

No. 4.

Early Australian History.

THE
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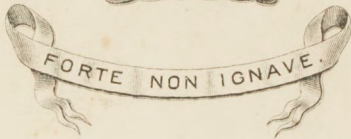
Australian
Bushranging.

By C. WHITE.

BATHURST :

C. & G. S. WHITE, *Daily Free Press* Office, George Street.

1892.



Alfred Lee.

CASE *SHELF*

N^o

Early Australian History.

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PART IV.

The Story of the Bushrangers.

(Published in Numbers I to VII.)

NO. 4.

By CHARLES WHITE

(Author of "The Story of the Ten Governors," "The Story of the Convicts," and "The Story of the Blacks.")

BATHURST :

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PART IV



The Story of the Bushrangers

Published in Numbers I to VII

1914



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LATTER-DAY BUSHRANGERS.

GARDINER'S LAST EXPLOITS & DISAPPEARANCE

TWELVE months elapsed between the shooting of Troopers Middleton and Hosie at Fogg's, when Gardiner escaped from custody, and the escort robbery at Eugoura; and the reader has already been made acquainted with the fact that the "King of the Road" had not been acting solely on his own account. From the time of his escape from Fogg's, Gardiner had apparently set himself the devilish task of inciting others to join him in the bushranging line, and how well he succeeded is a matter of history. As a rule he gathered to himself only younger men—how young some of them were the account of the escort robbery will have shown—and he was, no doubt, prompted to this choice of material by the reflection that youth is more pliable than old age, and that high-spirited youngsters were more likely to enter into reckless and daring deeds of spoliation planned by him than men of maturer years.

Thus it was that, aided by his disciples and followers, he made his name feared in the whole Western and Southern districts, even before the daring exploit at Eugoura Rocks made the colony sit up with excitement. Sometimes he would have two recruits with him, on which occasions he

would generally do the work of "bailing up" himself, while they stood guard, closely watching his plan of operations for their own guidance in the future ; at other times he would be accompanied by four or five "mates," and the work of emptying pockets and rifling mailbags would be fairly divided. Then again he would divide his gang, and the members would find employment on their own account in different parts of the district. But he was the General—he planned and supervised and ordered, and his slightest word was law.

It would weary the reader if I were to recount one-half of the cases of "sticking up" in which he was engaged or supposed to be engaged, either singly as his own executioner of bandit plans or with the others, who carried out his instructions as assistants. One of the raids upon the roads—they were generally carried out periodically—which attracted more than ordinary attention, was made in the vicinity of Wombat, a small hamlet near Lambing Flat, and then in the zenith of its fame as the centre of a mining district. It was early in March, 1862, and Gardiner and three of his men "bailed up" between 20 and 30 different people, including two teamsters and two storekeepers, who were foolishly acting as their own gold escorts. From the teamsters they took a large quantity of provisions and spirits, and a full supply of clothing for their winter supply ; while from the two storekeepers they obtained more money than if they had robbed one of the local banks, one of them having no less than £1,100 and the other £700 in gold dust and notes upon his person.

The reader has already been made acquainted with the circumstances under which the treasure in this instance changed hands, or pockets, and how Messrs. Horsington and Hewitt, the unfortunate victims, returned to their homes

sadder if not wiser men. As soon as a messenger could be despatched with safety, word of the robbery was sent to the police camp at Lambing Flat, and Captain Battye and eight troopers at once started out in pursuit. They also returned to their quarters sadder if not wiser men—sadder, because their hopes of catching the bushrangers had been disappointed; wiser, from having learned that Gardiner and his gang would not wait for police convenience or leave word as to the course they had taken.

As a stimulus to extra exertions on the part of the police, and as a temptation to one or other of the many residents of the district who were known to be on friendly terms with Gardiner and his "boys," the following proclamation was issued while the trial of those of the escort robbers who had been caught was proceeding:—



Colonial Secretary's Office,
Sydney, 6th February, 1863.

£1000 REWARD.

For the apprehension of FRANCIS GARDINER alias CLARKE, and
JOHN alias JOHNNY GILBERT.

WHEREAS the abovenamed Francis Gardiner *alias* Clarke, and John *alias* Johnny Gilbert, are charged with the commission of numerous and serious offences, and have hitherto eluded the efforts to apprehend them, principally by their being harboured, assisted, and concealed by parties resident in the districts they frequent: It is therefore notified that the Government will pay a Reward of Five Hundred Pounds for such information as will lead to the apprehension of either of them: And should such information be given by any person charged with the commission of any offence, his case will receive the favourable consideration of the Crown.

All parties are also hereby cautioned against concealing, harbouring, assisting, or maintaining the abovenamed offenders, as by so doing they render themselves liable to be dealt with by law, as accessories to the crimes of which the offenders so assisted may be found guilty.

CHARLES COWPER.

DESCRIPTION OF FRANCIS GARDINER, *ALIAS* CLARKE.

Native of Goulburn, New South Wales, 32 years of age, 5 feet $8\frac{1}{4}$ inches high, a labourer, dark sallow complexion, black hair, brown eyes, small raised scar in left eyebrow, small scar on right chin, scar on knuckle of right forefinger, round scar on left elbow joint, two slight scars on back of left thumb, short finger nails, round scar on cap of right knee, hairy legs, mark on temple from a wound by pistol ball or whip.

DESCRIPTION OF JOHN *ALIAS* JOHNNY GILBERT.

Between 22 and 24 years of age, boyish appearance, 5 feet 7 or 8 inches high, between 9 and 10 stone weight, slight, light brown straight hair, worn long in native fashion, beardless, and whiskerless; has the appearance and manner of a bushman or stockman, and is particularly flippant in his dress and appearance.

It was pretty well known that Johnny O'Meally and Ben Hall were, to use an expressive bush phrase, "up to their necks in it" with Gardiner; but for some reason best known to themselves the authorities did not put a price upon them—that piece of official work was reserved, as will shortly be seen, for a future occasion.

Meanwhile Gardiner and his mates continued in active pursuit of their calling. After the rescue of Manns and Darcey from Sir F. Pottinger and Lyons, as narrated in a previous number, Gilbert rejoined Gardiner, O'Meally, and others in the neighbourhood of the Weddin Mountains, and while the police of the district were engaged on the trials at the Special Commission in Sydney, they carried on their depredations, still pursuing their old plan of dividing forces

and appearing alternately on the Lachlan and the Goulburn sides.

A Goulburn paper described one of the exploits of two members of the gang: "Yesterday morning, a boy in the employ of Messrs. Davies, Alexander and Co., was sent on horseback with three spare horses, to Darby Murray's Flats, where the horses were to be left in a paddock. He had just gone over the brow of the Governor's Hill, about a mile and a half or two miles from Goulburn, when two mounted men armed with revolvers, came out of the bush, seized his bridle and led him off the road. They then made him dismount, and took his horse, which they said they wanted, and turned one of their own loose. They told him he must remain where he was until the mail passed. This was about ten o'clock. Shortly after the mail from Sydney was heard approaching; but the men said they did not want it—it was the Goulburn mail they were waiting for. In the coach which they thus declined to interfere with, Captain M'Lerie and Inspector Orridge were passengers on their way to Lambing Flat; and it was afterwards remarked in town that it was a great pity that an attack had not been made; as if so the bushrangers might have been shot, which would have done something towards quieting the country; or possibly M'Lerie might have been shot, which would have done much more. Shortly after two men, named Brown and Parker, passed with a dray, and the bushrangers brought them into the bush and searched them. Brown had £2 10s. 6d.; and Parker about 15s. The robbers took the £2 but left the silver. The boy and the two men were kept in the bush under guard until about half-past one, during which time the bushrangers helped themselves to some of the men's rations. The mail from Goulburn to Sydney then came along, and the robbers,

presenting their revolvers, stopped it. There were only three passengers—a Mr. Copeland, storekeeper, of Lambing Flat, and two ladies, Mrs. Bullough from Yass, and Mrs. Barnes. From the former the freebooters took some £15 in money, and his gold watch and chain. With the women, so far as we have learned, they did not at all interfere. They then opened one of the mail bags, and having emptied it, proceeded to cut open most of the others and empty the letters into it. While thus engaged, Mr. Futter and Captain Morphy came up on horseback. They were stopped, and from the former £1 was taken—from the latter £2 and his gold watch and chain. Mr. Marsh, of Jerrara, and his eldest son, a young man, then arrived. They also were searched. The younger Marsh had only a few shillings, and this was returned to him. Mr. Marsh had £1, some silver, and a watch. The bushrangers at once returned the watch and the silver, and on Mr. Marsh remonstrating with them, and telling them he had just buried two sons, and needed the money more than they, the younger of the two cried out, “For God’s sake give him back his money,” which his companion accordingly did. All the mail bags having been got out, and many of them ransacked, the coachman was told to drive on. Mr. Martyr, of Longreach, with his family were seen ascending the hill in a spring cart, and whether or not that the bushrangers thought that their company might get unmanageably large or not, it is hard to say; but they threw the saddles which they had taken off the travellers’ horses about the ground, and after examining Mr Futter’s valise and taking his saddle-cloth, they started the horses into the bush, and went to meet Mr. Martyr, whom they searched; but finding nothing on him but a few shillings they allowed him and his family to proceed without further molestation. They then rode into the bush, on the left hand

side looking from Goulburn towards Sydney. Mr. Marsh's mare was caught directly after, and that gentleman galloped into town and gave information to the police, with whom he returned in pursuit directly after, Mr. Futter's horse having in the meantime been caught, Marsh rode into town. The robbers are described as follows:—One man of about five feet seven, stoutly built, of dark complexion, and about forty years of age; the other a respectable-looking young man, of not more than twenty-five, about five feet eight or nine. The former searched the travellers and the mail-bags, while the latter acted as sentry. Both were armed with revolvers, apparently in excellent order, and were well dressed, wearing ponchos, long boots, and cabbagetree hats. The horse stolen from the boy was a strong, good-looking animal, a bay, about fifteen hands high, with two hind feet white, and branded JM. The other horse ridden by the bushrangers was also a bay, and apparently a good powerful animal. On the news becoming known in town the mail contractors' agent and several townspeople proceeded to the spot. A number of letters, among which were several registered, were picked up, as well as some empty mail-bags and four (including the Goulburn bag) which had not been opened at all."

The district police had some difficulty in regulating their movements, so many and various were the reports received and it was only occasionally that they could get upon the freshest tracks. Occasionally, however, they were brought by accident into something like close quarters with the Knights of the Road, but in such cases they invariably came off "second best"; and if they did happen to make a capture it was of some raw recruit only, the men chiefly "wanted" getting clean away. While the bushrangers were in the Goulburn district, three troopers—Hughes, Gall and Bacon—

who were "out" in the hope of meeting with them, saw several mounted men in the bush off the Tuena road, and judging them to be suspicious characters set about taking steps to make a closer acquaintance with them. In compliance with the semi-military character of the force, the order was given to extend, so as to hem the suspects in. The bushrangers, for such they were, quietly watched the operation, and believing in the proverb that union is strength, kept together, and as soon as the troopers were properly "extended," the opposing force thundered down in a body on Trooper Hughes. Shots were exchanged, and the trooper was wounded in the arm before his companions could come to his relief. Satisfied with having "winged," the leader of the force sent in pursuit of them, the bushrangers wheeled their horses and galloped away, while the discomfited members of the force, abandoning all thought of further pursuit, made haste to return to quarters with their report.

Another encounter between some of the members of the gang and the police took place between Forbes and Lambing Flat a few days afterwards, Sergeant Sanderson with detectives Lyons and Kennedy had left the Lachlan in charge of three prisoners by the coach for Lambing Flat. On reaching Brewer's shanty three horsemen with two led horses were observed. The horsemen on seeing the coach bolted, and were followed by the detectives on foot. Suddenly they faced about, went round the coach and drawing their revolvers, opened fire on the police. Two of the horsemen bolted, but the third, Davis, stood his ground and received four shots from detective Lyons, all of which took effect—one in his thigh, one in his wrist, and the other two in his head. Davis fell, and was immediately pounced upon by detective Lyons, who had already had his forefinger cut into by a shot

from Davis' revolver. On the fall of Davis the prisoners assisted in securing him, and he was brought to Brewer's shanty. Mrs. Brewer received a random shot in the cheek, but was not seriously injured. The horse of the captured bushranger was taken, together with the two led horses, and brought to the camp at Lambing Flat. Davis was one of the latest recruits in Gardiner's gang, and had been present at the sticking up of Crowther and Croaker's stations a few days previously. At the former place Gardiner, with seven accomplices, stuck up Mr. Pring's servants. One of the bushrangers played the piano while the rest danced and drank brandy and water at Mr. Pring's expense. At Mr. Croaker's station one of the bushrangers played a concertina, and sang, "Ever of thee," to the host.

Just about this time the following communication, which throws a little light upon the operations of the gang, appeared in the *Yass Courier* from the correspondent of that paper at Marengo:—

In my communication of the 30th ultimo, I stated that I was sanguine as to the result of the expedition in search of the bushrangers, but I am sorry to say that the police were unsuccessful, and from circumstances I have since ascertained the cause of this bad luck is explained. It seems in consequence of the gold escorts being strongly guarded, and the money order system being introduced by the postal authorities, that General Gardiner finds it expedient to change his tactics. I am informed that this captain of the "free companions," has divided his band into two parts, viz., the "neophytes" and "men-at-arms," and the *modus operandi* of his last raid was as follows: Eight or nine of the neophytes, or apprentices, headed by Johnny Gilbert were despatched as a decoy to beat up the enemy's quarters, that is, the surrounding stations, to make plenty of noise, etc., and then to securely "plant" for a few days. The news soon reaches Lambing Flat, and the commanding officer there, with his usual impetuosity and zeal, arms and musters all his available

force, consequently leaving those diggings contiguous to the Flat, quite unprotected, (for the foot police are only of use to the town itself), the very thing aimed at and required by the ubiquitous captain of "free lances," who instantly musters five or six of his most stalwart and unscrupulous men-at-arms, and in broad daylight ride up to one of the largest stores in Spring Gully (one mile from the Flat), coolly tie up their horses, and leaving two men outside to prevent awkward intrusion. march in, "bail up" the inmates, and obtain considerable booty, including ammunition, revolvers and about £60 in cash. Of course they experience no interruption from the authorities as the villains were well aware that the police were on a wild-goose and previously cut-and-dried chase miles away—which was the case with the exception of one unfortunate constable, who happened to be serving a warrant in the neighbourhood; he was ordered by the taller of the two rogues outside the store to "stand and deliver." He, being what is called a foot constable, was unarmed; consequently he had no other alternative but to comply with the disgusting requisition; still he slightly hesitated, and received one or two heavy blows from the butts of their pistols; and when the store was thoroughly gutted, and the operators mounted, he was condescendingly told to go to that place the antithesis of cold and comfortable—taking the precaution, however, to deprive him first of his horse, saddle, and bridle, which being his own property, made things still more disagreeable. The station owners about here have been so often plundered that they now keep scarcely anything on their premises that would be available by the bushrangers, therefore when they are visited by robbers the attack is only a ruse of the junior part of the rascals, to draw or decoy the police away from a wealthier place—previously spotted. And another thing that greatly counteracts the strenuous efforts of the mounted police is the system of "bush telegraphy," which I will explain. Of all the numerous settlers on the Fish River, Abercrombie Ranges, or the Levels scarcely half are true subjects; only five settlers on the Levels are considered by the police to be truly loyal, and free from the taint of harbouring and directly, or indirectly, encouraging bushranging. For instance about three or four months ago, the patrol were on the Bland Plains (the Levels) in pursuit of some well-known desperadoes, who they knew were not

many miles off, and they called at a slightly suspected station, but, being unsuccessful, they proceeded to the next station, the residence of a truly loyal man—a gentleman, though boasting of no great birth or education—no scion of, aristocratic tree, yet still a gentleman: “for honest men are the gentlemen of nature.” He gave the officer in command all the information in his power, but while doing so he suddenly exclaimed; “Haste or you’ll be too late; for, by Jove, there goes the ‘telegram’ from Mr. ——’s place, you passed last.” The officer looked in the direction pointed out, and there saw straight across one of the highest ranges, at a stretching gallop, a finely mounted youth. No time was lost by the patrol, but when they got to their destination they found the residents calmly waiting their arrival, having been evidently on the look out for some time. Of course everything was found correct and square; so that the police had to return sadder, but in slightly one sense (i.e., bush telegraphy), wiser men. There is a strong suspicion that a “bush telegram” exists in every township; for upon the day that Gardiner dispatched his junior corps upon the above mentioned strategetic expedition to Bentick Morrell, and some other stations, after the plundering they camped in the evening in a secluded part of the bush, near Marengo, not very far off the old sheep station, and were visited by some two or three members of a certain family here. This I have been told as a fact, and if, upon further inquiry, I find it to be so, I will, through the medium of your columns, regardless of consequences (notwithstanding their social position), thoroughly expose them; for I consider it the bounden duty of each and all loyal subjects of her Majesty to do everything in his or their power to check the wholesale atrocious depredations now carrying on; and until every one of these dens of refuge and “bush telegrams” are absolutely exterminated, all efforts of the authorities to put down bushranging will be futile and abortive.

It was to be expected that her Majesty’s mails would be placed under occasional contribution, and both drivers and passengers on the cross-country tracks looked forward to a meeting with the bushrangers on every trip quite as a matter of course. One morning the day coach from Forbes to

Sydney left the former place about 4 o'clock and had only proceeded a short distance on the road when it was "stuck up" by Gardiner and his mates. The coach having been stopped in orthodox style the passengers were ordered to alight and lie flat upon the ground, faces downward and hands behind them. They were then secured by having their hands bound with cords carried by the bushrangers for the purpose. A systematic search of their persons was then made and about £180 in cash was taken from them, although some of them had managed to secret their money in the coach before leaving it. At daybreak the bushrangers decamped, leaving the prostrate and bound victims to set each other free as best they could. The robbers had evidently expected to meet the mail, which had left Forbes at the same time as the passenger coach, but the driver had taken a bye-track through the bush that morning and the mail bags thus escaped the overhauling they would have received if the two coaches had kept together. The passengers on the day coach were diggers on their way to New Zealand, and refused to give any information concerning the robbers who had eased them of their money, fearing that they might be detained in Bathurst as witnesses on the off-chance of the bushrangers being captured, and thus be unable to reach the new Eldorado as speedily as they desired.

Just about this time a letter was published in the Lambing Flat paper, purporting to be from Gardiner. Many persons doubted its authenticity, but the editor of the paper invited inspection of the M.S., with the envelope, post-marked and stamped, and declared his belief in its genuineness. The following is a copy of the letter:—

(To the Editor of the Burrangong Miner, Lambing Flat.)

