

## Chapter Two – First born and descendants

(Weblink James Boyle and Jane Fahey)  
(Weblink to parents Thomas Boyle and Ellen Fanning)

**James BOYLE**

B about 1838 Ireland  
D 03 December 1879 Auckland New Zealand  
M 04 July 1871 Auckland New Zealand

**Jane FAHEY**

B 08 November 1853 Auckland New Zealand  
D 05 February 1916 Auckland NZ

**Children:**

1. Mary Ellen BOYLE born 05 August 1873 Auckland NZ
2. Thomas Edward BOYLE born 04 December 1875 Auckland NZ
3. Michael Fahey BOYLE born 31 May 1878 Auckland NZ

### The family history of James BOYLE and Jane FAHEY

James BOYLE the eldest son of Ellen nee FANNING and Thomas BOYLE was born about 1838 in Tipperary, Ireland.

When James left Ireland with his parents in 1847 the passenger list did not record his age only that there were 3 male children under the age of 10. The family embarked on the ship "Sir Robert Sale" at Cork on 30th June 1847 and set sail on 04 July 1847.

The BOYLE children became sick and spent some time in the ship's hospital. The Medical and Surgical Journal of the ship "Sir Robert Sale" records details of passengers who spent time in the ships Hospital.

<i>Name</i>	<i>Age</i>	<i>Aliment</i>	<i>Admitted</i>	<i>Cured</i>
BOYLE James	4	Diarrhoea	20 July 1847	26 July 1847

(Reference Archives NZ The Medical Journal of the Voyage of the ship "Sir Robert Sale" from England to New Zealand 1847 Original document Public Records Office Kew London Ref: ADM 101 79/1 also held at Alexander Turnbull Library, Archives NZ Auckland Office & NZ Fencible Society Indexes to Fencibles compiled by Shirley E. Kendall.)

James age was recorded wrongly as he would have been about 8 years old at that time.

The "Sir Robert Sale" arrived in Auckland on 11th October 1847 without having touched at any intermediate port on the journey to New Zealand.

Life must have been tough for James junior when his mother died on 14 October 1847, just a few days after the family arrived in Auckland. James would have been aged 9 years.

James' his siblings and father left the "Sir Robert Sale" and boarded the Brig "Victoria" which took the family to the fencible village of Howick where they settled.

James BOYLE along with his father and siblings are recorded on the 1849 Census of the Parish of Pensioners Villages. Details are:

Captain McDonald's Company stationed at Howick June 18th 1849

Number Rank & Name	Thos. BOYLE
Rate of Pension	9d.
Age	40
Wife's Name	Dead
Age	

Children Male	<b>James</b> Edward Thomas
Age	<b>10</b> 8 6
Children Female	Margaret
Age	4
Religion	Roman Catholic

(Reference NZ Fencible Society transcribed from records original held at Auckland Institute Library Auckland War Memorial Museum)

James must have attended school in Ireland and continued with his education in New Zealand as I have found his signature on many documents.

James was about 15 years old when his father Thomas BOYLE married on 07 July 1853 at Howick to Frances FLANNAGAN.

(Reference Auckland Public Library RA 7-1 Marriages 1848-1895 Our Lady Star of the Sea-Howick Catholic Church register Auckland)

The Auckland District courts registers of Monday 19 July 1858 record James BOYLE appears charged by Alex Henderson Constable Armed Police Force with Being Drunk at Howick on Sunday the 18<sup>th</sup> Instant. He pleaded guilty and was charged 5/- and cost or 48 hours Imprisonment. He paid his fine. James would have been about 20 years of age at this time.

#### *Nominal Roll 2<sup>nd</sup> Waikato Militia Entry*

Name	BOYLE James
Year	17 September 1863
Place of enrolment	Howick
Trade	Seaman
Age	23 years
Size	5 Feet 8 inches
Comments	27 September 1864 discharged
General observation	Convicted of Felony

Information recorded in the publication "The New Zealand Medal" detailed that: BOYLE James; Sergeant enlisted the 2<sup>nd</sup> Waikato Militia Regiment in Howick and served from 17 September 1863 to 27 September 1864. He also served with the Imperial Commissariat Transport Corps. He was later convicted of felony. He was born about 1840. His medal entitlement was published in the 1871 NZ Gazette. Other details are located at Archives NZ Wellington Agency AD (Army Department) series 32 Item 2255. (Imp Issue) Indicated entitlement to Imperial issued medal. Medal possibly named to 1<sup>st</sup> Waikato Militia. But on other documents it states "for services in the Commissariat Transport Corps".

(Reference *The New Zealand Medal to Colonials New Zealand Wars 1845-1872* by Richard Stowers page 93)

When James BOYLE made application in 1872 for his New Zealand War Medal it states "for services in the Commissariat Transport Corps".

The New Zealander Auckland Newspaper dated 21 May 1864 reads:

*POLICE COURT - Friday  
SHOOTING A PRISONER - James BOYLE was charged with having fired a gun loaded with gunpowder and heavy shot at August Loxton thereby inflicting a severe wound at Otahuhu on the 16<sup>th</sup> Instant - Mr Wynn appeared for the defence - The chairman said it was his intention to proceed to Otahuhu with Mr Lodge tomorrow to take the mans depositions who lies in a very dangerous state. Prisoner was then remanded.*

(Reference Alexander Turnbull Library *The New Zealand Auckland Newspaper 21 May 1864 page 6 in book form*)

The newspaper article recorded quote, "shot at August Loxton" but James actually shot Thomas Green. Another newspaper article stated that James was charge by Augustus Lawton a private in the 5<sup>th</sup> company of the 2<sup>nd</sup> Regiment.

The New Zealander Auckland Newspaper of 28 May 1864 reads:

*POLICE COURT - Friday*

*THE SHOOTING CASE - James BOYLE a Sergeant in the 3<sup>rd</sup> Regiment of Waikato Militia was placed at the bar charged by Angus Lawton a private in the 5<sup>th</sup> company 2<sup>nd</sup> Regiment with shooting with a felonious intent at Private Green also of the Waikato Militia on Monday the 16<sup>th</sup> instant. Mr J B Russell instructed by Mr Wynn appeared for the prisoner - James BOYLE sworn deposed. That on the day of the occurrence he left the Albert Barracks on escort to Otahuhu with a prisoner named Green a Waikato Militiaman the prisoner being Sergeant of the party. On arriving at the Junction Hotel they halted and the prisoner paid for drink for Green and offered the prisoner some but he refused to take any. They then proceeded on the journey and were next halted at the Harp of Erin public house where they again partook of refreshment with some bread and cheese for the prisoner Green. Then they left by command of the prisoner. When they were about one hundred yards from the public house the Sergeant ordered then to wheel about for the purpose of returning to the Harp of Erin. One of the men on escort named Cockrane expostulated with the prisoner said they were on their way to Otahuhu. They then proceeded again on their journey. Shortly afterwards the Sergeant asked prosecutor and private Cockrane if he would be put into the Stockade supposing he returned and left them to continue the march. Prisoner then ordered then to open out and on looking round he perceived that he had his rifle up to his shoulder and cocked ready for firing. The next moment he pulled the trigger and fired the piece off. Private Green received the charge and instantly fell on the ground. Green cried out: "Had you any spite against me? Was I doing anything to you? Your have broken both my legs". Prisoner Green was not handcuffed. Sergeant BOYLE said in reply, "Why were you going over the wall? The wounded man was then conveyed back to the Harp of Erin and medical attendance sent for. Sergeant BOYLE also came back to the public house and witness kept him in custody until an escort arrived from Otahuhu. Green was wounded in both legs above the knee. He never attempted to make his escape - Thomas H Cockrane a private in the 2<sup>nd</sup> Waikato Regiment of Militia sworn corroborated the testimony of the prisoner, witness having formed one of the escort party on the day in question. Witness went onto Penrose Farm for assistance after the occurrence as the wounded man was in great pain. Witness returned with an escort and cart to the Harp and Erin where they took the prisoner into custody. - William Montague Hall Welby Assistant Surgeon 3<sup>rd</sup> Waikato Regiment in charge of the Militia Hospital at Otahuhu sworn said he received a note on the 16<sup>th</sup> inst. For the officer in charge of Penrose Farm calling on him to proceed to Harp of Erin where he would find a person wounded in both legs. He accordingly went and found Private Thomas Green of the 3<sup>rd</sup> Waikato Regiment lying on a cart wounded and bleeding and suffering greatly in consequence. He had him removed to the Militia Hospital at Otahuhu that evening where he placed him under chloroform and on examining him found that the missile had entered the leg on the outer side of the right knee bone and close to the joint. It had severely fractured the bone splintered it and passed out on the inside of the joint entering the inner side of the lower part of the left thigh close to the knee joint also the bone the left knee. He extracted from left knee a portion of a bullet, which he then produced, and also portion of bone produced from the right knee joint. The wounds were very large and he considered that the shot must have been fired very close to his person. The wounded man was still under his care and in very dangerous condition. He considered the result of the case doubtful and that he probably have to undergo amputation. The*

wounds bore the appearance fired from the gun. - John Scott Corporal in the Armed Police sworn deposed to receiving a warrant for the apprehension of the prisoner James BOYLE on the 19th instant which he duly executed. - Prisoner reserved his defence and was committed to take his trial at the next Criminal Sittings of the Supreme Court.

(Reference Alexander Turnbull Library The New Zealand Auckland newspaper Saturday 28 May 1864 page 5 column 4 in book form)

The New Zealander Auckland Newspaper of 07 June 1864 reads:

**SUPREME COURT - Yesterday - Shooting with Intent**

James BOYLE was indicted with having on the 16<sup>th</sup> of May fired a gun loaded with powder and ball at T Green with intent to do him some grievous bodily harm. As the unfortunate man Green is dead and an inquest will be held on the remains this day the prisoner was remanded until the next sitting of the Supreme Court.

(Reference Alexander Turnbull Library The New Zealand Auckland Newspaper 7 June 1864 page 5 in book form)

The New Zealander Auckland Newspaper of 13 September 1864 reads:

THE SUPREME COURT was occupied the whole of yesterday in hearing the evidence in the shooting case - the Queen V Boyle Sergeant of Waikato Militia. The circumstances of the case are well known to our readers. The Sergeant was in charge of an escort over Private Green of the Waikato Militia who was being conveyed from the Orderly room Shortland Crescent to Otahuhu. The Sergeant having been drinking during the morning insisted on the escort calling at almost every public house they passed and was much annoyed because they insisted on pursuing their journey from the Harp and Erin where he wished to remain a little longer with a friend he had met on the way. It was a little beyond here with out any apparent cause that he leveled his rifle and fired at the escort the charge entering the legs of the unfortunate man Green and so severely wounding him that he died about a fortnight after notwithstanding every medical attention paid him. The whole was the result of drink and his Honor took occasion to call attention to the fact in his charge to the jury and in sentencing the prisoner to four years penal servitude the jury having found him guilty of manslaughter.

(Reference Alexander Turnbull Library The New Zealand newspaper 13 September 1864 page 4 column 6 in book form)

The New Zealander Auckland Newspaper of 13 September 1864 reads:

**SUPREME COURT**

(Criminal Sittings)

MONDAY SEPTEMBER 12

(Before his Honor Chief Justice Sir G A Arney)

The Court opened 10am. A juror was fined £25 for non-attendance. The following jurymen were then empanelled - Messrs W Bellingham, Atch Wallace, E Wilson, Alexander McKenzie, E Woodburn, W Cole, JY Stevenson, C McDonald, Daniel Coyle, James Peters, L Turrell, T Bissey.

**ALLEGED WILFUL MURDER**

James BOYLE was charged with having on the 16<sup>th</sup> May last wilfully murdered Thomas Green. The Crown Prosecutor opened the case for the prosecution.

Mr Wynn defended the prisoner.

(Line hard to read from copy) prosecution, His Honor remarked that it was an important question at law whether an escort could lawfully shoot a prisoner being on of her Majesty's subjects on attempting to escape even if under orders of a superior officer so to do.

August Lawton sworn deposed I am a private in the 2<sup>nd</sup> Waikato Regiment. I believe prisoner is a sergeant in Captain Pitts regiment No 3 and I think the 6<sup>th</sup> Company. I was on duty on escort on 16<sup>th</sup> May with Sergeant BOYLE in charge of a prisoner Thomas Green from the Albert Barracks to Otahuhu. The escort consisted of Sergeant BOYLE, Thomas Cochrane and myself we had Thomas Green in charge going to Otahuhu stockade. Green was to be imprisoned for 28 days for giving drink to a military prisoner he had in charge. By Mr Wynn Green was not going to be tried but to undergo a sentence.

By Mr Merriman we started from Albert Barracks at about 10am Green being under charge of the escort under to command of Sergeant BOYLE. We went by the Kyber Pass through Newmarket. We came to the Junction Hotel at the junction of the roads leading to Onehunga and Otahuhu. When there Sergeant BOYLE ordered us to go into the Junction Hotel we all went in together. Sergeant BOYLE and a friend he had picked up on the road between the Albert Barracks and the Junction were there I believe BOYLE called for a drink. They all drank some of it except myself. We went on the road for Otahuhu till we came to the Harp of Erin when the prisoner BOYLE told us to halt again and go into the Harp of Erin. We all went in again prisoner's friend still accompanying him. They all had a drink again with the exception of myself. Prisoner told the deceased Green "You had better get your dinner now" Green had some dinner and paid for it. Then there was more drink called for which was drunk by prisoner his friend Cochrane and the deceased. Prisoner then gave us orders to proceed to Otahuhu in charge of Green. We proceeded in charge of deceased towards Otahuhu prisoner came out with his friend from the Harp of Erin and proceeded a short way to the junction of Panmure Road. Prisoner came out after us following still in company with us to the distance about a hundred yards. We all went towards Otahuhu except the prisoner and his friend who stopped behind. I looked back after we had gone some distance and saw the prisoner still stopping at the junction of the roads where we had left him taking leave of his friend who was going to Panmure.

