

William S Caswell,
Moruya
2nd October 1871

William Edmond Plunkett, Under Secretary,
Crown Law Department, Sydney

Sir,

I do myself the honour to enclose precinct deposition etc in the case listed in the (Regina versus (Ah) Young [aka Yung] (Bestiality) margin. In which at the last Court held at Nerrigundah I committed the prisoner “Ah Young” to stand his trial at the next Central Criminal Court.

The only possible defence is that the prosecution witness has informed from malice and without cause.

The Witness I refer to, [John] Thompson, [aka Thomson], is a married man and I have not the slightest reason to discredit his testimony. I have the honour to be, Sir, your obedient servant.

[Signed] William Stewart Caswell, PM.

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Depositions of Witnesses.

New South Wales,
TO WIT }

The examination of James Irwin [aka Irvine], Senior Constable of Nerrigundah, in the Colony of and John Thompson of Nerrigundah, Miner ~~and Ah Young of Nerrigundah~~, in the said Colony, ~~Miner~~ take on oath, this 29th day of September in the year of Our Lord One thousand eight hundred and seventy one, at Nerrigundah in the Colony aforesaid, before the undersigned, two of Her Majesty’s Justices of the Peace for the Colony, in the presence and hearing of Ah Young who is charged this day before us, that he the said Ah Young, on the 26th day of September 1871 at Nerrigundah, in the said Colony, with a certain mare feloniously, wickedly, and against the order of nature, had a venereal affair, and then feloniously, wickedly, and against the order of nature, carnally knew the said mare and then feloniously, wickedly, and against the order of nature, with the said mare did commit that detestable crime of buggery, against the form of the Statute

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Nerrigundah, New South Wales,
TO WIT }

James Irwin being duly sworn says as follows: I am Senior Constable of Police Station at Nerrigundah. Last Tuesday the 26th inst. about 2 of the clock in the afternoon in consequence of information I received I accompanied a Miner named John Thompson to a place known as Doyle’s or Morrison’s Hill ~~near~~ in Nerrigundah. I saw there a log, with marks, like those made with boot nails. The log was a foot high from the ground – at the side of the log close to it, I saw the tracks of the hind feet of a horse which must have been standing with its tail to the log – there were only tracks on one side of it about a hundred yards from the log there were some horses feeding, amongst them, a small bay mare – she was very quiet and I caught her – I lifted her tail and saw some filthiness on the venereal parts; and on the hair underneath the tail – the colour of the filth was a dirty white. At this time I was

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accompanied by my informant John Thompson, we then proceeded together to Ah Loch a party's mining claim. I asked Ah Loch how many chinese there were in this party? And on being told called upon them for their Miner's Rights. All showed their Miner's Rights but the man, I asked was there not another man – some of the party called loudly and after some delay, prisoner "Ah Young" appeared out of the claim, he had his back towards us – Thompson said, "That's the man" – I then desired Ah Young to come. To "Ah Young" the interpreter he hesitated, but on speaking a second time, he went with me – On our way prisoner said in broken English – "Me go catch him horsey fetch him by horsey" I did not say anything to prisoner as I wished to have an interpreter present when I arrested him. On arriving at "Ah Man's" place I called him, and told "Ah Man" I then arrested the prisoner for having had connection with the mare that day, and desired him to tell the prisoner so. Before Ah Man spoke prisoner said "No fear" – I then brought prisoner to the lock up. Prisoner had

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on Cossack boots and the nails in them corresponded with the marks I had seen on the log. I know the mare I examined is not prisoner's property.

[Signed] James Irwin.

Taken on oath before us at Nerrigundah this 29th September 1871.

[Signed] W Stewart Caswell, PM and WD Tarlington, JP.

Ah Man being duly sworn saith as follows:– I am chinese interpreter at Nerrigundah. On the 26th inst. I remember Constable Irwin – Thompson and prisoner coming to my place – by request of Constable Irwin I told prisoner he was arrested for having had connections with a mare – prisoner said, "I tied up the mare and gave her some corn to coax your horse as it was wild.

