

[The Proceedings of the Old Bailey](#)**London's Central Criminal Court, 1674 to 1913**

THOMAS GOLDEN VAILE, Killing > manslaughter, 28th February 1853.

Reference Number: t18530228-411

Offence: [Killing](#) > [manslaughter](#)

Verdict: [Not Guilty](#) > [unknown](#)

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411. THOMAS GOLDEN VAILE was indicted for, that he, on 30th Dec, 1852, feloniously did kill and slay a certain man known by the name of Doyle, otherwise called *Maknolu*, otherwise called *Kawadalolio*.

MESSRS. BALLANTINE and PARRY conducted the Prosecution.

REV. WILLIAM ELLIS (*sworn as interpreter*). The book upon which the witnesses are about to be sworn is a translation of the New Testament, and part of the Psalms, into their language; the New Testament is entire, Gospels and Epistles; I presume that the witness now in the box (*Johnny Bull*) is quite able to read and write—he is a Christian.

COURT. *Q.* What language is this? *A.* The Polynesian—that language prevails over the whole of the islands of the Pacific—from the Friendly Islands in the west, to Easter Island in the east, and from New Zealand in the south, to the Sandwich Islands in the north, it is all one language; westward of that a different language prevails.

JOHNNY BULL (*through the interpreter*). My name is Oaka. I am a native of the Sandwich Islands—I remember the ship *Pekin* coming to Honolulu in the summer of last year—the prisoner was chief mate of the ship—I, with fourteen other natives of the Sandwich Islands, was engaged to work the ship to England—there were fifteen of us—among us was one who died on board the vessel as she was coming home—his name was Kaila; that was his foreign name—his native name was *Kawadalolio*—the name by which he was known by the foreigners was Doyle, or Kaila—we left Honolulu on board the *Pekin*—there were fifteen natives on board, and eight foreigners—there were twenty-three persons altogether—I remember Doyle, or Kaila's death—it was four months after we went on board—I remember something happening to him the day before he died—on the day before his dying, I saw the mate (the prisoner) strike him in the face or eye—I remember the mate ordering Doyle to go up the rigging—at that time Doyle had a disease in his feet, which caused him great pain—when he was ordered to go up the rigging, he went up—the first thing I noticed was the officer (the prisoner) calling upon him to make haste; he said, "Go up quickly;" and the next thing I saw was the officer following him with a piece of wood—it was like what we call a handspike—according to my recollection, it was a piece of wood as long as my arm, and nearly as large as my arm; I saw the officer, with the piece of wood in his hand, follow Kaila, and strike him at the back of the neck three times, and then he fell down on the deck—I should think it was about four fathoms from the place where he was to the deck—he fell with his face to the deck—he did not catch or touch the ropes as he fell, but fell directly to the deck—after he fell, he had not power to rise or to move, but continued as if asleep or insensible—he remained there from noon until the evening—whilst he was lying on the deck, I saw the prisoner with a cord or rope strike him three times.

COURT. *Q.* Was that immediately after he fell? *A.* It was immediately after he fell from the rigging; the prisoner also descended, threw away the piece of wood, took up a piece of cord or rope, and struck him three times with it.

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Mr. PARRY. *Q.* As he lay on the deck, was anything offered to him to eat or drink? *A.* Nothing as he lay on the deck, but after we had taken him forward (I was one that helped to take him forward) we offered him something to eat and something to drink, but he neither ate nor drank.

JURY. *Q.* When you say we, do you mean the natives? *A.* The officer gave as the food, but we took it to Doyle.

Mr. PARRY. *Q.* Was he carried below in the evening? *A.* He was; and we laid him in the cabin, and looked at his neck, and saw a dark place on his neck, and also on his back—the time when the prisoner struck him in the eye was before that time that he struck him with the wood; it was not the same day—Doyle continued till past midnight, and died just before daylight—while the mate was striking Doyle, the captain was in the stern; he could not see the striking; Mr. Gumming, the second mate, was aloft—all of us who were aloft could see the mate strike Doyle; the vessel had three masts—I was aloft when the mate struck Doyle; I was on the right side, on the same side that Doyle fell—he had a shirt on—after the falling, and the striking with the rope, and while he was lying on the deck, the captain came to the place, and saw him lie—nothing was done for him by the captain or the mate, or any of the foreigners, from the time of his falling—the sun was directly over head when he was committed to the deep—before that he was wrapped and sewn up in a blanket; he was sewn up by *Joe*, one of the natives—from the time that he lay on the deck, neither the captain, the first officer, the second officer, or any of the foreigners, came to him, or did anything with him; we took him down, we examined his body, we wrapped him up and sewed him up in the blanket, and I myself put the shot at his feet, to make him sink.

Cross-examined by Mr. BODKIN. *Q.* Did not you just now state that the mate struck Doyle on the eye the day before he died? *A.* It was not on that day, it was on a previous day—if I said so, I did not understand—it was not on that day—at the time this happened it was a day of wind but not a tempestuous

day—the wind was so strong, the sails being all out, that the captain was afraid it would break the mast, and ordered us up to make the sails less—we had all gone up aloft but Doyle; he remained below, in consequence of the pain in his feet.

Q. Did the prisoner carry the hand-spike up in one hand or both? A. He took the wood up in one hand, and when he got up he stood with his feet on the rigging, and took both hands to hold the stick, and struck Doyle with the stick in both hands, three times—when he came down he threw away the piece of wood down on the deck—the rope that he then took up and beat Doyle with was a piece of rope belonging to the rigging that we had been making on a former day, and it was near one of the pins by the side of the ship—it was a common piece of rigging—it was not so big as my arm—it was the ordinary size of rope for rigging.