By the Court until we looked back we did not know that we were going without prisoner. He had not halted the escort at the junction of the road; by Mr Merriman I was 166 paces from the corner of the Harp of Erin before I looked back. I knew BOYLE was under the influence of liquor therefore looked back to see if he was coming after us. When I looked back I saw BOYLE talking to his friend at the junction of the roads. We halted till prisoner came up within a few yards of us. He said then in a kind of inarticulate drunken voice "Come back" I made him no answer. Cochrane and the deceased said they were on the right road to Otahuhu. Deceased asked, "If he went by himself whether he would be admitted into the stockade". We all started again on the road to Otahuhu.

By the Court Deceased asked that question I have stated of the prisoner. The Sergeant made no answer. They were close to one another. We were then all standing still.

By Mr Merriman: We were then facing towards Otahuhu.

By the Court: Prisoner came up close behind us and formed one of the party we had deceased between us. Sergeant BOYLE had his rifle just under the hip cocked but not capped just in the same position as if going to charge with a bayonet.

By Merriman: Either prisoner or deceased said, "BOYLE would shoot us," I said there is no danger of that because he is not capped. His rifle was loaded at the time. We then went on our way to Otahuhu for about a mile and a half when prisoner halted up and said "open out" I moved out a pace sideways to the right from the deceased who was on my left side and in the middle between me and Cochrane then looked over my left shoulder. Cochrane moved a little to the side but I did not particularly remark what he

did. The deceased stood in the middle of the road a little inclining to sideways with his face little towards me with his hands down in front in the cuffs of his great-coat almost as if standing at ease. When I looked over my shoulder I saw the prisoner about nine feet to the rear he had a firelock with him at the time. I cannot swear to the firelock produced by John Scott but it was like it being one of the same description. He has it full-cocked and capped to present it directed towards deceased. If he had fired it at that time he must have killed the deceased instantaneously. He fired and hit the deceased in both knees. He pulled the trigger but I was so shocked when I saw him do this that I did not observe particularly whether he lowered the gun. But the gun went off and he was so near me that I would almost have seen the ball go into Greens legs. Green fell in the middle of the road on his back and said "Sergeant BOYLE you've shot me in both legs had you a spite to me? Was I doing you anything? Sergeant BOYLE made answer "You ought not have been going over that wall" There was a wall there at the time but deceased Green was so drunk that he could not get away and was not attempting to make his escape he was standing steady in the middle of the road sideways but facing Sergeant BOYLE. William Scott a mounted orderly rode up and the prisoner gave up his arms and said, "I am the murderer it was I did it or such words as that. Deceased lay on his back in the road then Mr Scarrett butcher came with a cart and I assisted to put Green into the a mattress there got some bandages and bandaged up both legs in which I found wounds. Cochrane meanwhile went to Penrose farm for an escort and brought up the ambulance to the Harp of Erin. I next saw deceased in the hospital under charge of Dr Welby. I took the prisoner in charge and marched him that night to the Otahuhu camp. He was tried by military inquiry and then handed over to the civil powers. Immediately after deceased fell I found that the ball had passed through both legs. The wound was through the right leg along side of the knee quite through. There was also a wound in the left leg. I saw the deceased afterwards in hospital.

By Mr Wynn: Before starting from Albert Barracks we paraded at between 9 and 10am. We were all armed muskets. Prisoner was stationed at the Albert Barracks. He would have come back in command of the same escort after taking the deceased to Otahuhu. I did not see him load his piece but it was loaded. I was coming through the Barracks Square when I first saw Taylor on that morning who was sick I took his place. I joined the escort at the request of BOYLE. I never left his company till the occurrence took place not even for a moment. He had the rifle with him when I first saw him. I had to take Taylor's rifle and ammunition from him. It was a very wet day I perceived on starting that BOYLE rifle had the muzzle stopped in it. When BOYLE fired Cochrane said, "You fired your muzzle stopper" In the public house that day some had beer and some had rum. Prisoner had a glass of ale or spirits or something at the Junction and some kind of spirits at the Harp of Erin. I first observed that the prisoner was a little flighty on coming out of the Barracks. He had a glass in him then I first perceived that deceased was so drunk when they came out of the Harp of Erin. I observed him and Cochrane jogging and staggering against one another on coming down the descent on the road from the Harp of Erin Cochrane was also the worse for liquor. I would not know this friend of the prisoners. I have never seen him since I did not observe to be drunk. At the junction of the roads between Panmure and Otahuhu we were standing about 5 minutes. When I turned around and saw prisoner standing at the junction of the roads I was about 100 yards off. BOYLE was then about? paces from the Harp of Erin. Green was so drunk that he would have fallen among the scoria of the road if he had attempted to escape. We had not to lead deceased or support him he could walk without falling. The first time I saw the gun presented I was very confused but I will swear the gun was at the shoulder the first time I saw him.

The elevation of the gun was so high that BOYLE must have shot Green if he had then fired at him. I did not see him lower the elevation. He was only 9 feet from Green. If he had fired the gun at the position to charge bayonets it would have kicked the daylight out of him (Boyle). The gun was not Boyle's it belonged to private Pippin. The rifle had been loaded for three or four months. Pippin was always bragging it would never miss fire. Pippin is not here he has gone away up to his company. I do not know that it was on that morning Boyle got the rifle from Pippin.

By the Court: When I relieved Taylor and was taking his accoutrements BOYLE said "Do not take that (when I was taking the front pouch) you may leave it behind" but it is customary to go loaded when on escort. So I left it behind and all the ball-cartridges had been already taken out of my back pouch. I had no ball cartridge myself but left with my empty rifle and bayonet.

By Mr Merriman: The first time the prisoner presented his rifle at the party going to Otahuhu it was not capped. I did not then remark if his muzzle stopper was in his rifle or not. But it had been capped from the time that he last saw us till then.

Thomas Newbridge Cochrane sworn examined by Mr Merriman said I am a private in the 2<sup>nd</sup> Waikato Militia. On the 21<sup>st</sup> May I was on escort duty at the Albert Barracks and received the deceased in charge in company with prisoner Boyle and private Taylor. We went to Captain Brackenbury's office in Shortland Street and were there ordered to take deceased to Otahuhu. We went first to the Albert Barracks where private Taylor left us and Lawson took place. We went to Newmarket and from there to the Junction Hotel where we halted. The prisoner who was sergeant of the escort ordered us to halt and go into the Junction. There was a civilian present. We all had something to drink except Lawton. We then left the Junction and started for Otahuhu. On arrival at the Harp of Erin public house we were again halted for something to drink. Lawson again refused to drink anything. Prisoner told deceased that if he wanted anything to eat he had better get it then. He had some bread and cheese. Prisoner told deceased he would have to pay for it and he did so. We then left the Harp and Erin the sergeant remaining conversing with his friend at the junction of the two roads for some time. He called out "Halt" and we waited for him. On coming up to us he wanted us to go back saying, "That was not the way to Otahuhu" deceased also refused to return saying, "He would go to Otahuhu himself" We then went on but did not notice whether the prisoner followed. We had proceeded about a quarter of a mile when prisoner again called out "halt" We did so and when he got within a few passes of us we marched in again. We had proceeded a short distance and had perhaps reached Scarrett's gate when the prisoner called out "stand clear" I stepped a little to my left and on looking over my left shoulder. I perceived the sergeant at the "present". I had not seen him point his rifle at the escort party prior to this. His rifle was pointed towards the escort when I looked over my shoulder and went off the same instant wounding deceased Green in both legs. Deceased fell on his back on the road and said "Sergeant what made you shoot me? You have shot me in both legs". He seemed in great pain and called for the doctor. I was directed to go to Penrose Farm for a doctor by the prisoner. I did so and an ambulance and escort was got ready to return with me and a doctor sent for from Otahuhu. The ambulance wagon upset on the road and we then got a cart. On arrival at the spot where I had left them they were gone. We went on to the Harp of Erin where we found them. We had deceased put into the cart to remove him but the doctor (Dr Welby) came up at this moment. He had him removed to the hospital at Otahuhu. The rifle produced is such a rifle as Sergeant BOYLE was armed with on the day in question.

Cross-examined by Mr Wynn. I was under the influence of drink. I had three glasses to drink that day I will not swear I had no more. The first house we

went into was the Junction. I will not positively swear I had nothing to drink before leaving Auckland. I will not swear I was not at the Masonic Hotel that morning. I first went to the Britomart Barracks to get the prisoner. I don't remember turning into a public house on the way. I knew I had taken drink that day but I did not know it had any improper effect on me, I don't remember staggering along the road. It was a very wet day and I had no great coat on. The prisoner took drink that day. I observed that he had been drinking before leaving the Albert Barracks. The rifle had a muzzle-stopper it in that morning. It was not usual to discharge rifles with the stopper in. I believe the rifle would burst if so discharged. I remember saying "You've fired your muzzle-stopper" addressing the prisoner. I had not seen him present his rifle before this. I did not say, "He'll shoot us". I did not observe if there was a cap-snapper on the rifle.

Re-examined by Mr Merriman: I observed the rifle stopper on prisoner's nipple.

William Scott sworn examined by Mr Merriman said I am a private in the 40<sup>th</sup> regiment and on the 16<sup>th</sup> May was attached to the transport Corps. I left Penrose on horseback to go to Auckland with a dispatch. When I got about a mile and a half from Penrose I heard the report of a rifle and then saw the smoke in the direction of the Harp of Erin. I galloped my horse to the spot and saw a man lying on the ground wounded. I did not know the man at the time I also saw two men and the prisoner BOYLE standing by his side. The men were the two last witnesses. I saw blood on the wounded man's trousers. He begged of me to go for a doctor saying the sergeant had shot him through both legs. Prisoner was the only sergeant there. I left them in the direction of Mr Scarrett's to get assistance and take the sergeant into custody. I found four men there and we all went back to the spot. The sergeant handed me his firelocks and told me he was "the man who did it". The firelock was similar in description to the one produced in Court. I handed the firelock over and cannot swear to it. It had been recently discharged and had a broken cap on the nipple.

Cross-examined by Mr Wynn: Prisoner said nothing to me of the loading of the piece. I have been 10 years in the service. If the muzzle-stopper was a good one and airtight the rifle would burst. I have burst a rifle in the same way myself. If a muzzle-stopper was well worn it would not burst.

Re-examined by Mr Merriman: I have never seen rifle discharged having the muzzle stopped up with clay from having fallen on to the ground.

John Scott sworn examined by Mr Merriman said I am Sergeant in the Auckland Armed Police and produce a rifle which I received from Constable Negus of the Armed Police.

Mr Merriman: I cannot trace the rifle your Honor the number was not taken.

Cross-examined by Mr Wynn: I have known the prisoner since his childhood. I have not known him to hurt a worm until this occasion. I know his father, his mother is dead. His father a pensioner living at Howick.

The court then adjourned for half-an-hour.

On the Court re-assembling:

William Montague Hall Welby sworn examined by Mr Merriman said: I am a member of the Royal College of Surgeons in England and assistant-surgeon in the Waikato Militia. I was in charge of the Military Hospital at Otahuhu on the 16<sup>th</sup> May last from information I received I proceeded in the direction of Auckland. On arrival at the Harp of Erin Hotel I found the deceased private Thomas Green lying on his back wounded in both legs above the knees. His legs were at that time bandaged and as I found no unusual bleeding I had him at once removed to the Militia Hospital at Otahuhu. I accompanied him part of the way and then road on to prepare for his reception. I was present when he arrived at the hospital in the cart. He was then in the same state as when he left the Harp of Erin. He did not appear to have receive any injury



on the way. I made a full examination of deceased at the hospital placing him under chloroform with the aid of another medical gentleman. Deceased was in my medical charge. On examination I found on the outside of the right thigh about two inches above the knee a wound the size of a shilling with bruised edges. On the inside of the same thigh about an inch lower down I found a similar wound. These wounds communicated. The bone was broken through and severely splintered. The wound on the outside of the thigh was jagged at the surface. On the inside the left thigh about an inch above the knee joint there was a similar wound lower down the point of exit of the first wound. This wound also communicated with the fracture of the left thighbone. There was no exit. From this wound I extracted a portion of lead I now produce. I found no other ligament of lead at this time. I treated him in the ordinary way. I have no doubt the wounds were produced by a bullet from a firearm. The rifle produced would cause such wounds. He remained under my charge until the evening of the 4<sup>th</sup> of June when he expired at six o'clock. I made a post mortem examination of the body on the following day. I found the right thighbone fractured and a great many splinters lying in the substance of the thigh. I found an opening apparently from a splinter of a bone or it might have been caused by piece of ragged bullet. There were several said abscesses round the bone, caused by recent injury found the portion of lead produced embedded in bone. This is a similar piece than the first. On the left thigh the extremity of the bone was completely separated from the shaft of the bone. The extremity is the expanded end of the bone close to the joint. I found several splinters of bone like the one produced which is the outside of the shaft of the thigh bone found several wounds and the third portion of lead produced in the separated extremity of the left thigh I found nothing else worth mentioning. A rifle bullet discharged within a short distance of the deceased would have been likely to have been broken up into the parts produced from the great force and nearness or the amount of resistance it would encounter. From the orifice of entry I should say the gun was discharged within a few feet of the deceased. The state of the bones would also lead one to this conclusion. The deceased died whilst under my treatment. I have no doubt as to cause of his death, which was attributable partly from exhaustion from suppuration from much extensive wounds and from the shock to the nervous system. He never rallied at all. He died from the wounds described.

Mr Scott recalled by his Honor at the request of Mr Wynn it is customary for the authorities to keep an entry of all rifles served out to the men. The number of the belts and rifles in the regular service are the same. The number is branded on each so that it is known which firelock each soldier receives.

By Mr Merriman through the Court: I cannot say whether the same practice is observed in Waikato Regiment.

Mr Merriman wished to put in evidence the deposition of the deceased and called Mr Lodge to prove the same.

Mr Francis Lodge sworn examined by Mr Merriman said: I am chief clerk at the Resident Magistrate's Court Auckland. [Mr Lodge was called to prove taking down the dying declaration of the deceased, but found the paper put into his hands were the depositions taken before the Coroner. After some delay the declaration was produced having been brought from the Supreme Court-House]

At the request of the Crown Prosecutor a light interval of time was allowed to permit the production of the dying declaration of deceased.

His Honor remarked to Mr Wynn that the trial of the present prisoner has been put off from the last day of the last sessions; as it was then uncertain whether Green would die or not Green had died since; otherwise the present charge of wilful murder could not have been brought against the prisoner.

