hands. Small sums were taken from time to time I was always spending my own money on matters relating to the company's interests. For five years I had gone in on Sundays and public holidays at all hours of the day and night to execute urgent orders. This necessitated out-of-pocket expenses, and never in one instance did I claim one shilling for any of this work. On one Sunday I despatched an order for £70 worth of floral tributes for a country funeral. That necessitated a lot of petty cash expenses. I would reimburse myself the next day from one of the sales. After April that practically ceased. The liquidator owes me £7 in this connection and that amount is still owing. It would more than compensate any small balance owing on account of my drawings. A list has been issued showing 60 items which, it was stated, had been sent out, and the company apparently had not been paid for the sales. I have gone through that list and 40 of the items were floral tributes which had been given to various persons for goodwill reasons and constructive business purposes. I thought it would be wise to send out those floral tributes."

Searl then mentioned the names of a number of persons to whom floral tributes had been sent on that basis.

"It is quite untrue," Searl went on, "that Smythe ever used the word 'misappropriation' or 'thief' to me. It was only after I had commenced business operations eight doors higher up the street that the false charge was laid against me and it was only laid after every possible scheme had been availed of to try to get me out of the business."



The Rev Joshua Robertson Baptist Minister at Lewisham said that he had always regarded Searl as an honest man. Searl had been joint organist at his church, and although entitled to £100 per annum, had always returned it to the church.

Mr Crawford: Are you in touch with other clergymen around the city? - With some of them.

Were you present when a Christian Endeavour rally took place in Sydney some little time ago. Did Searl play the organ at that rally. - I don't know but he played the piano on the day I spoke.

Do you know that Searl has been de-barred from going into any of these religious gatherings and playing there? - No.

Do you hold Searl up as a man of good character? - I regard him personally as a man of good character, and an honourable, true friend.

Evidence of character was also given by Mr William White (managing director of Gartrell White Ltd) and Mr H B Sevier (president of the Associated Chambers of Manufactures).

Detective Lawrence was asked by Mr Crawford: "Do you know the Home for Incurables at Ryde an Institution of which Searl was a member of the committee?"

Detective Lawrence: I investigated an alleged fraud when the secretary was arrested and charged with the embezzlement of about £10,000.

Who was treasurer of that committee at the time of your investigations?

Detective Lawrence: The accused, but I should add that there was nothing so far as I know connecting Searl with any of the alleged fraud.

Mr Crawford: Your particular class of work brings you daily in contact with the business people of the city? - Yes.

What do you say with regard to Searl's reputation for honesty? - His reputation is very bad.

In his address to the jury, Mr Curtis said that a most violent attack had been made to try to drag down the character of an honourable man. He (Mr. Curtis) did not think that better evidence of character had been produced in any court.

After a retirement of 4½ hours, the jury, at 8 p.m., having failed to agree, was locked up for the night.

Mr. Curtis, K.C., and Mr. Louat (instructed by Mr. D. R. Hall) appeared for Searl; Mr. J. J. B. Kinkead (instructed by Messrs. Emanuel and Pearce) appeared to watch certain interests.<sup>[602]</sup>

### **12 May, 1932. Quarter Sessions (Before Judge Edwards)**

Mr T.S. Crawford Crown Prosecutor

#### **Company Manager Acquitted**

The trial was concluded of Frederick Henry Searl 49 company manager and formerly managing director of Searls' Ltd who was charged on three counts with embezzlement. The amounts involved being 17/, £5 and £3/5/6. The jury which had been locked up all night came into court and returned a verdict of not guilty. Searl was discharged. Mr Curtis KC and Mr Louat (instructed by Mr D R Hall) appeared for Searl. Mr J J B Kinkead (instructed by Messrs Emanuel and Pearce) appeared to watch certain interests.<sup>[603]</sup>

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### 17 May, 1932. Quarter Sessions Appeal (Before Judge White)

#### Betting Appeal Succeeds.

Arthur Coates, 39, storekeeper, appealed against his conviction and fine of £5 imposed upon him on March 14 at the Central Police Court by Mr. MacDougal, S.M., on a charge of having on February 24 used a house at Yarra Bay for the purpose of betting. Appellant denied that he had used the premises for betting as alleged. His Honor allowed the appeal and quashed the conviction.

Mr. J. J. B. Kinkead (instructed by Messrs. Lobban and Lobban and Harney) appeared for appellant: and Mr. Weigall, K.C.. for the Crown.<sup>[604]</sup>

### 18 May, 1932. Quarter Sessions (Before Judge Armstrong)

#### Storekeeper Charged

Rowley Spalding Burcher, described as a storekeeper was charged with arson. It was alleged that, on October 5 last, at Lane Cove he maliciously set fire to a shop. Charles Frederick Schultz the owner of the shop gave evidence that a week before the fire he asked Burcher about his arrears of rent, and Burcher replied 'Don't worry - you will get your rent " Witness said to Burcher ' You must be getting a windfall."

Mr McKean said it appeared that the balance at the credit of Burcher in the Commercial Banking Co of Sydney Ltd at Lane Cove, on October 6 last, was 9/2. He admitted to Mr Kinkead that the account was not reduced to that amount. Just at that time but that was the condition of the account over the previous eighteen months.

Accused stated, in evidence that all he would have received as insurance was about £45 for stock. He owed about £35 for rent, and when the landlord spoke to him about the rent he was expecting about £500 from an estate. He was not guilty of the charge.

The hearing had not concluded when the Court rose till to-day.

Mr J J B Kinkead (instructed by Mr J Yeldham) appeared for Burcher.<sup>[605]</sup>

### 19 May, 1932 Quarter Sessions (Before Judge Armstrong)

Mr McKean K.C. Senior Crown Prosecutor.

#### Storekeeper Bound Over

The trial was concluded of Rowley Spalding Burcher 41 storekeeper who was charged with arson. It was alleged that he had maliciously set fire to a shop at Lane Cove. The Jury returned a verdict of guilty.

The Jury added a rider complimenting Detective Barber on the efficient manner in which he had handled the case.

His Honor: I am very glad you have taken that attitude because a strong attack was made on Detective Barber.

Mr Kinkead said that Burcher was not responsible for the accusation that had been made against Barber.

Burcher was bound over to be of good behaviour and appear for sentence if called upon within two years a condition being that he pay £20 at the rate of £1 a week to the Clerk of the Peace for the London and Lancashire Insurance Co.

Mr Kinkead (instructed by Mr J Yeldham) appeared for Burcher.

**(Before Judge Coyle)**

Mr T.S. Crawford, Crown Prosecutor

**Two Men Charged**

Herbert Ellis 46 jeweller and William Robinson 42 salesman were charged with breaking and entering a warehouse. There was an alternative charge of receiving.

The hearing had not concluded when the Court rose till to day. Mr T P MacMahon (instructed by Mr P N Roach) appeared for Ellis and Mr Kinkead (instructed by Mr W C Moseley) for Robinson.<sup>[606]</sup>

**21 May, 1932. Law Report - Court Of Criminal Appeal.**

(Before Mr. Justice James, Mr. Justice Davidson, and Mr. Justice Halse Rogers.)

(The Solicitor-General, Mr. Weigall, K.C., for the Crown.)

**Rex v Sharah.**

Michael Sharah appealed against a conviction at the Sydney Quarter Sessions of an indecent assault on a girl under the age of 16 years. Judge Curlewis, who had bound over the accused pending the hearing of the appeal, reported to the Court of Criminal Appeal that the verdict was outrageous. Further grounds of appeal were that there was no corroboration of the story told by the girl and that the verdict could not be supported by the evidence. Judgment was reserved.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for the appellant.<sup>[606]</sup>

**21 May, 1932. Quarter Sessions (Before Judge Coyle)**

Mr T.S. Crawford, Crown Prosecutor

**Two Men Convicted**

The trial was concluded of Herbert Ellis, 46, jeweller, and William Robinson, 42, salesman, who were charged with breaking and entering a warehouse. There was an alternative charge of receiving. The jury returned a verdict of guilty of receiving. Ellis was sentenced to two years' imprisonment. Robinson was remanded for sentence till Monday.

Mr. T. P. MacMahon (instructed by Mr. P. N. Roach) appeared for Ellis; and Mr. Kinkead (instructed by Mr. W. C. Moseley) for Robinson.<sup>[607]</sup>

**24 May, 1932. Quarter Sessions Appeal (Before Judge White)**

**Matilda Devine's Sentence Reduced.**

*Matilda Devine*, 34, appealed to Judge White in the Quarter Sessions Appeal Court yesterday against her conviction and sentence of six months' imprisonment imposed upon her by Mr. Nott, S.M. at the Central Police Court on March 14, on a charge of consorting with women of ill-repute.

Appellant submitted that she had met the women casually, not having seen them until then since her return from abroad.

His Honor said the Legislature had laid it down that women of that class were not to frequent each other's company. The appeal would be dismissed, but the sentence would be reduced to two months' imprisonment.

Mr. J. J. B. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for appellant; and Mr. Weigall, K.C., for the crown.<sup>[608]</sup>

### 24 May, 1932. Quarter Sessions (Before Judge Coyle)

Mr P.V. Storkey V.C., Crown Prosecutor

#### Convicted of Receiving

William Robinson 40 salesman had been convicted of receiving. Robinson was bound over in his own recognisance of £50 and a surety of £50 to be of good behaviour and appear for sentence if called upon within two years, a condition being that he pay £20 to the Clerk of the Peace for William Skinner at the rate of 10/ a week the first payment to be made on June 1.

His Honor said that he had taken that action because the police had stated that Robinson had been making every effort to go straight.

Mr Kinkead (instructed by Mr W C Moseley) appeared for Robinson.<sup>[608]</sup>

### 27 May, 1932. Is Consorting Act Unfairly Used?

Tilly Devine Once Again, Brushes With Police - Sentence Reduced by Judge On Evidence

Is the Consorting Act being used by the police in a manner oppressive to convicted persons who are anxious to go straight? The Act was designed to break up criminal gangs, and to stop the consorting of known crooks for nefarious ends. That is its legitimate purpose. But what of the man or woman who comes out of gaol and is casually greeted by a former associate? Is that a matter for police interference?

It is an interesting point in our criminal law, and it was argued again before Judge White in the Appeal Court this week. The cause of the argument was — for the umpteenth time — the picturesque, notorious queen of the under-world, *Mrs. Tilly Devine*. Tilly has become a symbol of the Act's working. Her complaint is that the police will not let her alone. If she passes the time of day with an acquaintance who is not of impeccable reputation, she is threatened with the Act. And not only threatened, but arrested and sent to gaol. This, has happened no fewer than 11 times. When the official called 'Matilda Devine' outside the Queen's Square Appeal Court on Monday, the flaxen haired lady, fur-coated against a cold southerly blast, tripped into court behind her counsel, Mr. Kinkead. Her numerous conflicts with authority have not broken the woman's spirit. As she stood waiting for the court doors to open, she smiled right and left at acquaintances in the throng.

Police constables to whom she nodded smiled back at her. They know their Tilly, and though they often arrest her, they do not dislike her. The campaigning is frank and open on both sides. In March of this year she was convicted at the Central Police Court of an offence against the Consorting Act, and sentenced to six months' imprisonment. Mr. Kinkead made a valiant attempt on her behalf to convince Judge White that the conviction and sentence were wrong.

#### Not a Virago

Four constables repeated the testimony they had given in the lower Court. They had seen her talking at night to women of bad repute. Mr. Kinkead pressed the police witnesses as to how they knew the women alleged to have been talking to his client were of ill repute, and drew the admission that there had never been either charges or convictions recorded against some of them. *Tilly Devine* told her story in the witness-box — told it modestly enough, with nothing of the virago in voice or manner. 'Woman speak to me,' she informed Judge White, and I have to answer their questions. Often I don't know who they are. One of the women, Rene Thompson, with whom she was accused of consorting, was described as 'a woman I have known for 12 years — she has stayed at my house.' Of another, a girl named Hankey, she said she knew 'nothing against her.' She had only spoken to her twice in her life. A third, Sylvia Brown, was stoutly defended by Tilly as 'a most respectable, hardworking girl, who earns her living by dress-making.' 'I was in Oxford Street, near Palmer Street,

with my sister-in-law,' Tilly informed the Judge, 'when a constable came up and said to my sister-in-law, 'Do, you know that woman?' She replied, 'I ought to know her — she has been my sister-in-law for 15 years.' He then said that if we weren't careful he'd arrest us both. 'Since then,' said Matilda, turning blue eyes and a confiding expression on the Bench, 'my sister-in-law hasn't spoken to me. She's been afraid.' 'I expect Your Honor is tired of hearing me on this Consorting Act,' was Mr. Kinkead's opening remark to Judge White. His Honor's smile was an encouragement to the barrister to go on.

### **Severe Sentence**

Mr. Kinkead's main point was that the Act was never intended to isolate convicted persons from their fellow men and women. He appealed to the Judge to say that the Act 'was being harshly and unfairly used against his client, and to quash the conviction. Judge White would not go that length. He was not prepared to say that the Act was bad, or that, in the case before him, it had been harshly or improperly used. He did, however, agree that the sentence of six months was severe, and reduced it to two months. With that Tilly had to be content. If she was disappointed she did not show it. With alert step and a smile to a woman friend she walked with an attendant constable out of the Court.<sup>[609]</sup>

### **28 May, 1932. Jury Has Say, Not Judge – Verdict Upheld Despite Him**

Although Judge Curlewis described a jury's verdict of guilty as "outrageous," the Court of Criminal Appeals yesterday refused to set it aside.

Thus the jury's view prevailed against the Judge's. Michael Sarah (36) was charged with an indecent assault on a young girl. Apparently so certain was Judge Curlewis that the jury would acquit that he took the unusual step of inviting Mr. Kinkead, for the prisoner, "not to waste time in addressing." The jury, however, found Sarah guilty, and Judge Curlewis bound him over in his own recognisances to come up for sentence — if called upon — after his appeal.

### **Cannot Override**

Mr. Justice James, delivering the Court's judgment on the appeal which Sarah lodged, said that the opinion of the trial judge, though entitled to a good deal of weight, could not overrule the verdict of the jury; and as the Court of Appeal could not say that the verdict was one that no reasonable men could find, it would not interfere.<sup>[610]</sup>

### **1 June, 1932. Central Criminal Court (Before Mr Justice Halse Rogers)**

Mr McKean K.C., Senior Crown Prosecutor

### **Not Guilty**

Thomas Jenkins, 33, hairdresser, was charged with the murder, at Sutherland, on April 26 last of Michael Desmond. The jury returned a verdict of not guilty Jenkins was discharged. The hearing is reported elsewhere. Mr J J B Kinkead (instructed by Mr Fred A Newnham) appeared for Jenkins.<sup>[611]</sup>

### **2 June, 1932. Alleged Frauds On Waverley Council Haulage Contracts**

Allegations of extensive frauds practised against the Waverley Municipal Council on haulage contracts were made against John Leahy, 50, contractor, and Patrick Burton, 43, overseer, at the Central Police Court yesterday. Leahy and Burton were charged with having conspired together to cheat and defraud the Waverley Council of large sums of money.

Mr. J. J. B. Kinkead, outlining the case for the prosecution, said that Leahy had been, the contractor who supplied lorries and drivers to the Waverley Council for haulage at various rates. Burton had been the overseer of works employed by the council. It was alleged that Burton had made a number

of irregular dockets concerning the working of lorries, and Leahy had been paid for a lot of haulage that had not been performed. After a report by the council's auditors, a letter was written to Leahy in 1930, pointing out that a system had to be strictly enforced showing how the haulage work was performed, and dockets had to be filled in showing particulars of lorries, loads, hours, etc., signed by the lorry driver and counter-signed by the ganger at the receiving end. The docket system was introduced and Leahy was told to comply strictly with the conditions of the dockets before his accounts would be recognised and paid. It was the duty of the driver of a lorry to put the particulars on the docket and get it signed. A blank form of docket would be given to the ganger to be sent later to the council's accounts branch to await Leahy's account. After Leahy's account had been rendered it would go to the engineer's department for his certificate, and then back to the accounts branch for the issue of a cheque to be paid to Leahy.

Burton at first had nothing to do with the dockets, said Mr. Kinkead, but later they were filled in by him. Some were altered by him, it was alleged. The effect was that a number of bogus dockets were issued by Burton, and Leahy had been paid for work that had not been performed.

Joseph Stanley MacKinnon, town clerk of Waverley, said that Leahy had been the cartage contractor for the Waverley Council from the beginning of 1929 to January, 1932. Burton had been employed by the council from the beginning of 1930 until 1932, as acting foreman of maintenance works.

Raymond Harold Truman, chartered accountant, said that his firm had been the auditors of the Waverley Council for many years. Witness had commenced an investigation into the cartage contracts of the council in April last. On several days in October, 1931, the council dockets showed a greater amount of metal as having been carted than had been received by the council. Leahy had been paid on the amounts shown in the dockets. Witness pointed out the signature of a driver named Bridie on several dockets. Witness said that, in his opinion, Bridie's signature was in the handwriting of Burton.

The case was adjourned until to-day.

Mr. J. J. B. Kinkead, instructed by Messrs. Kershaw, Matthews, Lane, and Glasgow, appeared for the prosecution; and Mr. W. Niland for the defendants.<sup>[612]</sup>

### **3 June, 1932. Cartage Contracts – Alleged Conspiracy to Defraud Waverley Council**

Hearing of the charges against John Leahy, 50, contractor, anti Patrick Burton, 43, overseer, of conspiracy to defraud the Waverley Municipal Council of large sums of money, was continued at the Central Police Court yesterday by Mr. MacDougal, S.M. It is alleged that Leahy, who performed cartage contracts for the council, had been paid for a considerable amount of cartage that had not been performed through irregularities in the docket system of the council, practised by Burton.

Raymond Harold Truman, accountant of the Waverley Council, who commenced his evidence on Wednesday, was in the witness-box all day yesterday, and had not concluded when the Court adjourned until to-day. He gave evidence of his audit of the council's docket system. He said that almost daily in October and November, 1931, when road metal was being carted for the council by Leahy's lorries, there had been irregularities in the dockets, which showed that a greater amount had been carted than had been received. Leahy was consequently overpaid by the council. Witness said that in his opinion the amounts of metal shown on several dockets had been, altered to a greater amount. On other dockets signatures of lorry-drivers appeared to be in Burton's handwriting. Lorry numbers appeared to have been altered, and drivers were shown as driving two different lorries on the same day. Witness had examined the wages paid by Leahy to his drivers, and had discovered that on many occasions the hours worked by them for Leahy were fewer than the hours worked as shown

by the council dockets. On occasions some of Leahy's drivers had received no wages at all, yet they were, shown by the dockets as having worked.

Mr. J. J. B. Kinkead (instructed by Messrs, Kershaw, Matthews, Lane, and Glasgow) appeared for the prosecution; and Mr. W. Niland appeared for the defendants.<sup>[613]</sup>

### **5 June, 1932. Death Follows Wine Orgy – Sutherland Man Discharged – Self Defence Plea**

A drunken orgy where cheap wine and methylated spirits were consumed, preceded the violent death of Michael Desmond on April 26 last at the Sutherland Unemployed Camp.

His death was the result of a frightful wound in his head, inflicted with a tomahawk.

Last week a Criminal Court Jury acquitted Thomas Jenkins, 33, of a charge of having murdered Desmond. 'I don't think any other verdict was open, on the evidence, gentlemen,' said Judge Halse Rogers, in discharging Jenkins.

Jenkins, who was defended by Mr. J. J. B. Kinkead, instructed by Mr. F. A. Kewnham, put forth the plea of self defence.

Witnesses told a sordid story of a night's wild carousal, in which two women joined in drinking methylated spirits and wine with Jenkins and Desmond, ending in the death of the latter after he had attacked Jenkins with a piece of wood.

'We all drank the wine, and Mick and the woman got very drunk. I went out of the tent to make a stew and fix up the fire, and while I was making the fire, Mick came out of the tent and started to quarrel with me.' said Jenkins in a statement to the police, which was read to the court at his trial.

'I tried to quieten him, but he became more abusive, and used bad language. I tried to pacify him, and while I was stooping down making up the fire, he picked up a piece of wood and struck me on the side of the face and shoulder. I went to get away from him and he rushed at me again with the piece of wood in his hand.

'He went to strike me, and when he did I struck out with the tomahawk to protect myself against him. I hit him, on the head and he staggered back into the tent and lay on the bed. I did what I could to help him by getting a cloth and some water and bathed his head.

'I struck Desmond in self-defence, as he was a much bigger man than I am and very powerful. He was very nasty and quarrelsome in drink. I am very sorry that I was placed in the position to have to defend myself, but if I had not done so he would probably have killed me,' he declared in the statement.

The statement went on to describe the meeting of two women, who went to the camp and indulged in a drinking orgy with the men.

### **Quarrelsome**

From the witness-box, Jenkins said his statement to the police was true. He was afraid of Desmond and had acted in self-defence. Several witnesses, including Sergeant McNeill, gave evidence to the effect that Desmond had been a very quarrelsome man.

'You will be pleased to know that you needn't worry your minds with considering any question of insanity in this case,' Senior Crown Prosecutor Mr. McKean. K.C., told the Jury, in outlining the Crown case to them. He added that it was open for them to bring in a verdict of manslaughter, should they have any doubts as to his guilt on the major charge.



'So far as I can see, the Crown has not brought forward sufficient evidence for you to convict accused on the major charge. It is open to you to find him not guilty if you consider that he acted in self-defence. The only other verdict it would be possible for you to return would be manslaughter,' said his Honor in summing-up.

After retirement of ten minutes, the jury returned a verdict of not guilty, and Jenkins was discharged.<sup>[614]</sup>

#### **8 June, 1932. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

##### **To Appear As Witness.**

Walter Letheby for whom a warrant was issued on his failing to appear on a subpoena as a witness when Thomas Welsh was called upon to answer a charge of arson, came before his Honor yesterday. Letheby was ordered to enter into a bond of £40 with surety, to appear as a witness at Welsh's trial, a condition being that he inform the police of any change of address prior to the trial. Letheby stated that he had taken his family to Narrabri on holiday, and that was why the police had failed to find him.

Mr. J. J. B. Kinkead (instructed by Messrs. E. R. Tracey and Co.) appeared for Letheby.

##### **Young Woman Acquitted**

Doris Williams, 20, was charged with the larceny of £15.

The Jury returned a verdict of not guilty. Accused was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for accused.

##### **Larceny As Servant.**

William Arthur Kelly, 40, grocery manager, pleaded guilty to larceny as a servant. The charge was that while employed by McIlrath's. Ltd., he stole £248. Kelly was remanded till Friday for sentence.

Mr. Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for Kelly.<sup>[615]</sup>

#### **11 June, 1932. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

##### **Larceny As Servant.**

William Arthur Kelly, 40, grocery manager, had pleaded guilty to larceny as a servant.

It was stated by the police that Kelly had been employed by McIlraths, Ltd., for 20 years, and for several years was grocery manager at Rockdale. The system adopted by accused was to take £1 or £1/10/ a week.

His Honor said that in view of Kelly's previous good character he would bind him over in his own recognisance of £50 and a surety of £50, to be of good behaviour and appear for sentence if called upon within three years, a condition being that he pay £248 to the Clerk of the Peace for McIlraths, Ltd., at the rate of £4 a month.

Mr. J. J. B. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Kelly.<sup>[616]</sup>

#### **18 June, 1932. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

**Not Guilty.**

John Thomas Weeber, 22, and Bryan Claude Travers, 23, were charged that, on February 21, 1932, at Como, they assaulted George Walter Fleming and occasioned actual bodily harm. There was an alternative charge of common assault.

Evidence was given by Fleming that on February 22 he found himself in hospital with injuries. On the previous day he had been playing cards at an hotel, but did not remember leaving the hotel. He did not have the injuries when he was playing cards.

The jury returned a verdict of not guilty. Weeber and Travers were discharged.

Mr G. F. Osborne appeared for Weeber; and Mr. J J. B Kinkead (instructed by Mr F A Newnham) for Travers.<sup>[617]</sup>

**21 June, 1932. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

**Alleged Conspiracy.**

Richard Charles Blake, 28, business agent, and Patrick Benedict Power 44 clerk were charged that between May 1 and August 31, 1931 they conspired to cheat and defraud Mary Frances Brown of divers large sums of money.

It was stated by the Crown that Blake was the owner of a business trading under the name of T Norman and Co Martin-place city. Power was employed by Blake It was alleged that Blake and Power conspired to get Mrs Blown to advance £200 to Blake to buy Power a half-share in the business. The Crown alleged that the business of T Norman and Co was not such that it formed a valuable security for the advance of money that Blake stated he owned land at Earlswood and that Power stated he had furniture valued at £500.

The hearing will be resumed to-day.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Blake; Power was undefended.<sup>[618]</sup>

**22 June, 1932. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

**Alleged Conspiracy.**

The trial was continued of Richard Charles Blake, 28, business agent, and Patrick Benedict Power, 44, clerk, who were charged that between May 1 and August 31, 1931, they conspired to cheat and defraud Mary Francis Brown of large sums of money.

In a statement from the dock, Power stated that £200 was loaned by Mrs. Brown for 12 months at 10 per cent, to buy him a half share in the business of T. Norman and Co. Power denied that the firm of T. Norman and Co. was a "mushroom" firm.

Blake, in a statement from the dock, corroborated what Power had stated about Mrs Brown making a loan of £200. He stated that Mrs. Brown was given a receipt. So far as he was concerned there was never a conspiracy to defraud Mrs. Brown.

The hearing will be resumed to-day.

Mr. Kinkead (instructed by Mr. Fred J Newnham) appeared for Blake; Power was undefended.<sup>[619]</sup>

**22 June, 1932. Quarter Sessions (Before Judge White)**

Mr T.S. Crawford, Crown Prosecutor

**Two Men Acquitted**

The trial was concluded of Richard Charles Blake, 28, business agent, and Patrick Benedict Power, 44, clerk, who were charged that between May 1 and August 31, 1931, they conspired to cheat and defraud Mary Frances Brown of large sums of money. The hearing had lasted three days.

The jury returned a verdict of not guilty. Blake and Power were discharged.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Blake.<sup>[620]</sup>

**24 June, 1932. Quarter Sessions (Before Judge Armstrong)**

Mr McKean K.C., Senior Crown Prosecutor

**Three Men Charged**

Charles Alfred Ashton, 27, boxer, William Lawrence Ashton, 26, labourer, and Clifton Green, 33, carrier, were charged that on May 3 they stole a motor lorry containing chocolates and a cinematograph machine, the property of Nestle and Anglo-Swiss Condensed Milk Co. (Australasia), Ltd. There was an alternative charge of receiving.

It was stated that the driver of the lorry went into a shop in Pitt-street, and when he returned the lorry had gone.

By direction the Jury returned a verdict of not guilty in the case of Green, and he was discharged.

Charles Alfred Ashton and William Lawrence Ashton were each found guilty of receiving. They were remanded for sentence.

Mr. J. Baker appeared for the two Ashtons, Mr. Kinkead (instructed by Mr. W. M. Niland) appeared for Green.<sup>[621]</sup>

**28 June, 1932. Quarter Sessions (Before Judge Armstrong)**

Mr McKean K.C., Senior Crown Prosecutor

**Not Guilty.**

Sidney Sheedy, 21, paper seller, was charged with the abduction at Redfern of Edna Dard, aged 17 years and 5 months, with intent to commit a serious offence. At the conclusion of the Crown case the jury, without leaving the box, returned a verdict of not guilty. Sheedy was discharged.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Sheedy.<sup>[622]</sup>

**30 June, 1932. Two Years Gaol for Wanton Driving****Youth of 19 Pays for Drunken Lark Mother – Daughter Injured**

Edward Albert Begaud, 19, was sentenced by Judge Armstrong at the Quarter Sessions today to two years' imprisonment for the wanton driving of a motor car, which knocked down and seriously injured two women, mother and daughter, while they were on their way home from midnight Mass, at Bondi, last Christmas. The judge directed that Begaud be sent to Emu Plains prison farm, and that at the end of 12 months, if his conduct in gaol was satisfactory, the question of his release be considered.

A severe sentence was sought by the Crown Prosecutor (Mr. McKean. K.C.), who pointed out that the Crown took a very stern view of the case, and added that it had the right of appeal against inadequacy of sentence.

### Foot Nearly Off

The Crown Prosecutor mentioned that the mother had been in hospital for 69 days and the daughter for 122 days.

When they were taken to hospital the mother had a compound fracture of the right leg, and the foot was hanging to the limb by a strip of flesh. Arrangements had been made for amputation, but doctors had managed to save the leg, although it was extremely improbable that either woman would ever be able to walk properly again.

The judge said that what made the case particularly serious was that the prisoner and a half-dozen companions were engaged in a drunken lark at 1 a.m. on Christmas Day.

The The Crown Prosecutor: It would be idle for the injured women to take any civil action against the prisoner.

Mr. Kinkead (for the accused) protested against the Crown Prosecutor raising the civil issue as a motive for a savage sentence. The prisoner's father, Mr. Kinkead said, was highly respected, and had been a master chef at Government House during the term of Lord Denman as Governor-General.

The prisoner had borne a good character previous to this escapade, and when he was 17 years of age he had walked 1000 miles in search of work. He had got into bad company, and that was the cause of the whole trouble.<sup>[623]</sup>

### 4 July, 1932. "Was Once a Very Wealthy Man" – Charge of Fraud – Grazier's Bail Is Reduced

When Gerald Vincent English (34), grazier, was charged at the Central Court to-day with having, by means of false pretences, obtained £5500 from Alec Robertson Moodie and Roy Desmond Moodie, trading as Moodie Bros., with intent to defraud, Sergeant Caban (police prosecutor) asked for a further adjournment.

He said the offence was alleged to have been committed at Boggabri. Seven witnesses would be called but two were at present absent in the country.

On the question of bail, Mr. Kinkead (for the defence) said the defendant was at one time one of the wealthiest men in Australia. He asked that bail be reduced from £500 to £100.

### Assets Elsewhere

Most of the defendant's assets and friends were in Victoria and South Australia. Hearing of the arrest, one of his friends came from Victoria and arranged for bail. He could not however, be accepted as a bondsman because he did not live in this State.

Mr. Kinkead said it was evident that the Court was being used for the purpose of extracting money which should be claimed for in another place. The alleged offence was the outcome of a transaction in 1929. Subsequently defendant was made bankrupt, and was unable to carry out a certain undertaking.

English was remanded to July 25. and the magistrate (Mr. Shepherd) reduced the bail to £100.<sup>[624]</sup>

### 8 July, 1932. Quarter Sessions (Before Judge Armstrong.)

Mr. F. W. Berne, Crown Prosecutor.

### Three Men Discharged

Harry Newberry, 32, labourer, William Mann, 44, bollermaker, and John Cowie, 34, labourer, were

charged that on May 25 they attempted to break and enter a dwelling at Waterloo with intent to steal.

By direction, the jury returned a verdict of not guilty in the cases of Mann and Cowle, and they were discharged.

The jury returned a verdict of not guilty in the case of Newberry, and he was discharged.

Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Newberry, and Mr. W. M. Niland appeared for Cowle.<sup>[625]</sup>

### *12 July, 1932. Quarter Sessions (Before Judge Armstrong)*

Mr V.H. Treatt, Crown Prosecutor

#### **Not Guilty.**

John Joseph Lawler, 52, advertising agent, was charged that, at Deewhy, on June 29, 1931, he assaulted a girl 12 years of age with an act of indecency.

At the conclusion of the evidence and addresses, and just before his Honor had finished his summing up, the jury retired to consider whether it would like to visit the scene of the alleged offence.

After a retirement of a couple of minutes, the jury returned into court and gave a verdict of not guilty.

In discharging Lawler, his Honor said to the Jury: "I think yours is the only verdict which could be returned. It is a great pity that in such a lot of these cases these young girls turn out to be the most dreadful and deliberate perjurers it is possible to imagine. It would be incredible if you did not see so much of it."

Mr. J. J. B. Kinkead (instructed by Mr. B. A. McBride) appeared for Lawler.<sup>[626]</sup>

### *13 July, 1932. Left Guessing*

I passed then to the Quarter Sessions to hear these pleasantries indulged in. Mr. McKean, K.C. (Senior Crown Prosecutor), to Mr. Kinkead (barrister) : Your memory is as good as your wit. Judge Curlewis (pleasantly, if ambiguously): Please don't exaggerate, Mr. McKean. And all that was left to Mr. Kinkead to guess is the exact meaning of the remarks of judge and Crown Prosecutor.<sup>[627]</sup>

### *13 July, 1932. Quarter Sessions (Before Judge Armstrong)*

Mr V.H. Treatt, Crown Prosecutor

#### **Salesman Charged**

George Oates, 47, salesman, was charged with having stolen at Kensington on December 1 last £290, the property of Charles Percy Brown. The hearing had not concluded when the Court rose till to-day.

Mr. J. J. B. Kinkead (instructed by Messrs. Manion and Co.) appeared for Oates.<sup>[628]</sup>

### *13 July, 1932. Quarter Sessions (Before Judge Armstrong)*

Mr V.H. Treatt, Crown Prosecutor

#### **Salesman Acquitted.**

The trial was concluded of George Oates, 47, salesman, who was charged with having stolen, at Kensington, on December 1 last, £290, the property of Charles Percy Brown. The jury returned a verdict of not guilty. Oates was discharged.

Mr. J. J. B. Kinkead (Instructed by Messrs. Manion and Co.) appeared for Oates.

### Guilty Of Receiving.

Leslie John Gillette, waiter, and Wilfred Frederick Eldred, motor mechanic, were charged with breaking and entering. There was an alternative charge of receiving. The jury returned a verdict of guilty of receiving. Gillette and Eldred were remanded till to-day for sentence.

Mr. J. J. B. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Gillette.<sup>[629]</sup>

### 15 July, 1932. "Squeaker" Brown has Own Legislator Race Horse Owner Staggered By Counsel Barrister was Ignorant of Famous Gelding Oh Me! Oh My! Such Comedy in the Court

The racing identity known as 'Squeaker' Brown was an astonished man as he stood in the witness-box at Darlington Quarter Sessions one day this week.



"Squeaker" was tempted to laugh himself hoarse at the "ignorance" of Mr. Kinkead.

He was giving evidence in a case in which he was charging a motor dealer, George Gates, with false pretences. It transpired that he had given Gates £290 with which to purchase a Cadillac car, the understanding being that the car was to be re-sold to the State Government at a profit.

The surprise came to Mr. Brown when Mr. Kinkead, for defendant, Oates rose to cross-examine him about his racing transactions.

'How do you make a living?' was one of the first questions. A bewildered smile spread over 'Squeaker's' open countenance. As if everyone did not know the answer to that! 'Why,' he responded, slowly, 'I have money, I own horses, and — and that.' The turf

might be going through a period of depression, but it was not registered on the face of Mr. Brown.

The next question was a staggerer, as Mr. Kinkead's rapid diction flung it at the witness-box. 'Is Legislator,' the barrister asked, 'a racehorse?'



Brown will no doubt have some difficulty in solving Legislator for the slight imposed upon him by the member of the bar.

'Squeaker' gasped. This was going rather far. Was 'Legislator — 'the' Legislator — one-time favorite for last Doncaster, and possible favorite for the next — was he a RACEHORSE? Well, well!

'You know,' he said reproachfully to Mr. Kinkead, 'he is a racehorse.'

'I don't know,' rapped back the lawyer. 'I don't follow racehorses.'

'Everyone knows,' protested Mr. Brown.



'Didn't you put something over Mr. Miller in connection with the purchase of that horse?' asked the cross-examiner.

The witness said he had not. Pressed further on the point, he was sure he had not. It was put to him that while Mr. Miller had fixed the sale price at £500, he ('Squeaker') had 'put one over' by securing the horse for £400. He would swear it was not a trick' that brought about the purchase at £400.

'As soon as you got possession of the horse, didn't you sack Miller's uncle?' asked Mr. Kinkead.

'I did not not,' was the reply.

'But you did sack him?'

'Yes; but it was six months after.'

Mr. Kinkead turned to other matters. He was inquisitive as to the reason why Mr. Brown had so suddenly decided to prosecute the motor-man criminally. He elicited the fact that he (Brown) was to get £340 from Oates in return for his £290, when the car had been sold to the Government, as Oates said it would be sold for £450.

A nice little scheme, that only needed the State Government to do its part in order to provide a handsome 'divvy' for both Oates and Brown. But the speckers were in advance of the market, so to speak. The Government did not buy. And when Oates' promissory note for £290 was dishonored, Brown informed the police.

Oates was acquitted by the jury, and discharged. 'Squeaker' left the Court marvelling at the slight knowledge of equine affairs possessed by some high lights of the law.<sup>[630]</sup>

#### **15 July, 1932. Quarter Sessions (Before Judge Curlewis)**

Mr McKean K.C., Senior Crown Prosecutor

#### **To Abstain From Liquor.**

Arthur Robinson, 46, dealer, pleaded guilty to receiving. He was bound over to be of good behaviour for and appear for sentence if called upon within three years, a condition being that he abstain from intoxicating liquor, during that period. Mr. J. J. B. Kinkead (instructed by Mr. F. A. Newnham) appeared for Robinson.<sup>[631]</sup>

#### **15 July, 1932. Naughty Young Girl takes Married Man to task.**

#### **'Dreadful Perjurers,' Says Judge Curlewis**

#### **Lying Child Darkens Man's Future**

#### **What Of The Remedy?**

Twice in course of the last few days have Judge Curlewis and juries been confronted with the problem of the girl child who makes an accusation against a grown man.

It is one of the baffling enigmas with which the law has to deal. On one side is the evidence of the child, usually uncorroborated. On the other side is the testimony of the man who, whether deservedly or not, finds himself in a position of deadly peril.

Juries are invariably warned that it is dangerous to convict on uncorroborated evidence. But often there is no other evidence. What is the position then?

In a case before him at Darlinghurst last week, Judge Curlewis directed the jury to acquit a young man charged with indecent behaviour to a child of five, but at the same time commented severely on the man's conduct, and expressed the view that the law should be altered.



But how should it be altered? His Honor did not say, and the problem remains a problem.

John Joseph Lawler, a middleaged man of hitherto unblemished reputation, will remember all his life the story told against him by a girl of 12 whom he met on the beach at Deewhy.

Lawler is a resident of Deewhy, where he has lived for eight and a half years. In his walks on the beach he had met the child several times. On this occasion — it was June 29, 1931— he walked along with her for some distance. Then they sat down on a newspaper that the man spread out against the damp of a winter day.

As to what happened then, there were conflicting stories, Lawler's and the girl's. But because of that halt on the sandy spaces of Deewhy, the man has gone through a great deal — enough to make him a cynic for the rest of his life. He has been arrested, charged at the police court, and twice arraigned before Judge and jury. On the first occasion the jury disagreed.

When the case came on again before Judge Curlewis this week the girl, now 13, went into the witness box. Rather small for her years, and wearing a turn-down straw hat that almost hid her face, she told once more her story of alleged interference.

But it was not quite a consistent story. To Mr. Kinkead, appearing for Lawler, she admitted having said, when first questioned, that she did not call out, 'because he held his hand over my mouth.' She now said that was not true; he had not held his hand over her mouth.

To the Judge, who asked her why she had told a lie, the girl lisped a scarcely audible 'I don't know.'

The accused, a man of refined features, with a ring of white hair round a bald forehead, told his own story in the witness box. He was a publicity agent, a married man, living with his wife and two daughters.

On the morning of June 29 last year he was on the beach and saw the child whom he had seen five or six times before. They walked along towards Collaroy; it might have been at his suggestion, but he was not sure. He had been suffering from rheumatism, he said, and could not walk far. He had also a bandage over his knee. The reason why he sat down was partly to adjust the bandage, partly to light his pipe out of reach of the wind. There was no impropriety of any sort.

'Why did you ask the child to go for a walk?' inquired Mr. McKean, Crown Prosecutor.

'She said she was going to Collaroy,' was the answer, 'and I was going that way, too.'

'Don't you think it was indiscreet,' pursued the Crown Prosecutor. And the answer came in a heartfelt tone — 'I do — now!'

Unreserved tributes to the character of Lawler were given by five prominent business men who had known him for periods of from 21 to 30 years.

The jury this time said 'Not Guilty,' and accused was discharged, after a bitter experience of what may happen to the most respected citizen who talks to strange little girls on the beach.

'A great pity that in so many of these cases young girls turn out to be dreadful and deliberate perjurers,' was the Judge's comment, in agreeing with the jury's verdict.<sup>[632]</sup>

*19 July, 1932. Quarter Sessions (Before Judge Edwards)*

Mr V.H. Treatt, Crown Prosecutor

### Bank Officials Charged

Stuart Charles McLean, 41, Horace John Finn, 49, and Frank Phibbs, 42, were charged that, in May, 1932, being then clerks to the Commercial Banking Company of Sydney, they stole £5099/2/7, the property of that bank.

The Crown Prosecutor said that the alleged offence occurred over a period of some months. It seemed that the three accused collaborated so that the shortage in the cash would not be found out. It appeared that one of the accused, a receiving teller, became short of cash, and took some out of the bank's cash. The amount gradually became larger, and the receiving teller told the other two accused, who then came into the matter. McLean and Finn were receiving tellers, while Phibbs had other duties which brought him into touch with the other accused. Subsequently, Finn went on holidays, and McLean was put on to other work. It was shortly afterwards that the alleged shortages were discovered.

The hearing had not concluded when the Court rose till to-day.

Mr. McCarthy appeared for McLean; Mr. Studdert (instructed by Mr. R. J. Dresser) for Finn; and Mr. J. B. Kinkead (instructed by Messrs. Tietzens, McLachlan, and Co.) for Phibbs.<sup>[633]</sup>

### 19 July, 1932. Quarter Sessions (Before Judge Curlewis)

Mr McKean K.C., Crown Prosecutor

#### Not Guilty.

George James McMahon, 26, labourer, was charged that, on February 23, 1932, he stole a motor car and clothing, the property of Mary Ward. There was an alternative charge of receiving.

The Jury returned a verdict of not guilty. McMahon was discharged.

Mr. J. B. Kinkead (instructed by Mr. Fred, A. Newnham) appeared for McMahon.<sup>[633]</sup>

### 20 July, 1932. Quarter Sessions (Before Judge Edwards)

Mr B.V. Stacy, Crown Prosecutor

### Bank Officials Charged

The trial was continued of Stuart Charles McLean, 41, Horace John Finn, 49, and Frank Phibbs, 42, who were charged that, in May, 1932, being then clerks to the Commercial Banking Co. of Sydney, they stole £5099/2/7, the property of that bank. The hearing, which is reported elsewhere, will be continued to-day.

Mr. McCarthy appeared for McLean; Mr. Studdert (Instructed by Mr. R. J. Dresser) for Finn; and Mr. J. B. Kinkead (instructed by Messrs. Tietzens McLachlan and Co.), for Phibbs.<sup>[634]</sup>

### 20 July, 1932. Bank Officials - Alleged Theft of £5099 - Statements From Dock.

At the Quarter Sessions Court yesterday, before Judge Edwards, the trial was continued of Stuart Charles McLean, 41, Horace John Finn, 49, and Frank Phibbs, 42, who were charged that, in May, 1932, being then clerks to the Commercial Banking Co. of Sydney, they stole £5099/2/7, the property of that bank.

Detective Findley gave evidence that he interviewed Finn at Canowindra. Witness said that, after Finn had been shown statements by McLean and Phibbs, Finn made a written statement, in which he admitted that the statements made by McLean and Phibbs were true in every detail. Finn, then went on to say to his statement: "Some time in March, 1931, was the first time I took any money the property of the bank. I was short of cash at the time, and took it to pay my debts. At later dates I

tried to get it back by going to the races. . . . Later, in view of the large amount involved in the shortages, Phibbs was approached. I must admit I am as much to blame as the others."

Answering Mr. McCarthy (for McLean), Detective Findley said: "McLean has led a good life up to the time of this happening, and was a man of good character. About twelve months ago he began to drink heavily, and was almost daily under the influence of liquor. He is the support of his mother, and he resides with her."

Replying to Mr. Studdert (for Finn), Detective Findley said that Finn had also borne a good character, and was a married man with two children.

Detective Findley told Mr. Kinkead (for Phibbs) that up to the time of the alleged offence Phibbs had borne an excellent character.

McLean, in a statement from the dock said that he had been employed by the bank for 24 years and this was the first trouble that he had experienced. He had been drinking heavily for a year.

Referring to the statement which he had made to Detective Findley, Finn, in a statement from the dock, said that he was first interviewed at Canowindra, where he was spending a holiday with his parents, who were well-known residents. When Detective Findley said that he proposed to charge accused at the Canowindra police station he begged him not to do so. Detective Findley then said that if he would make a statement he would take him to Orange and charge him. Finn denied that he had told his brother that he had admitted everything. When he went on holidays the books did not show a deficiency, they were in credit. He (Finn) had a good reputation, and he had always tried to lead a clean and honourable life.

Phibbs, in a statement, said that he had had nothing to do with the taking of any money from the bank.

The hearing will be resumed to-day.<sup>[634]</sup>

#### **21 July, 1932. Quarter Sessions (Before Judge Edwards)**

Mr B.V. Stacy, Crown Prosecutor

##### **Bank Officials Convicted**

The hearing was concluded of the charges of theft against three bank officials Stuart Charles McLean, 41, Horace John Finn, 49, and Frank Phibbs 42.

It was alleged that the three accused had stolen £5099/2/7, the property of the Commercial Banking Company of Sydney The jury found each accused guilty McLean and Finn were each sentenced to four years' penal servitude and Phibbs to two years' penal servitude The matter is reported elsewhere.

