

SUPREME COURT.—CRIMINAL  
SESSION.

(Before His Honor, Mr Justice Chapman.)

TUESDAY, DECEMBER 3RD.

His Honor took his seat at ten o'clock.

A JURY DISCHARGED.

Alfred Cook was put into the dock, and the jurors who had been locked up all night came into Court.

The Foreman said that they had not agreed.

The Judge: Is there any likelihood of your agreeing?

The Foreman: Not the least, your Honor.

The Judge: It is of no use keeping you. You are discharged.

NO PROSECUTION.

James Rutter was indicted for having,

on the 21st October, at Tuapeka Junction, stolen from William Banks two £5 notes.

The Crown Prosecutor (Mr B. C. Haggitt) said that he did not intend to offer any evidence.

The Judge: There is no evidence to be offered to you, gentlemen. There was a verdict of acquittal in a similar case against the prisoner yesterday; and in the present case there is an almost total absence of evidence.

A verdict of Not Guilty was taken; and Rutter was discharged.

ROBBING A SHIPMATE.

John Matheson was indicted for having

SUPREME COURT.—  
CRIMINAL SESSION.

OTAGO DAILY TIMES, ISSUE 1850, 4 DECEMBER  
1867

Using This Item

Allied Press Ltd is the copyright owner for the Otago Daily Times. You can reproduce in-copyright material from this newspaper for non-commercial use under a [Creative Commons New Zealand BY-NC-SA licence](#). This newspaper is not available for commercial use without the consent of Allied Press Ltd. For advice on reproduction of out-of-copyright material from this newspaper, please refer to the [Copyright guide](#).

JOHN BRADSHAW was indicted for having, in Dunedin, on July 14th, stolen from Frederick Bannister two L5 notes, one L1 note, and 22 sovereigns.

The Crown Prosecutor conducted the case. The prisoner was not defended by Counsel.

The prosecutor is a sailor, and the prisoner was his shipmate. They were paid off from the schooner Dunedin on the 11th July, the prisoner receiving a cheque for L38 5s. He got the cheque cashed, and on Sunday the 14th, he had two L5 notes, one L1 note, and 24 sovereigns, the money being in a chamois leather bag, in his right hand trousers pocket. The two men went to a disreputable house in Walker street, and stayed there, Bannister putting his trousers under his pillow. In the morning, he found that his bag and money had been taken away, but on searching the bed, he found a L5 note and a L1. The prisoner had left the house at this time, and Bannister suspected him of the robbery. On the Monday evening, Bannister was going along Stafford-street, and saw the prisoner in the Union Hotel. He listened, and heard the barman say, "That makes" so much "you have had, and now I've got" so much "belonging to you." Bannister went in, and said, "Jack, you're a nice fellow to walk off with my money." The prisoner replied, "I know nothing of your money." Bannister asked, "Has the man behind the bar got anything belonging to you?" The prisoner said, "There's nobody here has anything be-

longing to me." Bannister put a question to the barman, who replied, that the prisoner had on that morning given him eight sovereigns. The barman afterwards said, "I don't understand this charge against you of stealing money; but here's what's left of what you gave me; and I think you'd better clear out." The sum returned was L1 19s. On leaving the house, Bannister said, "That's my money and I must have L1 of it." He got the L1—"part took it, like," as he stated in the witness box. The two went on to the house of Philip Ashton, storekeeper, Walker street. There, Bannister said, "Jack, you've got that money of mine, and I must have it." The prisoner, after a while, said, "Well, I know who got it and where the 'plant' is. You shall have L20 of it, at the least, to-morrow." None of the money was returned. The prosecutor, in his evidence, said that the prisoner was only on board the Dunedin 10 days—a voyage from Hokitika; and he borrowed money several times, the last time being on the night of the robbery.