Q. Did not the captain or one of the officers order you and the other natives to carry the man down below, directly they saw him lying on the deck? A. At the time of his falling down, the captain, the first officer, the second officer, did not say anything to us, but told us to go on with the work of the ship—he was left there till the evening, and in the evening they told us to take him away—we had never objected to Doyle's being down in the cabin with us—the time before, when the prisoner struck him in the eye, and his eye was bad, the company of chiefs (the officers) in the ship took him aft, and took him away from us—we could not say why they did so; perhaps because



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they were angry with us—we do not know the foundation of evil—we did not refuse to let him come into our company—at the time of the striking I was towards the outside of the rigging, on the higher side, the windward side (a sketch of a ship was here shown to the witness, upon which he pointed out the position of the prisoner and deceased and himself)—I was at the extreme point—Doyle was here, and the officer was down at the bottom; and on account of my being at the extreme point I could see very clearly—we were all of us up on the yard, on the sail, the wind was flapping the sail about and we were holding on, but I was at the end and saw distinctly—I do not know whether some of the men had come down before the beating was over or not, but I did not see any.

JURY. Q. What was the general treatment of the crew, with the exception of this case? A. For one week after we left Honolulu, until after the first sabbath of our sailing, they behaved kindly to us, they behaved well to us; but after that they behaved differently; and on several occasions the captain was very angry, the first officer was very angry, the second officer was very angry, the third officer was very angry, and they were frequently very angry with us, and we were in fear.

TOM (through the interpreter). My name is Ka-a-vee—on board the ship they called me Tom—I am a native of the Sandwich Islands. I went on board the ship *Pekin*—I recollect the death of Doyle—I saw the striking of his eye—afterwards I saw the striking—we were all ordered aloft; the greater part had gone aloft—I was near Doyle, and was going aloft, I had not got up; I was on the rigging, going up, and the officer (pointing to the prisoner) called to Doyle, and said, "Go up quick, quick! quick, quick!" but Doyle could not go up quickly, in consequence of the pain of his feet—I do not know correctly how high Doyle had got up before anything occurred, perhaps it was about four fathoms—I do not think it was quite so high as this room—I then saw the officer hit him with a wood—he took the piece of wood from the deck, and struck him on the back of the neck—I saw him strike him four times, he then fell down on the deck—he fell with his face downwards—while he was lying on the deck, I saw the prisoner strike him with a rope on the back—at this time the sun was climbing towards the centre, but was not quite over our heads—Doyle had his general ordinary health, common health—we had all been working that day, and Doyle with us—the mate knew that Doyle's feet were bad—after he was struck with the rope he was left on the deck for a long time—he did not speak at all after he fell—the captain and the officers looked at him as they went about; they did not examine his person, they did not look scrutinously, they did not handle him—he died at very nearly the opening of the day—before he died we saw marks on his back, when we took him down; we also saw a mark on the neck—that was where I had seen him struck; it was a reddish mark, as if from a blow—it was not a very large place that was black, but a larger place that was red, it was on the back of his neck; it was not very long, it was wider than long—Joe sewed him up before he was thrown into the sea; the captain and mate did not examine him before he was thrown into the sea; it was in the middle of the day that he was thrown over; the sun was just above us, and it was very near to having our dinner.

Cross-examined by Mr. BODKIN. Q. Whereabouts in the rigging were you when you saw the first blow struck? A. I was on the rigging above Doyle, not very far from him (pointing out his position on the sketch); all the other men were up aloft, but I had no shoes, and could not go very fast, and therefore I was not up with them: I went up after the striking—I was aloft



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when Doyle was struck with the rope on the deck—what he was struck with in the rigging was what we, the natives, call the wood; foreigners call it a handspike—the mate took the wood in his left hand, and took hold of the rope to go up with his right hand, till he got to Doyle, then he again said, "Make haste!" and struck him with the wood on the neck—when he struck the wood was in his right hand, but he held with his knees on to the ropes of the ship, and took both hands to the wood—I saw him myself thrust his knee through the rattlin of the rigging, to hold himself fast, and then take both bands to the wood—I saw him strike him four times, in the same manner, with both hands.

JURY. Q. What was the general treatment during the voyage, with the exception of this individual case? A. Within a week after we had got out to sea they called us *niggers*, and said we were brutes; and were very angry with us.

COURT. Q. In what language did they call you brutes?—how did they express themselves? Do you understand English? A. Very little I know, not much—they did not beat us, but we had very little food—we did not mess with them—we, the natives, had our food together, not with the foreigners—there was no disease on board but such as is common among us; some of us had boils on parts of our bodies, and Doyle had a very bad foot—we arrived in England in good health.

JOE (through the interpreter). My name is Kahamanooe; I was called Joe on board the *Pekin*. I went on board at Honolulu—a man named Doyle was one of my companions—I remember the mate ordering him to go up the rigging—I saw him following up after Doyle with the wood, and saying, "Be quick! be quick!"—Doyle had a sore foot—I saw the mate strike Doyle with the wood three times; Doyle then fell down with his face downwards—after he fell he appeared as if asleep—I think the height he fell from was about four fathoms; I do not know exactly—I did not see anything else done to him after he fell

from the rigging; he laid there from noon till the evening—I was one who, when the work was done, helped to carry him forwards—I spoke to him, but he made no answer, nor any motion or sign—he had been in his ordinary health before that day, commonly well—I remember his having a black eye; I saw it done—the first officer did it—it was past midnight, but before day, when Doyle died—I sewed him up—before I sewed him up, I spoke to the captain about his death, and it was because the captain told us that we sewed him up—before sewing him up, I examined his body; there was a black place at the back of the neck, and a black place on the hack—the place at the back of the neck was the same place where he had been struck by the mate with the wood—the mark was the blackness from the striking—from the time that he fell on the deck till he was carried forward, neither the captain, the mate, or any of them did anything to assist him in any way; they looked at him as they passed by—at the time the mate was striking Doyle in the rigging, the captain was astern—he was not able, from where he was, to see the mate and Doyle in the rigging—Mr. Gumming, the second mate, was aloft.

