

'NOT HAVING THE FEAR OF GOD BEFORE HER EYES':  
ENFORCEMENT OF THE CRIMINAL LAW IN THE  
SUPREME COURT IN CANTERBURY 1852-1872

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I. INTRODUCTION

This article attempts to describe some aspects of the process of criminal justice in the early Canterbury settlement through the lens of the cases heard in the Supreme Court between 1852 and 1872. It is acknowledged that it is impossible to represent fully such a complex social phenomenon. Although the criminal jurisdiction of the nineteenth century Supreme Court was in practice much wider than its modern counterpart, the High Court, the cases which came before the Court represent an unascertainable fraction of all significant criminal conduct. Some offences were not reported by victims, others were not resolved by the detection or arrest of the offender. In a number of instances the authorities declined to prosecute; in others the matter was decided in the Resident Magistrates' Court either by trying the case itself, or by refusing to commit the alleged offender to the Supreme Court.<sup>1</sup> Despite the existence of this filtering process, more than 700 cases did come before the Supreme Court during the two decades under study. A significant body of archival and newspaper material gives details of a significant proportion of the cases tried, albeit with a degree of selectivity in the reporting which overemphasises some of the less common offences, such as murder, at the expense of less intriguing offences such as larceny or minor assaults. The value of the data is enhanced by the fact that for some two-thirds of the period under study one judge, Henry Barnes Gresson, presided over all criminal trials. Provided the limitations of the data are remembered, it is possible to derive some useful insights about serious criminal offending in Canterbury's formative years. The current study sets out some aspects of the manner in which the Court operated and considers the data as to criminal trials in its social and economic context. It then goes on to describe the main features of the offending which was dealt with by the Court, and looks at some aspects of the different groups of individuals who appeared before the Court. The paper complements to some extent two other recent studies of the operation of the courts in early Canterbury,<sup>2</sup> but it goes further than any previous study of the criminal justice process in operation in Victorian New Zealand, both in the range of offences considered and the geographical area from which cases were drawn.<sup>3</sup>

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1 By far the bulk of offences prosecuted were heard in the Resident Magistrates' Court. For a study of such cases see Jeremy Finn, 'Debt, drunkenness and desertion: The Resident Magistrates' Court in early Canterbury 1851-1861' (2005) 21 *New Zealand Universities Law Review* 452, 470-475.

2 See Jeremy Finn, 'Litigation in the early years of the Canterbury Settlement' in W Prest & S Roche Anleu (eds) *Litigation Past and Present* (2004) 59; Finn, 'Debt, drunkenness and desertion: The Resident Magistrates' Court in early Canterbury 1851-1861', above n 1.

3 For an interesting study which touches on some of the same data, see B Godfrey & G Dunstall, 'The growth of crime and crime control in developing towns: Timaru and Crewe, 1850-1920' in B Godfrey & G Dunstall (eds), *Crime and Empire 1840-1940: criminal justice in local and global context* (2005) 135.

## II. THE SUPREME COURT AND SOME ASPECTS OF ITS OPERATION

The criminal jurisdiction of the Supreme Court was conferred by the *Supreme Court Ordinance 1841*:

2. The Court shall have jurisdiction in all cases as fully as Her Majesty's Courts of Queen's Bench Common Pleas and Exchequer at Westminster have in England, and shall be a Court of oyer and terminer and gaol delivery and assize and nisi prius.

It could therefore deal with all kinds of criminal cases. The Court also had jurisdiction in Admiralty. To ensure there was no doubt about the authority of the judges to try cases arising on the high seas, judges were also commissioned as deputies of the Governor in his role as Vice-Admiral-Commissary and thus were able to exercise the English, rather than the colonial, Admiralty jurisdiction.<sup>4</sup> This was a matter of some importance as a number of prosecutions were brought for offences on ships en route to Lyttelton.<sup>5</sup>

The first sittings of the Supreme Court in the new settlement were held in November 1852. The early sittings were fleeting affairs, conducted at long intervals by a judge on circuit from Wellington. It was not until March 1858 that Canterbury had a resident Supreme Court judge, with the appointment of Henry Barnes Gresson, an Irish lawyer formerly in practice in Christchurch. There followed a significant increase in the frequency of criminal sessions, as four sessions were held in each year from 1859. Once a case came to trial, justice was speedy. Throughout the period of our study it was commonplace for there to be three, four or even six trials on a single day with very few taking even one full day.<sup>6</sup> The longest single trials appear to have been that of Christina Gregg for murder in 1859<sup>7</sup> and the trial of two women for arson and insurance fraud in 1870.<sup>8</sup> It is perhaps significant that in each of these cases the accused was represented by counsel, and cross-examination of witnesses certainly extended the duration of these trials. However the cases were all factually complex and an accused conducting her own case might well have taken as long. Certainly many cases where counsel appeared were conducted with considerable speed.

The proceedings in all these sessions strike the modern eye as notably lacking in procedural safeguards. Cases were first heard by a grand jury which returned either a 'No Bill' (a finding there was insufficient evidence to warrant trying the defendant for the alleged offence) or, much more commonly, a 'True Bill' (a finding that the evidence did warrant the matter going to trial). Every session of the Supreme Court saw an alternation of grand jury hearings and trials. The same panel of jurors served for the two days, with a shuffling of individuals between grand jury and petty (trial)

4 See, for example, the proclamation in relation to Henry Barnes Gresson, *New Zealand Government Gazette*, 8th December 1857.

5 *R v Joanna Cotter & Mary Ann Murphy*, 2 June 1863, reported *Lyttelton Times*, 3 June 1863 ('theft of a watch and chain on the high seas'); *R v William Duncan*, 7 December 1865, reported *Lyttelton Times*, 9 December 1865 (stabbing with intent to do grievous bodily harm). In 1856 the archival records, all that exist, indicate a defendant faced two counts of 'felony at sea' brought under the Court's Admiralty jurisdiction.

6 Lawrence Friedman, *Crime and Punishment in American History* (1993) 245, suggests a similar phenomenon was evident in the USA at this time.

7 *R v Christina Gregg* 5, 6 & 9 December 1859, reported *Lyttelton Times* 7 & 10 December 1859; see part IV below.

8 *R v Margaret Patterson & Emily Williams*, 13, 14 & 15 June 1870, reported *Lyttelton Times*, 14, 15 & 16 June 1870.

jury panels to avoid anyone sitting on both in any one case, but no trial juror can have been entirely free from knowledge of the grand jury's views of the evidence.

It is notable that where the petty jury had to decide a case, verdicts came quickly. It was not uncommon for the verdict to be reached without the jury leaving their box, and the longest retirement recorded in the first decade of the Court was in 1860 where it took the jury 35 minutes to acquit a ship's captain of alleged perjury in a civil action over the supply of provisions. Even a murder trial verdict in 1859 was reached 'in about half an hour'.<sup>9</sup> In the period after 1862, for reasons unknown but possibly related to jurors having more satisfactory facilities,<sup>10</sup> jury retirements were often significantly longer. Thus we find a jury out for more than two hours before acquitting in an indecent assault case in 1870.<sup>11</sup> The longest retirement recorded was in a case of alleged cattle theft in 1863, where the jury, having retired for an hour and then indicating they could not agree on a verdict, were ordered to be locked up from the Saturday night through until the Court sat again on the Monday, at which time a not guilty verdict was returned.<sup>12</sup> The speed of the criminal process extended to the swift carrying-out of sentences. In 1871 Simon Cedeno was charged with murder. He was committed on 11 January, tried on 8 March and his sentence of death was carried out on 5 April.<sup>13</sup>

On some occasions the Court was affected by the typical Victorian solicitude for nice legal points. The prime example is the two trials of Edwin Bennett for seriously wounding his wife.<sup>14</sup> There was ample evidence of a serious assault by Bennett, and the jury at the first trial quickly convicted. However the indictment had charged Bennett with assaulting the victim 'feloniously' but had referred to s 17 of the *Offences against the Person Act 1867* (which provided for a misdemeanour of assault) rather than s 15 of that Act which made assault a felony. Gresson J held that the conviction could stand but an appeal against his refusal of the accused's motion in arrest of judgment after the jury verdict succeeded.<sup>15</sup> The Court of Appeal considered that the verdict could not stand because the indictment was hopelessly bad, which meant Bennett had never been in jeopardy of conviction at the trial so there was no bar to the prosecution being launched afresh. The prosecutor took the broad judicial hint, and Bennett was re-tried on the same evidence with the same result.

A bigamy trial in 1872 illustrates the pedantic, even obsessive, insistence on exact proof of the charge as stated in the indictment. Although William Anthill had in civil proceedings in the Kaiapoi Resident Magistrates' Court in 1872 acknowledged that a woman he had married in 1853 was his wife Margaret, and admitted that he had gone through a ceremony of marriage with a different woman in 1870, he was acquitted of bigamy after the

10 *Rv Christina Gregg*, 5, 6 & 9 December 1859, reported *Lyttelton Times*, 7 & 10 December 1859.

11 The early records of the Court contain several protests by jurors about the deficiencies of the jury box and jury room.

12 *Rv Joseph Griffin*, 4 March 1870, reported *Lyttelton Times*, 5 March 1870.

13 *Rv Charles Enderly*, 5 December 1863, reported *Lyttelton Times*, 8 December 1863. There are no records of any other jury being locked up overnight in this fashion.

14 *R v Simon Cedeno*, 8 March 1871, *Return of Prisoners Tried, Fourth Book*, Case No. 696.

15 *Rv Edwin Bennett*, 8 June 1870, reported *Lyttelton Times*, 9 June 1870; second trial *R v Bennett*, 9 September 1870, reported *Lyttelton Times*, 10 September 1870.

16 *Rv Bennett* (1870) 1 NZCA386. There was at this time no formal process for appeals from jury verdicts in criminal cases.

judge accepted a defence submission that there was no proof that the woman referred to in the civil proceedings as his wife Margaret was the same person as the Margaret Tobin named in the certificate of his marriage in 1853.<sup>16</sup> Probably the only person who could have been called to prove that identity was the wife herself and, as the law then stood, she was not permitted to give evidence against her spouse.<sup>17</sup> One other constant of the operation of the Court is deserving of note. Class bias is obvious in many of the trials, as in a case of alleged theft of a packet of gloves where defence counsel argued that:

it was monstrous to think that a person moving in society as the prisoner did would risk his reputation and character by the theft of a petty package, worth only a few shillings.<sup>18</sup>

The judge supported this line with a very sympathetic summing up in the accused's favour, and he was speedily acquitted, but the judge then addressed the prisoner and cautioned him against ever appearing again in court under similar circumstances.<sup>19</sup> It is not perhaps irrelevant that in at least one false pretences case the accused had falsely claimed the status of a knight.<sup>20</sup>

An even more extreme example of class bias in action is provided by two different prosecutions for extortion, where the defendants were each alleged to have attempted to blackmail one Arthur Acheron Dobbs for having had homosexual conduct with them. Although in each case there would appear to have been ample evidence to warrant Dobbs being tried for a homosexual offence, in each case the judge was quick to characterise the accused as evil men preying upon an innocent. Why? Perhaps because Dobbs had a leading place in Canterbury society as his sister was married to the Duke of Manchester.<sup>21</sup>

### III. STATISTICAL DATA AND ANALYSIS

#### *Population*

The population of Canterbury grew rapidly after the province's formal settlement in 1850. In 1854 the first population count showed less than 4000 Europeans living in Canterbury. It is difficult to gauge exact population due to the separation of Canterbury and Westland population figures from the late 1860s onwards, but it appears that the overall trend is one of growth.

16 *Rv William Anthill*, 3 July 1872, reported *Lyttelton Times*, 4 July 1872.

17 Perhaps the most technical arguments advanced were in the arson and fraud trial of two Ashburton traders, where defence counsel argued that prosecution should be required to produce the actual document used to claim on the insurance policy, a letter which had been dispatched to Sydney: *R v Lucis Berliner & Betsy Berliner*, 2 & 3 June 1868, reported *Lyttelton Times*, 3 & 4 June 1868.

18 *Canterbury Standard*, 30 November 1854. This contrasts markedly with the contemporary American position, where it appears juries often found verdicts contrary to those sought by the social elite: Friedman, above n 6, 184.

19 *Canterbury Standard*, 30 November 1854.

20 *Rv Thomas Bray Gill alias Gill Bray*, 10 March 1863, reported *Lyttelton Times*, 11 March 1863.

21 *R v John Parsons*, 16 & 17 June 1859, reported *Lyttelton Times*, 18 June 1859; *R v William Burton*, 2 December 1861, reported *Lyttelton Times*, 4 December 1861. In the first of these cases, the extortion charges followed a remarkable action in the Resident Magistrates' Court where Parsons brought a private prosecution against Dobbs for obtaining money by false pretences, only to be cross-examined into admissions which could later support the extortion charge. It is apparent from the newspaper reports that Parsons' own solicitor had been involved in a scheme to present Parsons as a criminal, see *Lyttelton Times*, 27 April 1859.