SIR,—Having seen a paragraph in one of the papers,

wherein it is said that I took the boots off a man's feet, and that I also took the last few shillings that another man had, I wish to make it known that I did not do anything of the kind. The man who took the boots was in my company, and for so doing I discharged him the following day. Silver I never took from a man yet, and the shot that was fired at the sticking-up of Messrs. Horsington and Hewitt was by accident, and the man who did it I also discharged. As for a mean, low, or petty action, I never committed it in my life. The letter that I last sent to the prers, there was not half of what I said put in it. In all that has been said there never was any mention made of my taking the Sergeant's horse and trying him, and that when I found he was no good, I went back and got my own. As for Mr. Torpy, he is a perfect coward. After I spared his life as he fell out of the window, he fired at me as I rode away; but I hope that Mr. Torpy and I have not done just yet, until we balance our accounts properly. Mr. Greig had accused me of robbing his teams, but it is false, for I know nothing about the robbery whatever. In fact, I would not rob Mr. Greig or anyone belonging to him, on account of his taking it so easy at Bogolong. Mr. Torpy was too bounceable or he would not have been robbed. A word to Sir W. F. Pottinger. He wanted to know how it was the man who led my horse up to me at the Pinnacle did not cut my horse's reins as he gave me the horse. I should like to know if Mr. Pottinger would do so? I shall answer for him by saying no. It has been said that it would be advisable to place a trap at each shanty along the road, to put a stop to the depredations done on the road. I certainly think that it would be a great acquisition to me for I should then have an increase of revolvers and carbines. When seven or eight men could do nothing with me at the Pinnacle, one would look well at a shanty. Three of your troopers were at a house the other night and got drinking and gambling till all hours. I came there towards morning when all was silent. The first room I went into I found revolvers and carbines to any amount, but seeing none as good as my own, I left them. I then went out, and in the verandah found the troopers fast asleep. Satisfying myself that neither Battye nor Pottinger were there, I left them as I found them, in the arms of Morpheus.

Fearing nothing, I remain, Prince of Tobymen,

FRANCIS GARDINER, the Highwayman.

Insert the foregoing, and rest satisfied you shall be paid.

A few days after the appearance of this letter, the following paragraph appeared in a Yass paper:—"Owing to information received a few days ago in Yass, to the effect that the notorious Frank Gardiner had passed through the town, and gone in the direction of Queanbeyan, Captain Battye and ten or twelve troopers arrived in Queanbeyan on Sunday last, with a view to intercept, if possible, the progress of the robber. The rumour caused great excitement in the district, and there was no difficulty in procuring volunteers to assist in a thorough search for the outlaw. Gardiner has, we believe, relatives—a sister and a niece among others—in this neighbourhood, and it is said he has been on a visit to these. There is some reason to believe that Gardiner may be hiding in the fastnesses of the Jingerras, as he well knows the whole of this district, having been living here for many years in his youth, and we all know that he would be guaranteed the greatest secrecy in that quarter."

That the gang had taken a flying trip across country was made pretty evident by more than one case of robbery occurring, the most sensational being the "sticking-up" of the mail coach between Queanbeyan and Goulburn. As the coach was quietly proceeding along the road about ten miles from Boro, four armed men, well mounted on high-bred horses, rode up and commanded the driver to "bail-up" and get down off the box. That command having been obeyed, the bushrangers proceeded to overhaul the mail bags, appropriating all the money letters and a few papers, and then permitting the driver to resume his journey. Having arrived at Boro the driver at once communicated with the police, and Captain Battye with his black trackers happening to be at the station, they at once started in pursuit. But beyond

ascertaining that the bushrangers had gone in the direction of Braidwood, the Captain and his "merry men" were unable to make any satisfactory report.

As indicative of the widespread notoriety gained by the "King of the Road," it may be mentioned that the authorities in Sydney kept their brethren in Victoria fairly posted in his movements, suspected or ascertained; and the latter ordered a good look-out to be kept on that side of the Border, anticipating that Gardiner would sooner or later seek refuge in Victoria. One rather ludicrous instance of over-zeal by the Victorian police is recorded. A gentleman named Garrett, member of a respectable business firm, had gone into the country with one of his men, and when nearing his destination, a place called Raglan, he was accosted and catechised by a policeman, and having given satisfactory answers was allowed to proceed on his way. What subsequently transpired was thus narrated by a paper published in the locality:—"On arriving at Jones' cross-road public house, towards evening, the house was shut up, and it took some parleying with the landlord before he could be re-assured and the tired travellers admitted. Mr. Garrett retired to a bedroom to perform his toilet while supper was getting ready, and his man sat down at the table. Shortly afterwards two troopers arrived, and, taking the landlord on one side, informed him that Mr. Garrett was the desperado Gardiner; they then entered, and, placing two revolvers at the head of the man, asked where his mate was. The man replied he had no mate, but his master was in the bedroom. Mr. Garrett just then opened the door, and was coming out candle in hand, when the revolvers were pointed at him, and he was threatened with a bullet through his head if he dared to stir. Seeing that the constables had evidently lost all nerve, and

were perspiring freely and trembling from head to foot, Mr. Garrett, of course, thought it best to be calm, and so answered every interrogation as calmly as possible and while the revolvers were at his head allowed himself to be searched, the documents on him fully bearing out what he had stated. The police professed themselves satisfied that he was not Gardiner, but insisted on taking him into custody, right or wrong, on suspicion of horsestealing, and that he must come forthwith. Mr. Garrett, naturally—after a day's ride, hungry and tired—insisted on having his supper first; and, although the search had proved that he had no weapon of any description about him, his gallant captors sat during supper with their revolvers pointed within an inch or two of Mr. Garrett, who preserved his coolness, although, as he says, it was very difficult for him to do so, seeing that the police were in an evident fright, their pistols shaking in their hands so much that he almost expected to be shot every time he moved his hand with the fork to his mouth. Mr. Garrett's man could eat nothing under the novel circumstances. After supper, Mr. Garrett made a virtue of necessity and allowed himself to be handcuffed, or assuredly his bold captors would have murdered him. The party reached Raglan about 11 o'clock, and master and man had to submit to the indignity of being confined in the logs all night. Next morning the telegraph was set to work and Mr. Garrett's identity established, when he was set at liberty, with the comforting assurance that he had no remedy against his cowardly captors. This is another nice proof of what may happen to a man in the free (?) colony of Victoria.

But, somewhat suddenly, the talk about Gardiner changed to one simple inquiry to which nobody appeared in a position to give a satisfactory reply; and that enquiry was,

“Where is he?” The newspapers no longer contained thrilling accounts of heavily-laden coaches, honest carriers and travellers along the bush roads being “stuck up” by the King of the Road. Others were doing that sort of work, and to some purpose, too, as the reader will shortly see; but Gardiner—the father of bushranging, the man who boasted that he “never did nothing dishonorable,” the chief of the gang the record of whose exploits had made the colony shiver with excitement and set the members of the police force moving as actively as ants move when their nest is disturbed—Gardiner, the handsome, the daring, the ubiquitous, had suddenly vanished! Had he been shot by any of his followers in some heated brawl when dividing the spoils of the road? or was he in hiding in some deep, dark gully among the mountains which formed the bushrangers’ favorite resort? or had he escaped from the district, the colony, with the accumulated wealth gotten by his repeated robberies? These were questions easily asked, but never an answer came. That Gardiner had disappeared, however—vanished as completely as though the earth had opened and swallowed him up—was very soon known by the authorities, who could hear of, and sometimes see—at a distance, of course—those who had been associated with him in lawless deeds, but who watched for a sight and listened for a sound of the leader in vain. And it was, perhaps, all in the hiding leader’s favor that the gang he had formed remained unbroken and active, for any well-organised search for him could not be made while Hall, Gilbert, O’Meally and Co. held the roads, and kept the whole police force of the western and southern districts running hither and thither in their efforts to come up with and catch them.

But if the authorities did not know where Gardiner had

gone, at least one individual who was as well-known to the police of Lambing Flat as Gardiner did know. That individual was the Mrs. Brown in the neighborhood of whose house Sir Frederick Pottinger had allowed Gardiner to slip through his fingers so simply, after having gone there with a young army of police to capture him. It will be remembered that Sir Frederick, in his evidence against the youth who had been arrested in the house after Gardiner had ridden off on his white horse, said that the bushranger was enamoured of Mrs. Brown. He might have said also that Mrs. Brown was enamoured of the bushranger, for she proved her liking for him by forsaking a comfortable home to share the dangers of his flight and exile. So at least everyone believed who knew the pair, and who became aware of the fact that they had both disappeared at the same time; and subsequent events proved that the popular belief was the correct one.

When and how the pair got away together was not known until long afterwards, and where they had gone to appeared likely to remain an unsolved mystery. So long a time, in fact, elapsed before anything was heard of one or the other that people generally concluded that they had succeeded in getting clean away from Australia, and had taken up their residence in some distant land, to live there in retirement and perhaps affluence, since the purse of the freebooter must have swelled to fairly large proportions under the frequent replenishings from mailbags and travellers' pockets. The only thing definite known was that Gardiner and Mrs. Brown had both disappeared from the district.

But although Gardiner and Mr. Brown had managed to escape from New South Wales, they had not crossed the sea to any of the rogues' refuges in the Islands or in America which were then more numerous than they are to-day. They

were almost within hailing distance, and the colony was very much astonished one morning in the month of March, 1864, by the news that the notorious bushranger and the woman who had left a comfortable home to share his notoriety had been discovered, and separated, the former being seized, bound, and imprisoned by the officers of justice, who had succeeded in tracking him to his hiding place.

That news was not fully credited, and for a long time those who had rested in the conviction that Gardiner had escaped from the colony believed that some mistake had been made and that the man who had been arrested was not Gardiner; but in due course every doubt was set at rest, and then men marvelled greatly that the arrest had not been sooner made. The story of the arrest is a simple one, and may be told in few words.

GARDINER'S CAPTURE.

There was in the Sydney Police Force at this time a detective named McGlone, who had had a little experience in hunting down criminals, although not so large an experience as some of his colleagues in dealing with bush-rangers. In some way never fully explained to the public he received information from what he considered a reliable source that Gardiner was in Queensland, living somewhere on the Appis Creek road; and armed with all necessary documents and weapons, that officer, with two policemen named Pye and Wells, took boat for Queensland, reaching Rockhampton, the port nearest to the locality for which they were bound on 11th February, 1864.

The object of the expedition was not made known by McGlone to his companions, but they were satisfied to know

that it was one of more than ordinary importance, requiring the utmost secrecy. The trio assumed the dress and character of diggers, and thus the more easily escaped observation on the road in the crowd of persons similarly equipped that was moving steadily onwards towards the "diggings" that were then flourishing in that district. Owing to the flooded state of the river the hunting party were unable to proceed for several days after their arrival, and it goes without saying that while waiting for the flood to subside they carefully preserved their disguise. And it was well that they did so, for they observed in the town several persons whom they had previously seen on the Lachlan, and who there had the reputation of being sympathisers with the bushrangers. The sight of these men must have raised McGlone's hopes, and led him to believe that he was on the correct track ; but it is more than probable that if these men had gained the slightest inkling of the plot which the officers were working out, or even if they had been able to recognise the detectives beneath the disguise which they had assumed, the errand upon which they had set out would have been fruitless.

At length the river subsided and the detective trio crossed over to hunt out the Australian Dick Turpin. All along the road every face and every hut was rigidly scrutinised, but it was not till they had gone a day or two's journey that McGlone again recognised several old Lachlan faces. Hope revived, and the cautious Scot now knew that his game could not be far away. Weary, dusty, and thirsty, the seeming diggers arrived at Appis Creek, camping within 100 yards of a store and public house which a signboard indicated were jointly carried on by Messrs. Craig and "Christie." Without knowing it McGlone was in sight of his quarry ; and

here I must digress somewhat to narrate how Gardiner—for the “Christie” on the signboard was the “Gardiner” of this story—had come to take a partner and settle down as a respectable Boniface and retailer of rum and rice, tea and toddy, butter and beer.

Nine months previously Gardiner and his paramour had entered Rockhampton by the overland route, and had assumed the names of Mr. and Mrs. Frank Christie—this being Gardiner’s real patronymic, for his father’s name was Christie if his mother’s was not ;—and thereby hangs a tale which cannot just now be told. The new arrivals did not stay long in Rockhampton, but left the town, taking the route for the Peak Downs goldfields. After passing Yaamba the interesting pair fell in with a Mr. Craig, who was going in the same direction, and, as the woman afterwards said in the police court “they travelled together for company.” While thus journeying together Craig (who, to do him justice, appears to have been totally ignorant of the true character of his fellow-traveller) entered into an exposition of his intentions and prospects, which confidence was returned by his new acquaintance, who appears not to have concealed the fact of his having at least sufficient capital to make a good beginning in the public house or storekeeping line. What more natural, than, that these very communicative fellow-travellers should begin to entertain and discuss the notion of the probable success of a little “spec” in the public house and store way. Craig knew of a good stand at Appis Creek, and had a little spare cash ; while Christie *alias* Gardiner, was similarly provided ; and then, too, how well Mrs. Christie would suit behind the bar of a country inn, or counter of a snug little store ! As Craig was not a detective policeman it is not likely that he would look for any of the peculiar marks

on Mr. Frank Christie's person, which were so elaborately set forth in the *Crime Report*—if, indeed, he had ever seen the description referred to. Christie, and his "wife," were a "likely" couple no doubt; and, having a little ready cash, Craig did not hesitate—the partnership was entered into, a public house and store were opened at Appis Creek, and our quondam bushranger settled down apparently for a quiet life. Apparently, because some very knowing people afterwards affirmed that Gardiner only intended to lay by till there was something worth taking from successful Peak Downs miners, when he would be "at his old tricks again," and return "like the dog to his vomit," At any rate, in whatever light he may have regarded the prospect of any further achievements on the road, it is obvious that his intentions in a moral point could have been none of the purest, as he still consorted with Mrs. Brown. Nine months rolled away and no outward interruption of the quiet course of their lives occurred to this couple, whom it would be the cruelest of satires to term a "happy pair." No "outward" interruptions, indeed, but it cannot be supposed that that "silent monitor within" which when tainted with guilt, "makes cowards of us all," failed to remind Gardiner of the dark deeds of former days, or Mrs. Brown of the wedded bliss she had sacrificed. But the storm of which this calm was the precursor, was about to burst. Unknown to the guilty pair, Nemesis, in the person of Detective McGlone, was close upon them; and unknown to the pursuer his prey was actually within his grasp.

As was his usual custom after camping, McGlone went up to the house to ferret out all he could without exciting suspicion. As he approached he noticed an individual seated on the doorstep of the store, head in hands, elbows on knees, gazing vacantly up the road. The first glance told McGlone

his journey was at an end—there sat his man! But he must make sure; so putting on a woe-begone, sick-man expression, he entered the store and was confronted by Mrs. Brown *alias* "Christie." Something in McGlone seemed to alarm the woman (to recognise him was impossible), for on his asking for sago on the plea of being sick, she sharply said they had none. Gardiner overheard her, and said he thought there was some, came inside, and McGlone received a little sago, payment for which Gardiner refused. McGlone, all this time, never looked at Gardiner, which seemed to reassure the woman; still more so when he asked Gardiner to come and have a drink, Gardiner consented, suggesting McGlone's brandy should be burnt as being good for his complaint. While Gardiner stooped to pour out the liquor, McGlone's sharp eye noticed the peculiar scars on his head and hands, and now felt confident of his man. Lieutenant Brown, of the Queensland native police, happened to pass just at this moment, but McGlone dared not speak to him for fear of exciting suspicion; but fortunately he heard Brown say he would stop the night at M'Lennan's, a mile away.

McGlone now returned to his mates and told them for the first time who they had come to take, and where he was to be found. A plan was agreed on, and after dark McGlone crept off to Lieutenant Brown and secured the co-operation of that gentleman and his black troopers, who, as the sequel proved, behaved most admirably. These precautions were taken because McGlone saw so many of Gardiner's old chums, and so many suspicious ruffians about, that he feared a rescue. Next morning the digging trio struck their tent, picked up their swags, and prepared for their apparent journey further, merely strolling up to the hotel to get a parting glass. At the same time Lieutenant Brown and troopers hove in sight,

apparently off for a tour of his district, as they had often appeared before, the troopers singing gaily their corroboree song. Gardiner was standing talking to two fellows grinding an axe, but began to edge off to the store on seeing the diggers approach. Pye, however, perceived the move, and pushed up to cut him off; McGlone threw him off his guard by addressing a remark to him about his dog; Gardiner turned to reply when Pye seized him from behind, McGlone seized him by the legs and threw him on his back; the troopers sprang from their saddles and pointed their carbines at the spectators, while Brown literally poked his pistol into the jaws of one of the axe grinders before he could be deterred from assaulting the constables. And thus the notorious Gardiner was taken!

McGlone was not the man to spoil his work by the neglect of necessary precautions after having secured his man. After having assured himself that Gardiner was bound in such manner as to render escape impossible, he conducted him to McLellan's station, some distance from the store, where he placed him in confinement pending his removal to Rockhampton. Gardiner was not enlightened concerning the charge upon which he had been arrested until he was under lock and key at McLellan's, but here McGlone gave him clearly to understand that he had come over from New South Wales for the sole purpose of securing him for the part he had taken in the escort robbery and in other crimes which in the vernacular of auctioneering circles were "too numerous to mention." To make doubly sure McGlone also arrested Craig and Mrs. Brown, and quite an interesting little company was shortly thereafter under marching orders for Rockhampton.

The curtain next rises in the Rockhampton Police Court,

where Gardiner, heavily manacled, was placed in the dock, together with A. D. Craig, described as a publican, and Catherine Welsh, otherwise Mrs. Brown *alias* "Christie." Gardiner was guarded by five constables, and was broadly charged with having "committed various highway robberies in New South Wales," while Craig was charged with harbouring him and Mrs. Brown with "concealing and assisting a bushranger." There was a full bench, summoned specially to hear the case, and the crowd of spectators was so large that the court house could not accommodate them all. Some persons may be interested to know that the magistrates before whom the bushranger and his two partners were brought were Messrs. J. A. Larnach, F. T. Byerley, W. Callaghan, R. M. Hunter, J. Forsyth, W. F. Bassett, A. H. Palmer, G. P. Murray and H. Gaden. Mr. C. S. Dick had been instructed to appear on behalf of the Crown, while Mr. T. Bellas watched the case for Gardiner. The other two prisoners had evidently only been brought up as a matter of form, and the case against them was not pressed after the man upon whom the interest chiefly centred had been properly "fixed;" both being subsequently discharged from custody.

In opening the case Mr. Dick informed the Bench that he only intended calling sufficient evidence to justify an application to remand the prisoner to Sydney.

The first witness called was John Harvey Canning, who deposed that he was a constable of the Rockhampton police and the lock-up keeper; that he received Gardiner into the lock-up on the Sunday afternoon from Detective McGlone; and that the charge preferred against him was that of having "committed several highway robberies under arms in New South Wales." In cross-examination by Mr. Bellas the

witness said that there was no warrant for the prisoner's apprehension produced when he was given into his custody.

Then McGlone took the witness' stand and gave sworn testimony as follows: I am a detective officer in the Sydney police; I arrested the prisoner now before the court; when I apprehended him he gave the name of Francis Christie; this is not his real name; I believe his proper name to be Francis Clarke, *alias* Gardiner. (Mr. Dick here handed to the witness a copy of the New South Wales *Police Gazette*, bearing date Wednesday, the 25th February, 1864). This *Gazette* is issued by order of the Inspector-General of Police, and it is printed by Thomas Richards, the Government printer. In the first page I see an advertisement offering a reward of £1000 for the apprehension of Francis Gardiner *alias* Clarke, and one John *alias* Johnny Gilbert. I also see on the same page a description given of the man Francis Gardiner, which reads as follows:—"Native of Goulburn, New South Wales, 32 years of age, 5 feet $8\frac{1}{4}$ inches high, a laborer, dark sallow complexion, black hair, brown eyes, small raised scar on left eyebrow, small scar on right chin, scar on knuckle of right fore finger, round scar on left elbow joint, two slight scars on back of left thumb, short finger nails, round scar on cap of right knee, hairy legs, mark on temple from a wound by pistol ball or whip." I have examined the prisoner, and the marks as thus described correspond exactly with those I found upon him. The chief-constable (Mr. Foran) was present when I made the examination. After reading that description and from the result of my examination of the prisoner, I have no doubt whatever that he is the person referred to.