Philip Ashton corroborated Bannister's account of what passed in his (Ashton's) store. In cross-examination, he admitted he had been in Tasmania, "and many other colonies, too." He had been in the Dunedin Gaol. He might have been charged with "locussing" a man; what he was convicted of was, "something like what you stand there charged with."—Thomas Webb, who was manager of the Union Hotel, in July last, corrob-

rated Bannister's evidence. The prisoner came to the hotel during the morning of the 15th July, and gave him L8 to take charge of. He gave the prisoner L2 or L3, and L1, at different times during the day; and he returned L1 19s to the prisoner, in Bannister's presence. He recollected the prisoner saying before going to Hokitika, that he was going there to get some money.—George Harris, boot and shoe dealer, Princes street, recollected the prisoner coming to his shop at eight o'clock on the morning of the 15th July. The prisoner bought a pair of boots, and paid a sovereign for them. The prisoner took out of his pocket a number of sovereigns and some silver, when he paid for the boots.—William Graham, night porter at Wain's Hotel, Manse street, said that the prisoner came to that house about half-past one a.m. on Monday, the 15th July. He said he was a traveller, and had some refreshments; and he handed over 15 sovereigns for Graham to take care of. He got the money back about half-past seven, and went away.

The prisoner called as a witness, Eliza Davis, who lives in Walker street. She denied that Bannister had charged her with stealing L44 from him (Bannister had, in cross-examination, positively denied that he had ever made such a charge).

As to another witness whom the prisoner had asked to be subpoenaed, it was reported that inquiries had been made by the police, but the man could not be found.

In his defence, the Prisoner said that the absent witness, who could have proved his innocence indubitably, was present last session, when he (the prisoner) was "put back," through Bannister "not appearing at the eleventh hour." He hoped the jury would consider that fact; and also the differences in Bannister's account of the money he had and had lost.

The jury found the prisoner—Guilty; and he was sentenced to 12 months' imprisonment, with hard labor.

#### ARSON AT WEST TAIERI.

John Cartwright, alias Ferguson, was indicted for having, at West Taieri, on the 10th September, feloniously, unlawfully, and maliciously set fire to a stack of oats belonging to James Kemp.

The Crown Prosecutor conducted the case; and Mr H. Smythies appeared for the prisoner.

Thomas Kemp, ploughman: I am in the employment of my father. I went to bed a little after nine o'clock on the night of the 9th September. I was awakened by a crackling noise. I went to the door, and saw the stacks on fire. They stood barely five chains from the door. I saw the prisoner about nine or ten yards from the stacks; he was standing in a stooping position, with his face towards the stacks, but looking towards the ground. The stacks were of oats. Four of them were on fire when I went to the door; they were blazing, and there was a body of fire betwixt them. The stacks might have been afire for five or ten minutes—

: not longer than ten minutes, I think. The

prisoner was not doing anything when I saw him; he was simply standing still, facing the stacks. He had not given any alarm. My brother went up to him, and spoke. Five stacks were altogether burned. The prisoner had been in my father's service, as a reaper, for parts of two harvests. He did not finish the last of the two: he was unsteady, and he was paid off because of his drinking. The prisoner was at my father's house between eight and nine o'clock on the evening of the 9th. He returned an auger that had been borrowed by his employer, Mr William Heenan. He was quite sober then, but he said he was going to see Robert Gordon, who keeps the Plough Inn. In returning from Gordon's to Heenan's, it would be going out of the way altogether, to get into our stack-yard. The stacks were in a large fenced paddock, the fence being, three wires, three sods, ditch, and bank. Part of the fence comes up to a main road, through to Tokomairiro and Wai-poni. That road forms part of the way from Gordon's to Heenan's—a road strikes off it, on the right hand, to Heenan's, our stack-yard being to the left. There is a slip panel in the fence; and it was about 20 yards from that panel to the nearest point of the stacks. There was clear moonlight on the night of the fire; a man could not miss his road. After we had saved the two stacks that were not burned, I said to the prisoner, "Jack, you set fire to the stacks." He replied

you see me to the stacks. He replied, "All right." Nothing more was said.

By Mr Smythies : It was a still night. The prisoner, after I first saw him, went to fetch neighbors, to assist in removing one of the stacks. He suggested the removal of the stack, so as to save it. I did not hear him suggest that water should be handed up, by buckets, from the well. The prisoner is in the habit of drinking. I never heard him use any threat towards my father. After he left us, he worked in the neighborhood; and I believe that some few of the neighbors have subscribed to help him now. My father had a man fined, 18 months ago, for cutting harness; I don't know that that man has recently been seen in the neighborhood. The stacks were insured. There is a reward of L500 for the conviction of any one for firing ricks; but I was never expecting to get the reward, or any of it, for convicting the prisoner.