*Table 1. Population of Canterbury 1854-1872* <sup>22</sup>

Year	Male	Female	Total
1854	2196	1699	3895
1855	3095	2252	5347
1856	3552	2608	6160
1857	3846	2866	6712
1858	5301	3666	8967
1859	7445	5339	12784
1860	8895	6475	15370
1861	8939	7101	16040
1862	11651	8781	20432
1863	15559	11480	27039
1864	18931	13345	32376
1865	33111	15507	48618
1866	40204	18548	58752
1867	33083	20783	53866
1868	21319	17129	* 38488
1869	22409	18305	* 40714
1870	23240	19432	* 42852
1871	25781	21020	* 46801
1872	27927	23514	*51441

The population numbers and rate of change over the 21-year period of this study can be accounted for by identifying a number of factors. Early assisted passage schemes saw an average of 2,000 people arrive each year into the mid 1870s, accompanied by around 15,000 other migrants to the region. A possible explanation for the smaller rate of growth in the late 1860s is the competition for settlers from other regions and changing patterns of settlement based on the identification and abandoning of natural resources. There was also natural increase in the population over the period of study with approximately 6,000 births.<sup>23</sup>

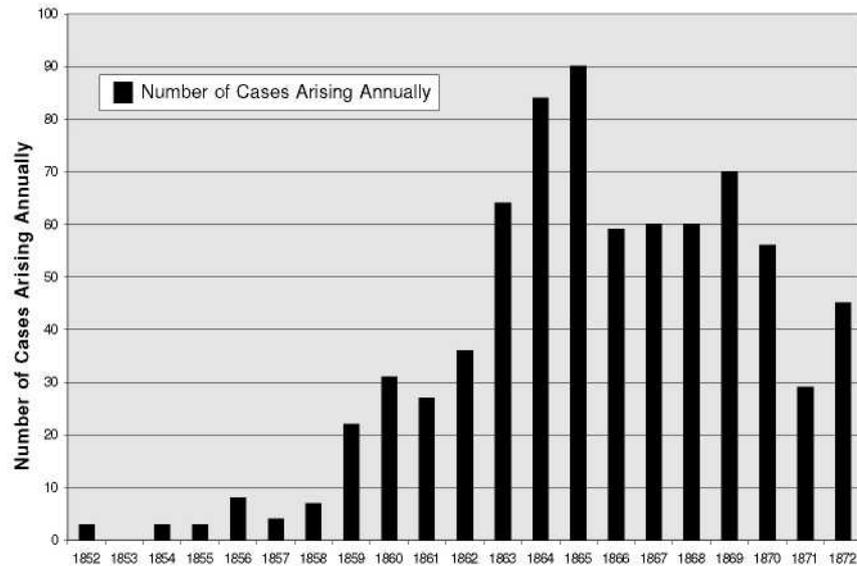
#### *Ratio of Cases to Population*

The number of cases that appeared in the records for the Supreme Court fluctuated with population changes. This data is shown in Figure 1 below. Demographic change was most marked between 1864 and 1865 where there was a dramatic increase of over 16,000 persons. Although these population numbers are problematic because there are changes in the definitions used for the Canterbury and Westland regions, they do provide some indication of the movement through or from the Canterbury area to the West Coast. When the definition was amended in 1868, there were 15,000 fewer people in Canterbury than previously, the majority of whom would have passed through the province to the West Coast.

<sup>22</sup> Source: *Statistics of New Zealand 1854-1872*. Figures marked with \* are for Canterbury only and do not include Westland. Population is European-only and does not include Maori living in the province.

<sup>23</sup> W H Scotter, 'Population and Immigration' in W J Gardner (ed), *A History of Canterbury* (1971) 323.

Figure 1. Number of Cases Appearing Annually in the Supreme Court of New Zealand sitting in Canterbury 1852-1872 <sup>24</sup>



It is also interesting to note that Gresson J saw an increase in the number of the cases and the nature of the offences charged as 'such may be looked for from the increase in population and the interruption of the ordinary industrial occupation caused by the goldfields'<sup>25</sup> However, Gresson J made a number of interesting comments about the relationship between population and criminal cases at the opening of the September 1865 Session of the Supreme Court, where he said:

The proportion of committals from the West Coast is by no means large, considering the extent of the population. Indeed I think that the calendar, upon the whole affords matter for congratulation rather than disappointment if it can be relied upon as a correct idea of the morals of our mining population.<sup>26</sup>

Gresson J then goes on to identify one of the most significant problems that modern commentators face in relying on these statistics to accurately gauge actual crime:

I speak hypothetically because I cannot help thinking that the distance of our place of session from the goldfields must prove a serious obstacle to the detection and punishment of crime.

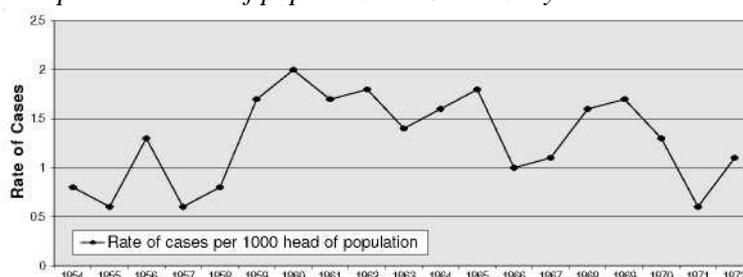
Accepting the interpretative difficulties posed by under-reporting of crime, we can nevertheless gain useful insights by looking to changes in the ratio of cases heard to population. Figure 2 shows criminal cases in the Supreme Court per 1000 head of population.

<sup>24</sup> Source: *Returns of Prisoners Tried for the Supreme Court of New Zealand sitting in Canterbury 1852-1872*.

<sup>25</sup> H B Gresson in his Opening Address at the March 1865 Session of the Supreme Court to the Members of the Jury, reported in the *Lyttelton Times*, Thursday 2 March 1865, 4, columns 4-6.

<sup>26</sup> H B Gresson in his opening Address at the September 1865 Session of the Supreme Court to the Members of the Jury, reported in the *Lyttelton Times*, Saturday 2 September 1865, 2, columns 3-5.

Figure 2. Rate of Cases appearing in the Supreme Court per 1000 head of population in Canterbury 1854-1872<sup>27</sup>



The rate of cases per head of population presents some interesting data for analysis. The rate is comparatively low and only once reaches two cases per 1000 head of population. However, the rate never remains static and there is considerable movement at this level. The ratio of cases to population reaches a high point in 1860. Declines are generally sharp, whereas upward movements are more gradual. The issue awaits more substantial treatment.

#### Numbers of Cases and Outcomes of Cases

We can begin our analysis by considering the number of cases heard and their outcomes over the twenty year period.

Table 2: Treatment of Cases laid in the Supreme Court of New Zealand sitting in Canterbury 1852-1872

	Total Cases	Not Guilty	%	Guilty Plea	%	Guilty Verdict	%	Plea/Verdict	%	No Bill	%	Other	%
1852	3	1	33.3	-	-	2	66.6	-	-	-	-	-	-
1853	-	-	-	-	-	-	-	-	-	-	-	-	-
1854	3	-	-	-	-	3	100	-	-	-	-	-	-
1855	3	-	-	1	33.3	2	66.6	-	-	-	-	-	-
1856	8	-	-	3	37.5	4	50	-	-	-	-	1	12.5
1857	4	-	-	2	50	2	50	-	-	-	-	-	-
1858	7	1	14.3	4	57.1	2	28.6	-	-	-	-	-	-
1859	22	6	27.2	6	27.3	7	31.8	-	-	-	-	3	13.6
1860	31	14	45.2	7	22.6	9	29	-	-	1	3.2	-	-
1861	27	4	14.8	13	48.6	8	29.6	-	-	1	3.7	1	3.7
1862	36	9	25	4	11.1	10	27.8	4	11.1	6	18.2	3	8.3
1863	64	13	20.3	7	10.9	27	42.2	2	3.1	11	17.2	4	6.3
1864	84	16	19.1	20	23.8	31	36.9	2	2.4	12	14.3	3	3.6
1865	90	19	21.1	22	24.4	45	50	-	-	4	4.4	-	-
1866	59	12	20.3	19	32.2	20	33.9	-	-	6	10.2	2	3.4
1867	60	15	25	17	28.3	22	36.6	-	-	5	8.3	1	1.6
1868	60	13	21.6	23	38.3	16	26.6	-	-	6	10	2	3.3
1869	70	15	21.4	21	33.3	24	34.3	4	5.7	1	1.4	5	7.1
1870	56	9	16.1	17	30.4	17	30.4	2	3.6	6	10.7	5	8.9
1871	29	9	31	2	6.9	9	31	5	17.2	4	13.8	-	-
1872	45	9	20	17	37.7	13	28.9	-	-	4	8.9	2	4.4
Total	761	165	21.7	205	26.9	273	35.9	19	2.6	67	8.8	32	4.2

<sup>27</sup> Source: *Statistics of New Zealand 1854-1872* and *Returns of Prisoners Tried for the Supreme Court sitting in Canterbury 1854-1872*. The 1854 starting date reflects the first available population data.

This table reveals a number of interesting points. Cases have been assigned to one of six categories. The first is where an accused was acquitted at trial. There are then three categories of convictions. The first is those where the accused pleaded guilty before trial, the second where the accused was tried and found guilty. The third category arises when an accused has pleaded guilty to one charge in the indictment and has been found guilty on another. Cases in which the grand jury did not find a 'True Bill' make up the fifth category. The 'other' category comprises cases where, for some reason, the proceedings were not formally resolved, such as where the Crown Prosecutor declined to press charges, a not uncommon practice where the accused had already been found guilty of other charges at the same session of the Court. This category also includes postponements, cases where parties failed to appear and one case where the 'prosecutor' or complainant died before the case could be heard.

The national conviction rate was approximately 65% for the period.<sup>28</sup> The conviction rate in Canterbury is consistent with that, with 65.96% of cases heard before the Supreme Court resulting in conviction. The conviction rate is at its highest in the mid to late 1850s when all cases heard in 1854, 1855, and 1857 resulted in the conviction of the accused. Only 1860 and 1862 show the percentage of cases resulting in conviction dropping significantly below the average. Towards the end of the period the proportions appear to level out and remain close to the Canterbury average. It is possible, though not without difficulties, to establish a relationship between committals for hearing and conviction. It may be possible to argue that where the number of cases appearing increased, this reflected reduced tolerance for crime. If that was in fact the case, it would be expected that conviction rates would remain close to the average for the province (approximately 65%) or rise. The Supreme Court heard 90 cases in 1865 and the conviction rate rose to 75% for that year, which supports this hypothesis. However, conviction rates remained close to the average over periods when the number of cases heard by the Court dropped. Further, when the conviction rate did decrease, the number of cases approximated to the average for the province over the period.

A drop in the percentage of cases resulting in conviction most often results in above average percentages of acquittals. For example, acquittals occurred in 45% of cases in 1860 and in 31% of cases in 1871. However a drop in the percentage of cases resulting in convictions does not result in an automatic increase in the percentage of cases resulting in acquittals. In 1862 the conviction rate dropped, but it was the number of cases in which 'No Bill' was found that affected significantly the patterns for the year. The average number of cases over the period that resulted in 'No Bill' was 8.8%. In 1862 the cases in which 'No Bill' was found accounted for over 18% of the cases appearing before the Supreme Court. It is also interesting to note that between 1854 and 1857 (inclusive) no defendants appearing before the Court were acquitted of the charges they faced. This may reflect a reluctance of the Resident Magistrates to remand defendants for trial in the Supreme Court, with the inevitable delays because of its infrequent sittings, unless the prosecution could show an extremely strong case, and/or the offence deserved a sentence beyond that available in the Resident Magistrates' Court.

28 *Official Statistics of New Zealand 1852-1872.*

The clusters of combination convictions in the early 1860s, and from 1869-1870, show an interesting trend. In those cases the defendant would be charged on multiple counts under one indictment. They would plead guilty to one or some of the charges and be sent to trial on the remainder, where they would be found guilty. The archival and newspaper sources do not provide any insight into this occurrence. There does not appear to be an increase in the number of counts appearing in the indictment, a factor which might have provided an explanation of this phenomenon. This might require further investigation into prosecution policy and court policy regarding the hearing of multiple counts where separate indictments had previously been used. A distinction must also be drawn between the number and proportion of cases in which conviction resulted from all cases listed to appear before the Supreme Court, regardless of whether or not the case did in fact appear, and the number and proportion of cases committed for trial in which a conviction resulted. Of all of the cases that appear before the Supreme Court, 95 were not committed for trial, usually as a result of the jury not finding a 'True Bill' or the Crown Prosecutor declining to prosecute a bill.<sup>29</sup> This occurred in approximately 12.7% of all cases appearing in the record. Convictions and acquittals therefore need to be considered as a proportion of the 666 cases that were sent before the Court. The following table shows the treatment of cases committed for trial:

*Table 3. Results of cases sent for trial after grand jury hearing*

	Total Cases	Not Guilty	%	Guilty Verdict	%	Guilty Plea	%	Plea/Verdict	%	Did not Appear	%
1852	3	1	33.3	2	66.6	-	-	-	-	-	-
1853	-	-	-	-	-	-	-	-	-	-	-
1854	3	-	-	3	100	-	-	-	-	-	-
1855	3	-	-	2	66.6	1	33.3	-	-	-	-
1856	7	-	-	4	57.4	3	42.6	-	-	-	-
1857	4	-	-	2	50	2	50	-	-	-	-
1858	7	1	14.3	2	28.6	4	57.2	-	-	-	-
1859	19	6	31.6	7	36.8	6	31.6	-	-	-	-
1860	30	14	46.6	9	30	7	23.3				
1861	25	4	16	8	32	13	52				
1862	28	9	32.1	10	35.7	4	14.3	4	14.3	1	3.6
1863	51	13	25.5	27	52.9	7	13.7	2	3.9	2	3.9
1864	69	16	23.9	31	44.9	20	28.9	2	2.9		
1865	87	19	21.8	45	51.7	22	25.3			1	1.1
1866	51	12	23.5	20	39.2	19	37.3				
1867	54	15	27.7	22	40.7	17	31.5				
1868	52	13	25	16	30.8	23	44.2				
1869	64	15	23.4	24	37.5	21	32.8	4			
1870	45	9	20	17	37.7	17	37.7	2	4.4		
1871	25	9	36	9	36	2	8	5	20		
1872	39	9	23.1	13	33.3	17	43.6	-	-	-	-
<b>Total</b>	<b>666</b>	<b>165</b>	<b>24.7</b>	<b>273</b>	<b>40.9</b>	<b>205</b>	<b>30.8</b>	19	2.9	4	0.6

The total number of convictions resulting from cases committed to the Supreme Court is 497, which results in a conviction rate of 74.6%. That rate is well above the 65% conviction rate for New Zealand for the period, and is

<sup>29</sup> The number 95 is derived by adding together the 'No Bill' and Other categories and subtracting the four cases in which there was a failure to appear (three in which the defendant did not appear and one in which the prosecutor did not appear). The failure-to-appear cases are then added to cases in which a guilty plea was entered or a conviction or an acquittal entered.

inevitably higher than the 65.3% that 497 represents of the 761 cases that appeared before the Court between 1852 and 1872. It is to be hoped that research may later investigate the reasons for the disparity between Canterbury conviction rates and those for the remainder of New Zealand.

