

A Story from the Adelaide Gaol

Thomas Donelly – Executed 29 March 1847

Adelaide, South Australia 1883

Thomas Donelly was charged with the wilful murder of an Aboriginal named Kingberri alias 'Billy', on the 1st September 1846 at Rivoli Bay South East.

Asked how he pleaded, he replied "Not guilty".

Mr Gwynne, acted for the Advocate General (Crown) and Mr Fisher for the Defence.

All witnesses were ordered out of the Court. Mr Gwynne opened by reminding the Jury of their responsible position. He referred with pride that he was sure they would participate, to the infrequency in this province of the crime of murder, the present being he believed but the third or fourth case since the Foundation of the Colony. The murder was one of cold blood and so conclusive was the evidence he could imagine no chance by which the prisoner could escape the consequences. Mr Gwynne then explained to the jury the nature of circumstantial evidence and gave some instances.

The facts of the case were then recounted. The enquiry they were entering into was of the death of a man - it did not matter what the colour of his skin was, it was the same in the law and the same in the eyes of Heaven.

The first witness for the Crown was John Watts, a shepherd, who was at Mr Davenport's station 17 miles from Rivoli Bay. He knew the prisoner and had worked with him up until two weeks before the murder. The prisoner had worked at Mr Davenport's. He also knew Billy, who did various tasks at the station.

On the 1st September, the witness and other men were building a wash pen about a mile from the station. "We came into the station for dinner and the prisoner was sitting down talking to a strange black boy whose name I do not know."

(A boy was brought into the court.) The witness identified him as the boy. "The boy and the prisoner began quarrelling. The prisoner had a pistol in his belt. I had never seen him carrying one before. The prisoner began quarrelling with the other men inside the hut. I stayed there after the prisoner left and then he went towards the wash pens. 5 minutes later, I came out and saw Mr Capon running towards me. The station cook, Smith, was with him, and the hut keeper. They called out to me saying to help them capture the prisoner.

On coming to the side road between Rivoli Bay and Mount Gambier Road, one of the men with me, Jonathan Dale, called out 'There is Donelly!' (prisoner). We commenced to run after him. We lost sight of him several times as the country is scrubby. We then lost him. Mr Capon and Mr Smith still continued on in the direction that he was last seen. I returned to the hut.

The bullock driver and I went out and brought Billy in. We placed him inside the hut. He was still alive, and was bleeding badly from a wound in the side above the hip. We did what we could, but he died the next morning. I had

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seen him in good health the previous morning carrying a wood log upon his shoulders."

William Capon was called as a Crown witness and stated that he heard the report of a pistol so he went over the rise to investigate and saw Billy about 50 yards away lying on the ground. "I went to him and asked him what was the matter. He said he had been shot and showed me the wound."

(Witness) was not allowed to say by whom the deceased was shot, in the court at that stage of proceedings. Capon said he then called Mr Glen and the hut keeper and they could see there was no one else about.

Billy pointed out the direction that the party who shot him had taken. Capon and Smith then headed off in that direction, leaving Mr Glen with Billy. Capon and Smith were both armed. They sighted the prisoner within 10 minutes after leaving the scene. The prisoner was on the other side of a swamp full of water. They had to go around, but could not gain on him as the prisoner was moving fast.

"We then returned to where Billy was and found that Mr Glen had taken Billy to the hut."

Thomas Glen and the hut keeper, John Smith, both gave accounts of what had taken place and their movements, and that the body had been buried in front of the huts 4 days later.

Henry Taylor Brooks, Constable of Mounted Police, stated that he was at Mr Davenport's station on the 20th of September to summon witnesses and that he examined the body the next day. Also present was a man named Sabey.

On the 12th of December he again visited the grave in the company of Mr Moorhouse, Protector of Aborigines. The body was taken from the grave and on examining the body, Doctor Moorhouse, surgeon, found a pistol ball.

Dr Moorhouse related that he began washing the body to examine it when the ball was found in a piece of flesh that dropped of the body.

The next witness was a native boy who had been with the prisoner.

The boy, Jemmy, was 10 years old. Difficulty arose as Jemmy was about to be sworn in. The court required that a native witness should declare that he will speak the truth. The boy did not understand the abstract word 'truth'.

It was got over by repeating each word. Mr Moorhouse explained that natives had no word meaning 'truth' but they would express themselves thus - 'mine is not the language of lies'.