Cross examined by prisoner: I had told prisoner on the previous Saturday if he saw my horse to catch it.

[Signed] Ah Man (In chinese).

Taken on oath before us at Nerrigundah this 29th September 1871.

[Signed] W Stewart Caswell, PM and WD Tarlington, JP.

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John Thompson being duly sworn states as follows:– I am a gold miner residing at Nerrigundah. I know the prisoner by sight. About 12½ o'clock on Tuesday the 26th instant after I had my dinner. I went out in search of my horse, when I went to Morrison's Hill I saw a mare and foal, and on going a little further I saw the prisoner standing on a log, with his hands on the hips of a mare that was standing in front of him. I stood behind a tree looking at him for 3 or 4 minutes, he still kept in the same position, prisoner was bare headed and the mare had her head on the ground. My little dog went up to the mare. I believe the prisoner was having connection with the mare. When the dog ran forward prisoner sprang off the log, and went to the side of the mare and began patting her, his shirt was out when he sprang off the log, when he saw me he turned his back to me and had his hand down as if he was buttoning his trousers, when I spoke to him he brushed the hair off the front of his shirt. I saw horse hair on it. I saw him pick up his hat which had corn in it, and put it down by the side of the log he had been standing on. I asked him what he was doing with the horse

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and he said he was catching his mare for fear it would run away. I asked him if the mare was his and he said it was, prisoner had neither rope nor bridle with him while he was patting the mare. I went and lifted her tail, it was all messed and wet with a filthy white matter, the prisoner then looked down and brushed the hair off his clothes. When the prisoner was behind the mare, he was lying on his hips with his body in motion. I left the prisoner patting the mare, and went and found my own horse, took it home and went to

my work. I saw my mate Ah Young, at the work, told him what I saw, and as he did not believe me brought him to where the mare was standing, and showed him her tail and the marks on the log, he then went back home and on my mate's advice I went and informed the Police. Senior Constable Irwin accompanied me to where the mare was. I showed him the marks on the log first, then we went to the mare. I saw nail prints on the accused part of the log. I showed the Senior Constable the filthiness under the mare's tail. From the examination I made of the mare I am satisfied the prisoner penetrated into the

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animal. I was standing about 30 yards from the prisoner, when I saw him on the mare. I then accompanied Senior Constable Irwin to the claim where we found the prisoner, and we took him with us to the interpreter at whose place the Senior Constable arrested him. On the road there I noticed the foot prints of the prisoner as he was walking before us, and the nail marks corresponded with those on off the log. As we were walking along prisoner said to Senior Constable Irwin, "We fetch him horsey". I know nothing of the prisoner except by sight.

Cross examined by prisoner: I did not hear the prisoner calling out to anyone.

By Bench: I described the prisoner to Senior Constable Irwin as a man who stuttered. I did not know his name and could not give a better description. I remembered him at once when he came out of the claim.

[Signed] John (his X mark) Thompson.

Sworn before us at Nerrigundah this 29th day of September 1871.

[Signed] W Stewart Caswell, PM, and WD Tarlington, JP.

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Statement of the Accused.

New South Wales,
TO WIT }

Ah Young stands charged before the undersigned, two of Her Majesty's Justices of the Peace in and for the Colony aforesaid, this 29th day of September in the year of Our Lord One thousand eight hundred and seventy one, for that he, the said Ah Young on the 26th day of September 1871 at Nerrigundah, in the said Colony, then feloniously, wickedly, and against the order of nature, with a mare did commit that detestable crime of buggery against the form of the Statute and the examination of all the witnesses on the part of the prosecution having been completed, and the depositions taken against the accused having been caused to be read to him by me, the said Justice (by/or) before whom such examination has been so completed; and I, the said Justice, having also stated to the accused and given him clearly to understand that he has nothing to hope from any promise of favour, and nothing to fear from any threat which may have been holden out to him to induce him to make any admission or confession of his guilt, but that whatever he shall say may be given in evidence against him upon his trial, notwithstanding such promise or threat; and the said charge being read to the said Ah Young and the witnesses for the prosecution James Irwin, Ah Man, and John Thompson being severally examined in his presence, and the said Ah Young is now addressed by me as follows:—"Having heard the evidence, do you wish to say anything in answer to the charge? You are not obliged to say anything unless you desire to do so; but whatever you say will be taken down in writing, and may be given in evidence against you upon your trial;" whereupon the said Ah Young saith as follows:—"I have nothing to say, the man said I had no bridle, and how could I do that thing to the mare." Taken before me, at Nerrigundah in the said Colony, the day and year first above mentioned.