Cross-examined by Mr. BODKIN. Q. Do you remember being examined before the Lord Mayor? A. Yes (looking at his deposition); I put this mark to this paper—what I then said was true (read:—"This deponent, Joe (through an interpreter) on his oath, says, I am a native of the Sandwich Island, Honolulu. I knew Doyle; I think his name was Makaolu—I recollect his dying in the ship—I had not seen anybody do anything to him before he died, only one beat him; it was the mate, about 12 o'clock—I was in the main top.

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Doyle was down on deck—the mate beat him with a stick, or wood, or rope, or something or other, across the back of the neck—he beat him one time, and he fell; then he was going to get up, and could not—he fell down, and was like sleep; he lay down, that is all—I did not hear him speak—no one else beat him—he was taken forward—he had nothing to eat after that—I speak to him; he cannot speak—I help carry him forward, and he could not open his eyes clearly (*the witness turns up his eyes, and catches his breath*)—the mate was the prisoner—he, Doyle, was not sick before—he was black on the neck and one eye when I sewed him up; he was also black on the back and other parts—I saw the mate strike him, and he fell down, and then the mate struck him two or three times, and he could not get up again, and I think that he died from that—I was in the main top—Doyle was called to go up, but he had had a large foot and could not, and that was the cause of the mate striking him—he struck him on the ribs, as well as the neck—the mate struck him on the eye with his hand, and made that bad; the mate then went down and got a wood, and struck him with that—I told the captain in the morning the man was dead, and he told me to sew him up—we all went to tell the captain—Doyle had done his work in the morning with us; he did not then seem ill or in pain—I did not see the captain or second mate there when the prisoner beat him—the captain was astern at that time—Mr. Gumming was aloft with us.

Cross-examined. I saw the mate strike Doyle—I was above by the sail; I was on the windward side—the prisoner struck Doyle in the rigging three times, I saw, with a rope—Doyle fell from the rigging on to the deck—the prisoner beat Doyle on the deck once with the wood—Doyle was standing up, but fell down from the blow; he fell down, I think, from the blow—when the mate beat Doyle with the wood, I was above—the mate was holding the wood in his hand—I did not see where he took it from—it was at another time that the mate struck Doyle in the eye—after Doyle was beaten with the wood, the mate said, 'Take him forward'—the mate did not tell us to take him below till it was dark; when it was black dark he said to us, 'Take him below'—we did not refuse to take him below before that time; we were willing to do so—we pumped the ship before he was taken below, and when that was done, and it was dark, the mate said, 'Take him below'—we did not pump again. ")

Q. Did you see the prisoner strike Doyle with anything when he was on the deck? A. Do you mean the striking with the rope? yes, I did; when I was in the rigging he struck with the wood.

Q. How was it that you came to say, when you were examined before, that he was struck in the rigging three times with a rope? A. I then made a general statement of what I thought was the thing—I do not exactly recollect whether I said the rope then—nobody has since told me that it was a stick, and not a rope, that he was struck with in the rigging—I saw the striking with the wood.

Mr. BALLANTINE. *Q. Who interpreted for you, when you were before the Lord Mayor? A. We, ourselves.*

Mr. BODKIN *to REV. W. ELLIS. Q. Did you read over these deposition to the witnesses afterwards, and explain them to them? A. I read over some depositions, I suppose it was these—they were handed to them to sign.*

COURT. *Q. Were you present at the examination? A. Not at the first, when the statement now read was taken—I should not think the men knew enough of English to be competent interpreters.*

Mr. BALLANTINE. *Q. With these persons, is the mode in which a question is put a very important matter? A. it is exceedingly important; so*

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much so, that I have felt considerable difficulty in limiting myself to the peculiar idiom in which the questions are put—I could have obtained the information much more easily by altering the question, and adapting it more to their form of expression.

ARCHIBALD BARCLAY, ESQ. *I am secretary to the Hudson's Bay Company. I heard that fifteen natives of the Sandwich Islands had embarked on board the *Pekin* and finding that only fourteen applied for their wages, I made inquiries, the result of which has been the present one—previous to that time I had received from the mate or captain no information of the death of this man—in consequence of an application to the Hudson's Bay Company to remit the wages of these men, I called on the agent of the owners on 31st Jan.*

COURT. *Q. When did the vessel arrive at Newcastle? A. About 10th Jan.—there was every opportunity for a communication to be made to me by the people of the ship about the death of the man because I was in communication with the agent of the owners here to make arrangements, and no explanation was given of there being only fourteen men instead of fifteen—I then went to the Sailor's Home, and inquired into the business, and found on examining some of them that one was missing, and I represented the matter to the Governor of the Company, who ordered an investigation to take place.*

Witnesses for the Defence.