Mr McCarthy appeared for McLean Mr Studdert (instructed by Mr R J Dresser) for Finn, and Mr J J B Kinkead (instructed by Messrs Tletyens McLachlan, and Co ) for Phibbs<sup>[635]</sup>

#### **22 July, 1932. Quarter Sessions (Before Judge Armstrong)**

Mr B.V. Stacy, Crown Prosecutor

##### **Woman Acquitted**

Mabel Florence Green, 38, domestic duties, was charged with bigamy. It was stated that on March 25, 1915 at Sydney, she married Arthur Orange Green, and that on August 7, 1926, at Sydney while Green was still alive, she married Louis Ronald Jones.

Mr. Kinkead, who was in court, offered to appear for accused. He said he understood that accused was not represented by counsel.

His Honor, in granting permission, said that it was a very kindly act on the part of Mr. Kinkead.

Accused's defence was that she had received a telegram (produced) stating that her husband was dead. Some time after that, believing that he was dead, she married again.

Mr. P. J. Fitzgerald, senior gaol recorder, gave accused an excellent character. He said that he and his family had resided near her at Long Bay for six years, and she had reared a family there.

The jury returned a verdict of not guilty. Green was discharged.<sup>[636]</sup>

### **23 July, 1932. Solicitor Sentenced – Misappropriation of Cheque.**

In Quarter Sessions before Judge Armstrong yesterday, Lancelot George Blackmore, 31, solicitor, was charged with having, on October 8, 1931, at Sydney, received a cheque for the payment of £260 to Daisy Tarleton, and misappropriated it to his own use in violation of the terms on which he received it. Blackmore pleaded guilty.

Detective-sergeant Gallagher gave evidence that Blackmore had told him that before the depression his income was between £1500 and £2000 a year. Apparently, racing had been the cause of his trouble. The total defalcation was about £2000. Blackmore had given himself up to the police.

Answering Mr. Kinkead (for Blackmore), witness said that Blackmore's case was different from that of another solicitor whose case was heard some time ago. That solicitor robbed people whether they were rich or poor. Blackmore had prepared a list of people in poor circumstances and, after realising on his assets, had paid those people, leaving himself with less than £10.

Mr. Kinkead said that the name of Blackmore had been honourably associated with the legal life of New South Wales since the earliest days of the State.

His Honor: Yes, as long as I have been in the profession.

Mr. Kinkead asked his Honor to pass as light a sentence as possible.

In passing a sentence of imprisonment for two years and six months, his Honor said that he did so with great regret as Blackmore had had a good reputation and position. If a serious portion of the money stolen was repaid, his Honor said, he would recommend forthwith that the sentence be reduced.

Blackmore was also charged with the fraudulent misappropriation of (1) £1003, which he had been required to pay to Arthur Edwin Stacey; (2) £700, which he had been required to pay to Sydney Angus; (3) £547/18/, which he had been required to pay to Inga Augusta Logan. He pleaded not guilty and was remanded for trial.<sup>[637]</sup>

### **23 July, 1932. Supreme Court - Court Of Criminal Appeal**

(Before the Chief Justice, Sir Philip Street, Mr. Justice Davidson, and Mr. Acting Justice Boyce.)

#### **Rex v Kingsbury**

This was an appeal by Guy Neville Kingsbury from a conviction and sentence of death passed by Mr. Justice James at the Central Criminal Court on March 17 on a charge of having shot at *Sydney Vincent Devine* with intent to murder on September 11, 1931.

The appeal was on the grounds that the verdict was against the evidence and weight of evidence, and that fresh evidence was now available.

Mr. Windeyer, K.C. (for appellant) attacked the evidence at the trial of Constable Schroeder concerning happenings at the arrest of the appellant. He said that appellant was not in a position completely to answer the evidence at the trial. Constable Cunningham, who also gave evidence, contradicted Constable Schroeder, and, following a remark by the trial Judge, an inquiry was held by the Police Department. Mr. Windeyer asked the Court to look at this report, which, he said, was unfavourable to Constable Schroeder.

To enable the transcript of the evidence and the report to be typewritten for presentation to the Court, the appeal was ordered to stand over for a fortnight.

Mr. Windeyer, K.C., and Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for the appellant.<sup>[637]</sup>

### **30 July, 1932. Gold Seized – Brought from New Zealand**

About £1000 worth of old gold, Jewellery, and sovereigns was the subject of proceedings in the Central Police Court and Equity Court yesterday. Percy John Wince, 36, steward, was charged during the morning at the Central Police Court with having had the valuables, which might reasonably be suspected of having been stolen, in his possession on July 16.

It was stated that the gold and jewellery had been seized by the Customs authorities when Wince arrived from New Zealand. The police were called in and Wince was arrested.

The police announced that they had no evidence to offer on the charge, and Wince was discharged by Mr. Laidlaw, C.S.M.

Mr J. J. B. Kinkead, who appeared, for Wince, asked that an order be made for the return of the gold to Wince, who had been carrying it to a Sydney firm of gold buyers. He understood that as the export duty on the gold had not been paid in New Zealand, the police intended to ship it to New Zealand during the afternoon on the Zealandia. The interested firm was prepared to pay the duty.

Mr. Laidlaw, C.S.M., said he had no power to make an order, and Mr. Kinkead announced that he would take the matter to a higher Court immediately.

### **Injunction Restraining Shipment.**

Early in the afternoon Mr. E. D. Roper, instructed by Messrs. Garrett, Christie, and Berne, applied to the Chief Judge in Equity for mandatory injunction to restrain the Commissioner of Police from shipping the gold taken from Wince, and the Huddart, Parker Company from handling it. Arrangements had, he said, been made to send the gold to New Zealand by the Zealandia sailing that day. The application was made on behalf of Garrett and Davidson, Ltd., metallurgists. The Court was informed that the firm had employed one, George Washington, to buy gold in New Zealand, and that Washington, having purchased 350 sovereigns and £650 worth of broken jewellery, placed the gold in the custody of Wince to bring to Sydney by the Niagara.

The proceedings at the Police Court having been outlined by counsel, his Honor granted the injunction asked for.

### **Further Charge.**

Wince was again brought before the Central Police Court late in the afternoon. He was charged by

warrant that at Auckland on July 13 he was knowingly concerned in the fraudulent evasion or attempted evasion of duty payable on the export of gold.

Mr. Shepherd. S.M. remanded him until August 5 on bail of £50.<sup>[638]</sup>

### **2 August, 1932. May Seek Pardon Now**

When Michael Sarah was convicted by a jury of having assaulted a girl under the age of 16, Judge Curlewis said the verdict was "outrageous." The Court of Criminal Appeals said the finding was "unreasonable" but refused to upset it. To-day the High Court refused special leave to appeal, but the Chief Justice told Mr. Kinkead (for Sarah) that he could apply to the Attorney-General for a pardon.<sup>[639]</sup>

### **3 August, 1932. Law Report – High Court of Australia**

(Before Sir Frank Gavan Duffy, C.J., Mr. Justice Rich, Mr. Justice Starke, Mr. Justice Dixon, Mr. Justice Evatt, and Mr. Justice McTiernan.)

#### **Application Refused**

Michael Sarah asked for special leave to appeal against a decision of the New South Wales Court of Criminal Appeal, which had dismissed his appeal against his conviction before Judge Curlewis at the Darlinghurst Quarter Sessions on a charge of assaulting a female under the age of 16 years, was an act of inaeency.

It was stated yesterday by Mr. Kinkead that after the jury had returned its verdict, which Judge Curlewis had described as "outrageous," his Honor bound Sarah over in £10 to appear for sentence after appeal to the Court of Criminal Appeal. That Court having dismissed the appeal, his Honor had bound Sarah to come up for sentence after the hearing of the application to the High Court.

Mr. Kinkead said that at the trial the Judge had summed up in favour of Sarah and had intimated to Mr. Kinkead that he did not think he need address the jury. Upon that intimation Mr. Kinkead did not address the jury, and neither did the Crown Prosecutor.

The Chief Justice: You have another course. You can apply to the Attorney General for a pardon. The Trial Judge has said that it was an outrageous verdict, and the Court of Criminal Appeal had said that it was an unreasonable finding, but that the Court would not interfere with it.

After further argument, the Chief Justice, without calling on the Crown, said: "We all think this is not a suitable case for special leave to appeal. The application will be refused."

Mr. J. J. B. Kinkead and Mr. Wilfred Collins (instructed by Mr. F. A. Newnham) appeared for the applicant; and Mr. T. S. Crawford (instructed by Mr. G. C.B. Champion) for the Crown.<sup>[640]</sup>

### **5 August, 1932. Condemned Man Not Father of her Child**

#### **Ex-employee of Rev. Hammond Accused of Vagrancy**

When Police Prosecutor Leary asked a young woman charged with vagrancy in the witness box at the Central the other day whether it was not a fact that a man now lying under sentence of death at Long Bay was the father of her child, he opened up a line of investigation that brought a curious triangle in its train. The girl herself is well-known to the police as a street walker. The condemned man is as favorably, or as unfavorably known in the underworld. And the third person .... All Sydney knows him. He is a clerk in holy orders, the Rev. R. B. S. Hammond, well-known missionary.

The young woman at whom the Prosecutor hurled his curious question was Doris Williams, a 21 - year-old domestic; and her indignation was so great that she shouted back : 'I object to that

statement. I have proof here in my letters. . . .' At the moment she did not disclose the name of the baby's father, but it came out later.

Williams had been charged with vagrancy. Sgt. Workman told the Court that on the night of July 9 he saw Williams in Elizabeth Street in company with Elsie Kay and Rosie Weir, both of whom were convicted thieves and street walkers.

'I said to her,' continued Workman, 'You have been given a chance, and it is conditional that you keep away from Kay. You know this woman is only using you as a decoy by which she robs men and she won't let you away from it unless you try your self. Elsie Kay and Vera Lewis live on you.'

Williams, he alleged, replied: 'You know how I get my living. I do it quietly.'

Constable Brown stated that defendant had been given a chance by Judge Curlewis at the Appeals Court. His Honor varied a sentence by binding her over to be of good behavior for two years, and refraining from associating with Kay or Lewis.

Williams, in defence, said her real name was Mary Malone, and she lived at 55 Darley Road, Randwick. A man whom she had known for years as the chief steward on a 'Bay' liner, was the father of her child, and he paid her £2/10/- a week. On the night in question she had no knowledge that she was going to meet Kay.

Mr. Leary: Do you know a man named Guy Kingsbury?

Elsie Kay's husband? I know Elsie Kay, but not her husband.

Is it not a fact that you were arrested and charged with Elsie Kay with robbing a man in the flat where Elsie Kay lived. Did Elsie Kay rent that flat?— No.

Is it not a fact that Guy Neville Kingsbury is the father of your child?

No. I object to that statement. I have proof here in my letters.

What date was your child born? — Is there, any need for that to be mentioned?— In 1931. It is 11 months old now.

You say a chief steward contributes to the support of that child?— Yes.

Was there any need for you to go out in the street and accost men?— I was on the road. ...

The Magistrate : What do you mean by on the road? — You get to know girls by being down the street.

After admitting to Mr. Leary that she had had certain convictions recorded against her, the Police Prosecutor asked :

If the father is contributing to the support of, your child, what is the necessity to go out into the street?— I do that of my own accord.

How often do you get money from this chief steward? — T get letters from all the Australian ports, and the money arrives in large sums — in bank notes.

To the Magistrate, Williams said the chief steward paid her £10 a month. She produced a bank book in the name of Mary Malone.

Mr. Leary: Since 1930 we have no record of her as Mary Malone. Your Worship.



At this stage Mr. Newnham, who appeared for Williams, jumped to his feet in protest. 'As an officer of the Court,' he said, 'I knew the defendant as Mary Malone when she was employed by the Rev. R. B. S. Hammond.'

In reply to the magistrate. Williams said she was identical with Mary Malone, Commonwealth Savings Bank depositor. At present she had a bank balance of £20/12/0.

Williams was discharged.

There was an interesting sequel on Friday last when, through his counsel, Mr. Windeyer, K.C., and Mr. Kinkead, Guy Neville Kingsbury, who was found guilty and sentenced to death for wounding *Sidney Devine* with intent to murder, asked the Court of Criminal Appeal to grant him a new trial on various grounds.

The gallery had just emptied of the members of the public. who had packed the Court to hear William Cyril Moxley make his final, but unsuccessful appeal, from his death sentence.

As the name of Kingsbury was mentioned, an attractive, neatly-dressed young woman tiptoed silently through the side door of the gallery, and took, up a position in the front row. Her pale blue beret was the only, spot of color amid the drab surroundings. For an hour she sat there listening to arguments by 'Kingsbury's counsel. She was Doris Williams.<sup>[641]</sup>

#### **6 August, 1932. When the Police Differ – One's Rank Reduced After Evidence**

For Guy Neville Kingsbury, sentenced to death last March for shooting at *Sydney Vincent Devine*, with intent to murder, another week must pass before his appeal is finalised.

Yesterday his case came before the Court of Criminal Appeals, when Mr. Windeyer, K.C. (with Mr. Kinkead), argued that a retrial was imperative.

One of the arresting policemen had been called for the Crown and another for the defence, and Mr. Justice James, trial judge, had said that one had committed perjury.

One of the two officers has since been reduced to uniform rank following a departmental inquiry into his evidence for the Crown.

The appeal was adjourned until next Friday.<sup>[642]</sup>

#### **9 August, 1932. Quarter Sessions (Before Judge Curlewis )**

Crown Prosecutors, Mr. McKean, K.C., and Mr. Kinkead (instructed by Mr. G. C. B. Champion.)

#### **Trial Postponed.**

Patrick Burton, 44, foreman overseer, and John Leahy, 50, contractor, were to have been charged with conspiracy to defraud the Waverley Council.

Mr. McKean said that the town clerk of Waverley, Mr. Mackinnon, who was one of the principal witnesses, was unable to attend, owing to the serious illness of his wife. He suggested that the matter be taken out of the list. It was his intention to recommend that the case be heard in the Central Criminal Court.

The matter was taken out of yesterday's list.

Mr. W. R. Dovey (instructed by Mr. W. M. Niland) appeared for Burton; and Mr. W.M. Niland for Leahy.<sup>[643]</sup>

**11 August, 1932. Quarter Sessions (Before Judge Curlewis.)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. G. C. B. Champion).

**Boilermaker Acquitted.**

William John Stain, 38, boilermaker, was charged with a serious offence against a girl under 16 years of age, at Enfield. The Jury returned a verdict of not guilty. Stain was discharged.

Mr. J. J. B. Kinkead (Instructed by Messrs. Mervyn Finlay and Jennings) appeared for Stain.

**Theft Of Motor Car.**

William Anderson, 26, mechanic, and Percy James Ball, 22, milk carter, were charged with having stolen a motor car. The Jury found Anderson guilty, and Ball guilty with a recommendation to mercy. Anderson was sentenced to 12 months' imprisonment. Ball was bound over to be of good behaviour for three years, and to appear for sentence if called upon within that time.

Mr. J. J. B. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Anderson.<sup>[644]</sup>

**12 August, 1932. Quarter Sessions (Before Judge Curlewis.)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. G. C. B. Champion).

**Smelter Acquitted**

Edward Rankin Gardner 25 smelter was charged with having broken and entered and stolen a motor car. There was an alternative charge of receiving Without leaving the box the jury returned a verdict of not gullyty and Gardner was discharged.

Mr J J B Kinkead (instructed by Mr Fred A Newnham) appeared for Gardner.

**Three Men Charged**

Leo Smith 26 barman Albert Mackey 28 motor mechanic and Thomas Leslie Dorter 27 salesman were charged with breaking entering and stealing 14,847 cigarettes and 1400 cigars the property of Christopher Richards.

By direction the jury returned a verdict of not guilty in the case of Dorter who was discharged.

The jury found Smith guilty of receiving with a recommendation to mercy Mackey was found not guilty on both counts.

Smith was bound over to be of good behaviour for three years and appear for sentence if called upon within that time a condition being that he pay £5 compensation.

Mr Sheahan (instructed by Mr P N Roach) appeared for Smith Mr J J B Kinkead (instructed by Mr P N Roach) for Mackey and Mr P N Roach for Dorter.<sup>[645]</sup>

**14 August, 1932. Amazing Story Surrounds Girl of Thirteen****Married Man and Wife Who Promised to Keep Her Secret**

An amazing story surrounding a girl of thirteen, in which it was stated that she had written down the names of nine men and boys who had been on familiar terms with her, was told at the Darlinghurst Quarter Sessions last week.

William John Stain, who was charged with having committed a serious offence on the girl, told his Honor, Judge Curlewis, that he and his wife knew of the allegations regarding the nine men and boys, but had promised to keep the girl's secret.

The girl, who subsequently became a mother, denied that she had written the names, but well-known solicitor, Mr. Mervyn Finlay entered the witness box and declared that he had seen the document. The writing, he said, was identical with a sample he had taken of the girl's hand-writing.

The alleged offence was stated to have taken place at Enfield In December, 1931; but after an hour's retirement the jury returned a verdict of not guilty and Stain was discharged.

The Senior Crown Prosecutor, Mr. McKean, K.C., appeared for the Crown, and Mr. J. J. B. Kinkead, instructed by Mervyn Finlay and Jennings, appeared for Stain.

'That somebody has interfered with the girl is beyond dispute, seeing that she has given birth to a child,' said Mr. McKean in outlining the case to the jury. 'The whole of the Crown case depends on the girl, and her alone. Juries must be warned that, although they can convict without any corroboration, they should not do so. In this case there is no corroboration, but there are some peculiar aspects,' he went on.

'It appears that the girl was in the habit of visiting accused's house. He is a married man of good character, and the girl says he interfered with her, which led to her condition. One strange fact is that she said nothing to her mother until she was in a certain condition.

'That may cause you to wonder whether she is a girl of good moral character. Accused says that she is not,' added Mr. McKean.

Wearing a brown overcoat, with fur collar, and a closely-fitting hat, the girl said she lived with her parents at Enfield at the time of the alleged offence. She had been going to Stain's house, next door, to mind his children.

About two years ago, she said, something happened in the bedroom, and the offence had been repeated many times since. On the first occasion the offence took place at night while accused's wife was away from the house.

On another occasion it had happened in the kitchen while Mrs. Stain was ill in bed. Accused had always used force, but she had not cried out, although she had struggled.

The offences, she went on, had taken place once and sometimes twice a week. She had not told her mother. On July 4, 1932, a child had been born to her.

She told Mrs. Stain about her condition, and informed her mother a week later. Mrs. Stain had told her to tell her mother.

Mr. Kinkead: Didn't Mrs. Stain ask you if there was anything the matter with you? — Yes, she asked me first.

Did you tell your mother?— 'About a week later.

Did Mrs. Stain ask you who was responsible?— No.

When your mother asked you didn't you say, 'I don't know'?— No.

Didn't you tell your mother that you didn't know who was the cause of your trouble? — I don't think I said anything, I was too upset.

Do you remember your mother telling a lot of boys that you were only 14?— No.

Didn't you have some boys in your house while your mother was away at Wollongong with your father?— No.

You and your sister were in the house alone?— No, my married sister was with us.

His Honor: You say you didn't tell your mother about Stain's conduct towards you? — No.

Why?— Because he threatened to cut my throat if I mentioned the matter.

To Mr. Kinkead, the girl said that Mrs. Stain had offered to give her medicine when witness told her of her condition. Witness said she told her mother, who had refused to let her take the medicine. The girl's mother then took her daughter's place in the witness-box. She said she asked her daughter on November 19 who was the cause of her condition, and she replied that she did not know. Her daughter had not spoken to her about medicine.

Mr. Kinkead: Did you ever warn some boys on the corner?— I did warn some larrikins, who laughed and sniggered when I passed with my daughters. I would not have them speaking to my daughters or myself.

'When I told accused what the girl had alleged against him, he said, 'She is a wicked little liar,' ' said Detective Sergeant Dye, the next witness.

Accused told him, went on the detective, that the girl, in his and his wife's presence, had written out the names of nine men and boys, whom she said had interfered with her.

'He told me,' continued the witness, 'that although he knew the class of girl she was, he did not prevent her going to his home.'

Stain then entered the witness-box and gave a direct denial to the girl's allegations. He added that she was very loose in her talk with him and his wife.

Mr. McKean: You told Det. Dye about her statements of her immoral conduct?—' Yes.

Why did you allow her to come to your house after that? — Well, it was her mother's wish— her family was on the dole and she used to come in for tea.

Did you ever tell her mother?— Well, I told her that the boys used to pull her about, and she said I was bad-minded.

His Honor: You and your wife knew that the girl was being interfered with by nine men and boys, yet neither of you lifted a finger to save her, and promised to keep secret what she had told you? — Yes, but my wife took her aside and gave her a good talking to.

And so you put yourself forward as a moral man?— Yes. 'I will ask the jury if it wouldn't expect any man or woman to have gone out of their way to save the girl,' said his Honor.

The accused's wife, Vera Stain, was the next witness. She said she was with her husband when the girl wrote out the names on a piece of paper. She heard her make statements about her conduct with the owners of the names.

I said to her mother, 'You don't know how loose Ivy is with her talk in front of Mr Stain and she said, 'Yes, I do, she is the same at home,' said witness.

Mrs. Stain added that the girl's mother had told her that a man had informed her he had seen the girl in a paddock with a man. 'I did not tell her mother that she had been interfered with by nine men,

because she shut me up each time I said anything to her about her daughter , and said I was bad-minded,' added Mrs. Stain.

Mr. Kinkead: Did you ever offer to give the girl medicine? — No.

Did she ever tell you who was responsible for her condition?— No.

Witness added that when she asked the girl about her condition she said she was going to tell her mother that a man knocked her down in a paddock.

His Honor: Did you promise to keep it secret when she gave you that piece of paper?— Yes.

Why? - Because she said she would get a belting, and I didn't think it was any use.

Well-known solicitor Mervyn Finlay entered the witness-box. He said he had appeared for Stain at the lower court, and had had the paper bearing the nine names in his possession. He had seen it tendered in evidence at the police court.

'I got the girl to write out a list of names, and I believe the writing was identical said Mr Finlay.

Mrs. Webb, recalled, said that no complaint had ever been made by anyone about her daughters moral character.

'Accused put himself forward as a man of good moral character, and it's for you to say what you think of that. As far as character goes, the less said about that the better,' said his Honor, during the course of his summing up. After a retirement of one hour, the jury returned a verdict of not guilty, and Stain was discharged.<sup>[646]</sup>

#### **20 August, 1932. Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Philip Street, Mr. Justice Davidson, and Mr. Acting Justice Boyce.)  
Appeal Dismissed.

#### **Rex v Kingsbury.**

The Court unanimously dismissed the appeal of Guy Neville Kingsbury, who had been found guilty on a charge of feloniously wounding *Sydney Vincent Devine* with intent to murder him.

In giving judgment, the Chief Justice said it was admitted that Kingsbury shot Devine, and the substantial question for consideration was what were the circumstances in which he did so. No third person was present when the shooting took place. Kingsbury's story was that he acted justifiably in self defence.

One of the features of the trial was a serious difference between the evidence of Constable Schroeder and Constable Cunningham, relating to the attitude and behaviour of Kingsbury at the time of arrest. The Chief Justice, after discussing this aspect of the case, said that a month or so after the trial, and as a result of the remarks made by the trial Judge, a police departmental inquiry was held regarding the evidence given by Schroeder and Cunningham. A number of witnesses were examined, not on oath, and there was a considerable conflict of testimony, both as to what took place in the house at the time of the arrest and also subsequently to it, after other police had arrived upon the scene. The Chief Justice said that the variance between the different descriptions of Kingsbury's demeanour after the arrest was astonishing, and it was very difficult to understand; but it was not necessary to discuss the statements in detail. It was apparent that there was a great deal of ill-feeling between Schroeder and Cunningham, and the variance between the stories which they told was emphasised by what took place at the inquiry.

The Chief Justice pointed out that the only ground upon which the appeal could be rested was the ground that there had been a miscarriage of justice. What the Court was really asked to do was to reopen the matter in order that the defending counsel might have an opportunity of more effectively cross-examining Constable Schroeder. The Court did not believe that this was a sufficient ground for asking for a fresh inquiry. The Court believed that it would be creating a very dangerous precedent if the Court quashed the conviction and ordered a new trial on such a ground as that. There was nothing in the evidence taken at the departmental inquiry affording any ground for saying that it would be a miscarriage of justice to allow the verdict to stand.

The Chief Justice said the Court did not believe that the fresh evidence which had been outlined in the affidavits was so material that without it a miscarriage of justice might be said to have taken place, and the Court did not believe that a satisfactory reason had been given as to why it was not called at the first trial.

As his Honor concluded, a woman rose in the gallery and called out, "There is no justice." She walked out of the Court crying bitterly.

Mr. Windeyer, K.C., and Mr. Kinkead (instructed by Mr. Fred A. Newnham) appeared for the appellant; and the Solicitor-General (Mr. Weigall, K.C.), instructed by the Deputy Clerk of the Peace (Mr. Champion), for the Crown.<sup>[647]</sup>

### *23 August, 1932. Quarter Sessions (Before Judge Curlewis)*

#### **Judge's Warning**

Ernest Victor Aston Grimshaw 19, pleaded guilty to a charge of housebreaking. His Honor, in sentencing Grimshaw to 18 months' imprisonment, warned him that the next time he appeared before the Court he would be declared a habitual criminal.

The police stated that Grimshaw worked alone when he committed offences.

Crown Prosecutors, Mr McKean, KC, and Mr Kinkead (instructed by Mr G O B. Champion)

#### **Alleged Conspiracy.**

Patrick Burton, 44, foreman overseer, and John Leahy 50, contractor were charged with having conspired to defraud the Waverley Council.

In outlining the Crown case, Mr Kinkead said that the period covered in the allegations was from October to November, 1931. Burton was foreman of works in the employ of the Waverley Council in that position he made out the amounts to be paid to Leahy. It was alleged that there had been overcharging of the council for material, and in respect of hours worked. One man, it was stated had been credited with having driven three different lorries at the one time.

The hearing had not concluded when the Court rose till to-day.

Mr Dovey (instructed by Mr W M Niland) appeared for Burton, and Mr, W M Niland for Leahy.<sup>[648]</sup>

### *23 August, 1932. Court Of Criminal Appeal.*

(Before the Chief Justice, Sir Phillip street, Mr. Justice James, and Mr. Justice Stephen.)

#### **Rex v Kelly And Messervy.**

The Chief Justice announced that Judgment would be given later in the week in the appeals of Alan George Kelly and Henry Edwards Messervy, who were convicted at the Sydney Quarter Sessions on

May 25 on charges of having demanded property by menaces and were sentenced to three and five years' imprisonment respectively by Judge Coyle.

Mr. Kinkead and Mr. G. R. Parker (instructed by Mr. William Parker) appeared for Messervy, and Mr. G. R. Parker (instructed by Mr. William Parker) for Kelly.<sup>[648]</sup>

**24 August, 1932. Quarter Sessions (Before Judge Curlewis.)**

Crown Prosecutors, Mr. McKean, K.C., and Mr. Kinkead (instructed by Mr. G. C. B. Champion.) Ernest Victor Aston Grimshaw, 21, motor mechanic, pleaded guilty to breaking and entering the dwelling house of Rowena Gwendoline Cleary, at Double Bay. He was sentenced to 12 months' imprisonment, concurrent with a previous sentence.

**Twelve Months' Imprisonment.**

Donald Buchanan, 26, traveller, pleaded guilty to stealing a motor car, and breaking and entering a shop. He was sentenced to 12 months' imprisonment on each charge concurrent.

**Alleged Conspiracy.**

The hearing was resumed of the charge of conspiracy to defraud the Waverley Council preferred against Patrick Burton, 44, former overseer, and John Leahy, 50, contractor. Accused were allowed bail till to-day, when further evidence will be heard.

Mr. Dovey (instructed by Mr. W. M. Niland) appeared for Burton; and Mr. W. M. É Niland for Leahy.<sup>[649]</sup>

**25 August, 1932. Quarter Sessions (Before Judge Curlewis)**

(Crown Prosecutors, Mr. McKean, K C, and Mr. Kinkead (instructed by Mr. G. C. B. Champion.)

**Alleged Conspiracy.**

The trial was continued of Patrick Burton, 44, foreman oval beer, and John Leahy, 50, contractor, who were charged with conspiring to defraud, the Waverley Council.

The hearing had not concluded when the Court rose till to-day:

Mr. Dovey (instructed by Mr. W. M. Niland), appeared for Burton, and Mr, W. M. Niland for Leahy.<sup>[650]</sup>

**26 August, 1932. Quarter Sessions (Before Judge Curlewis)**

(Crown Prosecutors, Mr. McKean, K C, and Mr. Kinkead (instructed by Mr. G. C. B. Champion.)

**Alleged Conspiracy.**

The trial was continued of Patrick Burton, 44, foreman oval beer, and John Leahy, 50, contractor, who were charged with conspiring to defraud, the Waverley Council.

The hearing had not concluded when the Court rose till to-day:

Mr. Dovey (instructed by Mr. W. M. Niland), appeared for Burton, and Mr, W. M. Niland for Leahy.<sup>[651]</sup>

**26 August, 1932. Refused Leave To Appeal**

The Full Court of Criminal Appeals to-day dismissed the application for leave to appeal on behalf of Henry Edward Messervy and Allen George Kelly, who were convicted at the Darlinghurst Quarter Sessions on May 27 and sentenced to five and three years' imprisonment, respectively, on a charge of demanding money, by menaces, from Edward Montgomery Perrott, a well-known grazier, of "St. Alban's," Scone.

Mr. Kinkead and Mr. Q. R. Parker (instructed by Mr. W. Parker), appeared for Messervy, and Mr. G. R. Parker (by Mr. W. Parker), for Kelly, and the Solicitor-General (Mr. Weigall, K.C.), for the Crown.<sup>[652]</sup>



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**27 August, 1932. Quarter Sessions (Before Judge Curlewis)**

(Crown Prosecutors, Mr. McKean, K C, and Mr. Kinkead (instructed by Mr. G. C. B. Champion.)

**Alleged Conspiracy.**

The trial was continued of Patrick Burton, 44, foreman overseer, and John Leahy, 50, contractor, who were charged with conspiring to defraud the Waverley Council

In a statement, Burton said that he had had a large number of works in the municipality in which there were 90 miles of streets. What he did was on the instruction of the then engineer, and the practice when a job was under-spent was to transfer the money to an over-spent job. He denied that he had ever gone to Leahy's place, and also denied that he had ever altered the dockets.

Leahy, in a statement, said that he had never done anything wrong. The accounts were made out for him from the dockets, and rendered to the council. When it was brought to his notice that he had been overpaid, he offered to work out the amount of the over-payment.

Addresses were entered upon, and the hearing will be resumed on Monday.

Mr. Dovey (instructed by Mr. W. M. Niland) appeared for Burton; and Mr. W. M. Niland for Leahy,,

**Bankstown Eviction Cases.**

Mr. McKean stated that by an arrangement between counsel for the defence and the Clerk of the Peace, the trial of fourteen men on charges of resisting constables in the execution of their duty, at Bankstown, was set down for September 19. The names of the men are:-John Bowles, John Arthur Terry, Douglas Owen Kendall, Daniel Sammon, Alexander Makoroff, George Cannon Hill, Jack Hansen, Richard Alexander Eatock, John Corbett, Andrew Thompson, Robert Mitchell, Arthur Tidman, Murray Cleveland Lavender, and John Parsons.

**One Month's Imprisonment.**

Joseph Jack Durning, 42, boilermaker, pleaded guilty to having falsely pretended to a constable at Katoomba that he had not earned any money for a certain fortnight, by means of which he obtained a food relief order with intent to defraud Durning was sentenced to one month's imprisonment.

**Broke And Entered.**

John McLean, 20, and Horace Harbridge, 18, labourers, pleaded guilty to breaking and entering at Lithgow. Both accused told his Honor that they committed the offence to obtain boots. A man in Court offered to provide boots for McLean.

McLean and Harbridge were each bound over to be of good behaviour for two years, and to appear for sentence if called upon within that time.

**Two Years' Imprisonment.**

Harry Valentine, 23, clerk, had pleaded guilty to indecent assault. He was sentenced to two years' imprisonment, to date from August 1.

**Waiter Bound Over.**

Sidney James Forknall, 26, waiter, had pleaded guilty to common assault.

His Honor said that as Forknall's wife seemed satisfied, he would not send him to gaol.

Forknall was bound over to be of good behaviour for two years and to appear for sentence if called upon within that time. His Honor told Forknall that if he assaulted his wife again he would be sentenced for the offence for which he had been bound over.<sup>[653]</sup>

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**27 August, 1932. Law Report - Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Philip Street, Mr. Justice James, and Mr. Justice Stephen.)

The Solicitor-General, Mr. Weigall, K.C., instructed by the deputy Clerk of the Peace, Mr. Champion, for the Crown.

**Appeals Dismissed.****Rex v Messervy and Kelly.**

In giving the unanimous judgment of the Court disallowing the appeals of Alan George Kelly and Henry Edward Messervy, the Chief Justice said that a more melodramatic story than that unfolded in the course of the proceedings had seldom, if ever, come before the Court.

Messervy and Kelly were tried upon an indictment of three counts, each charging them with having, on February 5, at Bondi, demanded with menaces of Perrott, a grazier, of Scone, his money with intent to steal it from him. They were found guilty on all three counts. Judge Goyle, who presided at the trial, sentenced Kelly to three years and Messervy to five years' imprisonment.

The Chief Justice, in disposing of the first ground of appeal--that the evidence was insufficient to support any of the charges--said that all the elements of the offence charged were present, according to Perrott's story, which apparently was accepted. The case of *Rex v Edwards and others* (6c and p.515) had been pressed forward as an authority showing that the circumstances were insufficient to support the charges. The case was very shortly reported; but the facts showed that it was of a different character altogether. The next question which had been debated was whether the summing up was so inadequate as to afford no guidance to the jury, and whether, in these circumstances, it would be a miscarriage of justice to allow the verdict to stand. Messervy's defence, in part, was that all that he did was done in the bonafide prosecution of what he believed to be a just claim, and that he used no menaces or threats, and exercised no coercion over Perrott. Kelly said that he only came into the matter as a friend, to help Messervy in enforcing what he believed was a just claim, and he also said that what Perrott did was done voluntarily, and that no improper pressure or coercion or threats were used. What was said in argument on this appeal was, in effect, that the trial Judge merely threw the facts at the jury, leaving them to choose between the two versions put before them, without any explanation of the necessary elements of the offence; without telling them that it was for them to decide whether Perrott had been frightened into acting as he did; without giving them any directions on the question of what was meant by intent to steal; and without giving any proper direction, or in fact any direction, as to how they should deal with the defence. No doubt there was much left unsaid which might usefully have been said, and the trial Judge might, with advantage, have been fuller and more explanatory in his remarks, but the Court believed that he probably took the view that the indictment sufficiently explained the nature of the charge, and that the facts spoke for themselves without needing any further comment than what he had made.

The Chief Justice, after quoting other cases, asked whether, applying the principles enunciated therein to the facts of this case, there was any doubt but that the evidence was such that the jury must have found all the prisoners guilty if they had been properly directed? The Court did not think that there could be any doubt. Nor did the Court believe that any body of reasonable men acting reasonably could have come to any other conclusion than that the Crown had made out its case, and that the defence was so extravagant a suggestion that no reasonable man could accept it.

Refusing an application by counsel that there should be reconsideration of the sentence passed on Kelly, the Chief Justice said: "If the idea was to go abroad that things of this kind were allowed to be done with impunity, then an intolerable state of affairs would exist. No man would be safe. The sentence erred on the side of leniency."

Mr. Justice James: I agree. It was a dastardly crime.

Mr. Kinkead and Mr. G. R. Parker (instructed by Mr. William Parker) appeared for Messervy; and Mr. G. R. Parker (instructed by Mr. William Parker) for Kelly.<sup>[653]</sup>

### **30 August, 1932. Quarter Sessions (Before Judge Curlewis)**

(Crown Prosecutors, Mr. McKean, K C, and Mr. Kinkead (instructed by Mr. G. C. B. Champion.)

#### **Not Guilty.**

The trial was concluded of Patrick Burton, 44, foreman overseer, and John Leahy, 50, contractor, who were charged with conspiracy to defraud the Waverley Council. The trial had lasted eight days.

The jury returned a verdict of not guilty. Burton and Leahy were discharged.

Mr. Dovey (instructed by Mr. W. M. Niland) appeared for Burton; and Mr. W. M. Niland for Leahy.<sup>[654]</sup>

### **30 August, 1932. Law Report - High Court Of Australia.**

(Before Mr. Justice Rich, Mr. Justice Dixon, Mr. Justice Evatt, and Mr. Justice McTiernan.)

#### **Death Sentence.**

Mr Windeyer asked for special leave to appeal on behalf of Guy Neville Kingsbury, 42, who was convicted at the Central Criminal Court on March 17, 1932, before Mr Justice James, of wounding *Sydney Vincent Devine* with intent to murder, and was sentenced to death. Mr. Windeyer said that the Court of Criminal Appeal had dismissed the appeal. His application to the High Court did not go further than for leave to ask for a new trial.

Mr Windeyer said there was no doubt that, up to the time of whatever happened, the two men were good friends. After Kingsbury and Devine had been together for some time, Devine was invited to Kingsbury's house. The defence was that they had been in each other's company, the one drinking and the other not drinking. Devine then asked Kingsbury to drive him home, and Kingsbury declined to do so. Devine was then alleged to have said that he would get "*Big Jim Devine* and others and clean them up." Kingsbury then reached the belief that he was to be attacked by Devine, who was shot in the arm. An outstanding feature of the case was that there was no motive suggested for the shooting. The Crown case was that the shooting took place because Kingsbury was in a state of frenzy. The story both by Devine and the prisoner was that at the time they were alone. It was, therefore, very important to ascertain what were the manner and demeanour of accused when the police came on the scene shortly afterwards. In the summing up, the jury were told to pay attention to the evidence given by the police as to a threat Kingsbury was alleged to have made, and as to his conduct immediately after the arrival of the police. Undoubtedly, there were two police officers on the scene, and the evidence given by one of those police officers, Constable Schroeder, was very damaging evidence, which his Honor relied upon in his summing up to the effect that Kingsbury had made use of a threat that he would shoot the Devines and shoot Constable Schroeder, too. The evidence of the other police officer, Constable Cunningham, was of an entirely different character.

Constable Cunningham said that Kingsbury submitted to arrest and that there was no struggle. The trial Judge had called attention to that remarkable discrepancy in the evidence. The jury, acting upon the obvious suggestions of his Honor in the summing-up, accepted the evidence of Constable Schroeder, whose evidence was to the effect that Constable Cunningham could not have been present at a certain important time, and that he did not take a prominent part in the proceedings. His Honor suggested in his summing up that there should be an inquiry. A very lengthy departmental inquiry was held, and the police authorities stated definitely that Constable Schroeder was not telling the truth, that he had not given false evidence to obtain a conviction, but was actuated by a desire to

get kudos for himself. It was a departmental inquiry, and the evidence was not given upon oath, but it resulted in Constable Schroeder being disgraced.

Mr. McKean: He was not disgraced.

Mr. Windeyer: He was removed from the plainclothes police and put back into uniform.

Mr. Justice Dixon: Was that brought before the Court of Criminal Appeal?

Mr. Windeyer: Yes. The position was that the jury had convicted after being invited to choose between the two constables. The inquiry which was held established that Constable Schroeder, who was relied upon by the Crown, was not telling the truth. The inspector who held the police inquiry was definitely of opinion that Constable Cunningham had answered truthfully, as it appeared to him, all questions put to him. The jury were invited to decide the case by weighing the conflicting evidence of those two constables, and the constable who gave evidence for the conviction had been found, after departmental inquiry, not to have told the truth, and the other constable was found to have told the truth and, what was very important, to have been present and in a position to see what did take place. The position had arisen where very grave doubt was thrown upon the evidence upon which the jury were invited to convict. He asked the Court to remember that he only asked for the right to a new trial. The matter could not stay where it was. If necessary, it would have to be dealt with at an inquiry under section 475 of the Crimes Act.

Mr Justice Rich: What ground do you put it on—miscarriage of justice?

Mr Windeyer said it would have to be on the ground of miscarriage of justice.

Mr Windeyer cited a case in which a conviction had been obtained for an assault. A girl had given evidence that, at the time of the alleged offence, she was suffering from scarlet fever, was near her window, and saw the offence, and to that extent there was corroboration. Subsequent inquiry established that the girl was not suffering from scarlet fever at that time, but the previous year, and at the time of the alleged offence was at school. The result was that the conviction was quashed.

Mr Justice Rich said that the Court was somewhat impressed by the insufficiency of the summing up by the trial Judge.

Mr McKean said that the jury heard all the facts, and were entitled to draw their own conclusions as to intent. The shot was fired at close range from a deadly weapon. One hundred odd pellets were in the upper part of Devine's arm, the arm was broken and Devine was 48 days in hospital. Something had been said about the character of the Devines, and although certain members of the family had achieved certain fame, Sydney Vincent Devine had not been prosecuted for anything at all. He submitted that the High Court, in fact no appellate Court, could substitute its opinion for the opinion of the jury.

Mr Justice Evatt: What has happened in this case is that the learned Judge said to the Jury, "who is telling the truth between these two policemen?"

Mr McKean submitted that no miscarriage of justice had taken place.

In replying, Mr Windeyer said that the Court would help the administration of Justice in New South Wales by deciding what was meant by the term, "miscarriage of justice."

Mr Justice Rich said that the Court would consider its decision, and probably would deliver judgment on Tuesday morning.

Mr Windeyer, K.C., and Mr J. J. B. Kinkead (instructed by Mr Fred A Newnham) appeared for Kingsbury Mr McKean, K.C. (instructed by the Deputy Clerk of the Peace, Mr G C B Champion) represented the Crown.<sup>[654]</sup>

**1 September, 1932. Kingsbury's Appeal Allowed by High Court - New Trial Ordered.**

The High Court (Mr. Justice Rich, Mr. Justice Dixon, Mr. Justice Evatt, and Mr. Justice McTiernan) yesterday delivered reserved Judgment in the appeal of Guy Neville Kingsbury, 42, who, on March 17 last, had been sentenced to death by Mr. Justice James on a charge of wounding *Sydney Vincent Devine* with intent to murder him. The appeal was allowed, and a new trial ordered.

In a joint judgment, their Honors reviewed accounts of the happenings given by the prosecutor and the prisoner, and said that neither of those rival stories possessed much verisimilitude. A plainclothes constable of police, who, with a uniformed constable, arrested the prisoner within half an hour of the affair, said in his evidence that he would certainly say that the prisoner was under the influence of some drug. The two constables of police gave different accounts of the conduct of the prisoner when they arrested him. According to the uniformed constable, who was called by the prisoner, he offered no resistance and uttered no threats. According to the plain clothes constable, who was called for the Crown, the prisoner greeted the constables with the statement that he had shot the prosecutor and would shoot them too, and moved towards the gun: that he struggled and was handcuffed only by force.

The trial Judge, said their Honors, gave no direction to the jury upon the question how far the complete absence of motive and the evidence of the frenzied condition of the prisoner, arising probably from drugs as well as drink, should be regarded by them as negating the necessary intent. Whether it did so or not would depend largely upon matters of degree, but in the course which the case took, it was extremely desirable that attention should be directed to the question. Their Honors could not think that the fact that the prisoner adopted another view of the matter could relieve the Judge from the task of dealing adequately with the true tendencies of the evidence in support of the Crown case, including that of the plainclothes constable upon which he laid so much emphasis against the prisoner. The evidence of the uniformed constable was put before the jury as contradictory to that of his comrade, and requiring the jury to choose between them. After the trial and before the hearing of the appeal in the Supreme Court an Inquiry was held by a police inspector into the conflict between the two constables. He took much evidence and made a report, and all that material was laid before the Supreme Court. The Supreme Court also took, as further evidence, testimony of the prisoner's son, who supported much of his father's story. The conclusions of the police inspector were that the uniformed constable answered truthfully as it appeared to him all the questions put to him; that the plainclothes constable's evidence in regard to the prisoner's resistance of arrest and violence generally was much exaggerated.

The Supreme Court, said their Honors, dismissed the appeal substantially on the grounds that the conflict between the constables was an issue fought at the trial, and that the additional evidence was available, and consequently that it could not be said that there was a miscarriage of justice. Their Honors thought that the attention of the Judges of the Supreme Court was not brought to the matters to which they had referred in the learned Judge's charge and to the manner in which the Jury's verdict might, because of that charge, be said to depend upon the jury's belief in the plainclothes constable. While to some material aspects of the case the Jury's attention was not directed, and from others it was diverted, upon a matter presented as most material, subsequent investigations showed that they might have been gravely misled. In those circumstances, their Honors thought that the conviction should be set aside, upon the ground of miscarriage of justice,

and a new trial ordered. Special leave would be granted. The appeal would be allowed. The judgment of the Supreme Court sitting as a Court of Criminal Appeal would be discharged. The conviction would be quashed, and a new trial would be ordered. That did not mean that the Crown might not, if it was so advised, proceed upon a new indictment. Instead of going to a new trial upon the old one.

On the question of bail, Mr. Justice Rich informed Mr. Kinkead that that was a matter for the Supreme Court.