#### IV. CRIMINAL OFFENDING BY OFFENCES

##### *Homicide*

Homicide rates in colonial Canterbury were very much higher than those prevailing in England in these years - then about 1.5/100,000 population per year.<sup>30</sup> The first murder trial in Canterbury, and the most thoroughly reported<sup>31</sup> criminal case of the 1850s, was the prosecution of Christina Gregg for the murder by arsenical poisoning of her husband, James Gregg. The prosecution established that James had died from the ingestion of arsenic, with detailed evidence being given as to the then relatively novel Marsh's apparatus used by medical witnesses. Opportunity to administer the poison was readily established, as James had been ill and had been nursed by his wife. Motive was suggested by the evidence of a former servant, who testified that he and the accused had been engaged in an adulterous relationship which had led to Christina's pregnancy, which she had tried to conceal from her husband. However, the prosecution could not establish that Christina had ever had any access to arsenic, and there was an instance of him suffering a similar attack in her absence. Defence counsel was therefore able to throw up the possibilities of some form of accidental ingestion by the husband, or deliberate poisoning by Christina's lover. Despite a somewhat hostile summing up, the jury acquitted after a half-hour retirement and the accused left the Court 'supported by her brother and friends'.

Over the next decade there were several further murder trials. As with Gregg's case, the newspapers reported proceedings very fully.<sup>32</sup> George Lumley was tried for murder in 1863, as a result of stabbing a man in a fight over an unpaid debt. There was considerable evidence that the deceased had initiated the violence and abused the accused, and it was apparently on the basis of provocation that the jury acquitted of murder but convicted of manslaughter.<sup>33</sup> A similar verdict was reached in the next murder trial where Henry Ives, described by the newspapers as a 'half-caste', was convicted of manslaughter after stabbing a fellow sailor in a drunken argument.<sup>34</sup> In each case the defendant received a sentence of three years imprisonment with hard labour.

The next two trials were very different. Both involved deaths in fires allegedly set by the accused. The first defendant, Darby Maher, was acquitted first of murder, and then at a separate trial of a form of arson, because the prosecution could not prove that he had started the fire in

30 Clive Emsley, *Crime and Society in England 1750-1900* (2nd ed, 1996) 42ff. For the colonial context for such offences see D V Madle, 'Patterns of Death by Accident, Suicide and Homicide in New Zealand 1860-1960' (PhD Thesis, Victoria University of Wellington, 1996).

31 The *Lyttelton Times*, 7 & 10 December 1859, carried apparently almost verbatim testimony from almost every witness.

32 This parallels the extensive coverage given in England to murder trials: Emsley, *Crime and Society in England 1750-1900*, above n 30, 44.

33 *Rv George Lumley*, 7 September 1863, reported *Lyttelton Times*, 9 September 1863.

34 *Rv Henry Ives*, 4 December 1866, reported *Lyttelton Times*, 5 & 6 December 1866.

which the victim died.<sup>35</sup> The prosecution was much more successful in a trial fifteen months later when John Densley Swale was convicted of the murder of his business partner, John Rankin, who died in a fire which destroyed the house in which both lived and from which they traded. There was a very substantial body of circumstantial evidence which tied the accused to the fire. After a retirement of 90 minutes, longer than in any previous murder trial, the jury returned with a guilty verdict but recommended mercy on the ground that the evidence was purely circumstantial. Gresson J indicated that such a rider implied that there was doubt about the accused's guilt and that the jury should reconsider their decision, but after a few minutes deliberation the jury affirmed their verdict.<sup>36</sup>

There were two further murder cases in 1868. One involved a stabbing in a dispute where the victim had intervened in a quarrel between the accused and his de facto spouse. The facts were disputed and Gresson J found it necessary to warn two defence witnesses of the risks of a perjury prosecution if they gave evidence, as they were doing, completely at odds with their statements at depositions. The jury found a verdict of manslaughter, apparently on the basis of provocation.<sup>37</sup>

In 1871 there was the remarkable occurrence of three separate murder trials at a single sitting of the Court. In the first, Simon Cedeno, a servant in the house of 'Ready-Money' Robinson (probably the richest man in Canterbury), for no apparent reason stabbed two fellow servants, one of whom died. Despite the best efforts of his counsel to urge a lack of intent to harm based on a temporary mental disorder falling short of insanity, the jury quickly convicted.<sup>38</sup>

That trial was followed by the trial of Hugh McLeod for the murder of his wife. Given that there were statements by the accused that he had stabbed her, the defence tried to argue that death may have resulted from some other condition. Although the defence expressly disclaimed any reliance on provocation, there was evidence that the victim had worked as a prostitute in Christchurch for some time, during much of which the accused was working in country districts. He had however spent some time living with her in a brothel. The accused, who had been drinking heavily for months, was also somewhat intoxicated at the time. The jury found a verdict of murder, recommending him to mercy on the basis of his prior good character and the provocation offered by his wife. That recommendation was forwarded by Gresson J to the Governor and may well have been instrumental in McLeod having his death sentence commuted.<sup>39</sup> It is notable that in every case bar one, that of John Densley Swale, where a murder verdict was returned, the victim had been stabbed to death. This is remarkable given that for the colony as a whole, death by stabbing accounted for only one-third of all homicides.<sup>40</sup>

35 *Rv Darby Maher*, 6 December 1866 (murder), reported *Lyttelton Times*, 7 & 8 December 1866; *R v Darby Maher*, 7 December 1866 (burning a house some person being therein), reported *Lyttelton Times*, 8 December 1866.

36 *Rv John Densley Swale alias John Swale Densley*, 5 & 6 March 1868, reported *Lyttelton Times*, 6 & 7 March 1868.

37 *R v William Monaghan*, 4 & 5 June 1868, reported *Lyttelton Times*, 5 & 6 June 1868.

38 *R v Simon Cedeno*, 8 March 1871, reported *Lyttelton Times*, 9 March 1871.

39 *R v Hugh McLeod*, 10 & 11 March 1871, reported *Lyttelton Times*, 11 & 13 March 1871.

40 Madle, above n 30, 170. Death by beatings accounted for another third; guns were used in one-fifth of all homicides.

Mention should also be made of three cases where attempted suicide was charged. In one case the grand jury threw out the charge; convictions were entered in the others, one after a trial, and short terms of imprisonment were imposed.<sup>41</sup>

### *Other Offences of Violence*

Forty-six offences of violence (other than homicides or sexual offences) were brought before the Supreme Court over the two decades under study. Only seven of these were in the first decade. These include a serious case of assault on a police officer,<sup>42</sup> another of assault while drunk,<sup>43</sup> and an extraordinary case of trivial assaults by a married couple on a neighbour which resulted in a 40/- fine, the lowest penalty imposed in any Supreme Court criminal case recorded.<sup>44</sup> By contrast there were 12 violence charges in 1862 - by far the highest for any year in the period under study - but here the bare total is a little misleading. Four charges were brought against one Peter Johnson, apparently for a single violent episode.<sup>45</sup> Six of the other charges arose from a prize fight.<sup>46</sup> The two combatants were both acquitted on charges of causing an affray but found guilty of common assault and imprisoned for one month. The seconds of the fighters were also charged with assault but were discharged after entering into bonds to keep the peace for a year.<sup>47</sup> It is notable that in his directions to the grand jury, Gresson J placed a great stress on the illegality of prize fights, relying on an unnamed textbook. It must be remembered this was some twenty years before the question was finally decided by an appellate court in England.<sup>48</sup>

The rate of prosecutions remained comparatively high for the next three years - four charges in 1863, seven in 1864 and four more in 1865, before dropping back to two or three charges a year through the later 1860s and early 1870s. The number of assault cases coming before the Supreme Court was affected by the ability of the Resident Magistrates' Court to hear less serious assault cases. This was particularly marked before the advent of regular Supreme Court sessions in Canterbury. Thus in 1855, four assault cases came before the Resident Magistrates' Court in Christchurch but none came before the Supreme Court. Curiously, the number of assault cases in the Resident Magistrates' Court in later years may have been lower.<sup>49</sup>

41 *R v George Bosted*, 9 March 1863, reported *Lyttelton Times*, 11 March 1863; *R v William Calcott*, 4 June 1864, reported *Lyttelton Times*, 7 June 1864; *R v Philip Gear*, 3 June 1867, reported *Lyttelton Times*, 4 June 1867. This report makes it clear the accused was then suffering from delirium tremens, a common feature of successful suicides in this period: see Madle, above n 30, 107.

42 *Rv James Sullivan*, 21 April 1872, reported *Lyttelton Times*, 22 April 1857.

43 *Rv Thomas Toppin*, 15 October 1858, reported *Lyttelton Times*, 16 October 1858.

44 *R v John Skinner*; *R v Matilda Skinner*, reported *Lyttelton Times*, 2 March 1859. The female accused was discharged.

45 *Rv Peter Johnson*, 1 December 1862. Unfortunately the newspaper account in *Lyttelton Times*, 6 December 1862, sheds no light on the circumstances of the offence.

46 See also Richard Hill, *Policing the Colonial Frontier* (1986) vol 1, 637.

47 *Rv George Barton*; *R v Harry Jones*, 4 & 5 September 1862, reported *Christchurch Press*, 6 September 1862.

48 *Rv Coney* (1882) 8 QBD 534. As the judgments in that case show, the issue had been disputed for some time, and dicta that such fights were illegal could be found as early as 1831. Textbook writers were by 1882 universally of the view they were illegal, but the issue would have been regarded in 1862 as not yet settled.

49 The number in Lyttelton in that year is not reliably ascertainable. In 1859, the Lyttelton Resident Magistrates' Court heard no assault cases at all: Finn, 'Debt, drunkenness and desertion: The Resident Magistrates' Court in early Canterbury 1851-1861', above n 1, 470-471.

In the second decade there were very many more cases of violence in the Supreme Court. Generally they appear to have been of a more serious kind, with many involving stabbings - 12 with knives<sup>50</sup> and one with a sword-stick.<sup>51</sup> In other cases fists or impromptu weapons such as stones were used. Firearms cases were very rare.<sup>52</sup> There appears to have been only two cases of domestic or relationship violence.<sup>53</sup> There were three instances of trials arising from brawls involving five or six individuals, though not all participants were charged.<sup>54</sup> One assault case arose from the victim of a theft taking the law into his own hands when he discovered his money had been stolen and inflicting serious injuries on the thief.<sup>55</sup> In another, a stabbing took place after the victim had attempted to recover money from the accused, believing the accused had intended to steal it.<sup>56</sup> Of the 46 individual charges, 41 came to trial, with four being rejected by the grand jury and a fifth not being prosecuted because the defendant, Cedeno,<sup>57</sup> had already been convicted of murder and sentenced to death. In 12 cases the accused was acquitted at trial, 10 convictions were entered on guilty pleas with the remaining 19 being convicted after a defended hearing. The use, or absence, of weapons does not seem to have affected the verdicts returned. One stabbing case is noteworthy, as the jury acquitted a black sailor who had allegedly stabbed a merchant in a quarrel after being called 'a bloody nigger'. While counsel for the accused was apparently arguing that the victim's wound was unintentional, Gresson J clearly leant to the view that there had been provocation sufficient to justify the serious assault.<sup>58</sup>

Sentencing too was apparently largely dependent on the facts. As might be expected, the penalties imposed in cases of simple assault were usually very much lighter than for aggravated forms of assault. A person convicted of simple assault might receive normally one, three or four months imprisonment - with the highest penalty for assault without a weapon being 12 months imprisonment. The penalties for more serious offences, such as