GEORGE WHITBY. *I was master of the ship *Pekin*. At the latter end of the year 1850, she was chartered by the agents of the Hudson's Bay Company upon a voyage to the Columbia River—we arrived at Columbia River in June, 1851, and there discharged our cargo—after we arrived there, sixteen of the*

crew deserted, I think the second day after our arrival there—I was detained there thirteen months—I was only able to engage three seamen to assist me in navigating the ship to the Sandwich Islands—I arrived at Honolulu about 23rd or 24th Aug., 1852—I stayed there ten or eleven days, and finding I could get no English seamen to navigate the vessel, I engaged fifteen natives with the sanction of the Governor—I left Honolulu on 2nd Sept.—I had a list of their names furnished to me, but I never could get them to answer to their names—I think only three out of the fifteen had been to sea—besides the natives, my crew consisted of Mr. Vaile my chief officer; Mr. Gumming, my second officer; Loftus, my third officer; two apprentices and the steward; making seven with myself—I gave the natives English names—the deceased was called Doyle—he natives were extremely lazy and dirty, and they refused to let the man Doyle down below for many weeks, I think for as long as five weeks, during which time I had the man aft, always under my own eye, to see that he got his allowance of food and that he ate it himself, that the others did not rob him of it—I observed nothing particular about the man as to his state of health, only that he was rather slow—on two previous occasions he complained of headache, and I gave him a little simple medicine—he had not been to sea before—I remember some time before he died his being missed on the watch being called over, which was about 8 o'clock in the evening—we hunted for him high and low about the vessel until about half past 9 o'clock I think, when we found him stowed between the spars in the after part of the vessel, with a great quantity of biscuit stowed away in his shirt, which he had taken off his body—I cannot tell for what purpose he was there, but his own comrades the natives brought him up from there, and then he either pretended to be or was in a state of insensibility; however, I found the hartshorn bottle quickly relieved him, he came to his senses, and remained on the main hatch rolled up in his blanket the whole of the night,

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and in the morning he got up and ate his breakfast the same as the others did—he was extremely indolent, and most filthy—I believe it was through that in the first instance that the other men would not associate with him—he would never even take down his trowsers—on 30th Dec. 1852, we were a little distance from the Western Islands—I cannot say the exact latitude—my logbook is here (*referring to it*)—on 30th Dec. we were about 44° 38' north, and 26° west—about noon that day there was an increasing gale, so much so that I had recourse to take in our close reefed main top sail, under which sail alone the ship then was—for that purpose all hands were ordered aloft—both myself and the chief officer were below—it is not usual for either the chief officer or the commander to go aloft—I was on deck, on the poop—I was then taking noon observations, it must have been only a few minutes before noon—I saw Doyle going up the rigging very slowly, and I called Mr. Vaile's attention to him—he was on the port side or left side of the rigging, what is called the shrouds—the other men were all aloft—when I called Mr. Vaile's attention to him he first told him to be quick, and on his remaining standing in the rigging, not moving at all, Mr. Vaile went up the rigging and made him fast with a small piece of broken lead line, which was a piece of condemned lead line—he took and made him fast round the body to one of the shrouds—at this time the wind was blowing very much, and there was a very heavy sea—after Mr. Vaile had passed the line round him he came down on deck—I told him it was of no use punishing the man, that he had better let him come down; and he went up and let him come down accordingly—he walked down the rigging, I swear to that—I was observing Mr. Vaile while he was up in the rigging—I saw the whole of it—no blow whatever was struck by Mr. Vaile or by any person else—Doyle came down the rigging himself—when he came down I believe Mr. Vaile would have struck him had he not been stopped, but Mr. Gumming was down on deck at the time, and he said, Oh, Vaile, it is no use to strike him" and I immediately said the same thing, and Mr. Vaile never struck him at all—when he went up into the rigging, he had nothing whatever in his hand but this small piece of condemned lead line—he had no handspike or anything of the sort—when he was going to strike him it was with the piece of lead line that he had untied, and brought down out of the rigging—the line was about three quarters of an inch in girth I suppose, a small line by which we heave a hand lead, it is made in three strands—after I had interfered, and prevented Vaile from striking Doyle, Doyle stood by the gangway for some short time, and after that he seated himself down on deck—I dare say he was standing by the gangway two or three minutes—he then squatted himself down on deck in the gangway—I did not give any directions then as to what was to be done with him—afterwards Mr. Vaile himself ordered him to be taken forward—that was when he had lain down—it was their custom very often to lie down on deck immediately they had knocked off work—the men were sent to their dinner after this reefing was done—Mr. Vaile ordered some of the men to take Doyle below—he was not taken below—they took him forward, and put him underneath the top-gallant forecastle, and there left him—at 7 o'clock in the evening I heard that he was still lying underneath the top-gallant forecastle—that is a place which is extremely wet in bad weather; it was very wet at that time—I did nothing with him—he was lying there to all appearance asleep, he had his blankets round him—he was taken down after that by Mr. Vaile's directions—on the morning of the 31st I received information of his death—the body was brought on deck about noon of that day—I examined the body, and so did Mr. Vaile—I observed no marks of violence upon it

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whatever—I examined it carefully—I cannot account for his death in any other way than natural causes—that was the conclusion to which I came from the examination of the body, and from what I knew of his previous state of health—Mr. Vaile has been with me since Aug., 1849, I have never known a kinder officer in my time at sea, which has been twenty-two years—supposing the deceased to have fallen from the rigging, where he was, he must have fallen overboard—he could not possibly have fallen inboard for this reason, that the rigging would serve as a network; and he being in the left hand side of the rigging, it was quite impossible for Mr. Vaile to strike him at all.

COURT. *Q.* Just explain, was he on the windward side? *A.* He was on the weather side, the windward side, that is the port side; the wind was if anything on the port quarter, and the yards were nearly square; if he had fallen he must have fallen overboard—the ship was perfectly upright, the wind was very nearly *aft*; it would not cause any inclination, the yards had no *cant* whatever—they were square; we were what we call *scudding*—there was a very heavy sea at the time—the motion was forward, up and down—the impetus given by the wind would be in the line of the ship's wake—he could not have fallen through the rigging on the deck, it would form a perfect net—he was on the mainmast, on the side of the rigging next the sea; if he had fallen he must have fallen into the sea, the shrouds would have thrown him that way; they were sloping that way; he was not more than one-third of the way up the main rigging; he could not possibly have fallen clear of the shrouds, the rattlin of the rigging forming a perfect net work would have stopped him—that network is generally about twelve or fourteen inches wide.