Mr. Windeyer, K.C., and Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Kingsbury. Mr. McKean, K.C. (instructed by the Deputy Clerk of the Peace, Mr. G. C. B. Champion) represented the Crown.<sup>[655]</sup>

#### **6 September, 1932. Quarter Sessions (Before Judge Coyle)**

Crown Prosecutor Mr T S Crawford (instructed by Mr R V Edwards)

#### **Acquitted By Direction**

Richard Charles Blake 28 business agent and Patrick Benedict Power 44 clerk were charged that during May, June and July 1931 they conspired to cheat and defraud Amy Tallon.

By direction the jury returned a verdict of not guilty Blake and Power were discharged.

Mr Kinkead (instructed by Mr Fred A Newnham) appeared for Blake.<sup>[656]</sup>

#### **9 September, 1932. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor Mr McKean K.C. instructed by Mr R.V. Edwards

#### **Matter Mentioned**

Mr Kinkead mentioned the case of Guy Neville Kingsbury 42 who he said had been convicted of wounding *Sydney Vincent Devine* with intent to murder him and had been sentenced to death. The Court of Criminal Appeal had dismissed his appeal but the High Court had ordered a new trial and he would be indicted on a charge of wounding with intent to inflict grievous bodily harm. Mr Justice Milner Stephen had refused Kingsbury bail. The Crown desired to expedite the trial but unfortunately Kingsbury was not prepared to go to trial immediately as he wished to arrange for legal representation.

Kingsbury replying to his Honor said he would like his trial to stand over till the October sittings.

His Honor ordered that the trial be listed for the October sittings of the Quarter.

Mr J J B Kinkead (instructed by Mr Fred A Newnham) appeared for Kingsbury.<sup>[657]</sup>

#### **12 September, 1932. Moree Quarter Sessions Opened This Morning**

The Moree Quarter Sessions opened this morning before His Honor Judge Clancy. Mr. V. H. Treatt was Crown Prosecutor. The visiting barristers were Messrs J. Kinkead and G. E. W. McDonald.<sup>[658]</sup>

#### **15 September, 1932. Indecent Assault Charge**

At Moree Quarter Sessions on Tuesday Thomas Alexander Cupples, an aged man, was charged on three counts

- (1) with attempting to unlawfully know a girl under 16 years of age at Pallamallawa on August 18;
- (2) with assaulting the same girl with intent to commit an offence on her;
- (3) with committing an act of indecency on the same girl on the same date.

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Accused pleaded not guilty to each charge. Mr. V. H. Treatt prosecuted for the Crown, and Mr. J. J. Kinkead, instructed by Messrs. Moodie, Cole and Co. (Moree), appeared for Cupples.

The following jury was empanelled: Messrs. Herbert Coleman, George Thomas Woods, Frederick J. Elliott, George Woods, Arthur Clyne, George A. Denning, Walter McNamara, John N. A. Gallagher, Norman W. Onus, Robert McLelland, Ernest J. G. Cory.

Mr. Treatt, in outlining the case, said that in cases of this nature it was dangerous for a jury to convict on the uncorroborated evidence of a girl. However, in the present case the story told by Margaret Collier Henderson, the eleven-year child whom accused was charged with asaulting, was corroborated by another little girl, Gladys Unwin. He predicted that on the admissions of accused, the jury would probably concentrate on the second count, that of indecent assault.

Margaret Collier Henderson was the first witness and spoke in a low voice. Once, during her cross-examination by Mr. Kinkead, she burst into tears.

On August 18, she said, she went with Gladys Unwin to the cottage of accused at Pallamallawa. Cupples was standing at the doorway and asked them to go into his bedroom. He placed Gladys on the bed and disarranged her clothing and something happened. "Then," continued witness, "he put me on the bed and put some Holloway's ointment on me. Mr. Cupples removed some of my clothing. Something happened." Witness said that after the occurrence Cupples told them to run away, as Mrs. Unwin was coming down with his washing.

Mr. Treatt: Did you ever go to accused's place on other occasions? — Yes.

How long ago?— About a fortnight ago.

Did anything happen? — The same as happened this time.

At this stage the report of the Government analyst was tendered. It revealed that there were traces of fatty material, resembling Holloway's ointment, on the child Henderson's underclothing. A negative report was tendered regarding certain marks on the same clothing.

Cross-examined by Mr. Kinkead, the child stated that she and Gladys Unwin went to school in the morning, but "played the wag" in the afternoon.

Mr. Kinkead: You could see Williams' house from accused's bedroom? — Yes, but not all the time.

Why? — He pulled down blind.

Witness admitted that her mother had gone over the case with her the night before and had corrected her about accused getting off the bed first.

Mr. Kinkead: Did you go down to accused's empty cottage? — Yes, about half-an-hour afterwards. She said she was there about fifteen minutes, and not one hour and a-half, as suggested by Mr. Kinkead.

Mr. Kinkead: Do you talk about naughty things at school? — No.

Do you ever hear your mother and father reading cases like this out of the papers?— No.

Witness said that accused had given her 1/-, and Gladys 6d., after the occurrence and that he had given them money on previous occasions.

Mr. Kinkead: Were you not climbing on the canopy of the bed, or on the brass rail at the back? — No.



What did you do?— I sat on a chair while Gladys was on the bed.

Gladys Nellie Unwin, who was smaller than the previous witness and whose head could be barely seen above the witness box, corroborated the evidence of the Henderson child. She described the occurrence in the bedroom and said that Cupples gave Margaret 2/- and her 6d. afterwards.

Mr. Kinkead: Are you sure he did not give you 2/- and Margaret 6d.? — Yes.

When did you go to the cottage? — We got the keys and went down there after we left the bedroom.

Did you tell your mother about the affair when you got home?— No.

Witness said that accused pulled down the blind.

Mr. Kinkead: Were you not at school at Goondiwindi and did you not have to leave because of complaints?— No.

This witness also wept in the box for a brief period.

Alice Henderson, mother of the first child, told of a conversation with accused after the incident, when he said: "I was only fooling with the children. I only used a little ointment, and it was Holloway's. I had them on the bed. I don't want this to go through the papers."

Witness replied: "I will beat my child," and accused answered: "Don't beat her, flog me! She was only speaking the truth."

Mrs. Unwin, said witness, then said to accused: "That's a nice thing to put before two mothers."

She denied that an Indian, Budda Deen, had been sent down for Cupples. She said that on August 21 she and Mrs. Unwin had another conversation with accused.

Mr. Kinkead: Was there any mention of money then? — No. I did not speak of money.

Did Mrs. Unwin mention £50? — No.

Did accused hire a taxi and take you in to have the matter settled? — I told Constable McKinnon that accused wanted the case settled, but he said he thought it was too late.

You were prepared to have it stopped?— Yes, I did not want my name dragged through the papers.

Witness was questioned about her residence at a place called Kelso Cottage, or Croft's Farm, and denied that a man named Ormond, or Allman, was living with her while her husband was away. Her brothers were with her and Allman only stayed one weekend.

You asked your daughter where she was? -- Yes, she said: I was up at Cupples' playing truant, mum."

Did you know Mrs. Unwin was going down to accused's place that afternoon?— No.

You owe him rent for the cottage you are living in?— Only since the case started. Witness denied that accused had given her or her husband £5 to help bury her mother, Mrs. Foreman. She began to cry under the questioning of Mr. Kinkead.

Mr. Kinkead: Did accused give your husband £5 at all?—Yes, after my mother was buried. I don't know what for.

How do you know your husband got £5?— You just told me. I did not know anything about it.

Did your husband sink a hole on accused's place and was not that credited as £1 off the £5? -- I don't know. Elizabeth May Unwm was closely questioned about a daughter she said lived in Cessnock, also one who lived in Clarence Town. She said she told Cupples she had a sick daughter, but denied that she asked him for £4 to send to her. She said she had come to Pallamallawa from North Star and was living in one of Cupples' cottages. She owed some rent. Under cross-examination witness said that accused made the suggestion about paying expenses up to £10 or £20.

Mr. Kinkead: Was anything said about £100?

Witness hesitated. "Mrs. Henderson said £100. No, I'm telling an untruth."

Mr. Kinkead: Go on, I'm anxious to hear all about the £100. Witness, continuing, said that when accused mentioned £10 or £20, Mrs. Henderson suggested £100, but Witness said, "No, go to the police sergeant about it."

Mr. Kinkead: Did accused say, "You are a bit hot?"— No, he said, "You are a bit high." Then my husband suggested £50 each. Cupples said, "Well, if that will save me, I'll pay it." Witness denied that she had said anything to accused about selling the doctor's certificates, issued after the examination of the little girl.

Mr. Kinkead: Do you know your husband was ordered out of Mr. Cole's office?— No!

Did you get any instructions to keep away from Cupples?— No!

The old chap was good to you?— Yes.

On the day you took the washing down did you ask accused for £1? — No.

Did you say you wanted something for a dance at Pallamallawa on the Saturday night? -- No, I never go to a dance.

George Theodore McKinnon, police constable of Pallamallawa, related a conversation he had with accused, who denied he had used ointment on the children — except to put some on the little girl Henderson's knee when she fell down. He admitted fooling about and romping with the girls.

Witness said Cupples was of good character as far as he knew.

Thomas J. Ellis, police constable of Moree, gave some startling evidence of admissions made by accused. With Sergeant McGrath and Constable Mc Kinnon he interviewed Cupples, who stated he was romping with the girls, but had not hurt them, as he was too old for that sort of thing. He had an operation six years ago. The girls were not fully clad, but they removed some of their clothes themselves. He said he often fooled about with them on the bed. They often came to his place and he gave them money. He said he would not give a statement, as he did not understand legal matters.

Mr. Kinkead: Did you make notes of the conversation as you were going along? — No. I wrote it all out that night for my report.

Did you refer to Sergeant McGrath?— No.

Did you know accused had already answered some of your questions the opposite way to Constable McKinnon? — No, I did not.

Did you enquire of Constable Mc Kinnon what he had asked accused? — No, definitely not.

Had he answered McKinnon as he answered you there would have been no need for the inquisition? — Sergeant McGrath was in charge of matters — I don't know anything about it.

Did you make any enquiries about the blind?— No.

Mr. Kinkead criticised witness for asking accused double-barrelled questions. One question asked, he pointed out, contained nine different points.

Witness said that he just "put things in a nutshell" and took accused's answer as applying to the lot.

To Mr. Treatt: Sergeant McGrath asked accused if he had the girls on the bed and attempted to criminally assault them. Accused replied: "That is not all true, I was romping with them, but I did them no harm."

This closed the Crown case. In a statement from the dock, accused denied that he had interfered with the children, although he was playing with them, on the bed. He did not act offensively towards them. He had given Mrs. Unwin £1 to get food for her children and had also given her £4 to send to her sick daughter down Maitland way. The day she came down with his washing the children were playing in the house. When she came in the children ran out the back way. On one occasion he gave Mr. Henderson a loan of £5 to buy something in connection with the funeral of his mother-in-law. Budda Deen was sent to him by the other parties and he met Mr. and Mrs. Unwin and Mrs. Henderson. They wanted money from him to settle the case and Mrs. Henderson asked for £100. "I said it was pretty hot," said accused, "and Mr. Unwin said what about £50 each. I said that I'd sooner give that than be dragged through the court."

Accused said that the blind in his bedroom would only stay in one position—about half-way up.

Budda Deen, who was sworn on the Koran, corroborated the evidence about taking Cupples to the Unwins. Mr Unwin said: "The women have made a false charge against the old fellow; I will go with you and withdraw it." Mrs. Unwin said she would withdraw the charge, as her statement had not been made on oath.

Dr Hunter, Government Medical Officer, stated that he examined the children, but found no signs of interference. Accused had an operation about four years ago.

Mr. Treatt: Would that operation remove desire? -- It is generally recognised as producing sterility, not impotence.

G. R. W. McDonald, barrister-at-law, corroborated the evidence that the blind would not stay in any position except one about 20 inches from the sill.

Thomas Rigby, grazier of Pallamallawa, said he had known accused for many years and found him very honest and of good morals.

Mr. Treatt: Has accused the reputation for being fond of sexual enjoyment?— That is only hearsay; only loose talk.

But has he not that reputation? — That is natural with all men. (Laughter).

Mr. Kinkead: I hope you don't include your visitors to Moree, (Laughter).

Mrs. Henderson and Mrs. Unwin, recalled, denied that they had conspired to bring a false charge against accused.

Mr. Kinkead, in an eloquent address to the jury, said that the whole thing was a frame-up. Accused was an old man slipping downhill to the sunset and was in his second child hood. It was only natural he would play with children. He described the visit of the three policemen to accused as an inquisition and criticised Constable Ellis for asking doublebarrelled questions. One question was nine-barrelled. "Nine rounds at target 78 and 2 yards," said Mr. Kinkead. He referred to the discrepancies in the evidence of the woman and referred to the cheeky attitude of the girl Unwin, and said the women had frightened the old man and put it on him for money.

Mr. Treatt said the defence had evaded the real issue — whether an offence had been committed. He contended that an offence had been committed, but the cupidity of the parties had been aroused and they attempted to get money.

Accused was quite competent to commit an offence, said the judge, in summing up. The question for the jury to consider was whether an indecent assault had been committed and the evidence of the girls was corroborative in this respect. It was not for the jury to consider whether the mothers were heartless enough to capitalise the misfortune of their children. Constable Ellis had been criticised for asking a long question, covering a series of events, and Mr. Kinkead had argued that the answer referred only to the last clause, "that he had done the girls no harm." However, said His Honor, denials might have been expected to other incriminating clauses in the question. In regard to the ointment on the under clothing His Honor said no evidence had been tendered as to the extent of the grease marks.

After a retirement of about two hours the jury returned with a verdict of not guilty. Accused was remanded till next Sessions on a charge of indecently assaulting Gladys Unwin, 9 years, at Pallamallawa on the same date as the above case. Bail was allowed in two sureties of £50.<sup>[659]</sup>

#### **15 September, 1932. Liquor Act Case – Appeal Upheld**

At the Court of Quarter Sessions, before His Honor. Judge Clancy, yesterday, the appeal by Mr. George Granger, licensee of the Imperial Hotel, Moree, against a conviction by Mr. Hardwick, P.M., for permitting drunkenness on his licensed premises, was dealt with.

The depositions taken in the Police Court were read, and Sergeant Mullins in reply to Mr. Kinkead stated he had seen Slyney in the lane that runs, between Balo and Auburn Streets, about 6.15 p.m. on the date in question, and that he subsequently found Slyney lying oh the seat near the Hotel Bar about 5.50 p.m. He was drunk and taken to the lock-up.

Mr. Granger deposed that on the afternoon in question the barmaid, Miss Norford, was in charge and that he was upstairs. That his instructions to her were that no drunkenness was to be permitted.

Miss Norford stated that Slyney came into the bar a short time before the arrival of the police, and was not served with drink; that he sat on a form under the window near the bar, near Balo Street; that she was looking after the whole of the bar and the lounge adjoining the bar; that her duties kept her towards the western end of the bar, and she did not see Slyney lying down on the seat; that her view from where she was standing was obscured by the bar counter. She further stated that she believed Slyney had walked out of the bar. She did not further see him until the arrival of the police, her attention being attracted by the presence of the police officers; that Slyney had not been served with any drink that afternoon.

His Honor, in giving his decision, stated that the police evidence disclosed that Slyney was found in the bar drunk, but did not go further — that was the only onus on them. It was then a matter for His

Honour to direct attention as to whether the hotelkeeper had taken reasonable steps to prevent drunkenness in terms of the Act.

He was satisfied, on the evidence, that this onus had been discharged, and upheld the appeal and set aside the conviction. Mr. J. J. B. Kinkead (instructed by Mr. W. A. Cole) appeared for Mr. Granger, and Mr. Vernon Treatt represented the Crown.<sup>[660]</sup>

#### **16 September, 1932. Moree Appeal Court**

At the Moree Quarter Sessions Appeal Court, before Judge Clancy, Albert James Warren appealed against a conviction imposed on him by the police magistrate at Boomi on May 17 for stealing, as a result of which he was sentenced to 12 months' hard labour. Mr. J. J. Kinkead, instructed by Messrs. Webb and Boland, Moree, appeared for the appellant. His Honor dismissed the appeal and affirmed conviction, but reduced the sentence to two months' hard labour.

The appeal of George A Granger, licensee of the Imperial Hotel, Moree, against his conviction for allowing drunkenness on his licensed premises, was upheld. Mr. J. J. Kinkead, instructed by Messrs. Moodie, Cole, and Co, Moree, appeared for the appellant, and Mr. V. H. Treatt for the Crown.<sup>[661]</sup>

#### **24 September, 1932. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr. T. S. Crawford, instructed by Mr. H. V. Edwards.

#### **Salesmen Convicted.**

William Frederick See, 27, salesman, and Moses Hyams, 30, salesman, were charged with stealing six watches.

They were found guilty and each sentenced to two years' imprisonment.

Mr Kinkead (instructed by Mr. P. N. Roach) appeared for Hyams; and Mr. P. N. Roach for See.<sup>[662]</sup>

#### **5 October, 1932. Quarter Sessions (Before Judge Coyle)**

#### **Pleaded Guilty**

Albert Beck, 49 carpenter, breaking entering, and stealing (four charges) Mr Kinkead (instructed by Messrs Mervyn Finlay and Jennings) appeared for Beck.<sup>[663]</sup>

#### **6 October, 1932. Son Gaoled - Father's Sacrifice in Vain**

A year's hard labor on each of 42 charges of forgery, the first two to be cumulative, was imposed at the Central Police Court to-day on Kenneth Anderson Raison, clerk, who pleaded guilty to the forgery while in the employ of the Egg Marketing Board. Dramatically rising from the back of the court, Raison's aged father told Mr Shepherd, S.M. he would mortgage his small cottage and pay compensation to prevent his son going to gaol.

After a consultation between the father, Mr. Shepherd, Sergeant Caban (police prosecutor), and Mr. Kinkead (for Raison). Mr. Shepherd said: "I don't think that any father should be allowed to ruin himself for his son. To my mind Raison deserves no consideration whatever. He was in a good position, and these forgeries went on over a period of 12 months."

#### **Went On Gambling**

Mr. Kinkead, in reply to Mr. Shepherd, said that most of the money had gone in gambling, particularly in the State Lottery. The father offered to pay 30s a week compensation by mortgaging his house. Mr. Pegel, of the Egg Board, pointed out that it would take nearly 10 years to pay off the money. After further consultation, Mr. Shepherd decided to send Raison to gaol and not let his old father pay for his wrongdoings.<sup>[664]</sup>

### 6 October, 1932. Quarter Sessions (Before Judge Edwards)

Senior Crown Prosecutor Mr McKean KC (instructed by Mr G C B Champion)

#### Alleged Wounding

Guy Neville Kingsbury 42 was charged that at Maroubia on September 11 1931 he maliciously wounded *Sydney Vincent Devine* with intent to do grievous bodily harm The hearing which will be resumed to day is reported elsewhere In this Issue.

Mr Windeyer KC, Mr Kinkead and Mr Wesche (instructed by Mr Fred C Newnham) appeared for Kingsbury.<sup>[665]</sup>

### 7 October, 1932. Quarter Sessions (Before Judge Edwards)

Senior Crown Prosecutor Mr McKean KC (instructed by Mr G C B Champion)

#### Jury Locked Up.

The trial was continued of Guy Neville Kingsbury, 42, on a charge of maliciously wounding *Sydney Vincent Devine* with intent to do grievous bodily harm. The Jury, having failed to agree, was locked up for the night. The hearing is reported elsewhere in this issue.

Mr. Windeyer, K.C, Mr. Kinkead, and Mr. Wesche (instructed by Mr. Fred C. Newnham) appeared for Kingsbury.<sup>[666]</sup>

### 8 October, 1932. Quarter Sessions

(Before Judge Coyle) - Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards).

#### Pleaded Guilty

Albert Beck, 49, carpenter, had plead guilty to four charges of breaking and entering. He was sentenced to 18 months' imprisonment on each charge, concurrent. J. Kinkead (instructed by Messrs. Mervyn, Finlay, and Jennings) appeared for Beck.

(Before Judge Edwards.)

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. G. C. B. Champion).

#### Jury Disagreed.

The trial was concluded of Guy Neville Kingsbury, 42, who was charged that at Maroubra on September 11, 1931, he maliciously wounded *Sydney Vincent Devine*, with intent to do grievous bodily harm.

The Jury disagreed and was discharged. Kingsbury was remanded on bail. The matter is reported elsewhere in this issue.

Mr. Windeyer, K.C, Mr. Kinkead, and Mr. Wesche (instructed by Mr. Fred C. Newnham) appeared for Kingsbury.<sup>[667]</sup>

### 9 October, 1932. Kingsbury 'Lives' Again After Death Sentence

#### New Jury Disagrees On Devine Shooting Sequel To Amazing Conflict Of Police Evidence

After hearing the death sentence pronounced on him, the guilt of Guy Neville Kingsbury of the shooting of *Sydney Devine* is still clouded and veiled in the mists of the sensational and contradictory story of that crime.

Seven months ago Kingsbury was doomed to the gallows. Appeals followed, and last week he was retried at Darlinghurst. Still the mystery shroud covered the truth. The jury failed to agree, and after having been locked up all night they were discharged by His Honor, Judge Edwards.

Kingsbury was also allowed to leave that court room of haunting memories and returned to his family. He will have to come up for further trial when called upon and was placed on a bond of £300 to appear.

Indicted in the first instance on a capital charge of having shot Devine with intent to murder him, at Maroubra on the night of September 11, 1931, Kingsbury, after a most dramatic trial, was found guilty, and sentenced to death by Mr Justice James. At that trial, his Honor made one of the most sensation summings up ever heard in the Criminal Court.

“One of the constables has committed absolute perjury”, he stated, “and I hope the authorities will take the matter up. There is an amazing discrepancy in their evidence. Either Constable Shroeder is deliberately concocting evidence in order to convict accused, or Constable Cunningham is deliberately forgetting incidents to help him. I have never tried a case before in which two police constables have contradicted each other so strongly.”

Some weeks after the condemned man had reached gaol, he made application to the Full Court for a new trial. The Full Court, however, refused to grant the request, and Kingsbury took his appeal to the High Court of Australia, and this time, was successful.

In the meantime, the Police Department took up the matter of the two constables and an official Inquiry, presided over by Inspector Carter, was conducted. The result was that, Constable Schroeder, then a plain-clothes officer, was put back into uniform, and removed to another district.

It remained for the Crown to produce the next sensation. When Kingsbury appeared for the new trial, it was to answer a reduced charge of having maliciously wounded Devine with intent to do grievous bodily harm.

Devine reiterated his evidence that he was at his brother's home at Maroubra on the night of September 11, 1931, when Kingsbury arrived at 8.30. He demanded beer but was told that there was none in the house. Devine then accompanied Kingsbury to the beach, where half a dozen bottles of beer were purchased and brought back to James Devine's home.

At 10.30 Kingsbury offered to drive Devine to his home at Bondi. When Kingsbury turned the car towards Maroubra Beach. Devine said he protested but received the reply. 'I am going home to get my gun. I am going somewhere after I take you home.'

'Kingsbury asked me to go into his home,' said Devine. 'I went into the breakfast-room and saw his young son there. He went out of the room and I sat down in a chair. Kingsbury picked up a gun. raised it at me and said, 'Now I've got you where I want you, you dirty — ,' and fired.

'I put my arm up and the shot entered my shoulder. I ran into the front room and escaped through a window with some gauze over it'

To Mr. McKean, Devine said he had no convictions against him, neither had he ever been charged.

Constable Shroeder said he accompanied Constable Cunningham to Kingsbury's home. He entered first, and saw Kingsbury sitting in a chair in the kitchen. 'I said, 'What's the trouble here?' He said, 'I shot Devine, and I'll, well shoot you, too,' ' said Shroeder.

'He jumped up off the chair, and moved towards a gun leaning against the wall. I pushed him against the wall, and put one handcuff on his wrist. He struggled, and Constable Cunningham then came to my assistance, and helped me to handcuff him,' added Schroeder.



Mr. Windeyer: You were in plain clothes? — Yes.

Why are you not in plain clothes now? — Oh. I have no idea.

What?— Well, I have been told several reasons, but I have no reason from the Police Department other than it was in the interests of the Service.

Will you swear that you were not at the Court of Criminal Appeals when I read out portion of Inspector Carter's report that you are unfit to be in the detective service by reason of your evidence in this case?— No.

You were in the court?— Yes, but I didn't hear the report.

Did you know that there was an Inquiry by Inspector Carter, at which you gave evidence in regard to this case? — Yes.

And you never found out the result? —I was told what the result would be before the inquiry came on.

Who told you? — I decline to answer.

Judge Edwards: I think you had better.

I was told that political influence would be brought to bear to secure my dismissal from the police force.

Mr. Windeyer: Who told you that? — I was told by a member of the Communist party — a man named Devanney.

What?— Well, when Mr. Justice James' comments were published, a Labor Federal member told me that political influence was to be brought by the Lang Government, because of the evidence I had given at the timber-workers' strike.

You're suggesting that there was some Governmental influence brought to bear against you? — I am not suggesting anything against the Police Department.

And you don't know that you were found guilty?— I don't know; I think that if I had been found guilty I would have been charged.

Did you ask this question of Mrs. Kingsbury: 'Did you ever tell anyone that you had fixed Cunningham up to give evidence against me'? — Yes.

Kingsbury then entered the witness box. His story was much the same as that of Devine up till the time they left James Devine's house.

He said he took Devine to his house on his request, as he wanted to see the wireless. Devine asked him to drive him home to Bondi, but witness refused. Devine then said he would 'go and get big Jim Devine and his mob to come back and clean the Joint up.'

Devine then left, and shortly after witness' son came in. Later, there was a knock at the door, and his son told him that Siddie Devine was at the door. Witness let him in. He again asked witness to drive him to Bondi and was refused.

'He then said, 'All right, you dirty? , I'll clean the joint up,' said Kingsbury. 'He picked up a chair, and hit me on the head. I walked into the breakfast-room. Devine followed, and knocked a milk jug and

glassware off the table. I told him to cut that out, and he made a rush at me. I got the gun and poked him in the stomach with it.

'I knocked him down, and as he was rising up, he put his hand in his pocket and said, 'You dirty big?, I'll drill you with this.' I got to the corner of the table and fired a shot at his arm. I shot him to protect my own life,' added Kingsbury.

Mr. McKean: What do you do for a living? — I am a property owner.

How did you get the property? — Backing race horses and working. I've owned property for years.

Through Elsie Kay?— Certainly not.

She's your wife? — Yes.

You didn't get the property through Elsie Kay's earnings?— Certainly not.

You drove out there that night in a straight eight Marmon car? — Yes.

And you got that through backing racehorses? — Yes, and property.

Whose car is it?— Well, it's the wife's.

Isn't your wife keeping you? — No, she's not.

Have you got a license to drive? — No.

Constable Cunningham said he entered the house first. He denied that Kingsbury struggled or made any threats to the police. He did not help Schroeder to handcuff Kingsbury.

Accused's son, John Kingsbury, got home at 10.25 p.m., and found his father sitting near the wireless. A knock came to the door; he went to the door and said, 'Who is there?' and a voice answered, 'Siddie Devine.'

The boy said he told his father, who let Devine in.

'They went into the front room,' he stated, 'and Devine said to my father, 'Are you going to drive me home?'

My father said, 'No. Devine used some language, and knocked all the things off the table.

'My father said, 'Don't be silly, Siddie,' and Devine picked up a chair and knocked my father on the head. I ran into the bedroom and hid under the bed. While I was hiding there, I heard a shot,' said the boy.

After counsels' addresses, the Jury retired, and on intimating that they could not agree at 5 p.m., they were locked up for the night. It was 'unavailing, however, and the following morning, as they were still in the same frame of mind, they were discharged.

Kingsbury was then remanded, bail in £300 being granted. Mr. R. Windeyer, K.C., Mr. J. J. B. Kinkead, and Mr. Wesche, instructed by Mr. Fred Newnham, appeared for Kingsbury. Mr. McKean, K.C., appeared for the Crown.<sup>[668]</sup>

### *13 October, 1932. Alleged Conspiracy – Deals in Wireless Sets*

Richard Barnard, 32, and John Brown, 34, company managers, were charged at the Central Police

Court yesterday that between December 31, 1931, and July 31, 1932, they conspired to cheat and defraud Standard Telephones and Cables (Australasia), Ltd., and others of large sums of money.

Mr. J. J. B. Kinkead (for the prosecution) said that Brown and Barnard started business as radio dealers in Barrack-street in November, 1931. Standard Telephones and Cables agreed to supply them with a consignment stock of wireless sets, from which they were to sell. Sales made for cash were to be settled for promptly; sales made on extended terms were to be taken over by standard Telephones and Cables. Ltd., and the signature of the customer obtained to the hire purchase agreement of the latter company. Commissions were to be paid to Brown and Barnard. Considerable business was done from November, 1931, to the end of May, 1932. In the mean, time, Brown and Barnard had formed a company under the style of Brown and Barnard, Ltd., and had moved to premises in George-st.

About May this year Standard Telephones and Cables agreed to a new sales arrangement, the defendants having advised that they had arranged with Cash Orders (Amalgamated), Ltd., to discount their hire-purchase agreements, and the defendants proposed to purchase the sets from Standard Telephones and Cables. Ltd., for cash with a discount.

It was alleged, said Mr. Kinkead, that large sales were being made, and the company asked for a cheque to cover the sales, for which Brown and Barnard had received payment from the cash order company. Mr. Hopkins, secretary for Brown and Barnard, said that the money had been spent, and he could not give a cheque, but shares in the new company were being sold and money would soon be available. It was discovered that in some cases Brown and Barnard had received commission on sales that had not been completed. In other cases a cash settlement had been made by the customer, but no settlement had been made by Brown and Barnard with Standard Telephones and Cables, although they had received full commission. On some agreements entered into Brown and Barnard obtained full cash payment from the cash order, company as well as commission from Standard Telephones and Cables. It was also alleged that instalments were being paid to Brown and Barnard by customers who had signed the agreements of Standard Telephones and Cables and no payments were being made to the latter company. Further, other payments due to Standard Telephones and Cables were being collected by Brown and Barnard, and no reimbursements were being made to the company.

Mr. J. J. B. Kinkead (instructed by Messrs. Minter, Simpson, and Co.) appeared for the prosecution: Mr. V. G. Wesche (instructed by Mr. S. H. Henderson) for Brown: and Mr. P. Jennings (of Messrs. Mervyn, Finlay, and Jennings), for Barnard.<sup>[669]</sup>

#### **15 October, 1932. Quarter Sessions (Before Judge Clancy)**

Crown Prosecutor Mr T S Crawford instructed by Mr R V Edwards

#### **Remanded For Sentence**

James Graves, 21, salesman and Charles Johnson 21, labourer pleaded guilty that on September 5 last they stole clothing, the property of Regis Arthur Ryan.

Graves and Johnson were remanded for sentence Mr J J B Kinkead (instructed by Mr W C Moseley) appeared for Graves and Johnson.

#### **Not Guilty**

George Henry Woods, 24, taxi driver was charged with having stolen clothing, the property of Regis Arthur Ryan.

The jury returned a verdict of not guilty Woods was discharged.

Mr J J B Kinkead (instructed by Mr W C Moseley) appeared for Woods.

#### **False Pretences**

Stanley Abel Jones 54 agent, pleaded guilty to having obtained £7/13/0 from Herbert John Baldwin by false pretences. He pleaded not guilty to a similar charge. Jones also pleaded guilty to three counts of larceny as a bailee.

Jones was remanded for sentence on the charge of false pretences to which he had pleaded guilty, and was remanded for trial on the other charge of false pretences. He was remanded for sentence on the three counts of larceny as a bailee.

Mr J J B Kinkead (instructed by Mr Fred A Newnham) appeared for Jones.<sup>[670]</sup>

#### **18 October, 1932. Quarter Sessions (Before Judge Clancy)**

Senior Crown Prosecutor, Mr. McKean, K.C (instructed by Mr. G. C. B. Champion).

#### **Sentenced For Stealing.**

James Graves, 21, salesman, and Charles Johnson, 21, labourer, had each pleaded guilty to having stolen clothing and property of Regis Arthur Ryan. Graves and Johnson were each sentenced to 12 months' imprisonment.

Mr J J B Kinkead (instructed by Mr W C Moseley) appeared for Graves and Johnson.

#### **False Pretences**

Stanley Abel Jones 54 agent, had pleaded guilty to having obtained £7/13/0 from Herbert John Baldwin by false pretences, and to three counts of larceny as a bailee.

Jones was sentenced to 12 months' imprisonment on each charge, concurrent.

Mr J J B Kinkead (instructed by Mr Fred A Newnham) appeared for Jones.<sup>[671]</sup>

#### **23 October, 1932. Governor's Act May Free Man Convicted of Foul Crime On Child**

Judge Made Strong Hint That Justice Had Miscarried.

Among the letters that arrived in the mail bag of the Governor of New South Wales, Sir Phillip Game, a few weeks ago was one that bore the stamp of Long Bay Gaol. His Excellency read the contents, and as a result of his humanitarian decision the great iron gates of the gaol, which the law said must remain closed against Michael Sharah for two years, may soon open to give him freedom.

Tucked away in the countless clauses of the Crimes Act is a long legal paragraph, marked 'Section 475', and it is the wording contained therein that has turned black despair into bright hope for a man who has been imprisoned for a foul crime on a little girl.

With the Governor's consent, however, the wheels of the legal machinery have been set in motion. Sharon's petition for an inquiry has been granted, and at the end of this month Mr. Gates, former C.S.M., sitting as a Commissioner, will hear the whole of the circumstances surrounding Sharah's conviction for the offence.

Sharah was convicted before Judge Curlewis at the Darlinghurst Sessions on April 12, and when the jury had returned it's verdict, his Honor informed Sharah's council, Mr. J. J. B. Kinkead, that he strongly disagreed with the verdict.

'I think the verdict is an outrageous one, and if there is an appeal, I will report that I strongly disagree with the verdict,' said his Honor.

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On being assured by Mr. Kinkead that there would be an appeal, Judge Curlewis took the somewhat unusual course of binding Sarah over on his own recognisance in £10 to come up for sentence if called upon, after the appeal was determined.

Sarah appealed to the Full Court, but Their Honors, after listening to Mr. Kinkead's arguments, 'with regret,' came to the conclusion that leave to appeal must be refused.

Not deterred, however, Sarah took his appeal to the High Court of Australia, which also dismissed the appeal. But their Honors set a match to the spark of hope that was now fast dying in the convicted man's breast. Although they could not allow the appeal, the learned judges stated that the case was a proper one for inquiry under Section 476 of the Crimes Act. This Section reads: ' . . . whenever, after conviction of a prisoner, any doubt arises as to his guilt . . . the Governor, on the petition of the prisoner, may direct any justice to summon and examine on oath all persons likely to give material evidence. . . .'

Sarah was convicted on the uncorroborated evidence of an eleven years' old Bexley girl, and it was that fact, together with the contradictory evidence given by the girl, that caused Judge Curlewis to make his caustic remarks concerning the Jury's verdict.

Sarah, who is a Syrian fruiterer, lived with his family, about a mile from the girl's home. He had been serving the parents of the girl with fruit for about four years.

#### 'Grabbed and Kissed'

On the afternoon of December 11, 1931, Sarah drove his fruit cart down Gladstone-street, Bexley, and pulled up opposite the girl's home. With him was his assistant, a boy named Broughton. According to the girl's evidence, she was playing with her young sister, two small brothers, and a third small boy. Both her parents were out. Sarah approached the house, told the other children to go to his cart and get some fruit and then followed her into the house. After making sure that there was no one in the house besides the girl, he grabbed the child and kissed her. The girl then declared that a certain offence took place.

To his Honor, the girl said she first heard about men doing wrong things to little girls when her mother read them out of the papers.

From the witness-box Sarah said that the girl told him that her parents had gone down the street, but would not be away many minutes. He had only been there a couple of minutes when her parents arrived. He was standing near the back verandah, and was not on it. He had not been in the house at all. He did not touch the girl at all. He did not remember giving the girl any oranges.

After the parents came back he was talking to them for about seven or eight minutes. He was next door to their house and in the vicinity for over half an hour.

To the Crown Prosecutor, Sarah said he never gave the children any fruit. He promised them some and said he would give it to them when he went out to the cart again. The whole of the girl's story was an absolute fabrication. The first thing he heard of the complaint was the next morning when the P.D. car came alongside his cart. The girl's parents knew where he lived, had in fact been to his place, where he had been living for eighteen months. His place was about a mile or a mile and a quarter from the girl's parents' place.

Sarah's assistant, Albert Broughton said he saw a man and a woman enter the girl's place just after Sarah had gone in. Sarah had been in the house for a minute or two before that. Sarah then came

out, and took an order back. He was at the house for about ten minutes. The cart was not shifted while they served two other customers after that.

Since the failure of his appeal, Sarah has been confined in Long Bay Gaol.

Mr. F. A. Newnham will appear for Sarah, while the Crown will probably be represented by Prosecuting-constable O'Leary.

It is understood that the Commissioner without making any recommendation at the close of the inquiry, will forward the copies of the depositions to the Governor.<sup>[672]</sup>

### **29 October, 1932. Court of Criminal Appeal**

(Before Mr. Justice James, Mr. Justice Davidson. and Mr. Justice Halse Rogers.)

The Solicitor-General, Mr. Weigall, K.C., instructed by the Deputy Clerk of the Peace, Mr. G. C. B. Champion, for the Crown.

#### **Rex v Lawrie.**

Jack Douglas Lawrie appealed against a conviction of an indecent assault on a male person and a sentence of 12 months' imprisonment passed by Judge Armstrong at the Sydney Quarter Sessions on July 14. The grounds of the appeal were that the defence was not properly put to the jury by the trial Judge, and that there was a wrong direction in regard to corroboration. Judgment was reserved.

Mr. Kinkead (instructed by Mr. R. M. Dun-can) appeared for appellant.<sup>[673]</sup>

### **31 October, 1932. Inquiry Conviction Of Syrian**

A special Investigation under Section 475 of the Crimes Act, into the case of Michael Sarah, a Syrian fruiterer, who was sentenced to two years' hard labor on a charge of indecency, was commenced by Mr. Gates, former C.S.M. at Glebe Court today.

Committed for trial from the Children's Court, Sarah was found guilty in April, after Judge Curlewis had warned the jury of the danger of convicting on the uncorroborated evidence of a girl, aged 11.

Judge Curlewis told the prisoner that if an appeal were lodged, he would report his disagreement with the jury's "outrageous" verdict.

The Full Court dismissed the appeal "with regret," and the High Court, in refusing special leave to appeal, expressed the view that it was a proper case for inquiry under Section 475.

In consequence, the present inquiry was ordered by the Governor, to whom the Commissioner will report.

#### **An Objection**

Mr. Kinkead, for Sarah, objected to the admission of depositions taken at the Children's Court submitting that Sarah was convicted on the evidence taken at the Quarter Sessions, which differed in some points from that taken at the Children's Court.

Mr. Gates said counsel could cross-examine on any points which were not in the Children's Court evidence.

The Children's Court depositions of Detective-Constable Gee, of Kogarah, were admitted. Giving fresh evidence the girl on whom the alleged assault was committed said she had known Sarah for four years and a half. On Friday, December 11, 1931, she was playing with her brothers when Sarah came to the house with some fruit. He sent the other children away, and after finding that there was no one else in the house, committed an assault.

Cross-examined by Mr. Kinkead, the girl broke down and sobbed. She admitted that sometimes she told her mother "fibs."

The girl was in the witness-box for two hours and three-quarters.

To Mr. Kinkead, the girl's mother, whose depositions in the Children's Court were admitted, said she did not have the girl examined by a doctor on the day of the alleged assault, the examination taking place the following day by the police doctor.

Michael Sharah, who appeared in the custody of a gaol warder, said he had been regularly serving the girl's parents with fruit for three or four years. On the day of the alleged assault, he was in the street for half an hour after leaving the house of the girl's parents. The girl's story, was "all a lie".

To Constable O'Leary, who was assisting the inquiry, Sharah denied sending the girl's brothers to his cart to get some apricots. He had "always found the girl truthful."

Sharah told Mr. Gates that he was on the premises a couple of minutes before the girl's mother came home.

Several witnesses testified as to the character of Sharah.

The inquiry was adjourned till 9.30 a.m. to-morrow at the Redfern Police Court.

Constable O'Leary appeared to assist the inquiry; Mr. J. Kinkead (instructed by P. Newnham) appeared for Sharah.<sup>[674]</sup>

#### **31 October, 1932. Big Man Now**

Mr. J. J. B. Kinkead, barrister, met an old associate of the days when he served in the Justice Department in Mr. Jamieson, ex-stipendary magistrate at North Sydney Court, and they were soon talking of "old times." "I always said you were the best magistrate I ever served under, and you always said I was the best deposition clerk you ever had under you," Mr. Kinkead remarked to his old chief. "Yes, but we have changed a lot since then," replied Mr. Jamieson. "In those days you were as thin as a whipping post, but now you would make three of me." The burly barrister led the laugh against himself.<sup>[675]</sup>

#### **4 November, 1932. Quarter Sessions (Before Judge Thomson)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. R. V. Edwards).

##### **Trial Postponed.**

When the case of Paul Grierson, 32, motor mechanic, was called on, Mr. Kinkead said that accused, who was to be charged with breaking, entering, and stealing, had also been charged in connection with an alleged hold-up of postal officials in William-street, city. It was feared that the publicity which had been given to the William-street affair might prejudice Grierson's trial on the breaking and entering charge. He asked that the case stand over until the other charge had been disposed of. His Honor acceded to the request.

Mr. J. J. B. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Grierson.

##### **Woman Acquitted.**

Ivy Gladys Mary Thomas, 27, married woman, was charged with having maliciously wounded Alexander Campbell, on September 24.

Mr. McKean said that at first accused had denied injuring Campbell. Later, she admitted that she did so, but that she did not use a razor. She said she had inflicted the injury with the jagged end of a



broken pocket mirror which she was using when Campbell "grabbed her." The jury returned a verdict of not guilty. Thomas was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. P. N. Roach) appeared for Thomas.<sup>[676]</sup>

#### **9 November, 1932. Quarter Sessions (Before Judge Thomson)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. R. V. Edwards).

#### **Trials Postponed.**

The case of Paul Grierson, on a charge of breaking, entering, and stealing, was taken out of yesterday's list on the application of Mr. J. J. B. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.).

The case of Arthur Daniel Walker (charge, assault with intent to commit a capital offence) was taken out of yesterday's list on the application of Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham).

#### **Not Guilty.**

John Frederick Hayes, 25, labourer, (*Note: This is 'Chow Hayes', one of Australia's most infamous murderers*), was charged that on October 3 he assaulted and robbed a news vendor named William Horace Stone.

Hayes was found not guilty and was remanded to his former custody.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Hayes.<sup>[677]</sup>

#### **12 November, 1932. Supreme Court - Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Phillip Street, Mr. Justice James, and Mr. Justice Davidson.)

The Solicitor General, Mr. Weigall, K.C., instructed by the Deputy Clerk of the Peace, Mr. Champion for the Crown.

#### **Appeal Dismissed.**

##### **Rex v Lawrie**

Mr. Justice James gave the unanimous judgment of the Court disallowing the appeal of Jack Douglas Lawrie, who was convicted at the Sydney Quarter Sessions of an indecent assault, and was sentenced by Judge Armstrong to one year's imprisonment. His Honor said, in dealing with the substantial grounds of appeal, that there was sufficient corroboration of the story of the boy alleged to have been assaulted. Dealing with the other ground, that there had, been a failure by the trial Judge to put the prisoner's defence properly to the jury, his Honor said that no substantial wrong or miscarriage of justice had occurred.

Mr. Kinkead (instructed by Mr. R. M. Duncan) appeared for appellant.

##### **Rex v Franklin.**

The Court refused an application for leave to appeal against a sentence of 18 months' imprisonment passed on Frederick Franklin by Judge Curlewis at the Sydney Quarter Sessions after conviction of having obtained money by false pretences.

Mr. Kinkead (instructed by Mr. Newnham) appeared for appellant.

##### **Rex V Johnson.**

Tessie Johnson appealed against a sentence of nine months' imprisonment, passed by Judge Coyle at the Sydney Quarter Sessions for the theft of a sum of money from a man. It was argued in support of the application that the appellant was a young girl of an unfortunate class, and that she had yielded

to a sudden temptation. In answer to the Chief Justice, counsel said that he did not believe any punishment or corrective treatment would cure girls of the class to which appellant belonged. That was his experience in the Courts over a long period, both as a representative of the Crown and a member of the Bar.

The Chief Justice said that, taking into consideration the whole of the circumstances, the Court believed that the sentence was unnecessarily severe. The term of the sentence was reduced to three months.

Mr. Kinkead (instructed by Mr. Newnham) appeared for appellant.

#### **Rex v Connor.**

The Court dismissed the appeal of John O'Connor, who was sentenced at the Sydney Quarter Sessions to 15 months' imprisonment for false pretences.

Mr. Kinkead (instructed by Mr. Newnham) appeared for appellant.<sup>[678]</sup>

#### **14 November, 1932. Murder Of Youth - Aged Father in Court - Given Permission To Attend Funeral.**

Nathaniel Govett, 81, who was charged at the Central Police Court on Saturday with having murdered his son, Phillip Herbert Govett, 18, on the previous day, asked through his counsel for permission to attend the funeral of his son. This was granted by the police. Govett, a pathetic figure, in charge of three detectives, stood at the graveside at South Head Cemetery.

At the police court, the old man tottered into the dock, and slowly sat down. When the charge was being read he shook his head to indicate that he could not hear, and a constable then stood by the dock, and, in a loud voice, read it to him. The defendant looked eagerly towards his counsel.