[Signed] W Stewart Caswell, PM, and WD Tarlington, JP.

For the Defence **RH Hing**, having been duly sworn after the chinese fashion of blowing out a match states as follows. I was saw the prisoner all the time between 12 and 2 o'clock . He asked me to go and help him catch a horse. I said I would not as he let the horse go he was too wild, prisoner went away

himself to do so.
[Signed] Chinese signature.

Sworn before us at Nerrigundah this 29th day of September 1871.
[Signed] W Stewart Caswell, PM, and WD Tarlington, JP.

The prisoner Ah Young stands committed to take his trial at the next General Gaol Delivery, Criminal Court Sydney to be holden at Darlinghurst Sydney on the 6th day of November 1871, by us at Nerrigundah this 29th day of September 1871.
[Signed] W Stewart Caswell, PM.

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[On the deposition's cover sheet is the following]

29th September 1871
No. 783
Depositions.
23 23
Regina v. Ah Young
Bestiality
SC 6th November
Next Sydney gaol delivery
[Initial illegible] (AG ?)
24 (?) 1871
Bestiality
Nerrigundah

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Justice A Stephen's Notebook ²

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[Sydney] Thursday: 16 November 1871

Ah Yung. Bestiality ~~Sodomy~~ with a mare at "Nerrigundah" on 26 September '71
(chinese)

Constable [James] Irwin. Went to Morrison's Hill with a man named Thomson on 26 September. Saw a ³ log with 2 footprints on it & prints of nails in them. Saw prints of (a ?) horse's hoofs in front of the log – hind feet. Thomson pointed ⁴ out the log to me. There were some horses (a small bay mare among them) some yards distant – grazing. The mare was quite quiet. Caught her and examined

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her. Saw some pale whitish fluid on her private parts. ⁵ Went to the gold field ¼ mile off to Ah Loch's claim. He said that there were 8 men in it. I desired that they should (all ?) come up ... and 7 men only came. I inquired for the 8th man. The prisoner came up and then Thomson said that he was the man. I knew him and have known him for 2 years. He had a miner's right. I told prisoner to come with me to the interpreter. ⁶

Brought prisoner with me. Noticed that the marks made by his boots were like those which I had observed on the log. Prisoner said Me go catch him my horsey ... fetch him my horsey.

After I got to the interpreter I asked him to tell prisoner that I arrested him for having connexion with a mare. Prisoner said ⁷ (after) Ah Mann had spoken to him in chinese “No fear”.

Cross-examined by Buchanan: The log is on an incline. It is

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about ¼ mile from houses. The ground is rather thickly timbered. Don't believe that the log could have been seen from the houses. ⁸

I could tell the difference between the marks of the hind and the fore feet of a horse – Saw no marks of any fore feet. There was grass in the front of the log where the marks would not be seen. But at the log and within a foot of the log ⁹ the ground was bare of grass and I could see marks of hoofs.

The mare must have stood quietly. ¹⁰ She must have been backed up to the log. I only once caught that mare but I have often seen her owner catch her. It may happen that a horse which is generally quiet will not stand to be caught. Can't say if the mare was “horsing”. Don't believe that she was.

Did not go to a medical man.

The position of the mare was not on the incline – but across it.

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Ah Mann. chinese interpreter: at Nerrigundah. Prisoner said that he ¹¹ tied up the mare and gave her some corn while he went to catch my horse:– “so that he could go and catch my horse.” I had told him to catch my horse 2 days before.

Cross-examined. He said that it was to decoy the horse by keeping the mare there. He said that he tried his belt to catch the mare with: but that it was too short and that he joined the belt to a piece of rope.