Q. Then if the ship were rocking somewhat fore and aft, whichever way it happened to be rocking at the moment the man lost his hold, he would be thrown backwards or forwards in the direction of the rocking? *A.* The width of the rigging would prevent that.

Q. What, twelve inches? *A.* That is merely one section of the rattlin; the rigging has a spread of many feet; I should think it might be twelve feet in width fore and aft, and there was a space of twelve feet through which he could not fall; he must have been projected six feet forward or backward in order to fall, and there was not rock enough of the ship for that.

Mr. DEARSLEY. *Q.* Whether that were so or no, are you quite positive that you were observing him, and that he did not fall, and that no blow was struck?
A. I am perfectly positive of it.

Cross-examined by Mr. BALLANTINE. Q. How high was he up when your mate, Vaile, fastened him? *A.* I should judge about one-third the distance up the main rigging; I should think that would not be more than eighteen feet at the utmost—I knew that he had a club foot; I knew that he had a small crack in his foot, which is very common with all seamen; that would not be a subject of any pain whatever; it is caused by sea water; it is not a thing to be of any inconvenience at all: I noticed the fact of his having it, because the men had stated that his feet were sore some days previous, and I had seen what it was, and told him what to do for it; we generally apply a small piece of worsted; I have oftentimes had them myself, and I never got off my duty through having them—during the time I had them I had to mount the rigging—I do not think the crack in the foot was a matter to cause pain.

COURT. *Q.* You say you use worsted; do you mean worsted thread? *A.* Yes; it is a small crack caused by the sea water; it comes just under the big toe, and if you pass a piece of worsted round it it is not of the least inconvenience—you tie it right in the crack.

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Mr. BALLANTINE. *Q.* At all events he had complained of a score foot previously? *A.* He had; in addition to that he had a club foot—his feet were thick, both were the same; they were not deformed, they were very short and thick—he walked in a very strange manner at all times—we had a heavy sea and a high wind at this time.

Q. I suppose it did not occur to you that tying one of the men to the mast would help the navigation of the vessel? *A.* It would help the discipline; it was necessary that some punishment should be adopted in order to prevent others; I thought that tying him up was a good thing, though I did not order him to be tied to the rigging, I ordered him to be liberated—he was there, I should think, from two to five minutes; he might have been then only a minute, I cannot say; I cannot tell the exact time, it was about that time.

Q. Turn to the log, if you please, and read me the account of this man's death? *A.* The account put down is merely this: "About 4 o'clock in the morning departed this life one of the Kanakas, Doyle"—there is nothing stated about his having been tied to the rigging—the chief mate keeps the log; he called my attention to that entry, so far as this, I overhauled the log after the chief mate had written it—every week I generally look over the log.

Q. Here was a man who to all appearance was perfectly well somewhere about 12 o'clock in the day, and who died a very few hours afterwards; did you make any inquiries as to what could have caused his death? *A.* I made inquiries of one or two—I found he had not received his food for one or two previous days, that Bull had had part of it, and a man of the name of *Jem* had had another part—it was from one of the other Kanakas that I heard that Bull had had his food—I think that was one reason why he was weaker than he would have been—it was not necessary to enter that in the log; he was not starved to death—we never do put such things in the log, I have never seen it in my experience—I should not have entered in the log if he had been struck—he was not struck, therefore there was no necessity to enter it—if he had been struck, and I thought it had murdered the man, I should most undoubtedly have entered it, but not otherwise—there is not sufficient reason to enter every time a man is touched on board a ship—except from his food being eaten, I have no other mode of accounting for his death, unless it be from natural causes which were unknown to me, I not being a surgeon—I examined his neck—I will swear that there was nothing but folds of dirt on the back of his neck, there was the mark that I saw but the mark of dirt; there were two or three layers of it, two or three folds; there was no appearance whatever of redness.

Q. What made you examine the back of his neck? *A.* I examined him all over round about the head and face; his mouth was swelled, that was the only part I found—Mr. Vaile also examined him before we had him sewn up—we felt his body, I did not examine his body—I examined the back of his neck because I could see it—I stayed there while the roan was being sewn up—his mouth was the only part that was swollen.

COURT. *Q.* Did that appear to be from a blow? *A.* No; his lips appeared swollen.

Mr. BALLANTINE. *Q.* Have you been in the habit of swearing at him at all? *A.* Well, that I really cannot answer, because I might tell a falsehood by saying so—I do not remember having done so—I did at times swear at the men—I never called him a d—d *nigger* or a *nigger*—I will swear that—I never heard him called a *nigger* by any one—I never heard the other men

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called *niggers*—I have heard them called brutes, but not d—d brutes—there is no memorandum in the log, of the deceased being found between the spars with his shirt full of biscuit two or three weeks before his death; we do not enter such things in the log—there is no memorandum in the log, of any illness of his to my knowledge, there may be (*referring to the log*)—there is not in this at all events; it would be in the other book if there was any—I have stated that it would be impossible for Mr. Vaile to have struck him; tying him is quite a different thing, a man might tie him though he could not strike him; he could not hold on with his feet and knees in the main rigging—he could hold on sufficiently to tie him, but not to strike him—he had the use of both his hands to tie him; he could pass his bands right round the shrouds, which he did—I cannot say the exact length of the line he used, it might be a fathom—I heard Doyle say nothing, but when he was down on deck he asked one of the natives for some water in his own language—I think the mate told him to be quick up the rigging—that was all I heard him say—and then he went and tied him—I was standing on the poop—the other men were aloft—Tom was aloft, and Johnny Bull also, on the same mast they had gone up before—these men had never made any complaints, they seemed perfectly satisfied—they never made any complaints to me, or of me to my knowledge—when we were at the Sandwich Islands, and were short of the crew, a guarantee was given by the agent of the Hudson's Bay Company there.