By the Bench: I am still in the Sydney Police Force; I came up here from Sydney, from information which I received some time ago, in company with Detective Pye and

Mounted Police Constable Wells; from Rockhampton we proceeded to Appis Creek, a place a hundred miles or thereabouts from here, on the Peak Downs Road; here, at Appis Creek, I saw the prisoner in a store; I saw him when I arrived; I believe the store belongs to him; it was on the 2nd instant that I first saw him; I did not then arrest him, but on the following morning I saw him again, and with the assistance of Detective Pye, Constable Wells and Lieutenant Brown of the Queensland Native Police, I took him into custody; I apprehended the prisoner on the road outside his own store; I did not then charge him with any offence I took him to McLellan's station, which is about a mile from the place where I apprehended him, and here, at the station, I informed him of the charge against him; I confined the prisoner at the station, and here secured him safely until I could bring him down to Rockhampton, where I delivered him over into the custody of the last witness; I charged him with the commission of several robberies, and also with the escort robbery at Eugowra Creek in June, 1863; I believe it was in June last that the escort was robbed at Eugowra Creek, but do not recollect the exact date, not having the *Gazette* by me; it was about that time; I know of there being a warrant in existence issued by a justice of the peace for New South Wales for the apprehension of Francis Gardiner *alias* Clarke; I am not positive what the charges are as contained in that warrant, but I know that there are numerous offences charged against him in it; it was from information I received in Sydney respecting him, and from the *Crime Record*, and also from my own knowledge of him that I arrested the prisoner. (The question being again put to the witness by the Bench, he made the same reply, adding "and from other documents.") I have

also in my possession a photograph likeness of the prisoner ; it corresponds with his appearance, and I consider it to be a fair likeness of him ; this photograph (produced) is also a likeness of Francis Gardiner *alias* Clark, for whom a warrant has been issued by a magistrate of New South Wales. (The photograph was here handed to the Bench for inspection. It certainly could not be said to bear a striking resemblance to the prisoner, and nearly every one who saw it remarked that it could scarcely be called a likeness at all.) I am perfectly certain from that likeness, and from the description given of Francis Gardiner *alias* Clarke, that the prisoner in the dock is that man ; that likeness was issued to the police of New South Wales, together with the description alluded to, for their information and guidance ; the *Crime Report* is issued to the police once a week ; all the highway robberies with which the prisoner is charged were committed in New South Wales, and all the witnesses, as far as I know, who are to prove the offences, reside in that colony : it is necessary for the ends of justice that the prisoner be sent to Sydney, and I therefore pray that he be remanded there, where, I believe, he will be put on his trial.

Mr. Bellas said he had no questions to put to this witness.

Mr. Larnach, J.P. : Why did you not tell him the charge when you arrested him ?

Witness : Well, I was afraid to do so then, but took him to Mr. Lennan's.

Mr. Lanarch : Did he offer any resistance ?

Witness : Not the slightest.

Mr. Bellas : How did you arrest him ?

Witness : In the usual way, the same as any other man ; I arrested him fairly.

Mr. Bellas : Was he knocked down senseless ?

Witness: Not senseless; he was laid down on his back quietly, and secured.

Jeremiah Foran, sworn, said—I am sub-inspector of the Rockhampton police; in company with the last witness, about ten o'clock this morning I went to the lock-up for the purpose of examining the prisoner; I then had in my possession a description of Francis Gardiner *alias* Clarke which I now produce; I asked the prisoner his age; he said he was thirty-two years old, which answers to the description of his age given in this document; I then examined him carefully and observed that there were marks on his person corresponding precisely in every minute particular with those mentioned in the description of him; there were some Indian ink marks seemingly on his arm which were not alluded to in the report; I believe he is the person referred to in that report; I have no further witnesses to produce, and pray that the prisoner be remanded to Sydney.

Mr. Dick said that he had no further evidence to offer, and having made out a sufficient case, he applied on behalf of the Crown for a Bench warrant remanding the prisoner to Sydney.

The Bench at once granted the application, and Gardiner was in due course removed to Brisbane gaol to await the first steamer for Sydney. But here McGlone suddenly learned that forces were at work in the bushrangers' favor which called for prompt resisting action. A feeling of sympathy for Gardiner appeared to have been awakened in the minds of a certain section of the Brisbane residents—whether Mrs. Brown in her movements among that section had anything to do with the awakening is not for me to say, but seeing that a prominent lawyer interested himself actively in the case warrants the assumption that that lady, who was reputed to be partner

with Gardiner in a tolerably long and stout "stocking," was really at the bottom of it; for lawyers themselves do not often act from sympathy, unless well supported by fees. Whatever the cause, however, it is certain that an effort was made to prevent the prisoner's removal from Brisbane to Sydney, and that the solicitor in question actually obtained a writ of *habeas corpus*. But McGlone "knew his ropes," and before the writ could be served he had removed his prisoner from the gaol to secure quarters on board the steamer "Telegraph," which was then getting ready for her return trip to the capital of New South Wales. The steamer was timed to start next morning, and at the hour fixed the start was made, and the detective and the erstwhile desperado were soon beyond the reach of sympathetic Queenslanders.

In due course Gardiner was safely lodged in Darlinghurst Gaol, and his active captor lost no time in hunting up the witnesses for the preliminary examination, which the authorities decided, for reasons which must be patent to every reader, should be held within the precincts of the gaol. It goes without saying that the greatest excitement prevailed in Sydney when it became known that the King of the Road had arrived. Here was indeed a distinguished visitor, and if the authorities had cared to make a display, and published the programme of proceedings connected with the landing and the escort from the quay to the prison, they could have drawn a crowd greater than would have gathered to witness the landing of any royal personage. But it was deemed prudent to keep the affair as quiet as possible, and before the majority of the citizens knew that Gardiner had arrived he was safely housed in the cell that had been prepared for him.

Captain Scott and Mr. George Hill were the magistrates

upon whom the duty was cast of conducting the preliminary proceedings. The court sat in the debtor's ward of Darlinghurst Gaol in April, 1864, and the charge preferred against the prisoner was that he did feloniously shoot and wound with intent to kill, John Middleton and William Hosie, at the Fish River on the 16th July, 1861. Mr. David Forbes appeared on behalf of the Crown, assisted by Mr. Williams, Crown Solicitor, and Mr. Frazer; while Mr. Redmond and Mr. Roberts attended on behalf of the prisoner. Evidence of the arrest having been given, Middleton and Hosie were examined at length. The former narrated fully the circumstances attending Gardiner's arrest at Fogg's house, and the wounding of himself and Hosie by shots fired from behind the screen. He said he went to apprehend prisoner because he saw a warrant for his apprehension in the "Crime Report," and he had suspicion that Gardiner had been concerned in at least two recent felonies. The witness was subjected to a searching cross-examination by Mr. Roberts, but nothing was elicited to shake his evidence in chief. He admitted that he was excited during the struggle and continued to be so for some time afterwards. He knew by repute that Gardiner was a ticket-of-leave holder.

When Hosie was sworn he said that he was now a digger, and not in the police force, but was stationed at Tuena at the time of the capture and escape. He described minutely the occurrences that took place on that occasion, adhering to his former story that when on the road with his prisoner, Middleton having ridden off to Bigga for surgical assistance, he was attacked by Piesley and another man and Gardiner was rescued. It will be remembered that when on the scaffold at Bathurst Piesley solemnly declared that he had not been near

the place, but that Hosie had received £50 to release his prisoner, and that it was thus Gardiner got away.*

At the conclusion of the cross-examination a remand for eight days was applied for on behalf of the prisoner, who put in a written statement to the following effect:—"I require time for consultation with my attorneys as to whether or not I will call any witnesses on my behalf, and I pray for a remand of eight days." The statement was then signed by the prisoner as Francis Christie, an act which of course put at rest any doubts that were entertained as to his identity.

When the case was next called on Mr. Roberts, on behalf of Gardiner, applied for a further adjournment for eight days, but the application was opposed by Mr. Forbes and the Bench decided that no sufficient grounds had been brought forward to show why it should be granted. No further evidence was offered and the Bench committed Gardiner to take his trial at the adjourned sessions of the Central Criminal Court to be held on May 17th following. Mr. Roberts protested strongly against such a comparatively short time to prepare his defence, when the Government had employed all their influence and had so much time to set up a case against him.

The report says that Gardiner was ill during one portion of the hearing, and was allowed a seat; also that he had to be taken out to get medicine. It adds: Gardiner preserved his firmness throughout the day, although suffering much from illness. He evinced some feeling when Middleton was sworn, and a close observer could not fail to notice the change in his countenance—a change which denoted a determination to meet the worst.

* "Story of Australian Bushranging."—No. 2.

THE TRIALS AT THE SUPREME COURT.

On the day appointed the prisoner, under the three names—Francis Gardiner, *alias* Clarke, *alias* Christie—was arraigned at the Sydney Central Criminal Court, before Mr. Justice Wise, the charge being shooting and wounding Middleton with intent to murder him

The Attorney-General prosecuted, and Messrs. Isaacs and Dalley appeared for the defence.

Before the trial commenced an application was made to have the money taken from prisoner returned to him. After hearing argument on both sides, his Honor ordered the money to be returned, which was done—the prisoner carefully counting out the money and subsequently rolling it in a handkerchief and handing it to his attorney. The Court was crowded in every part, and great precautions were used to keep out new comers, as the authorities feared that an attempt at rescue might be made.

Concerning Gardiner's appearance and demeanour when before the court, one gentleman bore this testimony:—"It was the first time that I had seen Gardiner, and I agree with what had before been said—that there is nothing special in his appearance. He wore a black moustache and large whiskers meeting at the throat, and was decently dressed as a well-to-do working man. His demeanour was calm and self-possessed, but there was a lurking intenseness, and I thought something of anxiety, in his eye as he turned it towards the reporters' box."

Mr. Martin opened the case mildly, remarking that the crime with which prisoner was charged was one for which he was liable to be executed if convicted, but that this the jury must dismiss from their minds, and they must treat it as any other case. He (the Attorney-General) intended to proceed

in this the same as in any other case that he might have to put before a jury. He then stated the facts to be proved in evidence, and called as witnesses John Middleton, William Hosie, and Mr. Beardmore, Police Magistrate of Carcoar, who gave, almost word for word, the evidence previously given before the magistrates. The two former were subjected to a keen cross-examination by Mr. Isaacs, the same being evidently intended to shew that the prisoner only resisted what he believed to be an unlawful attack, Middleton having had on plain clothes at the time of the attack, and not having given any intimation that he was a policeman when he entered Fogg's hut.

On the re-opening of the court after the adjournment for lunch, the audience were re-admitted, and they entered with a rush and noise like a crowd to a theatre on pantomine night. Gardiner looked round with something like a painful interest upon the excited spectators, apparently being desirous of learning whether any known faces were present.

The last witness called for the Crown was Mr. Taylor, one of the officers at Cockatoo Island, Gardiner's former location, and he stated that he had known prisoner there as Francis Clark. The Attorney-General proposed to put in evidence of a former conviction of the prisoner, but Mr Isaacs objected that no former conviction could be relevant to the present charge. His remarks were applauded in court, which caused interference from the Judge, who, however, rejected the evidence; and then counsel for the prisoner entered upon the defence, calling only one witness.

That witness was Mary Fogg, the wife of the man at whose house Gardiner was discovered by Middleton and Hosie, and who was present during one portion of the fight between her guest and the troopers. As her evidence must

have had great weight with the jury, judging from the issue of the trial, it is here reproduced. Being sworn, she deposed as follows:—On the 6th day of July, 1861, I was living at Fish River, 30 or 40 miles from Carcoar. Middleton and Hosie came to my husband's house on that day. They both had cloaks on, and old cabbagetree hats, and did not look like policemen. There was a mizzling rain at the time. I did not see the men until Middleton pushed in the doorway. My husband, my children, and a man named James Barney, were with me in the room. Middleton said to my husband, "Who goes there?" and walked across the room and put his hand to the screen and immediately fired, having first removed the screen with his hand. He said nothing more than I have stated before he fired into the skillion. No shot was fired before the shot of Middleton's; immediately afterwards another shot was fired, and I picked up two of my children to take them away; Barney took the other and we went into the yard. I heard more shots fired, and left the children with Barney, and returned into the house. I saw Middleton, Hosie and Gardiner in the yard, and heard more firing; I saw Gardiner on the ground, and the others beating him on the head. Middleton beat him with a loaded whip. I was in Sydney when Gardiner was committed. I was subpœnaed by the prisoner.

In cross-examination by the Attorney-General she said: I had known the prisoner twelve or eighteen months before the 16th July, 1861. I was living all that time at Fish River, My husband is a farmer and a stockholder. I saw him in Goulburn gaol, about a fortnight ago. I used to know Gardiner at our own house, and several other houses. He used to be at our house often, and, during the last six months before July 16th, 1861, he used to be there every week or fortnight. We knew him as Frank Gardiner. He has slept

at our house occasionally, coming in the evening and leaving in the morning. I cannot say whether he ever slept there for two nights together, or for a week—certainly not more than a week. He had only been a quarter of an hour at our house when the police came. I had not seen him for a month before. He was living sometimes at Newman's, and sometimes at Taylor's, Fish River. He went to Lambing Flat to take cattle for my husband. I was not in the house when Gardiner arrived. I was at the river washing. When I went up to the house I saw Gardiner. I can't say what he was doing. He bid me good day. Nothing further passed between us. He was talking to my husband. I did not take notice what they were saying. The room is a small one. After I had been there about three minutes, the police came up, and Gardiner walked into the back room. He said nothing. I saw no revolver in his hand. He had a big coat on, buttoned up. There was flour and sugar and other things in the skillion. I did not hear Gardiner say that he would shoot anyone who tried to get into the room, or anything to that effect. If he said so I must have heard him. After Middleton fired, I said, "My God, if you are going to fire, let me out with the children." I did not know that Gardiner had a pistol. I did not hear my husband speak. When Gardiner slept at our house he used to sleep in the front room. No one ever slept in the back room. I persuaded Gardiner afterwards to have the handcuffs on because I was afraid he would be murdered. It was not until I saw the handcuffs that I thought the men were policemen. I wanted to dress Middleton's wounds, but he went away almost immediately after Gardiner was handcuffed. All three men were wounded. After Middleton went away, Gardiner asked who he was, and was told that he was Middleton of Tuena. I never saw Gardiner after he left our house

that time until now. Barney is now outside the court.

By Mr. Isaacs : Middleton fired immediately on entering the house.

By his Honor : As Middleton entered he pushed me aside with one hand. I said "Are you frightened?" He made no reply but passed on. We cannot see the slip rail from our door, nor the fence in which the slip rail is. We can see it from the yard.

As this witness was leaving the box his Honor asked Mr. Isaacs if he had any more witnesses to call, and that gentleman replied in the negative, whereupon the Attorney-General turned to Mrs. Fogg and asked : "I think you said Barney was outside the Court?" The witness had scarcely uttered the reply "Yes, sir," when Mr. Isaacs sprang to his feet and protested against the Attorney-General interpolating such a question after he (Mr. Isaacs) had said he would call no more witnesses ; adding that the injurious effect of such a remark (upon the jury) would be apparent. His Honor closed the discussion by informing Mr. Isaacs that he would not prevent him from calling any other witnesses he pleased on the morrow—the Court being then about to adjourn, two days having been occupied in the hearing of evidence. When the case was resumed on the third day the man Barney was called by Mr. Isaacs. He corroborated in the main the testimony given by Mrs. Fogg, but stated that he did not recognise the prisoner as the man concerned on that occasion.

Then Mr. Isaacs proceeded to address the jury on the prisoner's behalf. His speech occupied about three hours in delivery and created a considerable impression, but it was mainly directed to the *argumentum ad wiseracordiam*. He described the terrors attendant upon a sentence of death—the awful doom, the hopelessness of reform when death came

in, the appearance of the executioner of the law, and so forth ; and dwelt at length upon the fact which he had endeavoured to build up for the defence—that Gardiner did not know that the men who sought to arrest him were policemen. This closed the third day's proceedings and the court adjourned until the following morning. While the court was being cleared Gardiner turned round in the dock, either for the purpose of shewing himself to the curious, or in order to see whether any of his old friends were present, and gazed long at the people passing out of the gallery and the body of the court.

On the fourth day the Attorney-General addressed the jury on behalf of the Crown, observing that he would confine his remarks entirely to the evidence, and would deal with the case precisely as any other. There were several remarks made by the counsel for the defence which he considered not justified, but to which he would not reply. The learned counsel had referred to certain other charges against the prisoner, but the jury had nothing to do with rumours either for or against him. It was neither consistent with law nor common sense to make any distinction in the prisoner's case because of the existence of popular feeling, or because of any supposed celebrity that attached to him. There were certain facts in the case about which there could exist no doubt. In the first place it was clear, and no attempt had been made to deny, that Middleton had been shot at by the prisoner, at the time and in the place alleged, and that he had been wounded in the mouth, wrist, and leg. The wound in the mouth was proved with special certainty, and the hip was entirely cut through ; therefore, that portion of the indictment was true, that the prisoner "did wound." Next arose the question of intent, and first, was it "to kill?" The jury could only judge

by the facts, and no reasonable inference could be drawn from the fact of a man firing a pistol in the face of another at two or three yards distance, but that his intention was to kill. But killing might be manslaughter, or justifiable homicide, and the charge against the prisoner was intent to murder. Middleton said that certain words came from behind the screen, and that on his approaching, prisoner raised the screen and fired. If that were so, and death had ensued, there could be no doubt that it would have been murder, unless prisoner himself had acted under fear of being robbed or murdered. The first thing, therefore, that the jury would have to determine, would be whether Middleton's statement was worthy of belief. It was true there was some discrepancy between it and that of all the other persons who were there; but allowance must be made for the excitement which would naturally arise under the circumstances. Mrs. Fogg and Barney said that Middleton put up his hands as if alarmed, and passed in; that Fogg and Gardiner were talking at the time; that Gardiner was going into the room as Middleton entered; and that they then went away with the children and a shot was fired. The probability was that they both went away before any shot was fired, and therefore were not witnesses of what they pretended to describe. Mrs Fogg evidently equivocated when she said she did not hear Gardiner use the words alleged by Middleton, and would not swear distinctly that such words were not uttered by him; therefore, in that particular she, at least, *did not contradict* Middleton. Barney too hesitated in saying that such words were not used, and, before giving his answer, the jury had no doubt observed how he looked and *where* he looked. Barney also stated, in precisely the same words as those used by Mrs. Fogg, that Middleton raised the curtain

with his left hand, and fired with his right. The coincidence of words, after the lapse of three years, was somewhat remarkable ; it was certainly not one of those little discrepancies alluded to by the learned counsel for the defence as indicative of witnesses of the truth. There were discrepancies, however, which were not little ones. Mrs. Fogg said that Gardiner, who was often at the hut, had been there a quarter of an hour when Middleton walked in, and Gardiner went into the skillion. That was in conformity with Middleton's own testimony. But Barney said he was ten minutes away—quite long enough indeed to go to the river and back—that Gardiner was not there when he left, and that when he returned Gardiner was walking into the skillion, and that he was there a minute before Middleton entered. The question naturally arose—was Barney inventing that ? for he was corroborated by no one else. The learned counsel then alluded to the remark of Mr. Isaacs, to the effect that it was usual for the Crown to call all persons as witnesses who were present at the alleged commission of any crime, and that he (Mr. Martin) had not called Fogg, or his wife or Barney. But the jury could easily perceive that it might be very inexpedient to call all witnesses of crimes, because there was such a thing as confederacy in crime. As to Fogg, it would have been quite competent for counsel for the defence to call him as a witness if they thought proper ; his learned friend was well aware of that, and therefore his remarks on the absence of Fogg as being caused by the Crown, were not warranted. The jury would look at the probabilities of the case. They were asked to believe that Middleton, without knowing who was behind the screen, raised it, and without speaking a word, fired at the prisoner. What could be more incredible ? and how much more probable was his own account, given, too, in

as straightforward a way as he had ever seen evidence given, and that in spite of the irritating questions and unfounded imputations of the learned counsel who cross-examined him. With regard to the evidence of Hosie, he spoke only of what occurred after some shots had been fired. Middleton, with his one single-barrelled pistol, could only have fired one shot. But there were several. Who fired the others? Then it was said that a charge was found in Gardiner's pistol after he had commenced to use it as a club; but the learned counsel for the defence omitted to add that the cap had exploded. [Some discussion ensued on this point, and the Attorney-General said he would be glad to withdraw the statement if it was not correct: his Honor, however, found the fact duly deposed to as recorded in his notes. It had not been taken down either by the counsel for the defence or by the reporters.] The jury would observe, continued the Attorney-General, that the two policemen might have been seen, similarly dressed, approaching the house. Neither Fogg nor his wife were alarmed on seeing them; but Gardiner was alarmed, and retired from view. The learned counsel suggested that there might have been some previous quarrel between the two men, but such a mode of accounting for Gardiner's conduct was very far fetched, and it had also been sworn that Gardiner afterwards asked who Middleton was. He (Mr. Martin) desired to impress on the jury that it was not necessary for a policeman to say, "I am a policeman, etc.," if the surrounding circumstances indicated that he was so, and that his intention was to apprehend; and under no circumstances could a man be justified in firing a shot before anything had been done by the other. The jury had heard something of courage as applied to the prisoner, and of blood thirstiness as applied to Middleton; but let them look at the facts—the shot fired

without a word. Let them consider those facts when an attempt was made to enlist their sympathy for what could not but be regarded by any rightminded man as a dastardly act. It was true that there was courage displayed, but it was by the Queen's officer, Middleton—not by the prisoner at the bar. The point the jury would have to consider was—was there wounding with intent to kill? and, if so, was it also the intent to commit murder? To that question the jury would apply themselves; and, said the learned gentleman, “no one would be better pleased than myself if you acquit the prisoner.”