The declaration in question had been made previously to the deposition being taken when the prisoner was committed for trial by the Resident Magistrate.

William Francis Lodge recalled: The dying declaration of Green was on the 21<sup>st</sup> May and returned to the Supreme Court with the depositions then taken. There were two different charges brought against BOYLE.

While Green was still alive a charge of intent to murder was brought against BOYLE.

After Green's death a Coroner's Inquest was held on him at Onehunga on the 7<sup>th</sup> June and further depositions were taken at the Resident Magistrate's Court and a second charge (the present case) brought against BOYLE for wilful murder. Through some accidental confusion the wrong depositions had been brought into Court instead of those to which the dying declaration in question was affixed.

His Honor explained to the jury that this delay was owing to the confusion caused by the removal of the sittings of the Supreme Court to the present building from the old place of session. In the heap of rubbish that was in that building - his Honor having to come up to superintend the arrangement necessary to be made - some papers had been overlooked and left down there. In consequence of this the result was that in order to transact the business of the present case it was necessary to send down for the depositions of which the declaration in question was attached.

William Francis Lodge re-called: I am clerk to the Registrar's Court Auckland. On the 21<sup>st</sup> May I accompanied as Justice of the Peace Mr Commissioner Naughton to the Militia Hospital at Otahuhu. I there saw the deceased Thomas Green. He was aware of the state he was in at the time. He said "Mr present belief is that I shall not recover". He made no different statement afterwards that I am aware of respecting his state of health. Mr Naughton was present at the time and in answer to Mr Naughton he made that statement. His Honor: The objection is Mr Lodge that the document produced by you cannot be read till the Court is satisfied that it is given under the sanction which the law attributes to a declaration made in the solemn and fixed impression that he would not recover.

Examination resumed: After making the statement in question. Green said his conviction was that he would not recover. When Mr Naughton and I entered the room Green was in bed and seemed in pain when he attempted to move. As well as I can recollect. Mr Naughton stated for what we can and asked him whether he felt himself able to give an account of what had taken place. He said he was Mr Naughton then asked him to state what had occurred on the 16<sup>th</sup> May. The prisoner was present during the whole time. He came into the room with us, and was standing by the bed. Green gave his narrative, which I took down in writing. At the end of the narrative he was asked if he thought he should recover. He said, "No." I took down that also in the written statement.

At the end the prisoner cross-examined Green; asked him if he had ever seen BOYLE load his (Boyle's) piece. I took that down also. Then Commissioner Naughton asked him a question still in the prisoner's presence. I read it all over to Green, after writing it down. The Green signed it in the presence of Commissioner Naughton, myself, and the prisoner.

By the Crown Prosecutor; I wrote all the statement down at the time.

The Crown Prosecutor applied to have the deposition's received as testimony, on the ground that when the declaration was made Green was perfectly conscious that he was in a dying state.

His Honor inquired whether there was any medical evidence in confirmation of the dying state of deceased or any further corroborative evidence?

The Crown Prosecutor had no medical evidence to that effect, and then called James Naughton, who deposed, I am Superintendent of Police and

*Justice of the Peace for Auckland. On 21<sup>st</sup> May I went with the last witness to the hospital at Otahuhu. I asked the doctor whether the patient (Green) was in a dying condition, he replied in the affirmative. I received no special instructions in the case. I asked Green in the presence of the prisoner if he (Green) had any statement to make; I also told him for what purpose I was required. After his making the statement I asked him if he thought he would recover? He said, "My present belief is that I shall not recover".*

*The prisoner cross-examined him the statement was read. Green said it was correct and signed it. As far as I can judge Green understood what was said to him and what he said. The man gave his statement very coolly indeed. By Mr Wynn: Dr Welby passed in and out occasionally at the time. I do not recollect any direct communication between the doctor and Green either before or during the transaction.*

*Dr Welby recalled I recollect the circumstances but not the day of Mr Naughton and Mr Lodge coming out and taken a statement in writing from Green. I was in and out of the room while that statement was being taken. Deceased was at that time in a state of danger from the gunshot wounds I have described in my former evidences and subsequently died from those wounds.*

*By Mr Wynn I never informed Green that he would not recover as I wished to amputate his legs and did not wish to depress him.*

*The Crown Prosecutor tendered the dying declaration of Green as evidence. This deposition was taken before Green's death and the Coroner's inquest.*

*His Honor: It was never taken as a deposition before the Magistrate but as a dying declaration of the deceased. As which do you propose to put it in.*

*Crown Prosecutor: As a dying declaration your Honor I wish to put in as evidence.*

*My Wynn objected to the admission of this declaration unless more positive proof were adduced of Green's impression that death was impending. The evidence did not reach that point. Because deceased thought he would not recover that was not sufficient ground as a person in consumption might also think the same. He might have a hope of recovery though he so expressed himself. But the evidence did reach the point of proving impending death.*

*Again he objected against the proceeding of Messrs Lodge and Naughton in going to the deceased and invitation statement from him. Upon the broad-grounds of prosecution [sic] policy it would not be right to give a sanction to the going for that express purpose. If such evidence was admissible it would be possible to secure conviction without bringing any living witnesses at all. He therefore submitted to his Honor that the evidence could not be received.*

*His Honor: The declaration has been adduced in two different ways first as a dying declaration under a solemn conviction that deceased was dying having weight equal to that made by an oath secondly by Mr Lodge as a document whereby to refresh his memory. I cannot receive it under the first class evidence the statement is in details and does not contain any strong expressions of his conviction of his approaching end. Then each sentence one by one ought to have been characterised by the same impression. This sort of evidence is an exception to the great principle of not admitting hearsay evidence therefore it is necessary to be stringent in the examination of its admissibility. The Statutes 2 and Philip and Mary and II and 12 Victoria relate to this species of evidence the Supreme Court of New Zealand does not contain a copy of the former Acts therefore I cannot refer to them. I feel I cannot receive this declaration in Common Law because it would be a violation of the great principle of not receiving hearsay evidence especially as there is not sufficient proof that it was made under such circumstances as would constitute it a dying declaration. It is my therefore this evidence.*

Mr Wynn then addressed the Jury for the defence making a very able speech contending that the prisoner was ignorant of the fact that the gun was loaded when he presented it at the deceased.

Mr Wynn called for the defence, Rienzi Turner who deposed I am an Ensign in the same Waikato Regiment with Prisoner. I have known him for about eight years and was quartered with him in the Militia for three months. I have always considered him as a quite well conducted young man the last man I should have expected to be guilty of such a crime as this.

Patrick Molloy deposed: I am a Sergeant in the Armed Police. I have known the prisoner for seven years. In my opinion of him he is one of the most inoffensive young men in the city.

William Evers deposed: I am Sergeant of Police. I have known the prisoner for the last sixteen years he was always a steady quiet and well behaved young man.

His Honor in summing up said: Gentlemen of the Jury: James BOYLE stands accused of the murder of Thomas Green under the peculiar circumstances which have been brought before you. Preparatory to reading the evidence therefore I shall merely advert generally to the doctrines of the law as to malice afore thought by which the question of murder or no murder is generally decided. It is laid down to you as a general principle that if a man uses his faculties in such a manner as to know what he is about and as to be capable of going about the world and know the difference between weight and wrong if such a man uses a firearm against a person knowing it to be loaded and shoots him (unless special evidence can be brought to show that it was aimed at his arms or legs) aiming at his body it is sufficient indication of the intention to take life. It is not then necessary to prove any previous quarrel or malice afore thought subsisting in the man's mind or deeply seated ill will against the person killed. In this case the evidence is not quite so stringent against the prisoner. Firstly because although drunkenness in general is no extenuating circumstance yet in this particular case if drunkenness were such a circumstance as would render the prisoner more easily excitable and under false impression of duty more likely to discharge his piece it would demand consideration on the part of the jury. Secondly he was in the execution of his duty furnished with a loaded firearm but no specific direction given him for its use. His Honor then proceeded to read the depositions of the various witnesses and to comment there on remarking that the first witness was perfectly sober and remarkably clear in his evidence. And the only motive that could be inferred from his evidence for the commission of the act was perhaps some fancied prisoner behind. The second witness thought rather under the influence of liquor corroborated the first in every important particular.

His Honor censured severely the prevalence of this vice remarking there is something in this frightful demon which without destroying the reason deprives men of all self-control over their moral actions and we very often find among such men even when possessed of complete consciousness a total paralysis of moral will be self command.

His Honor cited the case of a sentinel on board ship who in obedience to the orders of his officers fired at a boat, which would not reply to his challenge and thereby killed a man. The jury brought in a verdict of wilful murder, which was acquiesced in by the Judges, but the sentence mitigated in consideration of the peculiar circumstances.

After some concluding observations his Honor called on the jury to consider their verdict. After retiring for a short time returned a verdict of Guilty of Manslaughter.

His Honor in passing sentence said: Prisoner I regret to say it is my imperative duty to pass upon you what may seem some what severe sentence. I cannot regard the crime as an act of ordinary negligence; I

cannot but regard it as a crime that shows excessive recklessness in the use of a weapon, particularly an instrument of death. I feel that the jury have taken extremely merciful view of your case. The Law on the matter is and must be sternly held to be this if a man whether upon a previous quarrel or not presents a loaded firearm and discharges it at another and kill him it is murder. And I say imperatively, it is necessary to punish severely such cases considering that your offence can only be equally punished with burglary. I should be very sorry that the public should think that the Court shrinks from maintaining that principle in all its integrity. Amongst the public generally the practice has grown lately frequent of using these weapons in a most reckless manner. Then when men stand charged with actually taking the life of a fellow creature they have the notion that they can excuse themselves before God and man by saying they were drunk. You have received an excellent character which completely satisfies me of your previous good conduct this will be taken into consideration but at the same time it is my duty to pass such a sentence as will show the public that even if a prisoner escape with a verdict of manslaughter he cannot escape severe punishment. The sentence of the Court upon you is that for this offence you be kept for a term of four years in penal servitude.

The Court adjourned at about half-past six till ten o'clock tomorrow (this) morning.

(Reference Alexander Turnbull Library The New Zealander newspaper 13 September 1864 page 5 column 3 & 6 in book form)

Supreme Court Auckland  
3rd December 1864

The Honourable  
The Attorney General

Sir

I have the honor to acknowledge the receipt of your letter of the 26<sup>th</sup> ultimo enclosing a dispatch from Her Majesty's Secretary of State for the Colonies and requesting me to afford His Excellency the Governor the means of making the required report by furnishing him with a transcript of the notes taken by me at the trial of one James BOYLE, who was recently convicted of the manslaughter of Thomas Green.

I have the pleasure of forwarding a copy of my notes to yourself for the information of His Excellency the Governor, assuming its however to be understood, that these notes are in the nature of a private document not obtainable as a matter of routine by application through a member of the local Government.

I have the honor to be,

Sir,

Your Obedient Servant,

George Alfred Drury [sic] C.F.

(Reference Archives NZ Register J-3-1 Agency Justice Series 1 1864 item 1366)

Monday 12<sup>th</sup> September 1864

Auckland

Regr. Vs James BOYLE

Wilful murder of Thomas Green on the 16<sup>th</sup> May 1864

Mr Merriman for the prosecution

Mr Wynn for the Defence

*August Lawton*

I am a private in the 2<sup>nd</sup> Waikato Regt. in the 5<sup>th</sup> company. The prisoner I think is a Sergeant belonging to Captain Lily Company I think in the 3<sup>rd</sup> Regt. On the 16<sup>th</sup> May I went on escort with Serg. BOYLE in charge of a prisoner Thomas Green from the Albert Barracks Auckland to Otahuhu. - The escort consisted of Serg. BOYLE, Thomas Cockram & myself we had Thos. Green charge going to the Otahuhu Stockade. The prisoner was going to Otahuhu to undergo his sentence for giving drink to a military prisoner. - We started from the Albert

Barracks about 10 o'clock Sergt. James BOYLE the prisoner was in charge of the escort. - We went by the Kyber pass through Newmarket. - At the Junction Hotel at the corner road leading to Onehunga & Otahuhu Sergt. Jas. BOYLE the prisoner ordered us to go into the Junction. The prisoner Cochrane & the deceased went in. - The prisoner had a friend with him whom he picked up on the Road between the Albert Barracks and the Junction. - Either the prisoner or his friend called for drink. I believe it was the prisoner. - Drink was produced and the prisoner some of it. Cochrane & deceased drank, Prisoner asked me to drink but I did not. - From the Junction we went on straight to the Harp of Erin on the road to Otahuhu. - At the Harp of Erin prisoner told us to halt again. - He told us to go into the Harp of Erin & we all went into the house the same friend of the prisoner accompanying us. The prisoner the prisoners' friend & Cochrane & the deceased all had drunk there. - I took no drink there. - The prisoner then told the deceased man you had better get your dinner now. - Green had some dinner & paid for it & then there was some more drink produced. - The prisoner & Cochran & the deceased all partook of that had drink. - After this the prisoner gave orders to the Escort to proceed to Otahuhu in the charge of the prisoner. - I & Cochrane proceeded in the charge of the prisoner towards Otahuhu. - The prisoner when we started came out of the top of the Harp & Erin after us but in Company. - He then followed us still in Company as far as the Junction Road when it turns off to Panmure not more than two yards. - Cochrane myself the deceased went on towards Otahuhu. - After we had gone some distance I looked back I saw the prisoner BOYLE & his friend at the Harp of Erin. - Prisoner had stopped at the junction of the roads because his friend was going to Panmure. - I did not know we were going on without him until I looked back. - He had not halted to escort at the point of the junction of the roads. - I looked back I was 166 paces from the Harp of Erin (from counters) I looked back because I knew prisoners was under influence of liquor & I looked back to see if he was coming after us. - I then saw BOYLE standing at the junction gather roads talking to his friend. - We halted & waited till the prisoner came up to within a few yards of us. - He said then in a kind of inarticulate drunken voice "come back". - I made him no answer. - Cochrane & the deceased said, "They were on the right road to Otahuhu. - The deceased asked whether if he went by himself he would be admitted into the Stockade. - The deceased asked that of the Sergeant the prisoner. - The Sergeant made no answer. - They were within conversation distance quite close to one another. - Sergt. BOYLE had his rifle under his arm just above the hip as if he were going to "charge bayonets". - It was cocked but not clipped. - Either Citroen or the deceased man Green said he will short as [sic]. - I said there was no danger of that because he was not capped. - The rifle was loaded at the time. - We proceeded on our road towards Otahuhu about a mile & a half when the prisoner halted us. - He said 'open out' the deceased was then at my left side I stepped a pace to the right & looked over my left shoulder the prisoner BOYLE was behind. - I didn't remark what Cochrane did. - The deceased Green stood in the middle of the road a little inclining sideways facing me with his hands down in front (as if standing at ease) in the cuffs of his great coat. I saw the prisoner BOYLE about 9 feet to the rear. - He had a firelock with him at that time (firelock produced by John Scott policeman) it was a firelock of that description. - He had it full cocked clipped & to the present at the deceased Green. - If he had fired it at that time his elevation was to high he must have killed the deceased instantaneously. - I was to shocked when I saw him at the present that I didn't much observe how he fired, but he must have lowered the elevation. - I saw the bullet go into Green's leg; he was to near to me as that. - Green fell in the middle of the road on his back the & he said "Sergt. BOYLE you've shot me in both legs had you spit to me? Was I doing anything? Sergeant BOYLE made answer "You ought not to have been going over the wall". The deceased Green was so drunk that he could not get away, he was not attempting to get over the wall he was standing steady in the middle of the road a little sideways looking towards Sergt. BOYLE He could see Sergt. BOYLE & me. Wm Scott a mounted orderly & Sergt. BOYLE (the prisoner) gave up his arms & said, "was I did it" or words to the effect. - The deceased lay on his back in the road. - Mr Scanot butcher came up in the cart & I assisted to get the body of Green into the Cart & carry him to the Harp & Erin. - I laid Green on a mattress in one of the rooms & got some bandages & bandaged up his legs. - Both legs had wounds. - Cochran meanwhile had fetched an ambulance from Penrose, which came with an escort to the Harp & Erin. - When the ambulance Cart came from Penrose I assisted to put the deceased into the conveyance