Q. When you got to London did you make any communication of the death of one of these men? *A.* I spoke of it in the office; I spoke of it also at Newcastle—I did not make any communication to the Company—it was in Messrs. T. and W. Smith's offices that I spoke of it—I did not tell the owners, because they were not there—I stated in the office that one of the natives had died—Mr. Southern was there at the time.

COURT. *Q.* Was that in the office of the Hudson's Bay Company? *A.* No; the office of the owners.

Mr. BALLANTINE. *Q.* Did you make any communication to Messrs. Smith or the Company of the fact? *A.* No.

Mr. BODKIN. *Q.* You mentioned the name of some person who was there. *A.* Mr. Southern, he was in the room it the time I made the statement—I did not make any particular statement, I spoke of it, that one of the men out of the fifteen had died coming home—I had nothing-whatever to do with the Hudson's Bay Company, after delivering my cargo at Columbia River—when I returned, the log and papers were given up in the ordinary way to the owners at Newcastle.

COURT. *Q.* Your charter by the Hudson's Bay Company finished at Columbia River? *A.* Yes; I then came to England on account of my owners—I went and cut a cargo of spars and wood as a cargo—the burden of the ship was 562 tons; her complement was thirty-two hands, we were very short—I went down the Columbia River at the risk of my life, with three men and an apprentice; some of the men ran away and went to California; some remained there in the river working for American people, they got better wages than with me, they got something near 20*l.* a month; I wish I could have ran away myself.

Mr. BODKIN. *Q.* You have been asked about these men making any complaint; did either of them during the rest of the voyage make any complaint or representation to you of any violence done to this man Doyle? *A.* None of them ever made a complaint to me of anything of the sort.

FRANCIS SARFIELD CUMMING. I was second officer of the *Pekin*—I have been a seafaring man seven years—I went out with the *Pekin* from England

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—the crew deserted, as a matter of course—when we got to the Sandwich Islands the captain made an arrangement to get some natives, and fifteen natives came on board, among whom was one who went by the name of Doyle; he was about as brutally used as a man could be, by the rest of the men—he was kicked, rope's-ended, and turned out of the forecabin in 61 1/2 latitude, at as cold a place as there is in that latitude—he slept in a small locker on deck, which was used for boatswain's stores—I know no more reason for this than that the men seemed to have a dislike to him and his dirty habits; the particular dislike arose from that—they were not quartered pretty close to one another about the forecabin—there was no degree of dirt or nuisance but what he would be guilty of—Mr. Vaile was obliged to let him sleep in the locker—he told the other men to let him in several times, but they would not, and then the poor man had no other place than the open deck, so of course Mr. Vaile let him have this place as a shelter—I remember some time before Doyle's death his being missed in the ship, I cannot swear to the time, it may be five or six weeks before his death, he was found on the port side between decks, stowed among the spars, which we were bringing home as part cargo and part ballast—I was not one of the persons that found him—I saw him after he had been brought on deck; he was in a complete state of nature—the captain administered restoratives to him in the shape of hartshorn—he was rolled in blankets and laid on the main batch, but whether he really was insensible, or whether it was skulking, I cannot pretend to say, nor yet the exact time at which he appeared to come to—he was well next day—no provisions were found in this place at that exact time; I believe some days afterwards the captain was down looking round the ship, and in among the spars where Doyle was found, was a shirt which I had given him some months before; and in that shirt was wrapped a large quantity of bread, which he evidently must have stolen—I remember the day before Doyle died; it was blowing a pretty smart gale of wind, it was necessary to take in as much sail as we possibly could—all hands were called to shorten sail—I heard that order given; I was in my cabin at the time, and went out on deck to take my station, which was in the front of the yard, on the main topsail yard, on the weather-quarter—I went up there—I went up after all the others, as I always did—*Joe* went up before me—I cannot say where Doyle was when I went up, he must have been skulking somewhere; I had not seen him among the other men, or I should also have seen him aloft before I had gone—I did not see him after I had got up aloft, I could not see him from aloft, that is too dangerous a game to be trying, to look down on deck at that which is underneath you, my life is of more value; I saw all the men, *Joe*, *Tom*, and *Johnny Bull*, up on the yards, but their exact situations on the yards I do not know; I cannot say whether they were close to me or not; I should not think they were on the same yard, because *Joe* was invariably down to leeward with the eldest apprentice, *Waite*, that was his station by rights, he received orders to go there; we were all at work on one sail, the main topsail, we were all on the same yard, it was blowing a gale of wind, it could not blow much harder unless it was a hurricane—it is generally pretty difficult to hold on, unless you keep your eyes about you—the yard I was on is attached to the main topmast—the men engaged in reefing a sail are looking forward, except the two at the *earing*—one of them looks one way, and one the other, both amidships—the men were on the same yard with me, and I could not see where Doyle was—I could not see the main rigging, the maintop interfered and intercepted my view—the sail was also flapping about—I remained up until the main topsail"

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was reefed—I then came down, and the other men also, we were all coming down at the same time—as I came down I passed Doyle in the rigging, he was then walking down slowly, I was getting down as quick as I could out of the cold, he was walking slowly down; I saw him step over the gangway, which is about the height of four feet, and step down on deck, and stand there about a minute or two—I saw Mr. Vaile about to strike him with a piece of condemned lead line; I said to him, "What is the good of striking him, he is no use at any time, you may as well let him be;" and he did not strike him—I then went away, and when I came back next, Doyle was lying on the main deck very comfortably stretched out—that may have been about ten minutes afterwards; I did not hear the order given to remove him; I missed him off the deck about 1 o'clock; it was my watch on the deck from 12 to 6 o'clock; I had to attend to the steering of the ship, in fact I had to do it myself, because none of the *Kanaka's* could do it in a gale; therefore the order being given by Vaile, on the deck, I could not hear it at the helm; but at 1 o'clock I was just at the break of the poop, and missed him from there—it is not true that he remained there for six or seven hours after I first saw him—I found out afterwards that he was taken forward under the top gallant forecabin—that is a wet place, especially in bad weather; I was only told of his being there, I did not see him there myself—I next saw him when he was dead, that was about 11 o'clock next day; I saw his body then—I did not observe any marks whatever of blows about him; I noticed the back of his neck and shoulders while they were sewing him up; I did not help to sew him up. Heaven forbid—I saw no mark, or anything but the natural dirt of him; it is the nature of them to be dirty; they are an unnatural set; they are always in a dirty state, and in a very uncomfortable state too, I am certain.