- 50 *R v Horace Smith*, 5 December 1863 (not guilty of shooting with intent to murder), reported *Lyttelton Times*, 8 December 1863; *R v Peter Johnson*, 1 December 1862; *R v John O Malley*, 3 March 1864, reported *Lyttelton Times*, 5 March 1864; *R v Charles Melbourne*, 2 June 1864, reported *Lyttelton Times*, 4 June 1864; *R v William Duncan*, 7 December 1865, reported *Lyttelton Times*, 9 December 1865; *R v Samuel Wilson*, 3 March 1866; *R v Zachary Patterson*, 1 June 1866; *R v John Jaynson*, 4 December 1867, reported *Lyttelton Times*, 5 December 1867; *R v George Gustav Schmidt*, 6 March 1871, reported *Lyttelton Times*, 7 March 1871; *R v George Brown*, 2 January 1872, reported *Lyttelton Times*, 3 January 1872; *R v William Kerr*, 4 April 1872, reported *Lyttelton Times*, 5 April 1872; *R v Edward Whittington*, 4 April 1872, reported *Lyttelton Times*, 5 April 1872.
- 51 *Rv Patrick Keane*, 3 September 1863, reported *Lyttelton Times*, 5 September 1863.
- 52 The only two identifiable are *R v Daniel Philpott*, 1 December 1859, reported *Lyttelton Times*, 3 December 1859 ('No Bill' on charge of shooting with intent to murder and maim) and *R v Horace Smith*, 5 December 1863, reported *Lyttelton Times*, 8 December 1863 (not guilty of shooting with intent to murder).
- 53 In one case aman was convicted of unlawfully wounding his former partner's new paramour, see *R v George Gustav Schmidt*, 6 March 1871, reported *Lyttelton Times*, 7 March 1871. The other was *R v Edwin Bennett*, 8 June 1870, discussed in Part II above.
- 54 Two were in 1864, *R v Patrick Flaherty*, *R v John Ford*, *R v Michael Ford*, 5 March 1864, reported *Lyttelton Times*, 8 March 1864 (all convicted and sentenced to four months imprisonment); *R v Timothy O'Brien*, *R v Thomas Ryan*, *R v Michael Corry* & *R v Edward Manning*, 3 June 1864, reported *Lyttelton Times*, 4 June 1864 (O'Brien was acquitted of assault; the others were convicted). The last instance was *R v James Miller*, 8 October 1872, reported *Lyttelton Times*, 9 October 1872 (not guilty of assault occasioning actual bodily harm).
- 55 *Rv Thomas Taylor*, 2 September 1863, reported *Lyttelton Times*, 5 September 1863.
- 56 *Rv George Brown*, 2 January 1872, reported *Lyttelton Times*, 3 January 1872.
- 57 See the discussion on crimes of homicide above.
- 58 *Rv Charles Melbourne*, 2 June 1864, reported *Lyttelton Times*, 4 June 1864.

stabbing with intent to do grievous bodily harm or unlawful wounding (which in practice appears to be charged for less severe stabbings) or assaulting a police officer in the execution of his duty, would typically involve a sentence of 12 or 18 months imprisonment with hard labour. The range included some at six months with a high of two years.<sup>59</sup>

### *Property Offences*

Property offences were a significant problem in Canterbury. There were essentially two classes of property offences; the physical stealing, taking and carrying away of property, that is, larceny, receiving stolen property, animal-stealing (including dogs, cows and sheep), house-breaking, burglary and robbery; and cases involving deception, such as forgery, obtaining by false pretences and embezzlement.

The acquisitive offences, without deception, appeared most frequently in the charge books for this period. There were 352 cases in this period, some 46.52% of all charges laid before the Supreme Court. The gender breakdown of prisoners approximated to the overall trend. Over the 21 year period, 188 deception cases were heard, making up 24.7% of the cases before the Court. That is, property offences comprised just over 70% of all charges laid. The overall trend is one of increase in the early to mid- 1860s, with a significant decline in the late 1860s and early 1870s. Of the offences in which property was acquired without deception, larceny was the most common. There were 269 larceny cases heard over this period, with a conviction rate of approximately 70% — rather higher than the overall average for the period. Property taken was usually money, in what appeared from newspaper reports to be opportunistic crime often occurring when the accused or the victim, or both, were intoxicated. Women were more likely to appear on larceny charges than for any other offence. There were 60 cases in which animals were stolen - ranging from 1000 sheep to a single dog.<sup>60</sup> Of the more severe acquisitive offences, there were eight charges of house-breaking, 14 charges of robbery and 13 charges of burglary. There were also two charges of interfering with post. The incidence of deception cases increased steadily, reaching a peak of 26 cases in 1869, before declining in the 1870s, when the number of criminal cases heard by the Supreme Court also declined. A possible explanation for the decline is the economic context. Annual provincial revenue declined from over £600,000 in 1866 to approximately £200,000 in 1868, 1869, 1870 and 1871, after which time provincial revenue, in particular land revenue, improved.<sup>61</sup> That there was less money coming into the province might suggest reduced commercial and mercantile engagement and a period of depression in which people may have been more cautious about cashing cheques. However, it may also be argued that economic depression should have seen an increase in this type of crime as people were affected by economic hardship. Gresson J appears to have agreed that the trend is interesting and comments in one 1863 case that 'it was strange what could have indeed induced the prisoner to commit such an offence in this country where a man could easily get an honest living.'<sup>62</sup> The relationship arguably merits further investigation.

<sup>59</sup> *Rv George Gustav Schmidt*, 6 March 1871, reported *Lyttelton Times*, 7 March 1870.

<sup>60</sup> As to stealing of livestock, see the discussion of 'Rural and Agricultural' Offences below.

<sup>61</sup> *Statistics of New Zealand 1859-1872*.

<sup>62</sup> *Lyttelton Times*, 2 September 1863, 4, column 5.

Of the cases involving deception, the most frequently occurring charge was of forgery, although no defendants were tried on that charge in 1862, 1863 and 1871. Ignoring those years, the trend overall is one of steady increase over time. Forged documents that appeared before the Court were orders for the payment of money (usually cheques), promissory notes, bills of exchange, receipts, supply orders and acquittances. Commercial practices of the time appear to have been a contributing factor in the increase. Gresson J stated that 'facilities for the commission of it are afforded by the readiness with which publicans and storekeepers cash cheques presented to them by strangers regardless of past experience and of the many warnings addressed to them from time to time.'<sup>63</sup>

Obtaining by false pretences charges also appeared regularly. 'Pretences' included pretending to be another person, pretending to be employed by a certain person, and pretending to have money. Money was obtained in 30 cases and goods were obtained in 40 cases and in one case the prisoner was charged with obtaining goods and money by false pretences. The goods obtained were frequently food or fabric, although charges were laid that featured a shotgun and a saddle. Certainly the charge list can provide insight into the contents of food stores<sup>64</sup> and fashion. Sums of money obtained were usually under £20.

Embezzlement was another dishonesty offence charge that appeared to increase in frequency over time, although it remained rather rare over the period studied here - 36 cases, reaching a peak of six cases in 1867 before declining for a period. The occupations of the defendants charged with embezzlement included clerks, servants, railway guards and a police constable. David Mitchell McKay, the clerk of Canterbury Superintendent William Rolleston, was one of the defendants who faced a charge of embezzlement.<sup>65</sup>

The conviction rate for dishonesty offences over the period was 72.67% - somewhat higher than the overall conviction rate of 65.96%.<sup>66</sup> It is probable that this reflects public opinion with regard to these kinds of offences and the Court, as a result, adopting a tough approach to deter offending. However conviction rates actually decreased steadily between 1867 and 1871 from approximately 90% to approximately 40%. This could prove an interesting area for more detailed investigation, as such judicial leniency appears inconsistent with a statement from Gresson J in 1867 that 'I am sorry to find that the crime of forgery continues to be of very frequent occurrence.'<sup>67</sup>

Sentences of up to 10 years penal servitude were given for forgery, although imprisonment with hard labour was the most likely sentence to be imposed. Sentences for obtaining by false pretences ranged up to 24 calendar months imprisonment with hard labour, although sentences were more likely to be less than 12 months imprisonment. Embezzlement sentences were similar to those for obtaining by false pretences. Penal servitude was imposed by the Court only once for embezzlement, in 1868.

<sup>63</sup> *Lyttelton Times*, 3 June 1867, 2, column 4.

<sup>64</sup> For example, Catherine Greaves, *Return of Prisoners Tried, Third Book*, 3 March 1868, Case No. 513, obtained one lb of candles, two spotted herrings, 1/4 lb of citron peel, 2 lb raisins, 2 lb currants, 14 lb of cheese, 1/4 lb of tea, one large pot of jam and 1/4 lb coffee.

<sup>65</sup> *R v McKay*, *Return of Prisoners Tried, Third Book*, 6 December 1869, Case No. 630.

<sup>66</sup> *Returns of Prisoners Tried for the Supreme Court of New Zealand*.

<sup>67</sup> *Lyttelton Times*, 3 June 1867, 2, column 4.

There appear to have been 13 occasions where arson or similar offences came before the Court. Two of these involved charges of murder by burning down a house with a person in it.<sup>68</sup> Two other cases alleged insurance fraud by setting fire to business premises after having removed valuables and stock from the premises so as to defraud an insurance company.<sup>69</sup> Of the remaining nine cases, only two are notable. In 1862 Hugh Williams was convicted of setting fire to a hotel after the landlord had refused to serve him with spirits. Fortunately no-one was injured in the fire. However because the arson had been charged as a felony, when Williams was convicted he was sentenced to death. That sentence was later commuted to six years imprisonment.<sup>70</sup> The other case is notable for the conduct of the accused in surrendering himself to the police so as to ensure the liberation of someone else charged with the offence.<sup>71</sup>

### *Sexual Offences*

The number of trials for sexual offending rises drastically in the mid 1860s. There are only four cases reported in the first 10 years of our study, a number which is exceeded in a single Court session in 1867. It is difficult to know why this should be, given that the imbalance between males and females in Canterbury society appears to be smaller than in the preceding two years,<sup>72</sup> but the phenomenon was commented on by local newspapers:

The only remarkable feature in the calendar is the unusually large number of charges of assault upon females. Formerly, crimes of this nature were of comparatively rare occurrence in this province. This session they amount to one third in number of the whole cases in the calendar. It would be unfair to infer from the experience of a single session the rapid growth of any particular species of crime inasmuch as the appearance of the calendar may be the result of accidental circumstances rather than the normal condition of the community; but the fact is significant when considered in connexion with a subject which has lately attracted public attention.<sup>73</sup>

It seems highly likely that the figures for convictions for sexual offences grossly understate the actual frequency of the offences. It must be remembered that very many victims would not have brought complaints or charges,<sup>74</sup> and the process of having first a committal hearing, then consideration by a grand jury before the matter went to trial filtered out, justifiably or not, a number of those where complaint was made. Indeed the first trial for rape in the settlement did not proceed because the victim did not appear to give evidence.<sup>75</sup> Two other defendants on rape charges were both discharged after the grand jury found 'No Bill'.<sup>76</sup>

68 *Rv John Densley Swale alias John Swale Densley*, 5 & 6 March 1868, reported *Lyttelton Times*, 6 & 7 March 1868; *Rv Darby Maher*, 6 December 1866 (murder), reported *Lyttelton Times*, 7 December 1866. Both cases are discussed in Part IV above.

69 *Rv Lucis Berliner & Betsy Berliner*, 2 & 3 June 1868, reported *Lyttelton Times*, 3 & 4 June 1868; *Rv Margaret Patterson & Emily Williams*, 13, 14 & 15 June 1870, reported *Lyttelton Times*, 14, 15 & 16 June 1870.

70 *Rv Hugh Williams*, 19 June 1862, reported *Christchurch Press*, 21 June 1862.

71 *Rv Richard Matthews*, 1 June 1864, reported *Lyttelton Times*, 2 June 1864.

72 See the population data in Part III above.

73 *Lyttelton Times*, 3 December 1867.

74 Stevan Eldred-Grigg, *Pleasures of the Flesh* (1984) 55; cf Emsley, *Crime and Society in England 1750-1900*, above n 30, 161.

75 *Rv Charles McAlpine*, 7 March 1862, reported *Christchurch Press*, 8 March 1862.

76 See *Rv James Hair*, 2 December 1862; *Rv Alexander Heron*, 2 December 1867.

The data is less complete for the less serious offences of assault with intent to commit rape and indecent assault. It is notable that although the grand jury sometimes threw out charges of this nature, the rate of conviction in sexual assault cases is actually higher than for dishonesty or other property offences.<sup>77</sup> When cases went to trial, juries seem to have been more ready to acquit defendants where the charge related to an adult woman than in those where the victim was under the age of consent. On other occasions the jury was prepared to recommend a lighter sentence but not to excuse the accused's conduct.<sup>78</sup> Thus in one week in June 1870, two juries recommended lighter sentences after finding defendants guilty of indecent assault, one on the basis that the victim may have given some encouragement to the accused, the other on the grounds that although the accused had entered the victim's house by night, he had offered no violence to her.<sup>79</sup>

The pattern of convictions was also significantly affected by the nature of the charge brought by the prosecution. In some cases what would appear to have been sexually-motivated offending was charged as a simple assault, as was the case with George Dyson who was convicted of assault in 1863.<sup>80</sup> The evidence showed that he had broken into the victim's house, knowing that her husband was drunk, and had climbed into bed with the sleeping victim.<sup>81</sup> Dyson was charged only with simple assault in circumstances where attempted rape might well have been established. A similar effect is found in a number of cases where juries chose to convict of the general and less serious offence of assault rather than indecent assault or assault with intent to commit rape.

### *Rape*

The first conviction entered for rape was that of Jacob Small in June 1862. This case is distinctly unusual in that Small was not known to the victim, and was an outsider in colonial society - he is described as a foreigner and a man of colour - and there was corroboration of circumstantial evidence indicating his guilt. The offender had broken into the victim's house at night and had left distinctive boot tracks which could be matched to the Small's boots.<sup>82</sup> Only two other defendants were convicted of rape in the next decade, one after a guilty plea<sup>83</sup> and the other after a defended hearing. While sometimes the juries were prepared to convict, there were certainly others where a not guilty verdict may not have reflected the evidence. In 1862 the *Christchurch Press* reported the acquittal of William McDonald on a charge of rape:

The charge was sustained by the evidence of the prosecutrix, of a young man named Withers and a labourer who assisted in taking prisoner to the police barracks, but though their evidence appeared conclusive against the prisoner the jury, after three

77 Sexual offences 73%; larceny 70%, all offences 65%.

78 Unfortunately the absence of detail in the newspaper reports makes it impossible to tell whether juries, here or in relation to other offences, were deliberately returning merciful verdicts, or merely observing the niceties of the sometimes complex law.

79 *R v David Adam*, 8 June 1870, reported *Lyttelton Times*, 9 June 1870; *R v Gregory Nicholas*, 11 June 1870, reported *Lyttelton Times*, 13 June 1870.