James Kemp : My son, Thomas, woke me on this night, by calling out that the stacks were on fire. I went to the door as quick as I could, and I saw the prisoner standing within eight or nine yards of the stacks, and looking towards them. I went up and asked the prisoner why he did not wake us. He said he had called James; and I replied, "You never did." He also said he had burned his trousers, in trying to put the fire out. There was no loose straw or grass in the neighborhood of the stacks: it was quite clean. There had not been any one working about them on the day of the

fire. There were three of the stacks in a row, with spaces not more than 2ft wide between them. When I got out of the house on this night, it was the side of the stacks nearest the Plough Inn that was on fire.

By Mr Smythies : A stack and a "butt" were saved ; the prisoner helped. The prisoner did not use any threat to me when I paid him off.

James Kemp, jun. : I was awoke by my brother Thomas crying out that there was a fire ; I am sure it was not the prisoner's voice that I heard. When I went out, I asked the prisoner, " How did this happen ?" He said that he was trying to put it out. That was all he said to me.

By Mr Smythies : I did think the prisoner had had some liquor.

William M'Govan, farm servant : In September last, I was employed by Mr Miller, next neighbor of Mr Kemp. On the night of the 9th September, I was at Gordon's Plough Inn. I left there at ten o'clock, with a man named Gibbs, and the prisoner. I went straight home with Gibbs, leaving the prisoner at Mr Miller's slip-panel. We had stopped talking outside Gordon's for half-an-hour ; and it would be about eleven o'clock when we left the prisoner at the slip-panel. When standing at the panel, we could see Kemp's stacks. I did not notice anything wrong with them. From the striking of the clock in Miller's house, I believe that Gibbs and myself got in about a quarter after eleven. I heard the alarm of fire about half-past twelve.



It would be nearly a mile from Miller's slip-panel to Heenan's house, where the prisoner lived. The prisoner was sober when we left him. I did not see anybody about at that time. The stacks could not then have been on fire without my seeing it.

By Mr Smythies : I saw the prisoner drink two glasses of wine—that's all. He smokes, but I did not see him do so that

night.

Joseph Gibbs, joiner, Waipori : On the night of the 9th September, I was down at Gordon's store for provisions. I was at Gordon's at nine o'clock, and left at ten, with the prisoner and M'Govan, and another man, Gordon's ploughman. We had a bottle of gin with us, and we stood for a long while opposite the smithy, talking and drinking. Then Gordon's man turned back, and the three of us went on to Miller's slip-panel, where we had another nobbler. We stood there fully 10 minutes. The prisoner constantly asked me if I was not going on—because, if I had gone on, I should have passed this place of the stacks with him, and gone four miles beyond Heenan's. I stopped at Miller's, because I wanted M'Govan to do some work for me. The prisoner was not sober at the time—none of us was. We all knew what we were about. We did not see any man after leaving Gordon's man. The prisoner moved on, and stumbled, just as we stooped under the slip-panel.

By the Foreman : We did not drink more than half the bottle of gin. The rest was stowed away for the next day.

M'Govan recalled : We did take away a bottle of gin with us, and stood near the smithy. The prisoner did not drink any there, I am sure ; and though he took the bottle when we were at the slip-panel, I don't think he drank any. He said he did not drink gin or brandy, but only wine.

Margaret Paterson: I was in Mr Kemp's employment on the 10th September. On that morning, after the two stacks had been fetched from those that were burning, the prisoner came to me, and said, "Kemps will be blaming me for this burning." I said, I did not know—I had not heard Mr Kemp say a word. I asked the prisoner, "Jack, how did this happen?" He said that he did not see anybody on the road nor anywhere about, and that he was there when the grass was on fire. I asked him if that was before the fire caught hold to the stacks; and he said it was. I said, "Then, why didn't you give the alarm? Why didn't you wake us?" He said that as he was trying to put it out he burned his trousers. I asked him three times, was he there before the stacks were on fire, and he said, "Yes, he was." I have lived with the Kempes about 19 months.

By Mr Smythies: I recollect quite well that I told the police about asking the prisoner three times; I may not have said it before the Magistrate, because I believe I was not asked the question. I asked the prisoner the question particularly, because I wanted to know what I was to say if I was called upon. No, I do not know that I ever heard that there was a reward for a conviction for firing ricks; and I am sure that a reward is nothing whatever to me.