The police prosecutor (Sergeant Toole) applied for a remand until November 21.

Mr. Kinkead said he had no objection to the remand. He understood that the police were going to make some application.

Sergeant Toole: Owing to the age of the defendant the police are asking for the remand in order that he can be medically examined and kept under medical observation for that period. The facts are, shortly, that at 4.15 a.m. on Friday, Phillip Herbert Govett was seen coming out of his bedroom at his home at 586 Old South Head-road, Woollahra. His head and face were covered with blood, and immediately behind him was the defendant, who resided at the same address. Dr. Foy was called in, and, after examining the injured man, ordered his removal to St. Vincent's Hospital, where he died at 10.55 a.m.

Mr. Kinkead then asked for permission for accused to attend the funeral, remarking: "I do not think it will be denied that there was great affection between the old man and the boy."

The magistrate said he could not make any order in respect of such permission, but the police prosecutor, although unable to consent to Mr. Kinkead's application, said that there would be no objection by the police if application was made to the proper place.

Govett was remanded to November 21, and left the dock with halting steps.

The funeral of the youth took place from an Oxford-street mortuary, where a large crowd had assembled. Only immediate relatives and friends proceeded to the cemetery. On completion of the service, Govett was removed to Long Bay Gaol.<sup>[679]</sup>

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**15 November, 1932. Quarter Sessions (Before Judge Thomson)**

(Senior Crown Prosecutor, Mr. McKean, K.C., instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace.)

**Pugilist Remanded.**

Arthur Daniel Walker, 25, pugilist, pleaded not guilty to an assault with intent to commit a capital offence, and guilty to common assault. The Crown accepted the latter plea.

It was stated that the assault took place at Woollahra while the girl was on her way home from a tram. Walker was remanded till Thursday for sentence.

Mr. J. J. B. (Kinkead (instructed by Mr. Fred A. Newnham) appeared for Walker.

**Judge's Warning.**

George Gibson, 31, labourer, was charged with assault with intent, to rob.

The jury returned a verdict of guilty.

Detective Richards said that Gibson was known to the police as one of their greatest nuisances. Gibson frequented the streets for the purpose of stealing.

Gibson was sentenced to 18 months' imprisonment, with hard labour, and warned that if he persisted in his course of conduct he would be declared an habitual criminal.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Gibson.<sup>[680]</sup>

**18 November, 1932. Quarter Sessions (Before Judge Thomson)**

(Senior Crown Prosecutor, Mr. McKean, K.C., instructed by Mr. R. V. Edwards.)

**Trial Postponed.**

The case of Guy Neville Kingsbury (charge, wound with intent to do grievous bodily harm *to Sydney Vincent Devine*) was ordered to stand over till the December sittings. Mr. J. J. B. Kinkead (instructed by Mr. F. A. Newnham) appeared for Kingsbury.

**Pugilist Sentenced.**

Arthur Daniel Walker, 25, pugilist, had pleaded guilty to common assault of a girl at Woollahra.

Police evidence was that Walker had no respect whatever for women.

Walker was sentenced to two years' imprisonment.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Walker.<sup>[681]</sup>

**19 November, 1932. Court Of Criminal Appeal**

(Before the Chief Justice, Sir Phillip Street, Mr. Justice James, and Mr. Justice Davidson.)

The Solicitor General, Mr. Weigall, K.C. (instructed by the Deputy Clerk of the Peace, Mr. Champion) for the Crown.

**Rex v Kennedy**

A sentence of 12 months' imprisonment, passed at the Sydney Quarter Sessions by Judge Thomson on Ivy Kennedy for theft was reduced to six months' imprisonment on the ground of excessive severity.

Mr Kinkead (instructed by Mr P Roach) appeared for the appellant.

### **Rex v Graves And Another**

James Graves and Charles Johnson, who were convicted at the Sydney Quarter Sessions on October 14 of theft applied against sentences of 12 months imprisonment parsed by Judge Clancy. The appeals were dismissed.

Mr Kinkead (instructed by Mr Roach) Appeared for the appellant.<sup>[682]</sup>

### **22 November, 1932. Woollahra Murder Charge.**

The case of Nathaniel Govett, 81, of independent means, who is charged with having murdered Phillip Herbert Govett at Woollahra on November 11, was mentioned at the Central Police Court yesterday. Mr. Kinkead (for defendant) said that his client was in the Long Bay Penitentiary. Sergeant Caban stated that if the magistrate would mark the papers "not before the Court," the Chamber magistrate would arrange for a remand. This was done.<sup>[683]</sup>

### **26 November, 1932. Police Courts - Counterfeiting Charges.**

James Wallace, 31, cook, was charged before Mr. Reed, S M., at the Central Police Court yesterday, with having, at Alexandria on November 11, had in his possession 2000 pieces of counterfeit coin, resembling florins with intent to utter them.

On the application of Sergeant Caban, who prosecuted, Wallace was remanded to Redfern Police Court on November 28. Bail was fixed at £250.

Mr. Kinkead (instructed by Mr. Yeldara) stated that as soon as Wallace heard the police were looking for him he surrendered himself.

Charles Alfred Ashton, 27, boxer, was remanded till December 7 on a charge of knowingly offered to Robert Thorpe Amos a counterfeit coin resembling a florin. Bail was fixed at £20.<sup>[684]</sup>

### **27 November, 1932. Trial Of Paul Grierson - Listed For Sessions On Thursday**

The trial of Paul Grierson, 32, charged with robbery of £530 from a William-street postal official, and with having caused grievous bodily harm to another official. Robert W. Johnson, who is now blind, is listed for the Sydney Quarter Sessions on Thursday. The allegation against Grierson, is that he threw a corrosive fluid at Johnson. Mr. P. Roach, solicitor, has briefed Mr. J. J. B. Kinkead for the defence.<sup>[685]</sup>

### **30 November, 1932. With Axe – Story of Waverley Murder**

How, when questioned, after being attacked in his bedroom, Phillip Herbert Govett, 18, had told the doctor that he did not know who had struck him, and then proceeded to talk about his wireless activities, was related at the Coroner's Court to-day.

Young Govett died at St. Vincent's Hospital at 10.30 a.m. the same day, and, following the finding of a blood-stained axe in a drying-yard, 28 feet from the house, Nathaniel Govett (81), was later charged with murder, removed to Long Bay Penitentiary for medical observation, and finally declared insane.

Lily Pearson, housekeeper at the home of Nathaniel Govett at Old South Head-road, Waverley, said she was awakened by moans coming from Phillip's room early on November 11, and later saw Phillip Govett walk from his room to the bathroom, with blood flowing from terrible head and face wounds, followed by his aged father.

Constable Jardine gave evidence of finding an almost new blood-stained axe in long grass near a fence in a drying yard.

**Dazed**

Dr. D. S. Foy, who was called in after the attack, said he had asked him if he had fallen out of bed, but Govett said someone had struck him on the head.

"I asked him if he knew who it was, and he said 'No.' He made no further reference to his injury, but spoke about his wireless activities."

**No Blood**

"Govett, sen., asked me what I was there for, and did not seem able to grasp what I was telling him, or to realise what had happened," added Dr. Foy.

There was no sign of blood on Govett, sen.

Det. Sgt. Barratt said that when questioned on November 11, Govett, sen., said he did not remember following his son from his room. Govett said he had washed and shaved since getting up.

Witness said the correct name of deceased was Phillip Herbert Sibbett, who was born in Christchurch (N.Z.) on November 8, 1914.

Mr. Kinkead: Did you make inquiries about a man who was supposed to be prowling about the place? — I was unable to trace anybody answering the maid's description. About three weeks previously someone she described as a "Peeping Tom," had been seen gazing through a window.

Barratt said that when he searched the drying yard early in the morning, the small axe was definitely not where it was found later in the day by a constable.

Mr. Kinkead: Did Govett, sen., give the impression of being a strong man? — No, he seemed very feeble and tottery, and had to be helped into the police car.

**Proceeding.**

Mr T. M, Kemmis (Crown Law Office) appeared for the Crown; Mr. J. J. B. Kinkead for Nathaniel Govett and relatives of Phillip Herbert Govett.<sup>[684]</sup>

**6 December, 1932. Paramatta Quarter Sessions Appeals (Before Acting-Judge Lloyd)****Appeals Dismissed**

Sidney Pike appealed against a conviction accorded against him at the Wollongong Police Court on June 6 when he was fined £20 for having been found in Walker-street Helensburgh for the purpose of betting. The appeal was dismissed Mr F W Berne appeared for the Crown and Mr J J Kinkead instructed by Mr FA Newnham for the appellant.

Arthur William Smith and Harry Walker appealed against their conviction of having used a billiard-room at Helensburgh for the purpose of betting, and for which they were each fined £30. The appeal was dismissed and the conviction upheld Mr W Berne appeared for the Crown, and Mr J J Kinkead for the appellants.<sup>[685]</sup>

**7 December, 1932. Quarter Sessions Appeal (Before Acting Judge Barton.)****Conviction Quashed.**

Arthur Henry Atkinson, 46, painter, appealed against his conviction and sentence of six months' imprisonment imposed upon him by Mr. MacDougal, S M., at the Water Police Court on October 18, on a charge of indecency at Petersham Park, on October 10.

His Honor allowed the appeal and quashed the conviction.

Mr. J. J. B. Kinkead (instructed by Messrs. E. R. Tracey and S. J. Jones and Co.) appeared for appellant; and Mr. Weigall, K.C., for the Crown.<sup>[686]</sup>

#### **8 December, 1932. Coining Plant – Three Men Charged**

At the Redfern Police Court yesterday charges were heard against three men who were arrested following the discovery of a counterfeit coining plant in Alexandria on November 11. In addition to coining plant there were on exhibit several bags of counterfeit coins, which, according to Mr. Ernest T. Clucas, chief technical officer of the Melbourne Mint, were made of standard silver. Coins not made in the Mint, he said, were regarded as spurious.

Harold Roy Williams, 38, engineer, and James Wallace, 31, cook, were charged with having made 2141 counterfeit coins, resembling florins, between March 1, 1931 and November 11, 1932. Louis Somme, 63, diesinker, was charged with having been directly concerned in the making of the counterfeit coins.

After having heard the evidence of the arresting police and of Mr. Clucas, the magistrate remanded the accused. In the case of Williams bail was refused.

Detective Boswell stated that, in company with Detective Swasbrick and other police, he went to the Security Safe Company's premises in Mitchell-road, Alexandria, on November 11. He forced open the door, and found a concealed trapdoor leading to a cellar. Williams, who was in the cellar, said, "You've got me." Williams gave the police every assistance. He warned them not to go down into a pit until certain wires were connected up, and showed them how to dismantle the machinery, which included punching, marking, and rolling machines, a press, and a large quantity of counterfeit coins.

Mr. A. R. Taylor (instructed by the Commonwealth Crown Solicitor) prosecuted. Mr. Kinkead (instructed by Mr. John Yeldham) appeared for Williams; Mr. Yeldham for Wallace, and Mr. Clifton R. Penny for Somme.<sup>[687]</sup>

#### **10 December, 1932. Quarter Sessions (Before Judge White )**

Crown Prosecutor Mr T S Crawford (instructed by Mr R V Edwards)

##### **Bound Over**

Francis Percy Shannon, 22, labourer, pleaded guilty to an offence against a girl under 16 years of age.

Shannon was bound over in his own recognisance of £30 and a surety of £30 to be of good behaviour and appear for sentence if called upon within two years.

Mr. Kinkead (instructed by Mr. C. P. White) appeared for Shannon.<sup>[688]</sup>

#### **13 December, 1932. Quarter Sessions (Before Judge Thomson)**

(Senior Crown Prosecutor, Mr. McKean, K.C., Instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace.)

##### **Bound Over.**

John Charles, 44, granite polisher, had pleaded guilty to receiving. He was bound over on his own recognisance of £30 to be of good behaviour and appear for sentence if called upon within two years.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Charles.

##### **Mechanic Charged.**

Paul Grierson, 32, mechanic, was charged (1) that at Sydney on September 29 last he assaulted Frank

Edgar Seckold and robbed him of a handbag containing £530, the property of his Majesty; (2) receiving; (3) that maliciously, by the use of corrosive fluid ammonia, he did grievous bodily harm to Alfred Robert Welnacott Johnson. The hearing, which had not concluded, is reported elsewhere in this Issue.

Mr. J. J. B. Kinkead (instructed by Mr. P. N. Roach) appeared for Grierson.<sup>[689]</sup>

**13 December, 1932. Postal Robbery - Blinding of Official - Trial Of Paul Grierson.**

At the Darlinghurst, Quarter Sessions Court yesterday, before Judge Thomson. Paul Grierson, 32, mechanic, was charged (1) that on September 20 last, at Sydney, he assaulted Frank Edgar Seckold and robbed him of a handbag containing £530, the property of His Majesty; (2) he received that money; (3) that maliciously, by the use of a corrosive liquid, ammonia, he caused grievous bodily harm to. Alfred Robert Weinacott Johnson.

Mr. McKean, K.C. (Senior Crown Prosecutor), said that the alleged offence was known as the William-street hold-up. Seckold was postmaster at the William-street Postoffice. Johnson, a postal assistant, was with Seckold when the robbery took place. If the accused was guilty he had committed one of the most dastardly crimes in the annals of crime in New South Wales. It was a crime worse than murder, because it had condemned Johnson to a living death, the corrosive liquid had blinded him. After drawing the money from the bank the postal officials saw two men who, apparently, were washing down a wall in William-street. As the officials passed the two men, Johnson was attacked from behind, and a rag with corrosive fluid was pressed to his eyes, temporarily blinding him. Seckold was hit and knocked down and the bag was grabbed. On top of a bath-heater at a house where Grierson lived £16/10/ was found, and that money had been identified as having been handed to Seckold by Commonwealth Rank officials that day. In a basket containing peas, £9/12/ was discovered. Grierson had given no explanation of how he came by the money. It was understood that Grierson's defence would be an alibi.

Seckold gave evidence that he and Johnson were walking along William-street when he felt a splash of liquid and he closed his eyes. He ran but could not open his eyes because of the fumes. In a second or two the bag was wrenched from him. Then he heard a car stop suddenly and a little later saw a man with the bag "side-stepping" the traffic. The man was about 5ft 9in in height, and of athletic build. Witness went through a wine saloon and in a lane at the rear he saw three youths with whom he had a conversation.

Johnson, who was led into the court by a nurse, said that a rag containing ammonia had been pressed against his eyes, and he was hit on the back of the neck.

Antonle Louis Morgane, a French chef, gave evidence that he was standing near when the attack was made on the postal officials. Some of the ammonia splashed on to his coat. Grierson threw something in the face of Seckold. While the postmaster put one hand to his eyes, Grierson tugged at the bag which Seckold carried and wrenched it from his hand.

His Honor: How far were you away?

Witness: About a yard and a half.

Witness, continuing, said that Grierson was punching Seckold and trying to kick him. Witness said he spoke to Grierson who turned round, and witness saw his face.

Mr. McKean: Could you be mistaken?



Witness: No.

Witness said that after Grierson grabbed the bag he ran across the street and was struck by a motor car, being twisted on his feet Grierson recovered and continued to run until he was out of sight.

Cross-examined by Mr. Kinkead (for Grierson). Morgane denied that he was a police agent.

Mr. Kinkead: Haven't you been a police agent for 22 years?

Witness: No, I have only been doing work for the police.

Morgane mentioned that since he had given evidence in the Police Court he had become a "bit frightened." A man had threatened to shoot him, and the man was bound over. Witness did not suggest that the incident had any relation to Grierson. The man who had threatened him lived near him.

Renato Levi said that he was driving down William-street in a motor car when he saw some men struggling on the footpath. He saw accused run across the street. Accused was carrying a leather bag and another man was tugging at it. Accused bumped into witness's car. Witness stopped immediately. Accused had been struck a very heavy blow and became stunned. Witness's car was dented by the blow. However, accused recovered and ran across the road.

Mr. McKean: Have you any doubt that accused is the man who bumped into your car?

Witness: None whatever.

Cross-examined by Mr. Kinkead, witness said he had been in error when he said at the police court that Johnson was carrying the bag.

Mr. McKean: At the time you gave evidence at the police court did you know the names of Mr. Johnson or Mr. Seckold?

Witness: No.

The hearing will be resumed to-day.<sup>[690]</sup>

#### **14 December, 1932. Quarter Sessions (Before Judge Thomson, K.C.)**

Senior Crown Prosecutor, Mr. McKean, K.C, (instructed by Mr. G. C. B. Champion, Deputy-Clerk of the Peace).

#### **Mechanic Charged.**

The trial was resumed of Paul Grierson, 32, mechanic, who was charged (1) that, on September 29 last, he assaulted Frank Edgar Seckold. and robbed him of a handbag containing £530, the property of his Majesty; (2) receiving; (3) that, maliciously, by the use of corrosive fluid-ammonia-he did grievous bodily harm to Alfred Robert Weinacott Johnson.

The hearing, which had not concluded, is reported elsewhere.

Mr. J. J. B. Kinkead (instructed by Mr. P. N. Roach) appeared for Grierson.<sup>[691]</sup>

#### **15 December, 1932. Postal Robbery - Constable's Admission - Accused's Car In City.**

When the trial of Paul Grierson, mechanic, who is charged with the William-street postal robbery, was continued at the Quarter Sessions yesterday, a traffic constable, when questioned by Mr Kinkead (for Grierson) admitted that Griersons' car had been parked in Macquarie-street for an hour from 10.15 a.m. on September 29 (the day of the robbery).

Grierson is charged with having assaulted Frank Edgar Seckold and robbed him of a handbag containing £530, with receiving, and with having maliciously, by the use of ammonia, done grievous bodily harm to Alfred Robert Weinacott Johnson.

Continuing his statement from the dock, Grierson said that when he appeared before the court on September 30, his solicitor, Mr Roach, asked the magistrate to order a medical examination to test the allegation that he was the man who was struck a heavy blow by a motor car when crossing Willlam-street The magistrate declined to order an examination.

Edna Steele clerk in the office of Mr P. N Roach, solicitor, said that in the visitors' book on September 29, was the name Grierson She did not know at what time Grierson called to see Mr Roach.

Mr McKean: Have you any idea of the time?

Witness: It was some time in the morning.

William Oates, builder and contractor, of Cross-street, Double Bay, said that he had known Grierson for three years Grierson called at his place between 10 a.m. and 11 a. m. on business but they did not go on with it because Grierson said he had to go to Sydney Hospital to undergo treatment for an abscess.

Detective Walker said he was in the police court on the morning of September 30, and did not hear Mr Roach make any application for medical examination of Grierson.

Mr Kinkead (for Grierson) asked Detective Walker whether he did not think it worth while to have had Grierson medically examined.

Detective Walker: No. I had a good look at him.

Did you strip him? - No.

Was he stripped in your presence? - No.

Constable Charlton said that he was on traffic duty in Macquarie-street city on September 29 and booked up all cars that had been left unattended for 30 minutes. He had his book with him showing the cars booked up between 10 am and 1.15pm. He had not booked up Grlerson's car before lunch but when he returned from luncheon at 2.15 pm Grierson s car was there.

Mr Kinkead asked to be allowed to examine the constables book.

"Look here", said Mr Kinkead, "you have a tick opposite Grierson s car, No 87258 at 10.15 am."

Constable Charlton having examined the book admitted that that was so and that Griersons car had been parked in Macquarie-street for an hour from 10.15 am on that day.

Mr Kinkead called for the charge-sheet which contained the remand of Grierson on September 30. Mr Kinkead read out where Mr Roach asked for an examination to determine whether Grierson had abrasions or bruises consistent with having been struck by a car.

His Honor had not concluded his summing up when the Court rose till to-day.<sup>[692]</sup>

#### *16 December, 1932. Quarter Sessions (Before Judge Thomson, K.C.)*

Senior Crown Prosecutor, Mr. McKean, K.C., instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace.

**Grierson Convicted.**

The trial was concluded of Paul Grierson 32 mechanic who was charged in connection with the William street Post office crime. The case is reported in another column.

Mr J J B Kinkead (instructed by Mr P N Roach) appeared for Grierson.<sup>[693]</sup>

**17 December, 1932. Quarter Sessions (Before Judge Thomson, K C )**

Senior Crown Prosecutor, Mr McKean K C (instructed by Mr G C B Champion Deputy Clerk of the Peace)

**45 Years' Penal Servitude**

Paul Grierson, 32, mechanic, who had been convicted of the William-street postal robbery, was sentenced to 10 years' penal servitude for assault and robbery and 35 years for having maliciously by the use of a corrosive fluid-ammonia-caused grievous bodily harm. The matter is reported elsewhere in this issue.

Mr. J. J. B. Kinkead (instructed by Mr. P. N. Roach) appeared for Grierson.<sup>[694]</sup>

**20 December, 1932. Supreme Court - Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Phillp Street, Mr. Justice James, and Mr. Justice Halse Rogers.)

**New Trial Granted****Rex v Hyams, Rex v See**

On the ground that the trial Judge, Judge Curlewis, had misdirected the Jury, the Full Court granted a new trial to Moses Hyams and William Frederick See, who were convicted at the Sydney Quarter Sessions of theft in September. Each had been sentenced to two years' imprisonment.

Mr J J B Kinkead (instructed by Mr P N Roach) appeared for Hyams and Mr G F Amsberg (instructed by Mr P N Roach) for See.

The Solicitor-General (Mr Weigall, KC), instructed by the Deputy Clerk of the Peace (Mr Champion), appeared for the Crown.<sup>[695]</sup>

**22 December, 1932. Quarter Sessions (Before Judge Thomson K.C.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards).

**Pleaded Guilty**

William Graham, waiter, breaking, entering, and stealing at Corrimal. Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Graham.<sup>[696]</sup>

**23 December, 1932. Law Report - In Chambers (Before Mr. Justice James.)****Rex v Williams.**

Bail was granted to Roy Williams in one surety of £1000, or two sureties in £500 each, pending his trial at the Quarter Sessions on a charge of counterfeiting. The application was opposed by the Crown, on the ground that certain information was available which suggested that Williams might abscond. His Honor said that if the police could not give more substantial evidence of the source of their information the court could attach no great value to it.

Mr. J. J. B. Kinkead (instructed by Mr. J. H. Yeldham) appeared for the applicant; and Mr. A. R. Taylor (instructed by the Crown Solicitor, Mr. J. E. Clark) for the Crown, in opposition.<sup>[697]</sup>

**23 December, 1932. Police Courts - Theft Charges.**

Seven men and two women were charged at the Central Police Court yesterday with having stolen

£83 worth of clothing, cutlery, crockery, stationery, foodstuffs, etc., from the railways between Darling Harbour and Hornsby on December 2.

The defendants were Thomas Ryan, 54, Robert O'Brien, 30, Thomas James Summers, 26, Ernest Thompson, 21, Henry Stanton, 21, Frederick Andrews, 21, and Christopher Salmon, 19, labourers, and Ivy O'Brien, 27, and Nellie Collins, 20.

Detective Harold Jones said that he visited a house in Henry-street, Ultimo, about 10.15 p.m. on December 2 with other police. The door was opened by Ivy O'Brien. Witness heard a noise in an upstairs room, and on going to investigate, found Salmon, Andrews, Thompson, and Stanton in a bedroom, in which was a large quantity of goods and cases. Stanton and Thompson were examining a box of ties. Andrews was in the act of handing a pair of trousers to Salmon, and said, "Nine," as he did so. In front of Andrews and Salmon were bundles of men's trousers. As Andrews said "Nine," witness said, "What are you doing; counting the spoils?" Salmon replied, "Yes." Witness said, "We are police. What are you four men doing here, and what is all this property?" Stanton replied, "You have got us and the stuff. You don't want any more, do you?" In reply to further questions, Stanton said that the goods had come from the railways, and had been stolen. The other defendants, including the two women, were in the house. They were all arrested and taken to the Regent-street police station.

Salmon and Andrews were interviewed at the police station, continued Detective Jones, and Salmon said, "We want to 'cop the blue' for tills. It is no use us all being in it." Witness asked Salmon and Andrews whether the matter had been talked over by the defendants. Salmon replied, "Yes; we have never been in trouble before. It is no good us all getting in over it. We will take the blame."

Evidence was given by railway officials and warehouse employees that goods in Court had been despatched to Moree, Glen Innes, and Inverell, but had not reached their destination.

All of the defendants were committed for trial. Summers, Stanton, and Thompson were allowed bail of £100 each, O'Brien, Ryan, Andrews, and Salmon £80 each, and the two women £40 each.

Mr. Curlewis (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Ivy and Robert O'Brien, Collins, Ryan, and Summers; Messrs. Kinkead and Collins (instructed by Mr. F. A. Newnham) for Salmon; and Mr. W. O. Moseley for Stanton. Andrews was not represented.<sup>[697]</sup>

### **23 December, 1932. Quarter Sessions (Before Judge Thomson)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards.)

#### **Three Men Sentenced.**

William Graham, 28, waiter, Robert Want, 28, motor driver, and Jack Anthony, 27, labourer, had each pleaded guilty to breaking and entering and stealing.

His Honor said that the offence was premeditated. Breaking and entering was far too prevalent among the youth of the country and it would have to be put down.

Graham and Anthony were each sentenced to nine months imprisonment and Want to 12 months imprisonment.

Mr J J B Kinkead (instructed by Mr Fred Newnham) appeared for Graham.<sup>[697]</sup>

### **30 January, 1933. Woman Identifies Craig – Bessie O'Connor, She Declares – 10.20 pm Call – Bought Sandwiches at Tom Ugly's – Story at Inquest**

Describing in the Coroner's Court to-day a visit made with Eric Roland Craig to the spot where Bessie

O'Connor was brutally battered in National Park on December 14, Detective-Constable Payne said that as the car was pulling up Craig became very agitated and said, "Oh, don't take me down there."

Another witness, Mrs. Walls, said she saw Bessie O'Connor at her kiosk at Tom Ugly's Point at 10.20 p.m. on December 14. She was with a man whom Mrs. Walls identified as Craig.

Crowds fought to get into the small space of the Coroner's Court, where Eric Roland Craig, 25, salesman, charged with having murdered Bessie O'Connor, on December 14, was present in custody.

Mrs. O'Connor was the first witness, and as she cried and sobbed over the torn and blood-stained pieces of clothing that were ripped from her daughter's body, another mother, Mrs. Craig, who sat nearby, wept and prayed.

Several women were present in court, including Craig's wife, and friends of the O'Connor family.

There were 26 witnesses for the Crown.

### **Distraught Mother**

Mrs. O'Connor, mother of the dead girl, said that Bessie, who had been swimming at the Coowe Aquarium, returned home about 9.35 pm on Wednesday, December 14. After about three minutes she said, "I am going out for a while: I won't be long. Mum." Then she walked out without saying where she was going, or with whom.

Witness next day identified her daughter about 3 p.m. at the St. George Cottage Hospital, Kogarah, where she lay unconscious.

"Oh, this is terrible!" exclaimed Mrs. O'Connor as she sobbed for a few moments. The Court waited in a painful silence for her to regain her composure.

Mr. Kinkead (for Craig): How do you fix the time she came home? — When she was later than usual, I kept looking at the clock every five minutes or so,

Do you know any boy friend of Bessie whose Christian name was Frank? — He was only an acquaintance.

Were they sweethearts? — No; only pally. Bessie never had any sweethearts; she did not want any.

What was Frank's surname? — Frank Curtis.

Dr. McGarrity, of the St. George District Hospital, described Bessie O'Connor's condition at the time of her admission to the hospital. In addition to her injuries she was suffering from shock and exposure. In his opinion the wounds could be caused by a blunt instrument such as a policeman's baton.

### **At Tom Ugly's**

Evidence of having recognised Bessie O'Connor with a man at her shop at 10.20 p.m. on December 14, was given by Mrs. Elizabeth Watts, proprietress of the kiosk at Tom Ugly's Point.

Mrs. Watts said that a girl came into the shop, and she noticed her clothing in detail.

"I saw her come out after she had given an order for sandwiches. I took particular notice, and stared at her for a while; I was attracted by her as she had hair like a sister of mine. I smiled at her, and the girl smiled back.

**"Saw The Man"**

"When she came out," continued Mrs. Watts, "she joined a man on the verandah."

Mr. Barry: Have you seen that man since?— Yes.

Mr. Barry: Will you look round the court and see if you can see the man? Mrs. Watts then walked all round the court and placed her hand on Craig's shoulder.

Mrs. Watts said she later saw the dead body of the girl who came into her shop on December 14.

Skull Was Fractured - Ten Hits - Doctors Evidence At Inquest - Bessie O'connor

Mr. Barry: When the man and girl entered the car, in what" direction did they go?— Towards George's River Bridge.

Mr. Kinkead: When were you first interviewed with regard to this matter—On December 16.

Were you asked to describe the man you saw that night?— Yes, to the best of my ability.

What did you think his height was?— About 5ft. 6in. or 5ft. 7in.

Did you tell the police that? — I'm not sure.

**"Irish Features"**

Mr. Kinkead: Did you not tell the police you thought the man was 5ft. 10in.? — I'm not sure.

Did they ask you how the man was dressed?— Yes, I said he had a light colored cap or hat, but was not sure at the time. I thought he had a blue serge suit on.

Did you tell them anything else? — I said the man had broad features across the eyes and forehead. I thought he had Irish features.

Did you know that a man had been arrested in connection with the death of May Miller? — Yes.

**No Description**

Had you seen a photo of a man before you went to the line-up?— Yes. I saw one in "The Sun" or Truth."

You are short I sighted, are you not?— No.

Why then are you wearing glasses? — To hide some puffs under my eyes.

Mr. Kinkead called for the production of the statement by Mrs Watts containing the description of the man she saw with Bessie O'Connor on the night of December 14.

Detective-Sergeant Comans was called and said that no description by Mrs. Watts was in his possession.

**"At Least Ten Hits"**

Dr. Stratford Sheldon, Government Medical Officer, gave details of the shocking injuries to the head from which Bessie O'Connor died. There were 10 Irregular wounds in the scalp with fractures beneath, he said. There was also much fracturing of the top and left side of the head, and considerable injury to the brain. "Those injuries," he said, "could have been caused by at least 10 hits with a heavy instrument, which could have been a tomahawk or any blunt instrument."

George Edward McNamara told how he had found the nude girl near Farnell-avenue, National Park, with her head covered in blood, and apparently dead.

### **A Lock of Hair**

Detective Constable Payne, of Sutherland, said that, following the discovery of the battered girl by McNamara, he noticed motor car tracks, which he followed for 150 yards along Farnell-avenue. The front wheels of the car were shod with odd tyres, which were later identified on a car belonging to Mr. L. A. Downey, of Cook-road, Centennial Park, which had been stolen.

Near the girl he found a toll ticket issued from St. George's bridge, and a lock of hair which corresponded with that of the O'Connor girl.

Payne said that at the Central Station on January 6 Det.-Inspector Pryor questioned Craig, who said he knew some people in Liverpool. Pryor said, "I know some people there, too. Whom do you know?" Craig replied. "Some people named Stone, in Railway-street." Pryor asked if Craig knew who kept the hotel there, and Craig replied, "I know a widow lady with three daughters who keeps a hotel. One is a girl with a ginger head."

### **At Scene of Crime**

Payne said that, with other police, on January 7, he accompanied Craig in a car to National Park. On the way Craig asked, "Where are we going " and he was told they were going to where Bessie O'Connor was murdered. As the car was pulling up, Craig became very agitated, and said, "Oh, don't take me down there."

### **"Bloodstained Shirt"**

Mr. Kinkead: Did the man Brown who is supposed to have seen a man in a car give you a description, of that man?— Yes, he said he was wearing a cream or white Fuji silk shirt which had bloodstains on it.

Did he tell you anything else? He said he was dark haired.

Craig has not got dark hair, has he?— No.

Mr. Kinkead: When you told Craig you were taking him to where Bessie O'Connor was murdered did he say "Don't put that over me"? — No.

Would you say Craig has a broad Irish face? — No. He has a long, thin face.

### **Petrol From 'Bus**

Gerald Stiff, a laborer, said that with Alf Brown, Jack and Ron Dufficey and others he went for a drive on the night of December 14 and stopped at the kiosk at Tom Ugly's. All but he and Brown went inside.

While he was outside a man came over the bridge and said the garage was closed, and asked where he could get some petrol. Witness replied, "Here's a 'bus; ask the driver if he can give you some."

The driver of the 'bus took some petrol out of his tank into a tin. The man was sitting down holding the tin, and the petrol overflowed, but he did not notice it until the 'busman told him.

"He seemed to be pretty nervous," added witness.

The man told Mr. Brown, who was with witness at the time, that his name was Stone, and that he wanted to get back to Liverpool, where he lived in Railway-street. Mr. Brown drove him back to where his car was on the other side of the bridge.

Shortly afterwards the man returned driving an Essex sedan. They followed the man to Rockdale, where he went towards the city.



Stiff said he had picked out a man at a line-up who was "as near as possible to him." That man he picked in the line was Craig, but he could not say definitely he was the man seen on December 14. He was the same build and very much like the man.

Mr. Kinkead: Did the man you saw on December 14 have any cuts or scratches on any side of his face? —He had no cuts.

Witness said the man who wanted the petrol had a dark, plum-colored suit, and he wore a hat.

The Inquest was adjourned until 9.30 a.m. on Wednesday, February 1. Mr. A. Barry and Detective Inspector Miller, appeared to assist the Coroner, and Mr. J. J. B Kinkead (instructed, by Mr. J.'T. Desmond) appeared for Craig.<sup>[698]</sup>

## Barrister – 1933

## Overview

Date	Accused	Action	Offence	Result
30 January 1933	Eric Roland Craig	Defended	Murder	Committed
7 February 1933	William Roy Wilcox	Defended	Assault	Acquitted
7 February 1933	John Henry Vigor	Defended	Assault	Acquitted
8 February 1933	Francis David Maitland	Defended	Gambling	Convicted
14 February 1933	Christopher Salmon	Defended	Stealing	Convicted
14 February 1933	Frederick Andrews	Defended	Stealing	Convicted
21 February 1933	Reginald Mercer	Defended	Receiving	Acquitted
24 February 1933	Harold Roy Williams	Defended	Counterfeiting	Convicted
2 March 1933	Edward Levi	Defended	Smuggling	Convicted
3 March 1933	Edwin Kirkwood	Defended	Break & Enter	Acquitted
3 March 1933	Marie Davies	Defended	Break & Enter	Acquitted
4 March 1933	Paul Grierson	Defended	Appeal	Dismissed
9 March 1933	Stephen Reid	Defended	Break & Enter	Convicted
11 March 1933	Guy Neville Kingsbury	Defended	Malicious Wounding	Convicted
15 March 1933	George Leslie Griffin	Defended	Murder	Convicted
21 March 1933	Lindsay Donald Macpherson	Defended	Manslaughter	Acquitted
24 March 1933	Henry George Page	Defended	Indecent Assault	Acquitted
24 March 1933	Sydney Rowe	Defended	Receiving	Acquitted
25 March 1933	Frank Jackson	Defended	Break & Enter	Acquitted
1 April 1933	Ernest Robert Abigail	Defended	AVO	
4 April 1933	James Wallace	Defended	Counterfeiting	Acquitted
6 April 1933	Edward Heath	Defended	Counterfeiting	Acquitted
11 April 1933	Henry Morris MacCormack	Defended	Conspiracy to Defraud	Acquitted
20 April 1933	Sydney Victor Crealy	Defended	Theft	Acquitted
22 April 1933	John Thomas Fuller	Defended	Sexual Assault	Acquitted
25 April 1933	Donald Cullen	Defended	Sexual Assault	Remanded
4 May 1933	Bernard Hayes	Defended	Malicious Wounding	Convicted
11 May 1933	John Henry West	Defended	Break & Enter	Convicted
19 May 1933	James Joseph Nesbitt	Defended	Indecent Assault	Remanded
19 May 1933	Harry Ireland	Defended	Break & Enter	Acquitted

24 May 1933	Joseph Deegan	Defended	Malicious Wounding	Acquitted
25 May 1933	Henry Pickles	Defended	Larceny	Acquitted
30 May 1933	Robert Jackson	Defended	Appeal	Upheld
9 June 1933	Louis Lewis	Defended	Appeal	Upheld
14 June 1933	Reuben Holmes	Defended	Break & Enter	Acquitted
15 June 1933	William James Buffrey	Defended	Theft	Convicted
24 June 1933	Walter Bernard Johnson	Defended	Felonious Death	Acquitted
29 June 1933	Edward Heath	Defended	Theft	Acquitted
30 June 1933	Samuel Batten	Defended	Conspiracy to Defraud	Convicted
30 June 1933	Eileen Wilson	Defended	Theft	Acquitted
5 July 1933	James Joseph Nesbitt	Defended	Indecent Assault	Acquitted
5 July 1933	Stanley John Thompson	Defended	Conspiracy to Defraud	Acquitted
7 July 1933	Michael Jack Kelly	Defended	Conspiracy to Defraud	Remanded
7 July 1933	John Banting	Defended	Conspiracy to Defraud	Remanded
14 July 1933	Edward Rankin Gardner	Defended	Break & Enter	Convicted
18 July 1933	Moses Hyams	Defended	Theft	Acquitted
25 July 1933	William Thomas Law	Defended	Theft	Convicted
25 July 1933	Patrick Francis Roache	Defended	Theft	Convicted
25 July 1933	Luke Joseph Flanagan	Defended	Assault	Acquitted
3 August 1933	Harry Wilson	Defended	Indictable Offence	Acquitted
11 August 1933	Jeremiah Lynch	Defended	Assault & Robbery	Remanded
12 August 1933	Bernard Caplin	Defended	Appeal	Reserved
16 August 1933	Batholomew Dodds	Defended	Assault	Acquitted
16 August 1933	Lismore William Beatty	Defended	Break & Enter	Convicted
16 August 1933	Albert Thomas Lord	Defended	Conspiracy to Defraud	Convicted
19 August 1933	Robert Luke Charles	Defended	Break & Enter	Convicted
22 August 1933	George Harold Gail	Defended	Theft	Acquitted
23 August 1933	Henry Cuthbert Gillard	Defended	Assault	Convicted
23 August 1933	John Marks	Defended	Larceny	Acquitted
24 August 1933	Charles Hewitt Bacon Baker	Defended	Break & Enter	Acquitted
25 August 1933	Paul Grierson	Defended	Appeal	Refused

6 September 1933	Mervyn Aubrey McDonald	Defended	Receiving	Acquitted
7 September 1933	Rupert James Howes	Defended	Counterfeiting	Acquitted
8 September 1933	George Thomas Lynch	Defended	Assault & Robbery	Acquitted
14 September 1933	John Hubert McDonald	Defended	Appeal	Upheld
14 September 1933	John William McDonald	Defended	Appeal	Upheld
14 September 1933	George Allan Byron	Defended	Stealing	Convicted
19 September 1933	Harold Bert Gardiner	Defended	Larceny	Convicted
22 September 1933	Aubrey Eric Simpson	Defended	False Pretences	Acquitted
23 September 1933	Bernard Caplin	Defended	Appeal	Dismissed
7 October 1933	Arthur Leslie Hill	Defended	Stealing	Acquitted
24 October 1933	Hans Boyd Martyn	Defended	False Pretences	Convicted
4 November 1933	Joseph Patrick Morris	Defended	Break & Enter	Acquitted
7 November 1933	Eileen Fox	Defended	Theft	Acquitted
9 November 1933	Edwin George Humphries	Defended	Theft	Acquitted
15 November 1933	Harold Roy Williams	Defended	Appeal	Upheld
17 November 1933	Gordon Darby Smith	Defended	Assault	Acquitted
24 November 1933	John Gray	Defended	False Pretences	Undecided
7 December 1933	Frances Aston	Defended	False Pretences	Acquitted
8 December 1933	George Thomas Lynch	Defended	Assault & Robbery	Acquitted
8 December 1933	George Arnold Robson	Defended	False Pretences	Acquitted
14 December 1933	Cecil Victor Maurice Fevez	Defended	Obcenity	Convicted
19 December 1933	Stanley Henry Breen	Defended	Stealing	Committed
19 December 1933	Samuel Hugh Wright	Defended	Stealing	Committed
20 December 1933	George William Corfield	Defended	Conspiracy to Defraud	Adjourned

## Articles

### *30 January, 1933. Young Wife – Sad Figure at Inquest.*

Immobile, but following keenly every word that was said, Eric Roland Craig, charged with the murder of Bessie O'Connor, sat beside his counsel, Mr. Kinkead, at the Coroner's Court when the Inquest was begun to-day.

He spoke occasionally to his counsel, but was apparently unconscious of everyone else in the court. He watched the witnesses keenly.

His young wife came in and sat nearby, but he did not glance in her direction. Unable to stand the strain, she soon went out again.

### **Crowd At Court**

Several hundred persons crowded round the entrance to the court long before 10 o'clock, but only about a score, including a number of women, obtained admittance.

As they sat laughing and joking before the court opened, no one would have thought that it was a murder inquest they had come to hear.

They fell silent as the hearing began, and soon the atmosphere of the tragedy that was being investigated pervaded the court.<sup>[698]</sup>

### **1 February, 1933. Mr Kinkead Dissenting**

There is no more enthusiastic cricket fan than barrister J.J. Kinkead. At every first-class game in Sydney the popular legal mind joins a select band of "super critics", who congregate in the upstairs portion of the members stand. There are a dozen or more in the party, and the "costs" profession is well represented. Just before the Sydney Test match, J.J.K. was bemoaning the fact that an important case in which he was defending counsel was set down for hearing on the date the game started and he had the deepest sympathies of his friends, who promised to keep him well posted with the scores.

There was much surprise accordingly when on the day, the popular pleader took his usual seat a few minutes before the game started. He must have scented some wise cracks in the offing, for he volunteered the following before a word had been spoken by anyone: "Look here boys! You can read it in the papers. The Crown asked for a remand and I strenuously opposed it!" The handclapping as the players took the field drowned the dissenting chorus his friends had started sotto voce.<sup>[699]</sup>

### **2 February, 1933. National Park – Murder Inquest – Dramatic Evidence Tom Ugly's Point Incidents.**

Two dramatic Incidents occurred In the City Coroner's Court yesterday, when the inquest into the death of Elizabeth Isabel O'Connor, 16 of Holdern-street, Redfern, who was battered and fatally injured on the night of December 14, at National Park, was resumed by the City Coroner Mr. Farrington).

Two men placed their hands on the shoulder of Eric Roland Craig, who has been charged with the murder, when they were asked to identify a man who sought petrol at Tom Ugly's Point about 12.30 o'clock on the morning of December 15.

Craig's young wife, who had previously spent most of her time out of sight of people In court, watched proceedings yesterday with interest. She frequently smiled encouragingly at her husband, who nodded In return.

After 24 witnesses had been heard Mr. Farrington adjourned the Inquest until to-day. The evidence of Detective-sergeants McRae and Comans and Detective Wiley has still to be given.

The first witness yesterday was Edward Francis Watson, proprietor of a restaurant at Tom Ugly's Point. He said that a man entered his restaurant early on the morning of December 15, and asked where he could get petrol. When he was told that all the garages were closed, he said, "I am stuck up over the river in an Essex motor car and I want to get to Liverpool. I will pay double price." Witness told him to try at the hotel, and then went inside. Shortly afterwards, Percy Weekes, a bus driver, came in and asked for a tin. He said he wanted to give petrol to a man in the street. Weekes was given the tin, and he went away. Watson said he could identify the man. He walked from the box and placed his hand on Craig's shoulder.

Charles Alfred Watson, son of the previous witness, identified a gallon oil tin produced in court as one he had given Weekes.

#### **Bus Driver's Evidence.**

Percy Charles Weekes, of Prince's Highway, Kogarah, said he crossed the George's River bridge shortly before midnight on December 14, and saw a motor car on the Sylvania side. When he returned about 20 minutes later a man stopped him opposite Watson's refreshment rooms and asked for petrol. He mentioned that he had an Essex motor car. The man paid for the petrol, took the tin with him, and was driven over the bridge by a motorist who was standing beside his motor car nearby.

When asked if he saw the man whom he had supplied with petrol, witness walked down the court and placed his hand on Craig. He said that he was not positive, but he thought Craig was the man.

Lionel Albert Downey said that his blue Essex motor car was stolen from the garage of his home in Cook-road, Centennial Park, between 6 p.m. and 9.30 p.m. on the night of December 14. Watchman Williams, next morning, led him to his car in Centenniallane. There were bloodstains on the front door at the driver's side.

Downey added that the radiator was still warm. A large tomahawk or half-axe was missing, but the leather guard for the blade was on the floor of the car. The fan belt had been disturbed. Part was coiled round the lower shaft, and the rubber portion had been tossed into the back seat. Witness identified a strip of blood-stained polishing cloth as having been taken from his car and described the finding of bloodstains in his car.

#### **At Tom Ugly's Kiosk.**

Alfred Stephen Brown, shopkeeper at 24 Botany-road, Mascot, said he, Gerald Stiff, and three other men drove to the kiosk at Tom Ugly's Point on the night of December 14. He and Stiff remained in the motor car while the three other men went into the shop shortly after midnight. A man approached, and said he had run out of petrol and must get to Liverpool. Witness drove him to an Essex motor car, which was standing at the other side of the bridge. The number-plate was chipped. He told the stranger to see if there was any petrol. There was plenty of petrol. Asked if he had stolen the motor car, the stranger said "No." The fan belt had become displaced, and had swept off an ignition wire. Witness fixed the wire, and put the belt in the car. There were suitcases in the back of the car but he did not see any bloodstains. The man said he knew a widow named Summergreen, who had two daughters, and lived at Liverpool. After repairs were made, both motor cars were driven over the bridge. The man paid Brown's toll. His car passed Brown's and proceeded towards the city.

