

The captain seemed greatly distressed and agitated, and at times hardly seemed to know what he was doing. Witness did not like to say much. Did not see Burns and Whitty sign the articles; was on deck when they went below for that purpose. On their return Burns said to witness: 'At Bathurst I go by the name of John Burns, and I have signed the articles by that name.' The prisoner, MacPhee was one of Burns's party, and was all along aiding and assisting."

After this witness had been examined, the Chief Justice remarked that it was his opinion, in which the rest of the court concurred, that the indictment could not be sustained, as it would appear to have been the intention of the prisoners rather to save the vessel for the sake of the salvage, than to destroy her, however reprehensible the means adopted for that purpose may have been, and which ultimately caused the loss of the vessel. He did not know what further evidence was to be produced, but he threw out the forgoing remark, under the impression that the evidence of the witness was that on which the Crown officers chiefly relied.

The Attorney-General stated his determination to go on with the case; and Mr. Binns proceeded to cross-examine the witness as follows:—

"Cross-examined by Mr. Binns.—Had no interest in the vessel—she was insured in a club. Never said to anyone that Burns and Whitty had not been informed of the real state of the vessel before they came on board. They were to have extra wages on account of the vessel being leaky. After dropping anchor on the 28th of October there was more than six feet of water in the hold; before all hands left her it was more than ten feet. Only took a few necessities on shore that night; might have remained on board all night with safety. Left neither dog nor cat on board. Five cwt. of bread was left in the vessel, took about half a hundred-weight in the boats. Before Burns and Whitty deserted the vessel they had been pumping all the night before. When the first boat came off to them, the landsmen were frightened when they heard there was six feet of water in the hold, and refused to remain, thinking she was sinking. Neither Burns nor Whitty asked the captain nor witness to go or send on shore for assistance. At this time they were within half a mile of the land. When Burns came on board with the order, witness asked how could the vessel be abandoned when he was on board of her, and how dared he to come with such an order? Told Burns the captain was gone to Souris to hire a vessel. Burns asked witness if he would employ his boat's crew, which witness declined. Did not ask them to stop. Remained on board himself until near dark to watch the vessel. Witness is the captain's brother, and the elder of the two. The captain is upwards of twenty-four years of age. Had been master of the vessel for about three years. Burns might have had more experience. They had kept regular watch the night before they made the land; sometimes one pump was going, afterwards both. Before boarding the vessel after Burns had slipped the cable, the captain called out to them to heave back the main yard. They said they would not, she would not keep out of the wind. A vessel always does better when that was done. She was then about a mile from where she had been anchored, and worked very well. There was more sail put on her. His brother might have given orders. Witness and his brother were anxious to get the vessel nearer the shore, in hopes of picking up their