Irwin says that Thomson is addicted to drinking and has been suspected of sly grog (sale ?).

John Thomson. Miner. Been at the diggings 10 or 11 years. I know prisoner by sight: known him 3 years. Could recognise him the moment that I saw him. On Tuesday 26th September after dinner went to catch my horse and saw prisoner

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standing on a log on Morrison's Hill at back of M's house 200 yards from the house. Not visible from the house: there is too much scrub. There a mare in front of the prisoner and he had his hands on the mare's hips. I stood and looked at him. Thought that he was going to jump on the mare – saw his hat on the ground at the head of the mare with some corn in it. She was eating the corn. I was distant about 15 yards. I had a little dog with me & it ran up towards the mare. Prisoner's body was in motion as if he was having connexion with the mare. As soon as prisoner saw the dog he jumped back off the log towards the side of the mare and turned his back towards me and put his hands down as if buttoning up his trowsers. When he jumped from the log his shirt was out. ¹²

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I went to prisoner and asked if he had seen any horse with hobbles on, and asked what he was doing with the mare – prisoner said that he was catching his horse for fear that she would go away in the bush. I lifted the mare's tail and immediately the prisoner looked down and began to brush the hair – horse's hair – off his clothes. Asked if the mare was his. He said it was. He had no bridle and no rope and no strap. He had a sash which was hanging by his side when I went up to him. I went away from him. ¹³

The mare was all wet on her private parts and there was white fluid there. I went home to my mate who is a chinese and told him and then I went to constable and went with him to the log. Irwin pointed out tracks on the log of a man's feet and saw tracks (marks) of horse's hoofs on the ground close by

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the log – where I had seen prisoner – From the motions of his body I believe that the prisoner penetrated the mare – After prisoner was taken I heard him say that he was trying to catch his horse to take her home. I understood that he was talking of the mare.

I never had a quarrel with the prisoner – & don't know that [I ?] ever spoke to him.

Never worked with prisoner nor ever had dealings with him.

Cross-examined. Never made any offer to (compromise ?) this (?).

No house could overlook the spot. Morrison's house is the nearest. It is bush unfenced.

Three horses were grazing about. Only know of one entire horse ¹⁴ and he was not about the spot. The log is on a hill. I defy any person to see the log from the houses. There is no track there (shows on a sketch) – There are plenty of houses here – but not here. There was thick

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scrub – wattles. Not at the log but between the log and the houses. The log was on an incline. Not a steep one – a gradual incline. The log could be 2 feet high. Think that it was more than a foot. ¹⁵

The mare was athwart the hill – with the buttocks nearer to me than the head. I could see all along the mare's side. Did not see prisoner's naked person: but his shirt was out. His trowsers were not down. They open all along ... up and down.

Can't say if the mare was ¹⁶ "horsing." I believe that she was in foal. (Many questions more on the same beastly point) –

Am not sure if there was any mark of a man's foot off the log – Did not observe marks of horse's feet about, only at the log ... close to the log:– & I saw marks of feet where she stood eating the corn.

("If the constable has sworn that he saw more,

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has he spoken the truth?" – I refuse to allow this question.) –

I did not employ any medical man to examine the prisoner's person – or that of the mare–

The occurrence was about ½ past 12.

Never told Mr Walton that I did not see the offence committed but that I only saw the prisoner hitch up his trowsers. I said the contrary.

Re-examined. Walton is a digger there – He keeps 2 women and is much mixed up with the chinese. It is supposed to be a house of ill fame.

One woman is called Mrs Walton and the other is a twin sister Miss Maguire. I was twice inside that house. Have seen scores of chinese there. Mrs Walton is reputed not to be married. She is called "Lambing Flat Mary." (Prisoner ?) is not a licensed publican and he does not keep a store.

[James] Irvine. The house is supposed to be a bawdy house and a sly grog place. It is frequented by Chinese and others. I wrote down what the interpreter said was stated by the prisoner at the committal. "I had no bridle; and how could I do that to the mare." (ie without the means of keeping her still.) "I would give £5 to any one who could do it."