80 If a similar practice existed in prosecutions before the Resident Magistrates' Court, there may well have been a significant number of sexual assault cases which disappeared behind the more general label of assault. In other cases the Resident Magistrate may have tried sexual assaults rather than committing an offender to the Supreme Court.

81 *R v George Dyson*, 10 March 1863, reported *Lyttelton Times*, 11 March 1863.

82 *R v Jacob Small*, 18 June 1862, reported *Christchurch Press*, 21 June 1862. Because Small was a 'foreigner', the Judge appointed counsel to represent him.

83 *R v Joseph Jones alias Sydney Jones*, reported *Lyttelton Times*, 2 September 1869.

hours consideration, returned a verdict of not guilty apparently as much to the surprise of the prisoner as it evidently was to everyone present who had heard the evidence.<sup>84</sup>

The remaining case drew considerably more publicity. Robert Fisher was convicted of the rape of the wife of a fellow farm worker in 1864, after a defence which attempted to portray the victim as a prostitute who had initiated the sexual activity. Gresson J was highly critical of the behaviour of the victim's husband, who had accepted a payment of £30 from the accused to compensate for the injury to the victim, and of his employer who had credited to the husband wages due to the accused.<sup>85</sup>

### ***Carnal knowledge***

There were few prosecutions for unlawfully having carnal knowledge of girls under the age of consent (then 12 years of age). That offence was marked off from rape by the assumption that the sexual contact was consensual, although the victim's consent did not, in law, provide any defence where the female was under 12. There were various forms of offence relating to sexual conduct with girls younger than 12, differentiated in part by whether violence was used.

One of the very few sexual cases to be reported at any length occurred in 1863 when 57 year old James O' Kelly was convicted of 'carnally knowing a girl under the age of twelve'. The evidence established that the victim, Elizabeth Judson, had been a servant in O' Kelly's house in 1861, had been seduced by him, and had, shortly after her 12th birthday, given birth to a child. The *Lyttelton Times* described her as an 'interesting, precocious-looking girl'. It appears clear that Judson had told O' Kelly that she was 14 at the time. Gresson J pointed out that a mistaken belief as to her age was no defence in law, although it was a relevant extenuating circumstance, although he emphasised that it did not, in his view, detract from the accused's moral guilt.<sup>86</sup>

### ***Indecent assault and assault with intent to commit rape***

As indicated, the later years of the period under study contain an increase, for reasons not as yet fully understood, in the number of trials for, and convictions for, these two offences. While indecent assault was generally regarded as a less serious offence than an assault with intent to commit rape, it is far from clear that prosecutors and juries always observed a clear distinction. In some cases it seems evident that juries were prepared to find some degree of doubt which justified them in convicting only of a less serious offence.<sup>87</sup> There may also have been instances where the prosecution was prepared to encourage a guilty plea on the lesser charge by promising to drop the more serious one.<sup>88</sup>

84 *Christchurch Press*, 21 June 1862. The prosecutor later called no evidence on another charge of assaulting a man present at the incident. Other cases where the judge appears to have found the verdict surprising are *R v Henry Ballinger*, 4 December 1866, reported *Lyttelton Times*, 5 December 1866 and *R v James Pratt*, 1 July 1872, reported *Lyttelton Times*, 2 July 1872.

85 *R v Robert Fisher*, 1 June 1864, reported *Lyttelton Times*, 2 June 1864.

86 *R v James O'Kelly*, 9 & 10 March 1863, reported *Lyttelton Times*, 11 & 12 March 1863. The accused, who tried unavailingly to argue at sentencing that Judson had fabricated her evidence to extort money, received a sentence of 6 months imprisonment with hard labour. Another defendant was convicted of the same offence on a plea of guilty in 1865, see *R v Henry Fletcher*, 1 December 1865, reported *Lyttelton Times*, 2 December 1865.

87 *R v Natanahira*, 3 June 1869, reported *Lyttelton Times*, 4 June 1869 (see Part IV below); *R v William Armstrong*, 5 April 1872, reported *Lyttelton Times*, 6 April 1872; *R v David Sampson*, 8 Sept 1870, reported *Lyttelton Times*, 9 Sept 1870. Cf *R v Thomas Rowley*, 2 December 1862, reported *Lyttelton Times*, 6 December 1862 (not guilty of 'assault with intent' but guilty of assault).

88 *Rv Charles Brown*, 2 July 1872, reported *Lyttelton Times*, 3 July 1872.

The most remarkable case of indecent assault was that of Henry Lawrence, a 14 year old boy, who was convicted in 1869 of the offence on a guilty plea. Although counsel indicated he had been less than fourteen at the time of the offence, was very repentant and could provide evidence of prior good character, Gresson J believed none of this could reduce the enormity of the offence.

The depositions show a most wanton and grievous outrage has been committed on a young girl on a Sunday as she was sitting and reading her Bible close to her father's house. I cannot conceive a more wanton outrage than has been committed in this case.

Counsel specifically raised with the Judge the possibility of the infliction of corporal punishment to reduce the prison sentence that would otherwise be imposed. Gresson J agreed, saying he was opposed to corporal punishment generally for adults because it was degrading 'but for youth and for a class of offences of this nature I think it is a particularly suitable punishment.'<sup>89</sup> The accused was sentenced to one months imprisonment at hard labour, and two whippings of 12 lashes with the cat o'nine tails.<sup>90</sup> It is unlikely that modern criminologists would regard such a sentence as desirable. Whipping was also imposed in an indecent assault case in 1872 but, curiously, the 19 year old accused received only 12 lashes.<sup>91</sup>

### *Homosexual offending and bestiality*

While it is not surprising that there would be a significant number of offences of rape and indecent assault and the like, it is remarkable to find that there were eight cases of bestiality charged within the two decades under study.<sup>92</sup> Only one of these was within the first ten years.<sup>93</sup> In all but one case the accused pleaded not guilty and was convicted only of an attempt to commit the offence, usually receiving a two year sentence.<sup>94</sup> Since the facts were never reported, we cannot tell whether this represents a degree of mercy by the jury. The lone exception is the last case tried in the period under study in this article, where Alexander McKenzie, the 15 year

89 Gresson J had in his charge to the grand jury in December 1868 indicated his approval of the *Offences against the Person Act Amendment Act 1868* which gave the judges of the Supreme Court a power to order whipping as an additional punishment for most sexual offences: see *Lyttelton Times*, 2 December 1868.

90 *Rv Henry Lawrence*, 2 March 1869. Quotations are from the report in *Lyttelton Times*, 3 March 1869.

91 *Rv William Armstrong*, 5 April 1872, reported *Lyttelton Times*, 6 April 1872.

92 Eldred-Grigg, above n 74, 51, suggests that bestiality was rare, on the basis of there being eight convictions for the full offence in the whole colony in the three years 1874-77, and that the offence was regarded as 'distasteful or sad rather than criminal'. The apparent willingness of juries to convict only of an attempt suggests the former comment may underestimate the frequency with which such conduct came before the courts; that and the tone of the newspaper reports suggest the latter comment may also be open to challenge.

93 *Rv John McLaughlin*, 4 March 1859, reported *Lyttelton Times*, 5 March 1859. The indictment, for what was then a common law offence reads thus: '(McLaughlin) with a certain mare feloniously wickedly and against the order of nature had a venereal affair and then feloniously wickedly and against the order of nature carnally knew the said mare and then feloniously wickedly and against the order of nature with the said mare did commit and perpetrate that detestable and abominable crime of buggery (not to be named among Christians)'.

94 *Rv William Matthew*, 3 September 1862, reported *Christchurch Press*, 6 September 1862; *Rv John Magee*, 1 December 1863, reported *Lyttelton Times*, 3 December 1863; *Rv Harry Collins*, 4 December 1865, reported *Lyttelton Times*, 5 December 1865; *Rv Alexander Stuart*, 3 September 1867, reported *Lyttelton Times*, 5 September 1867; *Rv James Morgan*, 1 September 1868, reported *Lyttelton Times*, 2 September 1868. A longer sentence was imposed on Mark Turner, convicted on 6 March 1871 but he had a prior conviction for a misdemeanour (see *Lyttelton Times*, 7 March 1871) which the archives reveal was indecent assault of a child in 1858.

old accused, pleaded guilty to the full offence. The minimum sentence for the full offence was 10 years imprisonment with hard labour, which was duly imposed by the judge, with the newspaper noting that prosecuting counsel was to write to the Governor 'to see whether anything could be done to lighten the penalty.'<sup>95</sup>

By contrast there are remarkably few cases of alleged homosexual offending. In 1868 the 'old and feeble' William O'Brien faced two charges of assault with intent to commit sodomy but in each case the principal witness did not appear before the grand jury and eventually O'Brien was released.<sup>96</sup> There was also a lone case of alleged indecent assault by a male on a young boy, which was resolved by a guilty plea and a sentence of four years penal servitude.<sup>97</sup> It is possible that such conduct was rarely detected (though it is perhaps unlikely that bestiality was so much more readily observed). It may be simply that homosexual activity was unlikely to be reported to the authorities unless it involved an adult taking advantage of a child.<sup>98</sup>

### *Brothel-keeping*

In the early 1860s there were several prosecutions for keeping a 'disorderly house', the contemporary euphemism for a brothel, perhaps motivated less by views of the evils of prostitution per se than by a belief that brothels produced a general rise in criminal activity.<sup>99</sup> The first such prosecution was in March 1861 when James Evans was convicted, and his wife found not guilty, of keeping a disorderly house. Evans was imprisoned for two years for this offence.<sup>100</sup> Attempts in the following year to enforce the same law proved less successful. A couple charged in 1862 never came to trial, with the female partner absconding before trial and the male, the notorious Martin Cash, later being discharged when no-one appeared to carry on the prosecution.<sup>101</sup> A further defendant charged in December 1863 did not go to trial because the grand jury rejected the charge.<sup>102</sup> The prosecution was somewhat more successful in 1864 when a couple were convicted, on guilty pleas, of running a Christchurch brothel.<sup>103</sup> That appears to have been the last occasion within the period under study on which charges of brothel-keeping were brought. This is clearly not because there were no brothels. The evidence in a number of cases in the late 1860s and early 1870s referred more or less directly to brothels, with a notorious red-

95 *R v Alexander McKenzie*, 7 October 1872, reported *Lyttelton Times*, 8 October 1872. For the offence and penalty see *Offences Against the Person Act 1867*, s 58.

96 *R v William O'Brien*, 1 June 1868, see *Lyttelton Times*, 2, 3 & 8 June 1868. The newspaper reports indicate the prosecution intended to bring the accused before the grand jury again at a later date, but there is no evidence to show this ever occurred.

97 *Rv John de Seon*, 9 March 1871, reported *Lyttelton Times*, 10 March 1871. De Seon, aged 64, had at least two previous felony convictions.

98 Eldred-Grigg, above n 74, 49-50.

99 *Ibid* 42-43. For the not dissimilar position in America, see Friedman, above n 6, 131.

100 *R v James & Anne Evans*, 8 March 1861, reported *Lyttelton Times*, 9 March 1861.

101 Alice Farrell failed to answer bail on 9 March 1863. Cash was a former Tasmanian bushranger and member of the Canterbury police: see Eldred-Grigg, above n 74, 36; Hill, above n 46, 489. For his career, see *Dictionary of New Zealand Biography*, vol 1, 74. On this occasion he was discharged on 10 March 1863. He successfully applied for the return of £200 deposited with the Court, the Court being assured he had sold the house where the brothel had allegedly been conducted; see *Lyttelton Times*, 11 March 1863.

102 See *Lyttelton Times*, 5 December 1863.

103 *R Stephen Bowen, R v Margaret Bowen*, 3 December 1864, reported *Lyttelton Times*, 6 December 1864. The husband received a sentence of 12 months imprisonment; the wife 6 months.

light area simply being referred to by the newspapers as 'The Paddock'.<sup>104</sup> It is fair to assume that the authorities simply found legal action ineffective.<sup>105</sup>

### *'Rural and Agricultural' Offences*

Throughout the period there was a sprinkling of cases (40 charges) which remind us that Canterbury was a developing agricultural colony whose economy was based on farming. The most notable of these, and probably the best known criminal case in early Canterbury history, was the trial, conviction, and sentence to five years imprisonment of James Mackenzie for sheep-stealing:

James Mackenzie was charged with stealing on the 1<sup>st</sup> of March last 1000 sheep belonging to the Messrs Rhodes. The prisoner attempted to evade the responsibility of his crime by pretending not to understand the English language and he occasionally gesticulated in Gaelic: but on the empanelling of a jury to decide whether he was really ignorant of the language several witnesses proved that they had conversed with him in English which at these times he seemed to understand perfectly. The jury decided the prisoner was 'mute of malice' when the Judge directed a plea of not guilty on the charge of robbery be recorded and the trial proceeded.<sup>106</sup>

Mackenzie's fame is in part for the grand scale and brazenness of the theft, but more because he had taken the stolen sheep to a then-unknown (to Europeans) inland region of spectacular mountains, lakes and natural tussock pasture, which today is still known as 'the Mackenzie Country'.<sup>107</sup> Surprisingly, given the large flocks of sheep in colonial Canterbury, the only other occasion on which there was a trial for the theft of more than a few sheep was in 1872.<sup>108</sup> Despite the evidence that the accused had picked out at a combined muster a number of his neighbour's sheep which had been secretly marked on the legs, the jury acquitted the accused. The defence case appears simply to have been that the ear marks of the two landowners were similar enough to be easily confused and that the accused had been mistaken. The other eight cases where charges of sheep stealing were brought appear to have been the result of disputes between landowners, or between landowners and employees of neighbouring farmers, where the killing of a neighbour's sheep was magnified into criminal conduct. Juries seem to have been reluctant to convict any defendant who had some claim to have been acting in good faith or in accordance with customary practices,<sup>109</sup> or, at the least, would recommend leniency.<sup>110</sup>

104 See, for example, *R v Eliza Lambert*, 2 September 1869, reported *Lyttelton Times*, 3 Sept 1869; *R v George Brown*, 2 January 1872, reported *Lyttelton Times*, 3 January 1872; *R v William Kerr*, 4 April 1872, reported *Lyttelton Times*, 5 April 1872.