The defence objected and urged that the Act be adhered to. His Honour felt that there was difficulty and at the same time it was for the court to decide on the fitness of the witness in this case. The boy had gone through the words of the oath and he was made to understand that he was to tell the truth and no lies. It was the same thing, only expressed in other language.

The boy told how he had lived for quite a while with the prisoner, and the events of the day in question.

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Corporal McCulloch was next called and related how he and Corporal Robbins had met with the prisoner on the 3rd of February. "He had a black boy with him. He did not speak to us at first, though he slept in the same room as us at Hunter's place. On the morning of the 4th, the prisoner spoke to him and said 'I will be sleeping at your place tonight' meaning Mount Gambier.

The prisoner then left.

McCulloch and Robins then left for Rivoli Bay looking for a man charged with horse theft.

After going 8 miles they came upon the prisoner and asked him if he had changed his mind. He was surprised at us meeting him. We stopped at Mr McKinnon's station that night and on leaving the next morning the prisoner passed us.

On the evening of the 7th I received information from Mount Gambier about the murder and as I had seen the prisoner on the 5th, I immediately left the next morning in pursuit. I crossed the Glenelg River at Mcpherson's and managed to apprehend him. He was within 10 miles of Mount Napier on a road leading to Port Fairy, about 150 miles from Mr Davenport's. He was outside the bounds of the Colony.

The prisoner had a loaded pistol which I took from him. I cautioned him that any statement made might be used against him. The prisoner replied, 'Oh, I shall say nothing. I know what I am about. They can't hurt me. We then returned to Mount Gambier.'

The defence, Mr Fisher raised a point of law that in the indictment the deceased was called 'Kingberrie' otherwise called Billy, whilst all the witnesses spoke of him as Billy and also Johnny, which name was omitted in the indictment. His Honour replied the variance was unimportant or might be corrected. The evidence showed that he had no fixed name, and would support the count in which he was described as a Native of Australia, name unknown. His Honour said no amendment could be made, and it was a question whether any was required. The question of name he would leave to the Jury.

Mr Fisher then addressed the Jury and asked them to throw aside the native boy's evidence and that the rest was entirely circumstantial.

His Honour began his charge to the Jury but the hour being late the court adjourned.

On Monday the 15th, Thomas Donnelly was once more placed in the dock, and his Honour commenced his charge. His Honour went on to speak about the defence objections about the name of the deceased. His real name was his native name that they had not heard, and the names of Billy and Johnny had not been assumed by himself to its exclusion.

There were circumstances under which a false name might so become the putative name of a man as to support an indictment. For instance, if a man left his native country and called himself by another name which did not belong to

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him. But in the present instance they had no reason to suppose that the deceased had thrown aside his real name which was unknown to them.

They had only heard the names that they were called at the station, and as one witness had said, most of the natives were known by several names.

As to the young black boy, he was convinced that he had described occurrences that had occurred.

His Honour reminded the Jury that the case was one of life and death.

Mr Fisher had moved for a new trial. His Honour thought that course would be difficult but he would be glad to assist in anything that forwarded the interests of Justice.

It would be deep regret for him for any person to suffer death who was not liable to suffer it. In any event should I grant a new trial the indictment should be amended.

His Honour referred to Chitty's *Criminal Law* which stated no new trial could be had for Treason or Felony.

Mr Fisher then raised an objection that the prisoner had not been asked if he challenged any Juror, therefore he was never in charge. The Master of the Court then produced a book and read out "Mr Fisher, for the defendant waived challenge".

His Honour addressed the prisoner and said that the duty he was about to perform, was at all times painful to him. He impressed on the prisoner the enormity of the crime and that those present should devote and train their children carefully and to check the first display of ill feeling.

Thomas Donnelly was then sentenced to be hanged until dead. The prisoner had nothing to say. The prisoner was then removed to Adelaide Gaol to await execution.

On the morning of March 29th at 8.00am, Donnelly was led out of the front gate of the Gaol.

The execution was a public one; hundreds of citizens had gathered to watch.

Donnelly walked up the steps and gazed around at the crowd. The executioner made his arrangements, the lever was pulled, and Donnelly's body dropped the prescribed distance.

So ended the life of the only white man to be executed for the murder of an Aboriginal, in South Australia. Thomas Donnelly was 29 years old. He was buried in an unmarked grave inside the Gaol in the northern laneway.

From Australia's early days, authorities had tried to impress upon the natives that if they killed a white person they would pay the penalty and the same if a white person killed a native.

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