His Honor summed up carefully, and the jury retired at a quarter to five o'clock: and, his Honor also quitting the Court, a hum and bustle ensued, which lasted during the whole time that the jury were absent. The prisoner conversed a good deal with his solicitor, and seemed to bear the suspense well. At a quarter to six the Judge returned into Court, and ordered his temporary removal from the dock. At twenty-five minutes past six o'clock it was announced by the Sheriff to his Honor that the jury had agreed, and a profound silence ensued as they re-entered the box, and the prisoner was again brought into Court. Every eye was fixed upon him; he was pale but calm, and it was evident that he felt the awful solemnity of the moment, as he stood holding the iron spikes in front of the dock, and occasionally wiping the moisture from his face.

The clerk of arraigns put the usual question, “Gentlemen of the jury, do you find the prisoner at the bar guilty or not guilty?” The foreman answered in a distinct voice, “Not guilty,” and the announcement was received with a perfect yell of delight, accompanied by clapping of hands, which all the vociferations of the tipstaves and constables on duty failed

to repress. The Judge—pale as death from illness, fatigue and agitation—rose from his seat, and in a voice of severity ordered the constabulary to arrest any person they saw behaving in so disgraceful and shocking a manner on such an occasion ; at the same time pointing out, to the police on duty, a young lad, about fifteen or sixteen years of age, who was clapping his hands in a most frantic manner. The boy was immediately brought before the Judge, and the Court House—which a minute before was a scene of uproar and confusion—was again as silent as the grave. “Young man, you are committed to Darlinghurst gaol for contempt of Court. I am shocked—inexpressibly shocked, at this disgraceful and unseemly exhibition within the walls of a court of justice on so solemn an occasion as this.” These words were spoken by Mr. Justice Wise in a voice tremulous with emotion.

Several gentlemen now interceded for the misguided lad, amongst whom were Mr. Williams, Crown Solicitor, and Mr. Isaacs. It was stated that the youth was very respectably connected and that his father was a magistrate. He begged hard to be forgiven, and said that his feelings had been carried away by the applause that was going on around him. His Honor, after making some inquiries respecting the offender ; addressed him nearly as follows :—“My boy, I am truly sorry for you ; let me warn you, I beseech you, against giving way to such feelings as your actions just now gave evidence of. I am pained beyond measure to think that a young lad like you should have joined in so disgraceful and humiliating an exhibition of feeling as that which has just outraged the dignity of this court of justice. I hope what you say is true—that you clapped your hands without reflection ; you are discharged ; but again I implore you let this be a solemn

warning." And the youthful sympathiser with the King of the Road was permitted to go his way.

The prisoner, who all the time had been an anxious auditor of what was going on, appeared pained at the scene that had just been enacted, and now listened anxiously for what was to follow. The counsel for the Crown informed the Judge that there was another another indictment to be preferred against the prisoner, who was thereupon told that he was to return to gaol on remand. In view of the manifest sympathy existing for Gardiner amongst the crowd of spectators, however, the judge deemed it prudent to order the Court to be cleared before he was removed from the dock, and it was only when the spectators had left the building that the officers proceeded to take the prisoner away.

The fact that Gardiner had been acquitted after a three days' trial was flashed along the wires to all parts of the country, and great was the astonishment thereat. The newspapers in all the colonies made the circumstance a text upon which to moralise, and never before were the evils of criminal hero-worship more fiercely denounced. And that there should be excitement and indignation, widespread as deep, was the most natural thing in the world, especially among those of the colonists who had some acquaintance with the man and his exploits. Gardiner had run a career in the country such as no man ever ran before. His exploits had furnished a popular history which was the common property of man, woman, and child in every nook and cranny of the colonies. He had taken loaded gold boxes from an armed escort by hundreds weight at a time. He had bailed up travellers by the score; and had attempted to shoot down the police like dogs. He had terrorized a country side; and given the officers of justice, when in his wake (and they were, always unfortunately, in his wake)

the character and appearance of "Guys." He had cost the country thousands of pounds in horse-flesh, accoutrements, and rations for his pursuers. Large rewards had been offered for him alive or dead. Troops of men had been branded as cowards, and brave and gentlemanly officers had been cashiered because he remained still at large. Every man who had seen him without taking him was deemed an accomplice. Such was the number, and the desperate and deeply-dyed character of crimes committed by him during a period of many months, that every honest and peaceful subject of her Majesty in the colony mixed it up with his daily prayers that the marauder, the depredator, the murderer in intent if not in fact, might soon be taken, and the country be at peace. He was the Beelzebub of the bush—a modern Cacus—the prince of robber-devils; and because no term could be found extreme enough to describe the system he had adopted—because of the seeming charm which surrounded the mystery of his deeds—his very name became typical, and the stratagies he devised were distinguished by the name of GARDINERISM. In a fortunate moment, however, an intelligent and daring officer obtains a clue to his distant retreat, journeys to the spot and spies his game. With the wisdom of the serpent and the certainty of the tiger's spring, he makes a prisoner of the "Genius" of the Weddin Mountains, and safely deposits him in the metropolitan gaol. Surely it would be easy to deal with such a case. The man he has shot stands before him in the witness box, confronts him, and identifies him; yet the charge on which he is tried cannot be sustained, and GARDINER IS ACQUITTED! What wonder, I say, that the people should be indignant? It is very certain that the majority of the people raided so effectively believed that the sympathy of the

spectators in court which found expression in excited plandits was but the reflex of the more substantial, though not so loud in its utterance, sympathy existing in the breasts of the Sydney jurors. But the more charitably disposed were inclined to give the jurors credit for honest intentions if they could not credit them with sound law and good judgment, believing that they had acquitted the prisoner on the ground that he had not intended to kill the policemen, who should have made known their characters when seeking to arrest him. But whatever the causes contributing, the result was most disappointing to all but the personal friends of the prisoner and those who looked upon him as the hero of the century, a veritable Australian Dick Turpin.

For two months Gardiner had a further opportunity for calm reflection within the walls of Darlinghurst, and at the expiration of that time he was again placed in the dock. The Chief Justice presided on this occasion, and the prisoner was arraigned on the double charge of robbing Messrs. Horsington and Hewitt, while under arms. To the astonishment of everyone he pleaded guilty to each offence, doubtless under the advice of his counsel. But he was not to be allowed to cheat the gallows without another attempt to bring the capital offence home to him, although, as the sequel will shew, that attempt also failed.

He was charged with having on 10th July, 1861, feloniously wounded William Hosie with intent thereby to kill and murder him, and a second count in the indictment charged him with wounding Hosie with intent to do grievous bodily harm. It will be remembered that this count was not included in the first indictment, which was one of wounding with intent to kill, no alternative between an acquittal or a conviction on that single count being open to the jury. On this occasion

also Gardiner pleaded not guilty, and he was defended by Mr. Isaacs and Mr. Dalley, than whom two more able barristers did not exist in the colony. The witnesses called to prove the case against him were Middleton and Hosie, Mr. Beardmore, and Drs. Rowlands and Taylor, their evidence being merely a reiteration of that given at the former trial. But the Crown sought to make more plain on this occasion that the two troopers were well within their rights in going to Fogg's house to arrest Gardiner. Constable Paget, of Goulburn, gave evidence of the prisoner's conviction at that place on two charges of horse stealing in 1854, and his imprisonment. Evidence was also given of his release from the penal settlement on ticket-of-leave, and the subsequent cancellation of that ticket, John Budd, clerk of the Executive Council, proving the authenticity of the Governor's signature attached to the cancellation.

No witnesses were called for the defence, but Mr. Isaacs made a powerful appeal to the jury to acquit. After his Honor the Chief Justice had summed up the jury retired, and after an absence of three quarters of an hour returned into Court saying that they *had agreed* to find the prisoner guilty on the second count—wounding with intent to do grievous bodily harm. It afterwards transpired that five of the jurymen were for finding him guilty on the capital charge, while one was for acquitting him on both charges.

On being asked if he had anything to say why sentence should not be passed, Gardiner handed in the following written statement, which was read to the Court :—

To his Honor the Judge.

Your Honor,—I do not address you with the desire to impress upon your mind my innocence of the charge to which I have pleaded guilty, but my wish is to point out the untruths in the evidence on the part of the witnesses. In

the first place, they all distinctly assert that there were four in number, whereas there were five; they also state that three stuck up the cart containing Mr. Horsington, his wife, and boy, and that I alone went to Mr. Hewett; now it is just the opposite—I went to the cart, the four to Mr. Hewett. Again, they state that Mr. Hewett was thirty yards in the rear of the cart, whereas, on the contrary, he was thirty yards in advance of the cart. Again, it was I who told them to bail up, using no other words nor threats, and at the same time Mr. Hewett received a similar order from the four men. While I was directing Mr. Horsington where to turn off into the bush, a shot went off from one of the four men, caused through the restlessness of his horse. I at the time was within two or three yards of Mr. Horsington and his wife. I immediately turned round and asked, "Who fired that shot?" M'Guinness made answer, "I did, but it was purely accidental;" upon which I replied, that as soon as he had received his share of the spoil he should leave the party, which he did that night. The man M'Guinness, who was thirty yards away from me amongst the rest of the party, distinctly heard my question as to who fired; I also heard his reply; and yet Mr. Horsington, his wife, and boy, who were only a yard or so from me, positively swear that they heard nothing of this conversation. Again, on a former occasion, Mr. Horsington, his wife, the boy, and Mr. Hewett, positively swear as to the identity of the man Downey, as to his being of the party; now, I sincerely and solemnly assert that this man was not of my party on this or any other occasion. While Downey was in custody for the alleged offence I wrote to the *Burrangong Miner*, acknowledging that I was the man, and that he was perfectly innocent. Again, Mr. Horsington, and his party assert that the robbery took place on the 10th of March, while it really did not take place until some five or six weeks afterwards; so that if I had been inclined to stand my trial I might have been enabled to prove an *alibi*.

This, as your Honor will see, is not written with a view to escape punishment, for, on the contrary, it criminales myself; but as there are only two left of the party—myself and another man, who is at present undergoing a sentence of fifteen years—I feel that in writing this I am injuring no one except myself; and my only desire has been to point out the



inconsistency of the evidence on the part of the various witnesses, so, that, had I not pleaded guilty to this charge, I might probably have escaped; so contradictory is their evidence, that a verdict in my favor might have been the result.

If I may be permitted, in praying for a merciful consideration of my case, I beg to say that is not alone on the above grounds that I do so, for during the last two years I have seen the error of my ways, and have endeavoured, with God's assistance, to lead an honest and upright life, for I have even during this time had temptations (and those great ones), for I was on one occasion entrusted for some time with the first escort of gold that arrived from the Peak Downs, consisting of 700 ounces; again, Mr. Manton, whom I beg to refer to, a gentleman connected with the copper mines, entrusted to my care 264 ounces of gold; and, lastly, Mr. Veale did the same with 206 ounces;—yet the honest resolutions I had formed were sufficiently strong to prevent me doing a dishonest action on either of these opportunities. And I do trust that your Honor will do me the justice to believe that these were not isolated cases, or that I would have ever again fallen into those practices which I have felt for a long time past in my breast to be a sin against God and man.

And now, your Honor, as we must all on the last and great day of judgment throw ourselves on the mercy of the great Judge of all our actions, so do I now throw myself upon your mercy as my earthly judge, and pray for a lenient and merciful consideration in my case.

I am, your Honor, your humble servant,

FRANCIS CHRISTIE.

His Honor then, addressing the prisoner, said:—"I have read this letter. I am willing to take your expressions of contrition to be sincere. I have no means of knowing otherwise. I can rejoice that you are repentant, if that repentance is what it ought to be. You are not unknown to me; for I have known you for a number of years, and if you are now determined to lead a correct life, you will meet with a suitable reward in your own conscience. But there is a

duty both you and I owe to society. Look if you can, at the dreadful example you have shown to many young men of this community. You have been the acknowledged captain of a band of robbers carrying terror and rapine through many parts of this colony. If you are now repentant, I am infinitely glad you are so; but I cannot see how society will be benefitted by that. You have, by your lawless outrages, brought this community to the last stage of degradation. The idea entertained of New South Wales in England in the other colonies, and elsewhere is, that it is nothing but a den of thieves. Surely you must know that you will have to undergo the punishment due to your crimes. Suppose you were allowed to go. Perhaps you would have friends to assist you. Perhaps you yourself are rich; if not, what a lesson should your past character teach you! If you were liberated, or dealt lightly with, what encouragement would this not give to those who are emulating your example; and what an outrage it would be on society. I am told you have, in your robberies, abstained from all excesses in regard to females. Is this an excuse for bushranging? But you not only rob the rich, you plunder the poor also. I know many rich men, but I know not one that has not become so by the sweat of his brow in honest industry. It is hard for these men to have their long hard-earnings taken suddenly from them, by a band of robbers over whom you have been the captain, the leader, the head and front. Many young men owe their present misfortunes to you. That young man Piesley owes his death on the gallows to you; and another who was launched suddenly into eternity not far from this spot, owes his untimely end to you; and I fear others will follow. If justice was to be hoodwinked by professions there would be no security to property. It would

be a reflection on the administration of justice to allow you to go. Look not on the robberies you have committed but on the two constables, Middleton and Hosie. What harm had they done you? You have seen them alive this day, but it is by God's Providence rather than your will that they did not die. But whether they died or escaped with life, what is the difference in point of humanity? Had Hosie died you would have been tried for murder. What is the difference between the act of a man who causes death, and the act of a man who intends death? It pains me to dwell on these particulars. The evidence has been so recent that the whole picture must be fresh to your mind. Can I not say that justice has overtaken you at last? It would not be justice if it had not. This court, that bar in which you now stand is the goal to all bushranging. Sooner or later the man must come to that. No doubt you are a man of sense, I believe you are, and a man of pluck. But what think you of the constables who came to apprehend you, one of whom you called a game man? Just bring the whole picture of their conduct to your mind; nothing has been said of their courage; but they were both brave men. I am desirous of holding out a lesson that I hope the community will not forget. You are a man that many sympathise with, but I think that had you perished as some of your companions have done, it might not have been a wholesome lesson to the community and the world.—His Honor then read a paper prepared from matters which had been judicially brought before him, rehearsing Gardiner's career. The documents read as follows:—

In February, 1854, Gardiner (then called Clarke) stole five horses from Mr. John Reid, of the Fish River; he afterwards put them into the hands of an auctioneer at Yass for sale, sending a lad named Prior with them, who represented to the auctioneer that they had been purchased by his

master (Clarke) at Tuena Creek—a place fifty miles distant from Reid's. Clarke produced a pretended receipt (a forgery) for the price of the animals, but the brand, which was a very peculiar one, had been mistaken in this document, and it was proved that Clarke wrote it himself in the inn, at Yass, where he lodged.

Clarke stole also, in the same month and in the same district, two other horses, the property of a Mr. Barker, of the Fish River. For these he produced a receipt dated in January, purporting to have been signed at Goulburn by a Mr. Elliott. These horses were also sent to the auctioneer at Yass for sale. Prior stated that they had been purchased for the Melbourne market.

Clarke stole also, about the same period, three other horses, the property respectively of three diggers named Strong, Frost, and Klein, who happened to be at Bigga on the 17th February. The horses were turned out into a paddock one night, and the next morning they were gone. Strong and his mates spent ten days in looking for them, and at last discovered them in custody of the Yass police, Clarke and Prior both being then fully committed in the former cases.

Besides these ten horses there were six others stolen by Clarke, and sent to the same auctioneer. The prisoners were indicted, however, only in the three first-named cases, in two of which Clarke, *alias* Gardiner, was found guilty. They were not tried on the third charge. On their apprehension, £30 in notes were found on the prisoners; and each had a revolver loaded, Clarke's being ready capped.

Under all these circumstances, Gardiner was sentenced by the Chief Justice to fourteen years' hard labor on the roads, of which term three years and eight months still (in July, 1864) remain unexpired. He was recommended by the magistrate of Cockatoo, however, on the 1st December, 1859, for a ticket-of-leave; and he obtained one accordingly on the 26th December in that year.

The ticket-of-leave was recommended, and granted, on sundry certificates signed—or purporting to be—by (among others) Edward Ledsam, Esq., of Reid's Flat, Wheeo; and Henry Newham, Esq., same place, Lachlan River; speaking of Gardiner in strong terms of sympathy, as a mere dupe of other persons in the crimes for which he had been sentenced, and offering him as an "erring member of society" employ-

ment in their service.

Gardiner spoke of himself, at the same time, as a youth led into temptation "when uncontrolled by parental influence or good example," etc. And Messrs. John Reid and Edward Barker, the prosecutors in two of the cases before the Chief Justice, also recommended the indulgence.

In December, 1860, holding then a ticket-of-leave for Carcoar, Gardiner petitioned for a pardon. His application was strongly recommended by "Isaac Shepherd, J.P., Wheeo," and eight others of that neighborhood, and was accompanied by various certificates, as to his having been "led astray by others," when a very young man, etc.