105 The law in such cases was not straightforward. It appears that keeping a disorderly house was a felony at common law (see J F Stephen, *Commentaries on the Laws of England*, (6th ed, 1868) vol 4, 374), although proof of ownership or management had been simplified by s 8 of the *Disorderly Houses Act 1751* (Imp).

106 *R v James Mackenzie*, 17 April 1855, reported *Lyttelton Times*, 18 April 1855.

107 The sheep-stealer is believed to be the only New Zealand felon to have his name commemorated in that of a unit of local government. For a vivid recreation of the trial, and a contention that Mackenzie was in fact innocent, see James McNeish, *The Mackenzie Affair* (1972). McNeish's view is shared by Hill, above n 46, 475-6. Mackenzie was later pardoned, on condition he leave New Zealand: see Hill, above n 46, 479.

108 *R v Thomas Terry*, 3 April 1872, reported *Lyttelton Times*, 4 April 1872.

109 *Rv John Thompson*, 8 September 1863, reported *Lyttelton Times*, 9 September 1863; *R v Charles Enderly*, 5 December 1863, reported *Lyttelton Times*, 8 December 1863. This case, as noted in Part II, led to the longest jury retirement in 20 years.

110 See, eg, *R v William Collett*, 3 December 1866, reported *Lyttelton Times*, 4 December 1866.

However there were clearly limits to jurors' tolerance as was shown in one of the number of cattle-related cases in 1863, where two young men were twice convicted of cattle theft, it being shown that while they had a tenable claim to 10 cattle from a mob running wild near the Waimakariri River, they had taken 22.<sup>111</sup> That incident accounted for six of the 13 cases where cattle theft was alleged. Three other cases were heard in the same month, with the accused in each case being acquitted. Three of the remaining cases raised the very different issue that the cattle had been stolen and killed for their meat. Where defendants were convicted of this offence, the penalties imposed were severe.<sup>112</sup>

There were also cases where charges of wounding livestock (cattle, horses and, in one case, pigs) were brought by the owners of the animals against neighbours who had injured the beasts in question in order to prevent them damaging fences or crops. One such charge led to a conviction on a guilty plea, and one to a conviction after a trial.<sup>113</sup> In the other eight such cases the charges failed because there was evidence of statements by the owners which could have been construed as permission to take strong action against the trespassing livestock, and either the case was dropped or the jury quickly acquitted.<sup>114</sup>

Two other cases, in 1868 and 1869, deserve special comment. These were unusual charges of damaging property - in each case arable land - by the deliberate sowing of weeds. In the first case the defendant was acquitted, but in the second a conviction ensued.<sup>115</sup> Such charges were probably brought under s 51 of the *Malicious Injuries to Property Act 1867*, a 'catch-all' residual offence for damage to a value of more than £5. A third charge under that Act, for maliciously cutting trees on land, failed on the facts.<sup>116</sup>

## V. OF PARTICIPANTS *Of*

### *Prosecutors and Defendants*

The archival records almost invariably name the Crown as prosecutor - though there are two dishonesty cases in late 1861 which appear in the archive in the name of individuals. It is not clear whether these were

111 *Rv Edward Owen & William Davidson*, 2 December & 4 December 1863, reported *Lyttelton Times*, 3 & 5 December 1863. The prosecution called no evidence on a third such charge against each defendant.

112 *Rv Robert Ross*, 11 June 1870, reported *Lyttelton Times*, 12 June 1870 (4 years imprisonment on conviction on two charges); *Rv James Reid*, 3 December 1864 (2 years imprisonment). Section 10 of the *Larceny Act 1867* imposed a minimum sentence of three years penal servitude (maximum 14 years), but allowed a sentence of less than two years with hard labour to be imposed.

113 *Rv Thomas Evenden*, 1 March 1862, reported *Christchurch Press*, 8 March 1863; *Rv David Tibbets*, 7 December 1870, reported *Lyttelton Times*, 8 December 1870. The report of *Rv John Curtis*, 1 June 1865, reported *Lyttelton Times*, 3 June 1865, suggests, inconclusively, that this was a similar case.

114 *Rv Henderson Gordon*, 2 September 1863, reported *Lyttelton Times*, 5 September 1863 (case discontinued); *Rv Margaret McGrath*, 6 April 1872, reported *Lyttelton Times*, 8 April 1872 (not guilty verdict); *Rv Peter McGrath*, 6 April 1872, reported *Lyttelton Times*, 8 April 1872 (Crown declined to prosecute once accused's wife acquitted of similar charge). A similar charge failed in *Rv William Gaby*, 1 March 1866, reported *Lyttelton Times*, 2 March 1866 because of a lack of evidence tying the accused to the injury. In England such cases of maiming of animals was sometimes motivated by a desire for revenge against the animal's owner, or on occasion occurred as animal mutilation for sexual gratification: Emsley, *Crime and Society in England 1750-1900*, above n 30, 95. There is no clear evidence of either motivation in the Canterbury cases.

115 Respectively, *Rv Charles Jarvis*, 10 June 1868, reported *Lyttelton Times*, 11 June 1868; *Rv Patrick Gallagher*, 5 June 1869, reported *Lyttelton Times*, 8 June 1869.

116 *Rv Thomas King*, 1 September 1868, reported *Lyttelton Times*, September 1868.

genuinely private prosecutions, or whether the named prosecutor is simply the complainant.<sup>117</sup> Certainly for the most part of the 1860s, conduct of prosecutions was in the hands of the Canterbury Provincial Solicitor. In many cases accused persons were defended by counsel, but the archival data and the uneven quality of the newspaper reports do not allow any reliable analysis of the frequency of legal representation, or of its effectiveness.<sup>118</sup> In the absence of any system of legal aid, defendants usually had to fund counsel themselves. Many clearly could not afford to do so. All accused, whether or not legally represented, could not give evidence on oath. However it became increasingly common during the 1860s and early 1870s for defendants without counsel to make addresses to the jury as to the facts of the case - with varying degrees of success. We can be a little more definite about the defendants. They were overwhelmingly male and European. There were a number of female defendants, and some accused from minority racial groups, whose positions are discussed below. Most seem to have been at least resident in Canterbury, but some defendants in 1856, described only as 'felons', may well have been sailors as in some cases the principal witnesses were ships' officers stated to be not in New Zealand at the time of the sittings.<sup>119</sup> The tenor of evidence recorded in some of the cases suggests some individuals accused of theft, forgery and the like in later years were 'transient' offenders who had relatively recently come to Canterbury from elsewhere, but the data does not allow firm conclusions to be drawn.

#### *Women in the Supreme Court in Canterbury 1852-1854*

The role of women in the Supreme Court is an interesting one. Women appeared relatively rarely before the Court as defendants and victims.

#### *Women as Defendants*

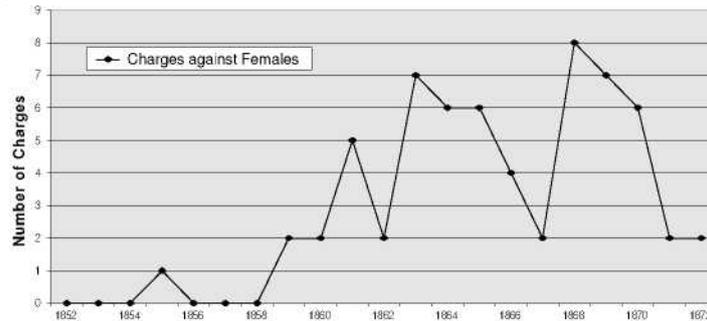
Fifty two different women appeared before the Court as defendants between 1852 and 1872. In that time women appeared 63 times and faced 75 charges, with one abandoned before it was entered. This represents just under 10% of the 761 charges laid in the Supreme Court for the same period. As can be seen from the graph in Figure 3, the pattern of offending is characterised by a series of sharp increases and decreases in the number of charges laid against female defendants. The highest number of charges laid in any one year, in 1863, is 10. No women appeared before the Court in 1852, 1853, 1854, 1856, 1857 or 1858. The average number of charges laid against women per year over the 21-year period is 3.6.

117 The Court records for two sessions in 1858 record most cases as 'R (on the prosecution of X) v Y', but it is far from clear that this represented actual charge of the prosecutions being in the hands of the person named, and the form of the records may simply reflect the recorder's preference.

118 Clive Emsley has described the effects of changing patterns of legal representation in criminal trials in nineteenth century England: see Clive Emsley, 'Albion's Felonious Attractions: reflections upon the History of Crime in England' in Clive Emsley & Louis A Knafla (eds), *Crime history and histories of crime : studies in the historiography of crime and criminal justice in modern history* (1996) 76. For the American position, see Friedman, above n 6, 245.

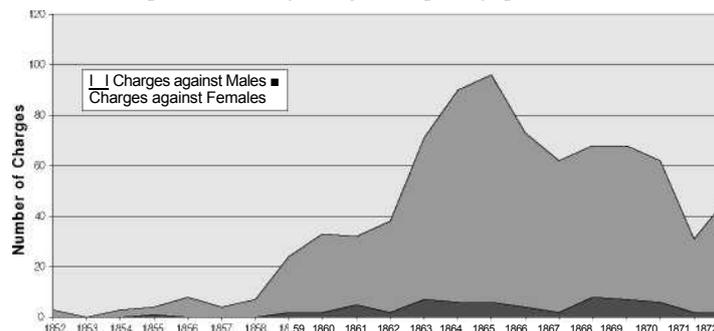
119 See *Lyttelton Times*, 5 July 1856.

Figure 3. Charges Laid against females in Supreme Court cases 1852-72 <sup>120</sup>



These figures stand out against the total figures for the period. Overall the number of charges laid increased steadily over time, before declining in the early 1870s. The average number of charges laid against male defendants was 32.66 per year and for the whole population the average was 36.43. There are a number of possible explanations for the low numbers of charges laid against women. The first of these relate to the type of crime that women were charged with. Women were charged with 16 different classes of offence in this period. The most common charge was larceny. Thirty-three of the 76 charges were for larceny. There were 11 charges of obtaining by false pretences and four charges each of perjury, robbery, forgery and arson. The remaining charges were for receiving stolen goods, assault, murder, manslaughter, keeping a bawdy house, escape, concealing birth, wounding, destroying a valuable security, maiming cattle and breach of customs regulations. The majority of charges are those that may have been disposed of easily in the Resident Magistrates' Court. There is not the same quantity of charges relating to violent crime as were laid against males, possibly due to reduced interaction. Further, as women did not participate to a significant extent in commercial activity, the opportunity for crimes such as forgery, embezzlement and obtaining by false pretences were limited. Interestingly, however, the *proportions* are not as dissimilar as might be expected. Approximately 26% of all charges laid in this period were for obtaining by false pretences, forgery and embezzlement whereas 20% of the charges laid against women were for obtaining by false pretences and forgery.

Figure 4. Analysis of charges by gender <sup>121</sup>



120 Source: *Returns of Prisoners for the Supreme Court of New Zealand 1852-1872*.

121 Source: *Return of Prisoners Tried in the Supreme Court 1852-1872*.

The first woman appeared in the record in 1855. She was Mrs Jane Cloud, about 30 years of age, and she was convicted on a charge of receiving stolen goods.<sup>122</sup> She was sentenced to three months imprisonment with hard labour. She had received two bags of flour, one bag of sugar, one bottle of mustard and two empty bags belonging to Lyttelton baker, Frederick Mason. No woman appeared on two or more separate occasions in one year, although some were charged with more than one offence or for separate counts when they did appear. Mary Ann Greaves (also known as Graves) faced charges on four separate occasions in 1862, 1866, 1868 and 1869 - this is the highest number of separate appearances by a woman. Hannah Bone appeared in 1860 and faced six charges of larceny.<sup>123</sup> She pleaded guilty to four of the charges and was acquitted on the remainder. It would be interesting to know how often these women appeared in the Resident Magistrates' Court. Catherine Greaves, whose age was given as 17 in 1868, was described in 1870 as 'an old offender'.<sup>124</sup> One interesting characteristic of the female defendants appearing before the Court is how often they appear charged with a male partner and how, following the trial, they and their partners were treated by the Court. There were 12 cases immediately identifiable as having been committed in partnership. The nature of the partnership varied. Emma Barnard was charged along with her brother with destruction of a valuable security.<sup>125</sup> In seven other cases the parties charged had the same surname and in one other case the couple were described as having lived together as husband and wife. However the results in these cases were varied. In four of the cases the male prisoner was convicted and the female acquitted. There were two cases in which the female was convicted and the male acquitted, and four cases in which both parties were acquitted. Hannah Bone, mentioned above, was charged alongside Stephen Bone, who was acquitted on all four charges he faced.<sup>126</sup>

Of the two cases in which both of the parties were convicted, there was disparity in the sentences handed down by the Court. Margaret Bowen received a sentence of six months imprisonment for keeping a disorderly house while Stephen Bowen received 12 months' imprisonment on the same charge.<sup>127</sup> Mary Holmes and Mary Ann Graves each received a sentence of two years imprisonment on a charge of robbery, while their partner, Charles Yates, received a sentence of three years imprisonment.<sup>128</sup> That women received lesser sentences of imprisonment was an almost universal trend. In part this was caused by the lack of separate prison facilities for women during the period but also by concern that first or young offenders would be irreparably damaged by continued association with hardened female criminals in the close confines of the Lyttelton gaol. In 1865 Gresson J commented that a Reformatory was badly needed, 'especially for juvenile offenders and females'. He was reluctant to sentence

122 *R v Cloud*, 17 April 1855, *Return of Prisoners Tried, First Book*, Case No. 9.