Defence.

William Walton. Am married. Married by Revd Dr Lang. Lived at the diggings with my wife. Here sister lives with us. Don't know that grog has been ever sold or any indecency done in my house.

On 26 September Tuesday: prisoner was in search for horses between

12 and 1. Horses graze thereabouts – I made out the plan produced: for defence. I went here (shows) and saw a log. The Chinese showed it to me. Could not see the log from my house – But you can see it from 4 houses:– the log shown me but perhaps not the log shown on this plan by Irwin. When I went to my dinner at 12, ¹⁷ the mare & 4 or 5 horses were 300 yards from the log – & when I went from dinner to my work (it may have been 20 minutes past 12 ... I only take a few minutes – it was nearer 12 I think than 1) the mare was nearly in the same spot. The log is on a slope – a rise ¹⁸ I spoke to Thomson about the prisoner's having done this deed and he said that it was true. He did not say that he did or did not see prisoner's person but that he saw prisoner brushing the hair off his trowsers.

Cross-examined. My house is not frequented much by Chinamen. The prisoner and his mates are my next neighbours.

Ah (Yeen ?). I know prisoner a little. I am Thomson's mate. He told me that the prisoner was a bad man – doing that to the mare. T took me to a tree and showed me the mark on it where he said it was done. I saw mark of a man's foot on the log. Did not see marks of a horse's hoof. There was grass about. Trees were thick. You could not see it from any of the houses about.

Ah Loch. One of prisoner's mates. The prisoner said that he was going to look for a horse. He was about 15 or 20 minutes. I saw him from just outside the hut. If this

offence had been committed I must have seen it.

Cross-examined. The prisoner went away with some corn in his hat. He was going to catch Ah Mann's horse. Did not come back with the horse. I said to prisoner it's no use bothering any more about it. You had better go to work. Prisoner said that he came back because I called him to come back to work. ¹⁹

[James] Irwin. This is the same Ah Loch of whom I spoke.

Shong (Een ?). One of the party of 8. After dinner prisoner went away for the horses and was absent about 20 minutes – I know nothing of the log. It is all flat. Never lost sight of prisoner – He could not have done.

John Pottie. Veterinary Surgeon. If a mare was horsing

there would generally be discharge from the vagina. Not always so. September is a common month. –

If a horse is backed against a log it will probably not stand – It would be restive. Don't believe that a mare would stand for such an operation as this; – not voluntarily – not without her being held. – I have always found great difficulty in performing any operations with a mare. She will generally require to be held.

James Downing. Great experience in horses. Never known a mare slinted ²⁰ without being held. Don't believe it possible that a man standing on a log 12 inches high could have this connexion.

²¹ A clear case for conviction as to the attempt. But the Jury after $\frac{3}{4}$ hour's retiring Acquitted the prisoner.

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Evening News, Thu 16 Nov 1871 ²²

CRIMINAL COURT, THIS DAY

(Before his Honor Mr Justice Hargrave.)
Mr CE Pilcher prosecuting for the Crown.

...

(Before his Honor Sir Alfred Stephen,
CB, Chief Justice.)

The Solicitor-General prosecuted for the Crown.

BEASTIALITY. [*sic*]

Ah Young, a Chinaman, was charged with having, at Nerrigundah, on the 26th day of September, committed an act of bestiality.

Mr Buchanan, instructed by Mr Maguire, appeared on behalf of the prisoner.

The particulars of the case are too disgusting for publication.

The case was not concluded when our messenger left.

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Empire, Fri 17 Nov 1871 ²³

CENTRAL CRIMINAL COURT.—

THURSDAY. [16 November 1871]

(Before his Honor Mr Justice Hargrave.)
Mr CE Pilcher prosecuting for the Crown.

...

(Before his Honor Sir Alfred Stephen, CB, Chief Justice.)

The Solicitor-General prosecuted for the Crown.

BESTIALITY.

Ah Young, a Chinaman, was charged with having, at Nerrigundah, on the 26th day of September, committed an act of bestiality.

Mr Buchanan, instructed by Mr Maguire, appeared on behalf of the prisoner.