& he was taken away to the Hospital at Otahuhu. - I subsequently saw the deceased at the Otahuhu Hospital on the Wednesday following the 16<sup>th</sup> He was under the charge of Dr Welby. - I took the prisoner in charge & we marched him that night to the Otahuhu Camp. - A military enquiry took place & prisoner was handed over to the civil authorities. - Immediately after the deceased fell I transcribed [sic] where he was wounded. - I found a wound through the right leg alongside the knee quite through & also a wound in the left leg about an inch above the knee quite through he left leg also. - The wound through the right leg was the highest up. - I saw the body of the deceased after he was dead in the hospital tent at Otahuhu. - It was the same man Green.

*Exd. by Mr Wynn*

It was between 9 & 10 a.m. on we left Albert barracks we were all armed. - There was no piece loaded but that of the prisoner the Sergeant. - There is no difference between the prices carried by a Sergeant & those carried by the men. - Prisoner was stationed at the Albert Barracks. - I did not see him load. - I first saw Green that morning in the Barrack square I then joined the escort at the request of BOYLE. - I did not leave his company from that time till this occurrence took place. - He had the rifle with him when I first saw him. - The escort was then ready to start I believed Taylor & took his arms & accoutrements & joined the escort. It was a very wet day. - Boyles' rifle had the muzzle stopper in its because when he came out of the Harp of Erin I heard Cochrane say to him when he was in the act of firing "You've fired your muzzle stopper". - At the Junction to the best of my belief some had beer & some had rum. I believe that I did not much notice. - I know prisoner had a glass of beer or spirits at the Junction & I know there were 2 glasses of some kind of spirits at the Harp of Erin. - I think Prisoner was a little flighty with drink at coming out of the barracks I observed he had a glass in him. I first perceived Green to be drunk when we came out of the Harp of Erin. - I observed him & Cochrane jogging & staggering against one another in coming down the road (the descents) Cochrane was under the influence of spirits also. - The friend of the Sergeants I never saw before or since. - I didn't remark whether he also was drunk I should say BOYLE & his friend were standing at the junction of the roads about 5 minutes. I should say that they were about 100 paces from when we were standing. - I saw that Green was so drunk he would have fallen amongst the income if he had attempted to escape. We had not to lead him he could walk without falling down. When the piece went off the gun was at his shoulder that I'll swear. - I did not see him lower the elevation. - He was only 9 feet from him, - If the gun had gone off at the position to charge bayonets it would not have shot Green in the way it did. - It would have kicked the day lights out of him (BOYLE). - The rifle was not Boyle's it belongs to Private Pippin. - I say it would have kicked the daylight out of him, because it had been so long loaded. (Witness explained what were his reasons for believing it had been long loaded) Pippin is not here. - I don't know whether it was that morning that BOYLE got the rifle from Pippin. - It is customary if you go upon escort to be loaded. - I was about to take the front ball pouch of Taylor (whom I relieved) & BOYLE told me I didn't want it. - I might leave it behind as I did leave it - all the ball cartridges had already been taken out of my back pouch as I marched with an empty rifle & my bayonet.

*Exd. by Mr Merriman*

I recollect particularly that the first time prisoner presented his rifle at the party going to Otahuhu he was not capped. The second time he was capped. - The second time I did not see whether his muzzle stopper was in or not.

*Thomas Newbigging Cochrane*

I am a private in the 2<sup>nd</sup> Waikato Regt. -

On the 16<sup>th</sup> May I was on escort duty to escort the deceased Green to Otahuhu. - He was first given into my charge at Britomart Barracks. - I marched him to Captain Brackenbury's Office in Shortland Street. The escort was formed by Sergt. BOYLE (Prisoner) private Taylor & Myself. - From Captain Brachenbury's we took him first to Albert Barracks (last witness) Lawton took the place of Taylor. - From Albert Barracks we passed by the Cemetery to Newmarket & the junction Hotel where the Otahuhu & Onehunga roads meet. The Sergt. The escort & myself went into he Junction by the order of the Sergeant. There was a civilian in company at the Junction I don't know who but a friend of the Sergeant. - We all had something to drink except Lawton I mean the prisoner BOYLE, Green, the friend & the Sergt. & myself. - We then left the Junction & went towards Otahuhu. - We went into the Harp of

Erin by the order of the Sergeant BOYLE; we all had something to drink there except Lawton. The prisoner told deceased that if he wanted anything to eat he had better have it. - He (the deceased) had some bread cheese so the Sergeant (the prisoner) told him Green he would have to pay for it, which he did. - The escort & the prisoner Green started again the Sergeant remaining at the Junction of the Panmure road opposite the Harp of Erin talking to his friend. The deceased Green, Lawton & myself walked on some distance and the Sergeant called out "halt". - We halted. - He came up & wanted us to go back. - I refused saying that was not the way to Otahuhu. The deceased also refused to go back saying he would go to Otahuhu by himself. - We then went on. I did not take notice whether the Prisoner BOYLE came on too. We had gone on & should I think about ¼ of a mile when the prisoner BOYLE called out to "halt" we did so when he got within a few feet of us we again marched on. I have noticed a red gate on the left hand side of the road going to Otahuhu. - I was about that gate very near it I think when Sergt. BOYLE called on us the second time to halt. When we halted he second time we waited till BOYLE came within a few paces of us & then proceeded a few paces on the road when the prisoner called out "stand clear". I stepped a little to my left & looking over my left shoulder I seen Sergt. BOYLE at the present. Before I saw him at the present that time I had not seen him point his rifle towards the escort party. - This rifle was at the present towards the escort party. - On the instant of my looking over my shoulder the rifle went off wounding the deceased in both legs fill in the road on his back & said "Sergeant "what made you shot me" "You've that me through both legs" - He seemed in great pain & was calling for the doctor I was directed by the Sergeants to go to Penrose I went there & reported the case & a doctor was sent for to Otahuhu & at Penrose an ambulance was got ready & an escort to go with me. - The ambulance was stuck [sic] on the road & we got a cart & went to the spot. We found no person there we then proceeded on to the Harp of Erin. - The deceased was there also the last witness Lawton and the prisoner BOYLE. Green was removed from the Harp of Erin in the cart that came from Penrose. - The Doctor Welby came up just as he was put into the cart & took charge of Green. - (Looking at the rifle) That is such a rifle as the prisoners BOYLE was armed with.

*Exd. by Mr Wynn.*

I was under the influence of drink. - I had had 3 glasses. - I won't positively swear, but I believe I had had no drink that morning before I left Auckland. - I won't swear I was not at the Masonic Hotel that morning. - I don't recollect turning in there. - I was perfectly sober when I left the Albert Barracks with the Prisoner. - At the time I knew I had taken drink but I did not know it had taken an improper effect on me. - I don't think it was the fact that I and the deceased Green were staggering against each other as we came down the road from the Harp of Erin. I observed the condition of BOYLE back that morning as we left the Albert Barracks. He had been drinking. - BOYLES' rifle had the muzzle stopper in that morning. - I believe a rifle would burst if it was fired with the muzzle stopper in. - I recollect saying, "You have fired your muzzle stopper " to BOYLE. - I did not see him present the rifle at the Escort before the time when it went off. I did not say, "He'll shoot us". -

*Exd. By Mr Merriman*

Prisoners rifle did not burst when discharged. -

*William Scott*

I am a private in the 40<sup>th</sup> Regt. On the 16<sup>th</sup> May I was attached to the Transport Corps. About ½ past 1 I started from Penrose on horseback & road towards Auckland with dispatches. When I got to about a mile & a half from Penrose I heard the discharge of a piece & saw the smoke in the direction of the Harp of Erin from me. - I galloped my horse up to the spot where I saw the smoke & saw a wounded man lying on the ground I didn't know the man at the time. There were two men & the prisoner BOYLE standing beside him. The other two men were Lawton & Cochrane. - I saw blood on the man's trousers & he asked me to go for a Doctor. He said the Sergeant (BOYLE) had shot him through both his legs. - I started off to Mr Scarrots (near to Auckland) I got 4 men to come with me & we went back to the spot. - When I arrived there the prisoners handed me his firelock & told me "here's the firelock I am the "man that done it. - The firelock, which he handed to me, was of a similar description to this. - It had a broken cap on the nipple. -



*Exd. By Mr Wynn*

Prisoner never said a word to me about the loading. Those were the only words he used. - I have been in the service 10 years. - If the muzzle stopper was in & was tight the rifle is nearly sure to burst. I have burst one myself the same way. - It would depend very much whether the stopper was worn. - If the muzzle stopper was well worn it wouldn't burst.

*Exd. By Mr Merriman*

I don't know that I ever saw a rifle stopped up only by clay.

*John Scott*

I am a Sergeant in the armed police. - I produce a rifle. - I received it from Constable Hegns [sic] of the Armed Police. -

*Exd by Mr Wynn*

I have known the prisoner since the year 1848. - He was quite a boy then. - I have known him since child hood. - I have never known him, to hurt a worm from the moment I first knew him except on this occasion I know the father. - He is still alive. He is a pensioner at Howick.

-

*William Montahue Hall Welby*

I am a member of the Royal College of Surgeons England and Assistant Surgeon of the 2<sup>nd</sup> Waikato Militia. - On the 16<sup>th</sup> of May last I was in charge of the Militia Hospital at Otahuhu. - From information I received I proceeded towards Auckland from Otahuhu. I went to the Harp of Erin Hotel. - When I arrived I found deceased Private Thomas Green on his back in a cart in the front of the Hotel. - I saw he was wounded above both knees. They were already bandaged & finding no unusual bleeding going on I had him removed at once to the Militia Hospital at Otahuhu. - I accompanied the cart part of the way and then rode on to prepare for his reception. I was present when he arrived at he Hospital. When he arrived at the hospital his body was in the same state as to the bandages as when I left him on the Otahuhu road. He arrived at Otahuhu & was taken into the Military hospital. - At the hospital I placed him under chloroform \* examined his wounds. - There was another medical man with me at the time. The case was under my own care. The other man was merely in consultation.

Right Thigh

I found on the outside of the right thigh about 2 inches above the knee there was a wound the size of a shilling with bruised edges. - On the inside of the same thigh but ½ an inch lower down there was a similar wound. These wounds communicated & the bone was broken quite through & severely splinted. The wound on the outside of the thigh appeared to be the orifice of the entrance. -

Left Thigh

On the inside of the left thigh & about an inch above the knee joints there was a similar wound lower down than the point of exit of the first wound. This wound did not go quite through but it communicated with the fracture of the left thighbone. - From the wound I extracted this portion of lead, which I now produce. - He was treated after the ordinary treatment of gun shot wounds. I have no doubt that the wound was caused by a bullet discharged from a gun. - The deceased remained under my charge alive till the evening of the 4<sup>th</sup> June. He dies at 6. O'clock that evening. I made a post morton examination of the body. -

Right

I found the right thigh bone fractured & a great many splinters lying in the substance of the thigh an opening into the joint just above the knee bone apparently from a splinter of bone or it might be from a piece of gagged bullet. - There were several small abscesses round the joints caused by recent injury. I found this portion of the lead embedded in the bone. - That was all in the right knee.

Left

On the left side the extremity of the left thighbone was completely separated from the shaft of the bone. - The extremity is the expanded end of the bone close to the joints I also found several splinters of bone like this one. This one came from the outside of the shaft of the thighbone & this portion of lead was very deeply embedded in the expanded extremity of the left thighbone. There was nothing else of importance I observed. A rifle bullet discharged within a short distance of the deceased would have been likely to have been broken up in that way from the nearest of the person firing, the great force, & the amount of resistance it

would encounter. - The discharge was probably some feet distance off. - The state of the bone led me to the conclusion that the discharge was within a few feet of the wounded man. - The deceased Thomas Green died under my treatment. I have no doubt whatever as to the cause of his death. - He died partly from exhaustion produced by the suppuration of such extensive wounds & also from the shock to the nervous system. - He never seemed to rally at all. I have no doubt his death was caused by the wounds that I have described.

William Scott recalled It is usual in the regular force when a firelock is served out to each soldier to have the number branded on it as that they may know which soldier has which firelock. I don't know whether the same system is adopted in the Regts. Of the Waikato Militia.