These papers were sent to the Chief Justice, who thereupon suggested further inquiry. Accordingly the Police Magistrate of Carcoar was referred to for a report, and he stated, that ever since March, 1860, Gardiner had been generally suspected of being concerned in various robberies in the neighborhood, and a warrant was actually then out against him for cattle stealing. On the 14th May, Gardiner absconded from his bail, and became a bushranger.

This is the man, continued his Honor, for whom so many people entertain sympathy! Here you are now to receive the just and necessary reward of a series of acts—I think, of cruelty, of wickedness, of crime, utterly unequalled, within any other country—acts which are now becoming general—acts which would sink the character of any community on earth. And I charge you now, Gardiner, with being the head, the front, the parent of all this! I cannot entertain sympathy with you; and I declare to you on my honor as a man, speaking to you not merely as a colonist, but as man to man, face to face, I would say that if I could feel sympathy with you I should feel ashamed of myself as a member of society, as a gentleman, or as a Christian. I know that the bushrangers are sheltered, it may be from fear, but this harboring of them is absolutely disgraceful to the community. A country's prosperity is gone when its character is gone. Others will judge ill of the country, and many honest men

will think it is not a fit place to come to. I know unhappily the sentences which are about to be passed on you will be thought by many to be too severe. They will say—that that man if left alone might be contented to pass a life of honesty. But why should you be let alone? Would it be just to the thousands who are earning their livelihood by the sweat of their brow (many of whom have been robbed by you) that you should be allowed to pursue a career of placidity and safety? I can feel for those constables who, I fear, if they attempted to take the captain of a band of robbers, do not meet with that sympathy that they deserve, but are shot down with little mercy.”

His Honor then proceeded to pass sentence, as follows:—For the offence of which he had just been found guilty, to be kept to hard labor on the roads or other public works of the colony for fifteen years, the first two years in irons; for the armed robbery of Horsington (to which he had pleaded guilty) to ten years' hard labor, to commence at the expiration of the fifteen years; and for the robbery of Hewitt (to which he had also pleaded guilty) to seven years' hard labor, the seven years to commence at the expiration of the ten—in all, 32 years.

It was truly a heavy sentence, and it will doubtless be thought that as the prisoner heard it fall from the judge's lips he must have indulged in a mental calculation whether he would live to see the end of it. But Gardiner was not of a despondent nature. He had been in prison more than once before, and had gained his liberty on each occasion before the sentence passed upon him had been half completed—once by giving his custodians what men accustomed to prison associations expressively called “leg bail,” and again by means of a ticket-of-leave. The experience of the past

favored hope, and Gardiner was hopeful where many a man would have been despairing. Gardiner entered the prison as a sort of temporary resting place when most men, under like conditions would have concluded they were passing the portals of a living tomb. And that his confidence and hope were not misplaced was fully proved by after events. The "good fortune" which had attended him all through his remarkable career—so pleasantly exemplified in a hundred different ways: his escape from Pentridge; the abandonment of the search for him by the Victorian authorities; the ease with which he obtained his ticket-of-leave from Cockatoo, and bail from the Burrangong magistrates; his escape from death under Middleton's fire, and from custody under Hosie's handcuffs; the refusal of Sir Frederick Pottinger's gun to "go off" when the muzzle was within a few inches of his breast; the inability of the police to trace or capture him; the disinclination of the Attorney-General to indict him for the escort robbery; the refusal of the Sydney jury to convict him of shooting at Middleton—the "good fortune" which had thus so effectively displayed itself in his behalf was not going to be separated from him by the shutting of such ordinary things as the gates of Darlinghurst! It had been made evident that he was "not born to be hanged," or shot. It was to be made evident that he was not born to beat the bars of a prison in despair. And it only now remains for me to narrate, as briefly as possible, the circumstances leading up to his release from the life-long imprisonment, and his restoration to the "bosom of his family."

GARDINER'S RELEASE AND FINAL DISAPPEARANCE.

It would not interest the reader to learn what were the

daily tasks and recreations of Gardiner—he had both—while wearing the prison garb. For a certain time and in a certain way he was simply a prisoner among prisoners; but he had this advantage over many of his fellows within the walls—he had been there before and “knew the ropes”; which means that he understood how to earn for himself those little indulgences which relieved the monotony of prison life and rendered confinement pleasant. From the first he sought, and not in vain, to ingratiate himself with his custodians. If a good example were needed in a certain direction, Gardiner was the man to set it; if a well-executed “job” were desired Gardiner was the man to do it; and ready obedience, cheerful alacrity, persistent efforts to please, within prison walls as without, invariably meet with their reward.

Only once did anything occur that was at all calculated to create disfavor towards this “white-headed boy” of Darlinghurst; but as that was not altogether of his seeking, and occurred before he had been long a prisoner, he did not suffer much loss of reputation or of privileges on account thereof. It was a little affair, a trifling affair, but one which if it had “come off” would have caused the colonists to call to remembrance the old proverb “Behold now great a matter a little fire kindleth.” The discovery was made that certain persons outside the gaol were plotting to make a way of escape easy for the imprisoned bushranger, and that those persons had succeeded in making known their scheme to certain other persons within the gaol walls, including Gardiner. The plot was “nipped in the bud,” and for a time some restrictions were placed upon the movements of the man who was the object of such designing consideration. But, suiting himself to circumstances, as none other than he knew better how to do, Gardiner soon won the official favor that he had

lost, made reparation for the wrong-doing of outside friends and his own by service as humble as it was perfect, and lifted himself into the highest position of trusted responsibility that it was possible for any prisoner to reach.

Thus eight years of the thirty-two passed away, and then the friends outside began again to exert themselves in his behalf—but this time openly and in legal fashion. They set about their work with a determination to succeed, a fixed resolution to bear down opposition from whatever quarter it might rise up to meet them. It was to be expected that they should, with such a work in hand, make sure of their ground before commencing operations and do first the thing that ought to be first done. And their care in arranging and energy in prosecuting that work met with its reward. Importunate prayers, urged midst falling tears by enchanting women before impressionable officials—particularly impressionable under such influences—met with a full measure of success, but not the fullest, as the reader will perceive during the narration of the occurrences following thereupon. Gardiner was released, but not at the time nor exactly under the conditions for which his influential friends and relatives pleaded.

The principal actors in the affair—principal, at least, so far as the general public were permitted to know at the time—were the prisoner's two married sisters, Mrs. Archina Griffiths, wife of Henry Griffiths of York-street, Sydney, and Mrs. Charlotte Deacon Cale, wife of Joseph Cale, of King-street, Sydney. That there were others engaged behind the scenes—hatching inspirations and pulling the strings which set the ladies named in motion and kept them moving on the ordered track—was subsequently made very clear when the public whose interests were chiefly involved probed the matter

through their Parliamentary representatives and caused to be brought forward into the light facts which at the time were carefully kept in the background.

The first step to be taken was the preparation of a petition for presentation to the newly-arrived Governor, Sir Hercules Robinson, by the two sisters, and that step was an easy one, and based as it was upon expressions of the strong natural affection entertained by loving sisters for an erring brother upon whom severe punishment had fallen, it was one calculated to be effective. Not even Governors can remain wholly unmoved at the cry of tender relatives in pain. The petition was as strong as it could well be made, and after briefly reciting the offences of which Gardiner had been convicted and the sentences passed upon him ran as follows :—

Your petitioners humbly implore your Excellency's merciful considerations of their unfortunate brother's case, towards affording a remission of his terrible sentence on the following grounds :

1. Previous to his apprehension he was obtaining his living as a storekeeper in Queensland for nearly two years, having abandoned his former career of wickedness, and had left the colony fully determined to lead a life of honest industry ; proofs of the good character he had gained could have been produced at his trial ; and it is well known that gold, both by escort and by private individuals, has been placed under his care with confidence and safety during that time.

2. That only four months after his conviction there was a desperate outbreak of prisoners in the gaol, in which he took no part whatever ; his conduct on that occasion was so noticed by the Inspector-General of Police that he assured the prisoner that he would see the Colonial Secretary, Mr. Forster, and have a record of it made for the future benefit of the prisoner ; to this record your petitioners would humbly refer your Excellency, the late Dr. West having told the prisoner that it had been made.

3. That the prisoner has assiduously endeavoured to make himself as useful as possible in the work appointed for him, and has invented a contrivance which has greatly improved the making of the selvedge on the matting, which was previously very defective and much complained of.

4. That the prisoner has always given every satisfaction to the Sheriff as well as to the Governor of the gaol, and other officers and overseers during the whole time, now the ninth year of his imprisonment.

5. That your petitioners beg also humbly to direct your Excellency's attention to the fact, that his Honor the Chief Justice has more than once publicly remarked that, although during the time there was so much bushranging he should always inflict the severest penalty of the law, nevertheless, we might perhaps be permitted respectfully to suggest that your Excellency would not be unwilling to exercise your prerogative of mercy now the crime of bushranging has been happily and effectually suppressed.

6. That the prisoner's health has already suffered so much from his long confinement as to cause him to be almost constantly under the hands of the doctor for disease of the heart and other serious symptoms, which have obliged him for a time to be placed in the hospital of the gaol, and have totally incapacitated him from continuous work.

Lastly. That your petitioners feel certain that if your Excellency be pleased to grant him a pardon, he will thus be afforded an opportunity of redeeming the past; and from your petitioners' knowledge of his character they can confidently assure your Excellency that they believe he will never again commit himself; and from the very confident and feeling manner in which his Honor Sir Alfred Stephen has on many occasions addressed himself to petitioner's brother, and remarked upon his reformation, they hope that he will recommend the prayer of this petition to the most favorable consideration of your Excellency.

Praying the Lord may guide to a wise and judicious conclusion in disposing of this petition, your Excellency's petitioners as in duty bound, will ever pray, &c.

The petition was not presented on the day on which it was drawn up, nor for many days thereafter, for it was

decided to add supports to it in the shape of official recommendations and favorable reports, and supplementary petitions from without the family circle. And in obtaining these the two sisters—for they were the active canvassers on every occasion for reasons which there is no necessity to name—spent not a little time. When the document fell into gubernatorial hands, therefore, it was buttressed by the most powerful recommendations procurable. That famous barrister, and then active legislator, W. B. Dalley, whose name now has a place among the renowned dead of the motherland in Westminster Abbey, supported the prayer of the petition by the following recommendation, his name being bracketed with a then popular member of the lower branch of the legal profession, Mr. Driver :—

We, the undersigned, beg most respectfully to recommend the foregoing petition to your Excellency's most merciful consideration, the more especially from the desire to reform evidenced by the prisoner before capture, and his conduct since his incarceration, and trust that your Excellency may be pleased under all the circumstances of the case to deem the period of the sentence already expired sufficient for the ends of justice.

Similar recommendations—about a dozen in all—were signed by a number of professional public men and citizens of Sydney, the number of signatures footing up in the aggregate between four and five hundred. One gentleman, a member of Parliament, put in a special word, to the effect that he had held a long conversation with Gardiner when visiting Darlinghurst Gaol, and was convinced from what he then said, that he deeply regretted the great wrong of which he had been guilty. Another gentleman named Hill made statement as follows :

Some years ago, whilst Christie, or Gardiner, was residing at Apis Creek, in the colony of Queensland, keeping

a roadside accomodation house for travellers, I was travelling in company with Mr. Keene, and on our return had occasion to want some flour from a dray which we met on the road; the driver refused to sell, urging that it belonged to Christie; in about half-an-hour after Christie made his appearance, and inquiring after his dray we mentioned the fact, when he immediately rode on and ordered some to be sent to us. From enquiries his conduct caused us to make, we learned that his conduct was civil and obliging, and that he was always willing to help or serve any traveller.

Since his long incarceration, I have made it a part of my duty to continually enquire of his behaviour and general deportment, and have found it to be good. Under these circumstances, and believing that when I saw him at Apis Creek he was a good member of society, I have now no hesitation in recommending the prayer of the petition.

Following this came a rather curious little document, dated from St. Phillips, and signed Thomas O'Reilly—curious, inasmuch as it introduces the qualifications of one of the petitioners for the work of training children, and Gardiner was surely no child, albeit he may have stood in need of better training than he had received as a child. Here is the wording: "I have known Mrs. Griffiths for many years, and have every reason to believe her to be highly respectable, and one who desires to train her children in the fear of God." As Mrs. Griffiths' character was not in question, the reader may have some difficulty in explaining to his or her own satisfaction why such a credential should have been attached to the petition. Anyhow, it does not bear upon the subject now being dealt with, and we may let it pass.

But there was one recommendation which in point of value must have put all other recommendations in the shade. It was signed by no less a personage than the then Colonial Secretary, Mr. William Foster, and ran as follows:—

Having been referred to in a petition for the mitigation of the sentence of Francis Christie, as holding the office of

Colonial Secretary when an outbreak occurred in Darlinghurst Gaol, I have much pleasure in testifying to the fact of Christie's good conduct on that occasion, as well as to his general conduct during the entire period of his incarceration, so far as it came under my notice in either case. I am glad to record this opinion so that it may operate as it ought in the prisoner's favor. And so far as these and other circumstances mentioned in the petition entitle his case to favorable consideration of the Government, I am willing to add my testimony and recommendation.

Then came a report from a medical gentleman, Dr. Moffitt, who evidently possessed the rare gift of diagnosing moral complaints as well as physical, and pronouncing upon their several stages. He reported as follows:—"For about fourteen years I have been medical attendant on the family of Francis Christie, and have frequently visited him since his confinement in Darlinghurst, and during my last three visits I was glad to observe that he was greatly changed for the better, having entirely lost that peculiar ferocity of character which characterised him immediately after his capture in 1864; and it is my opinion that he is now completely recovered from his evil ways, and that it would be perfectly safe to permit him to go at large." It will be observed that the worthy physician omitted to say anything concerning the prisoner's physical health, a rather remarkable circumstance, seeing that one of the grounds upon which the sisters urged his release was that he was suffering from heart disease. As a curiosity, this medical report should be bracketted with the clerical testimonial from St. Phillips'.

When the time was considered ripe for the presentation of the petition, Mr. (now Sir) Henry Parkes was head of the Government, and coming into the hands of Ministers as the responsible advisers of his Excellency, before sending it up to Government House the Colonial Secretary referred it to the

sheriff and gaoler for report. Then the following particulars of conviction and prison history were forwarded by the principal gaoler, Mr. Read :—

Name of prisoner—Francis Clarke, *alias* Christie, *alias* Gardiner; birth-place and age—New South Wales, 43; where convicted—Sydney Criminal Court; when convicted—4th and 8th July, 1864; offence—wounding with intent to do grievous bodily harm and robbery, being armed (two offences); sentence—15 years road (first two in irons), 10 years roads at expiration of first sentence, and seven years roads at expiration of second sentence (in all, 32 years); Judge—Chief Justice; previous convictions—as Francis Clarke, Goulburn Circuit Court, March 17, 1854, horse stealing, 14 years' roads; prison history—marks: in the gaol at Darlinghurst from January 1, 1866, to August 20, 1872; total number of days, 2423; orderly, 2323; industrious, 2016; disorderly, 0; idle, 0; sick, Sundays, and holidays, 407; punishments—none. General conduct in gaol very good, and sets a good example to others in every way.

With reference to statements in the accompanying petition in favor of the prisoner named in the margin (Francis Clarke, *aiias* Christie, *alias* Gardiner), I do myself the honor to state that the contrivance for improving the selvedge of the matting therein alluded to was the invention of prisoner. It is now in use and very effective. The matting was certainly wanting in finish until this addition was made to the looms, and many customers complained of its faulty make, and would probably have obtained their supplies elsewhere had not this improvement been introduced.

As regards the prisoner's conduct on the occasion of the outbreak, November 1, 1864, I must say he did not take any part in that desperate attempt, and, as far as I can learn, discouraged the proceeding, thereby incurring some annoyance from his fellow prisoners, who looked to him as a leader. He was considered, both inside and outside the gaol, the leader of all bushrangers, and at that time a great many of that class were commencing long sentences. As a rule, his conduct has been good and exemplary; there is, however, one exception; that was in November, 1864, when he with another prisoner (Cust) opened communication with their friends outside with a view to effect their escape; in this way they were assisted

by a warder, who was dismissed for attempting to carry a letter out of gaol for the prisoner's friends.

Since that time I have not had occasion to find fault with prisoner's conduct in any way.

This report was furnished by Mr. Read at the request of the Sheriff, who, in returning the petition with the report attached to the Principal Under-Secretary, wrote the following minute :—

Minute of the Sheriff.

FRANCIS CHRISTIE, *alias* CLARKE, *alias* GARDINER.

In returning the petition in this case with the usual particulars of conviction, I have thought it desirable to accompany the same with a special report from the principal gaoler (herewith enclosed) upon the conduct and services, together with a report from the visiting surgeon respecting the health of the prisoner.

Having regard to the prominence of prisoner's career, the circumstances attending the offences of which he was convicted, and the great length of his sentence (thirty-two years), the dealing with this case is of unusual importance in respect of its bearings upon those of numerous other prisoners serving long sentences for offences of a similar character imposed during the prevalence of bushranging, who will form expectations or modify [their hopes of commutation according to the decision that may be arrived at.

There is in the minds of those prisoners an expectation, founded partly upon the remarks of the Judges when passing sentences, and partly upon the action of the Government in reductions made in some of the sentences referred to, that such sentences are not intended to be served in full or even up to the periods of remission provided by the regulations. And if this view is to be entertained, it is desirable that the subject should be considered, and this and the other cases alluded to dealt with under a general idea of reduction of term of sentence, modified in each case by the circumstances and the prison career of the prisoner; the greater proportionate reduction being allowed in the longer sentences according to the principle laid down in the remission regulations.

It probably was never contemplated that this prisoner should serve the full period of his sentence, and as he has now

served eight years, and the crime of bushranging has been practically abated, the time for making any limitation would not seem to be unfavorable. This remark applies to the other cases in the same category. Such a course would tend to settle the minds of the prisoners concerned, and give them encouragement in reformation of conduct and industry.

In the cases of the prisoners referred to, the granting of conditional pardons (to exile) would in many respects be more desirable than the granting of actual remissions, and would admit of cases being dealt with at earlier periods, and without so apparent an interference with the ordinary operation of the remission regulations. The release of a prisoner under a conditional pardon is not open, as regards its effect on the criminal class, to so strong objections as his release in this colony wherein he might return to his former neighbourhood.

If any reduction be made in the sentence of this or any other similarly situated prisoner, I would suggest that it be made so that he could earn remission according to the regulations upon the reduced period, in order not to withdraw the incitement to good conduct and industry; thus, were his sentence reduced to twenty or fifteen years, that he could earn a further reduction of one-fourth. A conditional pardon granted after a service of ten years would be about equivalent to the reduction of a sentence to fifteen years on the terms above mentioned. The advantage to the prisoner, indeed, would generally be with the latter.

HAROLD MACLEAN.

September 12, 1872.

But the petition was not yet ready for presentation to the Governor, and the Colonial Secretary (Mr. Parkes) having received it from the Under-Secretary sent it forward for report to his Honor the Chief Justice, who had passed the sentences upon the prisoner. And this is what the Chief Justice said about it:—

The Chief Justice to the Colonial Secretary,
Supreme Court, 30th November, 1872.