Brown said that he would be unable to identify the man he had assisted. He picked out Craig in court as the man whose profile resembled, more than any other in court, that of the motorist at Tom Ugly's Point. Witness said that he was at a line-up at the Central Police Station on January 7, but he did not pick Craig.

Mrs. Grace May Stone said that she lived in Bigge-street, Liverpool. Railway-street was a side street nearby. She met Craig about October, 1928, when he was brought home by a daughter. She did not see Craig until 1929. He saw her again two years ago, when he rode to her home and sympathised with her over the death of a daughter.

George Graham, of Dalley-road, Naremburn, told of several visits to Mrs. Stone's home with Craig in October, 1928.

Margaret Grace Summergreen said she assisted her mother, who was licensee at the Golden Fleece Hotel In Scott-street, Liverpool. She said Craig's face was familiar. She thought she had seen him in her mother's hotel.

Herbert Cook, of Kenneth-avenue, Sutherland, said he was collecting toll on the George's River Bridge on December 14, when he issued ticket No. 196.111-the one found near Miss O'Connor's unconscious body-about 10.35 p.m. The ticket was issued to a motor car driver, but he had no recollection of the man.

Mr. A. W. Barry and Detective-Inspector Miller appeared for the police, and Mr. J. J. B. Kinkead (instructed by Mr. J. J. Desmond) represented Craig.<sup>[700]</sup>

### **3 February, 1933. Park Tragedy – Coroner's Finding – Verdict of Murder Craig Committed For Trial.**

The City Coroner (Mr. Farrington; committed Eric Roland Craig, 25, a salesmen, for trial yesterday on a charge of having murdered Elisabeth Isabel O'Connor, aged 16 years, who was fatally battered in National Park. He found that Craig had murdered the girl with a tomahawk.

Craig was present in custody. His wife and mother were in court Twenty seven witnesses gave evidence during the three days of hearing at the Coroner's Court.

At the conclusion of the police evidence Mr Farrington asked Craig if he wished to give evidence concerning the death of Miss O Connor. Craig consulted Mr Kinkead his counsel. Then he stood, and replied in a firm voice, ' On the advice of my counsel, no.'

Mr Farrington said that there was evidence of the motor car being stoken from Mr Downey's garage, that a tomahawk was missing from it, that Dr Sheldon believed the 10 blows could have been inflicted by the back or front of it, that the damaged fan belt had been thrown in the back seat, and that it was found there when the motor car was recovered. There was also definite evidence that Craig and Bessie O'Connor had been seen together at Tom Ugly's Point. He then returned his verdict.

### **Yesterday's Evidence**

In evidence yesterday Detective-sergeant James Comans said that he saw Craig on the morning of January 7. He told Craig that a man answering his description had picked up Miss O'Connor in an Essex sedan car on the night of December 14. Craig said "I have told the police what I was doing that night I left home about 8 pm and walked to the Majestic Laundry. I went home and found a girl named Lily with my wife. My wife said. Jack Wonders has just left. I walked to his home In Oxford-street but he was not there. I went as far as West's picture show and then returned home. I did not meet anyone I knew. Witness asked him if he had been to National Park that night Craig said, "No. It is no good asking me about the murder of Bessie O'Connor. I did not do it. I told the truth about the other case, and my conscience is clear." Craig said he had told Detective inspector Pryor, Chief of the Criminal Investigation Branch, that he knew people named Stone in Railway-street Liverpool and three girls in a hotel at Liverpool. He had been to the Stones' home with a man named Jock Graham. Detective-sergeant Coman told Craig that Downey's motor car had been stolen from Centennial Park, and that a man answering his description had been seen at Tom Uglys Point. The man had told People who helped him start the car that his name was Stone, and that he knew a widow with three daughters in a Liverpool hotel. Craig said "Jock Graham would know all that." He said he did not know anyone else who would be likely to know about the Stones and the widow.

### **"I Can't Say Anything."**

Witness said he told Craig that afternoon that Mrs Stone had said that he and Graham were the only



soldiers to visit her home. Witness said, "I put it to you that only you or Graham could have been in the stolen car at Tom Ugly's Point and Graham has proved he was not there." Craig said "I cannot say anything." Witness said "You gave a description of Graham which was almost identical with the published description of the man suspected of the murder of Bessie O Connor. We have found Graham and he does not answer the description." Craig replied "I can't say anything."

Witness told Mr Kinhead that a man named Frederick Lawrence, of Cornwallis-street Redfern had seen a girl answering Bessie O'Connor's description leave a motor car at the corner of Eveleigh and Lawson streets Redfern about 9.20 o'clock on the evening of December 14. The girl went down Eveleigh street. Lawrence had smoked a cigarette with the motorist before the girl arrived. He was unable to pick Craig out of a line-up at Central Police Station. Another man, Thomas Brown a commercial traveller of Newtown, had told the police that he had noticed a man wearing a gold signet ring in a sedan motor car shortly before midnight. He had not identified Craig in a line-up. Witness deduced that the murdered girl had been picked up on her way home from Coogee by a man in a motor car, because she took only three quarter of an hour to return home, from Lawrence's statement, and the fact that she was seen in a motor car at Tom Ugly's Point. Witness had interviewed fully 100 people in his investigations of the crime.

### **Scene Of Tragedy**

Detective James Wiley described a visit to the scene of the attack on Miss O'Connor in National Park with Craig and other police. Witness said Craig asked where the party was going when the car entered Farnell avenue. When it stopped, and Craig was told he was to be shown the scene he replied, 'Oh! Don't take me down there.' Craig was asked if he had been with Miss O'Connor on the night of December 14. He replied, I can t say anything." At detective headquarters he said, "Are you going to let those people look at me? I would rather be lined up. They will say anything for £250."

Witness said Craig appeared very agitated at National Park, and looked straight ahead when Detective-Inspector Miller indicated places where the attack had taken place.

Detective-sergeant McRae said that Craig told him at Paddington police station on January 6 that he had changed his address from 12 Victoria-avenue to 38G Park-road a few days before his arrest. Craig was shown a statement he had given Inspector Miller concerning his movements. Detective-sergeant McRae read the statement which described his movements on the night of December 14 as previously given in evidence by Sergeant Comans.

### **Similarity Of Crimes.**

Detective-sergeant McRae then described his interview with Craig. He had said to Craig, "I want to point out to you the similarity of the murders of May Miller and Bessie O'Connor." Craig replied "I have told you the truth about the murder of May Miller, but I cannot admit anything about Bessie O'Connor." Witness said, "I will point out the points of similarity. An Essex motor car was used to commit both offences. You admit having stolen an Essex motor car in connection with the crime of May Miller." Craig said, "Yes." Witness said, "An apparently unknown woman is picked up in each case. I understand you did not know May Miller before you took her in the car with you." Craig said "That is true." Witness said "Both victims were driven in a stolen car to a secluded spot. You admitted driving May Miller to Queen's Park apparently without being seen. Miss O'Connor was driven to National Paik at night. Both women were killed by being hit over the head. You admitted hitting Miller with a piece of wood. There were eight wounds. Miss O'Connor had been hit over the head in a similar manner. There were nine wounds on her head and the wounds were similar to those suffered by Miller. After being hit, the bodies were dragged by the feet into some bushes. You admitted dragging Miller into some lantana bushes. Miss O'Connor was apparently struck in the car,

and marks indicate she was dragged into some bush. You admitted stripping Miller of her clothing. Bessie O'Connor was also stripped except for her shoes. The clothing you took off May Miller was hidden in a plantation 300 yards away. Miss O'Connor's clothing was found in bushes about 300 yards from the scene of the crime. The Essex motor car which you used in connection with the crime on Miller was abandoned in Fullerton street about 600 yards north of your home. The Essex car we allege was used in Bessie O Connors murder was left in Centennial-lane about 600 yards to the south of your home. And the remarks passed by the man in the Essex motor car at Tom Uglys Point to Stiff and Brown about the Stones and hotel-keeper at Liverpool are similar to the remarks you made to Inspectors Pryor and Miller." Craig said "I can see it looks very black against me. I admit I killed May Miller but I cannot say that I did the same thing to Bessie O'Connor." Craig said he believed that only he and Graham could have passed the remarks made at Tom Ugly's Point. Detective sergeant McRae took a description of Graham from Craig and said, "It's nearly the same as that given in the newspapers of the man wanted by the police in connection with the crime." Craig said it is his description. Craig was unable to say where Graham was living. He was asked how long he had been growing a moustache and replied three weeks. He said he knew nothing of the mechanism of a motor car but could drive one. At the Central Police Station on January 21, witness charged Craig with the murder Craig replied "It Is a lie".<sup>[701]</sup>

Image from The Truth.<sup>[702]</sup>

I suppose every soldier who goes to Liverpool would go to your hotel for a drink?—No, I don't suppose so.

Well, that is a matter for regret! You are assisted in the bar by a Miss Flanagan?—Yes.

Herbert Cook, toll collector, employed by the Sutherland Shire, identified a toll ticket, No. 196.111, which he said he had given to a motor driver somewhere about 10.40 p.m. on the night of December 14.

session of the same information: He said, 'No.'

"I again saw Craig with Detective-Sergeant Keogh at about 10 p.m. on Jan-17 at the view room at Central Police Station, and I said to him, 'You have already been cautioned.'

"Mrs. Stone has been seen and she knows you very well. She says that you and Graham were the only two men from the camp who visited her place," and he replied, 'I can't say anything.'

"I asked him if he could name any person he had seen on the night of December 14 from the time he left home and



ON THE LEFT is Dr. McGarrity, of St. George District Hospital, who described Bessie O'Connor's death wounds; in the centre is part of the crowd waiting to get into the Court; and on the right is Craig's counsel, Mr. Kinhead.

criminate yourself.'" McRae said he had remarked.

"Craig said, 'I am sorry, but I can't admit that.' I then showed Craig a copy of a typed statement and said that it was the copy of a statement made by him to Inspector Miller concerning his movements on December 14. Craig, when asked, said that they were true. The

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**7 February, 1993. Parramatta Quarter Sessions (Before Acting-Judge Barton.)**

(Mr. F. W. Berne, Crown Prosecutor.)

**Assault Charge.**

William Roy Willcox, a student, and John Henry Vigor, a bus driver, pleaded not guilty to a charge of having assaulted Henry Robert Banks, a taxi-cab driver, at Auburn, occasioning, him actual bodily harm. The Crown alleged that Banks was driving his cab along Sutherland-road, Auburn, at 10.15 p.m. on November 25, when a bus driven by Willcox swerved toward him, causing Banks to leave the road. Later, it was alleged, Banks accused Willcox of attempting to run him off the road, and a quarrel followed. Banks said, in evidence, that Vigor struck him on the jaw with his fists, and they rolled on the ground. While he was down, Banks alleged, Willcox either kicked or punched him on the head. Willcox again assaulted him, and knocked him down and kicked him. The next thing he remembered, he said, was Vigor hitting him twice. He was taken to hospital suffering from concussion, and was a patient for two weeks.

Both accused denied the charge, and alleged that Banks was the aggressor.

The case is part heard.

Mr. J. J. B. Kinkead, instructed by Mr, F. E. Murray, of Parramatta, appeared for the defence.<sup>[703]</sup>

**8 February, 1933. Through A Glass Darkly**

During the hearing of a betting prosecution at the Central Court yesterday, Mr Kinkead, solicitor, asked a police agent if he would remove his glasses.

The police prosecutor, Sgt O'Toole, objected.

"What difference will it make?" asked Mr Kinkead.

"It makes a lot of difference," replied the sergeant.

"The court is crowded, and some people come here to identify these men so that they can assault them afterwards."

Mr Kinkead did not press the matter.<sup>[704]</sup>

**8 February, 1933. Police Agent - Evidence in Betting Case - Measures To Prevent Recognition.**

A curious incident occurred while Joseph Collins, described as a police agent, was giving evidence in a betting case at the Central Police Court yesterday.

Collins said that he did not wish to disclose his address, and the magistrate, Mr. Gibson, upheld him. Mr. J. J. B. Kinkead (for the defendant) later asked Collins to remove a pair of horn-rimmed glasses that he was wearing. The police prosecutor, Sergeant Toole, objected to the request.

Mr. Kinkead said that if Collins would remove his glasses he would ask him to identify somebody seated in the court.

Mr. Gibson, S.M.: I consider that It is a fair request.

As Collins put his hand up to remove his glasses. Sergeant Toole said, "Just a moment, witness. I still object, your Worship. The court is crowded, and there are frequently persons attending the courts to identify these men so that when they get them outside they can set upon them, assault them, and brutally kick them."

Mr. Kinkead: What difference will the removal of his glasses make to the witness?

Sergeant Toole: It will make some difference.

Mr. Kinkead then Indicated that he would not press the matter.

The case was one in which Francis David Maitland, 40, a labourer, was charged with having been in Harris-street, Pyrmont, on January 14 for the purpose of betting. Maitland was convicted and fined £20, in default 40 days' imprisonment.<sup>[705]</sup>

**9 February, 1933. Parramatta Quarter Sessions (Before Acting-Judge Barton.)**

(Mr. F. W. Berne, Crown Prosecutor.)

**Not Guilty**

The jury returned a verdict of not guilty in the case in which William Roy Willcox and Henry Vigor were charged with having assaulted Henry Robert Banks, and having occasioned him bodily harm, at Auburn on November 25. The accused were discharged. Mr. J. J. B. Kinkead, instructed by Mr. F. E. Murray, appeared for the defence.<sup>[706]</sup>

**14 February, 1933. Quarter Sessions (Before Acting Judge Lloyd)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. R. V. Edwards).

**Eight Persons Charged.**

Christopher Salmon, 19, Frederick Andrews, 21, Henry Stanton, 20, Ernest Thompson, 21, Thomas James Summers, 26, Robert O'Brien, 37, Nellie Collins, 20, and Ivy O'Brien, 27, were charged that on December 2 last, at North Strathfield, they stole a large quantity of merchandise, the property of the Transport Commissioners of New South Wales. There were alternative charges of receiving.

Salmon and Andrews each pleaded guilty to larceny, and were remanded till to-day for sentence.

In outlining the case against the other accused, Mr. McKean said that the merchandise disappeared between Darling Harbour and Hornsby. Police visited a house in Ultimo, and in a room downstairs found Ivy O'Brien, a man named Ryan, who was at present in hospital, and Nellie Collins. Men were found upstairs. The ownership of the goods by the Transport Commissioners was admitted, and it was also admitted that they were found in a house in Ultimo. Mr. McKean asked the jury to confine itself to the charge of receiving.

His Honor said that the evidence against Nellie Collins was very slight, and it would be dangerous to find her guilty. He directed the jury to return a verdict of not guilty. She was discharged.

His Honor upheld a similar objection with regard to Ivy O'Brien, and she was discharged.

In a statement from the dock, Stanton said that he went to tile house in Ultimo at the invitation of Salmon to attend a party. When he saw the goods he picked up a tie. He denied that he had anything to do with the theft of the goods, or that he knew they were stolen.

Thompson said that he went to the house the invitation to attend a party. O'Brien and Summers gave a general denial to the charge.

Ivy O'Brien, called by the defence, said that when the men were brought downstairs she told the police she knew Salmon and Andrews, but not the others. She did not know that the men were upstairs, or that the merchandise was there. So far as she knew, the goods were not in the house earlier in the evening, when she went out to look for her husband, who, she said, was under the influencr of liquor.

Mr. McKean (to Mrs. O'Brien) : I put It to you plainly that your house is simply a thieves' kitchen?-It is not.

The jury found O'Brien and Summers guilty of receiving, but disagreed with regard to Stanton and Thompson. O'Brien and Summers were remanded till to-day for sentence. With respect to Stanton and Thompson, the jury was locked up for the night.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Salmon; Mr. J. J. B. Kinkead (instructed by Messrs. John Hickey and Quinn) for Andrews; Mr. R. M. Kidston (instructed by Mr. J. J. Desmond) for Stanton and Thompson; and Mr. McClemens (instructed by Messrs. Rosendahl and Devereux) for O'Brien, Summers, Nellie Collins, and Ivy O'Brien.<sup>[707]</sup>

#### **15 February, 1933. Quarter Sessions (Before Acting-Judge Lloyd.)**

(Senior Crown Prosecutor, Mr. McKean, K.C., instructed by Mr. R. V. Edwards.)

#### **Railway Thefts.**

The case of Christopher Salmon and others, is reported In another column.

Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for Salmon; Mr. J. J. B. Kinkead (instructed by Messrs. John Hickey and Quinn) for Andrews; Mr. R. M. Kidston (instructed by Mr. J. J. Desmond) for Stanton and Thompson; and Mr. McClemens (instructed by Messrs. Rosendahl and Devereux) for O'Brien and Summers.<sup>[708]</sup>

#### **18 February, 1933. Long Sentence – Man Asks Leave To Appeal**

After it was explained: that appellant's, barrister, Mr. J. J. B. Kinkead, had returned his brief, the Full Court yesterday adjourned until Friday next the application by Paul Grierson for leave to appeal against his conviction and sentence of 35 years' imprisonment by Judge Thomson, on charges of assault and robbery, and inflicting grievous bodily harm on a William Street Post Office, official, by throwing ammonia. It is possible that Grierson may argue his own application.<sup>[709]</sup>

#### **21 February, 1933. Quarter Sessions (Before Acting-Judge Lloyd.)**

(Senior Crown Prosecutor, Mr. McKean, K.C., instructed by Mr. R. V. Edwards.)

Henry Abrahams, 35, salesman, Reginald Mercer, 29, salesman, and Jack Cohen, 29, salesman, were charged that in August last they stole fifty receiving set chassis, twenty loud speakers, 600 valves, and 169 receiving sets, the property of Jose Alberti.

There was an alternative charge of receiving. The hearing had not concluded when the Court rose till to-day.

Mr. J. J. B. Kinkead (instructed by Mr. O'Dea) appeared for Mercer; and Mr. W. P. Sheahan (instructed by Mr. O'Dea) for Abrahams and Cohen.<sup>[710]</sup>

#### **21 February, 1933. Quarter Sessions (Before Acting-Judge Lloyd.)**

(Senior Crown Prosecutor, Mr. McKean, K.C., instructed by Mr. R. V. Edwards.)

#### **Three Men Acquitted**

The trial was concluded of Henry Abrahams, 35, salesman, Reginald Mercer, 29, salesman, and Jack Cohen, 29, salesman, who were charged that in August last they stole 50 receiving set chassis, 20 loud speakers, 600 valves, and 169 receiving sets, the property of Jose Alberti.

There was an alternative charge of receiving. Having retired for a few minutes, the jury returned a verdict of not guilty. The three accused were discharged.

Mr. J. J. B. Kinkead (instructed by Mr. O'Dea) appeared for Mercer; and Mr. W. F. Sheahan (instructed by Mr. O'Dea) for Abrahams and Cohen.<sup>[711]</sup>

**24 February, 1933. Quarter Sessions (Before Judge White.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by the Commonwealth Crown Solicitor).

**Pleaded Guilty.**

Harold Roy Williams, 38, pleaded guilty to (1) having made 2141 counterfeit coins, intended to resemble florins; (2) having had in his possession - a coining instrument; (3) having in his possession 45 dies adapted to make the resemblance of a florin.

Louis Somme pleaded guilty to having made 45 dies adapted to make the resemblance of a florin.

They were remanded till to-day for sentence. Mr. J. J. B. Kinkead (instructed by Mr. J. H. Yeldham) appeared for Williams; and Mr. C. R. Penny for Somme.<sup>[712]</sup>

**25 February, 1933. Quarter Sessions (Before Judge White.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by the Commonwealth Crown Solicitor).

**Counterfeiting Charges.**

Harold Roy Williams, 37, had pleaded guilty to (1) having made 2141 counterfeit coins, (2) having had in his possession coining instruments; and Louis Somme, 63, to having made 45 dies adapted to make the resemblance of a florin.

Detective Boswell gave evidence that £4700 worth of the spurious coins had been made. The coins were perfect imitations.

Mr. Penny said that Somme was an artist, and he had been brought into the counterfeiting business in a subtle way.

Mr. Kinkead said that Williams was not the master mind in the business, The master mind was a third man.

His Honor sentenced Williams to 18 months' imprisonment on each charge, concurrent, and Somme to 18 months' imprisonment. His Honor said that at the end of a period they could apply for a remission of the remainder of the sentence, and the request would be considered. If possible, he thought both prisoners should be sent to a prison farm.

Mr. J. J. B. Kinkead (instructed by Mr. J. H. Yeldham) appeared for Williams; and Mr. C. R. Penny for Somme.<sup>[713]</sup>

**25 February, 1933. Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Phillip Street, Mr. Justice James, and Mr. Justice Davidson.)

The Solicitor General (Mr Weigall KC) instructed by the Deputy Clerk of the Peace (Mr Champion) for the Crown

**William-Street Robbery**

**Rex v Grierson**

Paul Grleison appealed in person to argue an appeal from convictions at the Sydney Quarter Sessions in December of (1) assault and robbery and (2) inflicting grievous bodily harm by throwing a corrosive liquid. Judge Thomson, the trial Judge, sentenced Grierson to 10 years and 35 years' imprisonment respectively, to be served concurrently.



Grierson in reply to the Chief Justice, said the grounds of his appeal were (1) I am not guilty (2) that the verdict was against the evidence and the weight of evidence (3) that the conviction is bad and contrary to law, (4) that his Honor misdirected the jury, (5) that the sentence was excessive, and (6) that his Honor wrongfully refused to admit certain documents in evidence. Grierson explained that he placed most reliance on the fourth and sixth grounds.

Having read the summing-up the Chief Justice expressed the opinion that the ground that the verdict was against the evidence was not capable of being supported. It appeared that the application resolved itself into this: An objection to the summing-up as being prejudicial to the defence, and that certain letters were not admitted in evidence.

"We feel, added the Chief Justice, that Grierson is at a disadvantage in not being represented and we believe that the case is one in which he should be advised to make application for assistance."

The Solicitor General: I agree if the Court will allow the case to stand over I will see that he gets assistance.

The further hearing was adjourned for a week after Grierson had indicated that he would apply for the assignment by the Crown of Mr Kinkead the counsel who defended him at the trial.<sup>[713]</sup>

### **2 March, 1933. Police Courts - Smuggled Cigarette Papers.**

Evidence that cigarette papers had been smuggled into Australia, via New Zealand, on an extensive scale was given at the Central Summons Court yesterday, when four men were fined for breaches of the Customs Act.

Arthur Albert Rees, a greaser on the Monowai, was fined £75 for having smuggled 500 cartons of papers, valued at £375, into the Commonwealth on February 14. Edward Levi, tobacconist's manager, 713 George-street, Sydney, was fined £75 for having received smuggled goods. Thomas Murphy, of 119 Beattie-street, Balmain, and Thomas Murphy, 137 Flood-street, Leichhardt, were fined £10 and £5 respectively for having conveyed smuggled goods. All of the defendants pleaded guilty.

Detective Arentz said that so far as he could ascertain Rees was not the "big man" in the business.

Rees admitted having received £315 for the papers, which were valued at £375.

Mr. Bowie Wilson (instructed by the Commonwealth Crown Solicitor) prosecuted. Mr. Kinkead (instructed by Messrs. T. W. Garrett, Christie, and Berne) appeared for Levi; Mr. Roach for Rees, and Mr. Mervyn Finlay for the two Murphys.<sup>[714]</sup>

### **3 March, 1933. Quarter Sessions (Before Acting Judge Lloyd.)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace).

#### **Three Persons Charged.**

George Fletcher, 27, salesman, Edwin Kirkwood, 39, clerk, and Marie Davies, 33, domestic duties, were charged with breaking, entering, and stealing. There was an alternative charge of receiving.

Mr. McKean said that there was no evidence of any description against any of the accused on the breaking and entering charge, but there was some evidence on the second count.

The Jury returned a verdict of guilty of receiving against Fletcher, and not guilty on both counts with respect to Kirkwood and Davies.



Kirkwood and Davies were discharged.

Police evidence was that at Chippendale and Ultimo Fletcher was an absolute menace.

Fletcher was sentenced to two years' imprisonment with hard labour.

Mr. R. M. Kidston (instructed by Mr. J. J. Desmond) appeared for Fletcher; and Mr. J. J. B. Kinkead (instructed by Mr. P. N. Roach) for Kirkwood and Davies.<sup>[715]</sup>

#### **4 March, 1933. Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Phillp Street, Mr. Justice James, and Mr. Justice Davidson.)

William-Street Robbery.

#### **Rex v Grierson.**

The appeal of Paul Grierson was again before the Court. Grierson was convicted at the Sydney Quarter Sessions in December of assault and robbery and having caused grievous bodily harm by throwing corrosive fluid, and was sentenced by Judge Thomson to 10 years and 35 years respectively, to be served concurrently.

Mr. Kinkead, who had been assigned by the Crown since the adjournment a week ago, appeared for the appellant, instructed by Mr. P. N. Roach; and the Solicitor-General (Mr. Weigall, K.C.), instructed by the Deputy Clerk of the Peace (Mr. Champion), appeared for the Crown.

Leave was given to Mr. Kinkead to add a sixth ground of appeal to the grounds announced previously. The new ground, he explained, was that fresh evidence was available that was not available at the trial. An affidavit had been filed showing the fresh evidence that could be made available.

The evidence and summing up were read, but Mr. Kinkead had not concluded his argument at the adjournment. The hearing will be resumed on Monday.<sup>[716]</sup>

#### **8 March, 1933. Law Report - Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Phillp Street, Mr. Justice James, and Mr. Justice Davidson.)

William-Street Robbery.

#### **Rex v Grierson.**

The hearing was continued of the appeal of Paul Grierson, who was convicted at the Sydney Quarter Sessions in December of assault and robbery and of having caused grievous bodily harm by throwing corrosive fluid, and was sentenced by Judge Thomson to 10 years' and 35 years' imprisonment respectively, to be served concurrently.

Elaborating one of the grounds of appeal, that there was fresh evidence available which was not available at the trial, Mr. Kinkead (counsel for appellant) read an affidavit by Kathleen Noble, a married woman, of 220 William-street, Sydney, who said that, on the morning of the robbery, she was in William street, opposite the post-office. One of two men, who were on that side, set out to walk across the street. On the other side of the street she saw a third man, whom she took to be a window cleaner. He made some motion with his hands to a man who had a bag. The man who had set out to walk across the street reached them almost as the attack took place, and he grabbed the bag from the person attacked. As he came back across the road, the man who had grabbed the bag came into contact with a motor car, and he passed within three feet of her, and rushed into the door of flats next to Holden's motor entrance. Later in the day her husband suggested that she should identify Grierson after he was charged. She told her husband she did not like this, and that she did not want to have anything to do with it. Some time later she saw in a newspaper a photograph of

Grierson, who had then been charged, and she saw by this photograph that he was in no way similar to the men she had seen in the street. About three weeks or a month ago she was approached by a woman, who said she was Mrs Grierson, and that Mrs Carberry (a former landlady of Mrs Noble) had disclosed that Mrs Noble had seen the incident on September 29.

Mrs Noble also stated in the affidavit that she was advised by her husband and by Mrs Carberry to say exactly what happened. On February 14, she saw Grierson at the Long Bay Penitentiary. He was definitely not the man who took the bag from the post-master, and he did not resemble that man in any striking manner.

After Mrs Noble had given oral evidence, the Crown called Mrs Carberry, who was examined on a matter dealt with by Mrs Noble. In her affidavit in answer to Mr. Weigall, KC, Mrs Carberry said that she had gone bail for Mr and Mrs Grierson in matters unconnected with this.

Mr Weigall argued to the Court that, in the whole of the circumstances, the fresh evidence, if it had been placed before the Jury, would not have influenced their verdict. He submitted that the case was a strong one, and that it did not rest on the question of identity. While admitting that, in these long cases, things could be said and done to which exception might be taken, there was nothing in the (summing up in this case which was calculated to mislead the jury, and having regard to the whole of the evidence, there was nothing to suggest that justice had not been done.

The appeal is part heard.

Mr Weigall KC (instructed by the Deputy Clerk of the Peace, Mr Champion) appeared for the Crown and Mr Kinkead (instructed by Mr P. N Roach) for the appellant.<sup>[717]</sup>

#### **9 March, 1933. Quarter Sessions (Before Acting-Judge Lloyd.)**

Crown Prosecutor, Mr. D. G. Bathgate (instructed by Mr. R. V. Edwards.

#### **Bound Over.**

Stephen Reid, 52, was charged with breaking and entering and stealing three cigarette cases. There was an alternative charge of receiving.

Reid said he found the cigarette cases in a garbage tin.

The jury returned a verdict of guilty of receiving.

As "a friend of the Court," Mr. Kinkead (counsel) assisted accused, at the request of his Honor, on the question of sentence.

Reid was bound over in his own recognisances of £50 to be of good behaviour for five years, and appear for sentence if called upon within that period.<sup>[718]</sup>

#### **11 March, 1933. Paul Grierson - Imprisonment for Life - Sentence Varied.**

The Court of Criminal Appeal yesterday altered to penal servitude for life the sentence of 35 years' penal servitude passed on Paul Grierson at the Sydney Quarter Sessions after he had been convicted of having inflicted grievous bodily harm by using corrosive fluid.

This and a second charge of assault and robbery upon which Grierson was convicted at the same Quarter Sessions, and was sentenced to ten years' imprisonment, were laid as the result of happenings in William-street in September, when two postal officials were robbed and one of them suffered injuries that caused the loss of the sight of both eyes. The Court of Criminal Appeal allowed

the shorter sentence to stand. In the circumstances the consequential order that the sentences would be served concurrently was a curious one.

No criminal trial has been so exhaustively reviewed for many years. For two days the Court of Criminal Appeal heard argument by Mr Kinkead, who was assigned by the Crown at the request of the appellant, and by the Solicitor-General (Mr. Weigall, KC). Yesterday the Chief Justice, Sir Phillip Street, announced that he and the other members of the Court, Mr. Justice James and Mr. Justice Davidson, had decided that the appeal must be dismissed. It was a 10,000 word judgment exploring every phase of the trial. The Chief Justice spoke for almost an hour and was listened to by a crowded Court.

The sentence of penal servitude for life is in effect an indeterminate sentence while, if the original sentence of 35 years' imprisonment had stood, the prisoner, after receiving the ordinary remissions, would have been called upon to serve about 28 years. According to the prison regulations a life sentence shall not be defined to mean a fixed period but after serving 20 years the prisoner will be allowed to petition the Executive Council upon the understanding that this permission gives no promise of release at that date. This provision applies in cases where, at the date of conviction, the prisoner's expectation of life is 22 years and more. In the cases of older prisoners the period which he or she is called upon to serve before petitioning is fixed on a descending scale.

The judgment is reported in the law columns.<sup>[719]</sup>

#### **11 March, 1933. Quarter Sessions (Before Acting-Judge Lloyd.)**

Crown Prosecutor, Mr. V. H. Treatt (instructed by Mr. R. V. Edwards.)

#### **Two Years' Gaol.**

Guy Neville Kingsbury, 43, independent means, convicted of maliciously wounding *Sydney Vincent Devine*, was sentenced to two years' hard labour. Mr. Windeyer, K.C., and Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for Kingsbury.<sup>[720]</sup>

#### **11 March, 1933. Supreme Court - Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Philip Street, Mr. Justice James, and Mr. Justice Davidson.)

The Solicitor-General, Mr. Weigall, K.C., (instructed by the Deputy Clerk of the Peace, Mr. Champion), for the Crown.

#### **William-Street Robbery.**

#### **Rex v Grierson.**

The Court unanimously dismissed the appeal of Paul Grierson from convictions at the Sydney Quarter Sessions of assault and robbery, and of having caused grievous bodily harm by the use of corrosive fluid but varied the sentence of 35 years' penal servitude passed on the last mentioned charge, to a sentence of penal servitude for life.

The Chief Justice in giving the judgment of the Court, said that in the first place it was said that the summing up was in some aspects partial and inadequate, and that it contained some inaccuracies as to matters of fact, in the second place it was said that material evidence which was tendered was rejected and in the third place it was said that further evidence of a material character was now available. The first question for the Court was not whether there were defects in the summing up - there were probably very few summings up in which some defects could not be discovered under the searchlight of minute criticism - but whether assuming some mistakes or omissions on the part of the trial Judge, the case was one in which on the whole of the facts, and with a different direction the Jury might fairly and reasonably have found the applicant not guilty. The Chief Justice said he did not

believe this was such a case. On the contrary, he believed that the facts put before the jury were such that a verdict of not guilty would not have been a reasonable verdict. One of the circumstances alone, the finding of some of the stolen money in his house so soon after the robbery, would of itself have been sufficient to justify a conviction on the charge of robbery. In the circumstances, even though there may have been some mistakes or omissions of fact, and though the evidence of identification might have been discussed more fully and more critically, it could not be said there had been any miscarriage of justice, and therefore, no ground for interference on the score of misdirection or non-direction had been made out. Passing on to the second matter raised in the appeal—the rejection of certain evidence—the Chief Justice said that the object of the defence in tendering certain letters was to meet in anticipation any suggestion that the story of the applicants' visit to the Sydney Hospital was a concocted story. The trial Judge rejected the evidence and as there was no proof of the applicants' handwriting it might be that it was technically inadmissible and that he was right. The Chief Justice believed however that if the writings had been proved the evidence would have been admissible, and he did not believe that having rejected it, the trial Judge should have allowed the Crown Prosecutor to suggest to the jury that the story of a visit to the hospital at 9.30 am on the morning in question was based upon an inspection of the hospital books and was, therefore, not to be believed. Where however, an appeal was rested upon the wrongful rejection of evidence the Court had to consider what effect it might have had upon the verdict of the jury, and in this case his Honor did not believe that the documents if they had been before the jury, would have led to a different result.

The Chief Justice then discussed the request that the matter should be reopened upon the ground that fresh evidence of a material character was now available. There was no doubt as to the materiality of the evidence which Mrs Noble, the proposed new witness said she could give, but it was not very clear upon her statement when it was that she told Mrs Carberry (a former landlady) that the applicant was not the man she had seen in William-street during the robbery. If it was before the trial it seemed improbable that Mrs Carberry would not have told the applicant or Dolly Barton (also spoken of as Mrs Grierson). If they were told then the evidence was available and should have been given in the first trial. Passing over this however, and assuming that the evidence had only come to light since the trial, his Honor did not believe that, though material, it was such as to justify the reopening of the matter. He did not believe that the evidence, if given at the trial, would have affected the result.

On the question raised whether the sentences were too severe, the Chief Justice said that the trial Judge imposed a sentence of penal servitude for 10 years, the maximum penalty, on the charge of assault and robbery, and in respect of the charge of doing grievous bodily harm by the use of a corrosive fluid he imposed a sentence of penal servitude for 35 years, concurrent with the other sentence. Section 46 of the Crimes Act provided that any person guilty of this crime of using a corrosive fluid should be liable to penal servitude for life. Section 442 of the Crimes Act provided that, where by any section an offender was made liable to penal servitude for life the Judge might, nevertheless pass a sentence of either penal servitude or imprisonment of less duration. Presumably, therefore the trial Judge considered that he was passing a sentence of less duration than penal servitude for life. In theory, perhaps, he was but as a practical matter it was of course, impossible to say whether the applicant would or would not live for 35 years. On this appeal the Court had statutory authority to substitute another sentence, either more or less severe for that passed at the trial if the Court believed that this should be done. The Chief Justice said he shared to the full with the trial Judge the horror and detestation which he felt at so callous and so brutal an attack as was made on these two postal officials but he believed that, instead of passing a sentence of 35 years,

the better course would have been simply to impose the maximum penalty provided for (penal servitude for life). The sentence of penal servitude for 10 years, in respect of the charge of assault and robbery would stand, but the sentence of penal servitude for 35 years in respect of the charge of using a corrosive fluid would be altered to a sentence of penal servitude for life. The Chief Justice said he did not overlook the fact that the applicant was not the man who thrust a rag covered with ammonia in Johnsons eyes and so caused his blindness, but it was apparent on the evidence that he and others were parties to a concerted scheme for robbing these postal officials and that the use of ammonia for the purpose of depriving them, temporarily at all events, of their sight, was part of the scheme. The applicant therefore was answerable for what was done in carrying out this scheme, and in point of fact though it was not he who put the acid in Johnston's eyes he threw it in Seckolds eyes, and it was only through some fortunate accident that Seckold escaped with his sight. The application failed) and must be dismissed.

Mr. J. J. B. Kinkead (instructed ' by Mr. P. N. Roach) for the appellant.<sup>[720]</sup>

**15 March, 1933. Central Criminal Court (Before Mr. Justice James.)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace).

**Murder Charge.**

George Leslie Griffin, 19, labourer, was charged with the murder at Newtown on January 4 last of William Alexander McIlveen, aged 50 years.

Mr. McKean said that the tragedy occurred in a lane in Newtown. Reading between the lines, some of the witnesses could tell a great deal more than they had told. It was alleged by the Crown that McIlveen was stabbed by accused, who, it was stated, had drawn two knives, one in each hand. The defence would be that accused was attacked by McIlveen and other people, and in the last extremity he stabbed McIlveen, with the result that he died next day.

Mrs. McIlveen gave evidence that Griffin called out to McIlveen, "Come along here and I'll fix you up." McIlveen replied, "You come along here and I'll have you on."

Griffin stated in evidence that McIlveen attacked him and he fell back. Later witness was thrown down and kicked by McIlveen and another man. Witness thought he would be kicked to death. Witness picked up the knives, which were in the garden, because "there was no other protection."

The hearing had not concluded when the Court rose till to-day.

Mr. J. J. B. Kinkead and Mr. J. D. Holmes (instructed by Mr. Fred. A. Newnham) appeared for Griffin.<sup>[721]</sup>

**17 March, 1933. Central Criminal Court (Before Mr. Justice James.)**

Senior Crown Prosecutor, Mr. McKean, K.C, instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace.

**Guilty Of Manslaughter.**

George Leslie Griffin, 20, labourer, who was charged with the murder of William Alexander McIlveen, and was found guilty of manslaughter, was defended by Mr. J. J. B. Kinkead and Mr. J. D. Holmes (instructed by Mr. Fred. A. Newnham). He was sentenced to 12 months' imprisonment.<sup>[722]</sup>

**21 March, 1923. Central Criminal Court. (Before Mr Justice James.)**

(Senior Crown Prosecutor, Mr McKean, K.C., instructed by Mr G. C. B Champion. Deputy Clerk of the Peace.)

**Manslaughter Charge**

Lindsay Donald Macpherson, 20, colliery agent, was charged with the manslaughter, at Cremorne on February 21 last, of Phyllis Shaffran.

Mr McKean said the Crown alleged that accused drove his motor car at an excessive speed at night time; that he drove on the wrong side of a stationary tram; and that the brakes of the car were wholly defective. It was understood that accused would admit that he passed the tram on the wrong side, but said he was not driving at an excessive speed, and that the whole matter was a most regrettable accident, for which he could not be held to be criminally responsible.

Thomas Bailey tram driver, gave evidence that Macpherson was driving at about 50 miles an hour.

At the conclusion of the Crown case the jury visited the scene of the fatality.

Macpherson was remanded till to-day, on bail.

Mr J. J. B. Kinkead (instructed by Mervyn Finlay, of Messrs Mervyn Finlay and Jennings) appeared for Macpherson.<sup>[723]</sup>

**22 March, 1933. Central Criminal Court (Before Mr. Justice James.)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace).

**Not Guilty.**

The trial was concluded of Lindsay Donald Macpherson, 26, colliery agent, who was charged with the manslaughter at Cremorne on February 21, of Phyllis Shaffran, who was knocked down by a motor car driven by accused.

Macpherson stated in evidence that when crossing Cremorne Junction, he was doing between 30 and 35 miles an hour. The young woman appeared to come from behind a vehicle and he was six feet away from her when he saw her. She hesitated, he swerved his car, but the young woman came forward and was hit, being thrown under a tram. Accused said he crawled under the tram and got the young woman out. The brakes of his car were re-lined about two months prior to the accident. There was no truth in the suggestion that he crossed the junction at 50 miles an hour. The accident would not have occurred if the young woman had not rushed forward, or if he could have swerved his car another foot.

The Jury returned a verdict of not guilty.

"I daresay you have been punished as much as you need be," said his Honor to Macpherson, who was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Mervyn Finlay, of Messrs. Mervyn Finlay and Jennings) appeared for Macpherson.<sup>[724]</sup>

**24 March, 1933. Quarter Sessions. (Before Judge Thomson, K.C.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards.)

**Printer Acquitted**

Henry George Page, 30, printer, was charged with having indecently assaulted a female, aged 10

years and 8 months, at Stanmore, on January 3. Without leaving the box the jury returned a verdict of not guilty. Page was discharged Mr J J B Kinkead (instructed by Messrs W E Miller and Co ) appeared for Page.

**(Before Acting-Judge Lloyd )**

Senior Crown Prosecutor, Mr McKean, KC (instructed by Mr G C B Champion, Deputy Clerk of the Peace)

**Merchant Acquitted**

Sydney Rowe, 36 merchant, was charged with receiving 78 dozen handkerchiefs.

Mr McKean said that after offering bribes, extending from £10 to £50, to the police, accused admitted that he had the handkerchiefs, but said he did not know they were stolen.

Detective Sergeant A E Jones gave evidence that Rowe offered him £10 then £15. At the police station Rowe told witness it would be worth £50 to him if he did not charge him. Witness told Rowe not to speak like that as it was a serious matter.

Rowe gave evidence that he was so worried he did not know what he said to Detective sergeant Jones.

Replying to Mr McKean, accused said he did not recollect having offered Detective-sergeant Jones £50.

The jury returned a verdict of not guilty.

His Honor advised Rowe to be more discreet in future transactions. Rowe was discharged.

Mr J J B Kinkead (instructed by Messrs Hunt and Hunt) appeared for Rowe.<sup>[725]</sup>

**25 March, 1933. Quarter Sessions (Before Judge Thomson, K.C.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards.)

**Ironmoulder Acquitted.**

Frank Jackson, 28, ironmoulder was charged with breaking, entering, and stealing. The jury returned a verdict of not guilty, and Jackson was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. J. S. Hearney) appeared for Jackson.<sup>[726]</sup>

**30 March, 1933. Eric Craig - Charge Of Murder - Bessie O'Connor's Death.**

There was a huge crowd at the Central Criminal Court, Darlinghurst, yesterday, for the trial of Eric Roland Craig, 28, salesman, on a charge of murdering Elizabeth Isabel (Bessie) O'Connor at Kogarah on December 16, 1932. Craig pleaded not guilty.

Mr. McKean, K.C. (for the prosecution) said that Craig's alleged victim was a girl of 16. He asked the jurors to disabuse their minds of anything they had heard or read.

It was a case of murder or nothing. The issue would be whether they were satisfied with the identification of the accused. A Mr. Downey was the owner of a sedan car, and he left it with some samples in his garage. The car was stolen at night, and recovered the next morning with the samples in disorder and blood on some of them. The Crown expected to show that the car was driven by accused. The defence was an alibi.

**Ten Separate Wounds.**

Dr. Stratford Sheldon gave evidence that with Dr. A. A. Palmer on December 16 he made an



examination of the body of the girl O'Connor. There were ten separate scalp wounds. They were all fractures of the skull except one.

His Honor (to Dr. Sheldon) : Did each wound indicate a separate blow?

Dr. Sheldon: Yes; death was due to injury to the brain, and the injuries could have been inflicted with a hammer or a tomahawk.

Lionel Albert Downey, a boot traveller, gave evidence regarding the disappearance of his car on December 14 from his garage, When the car was discovered there was blood on the driver's seat. A small tomahawk was missing from the car. A few strands of hair were found on the back seat of the car.

Police-sergeant James Kreulter said that what appeared to be fresh blood was on the driver's seat of the car.

Detective-sergeant P. G. Hale said that the car was found about 3.10 a.m. on December 15. There were bloodstains and red-coloured dust on the car.

Mrs. Patience Irene O'Connor, mother of the late Bessie O'Connor, sobbed as she identified two photographs of her daughter. Her daughter, she said, went to Coogee on December 14, and returned at night. Bessie went into her room for a few minutes, and then went out. Next morning she reported the disappearance of her daughter to the police.

Frederick Ogbourne Harvey, proprietor of the Better 'Ole Service Station, Brighton-le-sands, gave evidence that at 10 p.m. on December 14 a sedan car came along. A man and a girl were in the car. At Long Bay Gaol on Friday last he was asked by Detective-sergeant McRae whether he recognised any man in the line-up, and he picked out the man who had called at his place in a sedan car. That man was in the dock.

Mr. McKean was about to show Harvey a photograph of the girl when Mr. Mack, K.C. (for the defence) objected.

His Honor said he did not think the photograph should be admitted.

Mr. Mack (to Harvey) : Didn't you say at Long Bay, 'This is the nearest type of man, but he was a little more tanned than this man and he wanted a shave?'—Yes.

#### **Man And A Girl.**

Mrs. Elizabeth Hamilton Watts said that on the night of December 14 a girl with auburn hair and very large blue eyes called at her kiosk at Tom Ugly's Point. The girl bought sandwiches and later went outside, where she was joined by a man on the verandah. At the Coroner's Court she identified Craig as the man who was waiting for the girl, and pointed to him in the dock.

She informed Mr. Mack that she had read a description of Craig in the papers.

Pointing to Mr. Kinkead (barrister), Mr. Mack asked witness whether she could remember having seen him before.

On Mr. Kinkead standing up, witness answered that his face seemed familiar.