123 *R v Hannah Bone*, 3 September 1860, *Return of Prisoners Tried, First Book*, Case Nos. 66, 68, 70, 72, 73, 74.

124 *R v Greaves*, 1 March 1870, reported *Lyttelton Times*, 2 March 1870.

125 *R v Barnard*, 4 March 1870, reported *Lyttelton Times*, 5 March 1870.

126 *R v Stephen Bone*, 3 September 1869, *Return of Prisoners Tried First Book*, Case Nos. 65, 67, 69 & 71.

127 *R v Margaret Bowen*; *R v Stephen Bowen*, 3 December 1869, reported *Lyttelton Times*, 6 December 1869.

128 *Rv Holmes*; *R v Graves*; *R v Yates*, 4 September 1866, reported *Lyttelton Times*, 6 September 1866.

one female of 'tender years' to gaol but found that 'the moral atmosphere of our gaol even with all its deplorable deficiencies is less pernicious than the care of the girl's mother'.<sup>129</sup>

When it came to obtaining by false pretences, women were more likely than men to obtain goods by false pretences. Men were more likely to try and obtain money. Goods obtained by women were mostly domestic in nature, such as foodstuffs and fabrics.

The perjury cases provide some interesting material. 'No Bill' was found in the case of Eliza Ann Price in 1862.<sup>130</sup> In 1865 Elizabeth Moorhouse pleaded guilty to committing perjury and in her defence both she and her mother testified that she had been compelled to act by circumstances which had left her deserted by her husband, almost destitute, without food or money and compelled to go into service.<sup>131</sup> Gresson J sentenced Elizabeth to three calendar months of imprisonment, a more lenient sentence, he said, than one he would otherwise have passed. Harriet Edlin was discharged on a charge of falsely swearing that Robert Wilson was the father of the baby she had with her in the court.<sup>132</sup> The evidence in that case was considered unfit for publication. A similar case is that of Clara Nock, aged 19, who was charged and convicted in a case where again the evidence was deemed unfit for publication.<sup>133</sup> Clara was described by the prosecution as being of weak intellect. She had appeared in an affiliation (child maintenance) case where she had given evidence of paternity but where several witness for the prosecution testified to having had intercourse with her. She was convicted, although the jury recommended mercy, and she was sentenced to 18 months imprisonment with hard labour. It is arguable as to how merciful this sentence was because Charles Madden, in 1863,<sup>134</sup> and William Merritt, in 1864,<sup>135</sup> each received a sentence of 12 months imprisonment on conviction of a charge of perjury. Elizabeth Moorhouse, mentioned above, received only a sentence of three months imprisonment on being convicted on a charge of perjury. However Herbert Coupe, in 1867,<sup>136</sup> and George Musser, in 1869, both received sentences of two years' imprisonment with hard labour, indicating reduced judicial tolerance for the offence. Five women appeared in the Court facing pregnancy-related charges. They included Harriet Edlin and Clara Nock mentioned above. A charge was brought against Annie Wilson for concealing the birth of a child.<sup>138</sup> There were two cases in which women were charged with administering drugs so as to procure a miscarriage - one resulting in the death of the woman.<sup>139</sup> Annie Wilson had nothing to say in her mitigation and Gresson J noted that she could have been charged with murder, although he did not think that was what happened in this case. She sobbed bitterly in the Court and was given a lenient sentence of two months imprisonment with hard labour.

129 Gresson J, Opening of March Session of the Supreme Court 1865, reported *Lyttelton Times*, 4 March 1865

130 *R v Price*, 3 December 1862, *Return of Prisoners Tried, First Book*, Case No. 143.

131 *Rv Moorhouse*, 3 March 1865, reported *Lyttelton Times*, 4 March 1865.

132 *R v Edlin*, 2 March 1870, reported *Lyttelton Times*, 3 March 1870.

133 *R vNock*, 5 September 1871, reported *Lyttelton Times*, 7 September 1871.

134 *R v Madden*, 8 September 1863, *Return of Prisoners Tried, Second Book*, Case No. 191. Madden received a pardon on 16 June 1864.

135 *R v Merritt*, 4 March 1864, *Return of Prisoners Tried, Second Book*, Case No. 209. Like Clara Nock, Merritt was recommended to mercy.

136 *R v Coupe*, 5 June 1867, *Return of Prisoners Tried, Third Book*, Case No. 468.

137 *R v Musser*.

138 *R v Wilson*, 1 September 1869, *Return of Prisoners, Tried Third Book*, Case No. 597.

139 *R v Wilson*, reported *Lyttelton Times*, 2 September 1869.

There were six charges of violence among the 75 charges laid against females. Three of these were for assault, one charge was for murder, another for manslaughter and the last for wounding with intent to do grievous bodily harm. Only one of the charges resulted in a conviction. As discussed above, Christina Gregg was cleared on the charge of poisoning her husband. The charge against Anne Skinner was abandoned. Ann Taylor was discharged. Matilda Skinner, who was tried alongside John Skinner, was acquitted although John was convicted and fined 40 shillings.<sup>140</sup> Agnes Andrew was discharged on the charge of manslaughter after the grand jury failed to find a 'True Bill'.<sup>141</sup>

Eliza Lambert was charged with wounding with intent to do grievous bodily harm.<sup>142</sup> She had been drinking with a man named M'Cormack at a 'house of ill fame'. M'Cormack and Eliza quarrelled when he would not allow her to drink a glass of pale brandy. When they returned home later that evening, M'Cormack called Eliza an offensive name and she, in response, threatened him with a knife. He dared her to run him through. She did. The next morning Eliza apologised and said that he should not have dared her to run him through when she was in a temper. She was convicted but the jury recommended mercy on the grounds of provocation - the provocation being that she had been dared to commit the crime by the victim (Gresson J, interestingly, did not agree with the jury that the dare constituted provocation). These statistics however give little information about the backgrounds and characters of the women appearing in court. A number of New Zealand works on the area have suggested that poor women and prostitutes were targeted by police officers acting in accordance with the popular policies of the era, and that that same morality protected 'respectable' and married women from prosecution in the courts. Charlotte MacDonald, in particular, provides insight into the backgrounds and experiences of a number of the female defendants who appeared before the courts.<sup>143</sup> Jan Robinson notes that the lives of the women appearing in the courts were 'characterised by vagrancy, prostitution and drunkenness' and that as a result they attracted 'a high degree of police surveillance and intervention'.<sup>144</sup> These authors suggest that prostitutes were the class of female offender appearing most frequently before the courts. While this may well have been true of women appearing in the Resident Magistrates' Court,<sup>145</sup> the data does not allow us to be certain that the same is true of women appearing in the Supreme Court. Certainly several of the women mentioned above were prostitutes or were poor and many of the others charged with dishonesty offences were apparently also in need. However, as might be expected, there were

140 *R v Matilda Skinner; R v John Skinner*, 1 March 1869, *Return of Prisoners Tried, First Book*, Case Nos. 31 & 30 respectively.

141 *R v Andrew*, 1 June 1864, *Return of Prisoners Tried, Second Book*, Case No. 232.

142 *R v Lambert*, 2 September 1869, reported *Lyttelton Times*, 3 September 1869.

143 See, particularly, Charlotte MacDonald, 'Too Many Men and Too Few Women: Gender's "Fatal Impact" in Nineteenth-century Colonies' in Caroline Daley & Deborah Montgomerie (eds), *The Gendered Kiwi* (1999); Charlotte MacDonald, *A Woman of Good Character: Single Women as Immigrant Settlers in Nineteenth-century New Zealand* (1990); Charlotte Macdonald, 'Crime and Punishment in New Zealand 1840-1913: A Gendered History' (1989) 23 *New Zealand Journal of History* 5. For the English position, see Emsley, *Crime and Society in England 1750-1900*, above n 30, 152-153.

144 Jan Robinson, 'Canterbury's Rowdy Women: Whores, Madonnas and Female Criminality' (1984) 1 *The Women's Studies Journal (NZ)* 6.

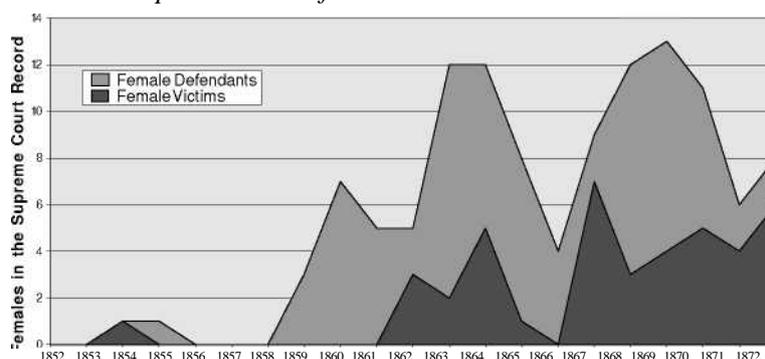
145 Finn, 'Debt, drunkenness and desertion: The Resident Magistrates' Court in early Canterbury 1851-1861', above n 1,470.

notable exceptions, such as Christina Gregg, mentioned above, and Margaret Patterson and Emily Williams who were jointly tried for insurance fraud in 1870.<sup>146</sup>

### *Female Victims*

Forty-one females appeared in the case records as victims of violent crime. The offences that were perpetuated against them include murder, rape, assault with intent to rape, indecent assault, assault, and indecent exposure. A number of these cases are discussed elsewhere in this article, particularly those with a sexual element to the offending. The first female victim to appear was in 1854, in the sixth case heard in the Province. This case featured alleged offending by William Domford, a 17-year-old blacksmith.<sup>147</sup> Domford was accused and convicted of assaulting, with intent to commit rape, a child under the age of 10 years. He was sentenced to two years imprisonment with hard labour. It appeared that in all cases appearing before the Court where the victim was female, the offender was male. A charge of assault against Anne Skinner for violence against Anne Wilson was abandoned in 1859 before it proceeded into the Supreme Court system. There is no readily apparent correlation between the number of female defendants and female victims. The graph in Figure 5 shows that the number of female victims exceeded the number of female offenders in four years, 1862, 1867, 1871 and 1872.

*Figure 5. Female Appearances in the Supreme Court of New Zealand 1852-1872*<sup>148</sup>



The female victims in Figure 5 do not include those women whose property was taken in larceny offending, or women who were indirect victims, such as those women whose identities had been used by certain prisoners to obtain goods and/or money by false pretences. Nor does Figure 5 include the two women mentioned above who were administered drugs so as to procure abortion. Inclusion of these latter categories may produce a clearer relationship.

### *Maori and Other Racial Minorities*

One of the most notable features of the two decades under study is the remarkably small number of cases involving Maori. There are only two cases in the entire 20 years with identifiable Maori defendants. If this

<sup>146</sup> See n 8 above.

<sup>147</sup> *R v Domford*, 1 December 1854, *Return of Prisoners Tried, First Book*, Case No. 6

<sup>148</sup> Source: *Return of Prisoners Tried 1852-1872*.

figure accurately reflected the rate of Maori offending, it was certainly well below that of the settler population. Certainly there is a high probability that some forms of criminal conduct would simply never have come to the attention of colonial authorities<sup>149</sup> and there is some evidence that police sometimes resorted to extra-judicial remedies for Maori offending rather than bringing a prosecution.<sup>150</sup> The former may have been less likely after 1863, when a Maori constable was stationed at Kaiapoi, the site of the largest Maori community in Canterbury at that time.<sup>151</sup> However it seems unlikely that the whole of the disparity can be so explained and it is simply possible that Maori genuinely had low rates of offending.<sup>152</sup> The first case to come before the Court was that of Pita Te Hori who was charged with obtaining money by false pretences in 1864 but the grand jury rejected the charge. Unusually the newspapers reported the substance of the grand jury proceedings, and we learn that the accused, who was described by his counsel as 'a Maori of the highest standing and a native assessor', had apparently been seeking to test the law relating to the impounding of straying horses. Gresson J pointed out that while the accused left the Court 'without the slightest stain on his character', he should not have preceded in the way he had done but rather ought to have referred matters to the authorities.<sup>153</sup> The other case involving a Maori accused was very different. One Natanahira was convicted of indecently assaulting his young niece when both were staying at a hotel.<sup>154</sup> Only two other cases are identifiable where Maori were involved. In one the complainant was a Maori land-owner from whose property some trees had been stolen;<sup>155</sup> in the other several Maori gave evidence as witnesses for the prosecution against a farmer charged with killing his neighbour's cattle.<sup>156</sup> In that case counsel for the accused made a sustained attack on the credibility and character of the principal Maori witness, and the prosecution was permitted to call evidence in rebuttal to show these criticisms were unfounded. The jury's guilty verdict shows their acceptance of the evidence of the Maori witnesses.

There were two cases where the accused was described by the newspapers as 'a half-caste'. One of these was a youth charged with theft of a horse in 1869.<sup>157</sup> The other was Jacob Ives, convicted of manslaughter in 1866 for stabbing a ship mate in a drunken quarrel.<sup>158</sup> While 'half-caste' in colonial usage commonly meant a person of mixed Maori and European ancestry,

149 Alan Ward, *A Show of Justice* (1974) has shown that, in the North Island at this time, Maori largely determined the extent of their involvement in the settler legal process. However Ward's study hardly touches on the South Island at all.

150 Hill, above n 46, 648, reports that Maori who conspired to steal gunpowder from the local armoury were beaten by police; they were not prosecuted.

151 *Ibid* 648-49.