*William T Lodge.*

I am clerk to the Regiment Magistrate at Auckland (It being found that a Deposition taken before Mr Comn Naughton J.P. & which the prosecution sough to give in Evidence as a dying declaration was not in Court but was supposed to be attached to the depositions taken prior to the June sitting of the Sup. Ct (the last named depositions being preparatory to the Committal of the prisoner on the charge of shooting with intent when Green was yet alive) I sent down Mr Kenny & Mr Anderton to try & find the dying declaration required. - It was found & the witness continued) On the 21<sup>st</sup> May I accompanied Mr Comer. Naughton J.P. to Otahuhu to the Militia Hospital. I only accompanied him to take the Deposition of the deceased on this one occasion. - I then saw the deceased Thomas Green. - Green was aware of the state he was in. - He said my present belief is I will not recover. - This was all he said as to his own impression of his approaching end. - It was in answer to Mr Nughton that he made this statement. When I & Mr Naughton went into the room Green was lying in bed. He seemed in pain when he attempted to move but I can't say her recollect Mr Naughton stated to him for what we came & asked him did he feel himself able to give an account of what had taken place. - He said he was. Then Mr Naughton asked him to state what took place on the 16<sup>th</sup> May. Prisoner was present all the time standing just beside the bed & heard what passed Thos. Green gave his narrative, which I took down in writing; just at the end of the narrative he was asked whether he thought he should recover. - I took down that also in the written statement. - The prisoner then x? (Questioned?) Him. - Mr Naughton then asked him a question still in the prisoner's presence. - I wrote the statement all down & read it over to Green & he signed it in my presence in the presence of Mr Naughton and in the presence of the prisoner. -

James Naughton

I am a Commissioner of Police and a Justice of the Peace for the Colony of New Zealand. - I recollect in the latter end of May my going out to Otahuhu to take the statement of Thos. Green lying at the Hospital at Otahuhu in bed. On going in I first informed him for what purpose we came & whether he was prepared to make a statement. - He then commenced relating the occurrence. The prisoner was in hearing the whole time. After his making the statement I asked him what was his own impression with regard to his recovery. He said my present belief is that I will not recover. He was crossed examined by the Prisoner after which the whole statement was read over in the presence of the sick man. Mr Lodge & the Prisoner. Green said it was perfectly correct & signed it. As far as I am able to judge he understood what was said to him & what he said. The man gave his evidence very coolly indeed. -

*Exd. By Mr Wynn*

Dr Welby passed in & out occasionally. - I think no communication passed between the Doctor & the patient while I was present. - I cannot recollect that I heard any conversation between the Doctor & his patient.

*Dr Welby recalled*

I recollect the circumstance of Mr Naughton & Mr Lodge coming out & taking a statement in writing from the deceased Green. - I was in & out of the room while it was being taken. The deceased was at that time in a state of danger from wounds I have described. -

exd.

I never informed him that he would not recover.

Mr Merriman here put in the declaration as a dying declaration

Mr Wynn objected wits.

I gave my reasons for rejecting the Evidence & did reject it. -

This was the case for the prosecution. -

Mr Wynn addressed the Jury for the Prisoner & called

*William De Lenzie R. Turner*

I am an Ensign in the 2<sup>nd</sup> Waikato Regt. - I have known the Prisoner about 8 years. I have always found him a quite steady & well conducted young man. I have been quartered with him 3 months since he has been in the same regiment. He is the last man I should have expected to do an act like this.

*Patrick Molloy*

I am a Sergeant in the Armed Police. - I have known the Prisoner 7 years. To my acquaintance he has been one of the most inoffensive young men I have known in this City.

*William Evers*

I am a Sergeant in the Armed Police. - I have known the Prisoner for the last 16 years. - During that time I have always known him to be a quite steady & well behaved Young man.

I summed up at great length & with care.

Verdict.

Guilty of Manslaughter

Sentence

4 years penal servitude.

In the Supreme Court

Copy of the Chief Justices "notes" taken of James BOYLE for murder

*(Reference Archives NZ Register room in register J-3-1 Agency Justice Series 1 Item 1864 / 1366 Chief Justice Prisoner BOYLE trial notes)*

Where personal details about James BOYLE and his family are recorded on the above document, for quick reference I have shaded the information.

Also recorded in the Archives New Zealand Wellington register room was Justice register J-3-1- that reads, Coroners Report Auckland - Green murder. The reference was Agency Justice, Series 1, Item 1864/610. The staff at Archives New Zealand in Wellington, were unable to locate the documents. They perhaps have been returned to the wrong box.

At Archives New Zealand Auckland Office in the Auckland Court records I located references about James BOYLE. The Archives references are:

BOYLE James 1864 Auckland shooting with/Lowton Augu

- Agency BADW 5989/20 page 245 [3990 sic]
- Agency BADW 5989/20 page 244 [4012 sic]
- Agency BADW 5989/20 page 241 [3974 sic]

BOYLE James 1864 Auckland Sgt 2<sup>nd</sup> Waikato Reg Shooting W Scott John C

- Agency BADW 10486/1 page 527 [3853 sic]
- BOYLE James 1864 Auckland Sgt 2<sup>nd</sup> Waikato Reg Shooting W Welby William
- Agency BADW 10486/1 page 526 [3852 sic]

BOYLE James 1864 Auckland Sgt 2<sup>nd</sup> Waikato Reg Shooting W Green Thomas

- Agency BADW 10486/1 page 527 [3854 sic]
- BOYLE James 1864 Auckland Sgt 2<sup>nd</sup> Waikato Reg Shooting W Lawton Augu
- Agency BADW 10486/1 page 524 [3850 sic]

BOYLE James 1864 Auckland Sgt 2<sup>nd</sup> Waikato Reg Shooting W Cochran T

- Agency BADW 10486/1 page 526 [3851 sic]

I was unable to sight the documents without the written permission from the Minister for Courts. All criminal records from the Courts are restricted under the provision of section 20 (1) of the Archives Act 1957. Application for access the above information should be made to the Minister for Courts, Department for Courts, P O Box 2750, Wellington.

James BOYLE would have been due for release from jail about 12 September 1868.

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AG 67/1058

May 3<sup>rd</sup> Gaoler

Auckland  
AG 67/425 Allotted [sic]

Report on conduct of Prisir. J BOYLE

No 20/67]  
Sir

H.M. Goal Mount Eden  
28<sup>th</sup> April 1867

I have the honor to inform you in reference to the Letter recd. From the Col. Secr. Office bearing date 27<sup>th</sup> February 1867 in which the Convict prisoner named in the Margin (James BOYLE) was informed that if his Conduct remained good, his prayer would be granted on the 12<sup>th</sup> May next.

I beg to state that his Conduct has been Very Good, up to the present date.

I have the honor to be  
Sir

R G Fountain Esqr.  
Col Secr. Office  
Wellington

Yours Obedient Servant  
*Joseph Luckely*  
Goaler

(Noted also in the margin is 'The Goaler with pardon see words [sic] attached')

*(Reference Archives NZ Register Room Justice register J-3-2 Goaler Auckland - Prisoner BOYLE Agency Justice, Series 1 1867/1058)*

AG 67/425  
Auckland  
AG 67/1058  
With Petition of Goaler

Supreme Court  
Auckland  
11<sup>th</sup> February 1867

Sir

I have the honor to transmit herewith Petition from the Prisoner named in the margin (James BOYLE) praying for a remission of his punishment.

I have to state for the information of His Excellency the Governor, that the Prisoner was tried and Convicted before Chief Justice Arney on the 12<sup>th</sup> Sepr. 1864.

The Honorable.  
The Colonial Secretary  
(Judicial Branch)  
Wellington

I have the honor to be  
Sir  
Your obedient Servant  
*J D More*

Also in margin was:

James BOYLE 12 Sept 1864 2/3<sup>rd</sup> of this prisoners sentence will expire on the 12<sup>th</sup> May next. Rest was hard to read.

Remission adducted [sic] taken place on the 12 May next G Clifford 26.2.67. The Goaler No 257 27/2/67

*(Reference Archives NZ Register Room Justice register J-3-2 Goaler Auckland - Prisoner BOYLE Agency Justice, Series 1 1867/1058)*

To His Excellency

Sir George Grey K.C.B.  
Governor of New Zealand

The petition of James BOYLE  
a prisoner in Mount Eden  
Goal Auckland.

Humbly Servant

That you petition was tried of the Supreme Court Auckland on the 12 Sept. 1864 & Convicted of "Manslaughter" for which he was sentenced to Penal Servitude for 4 years.

Your petition having now served 2 years & 5 months of his sentence, he would beg most respectfully and humbly to approach Your Excellency with the Hope that Your Excellency may be graciously [sic] please to take his case into your merciful consideration. Your petition would beg to inge [sic] upon Your Excellency the fact of his having been so long detained for trial.

Yours petitioner was committed for trial on the 18 May 1864 and assigned [sic] for trial it the June Sittings of the Supreme Court, but was on the application of the Crown Prosecutor

remanded until the September sessions thereby having to suffer an imprisonment of three months on that account.

Your petition hopes that this plea may be favourably considered by Your Excellency and that it may please you to permit the remaining part of his sentence - he first [sic] also that his conduct whilst in goal may be found to have been such as may be favourable to granting this soon [sic].

Your petitioner having received such a severe [sic] lesson by this long imprisonment, as will be a Caution to him this Life.

That Your Excellency may therefore be generously pleased to grant his prayer.

Your Petitioner as on duty barns will ever pray for.

James BOYLE Mount Eden Stockade

4 Feb. 1867

(Reference Archives NZ Register Room Justice register J-3-2 Gaoler Auckland - Prisoner BOYLE Agency Justice, Series 1 1867/1058)

Defaulters Sheet. H.M. Goal Mt. Eden 4<sup>th</sup> February 1867

Name	Offence	Sentence	General Conduct	Previous Convictions	Remarks
James BOYLE	8 May 1865 having Tobacco in his possession	24 Hours Solitary Cells	Very Good	Nil	Habitually industrious

J New [sic] I believe the Gaolers report to be correct Joseph Luckensh [sic] Gaoler

J Naughton V.I.

(Reference Archives NZ Register Room Justice register J-3-2 Gaoler Auckland - Prisoner BOYLE Agency Justice, Series 1 1867/1058)

I have found no records that state the day, month or year when James BOYLE was released from the Mount Eden Goal in Auckland.

A case recorded in the Justice Courts of Auckland Circuit Criminal Court of Monday 3 June 1867 reads: The Queen on the Pros of Alexander Anderson V James BOYLE

Indictment Horse Stealing – Plea Not Guilty

At Prisoners Request Adjourned Wednesday 5<sup>th</sup> June 1867.

Friday 7<sup>th</sup> June 1867 Mr Brookfield for the prosecutor Mr BEVERIDGE for prisoner

Names of Juror's & witness for Prosecution included

Verdict Guilty – Sentence Imprisonment with hard labour for the term of 2 years

Recorded at the bottom of the register was quote; "The other case was withdrawn by Crown Prosecutor".

(Archives NZ Agency BBAE A792/425 Department of Justice High Court Auckland Monday 3 June 1867 page 273 Circuit Criminal Court and Friday 7<sup>th</sup> June 1867)

When James was released, he appeared in the courts again. It was the newspaper report below, covering the court case for cattle stealing, which lead me to locating information about the charge against James BOYLE for the death of Thomas Green.

The Auckland Weekly News of 30 November 1867 reads:

*CRIMINAL CALENDAR.*  
*The following is a list of prisoners for trial at the Supreme Court Auckland commencing on the 2<sup>nd</sup> day of December 1867: -*  
*James BOYLE arrived in the colony per ship "Sir R Sale in 1847 free Irish blacksmith aged 28 years married Roman Catholic can read and write committed September 20 1867 by Resident Magistrate Onehunga for cattle stealing-Prosecutor constable Negus. Previously convicted on September 12 1864 at Auckland for manslaughter four years penal servitude.*

(Reference Auckland Public Library Weekly News 30 November 1867 page 7 microfilm No 4 Dec 1866 to Nov 1867 & compiled information from Howick Historic Village)

The article above was incorrect regarding James BOYLE being married as he did not marry until 1871.

The Circuit Court Criminal Sitting for 3<sup>rd</sup> December 1867 records:

The Queen on Pros

Of Michael Lord V James BOYLE & John Childerhouse

Indictment Cattle Stealing

James BOYLE Plea Not Guilty

John Childerhouse Plea Not Guilty

(Names of the Jury included but not listed)

The Prisoner James BOYLE after having been given in charge of Jury admits that he is guilty and consents to a verdict of guilty being returned by the jury against him accordingly.

Verdict James BOYLE = Guilty & of previous conviction witnesses for prosecution named

Verdict John CHILDERHOUSE = Guilty

Sentence James BOYLE and John CHILDERHOUSE

Each to be imprisoned and kept to hard labour for the term of eighteen months from the day of committal 20<sup>th</sup> September 1867.

(Reference Archives NZ Auckland Office Agency BBAE A792/425 Department of Justice High Court Auckland)

The Weekly News of 4 December 1867 reads:

*THE WEEK*

*James BOYLE and John Childerhouse were charged with stealing two cows and a heifer the property of Michael Lord of Howick. BOYLE pleaded guilty and Childerhouse was found guilty by the jury. They were each sentenced to 18 calendar months imprisonment with hard Labour from the date of committal.*

(Reference Alexander Turnbull Library Weekly News 4 December 1867 page 3 microfilm No 5)

If James BOYLE was committed on 20<sup>th</sup> September 1867 and given 18-month hard labour then he would have been due for release on 20<sup>th</sup> March 1869.

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AG 67/3530	21.12.67 Gaoler
Mt Eden	Report on conduct of Prizr. Jas. BOYLE
NO 77/6	H M Gaol Mt. Eden
AG 67/3529 attached	Decr. 13 <sup>th</sup> 1867

Sir

I have the honor in accordance with the instructions in your letter of Decr. 4<sup>th</sup> 1867 to report upon the Conduct of the Prisoner named in the margin (James BOYLE).

His conduct has been very good and of very industrious habits.

I have the honor to be

Lt. Colonel Harrington

Sir

No 41 7.1.68

Your most obed. Servant

The Honorable

*Thos. Young*

The Colonial Secretary

Act. Gaoler.