Mr. Mack: Don't you remember that Mr. Kinkead cross-examined you at the Coroner's Court?—His face seemed familiar.

George Edward McNamara described the finding of the unconscious girl at National Park.

Herbert Cook, a toll collector on St. George's River bridge, was shown a toll ticket. He said he issued it between 10.30 and 10.45 p.m.

To Mr. Mack: He had no recollection of the person to whom he issued the ticket.

"Don't Take Me There."

Detective-constable William Frank Payne, of Sutherland, said that on January 7 he was about to take accused to Sutherland, when accused asked, "Where are we going?" Witness replied, "To Sutherland, to where the girl Bessie O'Connor was killed." Just as the car was about to pull up, Craig said, "Oh, don't take me there." Craig was very agitated and nervous.

Gerald Stiff, of Mascot, said that on December 14 he and a Mr. Brown were sitting in a car outside a restaurant. They had some conversation with a man who came along. Witness did not know whether he had seen the same man again.

Alfred Stephen Brown, a grocer, of Mascot, said he attended a line-up at the Central Police Station, but could not see the man He had pointed out one dressed like him. Witness picked out a man. Witness had not seen that man since.

Mr. McKean: Do you see him to-day?

Witness: No.

Mr. Mack: When you went to the line-up, you did not put your hand on Eric Roland Craig?

Witness: No.

Charles Alfred Watson, son of a restaurant proprietor at Tom Ugly's Point, said a man came into the shop, and witness saw his father talking to him. A bus driver syphoned petrol, and gave it to the man.

To Mr. Mack: It was in the dark, and he did not take notice of the man. He told the police officers that it was not a bit of use taking him to the line-up, as he could not identify the man. He walked up and down the line, but could not identify the man. He could not even recognise him by his voice.

The hearing will be resumed this morning.<sup>[727]</sup>

#### **1 April, 1933. Eric Craig - Jury Disagrees - Locked Up For Night.**

The Jury in the case in which Eric Roland Craig is charged with the murder of Bessie O'Connor informed Mr. Justice Halse Rogers, in the Criminal Court at 8 o'clock last night, that they had not agreed, and that there was no possibility of reaching agreement.

As the statutory 12 hours did not expire until 2.45 this morning, they were locked up for the night.

His Honor said that he would take his seat on the Bench at 9 a.m. to-day.

In his address to the Jury, Mr. Mack submitted that the evidence of identification in the present case was extremely weak, and, to convict, the evidence must be extremely strong. Mrs. Watts had failed to recognise the barrister, Mr. Kinkead, who was sitting in court, yet Mr. Kinkead had cross-examined her for an hour and a half at the Coroner's Court. It was not until Craig's photograph had appeared in the newspapers that the witness Harvey had been called in to identify him. Harvey had also said that Craig was the nearest to the type. Stiff had said he was not sure Craig was the man. Brown, who saw the man in the car on Tom Ugly's Bridge, was not sure that he had seen that man since. The witness Lawrence, who, on the night of December 14, had seen a car in Redfern and had seen a girl whom he took to be Bessie O'Connor enter that car, had declared that the man in the car was not Craig.

Mr. McKean said that the questions that the Jury had to decide were (1) was Craig the person driving the car? (2) was Craig the person in Farnell-avenue? There was, he said, ample evidence upon which the Jury could convict Craig.

In summing up, his Honor said that the Jury should put out of their minds anything they had ever heard or read of the case. No criminal case could be tried on newspaper reports. The principal question to be considered was that of identification. Craig had set up an alibi. If the Jury was satisfied with the evidence for the defence on that point, that was an end of the Crown case. The Jury would have to consider whether the car which called at Harvey's garage was driven by Craig. It had not been challenged that the girl who called at Mrs. Watts' refreshment rooms on the night of December 14 was Bessie O'Connor, nor was it challenged that she was accompanied by a man. The question for the Jury to decide was: Who was that man?<sup>[728]</sup>

### **2 April, 1933. 'Afraid Because He Had Revolver'**

Mrs. Abigail wants Husband Bound Over - 'Blackened My Eye,' She Alleges In Startling Story

That she was terrified to return to her home at Cronulla to see her twin babies and her two other children because her husband, Ernest Robert Abigail, son of the late criminal lawyer, had a revolver in the house, was one of the startling allegations made by Mrs. Elizabeth Merton Abigail at Kogarah Court last Friday.

Mrs. Abigail, who asked Magistrate Williams to order her husband to enter into a recognisance to keep the peace towards her, by summons, charged Abigail with allegedly assaulting her at their home on March 4. The summons set out that he did assault, beat and otherwise illtreat her.'

Wearing a small yellow and black straw hat, and a yellow floral dress, Mrs. Abigail said she was living with Mrs. Westbrook at 'Sea Breeze' Hotel, Tom Ugly's Point. On March 14 she was living with her husband at Dolan's-road, Cronulla. She had been married for 11 years, and was the mother of four children, including twins, two years old.

She returned home from Bondi with her husband at 9.30 p.m. on March 14. She heard a motor car horn sounded outside and her husband went to the gate. Returning, he asked his aunt who had taken, the keys from the top house. His aunt replied that she had brought them down because the house might be robbed.

'My husband turned to me then and said, You go to bed,' said Mrs. Abigail. 'He punched me in the face with his fist, put my head through his arm and dragged me into the bathroom. He locked the door and said, You stay in there, you until I let you out again.'

'I forced the gauze window and got out. I went up the drive towards the top house, 150 yards away. My husband came on to the verandah and said, 'Where are you going?' I said. 'To the Police,' and he said, 'It's a long way.' He chased me down the drive and I ran back to the lower house. He caught hold of me, punched me, and dragged me back towards the lower house with his arms round my neck. He dragged me into the house and I said, 'If you leave me alone I'll go to bed.'

'I took off my dress and pretended to go to bed with my little girl,' went on Mrs. Abigail. 'He went out and I got up, dressed, and walked towards Cronulla. I met Constable Hennessey and told him something. He gave me a shilling. I got on a bus and went to Tom Ugly's to Mrs. Westbrook's. The following day I went to Dr. Stafford and he gave me medicine for my nerves,' she added.

Mr. R. Sproule (of R. D. Meagher and Sproule), for Mrs. Abigail: What effect did the first punch have? — It sent me on to the floor and blackened my face under my eye.

Any other injury? — Oh, yes, my back was injured. The second time, half-way between the two houses, were you down at all?— Yes, I was on the ground. He pushed me. My left eye was blackened and I cut my knees.

'I was dazed. He dragged me back to the lower house by my hair,' added Mrs. Abigail.

How far did you walk towards Cronulla? —About a half an hour's walk. Are you apprehensive that your husband will do you further injury?— Yes.

You are frightened of him? — Absolutely.

And you ask that he be bound over to keep the peace towards you?— Yes.

Did you give him any provocation whatever? — None whatever.

Mr. J. J. B. Kinkead (instructed by Mr. J. Yeldham), for Abigail: Have you told the court everything?— Yes.

Did you stop at Sea Breeze Hotel, Tom Ugly's, on the way home from Bondi?— I did.

And your husband went back to town? — Yes.

What time did he come, back to the hotel? — About 7.30 p.m.

Were you drinking that day? — I had one whiskey and soda with my husband in the morning.

Who was at the hotel when your husband came back?— Mrs. Westbrook.

Will you swear that there wasn't another man in the saloon bar with you people?— I do.

Wasn't there a hotel-keeper from Jervis Bay or Huskisson?— Oh, Mr. Poley.

Did you have any drink in his presence? — No.

Did he shout a round of drinks?— No.

Was there any damage done to your frock?— No. ?

Have you ever been under the influence of liquor? — No.

How old are you? — I am 29.

Have you ever been so drunk that you were ill over your daughter?— No, I have not.

Loving Mother

You love your little daughter, Gloria? — More than anything.

Is there any reason that she should suggest that you were ill over her?— Only that she's afraid of her father.

You love your little son?— Yes.

And you put yourself forward as a loving mother? — I do.

And yet, you never go near your children now? — I daren't.

You were up here yesterday?— Yes.

And you saw your husband?— Yes.

He asked you not to go away without seeing little Gloria?— He did.

Your little boy would have no cause to say anything against you?— None whatever.

Is it true that your husband had cooked for the children morning, noon, and night? — No.

He does most of the cooking? — Not most.

I'm suggesting that you were not capable of doing the cooking?— That's a very wicked suggestion.

You haven't been to see your little twin daughters?— No. I can't go.

Why not?— Because my husband keeps a gun in the place. I was terrified.

You went up to him yesterday; were you terrified of him then?— I didn't go up to him. He drove abreast of me all the way.

If you had a mother's love wouldn't you have dared him to shoot you if you wanted to see your children? — Oh, I have a mother's love.

Don't you think that a wish for the sight of your daughters would compel you to see them? — Oh, if you knew the heartbreaks I've had for them!

And yet your husband had to ask you not to go away before speaking to your daughter, said Mr. Kinkead.

Your husband has been good to you?— He hasn't kept me.

He's sent you money? — Only £1.

Would you live at any other place but Cronulla with him? — Not now.

Since when? — The last six months — my life has been so dreadful there.

At a party at Mrs. Graham's, did the women folk take your dress off? — No.

Were you under the influence of liquor? — No.

Did your husband carry you home?— No.

Who was present when you allege that your husband struck you first? — His aunty. Miss Primrose.

Will you agree that any injuries you sustained were brought about when you got out the bathroom window?— No.

Did you lose the heel off one of your shoes? — Yes.

When you went through the bathroom window? — No.

Rolled Her Own

When? — When my husband dragged me down the driveway.

Did you know that you had lost your heel? — I did. I had to walk to Cronulla.

Did you speak to Gloria? — No.

Did you say this to her, 'Gloria, do you know where I put my purse'? — No, I don't remember saying that, I was so upset at the time.

You may have said it?— I may have.

Do you remember asking Gloria where the tobacco was? — No.

You roll your own cigarettes?— I did.

If you knew the heel was missing, why didn't you put on another pair of shoes to walk to Cronulla? — I wanted to get away, and I only had the one pair of shoes to my name. I had been walking around in sand shoe's.

Do you say you only had the one pair of shoes? — There was another old, black pair.

Did you use bad language in the driveway way to your husband? — No.

On the Saturday night, you did try to strike him with the water bottle? — That's the first I've heard of it.

Did Gloria come between you and say, "Don't, mummy, don't"? —No.

Do you suggest that your husband has raised his hand to you on other occasions this year?— I do. About three weeks before this time, he chased me into the grounds and tore the dress off my back.

Anyone present?— Only Miss Primrose.

Why did your husband want you to go to bed? — Because he had some girls in the top house.

Any men there? — My husband said there were three boys and three girls there.

Did you scream or make any fuss at all?— No, I can't scream.

Answering further questions, Mrs. Abigail said her husband had asked her to go out in the car with the children, but she did not go because he had the car full of men and drink. She had allowed the twins to go, because she could not stop them. She had made no protest. At this stage the further hearing was adjourned to a date to be fixed.<sup>[729]</sup>

#### **4 April, 1933. Quarter Sessions (Before Judge Edwards.)**

(Crown Prosecutors. Mr. T. C. Crawford and Mr. A. R. Taylor, instructed by the Commonwealth Crown Solicitor.)

James Wallace, 31 cook was charged (1) that between March 1, 1931 and November 11, 1932 at Sydney, he made 2141 counterfeit coins resembling florins, (2) that he was directly and knowingly concerned with Harold Roy Williams making 2141 counterfeit coins, (3) that he was knowingly concerned with Williams having in his possession without lawful authority or excuse a coining instrument.

The Crown Prosecutor stated that the coins were excellent imitations of the genuine article.

The hearing had not concluded when the Court rose till to-day.

Mr J J B Kinkead (instructed by Mr J Yeldham) appeared for Wallace.<sup>[730]</sup>

#### **5 April, 1933. Quarter Sessions (Before Judge Edwards.)**

Crown Prosecutors, Mr. T. S. Crawford and Mr. A. R. Taylor (instructed by Mr. R V, Edwards)  
Cook Acquitted

The trial was concluded of James Wallace, 31, cook, who was charged (1) that between March 1, 1931, and November 11, 1932, at Sydney, he made 2141 counterfeit coins resembling florins; (2) that

he was concerned with Harold Roy Williams making 2141 counterfeit coins; (3) that he was concerned with Williams having in his possession a coining instrument.

The jury returned a verdict of not guilty on the three counts. Wallace was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. J. Yeldham) appeared for Wallace.<sup>[731]</sup>

**6 April, 1933. Quarter Sessions (Before Judge Edwards.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards).

**Labourer Acquitted.**

Edward Heath, 33, labourer, was charged that on January 24, 1933, he had in his possession certain metal with intent to use it in the making of counterfeit coins, and that he made two counterfeit coins resembling threepenny pieces. The jury returned a verdict of not guilty. Heath was discharged. Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Heath.<sup>[732]</sup>

**11 April, 1933. Quarter Sessions (Before Acting-Judge Nield.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards).

**Alleged Conspiracy.**

Methven Small, 30, dealer, Henry Morris MacCormack, 26, traveller, and Martin Finlay, 25, traveller, were charged that in October, 1932, they conspired to cheat and defraud Garden Vale Products, Ltd., of quantities of sauce and corn.

Mr. Crawford said it was alleged that a telephone message was received by Garden Vale Products, Ltd, and about 30 gross of goods were delivered to two cartels.

The case is part heard.

Mr. Neil McTague (Instructed by Mr. J. J. Desmond) appeared for Small; and Mr. J. J. B. Kinkead (instructed by Mr. J. J. Desmond) for MacCormack.<sup>[733]</sup>

**12 April, 1933. Quarter Sessions (Before Acting-Judge Nield.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards).

**Alleged Conspiracy.**

The hearing was concluded of the charge of conspiracy preferred against Methven Small, 30, dealer. Henry Morris MacCormack, 26, traveller, and Martin Finlay, 25, traveller. It was alleged that they conspired to cheat and defraud Garden Vale Products, Ltd., of quantities of sauce and corn.

The Jury returned a verdict of not guilty with regard to Small and MacCormack, and they were discharged.

Finlay was found guilty and remanded till to-day for sentence.

Mr. Neil McTague (instructed by Mr. J. J. Desmond) appeared for Small; and Mr. J. J. B. Kinkead (instructed by Mr. J. J. Desmond) for MacCormack.<sup>[734]</sup>

**20 April, 1933. Quarter Sessions (Before Acting-Judge Nield.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards).

**Alleged Theft.**

Sydney Victor Crealy was charged with having stolen, while a servant of R. Crealy, Ltd. (in liquidation), £1/6/, the property of R. Crealy Ltd. The accused pleaded not guilty. On behalf of the prosecution it was stated that the money was alleged to be the earnings of a man named Thomas Sinclair, who had



stated that he had not received the money. The hearing will be continued to-day. Mr. J. J. B. Kinkead (instructed by Messrs. R. D. Meagher, Sproule, and Co.) appeared for Crealy.<sup>[735]</sup>

**22 April, 1933. Quarter Sessions (Before Acting-Judge Nield.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards).

**Acquitted of Theft**

Sydney Victor Crealy who was charged with having stolen while a servant of R. Crealy Ltd (in liquidation) £1/6/ the property of R Crealy Ltd was found not guilty and was discharged. Mr J J B Kinkead (instructed by Messrs R D Meagher Sproule and Co ) appeared for Crealy.

**Not Guilty**

John Thomas Fuller 21 married was found not guilty on a charge of having at Ramsgate on November 5 assaulted a girl under the age of 16 years. He was also acquitted of a charge of having stolen a gold ring valued at £2/10/ at Ramsgate on the same date.

Mr J J B Kinkead (instructed by Mr Fred A Newnham) appeared for Fuller.<sup>[736]</sup>

**25 April, 1933. Quarter Sessions (Before Acting-Judge Nield.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. R. V. Edwards).

**Alleged Assault**

Donald Cullen, 44, was charged that, at Chullora on February 11 last, he assaulted a female, aged 13.

The hearing had not concluded when the Court adjourned till tomorrow. Mr. J. J. B. Kinkead (instructed by Mr. W. Parker) appeared for Cullen.<sup>[737]</sup>

**27 April, 1933. Quarter Sessions (Before Acting Judge Nield)**

**Jury Locked Up**

The trial was continued of Donald Cullen, 44, who was charged that at Chullora on February last he assaulted a female, aged 13. The jury, having failed to agree, was locked up for the night. Mr. J. J. B. Kinkead (instructed by Mr. W. Parker) appeared for Cullen.<sup>[738]</sup>

**28 April, 1933. Quarter Sessions (Before Acting Judge Nield)**

**Jury Disagreed.**

The trial was concluded of Donald Cullen, 44, who was charged with having, at Chullora, on February 11, assaulted a girl, aged 13 years, and committed an act of indecency.

The jury disagreed, and was discharged.

Cullen was remanded on bail for trial.

Mr. J. J. B. Kinkead (instructed by Mr. W. Parker) appeared for Cullen.<sup>[739]</sup>

**4 May, 1933. Quarter Sessions (Before Judge Thomson, K C.)**

Senior Crown Prosecutor, Mr. McKean, K.C., (instructed by Mr. R V. Edwards.)

**Jockey Sentenced**

Bernard Hayes 30 jockey was charged with maliciously wounding his wife Inez Hayes with intent to do grievous bodily harm.

The Crown case was that accused and his wife were living apart and on the night of February 21 he intercepted his wife as she was on her way home. Accused asked his wife to return to him and she

refused. Accused then caused a wound in his wife's throat with a razor blade. Hayes then ran away and while running he wounded himself and was, later found on a footpath.

Mrs Hayes said she preferred not to give evidence but she admitted to Mr Kinkead that at the time her husband was drunk.

The jury returned a verdict of guilty of maliciously wounding with a very strong recommendation to mercy.

Mr Kinkead asked that Hayes be bound over.

His Honor said there was too much of the class of crime of which Hayes had been found guilty. He would have to impose a sentence not only against the individual but as a deterrent to others because through that class of crime there had been double tragedies.

Hayes was sentenced to two years imprisonment with hard labour.

Mr J J B Kinkead (instructed by Messrs Prior and Flynn) appeared for Hayes.<sup>[740]</sup>

#### **6 May, 1933. Supreme Court Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Philip Street, Mr. Justice James, and Mr. Justice Halse Rogers )  
(The Solicitor-General, Mr. Weigall, K.C., instructed by the Deputy Clerk of the Peace, Mr. Champion, for the Crown.)

#### **Rex v Williams, Rex v Somme.**

Judgment on these applications by the Crown is reported elsewhere.

Mr. J. J. B. Kinkead (instructed by Mr. Yeldham) appeared for Williams, and Mr. R. Kidston (Instructed by Mr. C. R. Penny) for Somme.<sup>[741]</sup>

#### **11 May, 1933. Quarter Sessions (Before Acting Judge Nield.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace.)

#### **To Prison Farm.**

Norman Lewis Quigley, 22, labourer, pleaded guilty to two charges of breaking, entering, and stealing, and John Henry West, 20, labourer, to one charge of breaking, entering, and stealing. Quigley was sentenced to two years' imprisonment with hard labour. West was sentenced to 18 months' imprisonment. His Honor recommended that Quigley be sent to a prison farm, and that West be placed under medical observation, and then sent to a prison farm. Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for West.<sup>[742]</sup>

#### **14 May, 1933. Dying For Her To Come Back - Unhappiest Man In World - Pleads E. R. Abigail, Jr. Denies He Punched Wife: 'She Was Drunk,' Said He**

Proceedings in the second stage of the still unfinished case in which Mrs. Elizabeth Merton Abigail, wife, of Ernest Robert Abigail, jnr., is summoning her husband for alleged assault, took a decidedly dramatic turn at the Centred Summons Court last week when the hearing was advanced a further step and the husband's defence entered upon .

Abigail strenuously denied that he had struck his wife, 'beaten and otherwise ill-treated' her at their beautiful home in Dolan's-road, Cronulla, on the night of March 14, as the summons set out.

'I have never struck my wife in my life!' he swore at one period of his evidence. "I'm dying for her to come back; I'd do anything on earth to get her back" he assured the court.

Cross-examined concerning his alleged past by the solicitor for Mrs. Abigail, the husband repeatedly replied, 'Never in my life!' while he also hotly denied that on occasions he had entertained street-women and criminals at 'evenings' held on the property.

The further hearing was adjourned to May 17.

When the case had first come before Kogarah Court some weeks ago, Mrs. Abigail swore that on the night mentioned above, following the sound of a motor horn outside the house, her husband had ordered her to bed, punched her on the face, and then dragged her to the bathroom; where he had locked her in. When she forced the window and got into the grounds with the intention of going for the police, he had chased and caught her, punched her again and dragged her with his arms round her neck to the lower house.

Later, the same night, she swore, she walked towards Cronulla, where she told Constable Hennessy something and he gave her her fare to Tom Ugly's, where she stayed with a Mrs. Westbrook. In connection with her charge of alleged assault, Mrs. Abigail asked that her husband be bound over to keep the peace towards her.

Mr. R. Sproule (of R. D. Meagher, Sproule and Co.) appeared for Mrs. Abigail and Mr J. J. B. Kinkead (instructed by Mr. J. Yeldham) performed a like office for Abigail.

When the hearing resumed, the prevailing note of Mrs. Abigail's attire was sombre black, with just a touch of pale green at her throat.

In reply to Mr. Kinkead, she said that since the first hearing she had called at their school and afterwards seen her children. Her husband was also there, and had held her by the arm, preventing her from leaving.

Mr. Kinkead: The reason why you did not want him to put you on the bus was because you didn't want people to see you with him? — That is not true.

Wasn't your little daughter, Gloria, in Mr. Abigail's car, crying and saying, 'I want you to come home'? — I didn't see her crying.

You wouldn't say little Gloria was acting?— (Emotionally) No, she loves me.

'She was crying at the time, very agitated, and was holding one hand to the side of her face,' recalled Constable Patrick Hennessy in detailing how he had met Abigail's wife at 11 p.m. on March 14 in the main street of Cronulla. Her heel, the officer added, was missing: from her shoe. 'Her face,' he further said, 'was red and swollen.'

The officer concluded by saying that he put Mrs. Abigail on a bus and gave her a shilling for her fare to Tom Ugly's.

Mr. Sproule: In any way was she under the influence of liquor? — No.

The case for the complainant concluded, and Mr. Kinkead's submission that there was no case to answer overruled. Abigail was called to the witness box.

Explaining that he had a heavy cold, and speaking in a very husky voice in support of this claim, the defendant first swallowed a throat lozenge and then plunged into his version of affairs.

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He gave his name as Ernest Robert Abigail, saying that he lived in Dolan's-road, Cronulla. He began his defence by denying that he had struck his wife with his closed fist on the night of March 14 and told her to go to bed.

He also said that it was not a fact that he had put her head through his arm, dragged her to the bathroom and locked her there.

In fact, Abigail gave a general denial to all his wife's allegations of brutality and bad language. Mrs. Abigail, he swore, had had several whiskies at Tom Ugly's that day, although he had sought to dissuade her. When they got home that night she was under the influence of liquor.

Mr. Kinkead: She has been drinking more than usual in recent times? — She has; since Christmas.

Abigail went on to say that he helped his wife out of the car, half-carried her to the billiard-room and laid her on a couch there. His wife wanted another drink, when he heard the horn of a car outside, and went to see who it was.

While he was receiving a man named Mancer, two other men and three women, he heard his wife's voice in a driveway saying, 'You %\$@#\$! 'I'll show you to have friends here and leave your wife out of it!'

"I ran down the drive," swore Abigail, "picked my wife up and carried her back to the lower house. My aunt, Miss Primrose, said, 'Oh, Bessie, it's terrible to go on like this,' and I said, 'She's had some more drink somewhere. I'm going to put her in the bathroom and get her to make herself sick.'"

He then carried his wife to the bathroom, swore Abigail, told her what to do and said that he would leave the key in the door so that her aunt could open it when Mrs. Abigail called her.

After he had left his wife, continued the defendant, and 10 minutes or a quarter of an hour later, he saw Mrs. Abigail at a window of the lodge with a tile in her hand. He heard the crash of a window breaking and ran over to her.

'I held her arm and took the tile off her,' he swore. 'Then I carried her bodily to the other house — like you would carry a baby, your Worship! I took my wife into the bedroom. (While I was carrying her down she was squealing!)

She was definitely under the influence of liquor— she was drunk! I stood her alongside the bed and said, 'Will you go to bed now, darling, and be good?' and she said, 'All right, I won't get drunk again.'

Abigail then recalled the previous Saturday night when, he said he had come home with a bottle of whisky and two bottles of beer. He opened a bottle of the latter with his wife, but after he had drunk half a glass, she finished the rest of the bottle herself, and also his half-glass-full.

Later that evening, at dinner, she refused to eat, but sat down with the bottle of whisky at the table and had three drinks of whisky without water.

'I have never struck my wife in my life,' Abigail swore to Mr. Kinkead.

'I said, 'Come on, Bessie, can't we have a yarn together; it's breaking my heart you stopping away like this,' related the young husband in recalling the alleged conversation he had had with his wife near the children's school.

Mr. Kinkead: Do you want her to come back?— Abigail (vehemently): I'm dying for her to come back! I'd do anything on earth to get her back!

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Continuing, Abigail swore, still referring to the meeting, 'We were right as rain. I thought everything was right. We were walking towards my home all the time. I was overjoyed! I asked her was she coming, and she said 'No,' that she was only waiting for the bus. I said, 'All right, darling, I don't want to do anything against your wishes,' and I stopped the bus.

'Then she smiled, the bus went on, and I said. 'That means, darling, you are coming back home! I'll get the kids!' I ran back— about a mile and a half — I never stopped, and got the car.'

When he arrived back with his car and children, however, went on the husband. Mrs. Abigail inquired, 'What would my friends say who have been so good to me?'

'I said, 'I'm your friends,'" recalled Abigail. 'You and I are both young. You and I have had enough interference in our lives; come and let us be happy together.'

Mr. Kinkead: You put all the trouble down to the influence of other women?

Abigail: I do.

Mr. Sproule then commenced his cross-examination of the husband.

'You have found your wife to be a truthful woman?' was one of the opening questions. To which Abigail replied, 'Yes, except in drink.' 'I supplied a lot of information about my wife's doings,' he added in answer to another query.

Mr. Sproule: For the purpose of showing that she couldn't be believed? — Yes.

Not for the purpose of throwing mud at the wife of your bosom? — I haven't done that.

Mr. Sproule. You have been a good husband? — I couldn't have been a better husband in the last 18 months.

You have always been a good husband? — Always, except one occasion many years ago. Your wife issued divorce proceedings on the grounds of drunkenness and cruelty? — She did.

She left you and was away 12 months? — That's true; nine years ago.

And is it not a fact that you went along and threatened her with violence? — No, the case was withdrawn.

You have had an unfortunate career, Mr. Abigail? — No.

Mr. Sproule. You were bound over to keep the peace? — I consented to be bound over; that was eight years ago.

Didn't you, on earlier agreeing to withdraw the petition, give up your dypsomania?— That is absolutely wrong.

Mr. Sproule; it was never ever mentioned. Never ever!

In regard to him not being a faithful husband, added Abigail, there was only one thing in his life which his wife and he had forgotten. That had occurred three years previously. 'She forgave me that,' he told Mr. Williams. 'She was such a wonderful woman that we never had a row about it. I said I was sorry for what happened. I was ashamed of myself.'

His father, the late E. R. Abigail, he said, had never advised him to stay away from his wife.

Mr. Sproule: Isn't it a fact that after your wife went to Cronulla she complained about you getting drunk, flying into a rage and using bad language?— No, she never said that.

You always had liquor on the premises, knowing your wife had these propensities? — Yes.

Mr. Sproule. Don't you think that is foolish? — I do now, Mr. Sproule. I am the unhappiest man in the world!

In answer to a further question, Abigail admitted that he had been made bankrupt nine years ago.

You were put out of Mr. Abigail's office for robbing and plundering it?— It's an absolute lie, Mr. Sproule.

Tanned by the sun and the open air, William Coles, of Dominic-street, Burraneer Bay, was the next witness for the defence, and swore that he lived about 160 yards from the Abigail's home.

On March 14, he continued, he saw Mrs. Abigail drop from the window of the bathroom and fall over. She was under the influence of liquor when she had come with her husband and he had later seen Abigail carrying her in his arms. When Coles had concluded his evidence the further hearing was adjourned to May 17.<sup>[743]</sup>

#### **19 May, 1933. Quarter Sessions (Before Judge Coyle.)**

Senior Crown Prosecutor: Mr. McKean, K.C. (instructed by Mr. B. V. Edwards).

#### **Jury Locked Up.**

James Joseph Nesbitt, 30, labourer, who was charged with an indecent assault, pleaded not guilty.

Ernest Arthur Abrahams, 31, labourer, pleaded guilty to aiding and abetting in the felony. He was remanded for sentence.

The Jury, having failed to agree with regard to Nesbitt, was locked up for the night.

Mr. J. J. B. Kinkead (instructed by Messrs. W. E. Miller and Co appeared for Nesbitt.

#### **Salesman Acquitted.**

Harry Ireland, 26, salesman, was charged with breaking and entering a garage at Mascot on February 16 last. There was an alternative charge of receiving.

The jury returned a verdict of not guilty. Ireland was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for Ireland.<sup>[744]</sup>

#### **20 May, 1933. Quarter Sessions (Before Judge Coyle.)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. R. V. Edwards).

#### **Jury Disagreed**

The trial was concluded of James Joseph Nesbitt, 30, labourer, who was charged with an indecent assault.

The jury disagreed, and was discharged, Nesbitt was remanded on bail for trial.

Mr. J. J. B. Kinkead (instructed by Messrs W. E. Miller and Co ) appeared for Nesbitt.<sup>[745]</sup>

#### **24 May, 1933. Quarter Sessions (Before Judge Coyle.)**

Crown Prosecutor, Mr. B. V. Stacy (instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace).

**Not Guilty.**

Joseph Deegan, 47, labourer, was charged with maliciously wounding Constable William Martin Coleman, with intent to do grievous bodily harm. Deegan was also charged with an assault occasioning actual bodily harm. It was alleged that Deegan had kicked the constable.

Mr. Kinkead submitted that there was no evidence to support the first count of wounding. There was evidence of a fracture, but that was not a wound. Injury caused by a kick was not a wound unless it broke the inner skin and bled.

His Honor said it would be better if the Jury confined itself to the second count.

The first count was withdrawn from the jury.

The Jury returned a verdict of not guilty. Deegan was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Deegan.<sup>[746]</sup>

**25 May, 1933. Quarter Sessions (Before Judge Coyle)**

Crown Prosecutor, Mr B.V. Stacey (instructed by Mr G.C.B. Champion, Deputy Clerk of the Peace).

**Clerk Acquitted.**

Henry Pickles, 37, clerk, was charged with larceny.

It was alleged that Pickles stole a suit case out of a motor car in Oxford-street, Waverley.

The Jury returned a verdict of not guilty. Pickles was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Pickles.<sup>[747]</sup>

**30 May, 1933. Court Of Criminal Appeal.**

(Before the Chief Justice, Sir Phillp Street, Mr. Justice James, and Mr. Justice Davidson.)

**Sentence Reduced.****Rex v Jackson.**

The Court reduced to eighteen months' imprisonment a sentence of imprisonment for two years and a half passed on Robert Jackson by Acting Judge Lloyd, at the Sydney Quarter Sessions, for larceny of a motor car by trick. It appeared that another man had been sentenced by Judge Curlewis at a previous Court to twelve months' imprisonment on a similar charge, and the Court of Criminal Appeal agreed with Jackson's counsel that there did not appear to be any reason to differentiate between them to the extent that differentiation was made.

The Solicitor-General, Mr. Weigall, K.C. (instructed by the Deputy Clerk of the Peace, Mr. Champion), appeared for the Crown; and Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) for the applicant.<sup>[748]</sup>

**9 June, 1933. Quarter Sessions Appeals (Before Acting-Judge Ferguson.)****Stealing Charge.**

Louis Lewis, 58, dealer, appealed against his conviction and sentence of one month's imprisonment imposed upon him by Mr. McMahon, S.M., at the Central Police Court on May 8, on a charge of stealing £6/8/6 from Joseph Brown. In the lower court it was alleged that Lewis had taken the money from Brown at the Randwick racecourse, at the Sydney Cup meeting.

Lewis admitted having seen Brown, but denied having taken any money from him.



His Honor allowed the appeal, and quashed the conviction.

Mr. J. J. B. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for appellant; and Mr. Weigall, K.C., for the Crown.<sup>[749]</sup>

**14 June, 1933. Quarter Sessions (Before Judge Curlewis.)**

Senior Crown Prosecutor, Mr. McKean, K.C. instructed by Mr. R. V. Edwards.

**Two Men Acquitted.**

David Charles Rogers, 27, dealer, and Reuben Holmes, 43, dealer, were charged that at Carlton on February 14 last they broke and entered a building belonging to the Water and Sewerage Board and stole five pieces of belting. By direction, the jury acquitted Holmes and he was discharged. Rogers was found not guilty and discharged.

Mr. Fred A. Newnham appeared for Rogers; and Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) for Holmes.<sup>[750]</sup>

**15 June, 1933. Quarter Sessions (Before Judge Curlewis.)**

Senior Crown Prosecutor, Mr. McKean, K.C., instructed by Mr. R. V. Edwards.

**Theft Of Motor Tyres**

William James Buffrey, 37, labourer, and Jack Henry Shaw, 27, blacksmith were charged with having at Kogarah stolen two motor tyres and other articles the property of Com Fong. They were both found guilty. Shaw being recommended to mercy. Buffrey was sentenced to 18 months imprisonment. Shaw was bound over to be of good behaviour for three years and to appear for sentence if called upon within that time.

Mr J J B Kinkead (instructed by Mr George F Osborne) appeared for Buffrey.<sup>[751]</sup>

**24 June, 1933. Parramatta Quarter Sessions (Before Judge Barton.**

Mr. F. W. Berne, Crown Prosecutor.

**Not Guilty.**

Walter Bernard Johnson, 23, baker, pleaded not guilty to a charge of having feloniously slain John Henry Abbott at Granville, on April 30.

It was alleged by the Crown that the accused was driving a motor car which collided with a motor cycle ridden by the deceased, and that accused was under the influence of intoxicating liquor.

The Jury returned a verdict of not guilty, and the accused was discharged.

Mr. J. J. Kinkead (instructed by Messrs. Thompson and Bradfield) appeared for Johnson.<sup>[752]</sup>

**29 June, 1933. Quarter Sessions (Before Judge Curlewis.)**

Senior Crown Prosecutor, Mr. McKean, K.C., instructed by Mr. Roy V. Edwards.

**Acquitted By Direction.**

Edward Heath, 34, labourer, was charged that, at St. Peters, on October 16, he stole a cornet from Harry Bungate. There was an alternative charge of receiving. By direction, the jury returned a verdict of not guilty, and Heath was discharged. Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Heath.<sup>[753]</sup>

**30 June, 1933. Quarter Sessions (Before Judge Curlewis.)**

Senior Crown Prosecutor, Mr. McKean, K.C., instructed by Mr. Roy V. Edwards.

**Guilty Of Conspiracy.**

Gordon Charles Livingstone, 25, clerk, Samuel Batten, 53, garage proprietor, and Francis Edward Shepherd, 28, motor driver, pleaded guilty to conspiring to defraud the Vacuum Oil Co. Pty., Ltd., of large Quantities of petrol.

It was stated that Shepherd and Livingstone, who were employees of the Vacuum Oil Co., Ltd., had taken petrol from the company and delivered it to Batten, a garage proprietor, at 1/ a gallon.

Detective-sergeant Bowie gave evidence that the total loss to the company was about £150.

Livingstone was bound over in his own recognisance of £20 to be of good behaviour and appear for sentence if called upon within two years. It was stated that Livingstone was in ill-health.

Shepherd was sentenced to six months' hard labour and Batten to three months' hard labour. Mr. T. P. MacMahon (instructed by Messrs. Percy C. Law and Milne) appeared for Livingstone and Shepherd; and Mr. J. J. B. Kinkead (instructed by Messrs. McFadden and McFadden) for Batten.

**Not Guilty.**

Eileen Wilson. 19, was charged with having on March 16 stolen £25/1/, the property of Max Addison Josephs.

At the conclusion of the Crown evidence the Jury stopped the case and returned a verdict of not guilty. Wilson was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. P. N. Roach) appeared for Wilson.<sup>[754]</sup>

**5 July, 1933. Quarter Sessions (Before Judge Curlewis.)**

Senior Crown Prosecutor, Mr. McKean, K.C. (Instructed by Mr. Roy V. Edwards).

**Not Guilty.**

James Joseph Nesbitt, 31, labourer, charged with indecent assault in Petersham Park, was found not guilty. His Honor said that he agreed with the verdict.

Mr. J. J. B. Kinkead (instructed by Mr. W. E. Miller, of Messrs. W. E. Miller and Co.) appeared for Nesbitt.

**Acquitted By Direction.**

Stanley John Thompson, 23, agent, and Albert Pikett, 32, manufacturer, were charged that in December last they conspired to defraud Harold Taylor Harrison, an engineer, of £95.

Mr. McKean said that the alleged offence concerned a business which did not exist. Mrs. Harrison approached Thompson, who was most enthusiastic about the business, which was said to be in hardware." Mrs. Harrison told Thompson that her husband had been ill. Thompson was alleged to have told Harrison that the business had to do with the sale of a patent mop which "would play a wonderful part in the domestic life of the whole world." An agreement was drawn up, it being arranged that if Harrison paid £95 he would receive £4 a week and the commission on each machine sold. It was alleged that the £95 was paid to Pikett. A sum of £8 had been returned to Harrison. Thompson had told Mrs. Harrison that he had known Pikett for over four years and he was "100 per cent, genuine business man." It was alleged that Harrison was told that a factory was to be opened in Wentworth-avenue, city.

His Honor said that there was no evidence of a conspiracy. He directed the jury to return a verdict of not guilty. Thompson and Pikett were discharged.

Mr. J. J. B. Kinkead (instructed by Messrs. McFadden and McFadden) appeared for Thompson.<sup>[755]</sup>

**7 July, 1933. Conspiracy Charge - Four Men Committed for Trial - Auction Room Business.**

Four men were committed from the Central Police Court yesterday for trial on a charge of conspiracy. The men were Michael Jack Kelly, 40, auctioneer; John Banting, 30 salesman; Michael O'Keefe, 27, auctioneer; and George Barry, 44, salesman, and the charge against them was that, on May 19, they conspired among themselves and with other persons to cheat and defraud Richard Irwin, Louisa Guilfoyle, and others.

Detective Wilks gave similar evidence to that given by Detective Lawrence on Monday, regarding the disposal of articles with which presents were made. On one or two instances, he said, purchasers' money was returned. Kelly remarked on one occasion, "You see, ladles and gentlemen, we are not frightened to give presents away." After watching proceedings for some time Detective Lawrence spoke to the men. He said to Kelly, "We have had numerous complaints about people being victimised in these auction rooms. Wilks and I came here to watch proceedings, and I am satisfied it is nothing but a fraud." Kelly replied, "I'm sorry to hear you say that."

Witness said that on June 19 he had received instructions, and swore warrants for the arrest of the four defendants. They went to premises in George-street, and took O'Keefe, Kelly, and Banting to the Central Police Station.

Phillip Morris, manager of the clock department at Arthur Cocks and Co., York-street, stated that on May 24, Constable Willes showed him a clock, and witness valued it at 6/9. It was not a genuine rock crystal clock. A fountain pen and pencil, which had previously been tendered in evidence, were valued roughly at 10/6 a dozen boxes.

Richard Irwin, military pensioner, of Carrington, said that, during the sale, Kelly was acting as auctioneer, and Barry was assisting him. A man like Barry was also present. At first he thought the sale was well conducted. Afterwards they seemed to give the good stuff away, and sell the "crook." When the good stuff was sold they went round the back to get it wrapped up, but they did not seem to come back.

J. B. Sampson, clerk at the Central Police Court, said he purchased some articles. He said to Barry after one transaction, "Is the wife to see the colour of her £1 note again?" and the reply was, "Not on your life. She bought a clock, that's her business."

Mr. Reed, S.M., said that the proceedings in the auction room were in the nature of a mock auction, and the sales were not genuine auction sales. People were induced by deliberate design to purchase articles which were not bona-fide value. To make these sales, persons enticed the public into the premises, which they entered in the belief that a bona-fide sale was being held, and those responsible for such procedure were likely to be charged with conspiracy to defraud.

Mr. Kinkead, instructed by Mr. W. C. Moseley, appeared for Kelly and Banting; Mr. C. O'Dea for O'Keefe.<sup>[756]</sup>

**13 July, 1933. Catholic Club Notes - Mock Trial.**

Under the auspices of the Catholic Club Debating Society a mock trial took place in the club, social hall on Thursday evening, 6th inst. The hall was crowded with members and their lady friends. The whole cast was truly representative of the legal profession. The bench, jury boxes and witness box were the replica of a court room, replete with all the ceremony and procedure attached thereto. The cast was as follows:

Judge: J. J. B. Kinkead (Barrister-at-Law). Judge's Associate, John St. Olair Leonard (Barrister-at-Law). Counsel for Prosecution, J. Fitzpatrick (Barrister-at-Law), instructed by W. M. Niland, Solicitor, Sydney. Counsel for Defence, F. O. Hidden (Barrister-at-Law), instructed by V. Brady, Solicitor, Manly. Officer in Charge of Court, Mr. P. Boyce (Sheriff's Department). Arresting Officer, J. F. Walsh. Jury in Waiting, from members present.

The charge against the accused, Messrs. L. Maher and V. Flynn, was conspiracy in defrauding Mr. S. A. Williams of large sums of money in the purchase of a 'night cafe.' The accused after a gruelling cross-examination by the crown prosecutor, the spirited defence by their counsel, and the very able summing-up by his Honor, were found not guilty by the jury, who added a rider; 'That in our opinion, the government should legislate for the licensing of all business agents in order to safeguard the unsuspecting public.'

The whole of the trial was written and produced by Mr. W. M. Niland, an old and esteemed member of the club, who was thanked and loudly applauded by the large number present.<sup>[757]</sup>

#### **14 July, 1933. Quarter Sessions - (Before Judge Curlewis.)**

Crown Prosecutor, Mr. Weigall, K.C., Solicitor-General (Instructed by Mr. Roy V. Edwards).

##### **"Expert Safeblower."**

Edward Rankin Gardner, 25, labourer, pleaded guilty to (1) on October 15 last having broken and entered a warehouse with intent to steal; (2) at Alexandria on May 18 last having stolen a motor car, the property of McLeod and Co., Ltd.; (3) at Redfern, on May 20 last, having broken and entered a factory and stolen £13/7/4, the property of the New Cambridge Delicacies, Ltd.; (4) having maliciously damaged a strongroom door and safe, the property of the New Cambridge Delicacies, Ltd.; (5) at Allawah, on December 4 last, having broken and entered a dwelling house.

Detective-Sergeant Sedgwick gave evidence that in October last accused and others broke into a Sydney factory. Police surrounded the building, and Gardner was arrested. In the vicinity where he was hiding a 35 calibre German revolver, gelignite, and fuses were found. Later, Gardner absconded and while free had blown quite a number of safes. Gardner was one of the most expert safe blowers the police had known in this State for years. Gardner was conversant with explosives, having worked among them in brick pits as a boy.

His Honor, on hearing Gardner's record, said that he had qualified to be declared a habitual criminal.

Gardner was remanded till to-day for sentence.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Gardner.<sup>[758]</sup>

#### **15 July, 1933. Quarter Sessions**

Crown Prosecutor, Mr. F. W. Berne (instructed by Mr. Roy V. Edwards).

##### **Smelter Sentenced.**

Edward Rankin Gardner, 26, smelter, had pleaded guilty to breaking and entering a ware-house with intent; breaking and entering a dwelling; breaking and entering a factory; malicious damage to a strongroom door; and stealing a motor car.

Gardner was sentenced to three years' imprisonment on each charge, concurrent.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Gardner.<sup>[759]</sup>

**18 July, 1933. Quarter Sessions (Before Acting Judge Nield.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. Roy V. Edwards.)

**Two Men Charged.**

William Frederick See, 28, salesman, and Moses Hyams, 32, dealer, were charged that at Sydney on July 28, 1932, they stole six watches, the property of Paul Witzig.

It was alleged by the Crown that the two accused and a young woman visited Witzig's shop and told Witzig they belonged to the firm of Davis Bros, Lithgow. See and Hyams inspected a number of watches, and while Witzig was at the safe getting more watches they took six. Hyams then told Witzig he would go and cash a cheque and return later for the watches, but Hyams telephoned and said that he had to return to Lithgow and would collect the watches later. On August 1 a taxi driver delivered a parcel to Witzig, who found that it contained the missing watches.

In statements from the dock, both accused declared their innocence.

The hearing had not concluded when the Court rose till to-day.

Mr. P. N. Roach appeared for See; and Mr. J. J. B. Kinhead (instructed by Mr. P. N. Roach) for Hyams.<sup>[760]</sup>

**19 July, 1933. Quarter Sessions.(Before Acting Judge Nield.)**

Crown Prosecutor. Mr. T. S. Crawford (instructed by Mr. Roy V. Edwards.)

**Not Guilty.**

The trial was concluded of William Frederick See, 28, salesman, and Moses Hyams, 32, dealer, who were charged that at Sydney on July 28, 1932. they stole six watches, the property of Paul Witzig.

The jury returned a verdict of not guilty. See and Hyams were discharged.