COURT. *Q.* In their own country, do they wear clothes such as Europeans do. *A.* Yes; some of them, some do not; those that can afford them do, and glory in the idea of it—those that cannot afford them are obliged to be content with such things as Nature provides them with.

Mr. BODKIN. *Q.* Do you know of any article of dress having been given to the deceased? *A.* Yes; I know that a great many had been given to him, some by the captain, some by myself, some by the steward, and some by Mr. Vaile—when he came on board he had a pair of trowsers and a shirt, and with that he left to go a four months' voyage; that was the only rag he had belonging to him—I have been acquainted with Mr. Vaile since the Aug. of 1849—as an officer those above him can give him the highest character; for my own part I shall be glad to imitate his mode of proceeding as a superior officer; as a

man he is one of the kindest-hearted men that ever lived, a better cannot live.

Cross-examined by Mr. BALLANTINE. Q. What countryman are you? *A.* I was born in the City and Liberties of Westminster, in the county of Middlesex, Sir—I did not call these fellows *niggers*; they are not so good as *niggers*, because a *nigger* is a clean and a willing man, whereas these men are dirty and lazy—these are not so good as those *niggers* that I have been accustomed to—Doyle got brutally ill used by his countrymen and rope's ended—I frequently interfered with them—I took hold of a man named George, and shook him pretty heavily one day for it, because Doyle was a much less man than him.

Q. When this man was dead, if he had been so brutally ill used, kicked, and beaten, did it not occur to you that it would be worth while to examine his body to see if there were any marks? *A.* No, it did not; I am no

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coroner—I had no idea of such a thing—I should come to a conclusion without looking to see if there were any marks—the conclusion that I did come to was that he perhaps had died from those causes—I came to no conclusion—it was not ray place to examine him, I cannot say whose place it was—nobody examined his body that I saw, there was no special examination—I cannot pretend to say whether the captain knew that he had been brutally ill used—I did not tell him—I reported when they stole the food from him I did not report their brutally ill treating him, I dare say I might have mentioned it, but if is a thing I have quite forgotten—I do not know whether there is any such thing in the log; I neither wrote the log or looked at it—it was ten minutes after he had gone down from the shrouds by himself that I found him lying comfortably on the deck—I do not know whether I am bound in duty to answer whether I put my toe to him and turned him round to see who he was, but I did not—he was lying very comfortably, full length, I do not say he was stretched straight out—he was not lying on his face, apparently on his side—I could see his face, his lips were not swollen—I am on my oath—they were not swollen—I did not stoop down to him—I looked at him; I wondered what business he had to lie there—I did not ask him, because I had done with him; I did not trouble myself at all about him; he was no use when he was up—I cannot say whether it was necessary to take in the sails any more that day; I really have forgotten; we take in sail and make sail so frequently, perhaps three or four times in four hours—it was not necessary to take in sail again within ten or twelve minutes that I recollect.

COURT. Q. What is taking in sail? *A.* Shortening sail, reducing the quantity—we went up in this gale of wind to do that—we did it—you have to reduce or increase sail, according as the gale increases or not—it was very nearly as high a wind as could blow—we had very little sail.

Mr. BALLANTINE. Q. You say you saw Vaile about to strike Doyle; just show us what he was doing? *A.* If you have got a small piece of lead line I can show you in a minute—he was just going to hit him so (*waving his hand*)—I cannot pretend to say whether I was up in the rigging again that day, I might have been up in the rigging half a dozen times that day.

Mr. BODKIN to GEORGE WHITBY. Q. You have told us that you ordered all hands aloft for the purpose of reefing the main topsail? *A.* Yes; we could not have done it again that day, considering it was the last and closest reef that we took in; but there were other sails loose besides that.

COURT. Q. Do you remember whether you took in any more sail? *A.* We did not take in any more—the mainsail was already taken in, but it was furled afterwards; it was hauled up at the time of the main topsail being reefed, but it was not furled; it was all had snugly up by the buntings, lashings, and so on, close to the yard, ready for furling—the main topsail was then put into the same state, that is, close reefed, so that it could not be reefed any closer, unless it were clewed up and furled also; therefore, after that sail was close reefed, the mainsail alone was left—in the heaviest gale the vessel generally reduces all but her close reefed main topsail; that is merely to counterbalance the effect of a heavy sea on the ship; it enables her to obey the rudder.

