

## David Barnes (tried Oatlands Supreme Court, 12 April 1841)

*“justice is full of strange shapes...”* – David Barnes, September 1841



Figure 1: *The Good Woman Inn* ca 1900

David Barnes has the honor of being the first person sentenced by the Supreme Court sitting at Oatlands. He also has the more dubious honor of being the first witness to find himself behind bars ***instead of the defendant***. Such an unusual scenario requires some explanation....

Barnes was the licensee of the *Good Woman Inn* at Green Ponds (Kempton) and by all accounts a simple, straightforward sort of man. In November 1840, a scruffy character by the name of William Jones stayed overnight at Barnes' hotel. Jones already had a substantial rap sheet, and Barnes immediately suspected him of mischief. At the end of his stay, Jones offered to pay with a crudely forged check. Barnes somehow put the forger off and sought the assistance of Green Ponds District Constable Flexmore, who thought that the only way to prosecute William Jones for the forgery was to actually arrest him in the act. In fact, Flexmore could have arrested Jones simply for possession of the forged cheque, but doesn't seem to have realized this.

With DC Flexmore in tow Barnes returned to the *Good Woman*, accepted the forged cheque from Jones and gave him a bundle of promissory notes in change, totaling £9<sup>1</sup>. DC Flexmore observed the whole

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<sup>1</sup> *Cornwall Chronicle* 11 September 1841 p3

transaction and immediately arrested Jones. Thus, from David Barnes' point of view, having done the right thing by involving the police, he was now down by the substantial sum of £9, which had magically transformed – no longer his money, the £9 was now evidence, in the custody of the Crown.

Thus, when Jones's case (after multiple delays) found its way to the Oatlands Supreme Court, Barnes was determined to get his £9 back (bear in mind that at the time, laborers earned about £50 per annum, so £9 was a substantial sum of money). What Barnes didn't know was that earlier in the year the Attorney General had given permission for Jones to use the very same £9 in his defense, on the grounds that Jones had the money in his possession when arrested. In other words, having stolen £9 from David Barnes, Jones was allowed to use the same money to hire a lawyer to defend himself on the charge of stealing £9 from David Barnes..... (if your head is not spinning by now, it should be).

With that in mind, it is easy to see why, when Barnes was about to be sworn in as a witness, he demurred. In fact, Barnes spoke directly to Justice Algernon Montague, and in his own simple manner, asked for a guarantee that his money would be returned before agreeing to be sworn in as a witness. Sadly, Algernon Montagu was not the sort of judge to see the humor in the situation; instead, he simply demanded that Barnes comply and be sworn in. With visions of his £9 disappearing forever, Barnes refused; exasperated, Justice Montagu passed sentence from the Bench not on the defendant (Jones) but on the victim (Barnes) for contempt of court. And the sentence was neither symbolic nor summary; in fact, Montagu sentenced Barnes to a £20 fine *and* 12 months imprisonment in the Oatlands Gaol.

To add insult to injury, Jones' lawyer (paid with Barnes' money) scented a chance, and asked Justice Montagu to dismiss the case against his client as the principle witness – David Barnes – was now not available as a witness. Incredibly, Montagu agreed, and Jones walked away a free man (although he was re-arrested about a week later for stealing a shawl and sent to Port Arthur<sup>2</sup>). Barnes, on the other hand (who had not stolen anything) was taken into custody and lodged in the Oatlands Gaol. To make matters *even worse*, Jones – having been acquitted – was allowed to keep the money.

David Barnes served every day of his 12 month sentence at the Oatlands Gaol, and his case became something of a cause célèbre (Barnes regularly wrote to the newspapers complaining of his fate). Despite the manifest unfairness of the case, Governor John Franklin declined to intervene with "the dignity of the Court" (karma caught up with Franklin a few years later when he died trying to find the Northwest Passage). Finally, in April 1842, Barnes was released from gaol and returned to his wife and family. Little is known of him after this, although for the next year or two the *Good Woman Inn* seems to have been a popular place in Kempton. The year after his release, Barnes notified the public that Signor Dalle Case, Manager of the Foreign Gymnastic Company, would be giving a series of entertainments at the *Good Woman Inn*, including "Gymnastics, Tight Rope Dancing and Acrobatics"<sup>3</sup>. But all the entertainments in the world could not compensate for David Barnes' traumatic experience; in 1846, Barnes and family left Van Diemen's Land<sup>4</sup>

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<sup>2</sup> *Colonial Times* 16 November 1841 p3

<sup>3</sup> *Launceston Examiner* 1 March 1843 p5

<sup>4</sup> TAHO CSO95/1/1 p326

Prisoners Barracks

Police Office.



ISLAND OF VAN DIEMEN'S LAND TO W.T.

To the Commander of H.M. Colonial Brigade  
To the Keeper of Her Majesty's Gaol at  
To the Superintendent of the Prisoners' Barracks at Port Arthur  
To Mr. J. Morgan the Chief Constable,  
and all District, Division, and Petty Constables of the said Island, and others whom it may concern.

WHEREAS at a General Quarter Session of the Peace holden  
(by adjournment)

No. Police Office Registrar.

on the Twentieth day of May 1841  
at Hobart aforesaid

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William Jones was duly convicted of  
Larceny

Ship to this Colony.

and sentenced to be transported beyond seas for  
the term of Seven Years  
on board the *Enchantress*

he is now ordered by His Excellency the Lieutenant-Governor  
to be sent to Port Arthur on Probation for  
Eighteen Months

F.S. Original Sentence.

7-1-2 yrs

THESE are therefore in Her Majesty's name to command you and  
every of you the said Constables forthwith to convey and deliver him  
into the custody of the said Superintendent of Prisons  
at Port Arthur

Trade.

House Painter James Jones to be dealt with according to the said sentence  
order

Given under my hand and seal at Hobart Town  
aforesaid this Twelfth day of June  
in the year of our Lord one thousand eight hundred  
and forty, one

(Prisoner's Remove Warrant.)  
(Quarter Session.)

Figure 2: Warrant for William Jones' removal to Port Arthur, May 1841