

IN THE DISTRICT COURT
OF NEW SOUTH WALES
CRIMINAL JURISDICTION

No. 81/5/0071.

12
dg/4
O/S 4046

BEFORE HIS HONOUR JUDGE MARTIN

BOURKE, 19TH OCTOBER, 1981.

ALVIN R. RICHARD JAMES SMITH

CHARGE: For that he on or about the 23rd November 1980 at Bourke in the State of New South Wales did receive and have three gauges and four spanners the property of Bowden & Co. Pty. Limited before then stolen, he the same Richard James Smith at the time he did receive the said three gauges and four spanners knowing the said to have been stolen.

PLEA: Not guilty.

MR ARMITAGE appeared as Crown Prosecutor.
MR PARKER appeared for the Accused.

(Jury empanelled at 10.45 a.m.)

(Short adjournment)

(On resumption)

HIS HONOUR: Mr Crown, Mr Parker, Members of the Jury. Something has happened in this case which has caused me to delay the hearing and I am sorry for that delay, but it is something which worries me immensely and continues to worry me. It is the second time that it has happened in a court in which I have had the duty of presiding in the past and it is this. The accused man is obviously of Aboriginal blood. Equally obviously there were three members of the jury panel called who were of Aboriginal blood and none of those three remains. The reason why none of those three remains is because each of them was challenged by the Crown Prosecutor.

The Crown Prosecutor, like the counsel for the accused, has an absolute right of challenge of a certain number of jurors and does not have to give any reason. I have not the power to ask the Crown Prosecutor for his reasons and I

think, for a number of reasons, as to whether or not I should do so.

The fact is that the Crown Prosecutor is a person well known to me as an honourable citizen, an honourable Crown Prosecutor and I am not in the slightest criticising his action nor impugning it in any way whatsoever. But whilst that is the fact, the other fact remains that it is a very important principle of our system of justice that justice must not only be done, it must appear quite clearly to be done. What has been worrying me for the last one and a half hours is that if I allow the situation to continue, some members of our community may think that appearances suggest that justice is not being done. I believe that justice will be done, I have every confidence in my fellow citizens whether they are white or black that are called into juries, and I have no doubt that justice will be done, but I think some citizens may feel otherwise.

A Judge has heavy responsibilities and one of the Judge's powers under those responsibilities is to discharge a jury and to stop a trial and require it to go on another day with another jury for any reason which he, in his discretion, thinks proper.

I have given this considerable thought and I am considerably worried, but I am quite certain in my own mind that the proper thing for me to do, to avoid the possibility that some of the citizens of our country may think that justice will not be done, is to discharge you members of the jury from further service and thus to put an end to the trial for the time being.] The trial will go on at some other time and at such place as the Honourable the Attorney General appoints but it will not come on today.

You are discharged Members of the Jury. Thank you for your attendance and for your patience in listening to me.

(In the absence of the jury.)