Also in the margin was:

¾ of this prisoner's sentence will expire on the 6<sup>th</sup> Dec. 1868. Conduct "Very Good".

Side [sic] former papers 27.12.1867

Claim of the pardon served at present J H Stafford [sic]

(Reference Archives NZ Register Room Justice register J-3-32 Gaoler Auckland - Prisoner BOYLE Agency Justice, Series 1 1867/3530)

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AG 67/3529	Report of Petition in favour of Jas. Boyle
Auckland	21.12.67 Judge Moore
AG 67/3340 attached	Supreme Court

With AG 67/3530

14<sup>th</sup> Decr. 1867

Sir

I have the honor to acknowledge the receipt of your letter-conveying petition of the prisoner named in the margin (James BOYLE 7<sup>th</sup> June 1867) praying for a remission of punishment. I have to report for the information of his Excellency the Governor, that I am of opinion the prisoner was convicted in due course of law and I am not aware that any reason exists for remitting the remainder of his sentence other than may arise out of the regulations which may be considered applicable to like cases or then may arise out of a petition supported as the petition is in this case.

The Honorable  
The Colonial Secretary  
Judicial Branch  
Wellington

I have the honor to be  
Sir  
Your obedient Servant  
*J Moore*

*(Reference Archives NZ Register Room Justice register J-3-32 Gaoler Auckland - Prisoner BOYLE Agency Justice, Series 1 1867/3530)*

AG 67/3340

4.12.67 Col Harrington

No 2346

Tauranga

Tauranga

December 19<sup>th</sup> 1867

with AG 67/3529

With petition in favour Gaolr.of Jas. BOYLE

Sir

I have the honor to forward a petition in favour of the man named in the margin (James BOYLE) who served. In the 1<sup>st</sup> Waikato Regt. For nssnands [sic] of 3 years. And who was him - Effecting at the time of the Commission of the Crime for which he was tried. - He always Ine [sic] a most Excellent character whilst serving under my command and I can only account for his conduct by the fact that he was on the verge of "delirium teems" bought on by a sudden fit of drinking. -

He is quite a young man and has refutable relations and I therefore trust you will recommend his case of the favourable release of His Excellency Sir George. Gray

I am the honorable  
Sir  
Your most Ardt. Servt.  
*Philip Harrington*  
Lt Colonial  
Con. Militia Tauranga

Also in margin was written:

Recommended that this application to reported in the usual way to his Honor W Justice Moore for his remark. R F Jountrice [sic] 4.12.67

Appsd. - Require Gaolers report as to conduct also Elottersforel [sic] 4.12.67

The Goaler No 1707 4.12.67 Judge Moore No 1713 5.12.67

The Honorable. Colonial Secretary Wellington.

*(Reference Archives NZ Register Room Justice register J-3-32 Gaoler Auckland - Prisoner BOYLE Agency Justice, Series 1 1867/3530)*

### *Petition*

In favour of a pardon or commutation of sentence passed by Mr Justice Moore on James BOYLE last private in 1<sup>st</sup> Waikato Regiment of two-year imprisonment in Mount Eden Stockade for horse stealing at Tauranga.

To his Excellency Sir George Grey R.C.B. etc.etc.

The humble petition of the undersigned sheweth, - That James BOYLE late Private in the 1<sup>st</sup> Waikato Regiment did receive a sentence of two years of the Supreme Court Auckland, on the sixth day of June 1867 on a charge of horse stealing and that he is at the present time in confinement in Her Majesty's Gaol Mount Eden.

As Her most gracious Majesty's Representative We, your petitioners approach your Excellency and pray that you in your clemency will grant a pardon to the said James BOYLE or such commutation of his sentence, as you may be pleased to grant.

The prisoner had always borne the highest character for rectitude and honesty up to the time of the committal of the crime for which he is at present suffering imprisonment and had

always conducted himself in such a manner as to meet with the unqualified approval of his Officers and the good-will and brotherly feeling of his comrades together with the good wishes of the Civil inhabitants of Tauranga for the period of three years during which he has been amongst them.

We your petitioners would also crave for a commutation of his term of imprisonment on account of his youth and on behalf of his grief stricken relations feeling satisfied that the ends of justice have been fully met by the punishment he has already undergone. And we your petitioners will ever pray.

(Reference Archives NZ Register Room Justice register J-3-32 Gaoler Auckland - Prisoner BOYLE Agency Justice, Series 1 1867/3530)

**NOTE:** A total of 99 men from the 1<sup>st</sup> Waikato Regiment signed the petition and this included many Officers.

1867-1868 City of Auckland Electoral roll recorded

James BOYLE Household Drake Street.

I do not know if this was our James BOYLE.

(Reference Alexander Turnbull Library microfilm of NZ Electoral Rolls)

**SEARCH** Mining records for James BOYLE from 1868 to 1871

**SEARCH** Electoral Rolls Thames 1868-1871

The Intention to Marry application recorded that James aged 30 years occupation Miner had dwelled in Panmure for 3 months and had previously dwelled at Thames. Jane aged 17 years had dwelled at Panmure for 17 years. Name and relation of person giving consent in case of a minor to marry was Mary FAHEY the mother of Jane.

(Reference Archives NZ Intention to Marry Agency BDM 20/16 page 86-4597 Auckland)

James BOYLE occupation a Miner married Jane FAHEY a minor on 4 July 1871 at the Catholic Church, Panmure, Auckland. The witnesses at the marriage were William QUINLAN and Mary FAHEY both of Panmure. The minister Rev H J Fynes took the service. Both James and Jane signed the register.

(Reference RGO NZ marriage registration 1871 folio 158 Auckland district)

James's wife Jane FAHEY was born on 8 November 1853 at Panmure, Auckland. Jane was the third daughter born to Mary nee CALLANAN and Michael FAHEY occupation Labourer. Jane's mother, Mary FAHEY of Panmure, registered the birth on 3 December 1853. The FAHEY family was also a Fencible family.

(Reference RGO NZ birth registration 1853 folio 1618 Auckland district)

James BOYLE made application on 27 February 1872 and received the New Zealand War Medal for services in the Commissariat Transport Corps.

#### RECEIPT FOR WAR MEDAL.

I *James Boyle* hereby acknowledge to have received from the Under Secretary for Colonial Defence, by the hands of *Major Cooper* a New Zealand War Medal, awarded to me by Her Majesty's *Imperial* Government for services in the *Commissariat Transport Corps*.

(Signature of recipient) James Boyle

Witness *Edw. Lambert*

Dated at *Shortland* this 27 day of *February* 1872

*BOYLE James C.T.C. 2255*

(Reference Archives NZ Agency AD series 32 item 2255)

**SEARCH** National Archives of NZ Medal Index and AD1 NZ Gazettes 1871

James and Jane's first child, a daughter, Mary Ellen BOYLE, was born 5 August 1873 at Panmure Auckland. J J NUTT a Blacksmith of Parnell registered the birth on 8 August 1873.

(Reference RGO NZ birth registration 1873 folio 974 Auckland district)



James and Jane's second child a son Thomas Edward BOYLE was born 4 December 1875, Papakura, Auckland. James, the father, occupation Labourer of Papakura, registered the birth on 6 December 1875.

*(Reference RGO NZ birth registration 1875 folio 1690 Auckland district)*

In the Archives New Zealand Auckland in the Auckland Court records I located references about James BOYLE. All criminal records from the Courts are restricted under the provision of section 20 (1) of the Archives Act 1957. Application for access should be made to the Minister for Courts. The Archives reference is:

BOYLE James 1876 Auckland Drunkenness

- Agency BADW 5989/33 page 030 [33421 sic]
- Agency BADW 5989/33 page 055 [33581 sic]

I was unable to sight the above documents without the written permission from the Minister for Courts, Department for Courts. P O Box 2750, Wellington

James and Jane's youngest son, Michael Fahey BOYLE, was born on 31 May 1878 at Papakura, Auckland. The registration recorded James as aged 38 years, born Tipperary, Ireland, and Jane, 25 years, born Panmure, Auckland. James, the father, of Papakura, registered the birth on 3 June 1878.

*(Reference RGO NZ birth registration 1878 folio 1109 Drury district)*

1879-1880 Franklin Electoral roll recorded James BOYLE Freehold Papakura.

*(Reference Alexander Turnbull Library microfilm of NZ Electoral Rolls)*

James BOYLE aged 41 years occupation Labourer died on the 3 December 1879 at Point Britomart, Auckland. Cause was recorded as Coroners request Killed accidentally by a fall of Earth. The informant was recorded as T M Wilson the Coroner of Auckland on 5 December 1879. No other details were recorded on the registration form.

*(Reference RGO NZ death registration 1879 folio 1403 Auckland district)*

James BOYLE made a Will only 8 months before his death. The Will not only mentioned his wife's name Jane BOYLE but also noted her maiden name of FAHEY and included the names of their three children, Mary Ellen BOYLE, Thomas Edward BOYLE and Michael Fahey BOYLE. This Will gave more information than his death registration.

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This is the paper writing or Will made and referred to in the affidavit of Jane BOYLE sworn before me this eight day of December 1879 as being produced to her at the time of her making the said affidavit.

G T Rutley A Solicitor & C.

This is the Will and Testament of me James BOYLE of Papakura Engine Driver.

I give - demise - devise and bequeath all property - whether real or personal which I may now poses - hereafter acquire - or become entitled to - to my wife Jane BOLE formerly Jane FAHEY to do and perform the several acts hereunder set forth - that's is to say -

1. I direct that all debts just claims and testamentary charges be paid in full -
2. I direct the residue of my estate after paying all charges and claims as aforesaid to be applied to the use of the said Jane BOYLE and towards the support of my children names respectively Mary Ellen BOYLE, Thomas Edward BOYLE and Michael Fahey BOYLE and suck other children as may be born to me of the said Jane BOYLE - in such manner and in such way as the said Jane BOYLE shall deem best - And I appoint the said Jane BOYLE to be sole executor [sic] of this my last will and Testaments

Witness my hand this 12<sup>th</sup> day of April 1879 *James BOYLE*

Signed by the testator in the presence of us who at his request and in his presence and in the presence of each other have affixed our names on this 12<sup>th</sup> day of April 1879.

*William Stanley* Law Clerk R M Court Papakura Papakura

*Robert John Willis Green [sic] Papakura*

*(Reference Archives NZ Auckland Office Agency BBAE 1568 0863/79 Court Auckland File date 12 December 1879 Type Will Probate Number 0863/79 Death date 03 December 1879)*

The New Zealand Herald's and Daily Southern Cross Deaths Column dated Thursday December 4 1879 reads

*BOYLE - Accidentally killed, at Point Britomart, Auckland, on December 3, James BOYLE, of Papakura, age 41.*

*(Reference Alexander Turnbull Library The New Zealand Herald microfilm reel 16604 Oct-Dec 1879)*

Also appearing on the same page as the Deaths column of The New Zealand Herald and the Daily Southern Cross was a report about the accident to James BOYLE.

*In another column will be found the details of a sad and fatal accident, which took place yesterday at the excavations, Fort Britomart, by which a poor man named James BOYLE lost his life, and another family is left desolate and fatherless. The accident of yesterday does not come upon the public as a surprise, as for some time back it has been felt that it was merely a question of time when a serious if not fatal accident would take place. Several men had been already injured through falls of earth or boulders, and from the hazardous method in which the men undercut the face of the cliff to get a good "fall" when a "shot" was put in, it was scarcely possible to escape with impunity on all occasions. The topsoil is a volcanic loam, underlying that is a pipe-clay formation of an extremely treacherous character, as it was from a seam of that opening and giving way that the fatality of yesterday occurred. It is surely possible to adopt some safer method of excavating than in vogue at Fort Britomart, and which caused the daily remark from passengers by the railway going to and from, that "it was simply tempting Providence". In a Government work of such magnitude and of such a character, the authorities ought to take some steps to see that the lives of the workmen are duly cared for, by instituting those safeguards which daily experience and common prudence would dictate.*

*(Reference Alexander Turnbull Library The New Zealand Herald Reel 16604 Oct-Dec 1879)*

Another three articles appeared in The New Zealand Herald dated Friday December 5, 1879. One article was the coroners report; another showed compassion to the wife and family over their sad loss. The last article questions the responsibility of Contractor regarding the accident.