James Carter, mounted constable: I arrested the prisoner at Mr Heenan's

arrested the prisoner, at the fire. He was sleeping beside a creek, about mid-day on the 10th September, and I woke him, and said, "I arrest you." He at once said, "I suppose it's for them stacks at Kemp's." Afterwards; he made several remarks to me. He said, "I suppose I shall get seven years for this;" and on another occasion, "I was so taken aback, that I could not give the alarm." When I arrested the prisoner, I searched him, and found a box of matches in one of his pockets. I produce a pair of trousers which the prisoner gave to me as those he wore on the night of the fire. He said that he got them burned in trying to put the fire out. I did not find a pipe in his possession, nor any tobacco.

By Mr Smythies: I never heard where the prisoner got the matches.

Mr Smythies, in addressing the jury for the defence, commented on the extreme improbability of the prisoner's guilt, judging from the prisoner's conduct, before and after the fire. He was at the prosecutor's house on the evening before the fire, and he stated that he was going to Gordon's. In doing so, he drew attention to the fact that he would be returning by Kemp's that night. Was it likely that a man premeditating firing ricks, would so have attracted notice to his movements; or that he would, for such a work, have selected a beautifully clear, still, moonlight night, when any one going near the ricks might be seen from a long distance round? There was not a shadow of motive shown, on the part of

the prisoner. True, Mr Kemp discharged him for being drunk ; but an employer who did that had generally no feeling towards the man, except perhaps one of pity for an infirmity ; and the prisoner had not suffered from the discharge, for he went down to Mr Heenan's, and had continued to work there. To support the indictment, the jury must be convinced, not only that the prisoner had set fire to these ricks, but that he had done it wilfully. The prisoner evidently had been drinking, and might well have desired not to go back to Mr Heenan's, while under the influence of liquor. If he went into the stack-yard to sleep a while, when he had got comfortably laid down, his first thought would be to have a smoke. If he smoked, and accidentally ignited any of the straw, his first act would be to kneel upon it. The trousers worn by the prisoner were burned at the knees, which was an important fact to be considered by the jury. That the prisoner would be "taken a-back" when he saw the ricks on fire, was but natural ; for any man so placed would feel that suspicion must be directed to him.

The Judge, in summing up, commented upon the evidence. Between the time when Govan and Gibbs left the prisoner, and that at which the prisoner was seen near the burning stacks, there was an interval of three-quarters of an hour, wholly unaccounted for. Why had the prisoner spent that time other than in his home, or in going to it? Why was he in the

stack-yard at all? The jury had been told that the fire might have been accidentally caused by the prisoner smoking. True; but there was no evidence suggesting that he had been smoking, or that he had a pipe in his mouth, or in his possession, when he was first seen standing near the ricks. If there was any leaning in the evidence, it was to the conclusion that the prisoner was not smoking at all in the stack-yard. What was the condition of the yard, at the time? If Kemp was to be believed, it was in such a condition that it was not likely the accidental dropping of ashes from a pipe would create a fire; nor was there any evidence to show that the grass near the stacks was burned, or that there was any grass near them. It was incumbent upon the prisoner to account for being in the stack-yard; for he must have gone out of his way to get there. How did he account for it? He said that he went to put out the fire. But what would have been the first act of any man, who had any sense, on seeing a fire in a stack-yard late at night? He would have endeavored to rouse everybody in the neighborhood. Did the prisoner do that? The evidence was that he did not give any alarm. The prisoner himself made two contradictory statements on that point. He told Mr Kemp, "I called out to James;" which James Kemp denied. He told Margaret Paterson, in effect, "I was so flustered, that I did not think of giving an alarm." No doubt, when a case rested wholly on presumptive

or circumstantial evidence—as most of such cases must rest—it was very desirable that motive for the crime should be shown, if motive could be shown. There was not a word of evidence of threats here : but it was said, “The prisoner had been dismissed by Mr Kemp, and he may have entertained revengeful feelings.” That was very slight evidence of motive, no doubt : and it was all. It had been suggested that another man—he whom Mr Kemp had prosecuted for cutting harness—had a motive for this crime, and that he might have committed it. If it could have been shown that that man was in the neighborhood on the night of the fire, it would have been something to go to the jury ; but there was not a word to show that he was within miles of Mr Kemp’s farm when the fire occurred. The prisoner must stand or fall by the whole of the circumstances by which he was surrounded ; and those circumstances it was for the jury fully to consider, and to determine their bearing and their weight.

The jury retired shortly after half-past two o’clock ; and shortly before four, they returned with a verdict of—Not Guilty.

Cartwright was discharged ; and the Court was adjourned until to-day (Wednesday).