The particulars of the case are too disgusting for publication.

For the prosecution, the witnesses called were senior-constable **Irwin**, stationed at Nerrigundah; **John Thompson**, who alleged that he saw the offence committed; and **Ah Man**, Chinese interpreter at Nerrigundah. The witnesses for the defence were **William Walton**, **Ah Ye**, **Ah Luck**, **Chong Ye**, Mr **Pottie** (veterinary surgeon), and Mr **Downy**.

The case lasted all day.

Mr Buchanan addressed the Bench on prisoner's behalf at great length.

The Crown Solicitor replied; and

His Honor summed up.

At the close of the case the Crown Solicitor withdrew the capital charge, and left for the consideration of the jury only the attempt to commit the offence.

The jury retired at a quarter-past 6 o'clock; and at a quarter-past 7, an intimation having been given to his Honor that they were not likely to agree, he decided upon locking them up all night, and returning at 10 o'clock this morning. In a few minutes, however, the jury re-appeared in court, and pronounced prisoner not guilty.

He was thereupon discharged.

The Court adjourned till 10 o'clock this morning.

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Evening News, Fri 17 Nov 1871 [24](#)

CRIMINAL COURT, THIS DAY

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...

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(Before his Honor Mr Justice Hargrave.)
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The Sydney Morning Herald, Fri 17 Nov 1871 ²⁵

CENTRAL CRIMINAL COURT.
THURSDAY.

...

Before the CHIEF JUSTICE [Stephen]

UNNATURAL OFFENCE.

A miserable looking chinaman, named Ah Young, was charged with having at Nerrigundah, on the 26th September last, been guilty of an unnatural offence.

The Solicitor-General appeared for the Crown. Mr Buchanan, instructed by Mr Maguire, appeared for the defence.

The trial of this disgusting case lasted all day; the particulars, of course, utterly unfit for publication.

The jury retired to deliberate at a quarter-past 6 o'clock, and on their reappearance in Court, at ten minutes past 7, returned a verdict of not guilty.

The prisoner was discharged.

¹ SRNSW: NRS880, [9/6540], Supreme Court, Papers and depositions, SGD, Nov 1871, No. 783. Emphasis added.

- ² SRNSW: NRS7696, [2/7040], Judiciary, A Stephen, CJ. Notebooks Criminal, 1840-71, pp. 142-55. Emphasis added.
- ³ Mn: Log was about a foot high
- ⁴ Mn: “I pointed the marks out to him.” “He pointed out the log to me.”
- ⁵ Mn: “sexual” parts
- ⁶ Mn: “Ah Mann”
- ⁷ Mn: “before”
- ⁸ Mn: The mare about 14 hands high
- ⁹ Mn: “within a yard”
- ¹⁰ Mn: she is a quiet mare
- ¹¹ Mn: “going to tie her up”
- ¹² Mn: He took his hat with the corn in it from where it had been & put it down near the log.
- ¹³ Mn: Left prisoner standing there by the side of the mare.
- ¹⁴ Mn: in the neighbourhood
- ¹⁵ Mn: At first I stood behind a tree.
- ¹⁶ Mn: don’t believe that she was so.
- ¹⁷ Mn: or a little before 12
- ¹⁸ Mn: if where spoken of by Thomson. The spot which I was shown was on a flat – near a track. I don’t know what is the spot sworn to by him.
- ¹⁹ Mn: I called out to him. It was 100 or perhaps 200 yards.
- ²⁰ *The Australian Concise Oxford Dictionary* records the word “slinger: (Australian and NZ slang) a piece of trickery, deception”. It would appear that this is the likely word used here.
- ²¹ Mn: Rose at 7.40
- ²² *Evening News*, (Sydney, NSW), Thu 16 Nov 1871, p. 3.
- ²³ *Empire*, Fri 17 Nov 1871, p. 3. Emphasis added.
- ²⁴ *Evening News*, (Sydney, NSW), Fri 17 Nov 1871, p. 2.
- ²⁵ *The Sydney Morning Herald*, Fri 17 Nov 1871, p. 5.