

## SUPREME COURT.

## Criminal Sitzings.

Before His Honor Mr Justice Barry.

Saturday, December 18th, 1852.

His Honor took his seat on the Bench at the usual hour, when the following Jury were impanelled,

George Bailey, Wm Baker, Ed Butler, Louis Brennan, James Brandon, John Moore Bryant, John Buchanan, Francis Edis Reeve, (Foreman) Thomas Biliars, John Bland, George Bannister, A. B. or J.

## HORSE STEALING.

George Bannister, who was yesterday found guilty of horse stealing, was sentenced to seven years on the roads of the colony.

## UNNATURAL OFFENCE.

John H. Cusken was charged with the above offence.

Police constable Delaney, No 48, gave his testimony in such an incoherent and extravagant manner, as to force His Honor, who heard the man with most unexampled patience, to say that the constable was either mad or drunk.

The jury retired for a short period, and returning found the prisoner Not Guilty, when he was discharged.

Before the following jury—John Brophy, foreman, C Bunsworth, John Bourke, Robert Bennett, John W. Beaumont, J. Belman, Isaac Booth, R. F. Bickerton, H. Bignell, John Brown, J. W. Ball, Wm G. Battolph.

## ASSAULT WITH INTENT TO ROB.

Robert Preston was charged with having on the 21st day of November, assaulted one John Howick, with intent to rob him.

This was one of the usual street robberies, that have disgraced our towns long, and which after a brief lull for a season, have again become so common. The prosecutor was passing down Brunswick-street, when, meeting with four men, he was knocked down; starting on his feet again, he parried off the blows that were aimed at him, and shouting for the police, who were fortunately near, the men running away, close followed by the prosecutor who succeeded in apprehending the prisoner.

Mr Michie addressed the jury for the defence, insisting that the prisoner was one of many passers by in Brunswick-street on the night of the robbery, and that in the trepidation of the moment, the prosecutor seized hold of a man who was hurrying to his assistance.

The jury retired for half an hour, and acquitted the prisoner.

Before the following jury:—F. E. Beaver, (foreman); P. Bourke, O. Burs, A. Barchel, S. Brins, W. K. Bull, H. Budge, J. Bland, F. Barsten, G. Bisan, F. M. Bryant, and A. Bradford.

## MURDER-MEANOR.

William Dineo master of the ship Thorwaldsen, was placed on the floor of the Court charged with having behaved negligently, carelessly and being in a drunken state, as master of the said ship, on the 9th of Nov. last. The defendant pleaded not guilty, and

last. The defendant pleaded not guilty, and was defended by Mr Stephen and Mr Smyth.

This was an indictment framed under the Mercantile Marine Act, adopted by the Colonial Legislature (13 Vic, c 23). From the evidence of Mr Yeomans, a passenger, it appears that on the night of the 9th of Nov. last, the Thorwaldsen was entering the Heads. Much excitement prevailed on board, from a report which had been circulated, to the effect that the Captain was drunk. The passengers were running to and fro on board the ship, and were shouting to the first mate to take the command; the vessel was then close to land near the light-house, with her head towards land; the captain was giving his orders in a rough manner, and was apparently drunk, but this witness could not swear he was so; the sailors would not obey the orders of the captain to hoist the mainsail, but soon afterwards they attended to the orders of the mate, and, tacking, they stood out to sea. From the evidence of another passenger, Edward Cardwell, it appeared that for a space of six weeks the passengers were in a state of trepidation from the intemperate conduct of the captain. He saw him only once in that state; on the night of the 10th ult the ship was entering the Heads; at this time the second mate was on the look out for land, and when he cried "land on the bow," this witness ran abaft, and told the captain, who retorted in a most disagreeable manner; the first mate then came on deck and gave some orders; the captain countermanded these; the captain then asked if the mate intended to take the command of the ship, shaking his fist in the mate's face. The captain ordered him to go below, when he replied, "not until he saw the ship and passengers in safety;" he then called the mate a scoundrel and a swanking villain; the captain appeared to be suffering from the effects of drink, but witness would not swear he was drunk; the noise alarmed the steerage passengers, who, rushing forward, cried out to put the captain in irons; these expressions were used because the captain appeared inclined to thrash the mate; the conduct of the mate on this occasion was very good.

On this witness's cross-examination by Mr Smyth, it appeared that there was no friendly feeling between him and the captain. He also explained that on the first occasion when land was descried by the second mate, the captain had put the vessel (which was then close to land) round properly, and then headed her towards the land again. The first mate took command the second time, and wore the ship out. At this time the ship was outside the heads.

Thomas Hughes, a seaman on board the Thorwaldsen, deposed, that on the night of the 9th of November, he was on deck from 8 to 12; he was steering and at the wheel for that time; at 8 o'clock the ship was running with a fine breeze, and some time afterwards, when it was getting dark, some person forward cried out "light ahead," and then "Port your helm." Witness sung out to the captain, what is that sir? he answered, stand

captain, what is that sir? he answered, starboard your helm; he swung out, who the — cried out that viz., "Port your helm." The ship came round flat aback; the captain ordered the studding sails down, and it being difficult to do this, the captain swore at the sailors; the captain told witness to let go the wheel, and let go the starboard brace; did so, and after half an hour the ship went off, and ran in the same direction with studding sails down. When the vessel had proceeded some distance, the lead was hove and 16 fathoms found. The ship was then wore and was very stupid; the fore and top-gallant sails were then stowed by Captain's orders. At this time the witness was relieved and went forward; went to bed, and shortly afterwards hearing a noise came on deck; heard the mate say, "Haul in starboard fore brace;" witness did so, and heard the Captain say, "Not a word out of your mouth, you —; do you take the command out of my hand, Sir?" the mate replied "No I don't, Sir;" the passengers were then crowding about the Captain imploring him to do as the mate directed; he refused, and ordered the mate below, but was not obeyed; witness cannot swear that the Captain was drunk; if the mate had not given the order witness thinks if the ship had escaped, it would have been more luck than management; if the ship had not been put aback, she would have gone ashore; if she indeed stays, there was not room to wear the ship about. Can't say but if the Captain had been let alone, he might have put ship about; next morning

saw the Captain walking backward, out forward; he seemed to have had some liquor in his head.