Mr. P. N. Roach appeared for See; and Mr. J. J. B. Kinhead (instructed by Mr. P. N. Roach) for Hyams.<sup>[761]</sup>

**25 July, 1933. Quarter Sessions (Before Judge Curlewis )**

Crown Prosecutor Mr T S Crawford

**Convicted Or Stealing**

William Thomas Law, 30, motor driver; Patrick Francis Roache, 30, labourer; and Daniel John Jones, 45, labourer, were charged with at Chatswood having stolen on May 5 a suit case and other articles, the property of Reginald Prindable. There was an alternative count of receiving against each of the accused. The defence was that they were hawking poultry and were given the articles by a stranger.

The jury returned a verdict of guilty on the first charge.

Detective-constable Hamilton informed his Honor that Roache was the worst type of criminal and that both Law and Jones were his associates. Roache terrorised the neighbourhood in which he lived at Glebe, threatening people if they did not give him money. Jones was known as a sneak thief.

Law and Jones were bound over in their own recognisance of £50 to be of good behaviour and to come up for sentence if called upon, within three years, a further condition being that they abstain from intoxicating liquor.

Roache, who had a long criminal record, was sentenced to two years' hard labour, and was also declared a habitual criminal.

Mr J. Kinkead (instructed by Mr. Fred A. Newnham) appeared for the accused.

#### **Alleged Assault.**

Luke Joseph Flanagan, 39, motor mechanic, was charged with having at Paddington on May 15 assaulted Cyprian Wardale, occasioning him bodily harm.

It was alleged that Wardale went to repossess a piano at Flanagan's home on behalf of Carnegie and Sons. Accused hit Wardale on the head with an engineer's hammer, the wound necessitating four stitches.

The accused, in evidence, denied the charge. He was found not guilty and was discharged.

Mr. J. Kinkead (instructed by Mr. F. J. Somers) appeared for the defence.<sup>[762]</sup>

#### **3 August, 1933. Maitland And District News – Maitland Sessions - Sitting Concluded**

The Maitland Quarter Sessions were concluded at the East Maitland Court house yesterday. Judge Sheridan presided, and Mr. B. V. Stacy was Croan Prosecutor.

#### **'Accused Acquitted'**

Harry Wilson, 45 pleaded 'Not guilty' to a charge of having at West Maitland, on June 20, 1933, committed an indictable offence at common law. Mr. J. J. ' Kinkead; instructed by Mr. W. J. Enright, appeared for accused. The evidence was concluded on Tuesday.

After counsel's addresses and his Honor had concluded his summing up, the jury retired at 11.20 p.m.

The jury returned into Court at 3. p.m. with a verdict of "Not guilty," and accused was discharged.<sup>[763]</sup>

#### **11 August, 1933. Quarter Sessions (Before Acting Judge Nield )**

Crown Prosecutor Mr T S Crawford instructed by Mr G T Slawson.

#### **Remanded For Trial**

Stanley Wells, 31, labourer and Jeremiah Lynch, 33, dealer were charged that at Sydney on June 21 they assaulted and robbed Thomas Jones of £10. There was an alternative charge of common assault.

As the principal Crown witness did not appear, a Bench warrant was ordered to issue for him. Wells and Lynch were each bound over in their own recognisance of £40 to appear for trial if called upon not later than December.

Mr T F Williams appeared for Wells and Mr J J B Kinkead (instructed by Mr Fred A Newnham) for Lynch.<sup>[764]</sup>

#### **12 August, 1933. Supreme Court Court Of Criminal Appeal.**

(Before Mr. Justice James, Mr. Justice Davidson, and Mr. Justice Halse Rogers.)

The Solicitor-General, Mr. Weigall, K.C. (instructed by the Deputy Clerk of the Peace, Mr. Champion) for the Crown.

#### **Prisoner Bound Over.**

##### **Rex v Caplin.**

Bernard Caplin appealed against a conviction of receiving at the Sydney Quarter Sessions, and against a sentence of 12 months' imprisonment passed by Acting Judge Nield.

The appeal was based substantially on certain grounds of non-direction by the trial Judge amounting to misdirection and relating to the doctrine of recent possession. It was submitted, also, that the trial Judge was in error in directing the attention of the jury to evidence that might have been called, and that the sentence was unduly severe.

The Court, in view of the importance of the issues raised, reserved Judgment. Meanwhile, in view of the favourable testimony to applicant's character, the sentence was reduced to the extent of his being bound over in a bond of £100 to come up for sentence when called upon, such bond to be taken immediately before a magistrate.

Mr. J. J. B. Kinkead (instructed by Mr. P. N. Roach) appeared for the appellant.<sup>[765]</sup>

#### **16 August, 1933. Quarter Sessions (Before Judge Curlewis.)**

(Senior Crown Prosecutor, Mr. McKean, K.C, instructed by Mr. 'Gordon C. Champion, Deputy Clerk of the Peace.)

#### **Taxi Driver Acquitted.**

Bartholomew Dodds, 49, taxi driver, was charged that on July 9 he assaulted Alexander McRae and occasioned him actual bodily harm.

It was stated that McRae had parked a car in a laneway off Market-street. When McRae wished to get out at 1.10 a.m. on a Sunday Dodds' taxi was right across the fairway. McRae asked Dodds to shift his taxi, but met with a point-blank refusal. McRae alleged that he had been attacked by Dodds with a tyre lever. Dodds' defence was that McRae was drunk, and whatever was done was done in self defence.

The Jury returned a verdict of not guilty. Dodds was discharged.

Mr. J. J. B. Kinkead (instructed by Messrs. Mervyn Finlay and Jennings) appeared for Dodds.

#### **Medical Observation.**

Lismore William Beatty, 25, gardener, pleaded guilty to four charges of breaking, entering, and stealing, and two of breaking and entering with intent. Beatty was remanded, for medical observation. Mr. J. J. B. Kinkead (instructed by Messrs. C. P. White and Co.) appeared for Beatty.

#### **Guilty Of Conspiracy.**

Albert Thomas Lord, 47, clerk, pleaded guilty to conspiracy to cheat and defraud Robert James Brown, at Lidcombe, between January 1, 1927, and April 27, 1933.

It was stated that Lord had been employed in the Public Service for 31 years, and was senior clerk at the Lidcombe State Hospital at the time the frauds were carried out. The general deficiency was £1328, and extended back to 1920, although there was no evidence to show that Lord had been concerned back to that period. Others, the Crown alleged, were also implicated. Lord's share in the deficiency was £325, although he had a share in other amounts which had been taken from the hospital.

Mr. F. W. Sandon, of the Auditor-General's Department, was asked by his Honor how it was possible to get away with money like that over such a long period.

Mr. Sandon replied that it was a case of collusion.



Mr. Kinkead said that Lord was a physical wreck and suffered pain every day of his life. Lord had lost an eye and an arm at the war. When he came out of gaol, what opportunity would there be for him to earn a livelihood?

His Honor said he realised that. He sentenced Lord to six months' imprisonment.

Mr. J. J. B. Kinkead (instructed by Messrs. C. P. White and Co.) appeared for Lord.<sup>[766]</sup>

#### **19 August, 1933. Quarter Sessions (Before Judge Curlewis.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. Roy V. Edwards).

#### **Three Men Bound Over.**

Robert Luke Charles, 19, rubber worker; John Thomas Smith, 23, rubber worker; and William James Sinclair, 25, rubber worker, pleaded guilty to two charges of having broken and entered Mac's Retreads and stolen tyres and rubber. Sinclair pleaded guilty to a third charge of having broken and entered.

It was stated by the police that Sinclair had been employed by Mac's Retreads and had a duplicate key to the factory.

Charles, Smith, and Sinclair were bound over in their own recognisances of £50 to be of good behaviour and appear for sentence if called upon within three years, a condition being that Charles pay £25 compensation.

Mr. J. J. B. Kinkead (instructed by Messrs. J. J. Carroll and Son) appeared for Charles, and, instructed by Mr. Fred A. Newnham, for Smith; Mr. Flynn, of Messrs. Prior and Flynn, appeared for Sinclair.<sup>[767]</sup>

#### **22 August, 1933. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr. T.S. Crawford (instructed by Mr Roy V. Edwards)

#### **Not Guilty.**

George Harold Gail, 27, motor driver, pleaded guilty to having at Waverley on October 20 last, falsely pretended to James Higgins that he was the owner of a motor truck, with intent to defraud, and with having stolen a motor truck the property of John Ernest Norburn.

Gail told his Honor that he had worked Norburn's truck, Norburn having given him to understand that he could act as though it belonged to him. The truck was registered in his (Gail's) name. He had then exchanged it for another truck. Subsequently a firm had sought to repossess some furniture he had obtained on Unie payment, and to prevent them taking it away he had paid the money he had received from the sale of the lastmentioned truck. He did not think Norburn would object. He had not meant to do anything dishonest.

His Honor: I am not going to show a man mercy on the ground that he is not guilty. If he is guilty then it is a question of mercy, but when he says he is not guilty it is a matter of Justice and not mercy.

Mr. Kinkead, who was present in Court, said he would undertake the defence.

Gail withdrew his pleas and pleaded not guilty.

The jury returned a verdict of not guilty on each count. Gail was discharged.

His Honor: I am glad you came to that verdict. I am very sorry I cannot "see" Mr. Kinkead about anywhere because he would be glad to know that his generous action had resulted in an acquittal. This man can go away now and retain his good character.<sup>[768]</sup>

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**23 August, 1933. Quarter Sessions (Before Judge Curlewis.)**

Crown Prosecutor, Mr. T. S. Crawford (Instructed by Mr. Roy V. Edwards).

**"Cowardly Thing."**

Henry Cuthbert Gillard, 24, was charged that at Putney on July 2 he assaulted Queenie May Sly, and occasioned her actual bodily harm. There was an alternative charge of common assault. Gillard pleaded guilty to the latter charge.

Police evidence was that on the night of the offence Gillard was armed with a razor. After making a threat he threw the razor in the gutter. Then he pulled out of his pocket a handkerchief with a stone in it and hit the girl on the bridge of the nose.

His Honor: It was a cowardly thing to do.

Gillard was sentenced to 18 months' imprisonment.

Mr. J. J. B. Kinkead (instructed by Mr. O. P. White) appeared for Gillard.

**Three Men Acquitted.**

John Marks, 30, manager, Victor Cohen, 36, merchant, and Edwin Victor Hittman, 54, commission agent, were charged on three counts with larceny. There were alternative charges of receiving.

It was alleged by the Crown that accused had stolen 18 cabinets containing buttons and tie pins, ten gross of combs, and 36 necklets. The best the Crown could say was that the goods were similar to those supplied to Roy Wolf Michael, who on Monday had pleaded guilty to three counts of larceny and was sentenced to 12 months' imprisonment.

Michael gave evidence that he had been introduced to Marks and Cohen by Hittman. Cohen said to witness that he knew a firm that "could be touched for £1000." Cohen then gave him the name of Dann and Co. Marks told him he had better go away to the country, as it would look better. Hittman and witness then went to Huskisson and had goods sent to Nowra. The goods were then consigned back to Darling Harbour. About seven cases were readdressed from Nowra. The goods had been obtained on a promise to pay within 30 days.

Michael admitted under cross-examination by Mr. Kinkead that he had defrauded several firms by getting goods and paying a little now and then.

His Honor said to Michael that it looked as though he had been engaged in that sort of business long before he met the accused. He asked Michael whether he had not said that the thing was suggested to him by Marks and Cohen.

Michael did not answer.

At his Honor's request, Mr. Kinkead said that Marks' defence was that the first time he saw Michael was on March 2 last, when Marks bought goods and paid for them. Marks fully believed that it was a genuine transaction.

Mr. Lieberman said that that was also Cohen's defence.

Mr. Collins said that Hittman's defence was that he had seen neither Marks nor Cohen.

At the conclusion of the Crown evidence, the jury stopped the case and returned a verdict of not guilty. Marks, Cohen, and Hittman were discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Lieberman) appeared for Marks; Mr. Lieberman for Cohen; and Mr. Wilfred Collins (instructed by Mr. Lieberman) for Hittman.<sup>[769]</sup>

**24 August, 1933. Quarter Sessions (Before Judge Curlewis)**

Crown Prosecutor, Mr P. V. Storkey, V C. (instructed by Mr Roy V Edwards )

**Trial To Stand Over.**

Mr. Parker asked his Honor whether, with the consent of the Crown, he would allow the trial of Adolph Marco Shadier and Archibald John Gordon, on a charge of conspiracy to defraud, to stand over till next month. His Honor granted the request. Mr. W. A. Parker appeared for Shadier and Mr. J. B. Kinkead (instructed by Mr. J. L. Maguire) for Gordon.

**Not Guilty.**

Charles Hewitt Bacon Baker was charged that at Woy Woy on July 23 he broke and entered a garage with intent to steal.

Mr. Storkey said that the only Issue for the jury was the question of intent. Baker's defence was that he thought he heard a noise in the garage and went there to see if anyone had broken in.

The jury stopped the case and returned a verdict of not gullyty.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Baker.<sup>[774]</sup>

**24 August, 1993. Law Report - High Court Of Australia.**

(Before Mr. Justice Sterke, Mr. Justice Dixon and Mr. Justlca McTiernan.)

**Paul Grierson's Application.**

On behalf of Paul Grierson. Mr. Windeyer. K.C., asked for leave to appeal from the judgment of the New South Wales Court of Criminal Appeal, which had dismissed his appeal from conviction and sentence on a charge of maliciously using corrosive fluid to do grievous bodily harm to Alfred Robert Winnacott Johnston.

The matter, which is part heard is reported elsewhere in this issue.

Mr. Windeyer. K.C., Mr. Kinkead, and Mr. Wesche (instructed by Mr. P. N. Roach) appeared for Grierson; and the Senior Crown Prosecutor, Mr. McKeon, K.C.. and Mr. Nicholas (instructed by Mr. G. C. B. Champion. Deputy Clerk of the Peace) for the Crown.<sup>[770]</sup>

**25 August, 1933. Law Report - High Court Of Australia.**

(Before Mr. Justice Starke, Mr. Justice Dixon, and Mr. Justice McTiernan.)

**Application Refused.**

Argument was concluded on behalf of Paul Grierson who asked for leave to appeal from the Judgment of the New South Wales Court of Criminal Appeal which had dismissed his appeal from conviction and sentence on a charge of maliciously using corrosive fluid to do grievous bodily harm to Alfred Robert Winnacott Johnston.

The application was refused. The matter is reported elsewhere in this issue.

Mr. Windeyer, K.C., Mr. Kinkead and Mr. Wesche instructed by Mr. P. N. Roach) appeared for Grierson and the Senior Crown Prosecutor Mr. McKean, K. C. and Mr. Nicholas (instructed by Mr. G. C. B. Champion, Deputy Clerk of the Peace) for the Crown.

(Before Mr. Justice Starke, Mr. Justice Dixon, Mr. Justice Evatt, and Mr Justice McTiernan )  
Judgment Reserved.

Mr. Windeyer, K. C., asked for special leave to appeal on behalf of Harold Roy Williams .

It appeared that Williams had pleaded guilty at the Sydney Quarter Sessions before Judge White to charges under the Commonwealth Crimes Act. Williams who had pleaded guilty to making counterfeit coins and to two charges of having coining instruments in his possession was sentenced to 18 months imprisonment on each charge concurrent. The New South Wales Attorney General, Mr. Manning, appealed to the Court of Criminal Appeal on the ground that the sentence was inadequate. The Court of Criminal Appeal altered the sentence of 18 months to five years.

Mr. Windeyer submitted that the matter was not properly before the Court of Criminal Appeal because the prosecution was under Commonwealth law and the appeal was instituted by the New South Wales Attorney-General.

Mr. Justice Starke: Supposing that the Commonwealth Attorney-General asked the State Attorney General to appeal. If the appeal was undertaken at the request of the Commonwealth authorities would it not be merely a matter of procedure?

Mr. Windeyer: There is the question whether both have the right. Perhaps one would want to appeal and the other would not. For all we know the Commonwealth Attorney-General might have been perfectly satisfied with the 18 months sentence....If the warrant to hold Williams for five years is bad, then the original warrant is revived and he is held for 18 months.

Mr. Crawford contended that by an amendment of the Judiciary Act the State Attorney General had the same powers of appeal against sentences in Commonwealth convictions as he possessed against sentences for offences against the State.

When Mr. Justice Starke said that the Court would reserve judgment Mr. Windeyer said that the question of the treatment of the prisoner was involved. Treatment he said varied according to the length of the sentence.

Mr. Justice Starke : If our opinions are of any value the Government authorities might treat Williams as if he were under the original sentence.

Judgment was reserved.

Mr Windeyer, K.C., Mr Kinkead, and Mr Wesche (instructed by Mr. J. Yeldham) appeared for Williams; and Mr. T. S. Crawford (instructed by the Commonwealth Crown Solicitor) for the Crown.<sup>[771]</sup>

#### **6 September, 1933. Quarter Sessions (Before Judge Thomson, K.C.)**

Crown Prosecutor, Mr. V. H. Treatt (instructed by Mr. Roy V. Edwards).

#### **Debt Collector Charged.**

Mervyn Aubrey McDonald, 32, debt collector, was charged on three counts that having received money upon terms requiring him to account to M. A. McDonald, Ltd., he omitted to account for it. The amounts mentioned were £4, £3/10/, and £19. The hearing had not concluded when the Court rose till to-day. Mr. J. J. B. Kinkead and Mr. N. A. Jenkyn (instructed by Mr. Frank H. Spier) appeared for McDonald.<sup>[772]</sup>

#### **7 September, 1933. Quarter Sessions (Before Judge Thomson, K.C.)**

(Crown Prosecutor, Mr. V. H. Treatt, instructed by Mr. Roy V. Edwards.)

**Debt Collector Discharged.**

The trial was concluded of Mervyn Aubrey McDonald, 32, debt collector, who was charged on three counts that having received money upon terms requiring him to account to M. A. McDonald, Ltd., he omitted to account for it.

The jury returned a verdict of not guilty. McDonald was discharged.

Mr. J. J. B. Kinkead and Mr. N. A. Jenkyn (instructed by Mr. Frank H. Spier) appeared for McDonald.

**(Before Judge Coyle.)**

(Crown Prosecutor, Mr. T. S. Crawford, instructed by the Commonwealth Crown Solicitor.)

**Motor Driver Acquitted.**

Rupert James Howes, 33, motor driver, was charged with having uttered counterfeit coin, knowing it to be counterfeit.

The Jury returned a verdict of not guilty. Howes was discharged. Mr. J. J. B. Kinkead (instructed by Mr. J. Yeldham) appeared for Howes.<sup>[773]</sup>

**8 September, 1933. Drank 10 Hot Rums: Then Was Robbed, Says Man**

**MR. KINKEAD.**

Although he had "been on the wagon" for some time, he consumed ten hot rums and still remained sober. Thomas Jones, of Darlinehurst, told barrister J. J. B. Kinkead at the Sydney Quarter Sessions yesterday. Stanley Wells, 31, laborer, and George Thomas Lynch, 33, dealer, were charged with assault and robbery. Jones alleged that after he and Wells had been drinking on the morning of June 21 (when he had 10 hot rums) they went to Wells's home and Lynch arrived. Beer was brought out, but Jones did not like the taste of beer, and he said he went outside to spit it out. Lynch, he alleged, knocked him down, and while he was on the ground, Wells came out of the kitchen and kicked him. They carried him into the house and put him on a bed. While he was there about £10 was taken from his pocket, and, he averred, he caught hold of Wells's hand. Lynch denied that he knew either Wells or Jones, and that he had been at the house on June 21. On that date he was acting as an agent for an S.P. bookmaker at an hotel. Without leaving the box the

jury found Lynch not guilty on both counts, and he was discharged. The case against Wells is part heard.<sup>[774]</sup>

**8 September, 1933. Whose Shout Next?**

Those subtle distinctions in the niceties of the various social strata! Barrister J.J.B. Kinkead betrayed his knowledge of them in the Sydney Quarter Sessions yesterday, when Judge Coyle asked:

"If you shouted me a drink in an hotel, would not that mean two drinks?"

Mr Kinkead: No your Honor. Then as an afterthought as it were: "Oh, yes it would in your case, your Honor."

His Honor smiled in satisfaction. His Honor was not assailed.<sup>[775]</sup>

**8 September, 1933. Quarter Sessions (Before Judge Coyle.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. Roy V. Edwards.)

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### Two Men Charged.

Stanley Wells, 31, labourer, and George Thomas Lynch, 33, dealer, were charged that they assaulted Thomas Jones and robbed him.

Mr. Crawford said that Wells, Lynch, and Jones had been drinking at a house. It was alleged that Jones was struck by Lynch, and that after being placed on a bed £10 was taken from him by Wells.

Without leaving the box, and without hearing Lynch's counsel, the jury found Lynch not guilty on both counts. He was discharged.

The hearing of the charge against Wells will be resumed to-day.

Mr. T. F. Williams appeared for Wells; and Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) for Lynch.<sup>[776]</sup>

### 14 September, 1933. Sheep in Possession – McDonalds' Appeal Upheld

The appeal by John Hubert McDonald and John William McDonald against their convictions and sentences of three months and one month respectively was heard before his Honor Judge Clancy on Tuesday afternoon.

Mr. J. J. Kinkead instructed by Mr. F. C. Webb appeared for the appellants, and Mr. V. H. Treatt for the Crown.

The evidence given by Inspector Small at the lower court was read over.

In answer to Mr. Kinkead Inspector Small said that McDonald's pliers could be used to make the back mark. Some of the 15 months old lambs are owned by Welbondongah station and some of them by someone else. He had changed his mind regarding the ownership of the sheep since the last court.

It was his suspicion that the sheep were stolen sheep and probably the property of Welbondongah. He did not say thousands of lambs. He said thousands of sheep and hundreds of lambs. A ewe would not have a lamb before 18 months old. Assuming that the accused got the sheep in 1930. It would not be possible to produce the number of lambs in question from the 350 old ewes. In his opinion it would be impossible to have a 150 per centage of lambing from a double lambing. He did not agree with the authority produced that a ??? the lamb could be 26 months old. He had seen some merino sheep on Welbondongah which had been bought from Ferguson. It would be news to him that Welbondongah did not have any merino sheep.

Constable Nolan's depositions taken at the lower court, was read over.

Cross-examined by Mr. Kinkead witness stated that from his knowledge Welbondongah had both merino and crossbred sheep. He had seen merino lambs there about two years ago. In witness's opinion the tip of the nose was just as strong as the butt of the ear. The pliers produced appeared to be faulty on the right side.

George William Reece stated that on May 10 last he had a conversation with Forrester and as a result at that conversation he went to John H. McDonald's place.

At this stage. Mr Kinkead objected to witness's evidence.

Mr. Treatt said he would not press for the evidence and witness left the box. A lengthy argument followed between Mr. Kinkead and his Honor as to whether there was a case to answer.

Mr Kinkead based his argument on the grounds that there was not a reasonable suspicion that the sheep had been stolen at the time the charge was laid.

Eventually his Honor held that there was a case to answer.

John Hubert McDonald's depositions taken at the lower court were read over.

To Mr. Treatt: I will not admit that a large number of the sheep have a mark like an L and square. The pliers produced cannot make a mark like an L, but the second pair of pliers (produced) could. When the latter pliers were used they did not make a clean cut, and I pulled the piece out with my fingers.

Mr. Treatt was then proceeding to examine witness in regard to a mortgage on some sheep when Mr Kinkead objected on the ground that witness's answers might incriminate him in connection with a charge that was pending.

His Honor cautioned witness that he need not answer any question that might tend to incriminate him in another charge.

Further cross-examined by Mr. Treatt, witness stated: The ewes I gave my son in 1930 were not under mortgage to anyone. I did not mortgage my son's sheep.

Shown a document by Mr. Treatt, witness said the ear marks shown on the document were not his son's ear marks. They were the marks on some sheep he had bought, but he could not describe them. He did not give his son the proceeds from the sale of the wool from the sheep he had given him, as his son was helping him to get out of difficulties. He shorn the ewes in August, 1930, but his son did not take delivery of them until after they were shorn.

Asked why he had mentioned Forrester's name when questioned by Inspector Small, witness said he mentioned his name because Forrester's name had been previously mentioned in a letter. Regarding some sheep that had been trucked to Mr. Badgery, witness stated that he had sent six truck loads down in July, 1932, and instructed Mr. Badgery to sell them and pay the proceeds to the credit of Campbell. He did not give Forrester any permission to deal with his son's sheep. Forrester did not own the sheep.

To Mr. Kinkead: I had the sheep I sent to Pitt, Son and Badgery in Partnership with Campbell. Some of my son's sheep went down also. My son got his share of the proceeds, Campbell got his, and I got mine.

The depositions of John William McDonald were also read over.

To Mr. Treatt: Some of my sheep were sold and I got the proceeds from the sale.

Mr. Treatt: How much did you get?

Witness: I do not know.

Mr. Treatt: What did you do with the money?

Witness: I spent it.

Mr. Treatt: When did you sell the sheep? Was it in 1930, 1931, or 1932?

Witness: I do not know, but I think it was in 1932.

Shown a document by Mr. Treatt, witness stated he had signed it, but he did not know it had been filled in by Forrester. He would not admit that he knew that Forrester had an interest in the sheep.



Mr. Treatt: You said in your evidence in chief that you had told Inspector Small that you obtained the sheep from Forrester. Was that before you had seen your father that evening?

Witness: I cannot remember.

His Honor: Who did you see when you returned to the house.'

Witness: There was only my mother at the house when I returned.

His Honor: Did you speak to your father before you spoke to Inspector Small?

Witness: I did not see my father before I spoke to Inspector Small.

His Honor: But you have sworn that you were acting under instructions from your father when you told Inspector Small that the sheep came from Forrester.

Mr. Treatt: Was the arrangement made before the police came there?

Witness: I cannot remember.

Inspector Small (recalled) stated, in answer to Mr. Kinkead. that when he was talking to John Hubert McDonald he noticed a man named 'Sandy' leaving the house, and he asked McDonald what was he after. John William McDonald then came to the house.

John William McDonald (recalled) in answer to Mr. Kinkead stated that on returning home he had a conversation with his brother, Alexander Charles McDonald, who is known as 'Sandy,' who told him something, and as a result of the message he received from him, he (witness) had told Inspector Small he was acting under his father's instructions.

The depositions of Cecil William Wicks, taken at the lower court were read over.

To Mr Kinkead: I did not see the pliers (produced) used on the sheep. They were used on an old felt hat. The pliers did not cut clean. They seemed to be worn on one side. Inspector Small seemed to have some difficulty in getting a clean cut.

To His Honor: The marks on the sheep I examined did not vary in size. H.W. Copeland, Stock Inspector for the Morce P .P. Board, deposed: I have examined the sheep, the subject of this charge. I understand that the mark is two parallelograms, but the mark is not wide enough. I was given the pair of pliers produced and was told the mark was put on the sheep with them. I tried the pliers on the ears of the sheep, and I say the mark could have been put in with those pliers. The mark at the point is a good deal wider, but this can be accounted for by using an old pair of pliers. The widening towards the point of the ear can be accounted for by the pliers having been put in too deep. The pliers are faulty and would not make a clean cut on all occasions; that the cartilage of the ear would not be cut cleanly through. The practice is that when , the pliers do not cut the man using them pulls the piece out, and that has a tendency to widen the mark. In one pen I examined there was one sheep with an L, but in the second pen there were quite a number — 10 or 12. I think it is possible to make an L with the pliers produced. I would not say that the marks on the sheep I examined had been altered or defaced, because I could not find any evidence of another mark.

Mr. Kinkead: If the ewes had the rams all the year round, would it be possible to set 150 per cent of lambs in 12 months?

Witness: Yes; a ewe can give birth to a lamb in 5 months, and in two months time could be in lamb again. I know many men in this district who have obtained up to 150 per cent of lambs in 12 months, and some have obtained a higher percentage than that.

Mr. Treatt: You say that they might get up to 200 in 12 months, and yet an authority, produced by Mr. Kinkead, states that in the most favorable circumstances the most that can be obtained is 150.

Shown a pair of pliers, witness said they were not like the pair he had seen. The space was not the same in one as in the other. He had known John Hubert McDonald for a number of years, and during the last five since McDonald had been appointed a member of the Land Beord, he had been closely associated with him in land court matters. With regard to a defaced ear mark, witness stated he would expect to find evidence of a previous mark. He had not seen any evidence of that nature on the sheep he had examined. He had examined the sheep carefully, but he could not say how many he had found with an L. The sheep were running backwards and forwards and that made it difficult for him to keep tally of them. In most of the sheep he examined he thought the broader portion was towards the tip of the ear.

His Honor:- What do you say regarding the broad mark?

Witness: I am inclined to think there may have been some defacement, but there are many factors bearing on ear marking, and the marks do not always register truly.

Alexander Charles McDonald's depositions were read over.

Mr. Treatt: Did you at the lower court say that the mark on the lambs was that of Cornish's?

Witness: Yes.

Mr. Treatt: Will you admit that the mark put on the lambs was an L in shape. The Dorset lambs had an L on them.

Mr. Treatt: Did you see your brother mark any lambs?

Witness: I saw my brother mark some lambs, but I cannot remember how many times or when he marked them.

E. J. Comerford, grazier, and stock and station agent, deposed that in 1922 and 1923 he was a member of the firm of Comerford and Cramsie. In February, 1922, he sold 72 ewes earmarked with two bayonets and 390 lambs with two notches in the point of the ear to John Hubert McDonald. They were bought sheep and did not bear his registered ear mark. In 1923 he sold the accused 340 ewes.

Sergt. Grimes, of Baggabilla, gave evidence that in 1932 he was interested in a case at Boggabilla, in March, 1932, and at that time Forrester's pliers were in the possession of a man named Healey, who was before the court on a charge of sheep stealing.

Joseph Emanuel Didd stated that he was the overseer at Brudle, the property being seven miles from McDonald's place. In 1932, McDonald's sheep were shorn at Brudle. He knew some of McDonald's sheep. The lambs were marked with two squares in the back of the ear. He had examined the sheep outside the court and they were of a similar type to those he saw at Brudle in 1932. The earmarks were the same, two squares in the back of the ear.

William Bryant stated that he was in charge of Welbondongah, and had been employed on the station for 40 years. The sheep outside the court were merino sheep and were not the property of

Welbondongah. No merino sheep had been bred on Welbondongah station for the past 14 or 15 years.

To Mr. Treatt: The station did buy 350 merinos from a man named Ferguson near Boggabilla a few years ago, but they were sent away and the lambs were marked with single notch.

James R. Bateman said he was a station hand employed on Welbondongah. He had examined the sheep outside the court and they were merino sheep and not the property of Welbondongah.

To Mr. Treatt: About 2000 merion sheep had been bred on Welbondongah. I do not know where they were obtained. The sheep had lambs with them.

J. A. Cochrane, of Gilroy, grazier, said he knew John Hubert McDonald, his property, his sheep, and his mark. He had examined the sheep outside the court and found that they were of one type with two squares on the back of the ear, the same as John William McDonald's, but badly marked. He had examined, the fleeces and the wool was typical or McDonald's sheep. He did not know Welbondongah sheep. He had examined the pliers (produced) and they seemed to pull on the right side and did not cut clean.

To Mr. Treatt: The pliers would leave a piece hanging down. There were quite a number of the same type of sheep in the district.

J.B. Rigby, woolclasser, deposed that he had been wool classing for the past 15 years. He had classed the wool at McDonald's on one occasion only, and that was on July 31, 1933. He had seen the sheep the police had taken possession of and the wool was of the same type as McDonald's.

To Mr. Treatt: I have seen sheep in other sheds carrying the same type of wool.

F. W. L. Kirkby, grazier, stated that he knew McDonald and his family. His reputation in the district was good and he had always borne an excellent character. He had examined the sheep outside the court, and he would say that the sheep were marked all right, but some of the marks were a little faulty.

His Honor: Do you say the large mark can be made with one cut?

Witness: I would say it could be done.

Mr. Kinkead: Is it extraordinary for a man to get 150 per cent of lambs in 12 months?

Witness: I do not think it would be extraordinary.

A. P. Meller said he had a good many business deals with McDonald and had always found him honorable.

This concluded the evidence for the appellant.

Mr. Kinkead, in his address, contended that the only evidence that the sheep had been stolen was that they had certain marks on them, and these had been explained by the McDonalds. Inspector Small had admitted that the sheep had not been stolen from Welbondongah, and in support of that there was the Magistrate's refusal to make an order for the return of the sheep to Welbondongah.

His Honor: I agree with you that the sheep have not been stolen from Welbondongah, but how is that going to affect the case?

Mr. Kinkead: Then who are the sheep going to be returned to?

His Honor: I do not know that I will make an order at all.

Mr. Kinkead: I submit that the fact that the sheep do not belong to Welbondongah must go a long way to prove they are McDonald's. There is not a tittle of evidence that the sheep have been stolen. Forrester was McDonald's agent and he had said he had got the sheep from Forrester simply because the stock was under mortgage to Dalgety.

His Honor: But why did he say that he bought them from Forrester?

Mr. Kinkead: To save complications.

His Honor: Why should there be any complications? The father could easily have said they were the property of his son.

Mr. Kinkead: In making the application to the Relief Board, Forrester's name was mentioned. I submit, your Honor, the explanation is a reasonable one. Having heard the evidence, I would ask your Honor to find there is no case to answer.

His Honor (holding up a piece of paper on which appeared an ear mark): There is no question that quite a number of these marks were not made with one cut. How was the great wide mark put in the ears?

Mr. Kinkead: I submit that has no bearing on this case. If there are defaced or altered ear marks that is a matter for prosecution under the P.P. Act.

His Honor: It has a great bearing on it. A man can be charged with driving on the wrong side of the street, and yet can be charged with manslaughter also.

After hearing arguments put forward by Mr. Treatt, his Honor said he would postpone his verdict until he had again read through the depositions.

On Wednesday, his Honor said that additional evidence had been given in the case to that which had been taken at the lower court, and as a consequence there were certain aspects of the case that had not been placed before the Magistrate. Having regard to all the circumstances he considered the explanation in regard to the ownership of the sheep was an honest one. Regarding the ear marks, his Honor said he was satisfied that the marks had been altered at some time by someone. He was convinced of that, not only by Inspector Small's evidence, but by what he had himself seen, and by the evidence of Stock Inspector, who had stated that there may have been interference with the broad mark. Taking everything into consideration he would accept the appellants' explanation as to their honesty. He would like to give reasons why he had arrived at certain conclusions regarding the explanation, but he refrained from doing so owing to a charge that was pending. The appeal would be upheld and the conviction quashed.

His Honor made no order regarding the sheep.<sup>[777]</sup>

#### ***14 September, 1933. Accused Found Guilty - Sentenced to 9 Months Imprisonment***

George Allan Byron was charged at the Quarter Sessions on Monday before his Honor, Judge Clancy, with that he did steal 36 wethers and 14 ewes from Midkin station, the property of the New Zealand and Australian Land Company.

Mr. V. H. Treatt appeared for the prosecution and Mr. J. J. Kinkead barrister of Sydney, instructed by Mr. V. C. Webb, of Moree, appeared for the accused.

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The following jury was empanelled: — Charles Smith, H. P. Coleman, H. C. McDonald, G. W. R. Scott, J. D. H. Cummings, B. O. St John, A. P. Meller, O. H. Kirkby, F. J. Crews, and T. C. Hindes. The accused challenged seven, while five were stood aside by the Crown.

C. C. Walker stated that the sheep in question were the property of Midkin and the N.Z. and A.L. Company. The sheep were bred on Midkin station. He had examined the sheep and the arc by the teeth corresponded with the mark on the ear. The fences were absolutely sheep proof. Both defendants paddocks adjoined Midkin.

To Mr. Kinkead: I did not do the mustering myself. When I say that sheep are missing, I am relying on the shearing and crutching, and on what I was told by an employee. I do not know of my own personal knowledge that any sheep were missing in June. I inspected the boundary fence where it crossed a gully and saw a couple of places where fresh earth had been placed. The fence at this particular place was a few inches out of the ground. I had a muster of the paddock on the Sandy Camp side on March 27 and they tallied exactly. At last shearing time I saw two sheep that did not belong to Midkin station. Those sheep have not been shorn, and have been kept in a separate paddock.

To Mr. Treatt: I would not brand anyone else's sheep with Midkin brand.

In answer to Mr Kinkead, witness stated that the Company depastured about 75,000 sheep over an area of about 164,000 acres. There were quite a number of the same cross of sheep as Midkin in the district, and that he had 50 or 60 stragglers in a paddock which he had taken out at shearing time.

Inspector Small gave similar evidence to that given at the lower court.

To Mr. Kinkead: I have told all I know about the sheep the subject of this inquiry. I did not make any notes in connection with the case. I am relying on my memory. I never prepared a statement in connection with the case as I was conducting it myself.

Constable Nolan made a statement but I did not use it at the police court. In answer to a question by myself, the accused did say he had a few stragglers —not 2 or 3. Byron said, 'The sheep were full-mouthed when I bought them,' and not 'The sheep would be full mouthed.' Both Byron and myself were a little heated. Byron did say, 'I am fed up of you and I am going to have dinner.' I would not say that Byron adopted a fighting attitude. Some of the alterations in the ear marks are of recent interference. Some of the marks have been altered since June 20 and those marks have not yet healed up.

To His Honor: The sheep outside the court are the sheep I took from Byron's.

To Mr. Kinkead: I cannot say how many sheep are wrongly earmarked without counting them. I know there are two or three sheep.

At this stage the foreman of the Jury. Mr. A. P. Mellor. asked permission to inspect the sheep in question.

The Court was then adjourned for ten minutes to allow the jury to examine the sheep.

On the Court resuming, the jury asked to be given an opportunity of seeing some more of Midkin sheep.

His Honor assured the jury that they would be given the opportunity.

Further cross-examined by Mr. Kinkead, witness stated: I made a careful examination of the fence, but I could not find a hole where a sheep, a rabbit, or even a mouse could get through. I cannot say how many sheep outside the court bear the Midkin ear mark, but I know there are a lot undoubtedly with the station's ear mark. With regard to one particular sheep I say that the alteration in the mark was done about 20th June. The mark showed a slanting cut. The mark was not done with a machine. I did not crawl under the lorry in the shed to get any of the exhibits in the case. The lorry was right up against the shearing plant, between the plant and the motor car. It would be necessary to shift the lorry to shear the sheep. The clippings of wool produced are in my opinion new wool. There is about 7 or 8 lbs in the wool. The paddock where the sheep were is a scrubby paddock and that is the end of it.

Mr Kinkead: It is not the end of it.

Inspector Small: In some places I could see to the end of it, and in others I could not see more than three or four hundred yards.

In answer to Mr. Kinkead, Inspector Small said he came to the Moree district on July 5 last. A brother of his was in the district before. Publicity was given to him being in the district ten days after he arrived here. He asked Humphries about some wool. Regarding the sheep branded in blue and black oil, witness said the sheep branded in blue oil were shorn about June 20. Fifteen bales of wool from 560 sheep would be a fair thing. He did not make any inquiries whether the wool was sent to Dalgety's or the Primary Producers Company. He had O.K'd. an advertisement which was published in the local press. He had been satisfied because the underneath part of the advertisement explained the matter. He had inspected the sheep and was satisfied that the earmarks were not correct, but he had also been wilfully altered. The mark was made simply through Mr Newcomen not putting the mark in far enough. He found three unbranded shorn sheep at Ashley.

He did not make any make any of the conversation he had with Byron, nor did not take a statement from him. He did not ask Byron for a statement because Byron could just as easily go back on a statement as his word. He had not made a mistake regarding the evidence he had given at the lower court. He was now giving it to the jury what he thought Byrcn had said.

C. C. Walker, recalled, stated that he had sold a large number of culls. The sheep outside the court were not culls.

To Mr. Kinkead: The sheep were culled from various paddocks, principally from the Waterhole Camp side. They were the same class of sheep as those outside the court.

Robert Gill stated that he was oversee at Midkin station. He had seen the sheep outside the court and they were Midkin station sheep. He could identify the sheep by the ear and age marks. He had missed sheep between March and June. He had counted the sheep at crutching time in March and there were then 140 sheep. He had counted the sheep again at the shearing in June and there were 361 missing.

Mr. Kinkead: How many sheep did you shear in June?

Witness: 72.000.

Mr. Kinkead: I say you shore 74.000. What have you got to say to that?

Witness: I cannot recollect.

Mr. Kinkead: Then why did you say 72.000?

Witness: I got a bit mixed.

Further cross-examined by Mr. Kinkead, witness stated that he had mustered Temla paddock, which adjoins Shaw's and Woods' properties. He had relied upon what the men told him as to where the sheep came from.

To Mr. Treatt: There were about 200 unshorn stragglers on Midkin at the present time. I have been over the paddocks myself since the shearing.

To Mr. Kinkead: Repairs have been effected to the fence in Wallon Creek. I put dirt along the wire fence where it was out of the ground. That was about three weeks ago. There were two holes in the fence but a man would have a difficult job to get through them.

To Mr. Treatt: The wire was off the ground through the rain.

Constable Nolan gave similar evidence to that given at the lower court.

To Mr. Kinkead: When Byron was asked by Inspector Small how old the sheep were when he bought them, he said. 'They were full-mouthed.' He did not say 'They would be full mouthed new.' The lorry was next to the plant in the shed. Inspector Small picked up some pieces of wool in front of the lorry and some at the side of the lorry. Referring to the wool picked up by Inspector Small, Byron said. 'This is old stuff, the same as that out there (pointing to some wool lying on the ground outside the shed), only this has been under cover.' I do not think Inspector Small was there at that time. I helped to muster Moppin paddock. It is plain country. There were no sheep in the paddock after the mustering on the Friday. On the Sunday we got three more Midkin sheep shorn and unbranded in the same paddock. The three sheep had been recently shorn. It would be possible for the sheep to get into the paddock between Friday and Sunday, but I do not think so. Byron never claimed the sheep as his property at any time.

This concluded the case for the Crown.

Mr. Kinkead contended that on the evidence submitted by the Crown there is no case for the accused to answer. Neither loss, or identity of the sheep had been established, he said. Neither Walker nor Gill has mustered the paddock from which the sheep were alleged to be missing. The Crown, he contended, had not given any evidence of stealing.

His Honor said that, so far as Walkers evidence was concerned, he agreed with Mr. Kinkead, but there was evidence that Gill had afterwards gone around the paddocks and found only a few stragglers, but none of the class of sheep the subject of this charge. His Honor held there was a case to answer.

George Allan Byron, grazier, residing at Carole Creek, deposed: I have two separate paddocks, one called Watervale and the other Moppin, with a T.S.R. between them. The Watervale paddock is about three-quarters of a mile at the widest point. The paddock has some timber in it. but I would not call it a scrubby paddock. I know the boundary fence of the Watervale paddock. I would not say it was sheep proof. I walked the fence with Mr. Webb said Mr. Kinkead and saw where some one had placed some logs and mud to stop sheep from getting into my paddock. The fence had a good lean on it. The Moppin boundary fence adjoins Midkin and a T.S.R.. The fence was not sheep proof. There were at least 100 panels that were not in the ground at all. I also saw where repairs had recently been effected. There were holes in the fence in a washaway in Wallon Creek. I have not shorn any of Midkin sheep in my life. I remember Inspector Small coming to my place and I had a conversation with him. Small said. 'How many sheep have you?' I said, 'I shore 588.' Small said. 'How long is it



since you bought any sheep?' I said, 'Five or six years ago'. Small said, 'How old are they?' I said. 'They would be full-mouthed.' Small said. 'They can't be.' Small asked me if I had any stragglers and I said. 'Woods owns a couple.' Small said. 'I'll have a look at the sheep.' We mustered the sheep and Small said. 'We are looking for Welbondongah and Carrigan's sheep.' I told Inspector Small that I branded all my sheep. I saw some other sheep there and told Inspector Small that they did not belong to me. We yarded the sheep and Inspector Small checked the sheep with no brands on. Inspector Small said, 'Who owns these?' I said, 'I do not know.' Inspector Small found some with a blue brand and some with a black brand on them. Inspector Small drew my attention to the earmark and I said, 'The mark was defaced by the shears.' Inspector Small said. 'I'll wake you up to something.' I said. 'All right.' Inspector Small said. 'Did you shear any sheep here?' I said, 'I shored an odd sheep or two.' Inspector Small said, 'A good many were shorn here; two shearings were done here.' I did not say, 'I'll say nothing.' Inspector Small picked up some clippings of wool and I said to Constable Nolan, 'There are some more outside.' Shortly afterwards Inspector Small picked up a branding dish near something and said to Constable Nolan, 'Have a look at this. I have not used the dish since April last. My lorry was in the shed at the time near the shearing plant and it has not been out of the shed since June 21. Inspector Small said something to me and I said, 'I am fed up of you and I am going to have my dinner.' Inspector Small said, 'If you go away I'll arrest you.' The following day Inspector Small, Constable Nolan, Constable Gregory, Tracker Barlow and myself mustered Moppin paddock, and Inspector Small asked me if the something would hold. I said, 'It is not too safe.' Inspector Small went through the sheep and found 10 which included on belonging to Woods and a ram and a ewe belonging to Carrigan. I told Inspector Small I had six rams, that I shored six rams and that I shored Carrigan's ram in mistake. On the Sunday, Inspector Small and Constable Nolan came to my place and we went and mustered the sheep in Mopping paddock in a corral. We caught the ram and the three unbranded shorn sheep. Inspector Small said, 'What about these sheep?' I said. 'It seems to me that they have been put here since Thursday.' Inspector Small said, 'I must have missed them.' I said, 'You would not miss three pins in a room.' Inspector Small took charge of the sheep. Inspector Small counted the sheep but he did not tell me the number. Later on Constable Nolan and myself went back to the house and had dinner, leaving Inspector Small in the paddock. When we returned to the yard, after having dinner. Inspector Small was there, and Constable Nolan said. 'There's Inspector Small now. and he looks wild too.'