Sir,—I have attentively read and maturely considered all the petitions in Gardiner's favor, with the recommendations attached to them; as also the reports of the head gaoler and

surgeon, and the very judicious remarks of the Sheriff in his capacity of Inspector of Prisons. I have seen one or both of prisoner's sisters, who are the principal petitioners, and the persons to whom he is indebted for the numerous signatures which are before me. I have also more than once, although not of late, seen Gardiner, and personally received representations from him. And I feel deep sympathy for those affectionate relatives, who are, I believe, respectable members of society. I moreover think it probable that Gardiner's desire to abstain from evil is sincere, and perhaps may be permanent. But remembering what I do of his career, what his past character and his crimes have been, and the notoriety which these have acquired, as well as the widely spread mischief which his leadership and tutoring for so many years occasioned, I dare not incur the responsibility of advising any mitigation in his case. I do not mean that none should at any time be granted, but the end and object of all punishments are, first, the preventing of the individual, and secondly, the deterring of other individuals, from the committing of similar crimes. And I am satisfied from long experience and observation, that the particular crime of bushranging with its frightful loss of life and property, and the insecurity of both which it entailed, with its attendant terrorism, has been reduced to its present dimensions and state solely by the rigorously severe punishments (in which I include the deaths of some of the criminals by the police as well as by the Courts of Justice) inflicted upon the perpetrators. In several instances, no doubt, the penal servitude punishments have been mitigated, as the crime itself has gradually diminished in frequency. But I am compelled by a sense of duty, in this case peculiarly irksome, to point out, that of Gardiner's companions two or three have been executed for crimes in which he participated; that for the shooting both of Constable Hosie and Sergeant Middleton, he himself narrowly (and most unrighteously) escaped a capital conviction; and that of the thirty-two years to which he was justly sentenced, he has as yet barely endured one-fourth.

I am, etc.,

ALFRED STEPHEN.

Four days after the Chief Justice had sent in this report, the petition with all its attachments was sent on to the

Governor by the Colonial Secretary, who specially directed his Excellency's attention to the fact that among the signatures supporting the petition were those of prominent public men, notably those of Messrs. Dalley, Driver, Hill, Eckford, (members of Parliament), and also calling his attention to the minute of the former Colonial Secretary, Mr. W. Forster. Whether Mr. Parkes intended by this means to lead the Governor to believe that he favored the petition, as head of the Government which was supposed to give his Excellency advice on all important matters, was a point upon which public opinion was divided, and in the counter agitation that arose simultaneously in all parts of the colony, when the result of the petition was made known—which was not until two years had passed—the question was debated with great heat. But I must not anticipate. The petition duly reached the Governor's hands, and his Excellency returned an answer on the very next day in words few but pointed. "When the prisoner has served *ten* years," he wrote, "his case may again be brought forward. If his conduct should in the meantime be good, I should feel disposed to grant him then a pardon, conditional on his leaving the country. At present I do not concur with the petitioners that the sentence which the prisoner has undergone is sufficient for the ends of justice."

Meanwhile the anxiety of the sisters increased. They were doubtless apprised of all that was transpiring, and had evidently learned that the reports sent in were favorable—one report alone, that of the judge, excepted. To Sir Alfred Stephen, therefore, a special appeal was made on the very day the petition with his report had been forwarded to the Governor. That appeal and its result was brought to the knowledge of Mr. Parkes, on the day after the Governor had forwarded his reply, in manner following:—

The Chief Justice to the Colonial Secretary.

In re Gardiner's petition for mitigation.

My dear Colonial Secretary,—I have received a letter (one only of several) from one of Gardiner's sisters, which I think ought to accompany the papers, with a copy of my reply, I therefore enclose both, begging you to submit them with the petitions to his Excellency. Or if the case is already disposed of, I solicit the favour of your directing the present enclosures to be placed with them.

I have abstained from saying anything about Gardiner's career before his bushranging began; but I can add his previous history if desired. If my sentence on him for horse stealing, passed at Goulburn, had not been interfered with, he would have had no opportunity of commencing cattle stealing at Carcoar, or of robbing the gold escort afterwards; for the latter was committed before that sentence had expired.

I am, &c.,

ALFRED STEPHEN.

Supreme Court, 6th December, 1872.

To his Honor Sir Alfred Stephen.

Sir,—Again I place before you the one earnest wish of my anxious heart, in the hope that you will once more extend your mercy to my dear brother, Francis Christie. Oh, forgive him, for the sake of those who so earnestly plead for him; forgive him, as I hope the Great Judge of all may forgive you and yours when you plead for it. Mercifully grant him his liberation in the colonies, so that his sisters may draw him nearer them and farther from danger. Could you know how we have waited and watched for an answer to our petition—an answer which seems so long delayed—you would have spared us, I believe, some of the anxious suspense; but if the answer be what we could wish, how little will the past misery seem compared to the boon ultimately granted. I know, your Honor, that my brother's sins have been many. I do not wish to think his sentence was unjust, but his punishment has been great, and his reformation genuine, and may God grant that it may be your will to again restore my dear brother to freedom. With you his liberation or endless imprisonment rests, so far as earthly power rules; therefore, be that answer what it may, to you, Sir Alfred Stephen, I

must look. Be merciful when you would look at the darkest side of this man's character, and forgive me for taking the liberty of writing to you as I have done. Trusting that you will pardon my presumption, I remain, &c.,

A. GRIFFITHS.

December 4th, 1872.

[REPLY.]

The Chief Justice has read with deep sympathy the several letters which he has received from Mrs. Griffiths and her sister, and he will forward her letter of yesterday to his Excellency the Governor. The Chief Justice is quite willing to believe all that is represented in Christie's (otherwise Gardiner's) favour; but he feels bound to remember the notoriety of the prisoner's bushranging crimes, and their number, and the frightful evils to which they led, including the deaths of many persons, and the execution of two young men for acts in which Gardiner was the ringleader. Nor can it be forgotten that of the thirty-two years of his sentence one-fourth even has not yet elapsed.

The Chief Justice cannot, therefore, undertake the responsibility of recommending any mitigation in the case. But he does not admit that any such responsibility ought to be cast upon him. It is peculiarly a question for the Governor and Executive Council; and if they should think it right at some future period to remit any portion of the sentence, Sir Alfred Stephen, as an individual, would, for the sake of the petitioners, be glad to hear of the decision.

Supreme Court, 6th December, 1872.

This supplementary letter and reply Premier Parkes at once ordered to be sent on to the Governor, and on the same day his Excellency replied: "I have already decided to grant a conditional pardon at the termination of ten years' imprisonment." Then, evidently with the desire of impressing all parties with the finality of this decision, the following letter was forwarded by the Principal Under-Secretary to the Chief Justice, the sheriff, and the two petitioning sisters: "I am directed by the Colonial Secretary to inform you that his Excellency the Governor has been pleased to approve of th

prisoner's case being brought forward for consideration when he shall have served ten years of his sentence. I am further desired to state that, if the prisoner's conduct should be in the meantime good, his Excellency would feel disposed to grant him a pardon, on condition of his exiling himself."

But the condition of exile attached to the promised pardon was unsatisfactory to the prisoner's sisters. They desired to have him restored to freedom and to them, evidently believing that he was too good a man for the colony to lose altogether; and being impressed with the clearly-expressed determination of the Governor that Gardiner must leave the colony if released from gaol, they, when the two remaining years of the ten had nearly expired, passed his Excellency and approached the Executive Council, to whom one of them—the lady who, according to the certificate from St. Phillip's, desired to "train her children in the fear of God"—forwarded a petition which ran thus:—

To the Honorable the Executive Council of New South Wales.

The humble petition of Archina Griffiths, wife of Henry Griffiths, 659 George-street, Sydney, sheweth:

That your petitioner's brother, Francis Christie, was apprehended in February, 1864, and tried at the Criminal Court, Sydney, on the 8th July, before his Honor the Chief Justice, and convicted on the following charges:—For shooting and wounding trooper Hosie he was sentenced to fifteen years' imprisonment, the first two years in irons, with hard labor, and for robbing Messrs. Hewett and Horsington he received two cumulative sentences, ten and seven years, making a total of thirty-two years of hard labor.

Your petitioner humbly implores your merciful consideration of her unfortunate brother's case, and that you will grant him a full remission of the unexpired term of his sentence, with a pardon suffering him to redeem the past in the Australian colonies, and your petitioner urges the following reasons:—

1. Previous to apprehension your petitioner's brother was obtaining his living as a storekeeper in Queensland for nearly two years, having abandoned his former career of wickedness, and had left this colony fully determined to lead a life of honest industry. During these two years gold, both by escort and private hands, has, it is well known, been left in his charge with confidence and in safety.
2. That when, only four months after his conviction, there was a desperate outbreak of prisoners in the gaol he took no part whatever therein, and his conduct on that occasion was such as to draw from the Inspector-General of Police an assurance that he would recommend the Colonial Secretary (Mr. Forster) to make a record of it for the future benefit of the prisoner, to which record your petitioner humbly directs your attention, the late Dr. West having told the prisoner that it had been made.
3. That the prisoner has assiduously endeavoured to make himself as useful as possible in the work appointed for him, and is the inventor of an ingenious contrivance which materially improves the making of matting, hitherto defective.
4. That the prisoner has always given every satisfaction to the Sheriff, the Governor of the Gaol, and all other officers during the ten years of his imprisonment.
5. That although his Honor the Chief Justice has often declared his intention to visit convicted bushrangers with extreme rigour, your petitioner would humbly plead that the cessation of bushranging in this colony may operate in favor of the prisoner, as it appears to have done in the case of the released prisoner John Vane (whom, however, your petitioner's brother did not know previous to his imprisonment) and others.
6. That the prisoner's health has already suffered so much from his long confinement as to cause him to be almost constantly under the hands of the doctor, for disease of the heart and other serious symptoms, which have obliged him for a time to be placed in the hospital of the gaol, and have totally incapacitated

him from continuous work.
 7, and lastly. That your petitioner feels certain that if a pardon be granted to the prisoner, and he be permitted to once again dwell among his relatives, he will do all that lies in his power to lead an honest and respectable life, and prove himself worthy of your clemency, and will never again return to his evil ways, but by exemplary conduct in the future fully and completely redeem the past. Your petitioner also believes that his Honor, Sir Alfred Stephen, will graciously recommend, as he has very often spoken very kindly to the prisoner as to his reformation, and always seemed to take a kindly interest in him.

Praying the Lord may guide to a wise, merciful, and judicious conclusion in disposing of this petition, your humble petitioner will, as in duty bound, ever pray, etc.

That petition was also supported by recommendations from Mr. W. B. Dalley, Dr. Moffitt, and half a dozen merchants of Sydney, who, on the grounds set forth in the recommendations of two years previously, expressed earnest hope that the Executive Council might be pleased "to deem the period of the sentence already expired to be sufficient for the ends of justice." And thus supported it was sent to the Comptroller-General of Prisons for his report. That report was sent in to the Under-Secretary a fortnight afterwards, and must have proved unsatisfactory to Mrs. Griffiths, inasmuch as it was unfavorable to the granting of her prayer. It read thus:

In returning the accompanying petition in favour of prisoner Chistie, alias Gardiner, I beg to refer to my report, dated 12th September, 1872, upon the petition under which the prisoner was allowed a conditional pardon.

I took occasion in that report to urge the special importance in the public interest involved in the dealing with the case of this prisoner, by reason of the prominence of his career and the circumstances of his case.

That importance has been fully exhibited by the necessity that the granting to Christie of a conditional pardon, at all

events, initiated of reconsidering the sentences of a large number of prisoners who may be termed lesser offenders of the same description, and a plan of abridgment of such sentences was prepared with much care and forethought, the main policy of which was permitting the men concerned to leave the Australian colonies, chiefly based upon the action taken in Christie's case, approved, and now in course of being carried out.

Upon the same principle of equitable dealing which enjoined the adoption of the plan mentioned, if the condition of exile be foregone in Christie's case, it should similarly be foregone in those of the other men, and the whole policy of the plan abandoned.

The reasons now put forward in Christie's favour were fully considered when the former petition was dealt with, and there can be no question but that the case was determined upon with a lenity which the condition of exile alone could reconcile with public opinion, and with a sense of justice towards the general body of criminals serving their allotted periods.

I confess that I am surprised, in view of the merciful consideration with which the former petition was treated, at the present petition having been made, and I would most strongly deprecate any compliance with its prayer.

HAROLD MACLEAN,

Comptroller-General of Prisons.

That report was dated April 20th, 1874. Four days afterwards Premier Parkes added the following minute and sent the papers on to his Excellency:—"The enclosed petition prays for the remission of Gardiner's sentence. The prisoner has been authorized a conditional pardon, the condition being exile. The Sheriff strongly deprecates a compliance with the prayer of the petition." A few hours afterwards the document is returned bearing Sir Hercules Robinson's initials and the simple word "Refused!" and shortly thereafter the following polite little note was sent to Mrs. Griffiths from the Under-Secretary's office:—

Colonial Secretary's Office,
Sydney, 29th April, 1874.

Madam,—In reply to your further petition, praying that your brother, the prisoner named in the margin, may receive an unconditional pardon, I am directed by the Colonial Secretary to inform you that his Excellency the Governor sees no grounds for authorising a compliance with your applications.

I have, &c.,
(For the Under-Secretary,)
M. R. ALLAN.

The agitators thus became fully impressed with the fact that the line of gubernatorial clemency had been drawn at pardon with exile, and as the pardon with exile was better than no pardon at all they decided that it would not be wise to further object to the terms. They therefore resolved to possess their souls in patience till the time of release should come.

And that time came soon—all too soon for the people whose peace had been disturbed by the reign of terror which the prisoner had set up during his former privileged absence from the prison to which he had been condemned for previous crimes. And here I may point out that no proceedings were ever taken against Gardiner for his flagrant breach of the conditions of his ticket-of-leave, the lesser offence having been overshadowed by the greater.

When the fact that the King of the Road was to receive a conditional pardon leaked out—for until the manner and hour of his release had been decided the matter was known only to the chief authorities, the prisoner, and the prisoner's relatives—a great outcry was raised. The first intimation received by the public that the notorious bushranger was to be liberated was conveyed to them through the press reports of proceedings in Parliament. Three months more of the ten years of imprisonment which the Governor had fixed as

the limit of Gardiner's punishment only had to run when an inquisitive member of the Legislative Assembly asked the Colonial Secretary if it was true that the Government intended to release the prisoner before the expiration of the sentence passed upon him ; and if so, when was that intention to be carried into effect ? The question was asked on April 29th, 1874. The answer was given at once, Mr. Parkes producing and reading from the petitions, recommendations and reports which I have already given, and stating that the termination of the ten years would be about the 6th July following.

Then arose a storm as fierce and long-continued as any that had burst over the political world of New South Wales since the establishment of Responsible Government. From both sides of the House the action of the Government in assenting to the release of this notorious bushranger was denounced as an outrage, a foolish and injudicious interference with the proper course of justice, an exhibition of weak-mindedness and disregard of the people's welfare that admitted of no excuse. One of the foremost in the ranks of those who charged the Government in this matter was Mr. Edward Combes, who then represented the electorate of Bathurst in Parliament, and as the action taken by him was fraught with serious consequences by the Government, it is necessary that special prominence should be given thereto.

When giving his lengthy explanation in answering the question concerning the release of Gardiner, Mr. Parkes laid great stress upon the fact that his predecessor in office—Mr. Forster—had attached a minute to the petition of two years previously, which minute he contended was a recommendation that the prayer of the petition should be granted. From the front opposition benches Mr. Forster vigorously denounced this interpretation, pointing out that he had

simply placed on record his endorsement of the statement made by the petitioners that Gardiner's conduct since his imprisonment had been exemplary, being careful not to give an opinion that it was right to liberate the man. And certainly it would not be right, he contended, to liberate him under the conditions of exile stated, unless the Government could obtain a bond from others that he would not return. Those who opposed the liberation were anxious to know why clemency should be extended to this ruffian above all criminals. It had been argued in his favor that he had not actually shed blood, but if there had not been a mysterious halt in the advance towards his conviction made by justice he would have been tried and condemned for the Escort robbery and hanged, as was the unfortunate youth Mann, whom he had led into crime. He was more cunning than his followers, and quietly "cleared out" while they continued the course of robbery to which he had introduced them, and were either shot down in their tracks or sentenced to long terms of imprisonment. Thus they contended who sought to prevent the prison doors being opened to the King of the Road.

In replying to the strictures of those who opposed the release, Mr. Parkes made the very best that could be made of the case. He enumerated the good deeds of the prisoner in gaol—the reform he had effected in the manufacture of prison mats, his abstention from wrong acts, &c.—and submitted that he was entitled to all the credit that could come to him for his good conduct. And then, to the surprise of everyone, he tacitly admitted that he was not prepared to say whether what had been done in this case would or would not be conducive to the public interests—but he had very serious doubts about it. He went to some pains to give the House the impression that his Excellency had acted in the

matter entirely on his own responsibility, the Government not having been asked for advice. But in doing this he exposed himself and his colleagues to further attack. As the advisers of his Excellency, the Government should have demanded to be heard in a matter so important as this, and if the Governor refused to listen their plain duty then would have been to refuse to act as his advisers any longer. And this obligation pressed more heavily upon the Government in this case by reason of the fact that the Governor was comparatively new to the country and therefore ignorant of the loss and suffering, individual and communal, that had been caused by the man for whom extraordinary clemency was being so strongly sought. The Government should have warned him if need be, and then have boldly thrown up their positions if the Governor persisted in doing what the Colonial Secretary now admitted was in his opinion a wrong, instead of coming down to the House and whining about the Governor's independent action. This was the contention of the Opposition; and so fiercely did the battle rage that it resolved itself into a life and death struggle in the House. Night after night the Opposition harassed the Government by putting questions and moving motions, and for the time being every other question sank into insignificance.

The first debate having closed Mr. Combes re-opened the subject by asking the Colonial Secretary the following questions:—“ 1. The cost incurred by this country for the apprehension of prisoner Gardiner? 2. The names of the bushranging gang, of which Gardiner was the leader, that robbed and attempted to murder the gold escort at Eugowra? 3. Have the Government ascertained the respective fates of these men; and if so, will they have any objection to giving the information to this House? 4. What inventions or

improvements have been introduced into Darlinghurst Gaol by the prisoner Gardiner? 5. Will the Colonial Secretary state the nature of the improvements—whether mechanical or relating to improvements in prison discipline?" To these questions Mr. Parkes replied:—"1. £500 reward was paid to the person who supplied the information regarding Gardiner's whereabouts which led to his capture. 2. The men under-named were apprehended on the charge of wounding the police and robbing the gold escort at Eugowra—Henry Manns, convicted and executed; John Bow and Alexander Fordyce, sentenced to death, commuted to penal servitude for life; John Maguire, acquitted; Daniel Charters, admitted approver. Two other men, Gilbert and Darcey, were apprehended (with Manns) for the offence, but they were all afterwards rescued from the custody of the police. The approver alleged that Gardiner was the ringleader of the gang. Other persons were suspected of being concerned in the outrage, but the evidence was not sufficient to implicate them. 3. Gilbert was shot by the police when outlawed after committing several murders; what subsequently became of Darcey was not known. 4. Chiefly a mechanical contrivance for improving the selvage of the matting manufactured at the gaol. 5. This contrivance operated so that each time the shuttle was thrown by the pulling of a lever the selvage threads were crossed on each side, thereby producing a level and close selvage instead of as formerly an irregular selvage half an inch long formed by a loop. Christie also by his skill and assiduity much promoted the advance of the brushmaking and bookbinding industries, in the latter of which he had become very proficient and instructed others. Neither Christie nor any other prisoner had any concern with prison discipline."