Cross-examined by Mr Stephen. If the Captain had not been disturbed by the passengers, he might have put the ship about; the Captain's conduct did not appear to be that of a skilful seaman, by his orders respecting the taking down of the studding sails. Until the witness went down, the Captain's conduct was seaman-like. The man (the Captain) is a seaman, no doubt, in witness's opinion; it would be the duty of a captain, with the wind he had, to go in that night; the Captain was merry with gag; can't say he was drunk, but the night before the ship came in, witness saw the Captain drunk in the second cabin with some women; did not intimate to any one that if he (witness) got discharged he would not come forward to prosecute; heard the Captain offer ten pounds a-month and a discharge at Calcutta to the sailors if they would stay with him; witness might go to the diggings if discharged.

By the Solicitor General.—When witness came on deck he could not condemn the captain.

Thomas Taylor, boatswain of the ship Thorwaldsen, being examined, threw no further light on the question. He did not see the captain drunk; on his cross-examination being pressed hard, the witness said he heard the captain order the helm up before the mate ordered it down. Three weeks before the vessel came to port this witness and the captain had a quarrel re-

weeks before the vessel came to port this witness and the captain had a quarrel respecting some nautical work, but he could not allow he had any ill-will towards the captain.

James Stewart, seaman, proved the same facts as the above, with similar deductions. Witness had had a quarrel with the captain.

John Longbottom was passenger per ship Thorwaldsen; on the night of the above occurrence the captain appeared to him to be drunk; he was holding on by the poop rails, and talking to some ladies; he was talking in a rambling manner; never had any quarrel with the captain when at sea; after coming into port, one evening witness used some words in joke answering a boat that hailed him in nautical phrase, when the captain shook his hand in witness's face, and threatened him in violent language.

George Small and A. Langcake corroborated the testimony of the other witnesses, as also Mr Cavenagh, another passenger.

Wm. Read, mate of the Thorwaldsen, corroborated the main facts that occurred on the night of the 9th November; when he told the Captain that land was on the bow the Captain did not answer him; when he came on deck the Captain was ordering to put on sail; witness gave opposite order, and having stationed the men gave the word to back; the Captain followed out his directions.

On cross-examination this witness allowed that he could not swear that the Captain was drunk on the night in question.

Mr Stephen submitted that neither in the first or in the second count had the allegation been supported; and secondly, that the ship was not proved to be a British ship.

His Honor could only entertain the last point, the other was a question for the jury.

The Solicitor General having replied,

Mr. Stephen said he would waive the point by the express wish of the Captain.

Mr. Stephen then addressed the Jury for the defence, and indignantly denied the truth of the testimony adduced. He then put in the ship's log, kept and written by the mate, and in it no reference was made to the drunkenness of the Captain. He called

Mr. John Strachan, cabin passenger per Thorwaldsen, who deposed, that on the night of the 9th of November, he was awoken by some screams from a woman; coming on deck, he saw a rush from the deck to the poop and heard the people call out put the — in irons. The Captain was not drunk on the night in question. He refused to drink anything from the anxiety that was on his mind concerning the safety of the ship.

Mrs. Isabella McConnon, remembered the night of the 9th of November; was up all night whilst the ship was off time; the Captain was conversing with this witness and her husband; the Captain was not drunk that night, he conversed with witness, and walked with her up and down for a long time.

Mr. T. Longbottom corroborated the testimony of the last witness. The Captain was not drunk that night.

Mr D. McConnon was on deck the whole night of the 9th, and deposed that during that night he walked up and down the poop with the Captain, and his wife till two o'clock.

about he walked up and down the poop with the Captain and his wife till two o'clock; the Captain was certainly not drunk.

William H. Mix corroborated the above.

William Bishop, passengers' cook, recounted a conversation between himself and the first mate, in which the latter being asked if he believed it to have been the Captain's intention to run the ship on shore (a rumor and belief on board the Thorwaldsen) said "that the Captain was perfectly justified in having the ship where she was if he had room, and that he did not think he wanted to run the ship on shore;" he made no allusion to the Captain's state on the evening of the 9th of August.

This was the case for the defence.

The Solicitor-General addressed the Jury.

His Honor then summed up, and pointed out the various facts elicited. He left the fact of the captain's being drunk to the Jury, conceiving that they were the proper judges of the fact. He then went through the remaining evidence and especially commented on the remarkable fact of there not being any mention of the occurrences of the night in the mate's log book. He adverted to the terror of the passengers being no criterion of the captain's want of skill, and left the matter in their hands.

The Jury retired, and after a short delay returned into Court, and acquitted the defendant.

The Court then adjourned till ten o'clock this morning.