152 It is notable that Maori were also very much under-represented in criminal cases in the Resident Magistrates' Court in Canterbury 1852-62: see Finn, 'Debt, drunkenness and desertion: The Resident Magistrates' Court in early Canterbury 1851-1861', above n 1, 468. The area is deserving of further study.

153 *R v Pita Te Hori*, 19 December 1864, reported *Lyttelton Times*, 2 March 1865.

154 *R v Natanahira*, 3 June 1869, reported *Lyttelton Times*, 2 March 1865. The accused had been acquitted on the more serious charge of assault with intent to commit rape. At that time there was no criminal offence of incest.

155 *R v Michael Cleham*, 2 June 1866, reported *Lyttelton Times*, 4 June 1866. The accused was convicted and sentenced to six months imprisonment.

156 *R v James Courtney*, 9 & 10 June 1870, reported *Lyttelton Times*, 10 & 11 June 1870.

157 *R v George Apes*, 1 September 1869, reported *Lyttelton Times*, 2 September 1869.

158 See Part IV above.

it is not clear it did so here in both of these cases. The report of Ives's trial indicates the accused had only a limited knowledge of English, and had his principal language been Maori, an interpreter might well have been summoned.

There were also a number of other cases involving people from racial minorities. There were three or four cases involving people of African descent. The first possible instance is the accused noted in some records as 'Harry Black' and in others as 'Harry the Black'. The prosecution of Jacob Small for rape has already been noted.<sup>159</sup> A second black defendant was acquitted of stabbing with intent to do grievous bodily harm in 1864, but it is not clear whether the jury accepted the defence of accident or the clear evidence of provocation by way of racial abuse.<sup>160</sup> The last in our period

was Cedeno, convicted of murder in 1871.<sup>161</sup>

In the 1850s two cases were brought against Indian defendants (both workers brought out to Christchurch by a retired Indian Army officer); both were convicted, though one was acquitted on one of the two charges he faced. One of these involved an allegation of theft from a fellow-Indian;<sup>162</sup> the other two charges were of theft from the employer.<sup>163</sup>

#### *Young Offenders*<sup>164</sup>

At this time the age of criminal responsibility was determined under the common law rule that a child who knew the difference between right and wrong could be tried for an offence. There are four identifiable cases where defendants aged 15 or younger came before the Court. Three of these were in 1869 and the last in 1872. The two youngest defendants were John Tucker and John Pepperell, boys of 13 and 10, jointly tried for counterfeiting a shilling coin from lead and uttering it by trying to purchase goods with it. Both children were represented by counsel and pleaded not guilty. However the evidence was compelling and the jury convicted Tucker of counterfeiting and Pepperell of uttering the coin. Tucker's counsel also called a former employer to give evidence of his good character. Gresson J clearly attempted to temper the sentences he gave to the ages of the children, although those sentences would now be seen as harsh. Tucker was sentenced to 14 days in prison with three days at intervals to be served in solitary confinement; Pepperell was sentenced to serve nine days in prison with one of them in solitary confinement.<sup>165</sup> In the three other cases far more severe sentences were passed. As discussed above, a 14 year old youth was sentenced to one month of imprisonment and a whipping for indecent assault.<sup>166</sup> The other two defendants received lengthy prison terms. Thomas Smith was convicted on a guilty plea of theft of letters.

<sup>159</sup> See Part IV above.

<sup>160</sup> *R v Charles Melbourne*, 2 June 1864, reported *Lyttelton Times*, 4 June 1864.

<sup>161</sup> See Part IV above.

<sup>162</sup> *R v Goordena*, 10 March 1858, reported *Lyttelton Times*, 13 March 1858. The merits of that acquittal are, perhaps, called into question by a later Court order that a purse and money found on the accused be returned to the victim.

<sup>163</sup> *Rv Wuzeerah*, 1 September 1859, reported *Lyttelton Times*, 3 September 1859.

<sup>164</sup> For the position in England see Emsley, *Crime and Society in England 1750-1900*, above n 30, 204; for America see Friedman, above n 6, 163.

<sup>165</sup> *R v John Tucker; R v John Pepperell*, 4 June 1869, reported *Lyttelton Times*, 5 June 1869. A shilling was equivalent to the modern 10 cent coin, but of course had far greater purchasing power.

<sup>166</sup> *R v Henry Lawrence*, 2 & 3 March 1869, reported *Lyttelton Times*, 3 & 4 March 1869. See Part IV above. Gresson J on several occasions made it plain that he regarded the sentencing of young offenders as being made more difficult because, until 1872, there was no reformatory institution in Canterbury and to send young offenders to prison was to have them mingle with more serious offenders: see *Lyttelton Times*, 2 Sept 1868; *Lyttelton Times*, 4 March 1869; *Lyttelton Times*, 8 October 1872.

He had discovered that the key to his employer's postbox fitted others at the Post Office and had taken some letters from these boxes out of curiosity.<sup>167</sup> Gresson J imposed a sentence of three years imprisonment on the basis that the *Post Office Act* did not allow a shorter sentence, but said he was prepared to refer the matter to the Government to see if the Governor would commute the punishment. That sentence is dwarfed by the sentence of 10 years penal servitude imposed on Alexander McKenzie for bestiality in 1872.<sup>168</sup>

## VI. ALCOHOL AND OFFENDING

There were many cases where defendants put forward as a mitigating factor that they had committed an offence while drunk<sup>169</sup> or argued that intoxication had prevented them from knowing what they were doing. While there was one case where evidence of intoxication may have persuaded the jury that the accused lacked a necessary mental element of the offence,<sup>170</sup> such arguments rarely succeeded, even in such extreme cases such as that of Philip Gear. Gear was convicted in 1867 of attempting suicide while suffering from delirium tremens, an extreme effect of prolonged alcohol abuse.<sup>171</sup> It was also common for accused persons or their counsel to allege that victims or witnesses had been sufficiently intoxicated to become unreliable witnesses as to events.

One case which perhaps deserves special note is that of Angus McDonald, who pleaded guilty to assault with intent to commit rape in September 1867. The newspaper reported the accused as saying he was 'so much under the influence of drink at the time of the occurrence that he knew nothing of the matter'. The archival record contains the following entry which is unparalleled in the period under focus:

This prisoner was proved to be a man of excellent character and a good husband but to have been exceptionally under the influence of drink and so excited by it as not to be master of himself.<sup>172</sup>

Almost as rarely, it appears that Gresson J was prepared to see intoxication in this case as a reason for leniency in his sentencing;<sup>173</sup> it was more common for him to see intoxication as aggravating the offending.<sup>174</sup> Another indication of the centrality of alcohol to criminal offending in early Canterbury is the frequency with which offences such as thefts and assaults took place on, or just outside, licensed premises.<sup>175</sup> Defendants

<sup>167</sup> *R v Thomas Smith*, 2 June 1869, reported *Lyttelton Times*, 3 June 1869.

<sup>168</sup> *R v Alexander McKenzie*, 7 October 1872, reported *Lyttelton Times*, 8 October 1872. McKenzie had pleaded guilty to the offence. As is noted above, see Part IV above, other defendants to such charges were inevitably found guilty only of an attempt, and had received much lighter sentences.

<sup>169</sup> Two examples of dozens are *R v John O'Malley*, 3 March 1864, reported *Lyttelton Times*, 5 March 1864 and *R v Robert Wilson alias Stuart*, 2 March 1867, reported *Lyttelton Times*, 4 March 1867.

<sup>170</sup> *R v Joseph Griffin*, 4 March 1870, reported *Lyttelton Times*, 5 March 1870.

<sup>171</sup> *R v Philip Gear*, 3 June 1867, reported *Lyttelton Times*, 4 June 1867.

<sup>172</sup> *R v MacDonald*, 4 September 1867, *Return of Prisoners Tried, Third Book*, NZ National Archives, Christchurch.

<sup>173</sup> The sentence of one month of imprisonment, seems lenient: see *Lyttelton Times*, 5 September 1867.

<sup>174</sup> For example, 'the excuse of drunkenness was one which the law did not and could not recognise. The fact of being under the influence of liquor in the eyes of the law was more of an aggravation than an excuse for the committal of the crime': *R v William Matthews*, 1 June 1864, reported *Lyttelton Times*, 2 June 1864.

<sup>175</sup> For example, cases in the latter half of 1863 in such circumstances include *R v Patrick Keane*, 3 September 1863, reported *Lyttelton Times*, 5 September 1863 (stabbing); *R v George Lumley*, 7 September 1863, reported *Lyttelton Times*, 9 September 1863 (murder); *R v George Frazer*, 2 December 1863, reported *Lyttelton Times*, 3 December 1863 (assault with intent to rob); *R v Walter Brighton*, 4 December 1863, reported *Lyttelton Times*, 5 December 1863 (larceny). For the role alcohol played in colonial life, see Eldred-Grigg, above n 74, 72.

were not the only participants in the criminal justice process to feel the effects of alcohol. The grand jury in 1869 referred to the lack of proper accommodation for witnesses, saying that 'without such facilities witnesses went to public houses and were scarcely in a fit state to give evidence when called upon to do so'.<sup>176</sup> On one occasion two witnesses who drunkenly interrupted the Court were imprisoned for a day.<sup>177</sup> The same penalty was imposed on a potential juror who arrived at court intoxicated.<sup>178</sup>

## VII. CONCLUSION

As can be seen from the data discussed above, there were significant changes in the patterns of offences before the Supreme Court in the early years. It is clear that there was a major increase in the work load of the Court from the mid-1860s, an increase which appears to be related to a degree of social dislocation which accompanied the exploitation of gold in the neighbouring areas of Otago and Westland.<sup>179</sup>

Our reading of the cases before the Supreme Court gives some, but limited, support to Fairburn's thesis that much of the antisocial behavior evident in Victorian New Zealand was committed by persons not anchored to the local communities.<sup>180</sup> Certainly some areas of offending, such as forgery, appear often to have been committed by transients, that is to say, persons passing through Canterbury on their way to or from areas that were seen to possess better prospects, or who were, in effect, visiting as members of the crews of ships visiting the Canterbury ports.<sup>181</sup> The same appears to be true for a substantial number of the offences of violence. However many of the 'rural' offences, together with a substantial proportion of dishonesty offences, appear to have been committed by persons reasonably settled into their communities. There may be some parallels with contemporary America, where the relationship between social mobility and offending is contested.<sup>182</sup> We hope that our analysis of defendants in criminal cases and of the frequency of different offences may provide a starting point for future research. Although historians have long expressed divergent views as to the value of statistical analysis of criminal offending,<sup>183</sup> the volume and quality of the data we have been able to examine does suggest that there is value in the statistics compiled here. Certainly, as Philips and Gatrell<sup>184</sup> have suggested, there is a need for the statistical data to be carefully considered in its legal and social setting.

176 *Lyttelton Times*, 4 June 1869.

177 *Lyttelton Times*, 11 March 1863.

178 *Lyttelton Times*, 7 March 1871.

179 This was not unprecedented - there had been a small spurt of offending at the time of the short lived rush to the Aorere goldfield in Golden Bay in 1858.

180 Miles Fairburn, *The Ideal Society and Its Enemies* (1989) ch 7. See also Stephen Garton, 'The Convict Taint: Australia and New Zealand' in Clive Emsley & Louis A Knafla (eds), *Crime history and histories of crime : studies in the historiography of crime and criminal justice in modern history* (1996) 278.

181 The same would appear to be true of the less serious offences tried in the Resident Magistrates court, see Finn, 'Debt, drunkenness and desertion: The Resident Magistrates' Court in early Canterbury', above n 1,470-475. Clive Emsley, *Crime and Society in England 1750-1900*, above n 30, 103, has remarked on the frequency of violent offending in English sea-ports at this time.

182 Friedman, above n 6, 209-10.

183 Contrast, for example Fairburn, above n 180, 206 with the views of J J Tobias, *Nineteenth Century Crime: Prevention and Punishment* (1972) 81-96.

184 David Philips, *Crime and Authority in Victorian England* (1977); VAC Gatrell, 'The Decline of Theft and Violence in Victorian and Edwardian England' in V A C Gatrell, B Lenman & G Parker (eds), *Crime and the Law, The Social History of Crime in Western Europe since 1500* (1980).

Further studies are necessary to allow a full understanding of the phenomenon of serious crime in Canterbury. Further study may tell us more about the way in which gender issues affected the criminal law and its enforcement. Changes in the nature, and efficiency, of the local police force may also have had a very substantial bearing on patterns of reported offending and criminal trials. It would also be useful to consider the (relatively limited) changes to the substantive criminal law and criminal procedure during the period and the effect of these on the frequency and outcomes of prosecutions.

There is also much to learn from comparative analysis of offending in Canterbury and other contemporary societies, providing care is taken to consider the distinctive features of policing and prosecution of offending in the different settings. It would, for instance, be interesting to discover why the rate of Maori offending in Canterbury was, or appears to be, very much less than that for many North Island areas. Similarly, why were offences of forgery, embezzlement and obtaining by false pretenses very much more prevalent, or apparently so, in colonial Canterbury than they were in the heavily industrialised Black Country of England which has been studied by Philips.<sup>185</sup> In the absence of comparable data from New Zealand or other colonies, it is difficult to know whether the high rate of such offending is a peculiarity of early Canterbury or a part of a wider colonial pattern. Was this perhaps a function of the economic conditions of the colony?<sup>186</sup> Or, was it representative of offenders taking advantage of colonial commercial practices? We hope this study may stimulate further research along these or other avenues.

<sup>185</sup> Philips, above n 184, 223-28.

<sup>186</sup> On the disputed historiography of the relationship of capitalism and crime, see Emsley, 'Albion's Felonious Attractions: reflections upon the History of Crime in England', above n 118, 68-69.