Subsequently Mr. Combes put other questions:—Was it a fact that in 1854 Gardiner had been sentenced to 14 years' hard labor for horse-stealing and afterwards liberated? 2. Were these facts communicated to his Excellency by his responsible advisers? 3. Was any advice or remonstrance offered by his Excellency on this subject. 4. Was it the intention of the Ministry to offer such advice or remonstrance? 5. Was the liberation decided on conclusively? In answer to these questions Mr. Parkes gave the facts which I have already narrated, with a few additional particulars. Gardiner had only served five years of the fourteen when he was released on ticket-of-leave, and that sentence he was undergoing in 1874. He further added that he could not say what advice would be offered to his Excellency, who would have the case fully submitted to him on 8th July, following.

Then Mr. Combes moved the following resolution, which was carried:—“That an address be presented to the Governor praying that his Excellency will be pleased to cause to be laid upon the table of this House a return of the prisoners whom it is proposed to exile or liberate during the next twelve months, showing in each case the name of the prisoner, his offence, the duration of imprisonment to which he was sentenced, the period of sentence already expired, whether he had been previously convicted, and if so, for what offence, and the duration of his sentence; also, the minutes of his Excellency's advisers, giving the reasons, if any, for exile or liberation.” But there was some delay in the production of the papers and Mr. Buchanan asked further questions:—“Is the prisoner Gardiner alone to be liberated; if not, how many others are to receive a conditional pardon? 2. Will the Colonial Secretary give the names of all the prisoners who are to have the benefit of this clemency?” To

these questions the Colonial Secretary replied that a return would be laid upon the table of the House in a few days giving the information desired. And the House continued to wait, although called upon in the meantime to hear Mr. Buchanan ask for more information, namely:—"Was the decision of his Excellency the Governor, to the effect that the prisoner Gardiner should be liberated at the expiration of ten years, at any time communicated to the prisoner; and if so by whose authority, and by whom was such communication made?" To this three-barrelled question Mr. Parkes made answer that the decision had been communicated to the prisoner, according to practice in all such cases, by the sheriff through the principal gaoler. "Then," ejaculated Mr. Buchanan, "you must let him out if he was five hundred times worse than he is!"

Still the House and the country waited for the information promised, and to keep the subject warm Mr. Buchanan put one more question to the Colonial Secretary:—"Is it the intention of the Government to recommend the liberation of seven other prisoners now in gaol who have been there for over ten years?" The Assembly held its breath while Mr. Parkes replied:—"One or more of those prisoners has already been allowed a conditional pardon, he thought eighteen months ago, but he refused to take it, and is still in gaol, serving his sentence—that was John Bow. He thought that both he and Fordyce had been allowed a conditional pardon eighteen months ago, and they declined to take it, preferring to serve their sentence rather than be exiled. It was not the intention of the Government to take any steps in relation to the others."

And then the promised information was forthcoming, and the House and the country received enlightenment concerning

Gardiner's previous liberation, and the number of other prisoners who were to receive conditional pardons with him when the ten years should close. The reader has already learned something of the good fortune that attended Gardiner after his first double conviction in this colony, but it is necessary that some of the ground should be re-traversed in order that the full extent of that good fortune, and the circumstances leading up to it, may be fully apprehended. The papers tabled by the Government furnished all the information requisite for this, and as the reader will find much food for reflection therein I do not hesitate to quote extensively from them. Among the papers laid upon the table of the Assembly was the following, purporting to be a petition from the interesting penitent horse-thief himself, who was known in the prison annals as Francis Clarke; and were it not for the fact that it was dated Reid's Flat, Lachlan River, 6th April, 1859, one might easily suppose it to have been the production of some humane, sympathetic, grave chaplain of the period. It was addressed to Sir William Denison, the then Governor of the colony, and was endorsed by the signatures of the two prosecutors, whose horses Clarke, *alias* Gardiner, *alias* Christie, had been convicted of stealing:—

The humble petition of Francis Clarke, a prisoner of the Crown, at the Penal Establishment at Cockatoo, as follows:

That your petitioner invokes your Excellency's clemency to take into favorable consideration his youth and the temptations incident to an early career of life, when left uncontrolled by parental influence or good example, to run a giddy headstrong course of life, and become involved in the commission of a crime for which he is now under penal sentence of servitude.

Your petitioner implores your Excellency to pause but for a moment on the five years nearly expired of penal service he has gone through, and, in the exercise of the Royal

prerogative of mercy, your petitioner supplicates your Excellency will be graciously pleased to restore him again to society, a sadder and a wiser man than he once was.

And having the unasked recommendations of those he injured, humbly approaches your Excellency with a prayer that you will grant to him a ticket-of-leave.

And your petitioner, as in duty bound, will ever pray, &c.

It is remarkable that in addition to the "unasked recommendations" above referred to, the prisoner's wishes should have been simultaneously backed up by the recommendations of William Taylor and Henry Newham, who promised employment and to do what they could to influence his future life for good. Reference was then made to the prison authorities, and it was ascertained that the prisoner would be entitled by continuous good conduct to a ticket-of-leave in December, 1859. Subjoined is the report of the superintendent at Cockatoo Island, dated 12th May, 1859:—

The petitioner, Francis Clarke, a native of the colony, was received here on the 10th April, 1854, under two sentences to the roads, the first of seven years roads, the second of seven years roads to commence at the expiration of the first sentence, passed upon him at the Circuit Court at Goulburn, on the 17th March, 1854, for horse stealing; since which period his conduct has been as follows, viz.:

30th April, 1855—Disobedience of orders; three days' cells.

17th April, 1856—Absented himself on the afternoon of this day, in company with Joseph Roberts, a native, and remained secreted until the evening of Sunday, the 20 April, 1856, when he was apprehended in the lumber yard.

His conduct since then has been generally good.

On the 5th July following Mr. H. Newham wrote to the Colonial Secretary as under:—

Referring to a petition in behalf of Francis Gardiner, *alias* Clarke, a prisoner of the Crown, under sentence at Cockatoo, which I became the medium of transmitting to the

Government six weeks since—it being recommended by the prosecutors in the two cases of conviction—and undertaking to afford the man employment in my own service as also others—a guarantee that the locality are quite willing he should return to his native home.

I respectfully solicit information whether it has pleased the Executive Government to exercise the Royal clemency, by granting a remission or commutation of sentence under which Gardiner now labours. And those who have interested themselves in the subject will feel thankful for the communication.

Ten days afterwards Mr. Newham received the following reply from the Under-Secretary:—"In reply to the inquiry contained in your letter of the 6th instant, I am directed to inform you that the visiting justice of Cockatoo Island has been instructed to apprise the prisoner named in the margin, that by good conduct he will be eligible for a ticket-of-leave about December next." But the "locality" was beginning to grow bolder. It evidently desired to take the repentant and interesting Mr. Clarke back to its bosom at once, and was not by any means satisfied that his "return to his native home" should be postponed for six months. Accordingly Henry Newham appealed from the Colonial Secretary to his master, Sir William Denison, the Governor, in the following prayer:

I had the honor a few weeks since to be placed in receipt of a communication from the Honorable the Colonial Secretary, intimating to me that in the month of December next a ticket-of-leave would be granted to the prisoner named in the margin.

The application made in his favor had the spontaneous recommendation of his prosecutors. Their sympathy is enlisted with mine, because it has transpired since his conviction that, young and inexperienced at the time he was made the dupe of others.

I guarantee him permanent employment on one or other of my properties.

And, therefore, I most respectfully solicit the indulgence,

at your Excellency's hands, of a ticket-of-leave in the young man's favor, for the district of Lachlan River; and I will second the humane considerations of the Government to restore him to society a good and useful member.

Reid's Flat, Lachlan River, November 10, 1859.

That application was endorsed by the following minute: "Francis Gardiner, *alias* Clarke, has been recommended for a ticket-of-leave this month, and the Classification Board have offered no objection to his receiving the indulgence for Carcoar, the nearest police district to the Lachlan River.—Convict Department, December 13, 1859.—JNO. M'LERIE, Inspector General of Police." Then followed another epistle from the same gentleman, who evidently "knew the ropes" of prison discipline addressing "the Honorable the Board of Classification for determining on eligibility of prisoners of the Crown to remission of sentence, &c., &c., &c.," he says:—

Gentlemen,—I have previously placed myself in communication with the Government in respect of soliciting that the Crown prisoner intimated in the margin may be granted a ticket-of-leave for the Lachlan River district.

I have interested myself in this young man's behalf from principle. Since his conviction, it is known to me that he was the dupe of artful and designing knaves, who, profiting by his inexperience and knowledge of the world, left him to wither his best years in abject servitude.

The two prosecutors in this case have given me their signatures, and they respectfully invoke the clemency of the Government. They recommend a ticket-of-leave to be granted for the district; they are not apprehensive of wrong being meditated by him.

I have already pledged myself to find permanent employment for this man on one or other of my stations.

And, gentlemen, in conclusion, I will say, in assisting individually to carry out the beneficent intentions of the Government, by granting a ticket-of-leave, to reclaim and restore to society an erring member of society, I shall do a meritorious service, and respectfully trust that you, gentlemen, will second me in my endeavours.

I shall presume on the favor of your acknowledgement of receipt of this communication.

Who could resist this strong appeal on behalf of the "dupe of artful and designing knaves"—this "erring member of society," who had been left to "wither" in "abject servitude?" Not a Colonial Secretary, not a Colonial Governor, and certainly not a Colonial Gaoler. Consequently on 26th December, 1859, the prisoner was presented with a ticket-of-leave for the police district of Carcoar. In the meantime, however, the tender solicitude of the "locality" for the prisoner's welfare produces another advocate in the person of Mr. Edward Ledsand, who, on the 13th December, importuned the Under-Secretary to the Government in the following manner :—

I beg leave respectfully to place myself in communication with you, having reference to the Crown prisoner herein named, who has, I am informed, become eligible from some years' probation of penal servitude at "Cockatoo Prison Established," for "ticket-of-leave."

It is within my knowledge that the parties who prosecuted this man have transmitted or appended their certificates in his behalf, the gist of their recommendation being that Gardiner might be granted his indulgence of a "ticket" for the Lachlan district.

Persons of undoubted character and respectability are willing to engage him; they have subscribed to the petition in these terms.

And in addition to their zeal in this young man's behalf, I beg leave to become an advocate in the same cause. Trusting that the Executive Government will enable the friends of this unfortunate young man to establish him in credit and to earn for himself a good name, &c.

In due course the unfortunate victim of circumstances, now a repentant young man, set out to the police district of Carcoar, in manner previously narrated, to begin his career of amendment, or, to use his own unctuous description of

himself, "a sadder but a wiser man than he once was." He had profited by experience and the chastening influences of prison discipline, and as the reputation of the district stood in some sort committed to his reformation, we need not be surprised that after the expiration of twelve months he should have re-established himself in "credit," and have earned for himself a "good name," in certain quarters, but, alas, only in certain quarters. As the reader has been already informed, his "reformation" was not of that sort which those keen observers and custodians of the public peace, the police, could appreciate, although it was perfectly satisfactory to the ticket-of-leave holder and his interested friends. This was fully set out in the following document forwarded to his Excellency by the former, who, it will be observed, inadvertently uses a name other than that which had been entered up in the prison records, although it was the name by which he was commonly known in that "locality" which had opened its bosom to him :—

The humble petition of Frederick Gardiner, of the Fish River, in the colony of New South Wales, farmer and grazier ;

SHEWETH—

That on or about the 17th day of March, 1854, one Francis Clarke was tried at the Circuit Court, Goulburn, and convicted of horse-stealing on two several indictments.

That the said Francis Clarke was sentenced in each case to seven years' imprisonment.

That he served nearly six years at Cockatoo Island, and then obtained a ticket-of-leave for the district of Carcoar.

That he has been residing in the district of Carcoar for some months past, and his character and behaviour have been such as authorise your petitioner in seeking on his behalf some mitigation of punishment.

Your petitioner, therefore, humbly prays that your Excellency will be pleased to mercifully consider the premises, and afford such relief to the said Francis Clarke as to your Excellency shall seem meet.

And your petitioner, as in duty bound, will ever pray, &c.
Attached to that document was the following :—

Weego, December, 1860.

We, the undersigned householders, residing in the districts of Bathurst and Carcoar, hereby certify to your Excellency that we have read the annexed petition, and declare that we knew the said Francis Clarke a considerable time before his conviction, and have known him since, and we beg conscientiously and strongly to recommend the prayer of the petition.

ISAAC SHEPHERD, J.P., Wheeo.

JOHN REED, grazier,

EDWARD BARKER, grazier, } Prosecutors.

FRANCIS HARRIS, grazier.

WILLIAM FOGG, grazier.

WILLIAM ATKINS, grazier.

CHARLES AUGUSTUS HOWARD, grazier.

RICHARD TAYLOR, grazier.

HENRY NEWMAN, grazier.

Sir John Young having succeeded Sir William Denison as Governor of the colony, it was into his hands that this petition and attachment came, and he it was who had finally to deal with it. But before it reached its destination Sir Alfred Stephen, who had tried the prisoner, was requested to report upon it, and he did so in the following letter to the Colonial Secretary :—

Supreme Court, April 2, 1861.

I have perused all the papers sent me respecting Francis Clarke, otherwise Gardiner ; although many of them appear to me to be unnecessary to my report.

I know nothing of any of the parties signing the various recommendations ; and I observe that the names of Messrs. Ledsam and Newham, on whom I feel disposed, from the style and tenor of their letters, to place much reliance do not appear to the recent application.

If there be no reason to doubt the representation, however, that Clarke has conducted himself well since the acquisition of his ticket-of-leave, then I should not hesitate to advise compliance with the petition, bearing in mind the

assurances given prior to that indulgence, that the prisoner had been led to the crime for which I sentenced him, by other persons, practising on an inexperienced young man; and that there was every reason to hope that restoration to society would benefit him, without inflicting injury on others.

The only matters apparent on my notes of the trial are, that the prisoner committed some wholesale larcenies of horses, and found an easy sale, by travelling with a pretended servant—really his accomplice.

I am, &c.,

ALFRED STEPHEN.

Upon the receipt of this report Mr. Charles Cowper attached to it a minute directing that the district authorities should be referred to in order to ascertain what character Clarke bore in the "locality." This minute called forth the following reply:—"The Police Magistrate of Carcoar (the district in which Clarke has been holding a ticket-of-leave), has reported most unfavorably of the man's conduct, so much so that I have recommended the cancellation of the indulgence he holds.—JOHN M'LERIE, Inspector-General of Police." This document was dated from the Convict Branch of the Police Department, on May 14th, 1861; and on May 24th Sir John Young gave his decision, briefly and to the point. It was conveyed in the following words: "Prayer of petition cannot be acceded to."

This interesting correspondence closed with the following memorandum, which the reader will notice bears a date subsequent to the Escort Robbery and to Gardiner's disappearance from the colony with Mrs. Brown:—

Police Department, Inspector General's Office,
Sydney, 12th October, 1863.

Francis Clarke or Gardiner, the bushranger, was convicted at Goulburn Circuit Court on 17th March, 1854, and sentenced to two sentences of seven years on the roads, on two charges of horse-stealing.

A native of Boro Creek, near Goulburn.

Obtained a ticket-of-leave on 31st December, 1859, for Carcoar, which was cancelled on 13th May, 1861; absence from district, and suspected of cattle stealing.

I have quoted from these documents extensively in order that the reader may see how like the one agitation in the prisoner's favor in 1859-61 was to the other in 1872-4. The phrasing of the petitions and recommendations in both cases are alike—so much alike that critical readers will conclude that the same hands and brains were at work in each.

Meanwhile the time for Gardiner's liberation under Sir Hercules Robinson's hand was rapidly approaching, and the Assembly waited with not a few signs of impatience for the production of the other papers, which the House had instructed should be furnished, relating to the other prisoners who were to receive conditional pardons with Gardiner. The return asked for came at last, and formed an interesting supplement to the documents already produced bearing upon Gardiner's early career within and without the walls of the penal station at Cockatoo. In view of the record of the exploits of several of the bushrangers named, which will appear in proper order, that return will also prove interesting, and I give it in the form in which it was laid before Parliament :

Return of Prisoners proposed for Exile or Liberation.

WILLIAM BROOKMAN, for wounding with intent to murder; convicted 16th January, 1868; term of sentence, death, commuted to 15 years' roads; period served $6\frac{1}{3}$ years; previous convictions, none known. Recommendation of the Sheriff—May be allowed conditional pardon after 13th April, 1874; question of liberation in colony to be postponed. Decision of his Excellency—Approved; H.R., 1st October, 1873.

SAMUEL CLARKE, for robbery, being armed, and horse stealing; convicted, 18th April, 1866; term of sentence, 15 years' roads; period served, 8 1-12th; previous conviction,

none known. Recommendation of Sheriff—May be allowed a conditional pardon; failing means, to be brought forward for consideration for liberation in January, 1875. Decision of his Excellency—Approved: H.R., 1st October, 1873.

DANIEL SHEA, for robbery, being armed; convicted, 6th November, 1860; term of sentence, 15 years' roads, first 2 in irons; period served, $8\frac{1}{2}$ years; previous convictions, stealing 2 years. Recommendation of the Sheriff—May be allowed a conditional pardon. Decision of his Excellency—Approved; H.R., October 1st, 1873.

WILLIAM WILLIS, *alias* Dunkley, for robbery, being armed, three charges; convicted 16th May, 1866; term of sentence, 15 years' roads; period served, 8 years; previous convictions, stealing (3)—9 months, 18 months, 6 months. Recommendation of the Sheriff—May be allowed a conditional pardon. Decision of his Excellency—Approved; H.R., October 1, 1873.

ALEXANDER FORDYCE, for robbery and wounding; convicted 23rd February, 1863; term of sentence, death; commuted to life, first 3 years in irons; period served, $11\frac{1}{4}$ years; previous convictions, none. Recommendation of the Sheriff—May be allowed a conditional pardon now; failing taking advantage, case to be brought forward commencement of June, 1874. Decision of his Excellency—Approved; H.R., October 1, 1873.

JOHN PAYNE, for robbery under arms, two charges; convicted 14th January, 1868: term of sentence, 20 years, two of 10 years each, second sentence remitted by his Excellency; period served, $6\frac{1}{2}$ years; previous convictions, none. Recommendation of the Sheriff—May be allowed a conditional pardon after service of 7 years. Decision of his Excellency—Approved; H.R., 1st October, 1873.

JAMES JONES, for robbery under arms; convicted 31st March, 1864; term of sentence, 15 years, first 3 in irons; period served, 10 1-12 years; previous convictions, none. Recommendation of the Sheriff—May be allowed a conditional pardon after service of 10 years. Decision of his Excellency—Approved; H.R., 1st October, 1873.

ROBERT COTTERELL, *alias* Blue Cap, for robbery, being armed; convicted 20th April, 1868; term of sentence, 10 years on roads; period served, 6 1-12 years, previous convictions, none. Recommendation of the Sheriff—Not a case

for liberation ; may be allowed a conditional pardon. Decision of his Excellency—Approved ; H.R., 1st October, 1873.

JAMES BOYD, *alias* M'Grath, for robbery, being armed ; convicted 24th February, 1864 ; term of sentence, 10 years on roads ; period served, $9\frac{1}{4}$ years ; previous conviction, horse stealing, 5 years on roads. Recommendation of the Sheriff—May be allowed a conditional pardon. Decision of his Excellency—Approved ; H.R., October 1, 1873.

THOMAS CUNNINGHAM, *alias* Smith, for robbery under arms ; convicted 9th April, 1867 ; term of sentence, 15 years' roads ; period served 7 1-12 years ; previous convictions, none known. Recommendation of the Sheriff—May be allowed a conditional pardon ; failing to avail, case to be brought forward for liberation in January, 1876. Decision of his Excellency—Approved ; H.R., October 1, 1873.