Mr. Kinhead: Well you know, you left him to walk back from the paddock.

In answer to Mr. Kinhead. witness stated when Inspector Small spoke in reference to the age of the sheep, he understood him to mean the age of the sheep now. He shored his sheep at Carole Creek on June 15 or 16. The sheep were put on the road on the Wednesday night, and they were taken along the road toward's Carole Creek for about a mile and a quarter. He picked them up again on the Thursday morning, when they had scattered for about 2½ miles towards Ashley. He started shearing operations after lunch on the Thursday. He took the shorn sheep out on to the T.S.R. and left them there and went back to the shed. He had branded all the sheep that were shorn. It was a bit dark when he got back to the shed. He branded all the sheep in blue oil. He had not examined the ear marks on the shorn sheep when he branded them. Later on he discovered that some sheep were not his sheep and he had branded them in black and four of them bear the Midkin earmark. He had put the black mark on them to distinguish them from his own sheep. Witness said he had not seen the sheep before until Inspector Small had drawn his attention to them in the paddock. He had gone through his sheep on the Monday previous to Inspector Small's visit and his sheep were all right then. He had not known anything regarding the visit of Inspector Small to the district until the Inspector called at his place. The sheep outside the court were not his.

To Mr. Treatt: I know the sheep I branded in black and bearing my earmark are not my sheep. I do not know the Midkin earmark. About 6 or 7 years ago I was charged with stealing sheep and it was alleged in that case that sheep had the Midkin earmark. On that occasion the charge was that I had Midkin sheep in my possession. On that occasion the mark was brought under my notice but I did not make any attempt to find out what earmark it was. When the police came to my place I did not notice the earmark on any of the sheep that they took away. I admitted that the sheep were not mine. When I was arrested I knew I would be taken to Moree and a serious charge laid against me. That did not suggest to me that I should examine the sheep more closely.

At this stage the case was adjourned until the following morning. On the Court resuming on Tuesday morning, witness, in answer to Mr Treatt said: My property adjoins Midkin. I occasionally ride round the fences and during these rides I have seen Midkin sheep alongside the fence. When I put the black brand on the four sheep I did not look at the earmark. I just had a look at the sheep and saw they were not mine. I never made any inquiries as to who owned the sheep. The wool from the sheep has been sold. The police counted 660, but I did not know that number was there. I know that I had 588 and I shored that number. I do not know what Inspector Small said regarding the number. I was more concerned with who put the sheep there. I cannot say if the brand on Carrigan's sheep is in black oil. I put the brand on the ram when I noticed it or at Carole. I sent the wool from the 588 sheep I shored to Sydney. No other wool but that from the 588 sheep I shored was sent to Sydney in my name. During the past twelve months I did not send carcasses of sheep to Ashley regularly. I sent some occasionally for which I got 10/- each. I only sent one on an average of every three weeks or a month. I did not send 2 or 3 every week. I was supplying two families. My earmark is a bayonet and J pointing towards the top of the ear. To a man with good eyesight it can easily be distinguished from that of Midkin. My eyesight is not too good. The boundary fence was in bad repair in many places but I have not complained about it.

To Mr. Kinhead: I have two sets of glasses, one pair for reading and the other pair for seeing at a distance. I do not wear my glasses while I am drafting as the dust settles on the lenses and prevents me from seeing. I only know three earmarks in the district, Welbondongah, Ledingham, and Shaw - and I know their marks because I have worked their sheep. While riding along the fence I saw some sheep but I never examined them. The sheep would not stand long enough for a man on horseback to examine their ear marks.

John Thomas Crane gave evidence similar to that given at the lower court.

In answer to Mr Treatt, witness said that the accused had worked under him at Cleveland station for 14 or 15 years. He had financed the accused in a lot of sheep. He would not say that the accused's reputation was that of a sheep stealer.

Mr Kinhead in a lengthy address to the jury, said that the jury had to be satisfied beyond all reasonable doubt that the sheep in question had been stolen. Mr Walker had stated that out of 8,500 sheep 250 had been sold as culls. The Crown, contended Mr Kinhead, had first to establish the fact that the sheep outside the court were the sheep that had been stolen. With regard to the sheep outside the Court Mr Walker had said that only for the age and earmarks he would not claim them as Midkin sheep.

After hearing the addresses by counsel and his Honor's summing up, the jury retired at 12.30 pm on Tuesday and returned into court at 4 pm with a verdict of guilty with a recommendation to mercy on account of accused's age.

When Byron was called upon for sentence on Wednesday morning, Constable Lockhart read out a list of previous convictions.

Inspector Small stated that the accused was a landholder and owned about 900 sheep. He had lived at Moppin for several years and he was looked upon as a sheep stealer. He had been stealing sheep in various ways. He had been killing fat sheep for the past 18 months and selling them. Of the 580 sheep he had examined he was satisfied that the marks on 265 had been interfered with. The marks were altered in such a way that no one could claim them.

Mr Kinkead: Has the accused ever been charged with defacing marks?

Inspector Small: Yes, but the case was withdrawn until this case was over.

Mr Kinkead: You also charged him with having used his premises as a slaughtering house without a license?

Inspector Small: Yes; that case was dismissed. I also charged him with defacing ear marks and also with stealing sheep from a man named Carrigan. These cases were held over, but I still have the sheep, and if he had got out of this case he would have been arrested tomorrow.

Mr Kinkead: You are pretty vindictive.

Inspector Small: No.

Mr Kinkead said there was only once conviction against the accused that really mattered, and that wasn't of a very serious nature. It was merely that he had been found in possession of portion of a tarpaulin and piece of rope that the accused said had been given him by a man. That was the only conviction that affected accused's honesty. He pointed out that Byron was an old man, and he asked his Honor to bind him over to be of good behaviour even if it was for a long period.

His Honor said he had decided to take into consideration the recommendation of the jury in fixing this sentence, otherwise he would deal more severely with him. Situated as the accused was, he could not put forward the plea that the offence had been committed through poverty or hunger. In view of the circumstances of the case, his Honor said he could not help feeling that the stealing had happened over a number of years. He sentenced Byron to nine months' imprisonment with hard labour.

Regarding Byron's appeal against his conviction and sentence of three months in connection with a charge of having the carcass of a sheep in his possession reasonably suspected of having been stolen, his Honor dismissed the appeal with £5 5s costs, and stated that the sentences would be concurrent.<sup>[778]</sup>

#### **19 September, 1933. Quarter Sessions (Before Acting Judge Neild.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. Roy V. Edwards).

#### **Stealing.**

Harold Bert John Gardiner was charged with the larceny of a radio set. The Jury found him guilty. His Honor bound Gardiner to come up for sentence within two years if called on, and ordered him to make restitution to the amount of £50.

Mr. Kinkead (instructed by Mr. Newnham) appeared for the defendant.<sup>[779]</sup>

### 22 September, 1933. Quarter Sessions (Before Judge Thomson.)

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. R. V. Edwards, of the Clerk of the Peace Office).

#### Accused Discharged.

Aubrey Eric Simpson pleaded not guilty to a charge of falsely pretending to Henry Benjamin Benson that he had an interest in his deceased father's will, and thereby securing £300 from Benson in April, 1926, with intent to defraud.

Benson said that he met the accused at the office of Ronald Gregory Duncan, solicitor. He handed Simpson a cheque for £300, but later discovered that the estate was mortgaged to accused's sister. Witness said Duncan had told him the estate was free from any charge. It was his belief in Duncan that had induced him to give the cheque to Simpson.

Simpson, in evidence, said that before 1926 he borrowed £150 from his sister, and believed that when the estate was distributed that amount would be deducted from his share. He considered Benson's interest would not be affected.

The Jury returned a verdict of not guilty and the accused was discharged.

Mr. J. J. Kinkead (instructed by Messrs. Gourlay and Snelling) appeared for accused.<sup>[780]</sup>

### 23 September, 1933. Law Report – Supreme Court – Full Court

(Before Mr. Justice James, Mr. Justice Davidson, and Mr. Justice Halse Rogers.)

#### Doctrine Of Recent Possession.

##### Rex v Caplin.

Mr. Justice James dissented from the majority Judgment of Mr. Justice Davidson and Mr. Justice Halse Rogers dismissing the appeal of Bernard Caplin from a conviction of receiving at the Sydney Quarter Sessions. At the trial, he was sentenced to 12 months' imprisonment, but the Court of Appeal, in reserving Judgment, in August, directed that the prisoner should be bound over, in view of favourable testimony to character.

Mr. Justice James said that, from the facts, it appeared that five rolls of cloth were taken from the warehouse of John Vicars and Co. by two other accused, and were afterwards, within a short period, found in the premises of the appellant. When asked whether he had purchased any cloth that evening, he denied that he had done so, but a little later admitted that he had bought them from a man he did not know, and that he was frightened to say so before. Appellant carried on the business of a manufacturing tailor. At the trial, he gave evidence that he had said what was false at first for two reasons, one on account of his wife who was present at the time and was a delicate woman, and the other because a customer was present. Evidence was given that appellant had a good reputation, and a very good character. His Honor said he was of the opinion there was plenty of evidence that the cloth was stolen, and the question really was, did the accused purchase it knowing it to have been stolen. His Honor said that here the prisoner at first did not account for his possession of the cloth. He contented himself with simply denying that he had purchased any, but he afterwards gave an explanation, that is, he told a false-hood at first, so his Honor believed it would be strong evidence upon which the jury might have disbelieved his explanation as to how he came into possession. Still, if the law had been explained to the Jury in accordance with the law, as laid down in *Rex v Schama* and *Abramovitch*, the jury might have, although not absolutely believing his story, considered that it raised such a doubt, and found that the Crown had not proved its case. As this was not done, his Honor believed that the conviction should be quashed.

Mr. Justice Davidson, in giving judgment that the appeal should be dismissed, spoke at some length on the second ground of appeal, which was that, in his summing up, the trial Judge failed to direct the Jury fully or properly on the subject of recent possession.

Mr. Justice Halse Rogers said that, in his view, when, as here, the prisoner had at the outset given an explanation which was subsequently admitted to be untrue, there was no need for the Judge to explain to the jury the doctrine of recent possession. It was sufficient if he told them, as the trial Judge did in this case, that the onus of proving the case beyond reasonable doubt was on the Crown, that they must take into account all the circumstances, including the earlier false explanation, and determine on the whole of the evidence whether they were satisfied.

Mr. J. J. B. Kinkead (instructed by Mr. P. N. Roach) appeared for the appellant; and the Solicitor-General (Mr. Weigall, K.C.), instructed by the Clerk of the Peace (Mr. Lacey) for the Crown.<sup>[781]</sup>

#### **7 October, 1933. Quarter Sessions (Before Acting Judge Nield)**

(Crown Prosecutor Mr T S Crawford instructed by Mr R V Edwards )

##### **Not Guilty.**

Arthur Leslie Hill, 32, boot repairer, was charged that at Leichhardt he stole a motor cycle, the property of Frederick Reginald Ellis.

The jury returned a verdict of not guilty. Hill was discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Mervyn Finlay, of Messrs. Mervyn Finlay and Jennings) appeared for Hill.<sup>[782]</sup>

#### **9 October, 1933. Mistrust**

The only building in Phillip Street in which the doormat is secured stoutly to the flooring by lock and chain is Chancery Chambers, the professional home of a score of lawyers. These include Sir Robert Garran, K.C., Mr E.M. Mitchell, K.C., Mr M.W. Monahan, K.C., Sir Daniel Levy, Mr P.D. Shortland (Mayor of Strathfield), Mr W.F. Sheahan, and Mr James Kinkead.

Of course, all these gentlemen have mats of their own.<sup>[783]</sup>

#### **24 October, 1933. Quarter Sessions (Before Acting Judge Nield )**

Senior Crown Prosecutor, Mr McKean K C. (instructed by Mr R V Edwards).

##### **Stockman Convicted.**

Hans Boyd Martyn, 36, stockman, was charged that at Sydney on April 28 he falsely pretended that a certain motor car was his sole property, and was unencumbered, and thereby obtained from William George Hancock £55 the property of Jane Tumeth, with intent to defraud.

Martyn, who wore a sombrero, riding breeches, leggings, and lumber jacket, pleaded not guilty.

Mr. McKean said that the question for the Jury was whether statements which Martyn was alleged to have made were made with intent to defraud. Certain admissions had been made by the accused, and it would not be necessary for the Crown to call any evidence.

In a statement from the dock, Martyn said he had no intention to defraud, but he needed the money.

Martyn was found guilty and remanded till Friday for sentence.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Martyn.<sup>[784]</sup>

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**28 October, 1933. Quarter Sessions (Before Acting Judge Nield.)**

Senior Crown Prosecutor, Mr. McKean, K.C. (Instructed by Mr. R. V. Edwards).

**Bound Over.**

Hans Boyd Martyn, 36, stockman, had been convicted of obtaining property by false pretences.

His Honor said that if Martyn had shown greater frankness in making his statement to the Jury the verdict might have been different. Of course, his Honor did not suggest that the verdict was wrong.

Martyn was bound over in his own recognisance of £20 to be of good behaviour and appear for sentence if called upon within two years, a further condition being that he make restitution of £45/2/ by monthly instalments of £2/10/, the first payment to be made on December 1.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Martyn.<sup>[785]</sup>

**4 November, 1933. Quarter Sessions. (Before Judge Curlewis.)**

Senior Crown Prosecutor, Mr. McKean, K.C. (instructed by Mr. R. V. Edwards).

**Alleged Housebreaking.**

Norman Wesley Duckett 27 motor mechanic was charged that on October 10 he broke and entered a dwelling house in Bayswater road, Darlington, and stole a wireless set and a pair of field glasses. There was an alternative charge of receiving. Duckett pleaded guilty to breaking entering and stealing.

Duckett was sentenced to 18 months imprisonment.

Kenneth Albert Wickman, 21, signwriter and Joseph Patrick Morris, 22, mechanic pleaded not guilty to similar charges.

At the close of the Crown evidence Mr. Kinkead submitted that there was no case to go to the jury against Morris.

By direction, Morris was found not guilty and discharged.

Wickman was found guilty of breaking entering and stealing.

Detective-constable Jack said that when the men were arrested a loaded automatic pistol was found in a wardrobe at their residence.

Wickman was sentenced to six months imprisonment.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Morris.<sup>[786]</sup>

**7 November, 1933. Quarter Sessions (Before Judge White.)**

(Crown Prosecutor, Mr. T. S. Crawford, instructed by Mr. R. V. Edwards.)

**Two Women Charged.**

Eileen Fox, 31, and Patsy Reardon, 27, were charged that on August 28 last they stole £32 from Pellegrino Girolano.

It was alleged that while Fox engaged Girolano's attention Reardon took the money from his coat pocket.

The hearing had not concluded when the Court rose till to-day.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Fox; and Mr. T. P. MacMahon (instructed by Messrs. C. P. White and Co.) for Reardon.<sup>[787]</sup>

**8 November, 1933. Quarter Sessions (Before Judge White.)**

(Crown Prosecutor, Mr. T. S. Crawford, instructed by Mr. R. V. Edwards.)

**Two Women Acquitted.**

The trial was concluded of Eileen Fox, 31, and Patsy Reardon, 27, who were charged that on August 28 last they stole £32 from Pellegrino Girolano. The jury returned a verdict of not guilty. Fox and Reardon were discharged. Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for Fox; and Mr. T. P. MacMahon (instructed by Messrs. C. P. White and Co.) for Reardon.<sup>[788]</sup>

**9 November, 1933. Sheep in Possession – Defendant Discharged**

At the local Police Court on Tuesday, before Mr. A. G. Hardwick. P.M., Edwin George Humphries was charged with knowingly having two sheep— one ram and one wether — reasonably suspected of having been stolen. Inspector A. R. Small appeared for the prosecution, and Mr. Kinkead of Sydney, instructed by Mr. F. C. Webb of Messrs. Webb and Boland, Moree, for the defendant, who pleaded not guilty.

Inspector A. R. Small deposed: On October 20 last, in company with Constables Nolan, Gregory and Cochrane. I called at the defendant's place, Carole Creek, situated about 7 miles from Moree, and saw the defendant there. I said, 'I am looking for some rams.' He said, 'Who owns them?' I said, 'They are Tycannah station rams; have you any rams here?' He said, 'One.' I said, 'Can I have a look at your sheep?' He said, 'They are up there; I would like you to hurry up as I am not well and have an appointment with the dentist.' I mustered about 250 mixed sheep from a paddock adjoining the defendant's residence and put them in a yard near the woolshed. I there saw the ram (produced). It is 2-tooth ram, or 18 months old, and is a merino ram. The earmark is like a note in the front of the registered ear and a swallow tail in the opposite ear as an age mark. The tips of the horns have been cut off and the tar brand is what is known to me as the Prince of Wales' feather in black tar. The brand on the sheep appears to be about 3 months old and the travelling T on the rump of the sheep appears to be the same age. I said to the defendant, 'Where did you get this young ram?' He said, 'I never saw it before; this is the first time I have seen it.' I said, 'It has your son's registered brand on it,' and I showed it to him. Defendant said, 'That is right, but I know nothing about it.' I let the ram go, and a little later I said, 'When did you dip your sheep?' He said, 'About a fortnight ago.' I said, 'That ram was not dipped.' He said, 'Yes, it was.' Defendant caught the ram, opened its wool and showed me that it had been dipped. I said, 'When I showed you the ram you said it was ' the first time you had seen it.' The defendant made no reply. I produce the sheep brands and marks directory book and on page 349, opposite the name of Charles George Humphries, of Wermalong, is the brand which I described as the Prince of Wales' feather, and which is on the ram in court. I then took possession of the sheep. In the yard at the same time Constable Cochrane caught the wether (produced). It is a 4-tooth merino wether and was shorn about July last. It bears an unrecorded, or altered, earmark in the registered ear and no mark on the unregistered tar. The wool on portion of the back of the wether was clipped about a fortnight ago and on the portion cut is the tar brand E sideways over H. Looking at the sheep brands and marks directory this brand appears in front of the name of Edwin George Humphries, of Carole and Woodbine. I said to defendant, 'The brand on there has been cut off and your brand placed on.' He said, 'That sheep is all right; it is my sheep end ear mark; my son's brand was placed there by mistake; a chap named Spilsbury cut it off and put mine on.' I said, 'I believe the sheep has been stolen because it has an unrecorded, or altered, earmark, that it was shorn in July last, and whatever brand it had on was cut off a fortnight ago.' I took possession of the



sheep, and said, 'There are a lot of sheep stolen in this district and I think both of these sheep are stolen sheep. The following day the defendant was brought to the lock-up and charged, but he made no reply. On October 22, in company with Constables Nolan and Johnston, I went to Woodbine and there saw 5500 sheep the property of the defendant and Carl Humphries. The latter was present. I made an inspection of the sheep, and took Carl Humphries out, who told me something. Some of the sheep, the property of the defendant, were branded with his son's brand, the Prince of Wales' feather, and there were some of Carl Humphries' sheep, bearing defendant's tar brand (E sideways over H). The sheep I saw at Woodbine and Carole Creek were branded with a travelling T, but the wether in court is not so branded. The ear mark on the ram is the registered ear marks of the Austin Wanganella Company, of Wanganella, Denillquin. Their stud rams, two-tooth are marked with a swallow tail in the unregistered tar, and bear the same mark in the registered ear and are the same age as the ram (produced). While at Carole Creek, on October 20, a ram, which had been struck with the flies, was found, but it was not running with the sheep. The wool has grown on the wether since I took possession of it but on October 31 I took a photo of the wether, and I produce both the negative and the photo.

To Mr. Kinkead: On October 20 when I saw the ram, I said I suspected it to be stolen because defendant said he had no young rams. The ram bore the son's tar brand. On the same day when I saw the wether, I suspected it had been stolen because it bore an unrecorded, or altered, ear mark, that the original brand had been cut out because it was different from the other sheep and had no travelling T on it, and because there are a lot of sheep missing in this district. It is a sheep stealers trick to cut the brand cut. When a man brands another man's sheep in mistake he should leave it there and return the sheep to the owner.

Mr. Kinkead: What is there to prevent an owner from altering the tar brand of another man that had been placed there in mistake by someone else?

Inspector Small: There is nothing to prevent a man from doing anything right or wrong.

Mr. Kinkead: What is wrong with a man removing another man's brand from his own sheep and placing his own brand on it?

Inspector Small: I would not like to answer that question without first looking at the P.P. Act.

Mr. Kinkead: Can you make a representation of the mark on the ram?

Inspector Small: I admit that the mark appears to have been torn, but I think it was an accident.

Mr. Kinkead was quoting from section 143 of the P.P. Act, when Mr. Hardwick said the matter was not going to assist him in arriving at a decision.

Mr. Kinkead: I hope you are not going to become angry with me, your Worship?

Mr. Hardwick: I am not going to argue with you about it.

Mr. Kinkead: I do not need any assistance from you, your Worship, in conducting my case.

Mr. Kinkead: You spoke to a fair number of men about the ram?

Witness: Yes, I spoke to 41 men.

Mr Kinkead: You suggested that it belonged to Kirkby.

Witness: I did not.

In answer to further questions by Mr. Kinkead, witness said: Defendant said 'The ram is not mine.' I said I thought it had a Dorset Horn frame. I altered my opinion yesterday afternoon. I said I do not believe it is a mongrel merino breed! It is a good ram and Wanganella bred. I inspected some Wanganella sheep at Garah and I say the ram is Wanganella bred. The mark in the ear of the ram is identical with Austin's earmark The mark is not clearly defined, it is torn. I say the mark is identical with the Wanganella mark, as I saw the same mark on Wanganella sheep yesterday. I am unable to make an imprint of the mark in the ear of the ram. The age mark is a swallow tail, and a swallow tail mark is like a V. In connection with Wanganella sheep. I say that the ram is a stud ram, and that is why the horns have been cut. Stud sheep are not numbered until they are sold. I have never seen Tycannah sheep. I got the mark from something I was told and saw. I did not examine any sheep or the skins of sheep that had been sold to Spokes. I inspected 5500 of defendant's sheep and I have no fault to find with them excepting these two. I had a conversation with Carl Humphries. He told me he had no young rams. He told me that what sheep had been left at Carole Creek were culls and that they were used for mutton. He told me he knew nothing about the ram. He said there was a ram struck with flies and I told him I had seen that one. I asked him about the wether, but as he did not know what sheep I was referring to I did not say any more. I know that dermatitis affects a mark on the ear. I did not make a mistake in connection with Carrigan and Newcomen's sheep. I did not ring Keith Carrigan and tell him to go and get the sheep. I was present when a message was sent to him to go and get the sheep. I interviewed Charley Gough regarding one of the sheep in the flock, but I did not accuse him of stealing a sheep from Carrigan. I have never held the opinion that dermatitis did not affect earmarks in this district.

This concluded the case for the prosecution

Mr. Kinkead contended that there was insufficient evidence for his Worship to say that he had reasonable grounds to suspect that the sheep had been stolen. The only reason that Inspector Small had for suspecting the sheep had been stolen was that defendant had said he had never seen the ram before.

Mr. Hardwick: Is it not sufficient when a sheep is discovered with a brand freshly cut out?

Mr. Kinkead: The case is so flimsy that Humphries should not be called upon to give an explanation.

Mr. Hardwick: I am satisfied that there is a case to answer in respect to both sheep.

Alfred Jones, grazier, residing at Munjie Bundle, Moree, deposed: I am President of the Booloproo Shire Council and President of the Moree P. and A. Society.' I have been on the land since 1874, and have owned sheep for the past 40 years. At one time I dealt extensively in sheep and have handled up to 80,000 a year. In handling them I had to deal with earmarks. I would not say that I am an expert in ear marks, but I know an ear mark when I see one. I have examined the ram (produced) and I would not say it was a stud ram, but a very poor merino. It would not be a stud sheep for me and probably not for anyone else. I do not know very much about Wanganella sheep. I have seen Humphries' pliers and have inspected some of his sheep, and I say the mark on the ram (produced) is Humphries' ear mark. The little nick on one side, in my opinion, was done by a shearing machine. The age mark, in my opinion, is a kind of block out of the point of the ear. The pliers (produced) would be capable of producing the age mark on the ram. I also examined the wether. In marking the ears in sheep one would get variations in marks. This, in my opinion, is due to the time the lamb was marked, whether it was three weeks or eight weeks old. The ear of a three weeks old lamb had not very much substance as a lamb eight weeks old, therefore, the mark in a young sheep would vary to one in a lamb 8 or 9 weeks old.

Mr. Hardwick: What would be the variation?

Witness: It would vary in different ways. For one thing in the way it was put in. If the mark was put in properly it would come out as one mark, but if the mark was put in only half way it would come out quite differently. In this particular case it would make a difference by holding the ear from the back. Practically every man has a different way of holding a sheep to ear mark it.

Mr. Kinkead: Have you had experience with black flies?

Witness: I have seen all kinds of flies, but we look mostly for the green ones.

Mr. Kinkead: Have you had any experience with dermatitis?

Witness: Yes; I have seen marks affected by it. I have examined some of defendant's sheep outside the court, and in my opinion, they bear the same earmark as the sheep in court, but have no age mark. I have not had any personal dealings with the defendant.

To Inspector Small: I have compared the earmarks in the registered ear of the two sheep, and one is not as large again as the other. I know that all ear marks are made to scale. From its present condition I would not say what the mark in the wether is, but it could be defendant's mark by doubling the ear back. I see the mark in the book shown me, and it looks a good deal like the mark in the ear of the wether. I do not know much about Wanganella sheep. My brother Reece has some Wanganella rams, but I have never examined the earmarks on them. Every grazier cuts the horns of stud rams, and as a rule it is done when they are classed. I am sure the mark is a fork. I have examined the wether and where a brand has been cut off and another placed on. I have heard of brands having been cut out. It does not seem possible that the defendant would cut another man's brand off and put his own on. If a man stole my sheep he would not be foolish enough to cut the brand off and put his own on. I am a member of the P.P. Board and I know that ear marks are evidence of ownership. If a man is careless he can put in different marks. My advice to graziers is to do their own marking and not trust to anyone else.

Inspector Small: That would not be much use if a square can be made with a heart pliers.

Witness: The mark in the ear of the wether could have been made with the fork pliers, all but the little mark on the back.

Inspector Small: What do you say as to the quality of the ram for stud purposes?

Witness: If I was a stud breeder, there would be only one place for that ram, and that is Homebush.

Inspector Small: What is wrong with him?

Mr. Hardwick: If he is as bad as Mr. Jones suggests, then everything is wrong with him.

Edwin George Humphries, grazier, I do not dispute the conversation alleged to have taken place between Inspector Small and myself. I told Inspector Small that the ram was not mine, but not before he mentioned there was a V in the unregistered ear and that it had not been dipped. I said, 'If that's a fact I do not own it, and I never saw it before.' I now, say the ram is mine, and that it bears my registered ear mark — a heart in the front of the ear. I lost my old pliers some time ago, and although I have made a thorough search I have been unable to find them. Since this case started I got a new pair of pliers. The new pair are a shade smaller than the old pair. I had the old pair of pliers about 14 years. I had nothing to do with the tar branding or ear marking of the ram. My son does all the marking at Woodbine. I have not been looking after the sheep for the past two years owing to ill

health. The wether is my property. I have other sheep the same age and with the same registered ear mark, and I told Inspector Small that when he took possession of the wether. About October 10, my son left a lot of culls at Carole to fatten for the market. I also sold a draft of 20 to Spokes. I did not know that the ram was amongst my sheep until Inspector Small came out. Had I known it was there I would have cut its throat. I told Inspector Small that the ram was a mongrel merino and was not worth the snap of the fingers. My age mark on the ram is a fork, and was made with the fork part of my son's pliers.

Mr. Hardwick: The tar brand shows where something has been cut off.

Witness: I do not know anything about it. I did not know it had been done until it was pointed out to me.

Inspector Small: Didn't you tell me that Spilsbury did it?

Witness: No.

Inspector Small: Didn't you tell me that your son's brand was put on by mistake.

Witness: No.

Inspector Small: Why were the horns cut?

Witness: To prevent the ram from knocking other sheep about. My son cut them.

Inspector Small: Didn't you know the ram was on your property?

Witness: No.

Inspector Small: Didn't you examine the wool on the ram and say he had been dipped?

Witness: Yes.

Further cross-examined by Inspector Small, witness stated that he knew Les McIntosh and Johnston. The latter had sheep on his son's property. He did not know H. W. Johnston. The mark on the sheep was witness's mark. Shown Johnston's pliers, witness tried them in the marks on the sheep, and said the marks could not be made with them, but they could be made with witness's heart pliers.

Inspector Small: Didn't you tell me that Spilsbury cut the wool off?

Witness: At first I said I did not know anything about it, but later I said that the boys told me that some of my sheep had been branded wrongly and they had tried to rectify it. I said, 'What boys?' and they replied 'Spilsbury and my son Carl.' I did not ask them how they had branded it wrongly. I told a lie when I said I didn't know anything about it, but ten minutes later, in thinking things over I recollected what the boys had told me.

To Mr Hardwick: I do not know the Wanganella ear mark I have similar type of sheep on my property to the ram in court.

To Mr. Hardwick: I have Midkin and Scott rams, a few old Tycannah rams, and also some of W. Kirkby's. I do not know what rams were joined with the ewes.

Inspector Small: If one particular type of rams were joined with the ewes would you expect them to produce the same type of sheep?

Witness: There are not two things in the world alike.

Inspector Small: Yes, there is— two witnesses. Seeing that the wool has been shorn off what does that suggest to you?

Witness: It suggests to me that probably one of my neighbours put the brand on and had then sent it home and it had been rebranded.

Inspector Small: Are your rams capable of producing a sheep of this type?

Witness: Unless I know what ewes the rams were mated with I could not say.

Inspector Small: Have you any more sheep with the same length of wool as the ram?

Witness: I cannot say, as my son Carl has looked after the sheep for the past two years.

Inspector Small: Are you calling your son?

Witness: Yes.

Mr. Hardwick: I do not wish to hear any more. The charge is dismissed. If the defendant had used the pliers that he now has he would not be here today answering this charge. I am satisfied that the defendant owns the sheep.

Inspector Small: Will your Worship make an order that the sheep be detained for a fortnight?

Mr. Hardwick: I cannot do that. I am satisfied with the defendant's story and, therefore, I am bound to make an order for the return of the sheep to him, but if he is the honest man I believe him to be, he will have no objection to leaving them in your charge.

Mr. Kinkead: We agree to that.<sup>[789]</sup>

*15 November, 1933. Law Report - High Court Of Australia.*

(Before Mr. Justice Starke, Mr. Justice Dixon, Mr. Justice Evatt, and Mr. Justice McTiernan.)

### **Commonwealth Crimes Act.**

#### **The appeal Harold Roy Williams v The King was allowed.**

Williams had pleaded guilty at the Sydney Quarter Sessions, before Judge White, to charges under the Commonwealth Crimes Act. He had pleaded guilty to making counterfeit coins and to two charges of having coining instruments in his possession, and was sentenced to 18 months' imprisonment on each charge concurrent. The New South Wales Attorney-General, Mr. Manning, K.C., appealed to the Court of Criminal Appeal on the ground that the sentence was inadequate. The Court of Criminal Appeal altered the sentence from 18 months to five years. In the appeal to the High Court it was submitted on behalf of Williams that the matter was not properly before the Court of Criminal Appeal, because the prosecution was under Commonwealth law, and the appeal was instituted by the New South Wales Attorney-General. It was contended by Mr. Crawford, on behalf of the Crown, that by an amendment of the Judiciary Act the State Attorney-General had the same powers of appeal against sentences in Commonwealth convictions as he possessed against sentences for offences against the State.

In his judgment yesterday, Mr. Justice Starke said that in his opinion, an appeal instituted in the name of the New South Wales Attorney-General was incompetent, for the latter had no authority to exercise the Crown's right to appeal against sentences pronounced in respect of offences against Federal law. The appeal should be allowed and the order of the Court of Criminal Appeal discharged. Such a determination would leave the original sentence standing, subject, of course, to any appeal that the Federal Attorney-General might institute on the ground of the inadequacy of the sentence.

Mr. Justice Dixon thought that the appeal instituted in the Supreme Court as the Court of Criminal Appeal by the State Attorney-General, as such, was incompetent. The question did not arise at present whether section 68 (2) of the Judiciary Act, 1903-1932, operated upon section 5D of the New South Wales Criminal Appeal Act in such a way as to enable the Federal Attorney-General to appeal to the Court of Criminal Appeal against a sentence imposed upon a prisoner convicted in New South Wales on indictment of an offence against the laws of the Commonwealth. But he did not wish to be understood as assenting to the view that the legislation did not have that operation. In his opinion, the appeal should be allowed and the order of the Supreme Court increasing the sentence should be discharged.

In a joint judgment, Mr. Justice Evatt and Mr. Justice McTiernan said that, assuming that the Crown in right of the Commonwealth was entitled to appeal against the adequacy of the sentence, the person who alone could exercise that right of appeal was the Federal Attorney-General. Neither section 69 of the Judiciary Act nor a Commission appointing the State Attorney-General to prosecute authorised an appeal after an offence had been prosecuted to conviction and sentence. The appeal should be allowed.

Mr. Windeyer, K.C., Mr. J. J. B. Kinkead, and Mr. Wesche (instructed by Mr. J. Yeldham) appeared for appellant; Mr. T. S. Crawford (instructed by the Commonwealth Crown Solicitor) for the Crown.<sup>[790]</sup>

**17 November, 1933. Quarter Sessions (Before Judge Curlewis.)**

Crown Prosecutor, Mr. T. S. Crawford (instructed by Mr. Roy Edwards).

**Two Men Acquitted.**

Gordon Darby Smith, 24, smallgoodsman, and Clement Clarence Dibley, 22, draughtsman, were charged that, at Enfield on October 4, they assaulted Harold James Bismire, with intent to rob him. There was an alternative charge of common assault.

During the Crown evidence the Jury stopped the case and returned a verdict of not guilty. Smith and Dibley were discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Fred. A. Newnham) appeared for Smith; and Mr. Brian Clancy (instructed by Messrs. Thomas Rose and Dawes), for Dibley.<sup>[791]</sup>

**23 November, 1933. Barrister's Home Robbed – Carpenter Committed for Trial**

Immediately prior to conduct a case for a defendant, Mr J.J.B. Kinkead, barrister, gave evidence against an accused man at Central Police Court yesterday.

Richard Clife Johnson, 34, carpenter, was committed for trial by Mr Laidlaw, C.S.M., on a charge of having broken and entered the dwelling house of Mr Kinkead and stolen three sleeve-links, a military cross bar ribbon, three dress studs, and an enamel badge, valued in all at £4.<sup>[792]</sup>

**24 November, 1933. Quarter Sessions (Before Judge Curlewis.)**

(Crown Prosecutor, Mr. T. S. Crawford, instructed by Mr. R. V. Edwards.)

**Company Promoter Charged.**

John Gray, 47, company promoter, was charged that in December, 1932, he falsely pretended to Edward Henry Knight that he then had 500 vacuum cleaners stored in Melbourne, thereby obtaining £3754 with intent to defraud.

Replying to Mr. Kinkead, Knight said that he was not aware that a weekly newspaper had referred to him as "the Leviathan punter."

Mr. Kinkead: isn't it a fact that you live by racing?

Witness: No, I have been independent for 40 years.

How did you make your money? Out of shops in the city.

Isn't it a fact that you got £1000 from Gray before you went to a race meeting In Melbourne? Yes, and I gave it back to him.

What else have you done in recent years?

I have dealt in cattle.

The hearing had not concluded when the Court rose till to-day.

Mr. J. J. B. Kinkead (instructed by Mr. Lieberman) appeared for Gray.<sup>[793]</sup>

*25 November, 1933. Quarter Sessions (Before Judge Curlewis.)*  
(Crown Prosecutor, Mr. T. S. Crawford, instructed by Mr. R, V. Edwards.)

#### **Company Promoter Charged.**

The trial was continued of John Gray, 47, company promoter, who was charged that in December, 1932, he falsely pretended to Edward Henry Knight that he then had 600 vacuum cleaners stored in Melbourne, thereby obtaining £3754 with intent to defraud.

The hearing will be resumed on Monday.

Mr. J. J. B. Kinkead (Instructed by Mr. W. Lieberman) appeared for Gray.<sup>[794]</sup>

*28 November, 1933. Quarter Sessions (Before Judge Curlewis.)*  
(Crown Prosecutor, Mr. T. S. Crawford, instructed by Mr. R, V. Edwards.)

#### **Company Promoter Charged.**

The trial was continued of John Gray, 47, Company promoter, who was charged that in December, 1932, he falsely pretended to Edward Henry Knight that he then had 500 Vacuum cleaners stored in Melbourne, thereby obtaining £3754 with intent to defraud. The hearing will be continued to-day. Mr. J. J. B. Kinkead (instructed by Mr. W. Lieberman) appeared for Gray.<sup>[795]</sup>

*29 November, 1933. Quarter Sessions (Before Judge Curlewis.)*  
(Crown Prosecutor, Mr. T. S. Crawford, instructed by Mr. R, V. Edwards.)

#### **Company Promoter Charged.**

The trial was continued of John Gray, 47, company promoter, who was charged that in December, 1932, he falsely pretended to Edward Henry Knight that he then had 500 vacuum cleaners stored In Melbourne, thereby obtaining £3754, with intent to defraud. The jury, having failed to agree, was locked up for the night. Mr. J. J. B. Kinkead (instructed by Mr. W. Lieberman), appeared for Gray.<sup>[796]</sup>

#### *29 November, 1933. Got His Cricket*

Mr J.J.B. Kinkead, barrister, had been anxious to see more of the cricket match; but his case at the Quarter Sessions went over until Monday.

A juryman, expecting to be locked up overnight (he was not disappointed), brought along a portable radio. It was not allowed into the jury room, but Mr Kinkead found use for it in the counsels room while awaiting the verdict.<sup>[797]</sup>



**30 November, 1933. Quarter Sessions (Before Judge Curlewis.)**

(Crown Prosecutor, Mr. T. S. Crawford, instructed by Mr. R. V. Edwards.)

**Jury Disagreed.**

The trial was concluded of John Gray company promoter, who was charged that in December, 1932, he falsely pretended to Edward Henry Knight that he then had 500 vacuum cleaners stored in Melbourne, thereby obtaining £3754, with intent to defraud.

The jury which had been locked up for the night returned into court and informed his Honor that there was no possibility of reaching an agreement. The jury was discharged and Gray was remanded on bail for trial.

Mr J J B Kinkead (instructed by W Lieberman) appeared for Gray.<sup>[798]</sup>

**7 December, 1933. Quarter Sessions (Before Judge Curlewis.)**

(Crown Prosecutor, Mr McKean K.C., instructed by Mr. R. V. Edwards.)

**Woman Acquitted**

Frances Aston, 27, domestic, was charged with false pretences with regard to a riding school at Coogee. It was alleged that she had stated that she was the owner of the riding school, and that it was free of any lien or encumbrance, by means of which she obtained £50 from John Bernard McTiernan, with intent to defraud. The jury returned a verdict of not guilty. Aston was discharged. Mr. J. J. B. Kinkead (instructed by Messrs. Harry Brown and Co.) appeared for Aston.<sup>[799]</sup>

**8 December, 1933. Quarter Sessions (Before Judge Curlewis.)**

(Crown Prosecutor, Mr McKean K.C., instructed by Mr. R. V. Edwards.)

**Not Guilty.**

George Thomas Lynch, 34, traveller, and Frederick Sullivan, 35, labourer, were charged that on October 3 they assaulted Leslie John Lésina and robbed him of a watch and chain and £13.

Mr. McKean said that the whole case depended on identification.

Lésina admitted that, at the time, he had £6 in his possession belonging to the sick and accident fund of the Railway Department. He had not told his uncle that he had taken money to the races which he should not have taken. He had been carrying the £6 about with him for a month.

His Honor: All I can say is that the railway people are singularly trusting. You have been going to the races and getting drunk, and I don't know whether the accused ought to be in gaol, or somebody else.

His Honor added that he did not think any jury would convict the worst criminal in Sydney on Lesina's evidence.

The jury stopped the case and returned a verdict of not guilty. Lynch and Sullivan were discharged.

Mr. J. J. B. Kinkead (instructed by Mr. Fred A. Newnham) appeared for Lynch.

**Agent Discharged.**

George Arnold Robson, 64, agent, was charged with false pretences. The jury returned a verdict of not guilty. Robson was discharged. Mr. J. J. B. Kinkead (instructed by Mr. J. Yeldham) appeared for Robson.<sup>[800]</sup>

**14 December, 1933. Looking For Filth, Says S. M. - Caustic Remarks on The Public - Lewd Picture**  
Severely admonishing Cecil Victor Maurice Fevez, charged at the Central Police Court yesterday with having exhibited an obscene publication, Mr. McMahon, S.M., remarked that the card amounted, in his opinion, to an appeal to the baser instincts of the community.

Evidence for the prosecution was that Fevez took a block to Alfred Harris, printer, of George Street, stating that he was a printer's agent, and wanted 1000 cards printed from the block for a client, whose name he could not divulge, one print had been made and shown to Harris, who immediately stopped the the printing and informed the police.

According to Constable Hazelton, Fevez had admitted that the printed card, when turned upside down, was indecent.

Mr. J. J. B. Kinkead, for the defendant, said his client would not offer any evidence.

"With Avidity"

In reply to a submission by Mr. Kinkead, Mr. McMahon said: "It is as plain as a pike-staff. The art of all these filthy pictures is that the obscenity is concealed. Immediately it is suspected that there is anything lewd or filthy you have the public looking for it."

Later, in giving his decision, the magistrate remarked: "I can quite understand that by the disposal of these cards among the public, the majority of whom would, with avidity, like to become a purchaser of such a thing, a considerable sum of money by way of profit would result to the distributor upon the sale of 1000 cards at 1/ each — probably they would get more."

In imposing a fine of £20, Mr. McMahon said that had Fevez previously been convicted, he would have had no hesitation in sending him to gaol.<sup>[801]</sup>

**19 December, 1933. Witness's Confession - "Always in the Awkward Squad"**

A witness who was giving evidence in a case in which a man was charged with wanton driving, at the Quarter Sessions Court yesterday, admitted that he did not know his right side from his left side.

Mr. Kinkead (for the accused): Did you serve in the Great War?

Witness: Yes.

Mr. Kinkead: How did you get on with the sergeant-major? I was always in the awkward squad.<sup>[802]</sup>

**19 December, 1933. Quarter Sessions (Before Judge Thomson.)**

Crown Prosecutor, Mr. T. S. Crawford.

**Remanded For Trial.**

Stanley Henry Breen and Samuel Hugh Wright were charged that on July 28 last they stole £20 from Walter Charles Donaldson.

Mr. Kinkead, for accused, said that Breen and Wright had been acquitted by a magistrate of the charge, but the Attorney-General had filed an ex-officio indictment against them.

Mr. Crawford asked that the accused should be remanded, on bail, for trial till February.

Breen and Wright were bound over to appear for trial as the Attorney-General might direct.

Mr. J. J. B. Kinkead (instructed by Messrs. E. R. Tracey and Co.) appeared for Breen and Wright.<sup>[803]</sup>

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*20 December, 1933. Clerk And Agent - Alleged Fraud on Bank.*

Before Mr. Laidlaw, C.S.M., at the Central Police Court yesterday, Paul Leo Alrich, 27, clerk, and George William Corfield, 42, agent, were charged with having, between June 2, 1932, and November 25, 1933, conspired to defraud the directors and shareholders of the E. S. and A. Bank of large sums of money.

Detective-constable Buckley related a conversation which he said he had with Alrich. Witness had been taken to defendant by Mr. Docker, who said, "This man is a ledgerkeeper from the Martin-place branch; he has been away on his holiday, and in his absence defalcations amounting to £1700 have been discovered in the ledgers kept by him. He informed us he was in collusion with one of the bank's customers, a man named Corfield; that he had falsified the ledger and placed money to the credit of Corfield." Alrich said later that he had helped Corfield to draw about £1700. What money Corfield received was to be divided between defendants on a 60-40 basis. So as to balance the account, Alrich said that he had placed false entries in the account of other customers. He also said that Corfield was a starting-price bookmaker, and he asked Jim (Alrich) to O.K. his cheques.

Detective Buckley said that he saw Corfield, who assured him that his account was in order, that he had been dealing with the bank for years, and could account for all his transactions. He said that he had slips at his flat for all the money he had withdrawn from the bank. He also said that he knew Alrich in the bank, but did not know him outside.

Harry Rainsford Gledhill, a bank officer, said that Alrich said to him, "Corfield and I arranged the scheme between us. I lost the money gambling on the racecourse, but I did not go to the races with Corfield." Alrich asked Mr. Docker, of the bank, to give him a chance, adding, "This sort of thing is no use to the bank on account of the publicity, and I have a wife and child. I suppose this means my being arrested: give me 24 hours and I'll go over the bridge." Mr. Docker said, "That is the action of a coward. Do you not consider your wife and child?"

The hearing was adjourned till 10 a.m. to-day. Mr. Dovey (instructed by Messrs. Halse, Millett, and Co.) appeared for the prosecution; and Mr. Kinkead (instructed by Mr. P. A. Newnham) for Corfield. Alrich was undefended.<sup>[804]</sup>

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