The New Zealand Mail Wellington 6 December 1879 reads:

*Auckland, Dec. 8. A labourer named James BOYLE was killed at Dempsey's reclamation works to day through a fall of earth from above where the men were excavating.*

*(Reference Alexander Turnbull Library New Zealand Mail Wellington 6 December 1879 column 15C)*

#### **THE FORT BRITOMART ACCIDENT: CORONER'S INQUEST**

*An inquest was held yesterday, at 2pm, in the Britomart Hotel, on the case of the unfortunate man James BOYLE, who was killed on Wednesday at the Britomart reclamation works by the falling of a mass of clay from the top of the cliff. Dr Philson presided as Coroner, and the following jury were appointed - Messrs. Joseph Dwyer, Thos. Thwaite, Wm O'Connell, Wm Jamieson, Francis C. Taylor, Alfred J. Edmunds, Thomas Thompson Anderson, Edward D. Wilcox, Geo. Ryan, John Newburn Young, Charles Langsford, Charles Daire and Edward West. Thomas Twaite was elected foreman of the jury. Mr James Russell appeared to watch the proceedings on behalf of the relatives of deceased. The jury viewed the body, and afterwards inspected the scene of the accident. The first witness called was Dr Charles H Haines, who deposed to having*

been called deceased about noon on December 3. He found him lying on the ground, about 20 yards from the base of the Britomart excavation. He was quite dead. Both bones of the right leg were broken, the right clavicle and four right upper ribs broken, and the skin in a condition of emphysema, indicating a wound of the lung. The only wound on his body was a slight scratch on his right leg; no blood about the body; no fracture of the skull. The above injuries were caused by the falling of a mass of earth as he was working at the base of the cliff. The height of the cliff at the point where deceased was working witness would roughly estimate at 50 feet. The shock of a mass of earth falling from such a height to a person must necessarily cause instant death. He did not consider it necessary to have a post mortem examination. The cliff, as it now stands is, in the opinion of witness, highly dangerous, even to passers by much more so to persons working under it. Mr John Aldworth deposed that he was a labourer. Living at Newtown, and employed by Mr James Dempsey, contractor, at excavating the earth at Britomart point. He began work there on Wednesday morning at 9 o'clock. The deceased was working along with him. Their work was to bore a hole with a drill in the face of the cliff, which is very high at that point. John Howe, the foreman, set them to work. The foreman gave then no caution respecting the danger of the work, and witness did not think himself there was any danger in it. Young Mr Dempsey, son of the contractor, was on the look out for accidents, about 50 yards away. Witness was well acquainted with this kind of work, and had reason to believe that deceased was also experienced in the same. They were not digging into the face of the cliff at the time the accident occurred. He did not know if there was anyone at the top of the cliff. They had been about two hours at work when they heard someone calling out to them to look-out and to get out of the way; that there was some stuff coming down from the top. They heard no crack; No small pieces came down first as a warning. Witness immediately ran away the cliff, and escaped unhurt. Deceased ran too, but in a different direction from witness. Witness saw a great mass of earth coming down from above, and this mass fell upon the deceased. On looking round he saw the deceased lying underneath this mass of earth, his head and shoulders being alone visible. Witness ran up to him at once, being only about five yards off, and he believed the deceased was then breathing, but not able to speak. He looked very pale. A number of men came up and commenced removing the earth from the body, of the deceased. They then took him about ten yards away. He was not dead at the time. He saw no doctor, but heard that one was sent for. Witness went to water, but deceased did not drink any of it in his presence. By Mr Russell: Witness said he had never been warned that there was any danger, and being a new hand, he thought he would have been so warned. John Conway Carter residing at Ponsonby, deposed that he was not acquainted with deceased. He was at the reclamation works about noon on Wednesday. Witness was in company with young Mr Dempsey. He saw a number of men engaged at to work on the cliff, but did not particularly notice the deceased. He was sitting, and happened to be looking at the cliff, when he saw the earth beginning to move near the top. Witness immediately shouted out to the men to clear out. The mass of earth came down without any warning. The weight of the mass that struck the deceased must have been about two tons, but witness did not see it strike any one. Witness went over to the place of the accident, and saw the deceased extricated from the mass that had crushed him. There was such a crowd around him that witness could not see him to tell whether he was then alive or dead. The fall of the mass of earth was broken by having first struck on a ledge above where the deceased was working, and from there rolled down. (By the Foreman): Young Mr Dempsey told witness he was on the look out. (By Mr Russell): Deceased was working about three or four feet above the level of the ground. The fall of the earth was not occasioned by the men working at the foot. Witness was about 25 to 30 yards distant when the fall took place. Edward Dempsey being sworn deposed, that he is employed by his father James Dempsey, contractor for the Britomart Reclamation Works, to see that no accident happened from any dirt about the hill. He had been employed in this duty ever since the work started and looked after his

father's interests in the work. The workmen were directed by John Howe, Foreman: He was at the works on December 3, and saw deceased at work, drilling holes in the face of the cliff for blasting; Witness was sitting in the open air by the side of a shed looking at the top of the cliff not thinking however, that there was any danger. He saw a couple of masses of clay on the point of breaking off from the top of the cliff, and roll down. He at once called out to the men to look out, and they ran, but one of them was struck by the mass. He at once went over, and saw the men removing the earth from the deceased. He heard him groan once, but not speak. Deceased survived a few minutes, and witness saw him die. Witness had never witnessed any similar accident at the works before, but had heard of one lately, though he was not present at the time. Witness's father was not in Auckland. By the Foreman: Mr Dempsey was to get \$33,000, the amount of his tender. It would cost two to three times more to cut down the cliff from the top than it did to blast. By Mr Russell; Witness did not know whether in making the tender, his father based his estimate on the work being done from the top, or blasting. Witness was not at the place all the day, and when he was away there was no one put in his place to watch and prevent accidents. When there was no danger apprehended there was sometimes no one on the lookout at all. The top of the cliff is all loose rubble stuff; below that is a rock. John Howe, being sworn, said he is foreman for Mr Dempsey at the reclamation works, and had been engaged on that work for the last sever months. His duty was to get the ground down in the best and safest way he could, and he set the men to work. If he saw any danger or apprehended any, he set a man to be on the lookout. On Wednesday, December 3rd he put deceased to work at drilling the holes in the ground at the base of the cliff, and he had another man, Aldworth, with him. He did not consider this work dangerous, so did not put anyone to be on watch at this particular spot, but had two men on the lookout at another part, where he did think there was some danger. Witness was not present at the time of the accident, being at the other side of the hill, charging holes but heard of it at once on the deceased getting hurt. He came round immediately, and saw the deceased being got out from underneath the stuff. The deceased was not dead, but when he came back from getting a stretcher for him, he found him dead. Witness believed the present system of taking down the cliff was as safe as any, by taking due precaution. When any very large piece broke off it always have warning by smaller pieces first falling. There was no warning in the present instance, and witness considered the accident to have been unavoidable. The men did not get any increased wages on the work if they did not object to the nature of the work. The accident that happened the other day to the man who had his leg broken happened in the same way as this, and there was no warning in either case. He thought it would take six weeks or two months yet to finish the work. If the top clay were all-away, there would be no danger whatsoever. The cliff was about 50 feet high where the accident occurred. Deceased was 41 years of age, and left a widow with three children. By Mr Russell: There were about 60 men working all round the hill on the day the accident happened. When there is no danger no watch is put on. The condition of the cliff is worse now than ever it was. The top clay is not dangerous, but the layer of pipe clay below is the most dangerous. By a Juror: None of the surface soil came down on this occasion; only the pipe clay. John Witheridge, being sworn deposed that he is overseer of works from the Government. He did not see anything of the accident not being on the ground at the time. He had since inspected the place. He did not consider it to have been all-safe for the men to have been working where they did, with the clay overhanging. Instead of undercutting the hill, the work should have been done from the top. They could not have done work in a more dangerous way than the way they did. There was no danger whatsoever in working from the top, and it could in his opinion, be done cheaper. He had warned Mr Dempsey on several occasions that there was great danger in the way he was performing the work, but had no control over him as to the management of the works. The height of the cliff is between 70 or 80 feet. By Mr Russell: When witness pointed out the danger to Mr Dempsey, he hoped there would be no accident while he was carrying on the work. He did not

*think that the putting a man or two to watch for loose stones or masses of clay was of much, if indeed, any use. There was not sufficient time given to escape, and a man might become flurried and run into danger instead of out of it. Witness had discussed with Mr Dempsey, the advisability of removing the hill by taking it away from the top. This closed the evidence. The jury after a short deliberation delivered the following: - that they find the James BOYLE was accidentally killed; but that in view of the dangerous works being carried on in the colony similar to that by which James BOYLE was killed the jury recommend that representation should be made to the Government that it would be conducive to the safety of the working men that steps should be taken to inquire into the subject, and, if practicable, take protective measures:"*

*(Reference Alexander Turnbull Library The New Zealand Herald Reel 16604 Oct-Dec 1879)*

### **FRIDAY, DECEMBER 5, 1879**

*It is impossible, we think to arrive at any other conclusion from the evidence given yesterday at the inquest on the body of James BOYLE killed by the late accident at the excavation at Fort Britomart, than that the poor fellow was the victim of culpable conduct on the part of the contractor for carrying out the work; and we must express the opinion that the verdict of the jury was far from adequate. The facts and the evidence were quite clear, that the man's destruction had been caused by the dangerous manner in which the work had been carried out, and yet their verdict contains not one word of condemnation of the contractor. It is evident that the work was carried on at hourly risk to the men, and their lives periled, because the removal of the earth was effected in a manner most likely to render the contract profitable. What are the facts? The height of the cliff is given variously at fifty, and from seventy to eight feet and it is immaterial what it really is, because the lesser height was quite sufficient to render the work dangerous. On a basis of rock is a layer of pipe clay, and on this a super incumbent mass of earth. There was thus always a probability that such a slide would take place as that which killed the man BOYLE. In consequence of this a watch was kept when things were more than usually dangerous, but sometimes there was none. The warning was a shout, and if the men were lucky and ran in the right direction they escaped, but BOYLE ran the wrong way and hence lost his life. In fact it was just a matter of chance whether the men escaped or were caught by the falling mass. The miserable apology made by Mr Dempsey, jun, for the fatal accident is that usual by the falling of some small pieces of earth gave warning of the approaching fall, but on this occasion they did not. He gave also an indication of why the work was carried out in so dangerous a manner, that the contract was for \$33,000, and that it would cost twice or thrice as much to work it from the top, instead of the bottom - the way in which contract was being carried out. And what do we find, that the men had never been warned of the dangerous nature of the work on which they were employed? We are entitled to say the poor Boyle's life was sacrificed to the manner in which the work was carried out. Apart from the evidence of the dangerous nature of the proceedings, and the conviction of all who saw in which the works were carried out that it would be little short of a miracle if an accident had not occurred, we have the fact from which there is not getting away, that an accident, had occurred previous to that which proved fatal to the deceased man BOYLE. Further, we have the evidence of the Overseer of for the Government that he thought the mode of conducting the work danger; that it should have been downward from the top, and not upward from the bottom; that it could not have been more dangerously done; that he warned Dempsey, who made the extraordinary reply that "he hoped there would be no accident while he was carrying on the work". In fact, Mr Dempsey hoped against hope. More over, the overseer expressed the opinion that the watch was of no use an opinion which will be shared by most other persons, and was unhappily justified by the event. There are no palliating circumstances in connection with the conduct of the contractor because he could have been unaware of the risk the men ran. He had the previous accident to warn him - he has the emphatic opinion of the Government overseer. That he did*

something to mitigate the danger by having a watch kept is true, but he must have known that it was inadequate and hence his conduct was highly censurable, and it was the duty of the jury to have said so. It could not restore the dead to life, it would not console the widow by its comment, but it could have discharged a public duty and it shrank from doing so on that happy-go-easy principle, on which the public will have to put their foot down. Why should a breadwinner be lost to his family under such circumstances as those which the inquest discloses, and only those be considered who are responsible for the dreadful loss? We venture to think that of James BOYLE, instead of being a labouring man earning his living by an arduous employment had been some local notability, the conduct of the contractor would have been treated in a very different fashion. But he was as dear to his wife and children, probable as the best man in the land to his. It is a shocking and outstanding that so great misconduct and so serious a calamity should have been passed over in so light a matter, and it will assuredly form the subject of general condemnation. It must be deemed a matter of regret that, holding so strong and opinion of the dangerous nature of the work, the Government overseer did not take some steps to protect the men. It is true that he warned Mr Dempsey and asserts truly enough that he had no control over the contractor. But it was not inevitable; therefore, that he should fold his hands and leave things to take their course. He could have communicated with the head of his department, or with the Mayor; and then, at all events, he would have acquitted himself of a responsibility, which he seems to have regarded to lightly. What blame attaches to him, however, is not of a very serious kind, and we are sure he will regret that he was not more resolute and energetic. The jury recommend that the Government should take some steps to guard against a recurrence of a similar disaster; and there can be reason why it should not make general the protection against the carelessness of employees, which is now confined to the mines. So far as regards Government works, this could be accomplished by making adequate provision in contracts for the safety of the employees, and introducing a clause giving compensation when death or injury results from culpable neglect. But it is requisite that it should go further, and present a measure to Parliament defining the manner in which all such works should be carried out, and providing for compensation. We know of no private rights, which include that of periling the life of a fellow-creature. Something more than sympathy and remonstrance is required in these cases-prevention for the future; and should the death of BOYLE lead to security being taken for the lives of others of his class, the death, which we all lament, may be made the means of mitigating the risks which in some shape or another labour has to encounter.

(Reference Alexander Turnbull Library The New Zealand Herald Reel 16604 Oct-Dec 1879)

Yesterday afternoon an inquest was held at the Britomart Hotel, on the body of James BOYLE, the unfortunate man who was killed the day before yesterday at the Britomart reclamation works, by the falling of a mass of clay from the over-hanging cliff. Evidence was taken before a very respectable jury - the foreman of whom was Mr Thwaite - Dr Philson coroner, presiding and, having previously viewed the body and the place where the accident occurred the jury brought in a verdict of "Accidentally killed". Full details of the inquest will be found elsewhere. The deceased was 41 years of age, in the vigour and prime of life, and has left an aged father and mother, and a widow with three little children to mourn their sad loss. As soon as the jury had viewed the body, it was taken away by the family, the family who were present, to Papakura where the deceased had resided, and where his remains will interred.

(Reference Alexander Turnbull Library The New Zealand Herald microfilm reel 16604 Oct-Dec 1879)

The Inquest and Accident column of The New Zealand Herald dated Monday December 8 1879 reads:

### **INQUESTS AND ACCIDENTS.**

*On the 3<sup>rd</sup> December a fatal accident occurred at Fort Britomart, whereby a man named James Boyle, of Papakura, lost his life. The circumstances, so far as could be gathered, are as follow: - A little before noon a party of labourers were working at the surface of the cliff, near the railway station, some shovelling the earth into the drays, and two about fifteen feet up the face of the cliff were engaged in drilling a hole for a "shot," when a opening at the top of the cliff caught the eye of a man named Hone, sitting on a log on the opposite side of the street, and he immediately shouted, "Run, boys the stuff is coming down!" The men ran outwards, but the deceased tripped, on some of the loose clods on the slope and fell, and the mass of earth in falling split on a projecting ridge, half falling in the direction of the railway station, and the balance towards BOYLE, who was struck on the back and legs with the boulders, and the next moment partially buried with the Debris. His mates released him as speedily possible, but he was past all earthly aid, and died almost instantaneously. On the occurrence of the accident, Dr Haines was sent for, but his services, of course, were unavailing. The workman, at once, left off work for the remainder of the day. On the 4<sup>th</sup> December an inquest was held in the Britomart Hotel, on the body of the unfortunate man. Evidence was taken before a respectable jury - the foreman being Mr, Thwaite - Dr. Philson, coroner, presiding; and having previously viewed the body and the place where the accident occurred, the jury brought in a verdict of "Accidentally killed." The deceased was 41 years of age, in the vigour and prime of life, and has left an aged father and mother, and a widow with three little children to mourn their sad loss. As soon as the jury had?*

(Reference Alexander Turnbull Library The New Zealand Herald Reel 16604 Oct - Dec 1879)

**NOTE:**

I was unable to complete the transcribing of the newspaper article, as the photocopies have unfortunately been lost so I will have to order new copies

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*"New Zealand Mail" Wellington Newspaper 1879 December 6<sup>th</sup>*

<p>Auckland December 8  <i>A Laborer named James BOYLE was killed at Dempsey's reclamation works to-day through a fall of earth from above where the men were excavating.</i></p>
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(Reference Alexander Turnbull Library "New Zealand Mail" Wellington Newspaper 1879 December 6<sup>th</sup> page 15c)

**TYPE up contents of Coroners report** A full 12 page Coroners report regarding the accident can be found at Archives New Zealand in Wellington.