THOMAS WAITE. I was one of the apprentices on board the *Pekin*. I remember coming from the Sandwich Islands—I knew the deceased—the other foreigners would not allow him to sleep below in the forecabin with them, and they took his food from him; I have often seen them hit him with ropes and with their fists and hands—I remember being at the Western Islands when there was a gale of wind, and all hands were called for the purpose of taking in sails—I went aloft—I did not see Doyle; I went up before

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him—I passed him in the rigging; he was then coming down—I was a little below him—he was coming down slower than I was—when I got on deck I had duties to perform, and I saw him come down and step over the gangway—he walked down on deck himself—I saw him standing in the gangway—I was there perhaps four minutes, and then went away, and saw no more of him—after I went away I heard the prisoner tell the natives to take Doyle below, and they took him under the forecabin; that was perhaps twenty minutes or half an hour after I came down from the rigging—I did not go to the forecabin at that time; I went at 7 o'clock in the evening, and he was then in a very wet state, and I told the prisoner that he was lying in the forecabin, under the topgallant, and they had not taken him below as he had ordered—the men were pumping the ship out at that time, but the prisoner would not let them go on till they had taken him down, and then they took him down—I saw his dead body next day for two or three minutes—I noticed no marks of violence, but I did not look for that particular purpose—if there had been marks on the neck or back I should have seen them—I have known the prisoner since 1850; he is the kindest officer I was ever with.

Cross-examined. Q. Were prayers read over the deceased? *A.* Yes, by Captain Whitby, who read the whole service when he was consigned to the deep—the men were not in the habit of calling the natives *niggers* or brutes; they never did so—we do not call that class of men *niggers*—I dare say I have called them brutes—I have considered it necessary to start them, and have bit them with a small piece of line—they would be started as often as they required it, every time they were wanted.

Q. So then a piece of line was the mode adopted to request them to go to their work? *A.* Not at first, till we found they would not go without—I did not find it necessary to start them for the first week—we had a moderately quick passage; it was not one of the best ever known, it was not extraordinarily quick—I did not see the man tied in the rigging—I never saw any man tied in the rigging, that I recollect—I have been at sea three years and a half—we took these men on board at the Sandwich Islands; we were then going into a warmer climate—it was warmer during this week than it was at the Sandwich Islands—this is my name to these depositions (*these being read, stated, "I saw the deceased lashed in the rigging; I did not see who lashed him in it; it was in the forenoon; we were all coming down from aloft, and I passed him coming down"*)—that is what I said before the Lord Mayor, it is true—he was

just untying himself when I got down, when I passed him coming down.

Q. Which is true; what you have sworn to-day, or what you swore before the Lord Mayor, or are either of them true? *A.* I know that he came down directly after me; I have made a mistake about saying I saw him lashed there.

Q. Let me call your particular attention to what you did swear: you said, "He was well, to all appearance, prior to his death. I recollect the day before he died, the weather was very windy that day. I saw the deceased lashed in the rigging; I did not see who lashed him in; it was in the forenoon, we were all coming down from aloft, and I passed him coming down; he came down almost directly after us; I did not see him unloose himself, but I heard that he did;" now is that all a mistake? *A.* No, it is all the same as I have said just now, except that I said I saw him lashed there—he might have been tied there, for anything I know, when I passed him coming down—I do not know whether he was lashed at the moment—I am apprenticed to Mr. Thomas Smith—I do not know whether I am

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going another voyage with the same captain; perhaps not, I do not know; I have made no inquiry.

Q. Do you expect to go another voyage, if the prisoner is acquitted? *A.* I do not know even what ship I shall go in—I am apprenticed to the owners; they have several ships, and send their men by what ships they please.

Mr. BODKIN. *Q.* Had you heard that anybody had unfastened themselves from the rigging? *A.* Yes; I heard that the deceased had unfastened himself from the shrouds—I did not as I came down take sufficient notice of him to see whether he was lashed to the rigging or not—I was down on deck about two minutes before he came down—I heard the prisoner give directions for him to be carried below—from the time of his giving those directions until the prisoner was carried to the forecastle, there was no going aloft to do anything to the sails, or anything of that kind that I remember, but I cannot remember exactly.

ALFRED JOHN LOFTUS. I was one of the apprentices on board the *Pekis*, I acted as third mate—I was apprenticed to Smiths, the owners of the vessel, I am not now; I am out of my time—I remember the natives coming on board at the Sandwich Islands—I remember Doyle; too well—he could not have been treated worse than he was by the different men—they did not let him sleep in the same place with them, they bundled him up into a locker—on the day before his death there was a gale, and all hands were ordered aloft—it was about 11 o'clock in the day, I cannot tell exactly—when all hands were ordered up, I went up in the middle of them—I got up on the yard where the work was to be done, and after it was done I came down again—I did not see Doyle till I was perched on the main yard, because I had my face inwards—while I was in the rigging, I saw him about one-third of the way up; as I came down I passed by him, and he asked me for water—he was trying to untie the rigging, and Mr. Vaile went up, and was going to make him fast again, because Doyle was casting himself adrift; he had a knot behind his back, made by the two ends of the lead line, and was putting his hand to try to get it adrift—the line was fastened into the rigging; I had not seen who fastened him there—the captain said to Vaile, "No, let him come down, it is no use"—I did not see what he did, and did not see him come down—I was down a few minutes before him, and I did not bother about it—he was down a few minutes after me, and was standing by the gangway—I afterwards saw him reeling about the main hatchway—in the afternoon the chief officer, Mr. Vaile, gave orders to carry him down below to his bunk, but they did not do so; they carried him under the forecastle, and left him—I have known Mr. Vaile since 1849; he is a kind-dispositioned, humane man, I shall never come across another like him.

Cross-examined. *Q.* When you were coming down you saw Doyle with a knot behind him? *A.* Yes; the two ends of it had been just knotted behind his back, and he was trying to unloose it—the ship was nearly upright in the water, nearly square—I saw Mr. Vaile coming up when I was on the main yard—I did not see him mounting, but I saw him when he was close to Doyle, just at him—I did not see him get from the deck into the rigging—Doyle was about one third of the way up, about twelve feet; he was as high as the *leaders*, he could not have tumbled down.

Mr. BODKIN. *Q.* Did you see enough of the prisoner to see whether he had a handspike in his hand? *A.* He had nothing in his hand.

(The prisoner received an excellent character.)

NOT GUILTY .

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