

James was 26 when he was convicted in 1848, which would place his birth around 1822.

Caernarvonshire Quarter Sessions, 6 January 1848.

John Fagan and James Dutton both pleaded Not Guilty to stealing, in the parish of Trefriw, County Denbigh, on 25 November 1847, from a building attached to the dwelling-house of Hugh Jones, two watches and other goods, the property of John Edwards.

John Edwards, the owner of the stolen property, deposed that on the night of 24 November, he sat up late, awaiting his master's return, and that when he went to bed, he placed a watch in his sleeping room, which, together with his clothes, was missing in the morning. The articles of clothes were two jackets, two waistcoats, a pair of trowsers, a handkerchief, a shirt, etc. A police officer of the Denbigh force produced some of the articles, which the witness identified as part of those that had been stolen. Another police officer from the same force produced the watch, which the witness also identified.

Mr R. D. Williams cross-examined, on behalf of Fagan, but could not shake the testimony in chief. The police officer recalled—On 28 November was on duty at Wrexham, and saw Fagan come out of a house near one o'clock, and make a great noise. Witness followed him home, saw him safely housed, and afterwards heard a conversation that passed between the prisoner and his wife, which led to the detection of the prisoner, Fagan, as the holder of the stolen watch, and ultimately to the apprehension of the other prisoner. On their way to Bridewell, Dutton admitted the truth of Fagan's statements, that Dutton had given him the watch. The shirt and handkerchief were on Dutton's person. None of the stolen goods, except the watch, was found with Fagan, and Dutton admitted to having given it to him. Fagan, however, had been seen to offer for sale the waistcoat that had been identified.

Cross-examined, Fagan was drunk that night more so than Dutton. I have known Fagan for 37 years. There has never before, that I know of, been a charge against him. He is too fond of drink and rows. The other policeman confirmed the same admissions and deposed to the same facts in chief. He also deposed to seeing Fagan at home on the day of the robbery.

John Hind deposed that the two prisoners both came to him on a Sunday night, and Fagan offered him the waistcoat for sale.

Cross-examined—Dutton said to Fagan that he would give him a glass of ale for his trouble. I understood by this that the waistcoat belonged to Dutton and that Fagan was merely employed to sell it. The money was paid to Dutton. Fagan is no stranger to Wrexham; the other is. Would not have bought the waistcoat of Dutton had not Fagan been with him. Believed he was in Wrexham on the day named. A fellow servant of the prosecutor was called to confirm that the goods were missing on the specified day. This closed the case for the prosecution.

Mr R. D. Williams wished the Court to say whether there was a case to go to the jury as far as Fagan was concerned. The Chairman said that he thought there was a strong one. Mr R. D. Williams ably drew the attention of the jury to the fact that both prisoners were charged with breaking into the building and stealing therefrom; therefore, even if they thought Fagan had been guilty of receiving, they could not convict him under the present indictment. It was clearly proved that he was in Wrexham, a distance of forty miles, at the time of the robbery. He might have been imprudent in helping the other prisoner to sell the property, but that would not convict him of stealing them. It was clearly shown that all the goods produced passed through the hands of Dutton, with the exception of the watch, which Dutton admitted to having given to Fagan. He appealed to their good sense, arguing that against Fagan, there was not a shadow of a case. The other prisoner in his defence stated that he was a hawker of soft wares, and had bought the goods in Lancashire. His Lordship summed up most unfavourably to Fagan, and without adverting to the clear alibi set up in his favour. The jury very properly acquitted Fagan and, with equal justice, convicted Dutton. Mr Griffith stated that there was another indictment against Dutton, for a similar offence, perpetrated in another dwelling, and another parish, on the evening before that on which the other

offence had been committed. He submitted to the Court that he was prepared to support the indictment by evidence, but would withhold it if the Court wished. The Court thought no evidence need be taken, and the jury was accordingly directed to acquit on the second indictment. The prisoner was sentenced to be transported for ten years, as his Lordship observed, to deter others from committing depredations here.¹

The Prison Registers show that James Dutton, 26, single, unable to read or write, labourer, was convicted on 6 January 1848 at Carnarvon of breaking and entering, and stealing from a building, and sentenced to 10 years. He was received at Millbank Prison on 15 February 1848 from Carnarvon. It is unknown if he had any previous convictions. "He was obstinate, intractable, surly and harsh; his conduct since trial unsatisfactory". James had brown hair, blue eyes, a large nose, was freckled, had a long face, a slender stature, 5'7½", and his mother and father lived at Lucan near Dublin. On 4 October 1848, James was transferred to the *Warrior* hulk at Woolwich; however, he was sent to the *Justitia* hulk. On 15 June 1859, he was removed to the *Stirling Castle* hulk at Portsmouth. From here, he boarded the *Pyrenees* on 10 March 1851 for the voyage to Western Australia.²

On arrival at Fremantle, Western Australia, on 28 June 1851, James was assigned number 539, issued with a Ticket of Leave and a physical description was recorded.

539. James Dalton, 37, 5'7½", light brown hair, grey eyes, long face, fair complexion, thin stature, with two wounds on his left foot, a labourer and single.³

The Superintendent's journal shows that:

14 July 1851. The following 44 men will be received from the ship *Pyrenees* and located in the 3rd division, including 539. James Dalton.⁴

Guildford, May 1852. John Dutton, a Ticket of Leave holder, was apprehended by Constable Sullivan for absconding from the service of Mr H. Morley and going about without a pass; the sentence was deferred.⁵

The Superintendent's journal shows that on:

7 May 1852. No. 539 James Dutton, a Ticket of Leave Holder from the Upper Swan District, received under Magisterial sentence of four months imprisonment with hard labour, will be placed under the usual Prison discipline.

9 September 1852. No. 539, James Dutton, will be released from the Associated Rooms and forwarded to North Fremantle Station.⁶

By December 1852, James had repaid £2.10.2½ of his passage money (£10).⁷

At some stage, James was sent to Albany to work. He escaped on 1 May 1854. Whether he left by boat or escaped into the bush is unknown. He was still at large in 1859 when the Government issued a list of convicts at large.

A Reward of £5 was offered for the apprehension of each Convict, or such lesser sum as may be determined on by His Excellency the Governor. The list was a return of Convicts who had escaped from the colony between 1 June 1850 and 31 March 1859, and included:

From King George's Sound, 1 May 1854.

Reg. No. 553, James Dutton, per *Pyrenees*; tried Caernarvon on 6 January 1848, 10 years. The description was the same as that taken on his arrival in the colony.⁸

¹ Caernarvon and Denbigh Herald and North and South Wales Independent, 8 January 1848, p5

² The National Archives (TNA) UK, HO24/4; HO8/107; PCOM2/134; PCOM2/28

³ SROWA, Acc 128/32

⁴ SROWA, Superintendent's Orders, So1-So3, p59

⁵ The Perth Gazette and Independent Journal of Politics and News, 7 May 1852, p2

⁶ SROWA, Superintendent's Orders, So1-So3

⁷ TNA, CO18/69

⁸ SLWA, online slwa.wa.gov.au, https://purl.slwa.wa.gov.au/slwa_b2487454_002