(Reference Archives NZ Agency Justice Series 46 item 1879/4392)

It would be interesting to know if Jane received any compensation for the loss of her husband after the accident or if the Contractor had to pay any fines or charged any penalties. I have been told that later the Government began toughening the laws to make excavation sites safer.

**SEARCH** Parliamentary publications for evidence about any debates held in Parliament regarding the safety of excavation sites etc.

James BOYLE was buried at the Papakura Cemetery in Auckland but I have been unable to locate the block and plot number or if there is a headstone bearing the name of James BOYLE

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## Family Tree of James and Jane BOYLE

- B-1- James BOYLE** born about 1838 Tipperary Ireland died 03 December 1879 Auckland NZ married 04 July 1871 Auckland NZ Jane FAHEY born 08 November 1853 Auckland NZ died 05 February 1916 Auckland NZ
- B-1-1- Mary Ellen BOYLE** born 05 August 1873 Auckland NZ died 27 October 1942 Auckland NZ married 07 August 1895 Auckland NZ Ernest Charles Frederick ZUGE born 1864 Germany died 23 August 1935 Auckland NZ (1 Issue)
- B-1-2- Thomas Edward BOYLE** born 04 December 1875 Auckland NZ died 18 November 1918 Auckland NZ married 29 August 1906 Auckland NZ Mary Ann Josephine SHERRY born 28 October 1881 Auckland NZ died 04 June 1938 Auckland NZ (5 Issue)
- B-1-3- Michael Fahey BOYLE** born 31 May 1878 Auckland NZ died 25 May 1931 Hamilton NZ married 17 October 1904 Auckland NZ Mabel Ann PEARCE born 25 April 1886 Auckland NZ died 27 July 1971 Auckland NZ (4 Issue)
- 1-2-3- Generations
- 

### Jane BOYLE the widow

Jane BOYLE nee FAHEY was now a widow with three small children to care for on her own.

The Auckland Evening Star Saturday 13 March 1880 reads:

*The Auckland Evening Star Saturday March 13 1880*

*Mrs BOYLE, widow of the late James BOYLE, who was accidentally killed some time ago, called at the Star office this morning to complain of a wrong that needs resistance. Fifteen months before his death her husband insured his life in the Government Department, and the premiums were regularly and fully paid up at the time of his decease. Shortly after his death she applied for the money under the will. Many weeks elapsed and the money was not received. She then received a letter directing her to send the probate to Wellington, and a copy was sent accordingly. This was a fortnight ago, and still the money sticks somewhere. There has been a delay of fifteen weeks altogether, which is far from creditable to the Insurance Department, and it is to be hoped that Mr Luckie, the Commissioner, who to his credit be it said has greatly improved the Department since he took the helm, should give some laggard official a jog.*

*(Reference Alexander Turnbull Library "The Auckland Evening Star" newspaper Saturday March 13 1880 page 2)*

The New Zealand Mail Wellington 20 March 1880 reads:

*Auckland March 13 1880*

*Mrs BOYLE, widow of the late Jas. BOYLE killed at Fort Britomart, complains in the local papers that though her husband's life was insured in the Government Insurance Department, and premiums all paid up, she has not received the money. Boyle's death occurred three months ago.*

*(Reference Alexander Turnbull Library "New Zealand Mail" Wellington Newspaper 1880 March 20<sup>th</sup> page 7a.)*

In these early years it was quite natural for a widow with a young family to marry shortly after the death of her husband. It was often a matter of the family's survival.

Jane BOYLE nee FAHEY a widow married Archibald Ramsay LESLIE occupation Baker on 5 August 1880 at the Roman Catholic Church, Papakura, Auckland. The rector M D O'Hara took the service. The witnesses were Catherine and D Lindsay a settler of Papakura. Both Jane and Archibald signed the register.



*(Reference RGO NZ marriage registration 1880 folio 1636 Drury district)*

The Intention to Marry application recorded that Jane age 27 years had dwelt in Papakura for 4 years and Archibald, aged 38 years, had dwelt in Papakura for 3 years.

*(Reference Archives NZ Agency BDM 20/25 page 193-333 Drury)*

1880-81 Auckland Electoral Rolls recorded

Archibald Ramsay LESLIE occupation Baker dwelt Freehold Papakura Lots 58 Section 11.

*(Reference Alexander Turnbull Library microfilm of NZ Electoral Rolls)*

Jane and Archibald's first child, a son, James Victor LESLIE, was born in 1881 in Auckland.

*(Reference RGO NZ birth registration 1881 folio 2249 Drury district)*

1881-82 Franklin North Electoral Rolls recorded

Archibald Ramsay LESLIE occupation Hotel Keeper dwelt Freehold Papakura Lots 58 Section 11.

*(Reference Alexander Turnbull Library microfilm of NZ Electoral Rolls)*

The 1882 Freeholder of New Zealand register stated that

Archibald Ramsey LESLIE was a publican and had 40 acres of land in Manukau valued at £40 plus land in Papakura £60 total value £100.

*(Reference FHC LDS microfilm Freeholders of New Zealand 1882)*

Jane and Archibald's second child, a son, Archibald Roy LESLIE was born in 1883 in Auckland.

*(Reference RGO NZ birth registration 1883 folio 2343 Drury district)*

Jane and Archibald's youngest son, William Ramsay LESLIE was born about June 1885 in Auckland.

**SEARCH** (Reference RGO NZ birth registration 1885 folio? Auckland district)

Archibald Ramsay LESLIE, occupation Hotel Keeper, aged 56 years, died on 11 December 1886 at Panmure. Cause of death was recorded as Manic Convulsions 4 days and Manic Coma 1 day as certified by Dr Erson who say him last on 10 December. Archibald was buried the next day on 12 December at Panmure Cemetery, Auckland by Roman Catholic minister Rev W MacDonald. The death registration gave his place of birth Musselburgh, Scotland and parents Margaret nee NICE and father Archibald Ramsey LESLIE, occupation Dyer. The registration stated that he was 49 years old when he married Jane BOYLE in Papakura. His living issue was recorded as 3 males aged 5, 3 and 18 months. The informant was Jane LESLIE widow of Panmure dated 21 December 1886.

*(Reference RGO NZ death registration 1886 folio 1615 Auckland)*

Mrs Archibald Ramsay LESLIE

Papakura Rates Records 1887-1894

*(Reference Biographical index Papakura & Districts Museum)*

Jane was a widow for the second time but now had the added burden of 6 children to support. The youngest being only 18 months old.

Jane LESLIE (formerly BOYLE nee FAHEY) married Archibald FLEMING in 1888

**SEARCH** RGO NZ Marriage registration for Auckland district

The Intention to Marry dated 15 August 1888 Auckland District records:

Jane (nee FAHEY ex BOYLE) LESLIE age 33 years condition widow married Archibald FLEMING widower age 26 years, occupation Blacksmith, on 15 August 1888 at the Registrar's Office in Auckland. Archibald had dwelt in Panmure for 26 years and Jane for 4 years. The registrar, J Owen LORD, took the service.

*(Reference Archives NZ Intention to Marry Agency BDM 20/33 page 843-242 Auckland district)*

There was a death registration for an Archibald Alexander William FLEMING in Auckland about 1892. This may have been the son of Jane and Archibald FLEMING but I have not sighted the registration to confirm.

ORDER (Reference RGO NZ death registration 1892 folio 582 Auckland district)

On 1 September 1892 Jane FLEMING made application for relief to the Auckland Hospital & Charitable Aid Board. The application details are as follows:

FLEMING Jane age 37 Married, Union Street, Wife, 37 years, in colony.  
Cause for Application Sickness & husband in Sydney.

BOYLE Mary Ellen 19 years  
BOYLE Michael F 14 years  
LESLIE James V 11 years  
LESLIE Archibald 9 years  
LESLIE William R 7 years

Names of relations liable to support of applicant

A FLEMING (husband) Blacksmith, Sydney.  
Thomas E BOYLE 16 c/ Mr McPHILLIP, Panmure.

*(Reference Archives NZ Auckland Office details sent to me by Mrs Alderson)*

Thomas Edward BOYLE the son of Jane and James BOYLE would have been aged 16 at the time his mother made application for financial assistance. He was probably unable to assist his mother.

We believe that Jane's third husband Archibald FLEMING deserted Jane and her family and went to live in Australia, as I have been unable to locate any further information about Archibald FLEMING.

1893 City of Auckland Electoral Roll

Jane FLEMING Residence Union Street Occupation Home Duties Number 4385

*(Reference Alexander Turnbull Library microfilm of NZ Electoral Rolls)*

In 1893 Women in New Zealand were able to vote.

On 7 August 1895 at St. Patrick's Cathedral Auckland, Jane and James's daughter Mary Ellen BOYLE married Ernest Charles Frederick ZUGE.

*(Reference RGO NZ marriage registration 1895 folio 2214 Auckland district)*

In 1903 at St. Patrick's Cathedral Auckland, Jane and her late second husband Archibald's son, James Victor LESLIE married Agnes Clara MARTIN.

*(Reference RGO NZ marriage registration 1903 folio 5068 Auckland district)*

On 17 October 1904 in the Registrars Office Auckland, Jane and James's youngest son Michael Fahey BOYLE married Mabel Ann PEARCE.

*(Reference RGO NZ marriage registration 1904 folio 5215 Auckland district)*

On 29 August 1906 at St. Patrick's Cathedral Auckland, Jane and James's oldest son Thomas Edward BOYLE married Mary Ann Josephine SHERRY.

*(Reference RGO NZ marriage registration 1906 folio 4579 Auckland district)*

In 1914 at the Registrars Office Kohukohu, Jane and her second husband Archibald's youngest son, William Ramsay LESLIE married Tiohi Kawa TE AWA.

*(Reference RGO NZ marriage registration 1914 folio 314 Auckland district)*

In 1916 at the Church of the Sacred Heart, Ponsonby, Auckland, Jane and her late second husband's middle son, Archibald Roy LESLIE married Doris RYAN.

*(Reference RGO NZ marriage registration 1916 folio 4910 Auckland district)*

On 5 February 1916 Jane FLEMING (nee FAHEY ex BOYLE & LESLIE) aged 61 years died at the General Hospital, Auckland from Summer Street, Ponsonby, Auckland. Her father

was recorded as Michael FAHEY but there were no details about her mother. Jane was born in Panmure. The cause of death was Exhaustion and Anaemia 1 month and Carcinoma of Pancreas 2 months as certified by Dr McGhil who saw her last on 5 February. The death registration recorded Jane's 3 husbands and the age she married them and where, James BOYLE age 19 in Auckland, Archibald Ramsay LESLIE Auckland and Archibald FLEMING Auckland. No details regarding her living issue were recorded. Jane was buried on 7 February at Panmure Cemetery, Auckland and the Roman Catholic Minister Rev M Tarmey took the service. Alice Orr who was authorized in writing by C Little the Undertaker of Auckland registered the death on 9 February 1916.

(Reference RGO NZ death registration 1916 folio 36 Auckland district)

The New Zealand Herald Deaths column dated 7 February 1916 reads:

*FLEMING - On February 5, 1916, at the Auckland Hospital, Jane FLEMING, third daughter of the late Michael and Mary FAHEY, of Panmure, aged 61 years R.I.P.  
The funeral will leave the residence of her daughter, 72 Summer Street, Ponsonby, for Panmure Cemetery, today (Monday), at 2pm. Friends please accept this intimation (sic).*

(Reference Alexander Turnbull Library The New Zealand Herald Reel 16493 Jan-Feb 1916)

Jane's first husband James BOYLE was buried in the Papakura Cemetery Auckland and her second husband was buried at Panmure Cemetery Auckland but I have been unable to locate the Panmure Cemetery Auckland burial plot and block number for Jane.

### Family Tree of Jane FAHEY and Archibald Ramsay LESLIE and Archibald FLEMING

- J-2- Jane FAHEY** born 08 November 1853 Auckland NZ died 05 February 1916 Auckland NZ 1st married 04 July 1871 Auckland James BOYLE born about 1838 Tipperary Ireland died 03 December 1879 Auckland NZ (3 Issue) 2nd married 05 August 1880 Auckland NZ Archibald Ramsay LESLIE born about 1830 Scotland died 11 December 1886 Auckland NZ (3 Issue) 3rd married 15 August 1888 Auckland Archibald FLEMING born about 1862 died unknown (1 Issue)
- J-2-1- James Victor LESLIE** born 1881 Auckland NZ died before 23 September 1943 Auckland NZ married 1903 Auckland NZ Agnes Clara MARTIN born 1882 died unknown (Issue unknown)  
*James Victor LESLIE occupation Carter was living at 50 Sale Street Auckland during World War One classification E (4 children).*
- J-2-2- Archibald Roy LESLIE** born 1883 Auckland NZ died unknown 1st married 1916 Auckland NZ occupation Butcher Doris RYAN born about 1891 died before 03 April 1962 Auckland (Issue unknown) 2nd married 1929 Auckland Lena Maud COLCORD (Issue unknown)  
*Archibald Roy LESLIE occupation Butcher was living at 72 Summer Street Ponsonby during World War One*
- J-2-3- William Ramsay LESLIE** born June 1885 Auckland NZ died unknown married 1914 Kohukohu NZ Tuhi Kura or Tiohi Kawa TE AWA born about 1897 (Issue unknown) William Ramsay LESLIE occupation Bushman served in World War One Rifleman service number 46462 NOK wife Mrs T Leslie, Whakarapa via Rawene
- J-3-4- Archibald Alexander William FLEMING** born about 1892 Auckland died 1892 Auckland
- 1-2-3- Generation