

**Source: *Perth Gazette and West Australian Times*, Friday 5 April 1867, p.3.**

**SUPREME COURT [Before His Honour Chief Justice Burt]**

**Thursday, April 4, 1867.**

Cornelius A'Herne, t.l., charged with cutting and wounding with intent to kill and murder Police Constable Moran.

The prisoner pleaded guilty to the assault, but not to the intent; a plea of not guilty was directed to be entered.

The prisoner was undefended.

The Attorney-General opened the case by detailing the particulars of the assault, as they were afterwards elicited from the evidence.

Michael Moran, p.c.-On the night of the 26th February, about 20 minutes to 11 o'clock I was on duty in Murray Street, when I met the prisoner on the west side of Towton's public-house; I stopped him and asked his name; he would not give it and I caught him by the arm and led him along about 50 yards, to opposite Bryant's cottage, when he jumped away from me, and as I went to catch him, he raised a stick, which I did not see that he had before, and hit me on the head; I recollect falling on my hands and then became insensible. I can swear it was the prisoner who struck me. The cap produced is that which I had on that night. [There was much blood about the cap.] It was a dark night, and I suppose he had the stick by his side, as I did not see it.

Cross-examined by the Prisoner - I did not shove you in the back of the neck with my staff, that was in my pocket at the time.

Richard Kennedy, p. c.-Was on duty on the cross-beat on the night of the 26th Feb., and a little after 11 o'clock I was standing in the road near the Wesleyan Chapel, and heard a man come up the road in Murray Street; the man came up towards me saying something, and as he closed near me I heard him say, "I've cut the b-rs." I stepped right in front of him, and asked his name. He had the stick produced, holding it over his shoulder; he said to me, "my name," and raised his stick with both hands as if to strike me, but I warded off the blow with one arm, and tripped him up on his back. He then said "I'll go with you master, I'm a free man." I asked him if he was free; he then said he was a conditional pardon man, and handed me the parchment produced, by which I knew he was a ticket-of-leave. On the way to the station he told me about the six months he had got, and asked me where Sergt. Dale was, I told him he was in bed. Prisoner then said "I'll be hung to-morrow." I asked him why; he replied "he knew he would and right too, life for life and blood for blood, and that if he had killed the Comptroller and Sergt. Dale he would die easy," he said that several times. On nearing the station prisoner threw his stick away, I took particular notice where it fell. After we had taken Moran to the hospital p.c. Campbell and myself went to look for the stick, and Campbell found that produced which I know to be the stick; it has upon it both blood and hair. [The stick produced was a paling about three feet long with a nail in one end.] As we went into the station

prisoner took a letter from his pocket, and was tearing it up when I took it from him; it is that produced. The letter was read:

*Comptroller General's Office, Perth,  
21st. February, 1867.*

*Memo :*

*Reg. No. 4738, Cornelius Aherne, is informed that in "consequence of the numerous mis-statements contained "in his letter, dated the 10th. January, last, His Excellency "the Governor has been pleased to direct that his Ticket-"of-Leave be revoked for six (6) months.*

*W. R. FAUNTLEROY,  
pro Acting Comptroller General,  
absent on duty. Care of  
Mr. John Keeling,  
High St.,  
Fremantle.*

I asked him where he came from, he said "from Fremantle," and added "I've killed one of your boys," and I asked him would he be guilty of killing a boy; he then told me "to go down the road and I would find one of my children dead;" I asked him where; he replied "go and look and you will find him." I then went down Murray-street to see the policeman on that beat, and see if anything had happened him; that was about 20 minutes past eleven; I went all along Murray-street and could not find any man upon it, but after waiting a little while Corporal Furlong came to me. I asked him what man was upon the beat, he told me that it was Moran; we then went in search of him and on the footpath close to a pool of blood we found the cap produced, with much blood upon it, and on the ground was a print of the impression of hands as if a man had fallen upon them there. Sometime after we called Sub-Inspector Campbell, and after searching some time I heard him call out "here he is," we were then in a vacant grant at the back of the Wesleyan Chapel, and on going to him I saw it was Moran's body, lying against the fence with the head under a bush; I dare say that was more than 50 yards from where I found the pool of blood. Moran appeared to me to be dead, I did not examine him, but went for a stretcher upon which he was carried to the hospital by myself and others.

Cross-examined by the prisoner - You lifted up the stick as if to strike me, and I thought you were going to do so, and therefore tripped you up.

Robert Campbell, sub-inspector, corroborated the testimony of the previous witness as to the finding after a long search, of Moran's insensible body, and to having seen the pool of blood opposite to Bryant's, and marks as of a scuffle having taken place. He knew the body to be that of a constable by the dress, but not by the face; it was lying on the face close to the boundary fence of the Wesleyan grant, and within a few feet of the street boundary. I raised the body up, and for some time thought death had taken place, but after a little time found that breathing continued; there was a great quantity of congealed blood covering the face and head; face much swollen and with two cuts upon it; I saw it was Moran, and got some water and washed his face and head; I also found a deep cut three inches long on the left side of the head,

the cut was forked as if there had been two blows. I assisted taking Moran to the hospital. In Murray-street, I found a place where a paling was missing of apparently the same dimensions as that produced.

Richard Furlong, police corporal, confirmed the testimony of the previous witness, and said that on the evening in question he visited Moran on his beat at 20 minutes to 11 o'clock, and found him at the corner of Murray and William streets. Where the pool of blood was found were the marks of boots which the witness afterwards found to correspond with those worn by A'hern and given him by constable Male.

Constable Male deposed to having taken prisoner's boots from him and giving them to Furlong.

Constable Maloney testified as to the similarity of the boot marks in Murray Street with those made by prisoner's boots.

Dr Ferguson deposed that upon examining Moran at the hospital, he found him insensible ; upon the left side of the head was a wound extending from the crown downwards four inches, cut down to the bone, also apparently a scratched wound forking from the lower part ; there was also another but slighter wound on the same side ; also the marks of a blow down the left side of the face to the chin ; the first wound might have been occasioned by the stick produced, and the fork by the nail ; there were also contusions on the back of the head and neck perhaps made by a kick or fall. There must have been three blows on the left side of the head and face. Moran remained totally unconscious for three days, and partially so for four days longer I thought him in danger of his life.

In his defence prisoner said Constable Kennedy's evidence was anything but correct; that if he had attempted to strike him it was not likely that he would have been allowed to retain his stick until they got near the station. Prisoner also put in a written statement in which he admitted the assault upon Moran but denied he intended to kill him, also that when he met Kennedy he [Kennedy] said to him "you will not hit me," and asked him to go to the lock-up with him, to which he agreed and went quietly; that after receiving the letter from the Acting Comptroller General in the afternoon, he left Fremantle and when he met Moran, he was excited by the revoking of his ticket-of-leave and by some drink.

In summing up His Honor said that it appeared the only point requiring consideration from the jury, after the admission of the assault by the prisoner, was the intention, and for their guidance pointed out the particular portions of the evidence bearing upon the point, which he said must be judged by the overt acts of the prisoner, as the weapon alone, being only a stick, was not sufficient evidence of an intent to murder, but there was the fact that there must have been more than one blow, and again, there was evident intention of assaulting Kennedy, and afterwards the total absence of all remorse.

After an absence of about an hour the Jury returned with a verdict of Guilty, and His Honor sentenced the prisoner to Death, without holding out to him any hope of mercy.