

**FREMANTLE POLICE COURT.**

**JANUARY 14TH, 1868.**

[Before C. Symmons, Esq., Resident Magistrate.]

**IMPORTANT CASE—RIGHT OF FISHERY.**—*John Vance*, pensioner, and *Edward Thompson*, appeared to summonses at the instance of *Capt. Jackson*, Superintendent of Rottneest Island, who charged them with "landing on a certain reef of rocks adjacent to Rottneest, contrary to the proclamation in the Government Gazette of October 23, 1855."

Mr. Loftie appeared for the accused.

*Capt. Jackson* deposed that on the 6th instant, at day-break, he saw two men pull out from Direction Island, one of them having just before stepped on board the boat from the Island. He gave chase in his boat, and on overhauling them, saw the defendants in the boat. He had suspected them for some time, and had been watching them. On cross-examination *Capt. Jackson* admitted Direction Island was more than a quarter, and might be half, a mile from Rottneest, and was a distinct island, and not connected with Rottneest mainland even by reefs. He had never measured the distance. He was under the impression one mile of Rottneest was the limit within which no person could land or approach; but did not know whether that was one of the rules laid down in the proclamation. He had fished inside Direction Island, himself and his friends, also the pilot's crew, and he had seen other people fishing there frequently without permission. He brought crayfish into Fremantle for his friends sometimes, but never eat any of them (!)

*John McGovern*, one of the pilot's crew, corroborated *Capt. Jackson's* evidence as to having seen the defendants pull out from Direction Island.

In defence, it was admitted that the defendants had "approached" Direction Island, but it was denied they had fished there; and it was contended by Mr. Loftie on the part of the defendants—1st, That the Ordinance of the 4th and 5th Vict. No. 21, under which the proclamation in question was made, only authorized "the Governor in Council" to make rules and regulations by proclamation "touching the landing of boats at the said Island" (Rottneest); therefore Clause 7 of the proclamation could only be construed to allude to the Island of Rottneest itself; and "the adjacent rocks" mentioned in it must be understood to be the rocks of the island of Rottneest, and not distinct and separate islands  $\frac{1}{2}$  a mile off. 2ndly, That if the prohibition contained in Clause 7 of the proclamation as to the "adjacent rocks" is held to allude to the rocks on neighbouring islands, then the Governor and Council had by the proclamation clearly overstepped their authority as contained in the 4th and 5th Vic. No. 21, which restricted them to making rules "touching

which restricted them to making rules "touching the island of Rottneest," and did not give them power to proclaim the neighbouring islands.

Mr. J. Harwood and Mr. W. Bateman were called for the defence.

Mr. Harwood deposed that he always considered Direction Island to be about  $\frac{1}{2}$  a mile from Rottneest and distinctly separate from Rottneest Island. He had frequently fished there, and had never been called in question. He never considered it was necessary to obtain permission, and did not know before to-day it was forbidden; but was aware he could not approach Rottneest without an order. Knew many people who had fished on Direction Island without permission.

Mr. W. Bateman deposed that he knew Direction Island all his life. Never was aware it was necessary to get permission to land there. His brother had landed and fished there, and had never been prevented. He considered it about  $\frac{1}{2}$  a mile from Rottneest. He had been on the island about 12 months ago himself, and no notice was taken of him.

His Worship said he would confine himself to Clause 7 of the proclamation, and to that alone; and would not enter into any discussion as to the authority under which the proclamation was made. He was satisfied the defendants had transgressed the rules laid down in the proclamation, as there was clear proof of their having approached and landed on Direction Island, which he considered was one of "the adjacent rocks" prohibited by the proclamation. As one of the defendants had been before accused of fishing near Rottneest, he would inflict on both the highest penalty (a fine of £10 each); in default three months' imprisonment.

Mr. Loftie gave notice he would appeal to a higher tribunal.

(As the defendants were ordered to be kept in custody, and had not the money in Court, and from their confinement, had no means of procuring it, they were, on the following day, committed to prison for three months, with hard labor.)