CHARLES HUGH GOUGH, *alias* Windham, *alias* Bennett, for robbery under arms ; convicted 9th April, 1867 ; term of sentence, 15 years' roads ; period served, 7 1-12 years ; previous conviction, assault with intent to rob, 3 years. Recommendation of the Sheriff—To be allowed conditional pardon ; failing to avail, case to be brought forward for liberation in January, 1876. Decision of his Excellency—Approved, H.R., October 1, 1873.

THOMAS DARGUE, for robbery, being armed, convicted 28th March, 1867 ; term of sentence, 10 years' roads (first year in irons) ; period served, $7\frac{1}{6}$ years ; previous convictions, none known. Recommendation of the Sheriff—May be allowed a conditional pardon, case for liberation to be brought forward in September, 1874. Decision of his Excellency—Approved ; H.R., September 1, 1873.

HENRY DARGUE, for robbery, being armed ; convicted 28th March, 1867 ; term of sentence, 10 years' roads ; period served, $7\frac{1}{6}$ years ; previous convictions, none known. Recommendation of the Sheriff—May be allowed conditional pardon ; case for liberation to be brought forward in September, 1874. Decision of his Excellency—Approved ; H.R., September 1, 1873.

JOHN KELLY, for robbery, being armed ; convicted 11th March, 1867 ; term of sentence, 14 years (first 2 in irons) ; period served, $7\frac{1}{6}$ years ; previous convictions, embezzlement, 2 years. Recommendation of the Sheriff—May be allowed conditional pardon ; case may be brought forward for liberation

in May, 1875. Decision of his Excellency—Approved; H. R., September 1, 1873.

JAMES SMITH, robbery, being armed; convicted 15th April, 1867; term of sentence, 17 years' roads; period served, 7 1-12 years; previous convictions, horse-stealing (2 charges), 3 years' road. Recommendation of the Sheriff—Case to be brought forward for consideration as to conditional pardon in May, 1874. Decision of his Excellency—Approved; H. R., September 1, 1873.

JOHN FORAN, robbery, being armed, three charges; convicted 18th October, 1867; term of sentence, 15 years' roads; period served, 6 7-12 years; previous convictions, none known. Recommendation of the Sheriff—May be brought forward for conditional pardon in January, 1874. Decision of his Excellency—Approved; H. R., September 1, 1873.

EDWARD KELLY, for robbery with arms; convicted, 14th January, 1868; term of sentence, 15 years' roads; period served, 6½ years; previous convictions, none known. Recommendation of the Sheriff—Case for conditional pardon. May be brought forward in April, 1874. Decision of his Excellency—Approved; H. R., September 1, 1873.

JOHN WILLIAMS, for wounding with intent to murder; convicted 14th January, 1868; term of sentence, death, commuted to 15 years' roads; period served, 6½ years; previous convictions, none known. Recommendation of the Sheriff—May be brought forward for consideration as to conditional pardon in April, 1874. Decision of his Excellency—Approved; H. R., September 1, 1873.

WILLIAM H. SIMMONS, for robbery, being armed; convicted 6th April, 1868; term of sentence, 15 years' roads; period served, 6 1-12 years; previous convictions, larceny (2 charges), 10 years' roads. Recommendation of the Sheriff—May be brought forward for conditional pardon in April, 1874. Decision of his Excellency—Approved; H. R., September 1, 1873.

WILLIAM TAVERNER, for robbery, being armed; convicted 5th April, 1867; term of sentence, 10 years' roads, commuted to 8 years; period served, 5 1-12; previous convictions, none known. Recommendation of the Sheriff—May be allowed conditional pardon; case for liberation to be brought forward in April, 1875. Decision of his Excellency—Approved; H. R., September 1, 1873.

DANIEL TAYLOR, for robbery, being armed, and horse stealing; convicted 24th October, 1865; term of sentence, 15 years' road; period served, 8 1-12 years; previous convictions, none known. Recommendation of the Sheriff—May be allowed conditional pardon; case for liberation to be brought forward in January, 1875. Decision of his Excellency—Approved; H. R., September 1, 1873.

JOHN BOLLARD, for assault, with intent to rob, being armed; convicted 19th October, 1869; term of sentence, 10 years' roads; period served, 4 7-12 years; previous convictions, none known. Recommendation of the Sheriff—May be brought forward for conditional pardon in October, 1874. Decision of his Excellency—Approved; H. R., September 1, 1873.

FRANCIS CHRISTIE, *alias* Clarke, *alias* Gardiner, for wounding, with intent to do grievous bodily harm, and highway robbery; convicted 8th July, 1864; term of sentence, 32 years' roads, first 2 in irons; period served, 10 years; previous convictions, horse stealing, 14 years. Recommendation of the Sheriff—(Full reports, minutes, &c., in this case already laid before Parliament).

JOHN BOW, for robbery and wounding; convicted 26th February, 1863; term of sentence, death, commuted to life on roads, first 3 years in irons; period served, 11 $\frac{1}{4}$ years; previous convictions, none. Recommendation of the Sheriff—May be allowed a conditional pardon now (in August, 1873); failing to take advantage thereof, case for liberation in the colony to be brought forward in June, 1874. Decision of his Excellency—I approve the Sheriff's recommendation in this case; H.R., 19th August, 1873.

Undoubtedly, the majority of the bushrangers named owed their simultaneous liberation orders to the determination at which the authorities had arrived to open the prison doors for Gardiner. It would not look well to release such a notorious offender—and it had been ordained that by hook or by crook he should be set free—without releasing others who had been guilty of offences like to those for which he was serving sentence. Hence his Excellency was called upon to affix his initials "H.R." to 24 recommendations by the sheriff

for the privilege of setting them over against one. Needless to say, the prisoners concerned were not slow to avail themselves of the advantage held out to them, and some of them had at least the satisfaction of knowing that if it was through Gardiner's example they had been led into prison, it was also through the favor extended to Gardiner that they had been released.

A word or two concerning the conditions of exile under which the arch-bushranger was to be released is necessary here. They at least were not formed for the occasion, but were a relic of the former convict-prison days. An Act of Parliament which had been passed in 1847 (No. 34, 11 Vic.) provided in the 4th Clause as follows:—"And be it enacted that it shall be lawful for the Governor, or officer administering the the Government, to grant to any prisoner under any sentence or order for transportation, or of hard labor, who shall have served on the roads or other public works of the colony for not less than two years in any case, a remission of the remainder of the term for which he shall have been so sentenced, or ordered for transportation, or hard labor, on condition that he shall not remain in or come within the colony during the residue of his said term; and it shall be lawful for the said Governor to make such rules or regulations as he shall think fit for the mitigation or remission, conditional or otherwise, of any sentence or order for punishment under this Act, as an incentive to reward for good conduct, whilst the offender shall be serving under such sentence or order, and to mitigate or remit the term of punishment accordingly."

It will be observed that this clause was not mandatory, but only permissive, and it left the Governor (who then possessed almost absolute powers) to exercise his discretion. The Governor was at liberty to allow any prisoner to depart after

two years of punishment, no matter what might be the length of his sentence, the only condition being that the prisoner should not return to the colony until his term of punishment had expired. Such return, however, could not be treated as a new offence, and the only punishment for it was imprisonment for the balance of the unexpired term. As the clause stood, it was merely exile from the colony that was required, but the regulations under it required exile from all the colonies and New Zealand. In the earlier days expatriation was in itself a punishment, but as settlements grew up in the neighborhood of the colonies, it became much less distasteful to prisoners. As mentioned in one of the official reports already given, two of the prisoners whose names appear in the return—Bow and Fordyce, the Lachlan escort robbers, who, although more fortunate than their young companion, Mann, had been less fortunate than their leader, Gardiner—had been offered freedom under conditions of exile in 1873; but they preferred to serve a longer term in the hope of regaining freedom within the colony.

Obtaining his freedom under this Act, Gardiner would not be required to go farther afield than New Caledonia or Fiji, where he would be within a week's voyage of the powerful friends who had agitated so strongly for his release. The reader will notice that practically the power to grant exile after two years' imprisonment resolved itself really into a question of discretion, and that again resolved itself into a consideration as to the evidence there might be that Society was sufficiently protected against renewed depredation.

Those who opposed Gardiner's release urged that his previous lapses into crime when granted indulgence proved that he was not to be trusted, even if he had undergone punishment commensurate with his crimes. Of all criminals,

they contended, he was the last one to whom freedom under any conditions should be extended. He was the bushranger *par excellence* in the days when bushranging raged most fiercely ; he had more than once imposed upon the authorities ; although evidently possessed of means he had made no effort to show the genuineness of his professed repentance by restoring that he had robbed ; he had either imposed on himself as to his repentance or reformation, or was a clever hypocrite. How many lives were to be placed to his account, directly or indirectly, could not be stated, nor how many dangerous woundings short of loss of life. Still less possible was it to form an estimate of the evil he had inflicted on society in a less overt but more subtle manner, by the extent to which he corrupted the moral sense of the neighbourhood where his depredations were chiefly committed. These were some of the grounds taken by the objectors, who waited in vain for an answer to the question : If we have a man who has been tried in gaol and tried out, whose conduct in gaol is uniformly good, and whose conduct out of gaol is uniformly bad—which is the best place for him and for society ?

The production of the papers relating to the release of the twenty-four prisoners was the signal for the resumption of angry debate in the House, the member for Bathurst taking the lead on the part of the objectors, and moving " That this House disapproves of the contemplated release of the long-sentenced prisoners whose names are set forth in the return laid upon the table of this House by the Colonial Secretary." It proved an exciting time in the Assembly ; and for the Parkes Ministry an anxious time, for as the debate proceeded they became aware of the fact that many of their supporters, moved, doubtless, by the knowledge that the electors generally

were opposed to the extension of clemency to Gardiner and his fellow prisoners who had been bushrangers, were undecided as to the vote they should give on the question. When heads were counted it was found that if all those who had spoken against the proposed release voted for the motion of the member for Bathurst there would be a majority against the Government, and as a last resource the Government raised the cry that the motion was intended to oust them from office, although Mr. Combes had declared that in moving it he had no such intention. They were determined that the Opposition should not snatch a victory, and adjournment followed adjournment until the talking force of both sides had been expended. If the House had divided upon the merits of the question of Gardiner's release, the Government would undoubtedly have been left in a minority, but the other question of change of administration having been raised, those who had hitherto supported the Government now declared for them, although they had spoken in favor of Mr. Combes' motion. They stated that they did not wish Gardiner to be released, but they were not going to assist the Opposition to oust the Government, and they must therefore vote with the party they wished to keep in power. When the division was taken, it was found that the members were equal, there being 26 for and 26 against. For a time there was a scene of the wildest excitement, the climax of which was reached when the Speaker gave his casting vote with the Government, and thus defeated the motion. By a majority of one, therefore, the House declared that it did not disapprove of the release of the long-sentenced prisoners whose names appeared in the return that had been furnished; and, amidst many sneers and reproaches the Government coolly proceeded to take the next business

on the paper and to prepare for the prorogation, which took place shortly afterwards.

But the agitation was still kept up outside the House. Public meetings were held in every important centre, at which condemnatory resolutions were passed, and petitions against the release were signed; and every prominent man in those centres either made a speech or in some other way gave evidence of his opposition to the action of the Governor and his advisers. Petitions to the House and to the Governor were prepared and carried at those meetings without dissent, and no movement since that for the cessation of transportation to the colony had taken such a firm hold of the public mind. The character of the petitions did not vary, and the following, which was passed at a public meeting held at Bathurst on the evening of June 2nd, 1874, will serve to shew how deeply public feeling had been stirred:—

To the Honorable the Legislative Assembly of New South Wales.

The petition of the undersigned—FRANCIS HALLIDAY, Mayor of the city of Bathurst—(signed on behalf of a public meeting of the citizens of the said city and residents in the district of Bathurst), respectfully sheweth:—

1. That your petitioners regard with feelings of astonishment and apprehension the proposed action of his Excellency the Governor in liberating a number of prisoners of the Crown now undergoing sentences for robbery under arms and other like offences against life and property.

2. That your petitioners have but recently emerged from a period of terrorism, in consequence of the raids of bush-rangers upon their property, and the assaults of armed robbers upon peaceful travellers by public conveyances, whereby many valuable lives have been sacrificed to the brutality of an armed banditti, by whom law and order have been set at defiance.



3. That your petitioners believe such a state of disorder and lawlessness will be revived by the simultaneous release of a number of prisoners who have served but a minor portion of the time to which they were sentenced, if the ill-advised clemency of his Excellency the Governor is carried into effect with regard to the liberation of the prisoners before mentioned.

4. That your petitioners are strengthened in the belief by the fact that many released prisoners have already returned to their evil courses, and that bushranging and mail robberies are now becoming of very frequent occurrence, and in many, even in most, instances may be traced to old offenders, who have been set free after serving a moiety of their sentences.

5. Your petitioners strongly deprecate a policy of pseudo-sympathy in their cases, and would respectfully urge upon the members of your honorable House their individual responsibility as representatives and protectors of the people whose lives and prosperity are now jeopardised; and your petitioners desire that your honorable House will use such constitutional and lawful means as it may be in your power and authority to employ in order to prevent—or, at least, protest against—a release of Crown prisoners, which they cannot but regard as a public calamity, and as tending to the commencement of a new era of demoralisation and crime.

It was all so much useless expenditure of strength, however. The Governor had given his promise, and the promise must be kept. At the last meeting of the Executive Council before the prorogation, his Excellency laid before the members six petitions and memorials which had been sent to him and forwarded a minute setting forth his views on the subject. As that minute really formed the Governor's defence, it is necessary in justice to him that I should give it in full. It reads thus:—

MINUTE OF HIS EXCELLENCY SIR HERCULES ROBINSON AND PROCEEDINGS OF THE EXECUTIVE COUNCIL, WITH RESPECT TO THE RELEASE OF THE PRISONER GARDINER.

I have to lay before the Executive Council six petitions and memorials which have been addressed to me with regard

to the proposed mitigation of Gardiner's sentence. These representations, viewed in connection with the public discussions which have recently taken place on the same subject, have led me carefully to consider whether any fresh facts have been brought to light which would justify me in disappointing now the expectations which I raised when this prisoner's case was first submitted to me—about eighteen months ago.

It is true that no positive compact was then made with the prisoner, or any decision given in the nature of an absolute remission, which would of course have been irrevocable ; but it is beyond question that a hope was held out to him by my minute of the 5th December, 1872, that if he continued to conduct himself well he would in all probability be allowed a pardon, conditional on his leaving the country so soon as he had served ten years of this sentence.

I think that this may fairly be held as being tantamount to a promise contingent alone on the prisoner's good conduct in gaol ; and that it was so viewed by myself at the time, and by the Honorable the Colonial Secretary subsequently, is apparent from my minute of the 7th December, 1872, in which I stated, " I have already decided to grant a conditional pardon at the termination of ten years' imprisonment," and from the Colonial Secretary's minute of the 24th April last, in which, when submitting to me a petition for Gardiner's release, he observes, " the prisoner has been authorised a conditional pardon, the condition being exile." The sheriff too, obviously viewed the matter in precisely the same light, and referred in his letter of the 21st January, 1873, and in his minute of the 20th April, 1874, to Gardiner's case as one that had been practically decided and disposed of.

I may mention that it has been the practice here for many years for the Governor, when dealing with applications for mitigation which have appeared premature, to fix a date at which the case might again be brought under his consideration. Hopes so held out have always been regarded by the prison authorities, and by the prisoners themselves, as equivalent to promises of pardon, conditional on good conduct ; and in every such case the expectation so raised has been, I believe, scrupulously fulfilled. I remember one case in which Sir Alfred Stephen, as Administrator of the Government, intimated to one of the most prominent and

daring of the bushrangers that his case might again be brought forward for consideration as soon as he had served seven out of the nineteen years to which he had been sentenced. The papers came before me at the time specified, and, as the case appeared to me a bad one, I declined to sanction any greater remission than that contemplated under the general regulations for bushranging cases, unless Sir Alfred Stephen's intimation was held to be a promise. I was informed by the Sheriff that this was unquestionably the view in which the decision had been looked on in the gaol, and I accordingly authorised the prisoner's discharge on a conditional pardon four years before the date at which he would have been eligible for exile under the special mitigation regulations laid down for such cases.

Of course I am aware that, under certain circumstances, it might be wise and proper to withhold the fulfilment of such promises, whether positive or implied. For example, a promise given under false representations would not be binding: and a promise to release a prisoner which, it was subsequently found would, if carried out, imperil the public safety, should be cancelled. The practical question for consideration in the present case is, therefore, simply this: Are there any such grounds which would justify me in now withholding the conditional pardon which nearly two years ago I led Gardiner and his friends to expect that he might receive about his time?

I have seen it urged that Gardiner's case was decided upon false representations, it being alleged that some of the signatures attached to the petition were forgeries, and that there was a previous conviction against Gardiner in Victoria, which had been concealed. But I think these grounds, even if they were facts, which they have not been proved to be, would be quite insufficient to release me from my implied promise. In a petition so numerous and influentially signed, a few signatures more or less of persons of whom I had no knowledge would have been immaterial; and I cannot say that my decision would have been different if it had been stated on the papers that before Gardiner commenced his criminal career in New South Wales, he had been convicted in Victoria of horse stealing in 1850—nearly a quarter of a century ago. In view of the grave character of his crimes in New South Wales, such a comparatively minor offence would

have appeared insignificant. I must, therefore, as I have said, dismiss these pleas as insufficient.

The question remains—would the public safety be in any way jeopardised if the expectation held out to Gardiner of being allowed to exile after ten years were now fulfilled? I think not. Sir Alfred Stephen observes in his letter on Gardiner's case that "the end and object of all punishment are, first, the preventing of the individual, and secondly, the deterring of other individuals, from the committing of similar crimes." Have these ends been attained in the present case? I think they have. The sentence of thirty-two years, passed upon Gardiner, was imposed at a time of great excitement, and his punishment would seem to have been measured more in view of the crimes with which he was supposed to have been connected than with reference solely to those of which he was actually convicted. It was probably never intended that such a sentence should be served in full; and, looking dispassionately at all the circumstances of the case, I consider that ten years of rigorous penal discipline within the walls of a gaol—the first two years in irons—followed by expatriation for a further period of twenty-two years, is a punishment amply sufficient to satisfy the ends of justice, and to deter others from following Gardiner's bad example.

Whether Gardiner's apparent reformation is sincere, is a point which time alone can determine. I am myself disposed to think after the experience he has gained, and under the altered circumstances of the colony, he might be released even in Sydney without any substantial danger; but there are many persons who apparently think differently, and who believe that if Gardiner had an opportunity, he would revert to bushranging; and these fears, which are entitled to consideration, have been aggravated by a few isolated robberies which have occurred just at the time when this case was attracting public attention. Assuming, however, that these apprehensions are reasonable and well founded, it appears to me that they are fully met by the condition of exile, which the Government will of course take effectual means to enforce. A Legislative enactment authorises and empowers the Government to take the necessary steps for this purpose, and none of the old and settled countries will offer opportunities for the peculiar crime of bushranging, even if Gardiner were disposed to revert to it. I do not think sufficient weight has

been allowed throughout the community to this condition of exile, which it is intended to attach to Gardiner's pardon, and which supplies, in my opinion, effectual security for "preventing the individual from the committing of similar crimes."

The end and object of all punishment would therefore seem to have been secured by the course which it is proposed to adopt in the present case. The prisoner has, I hold, been sufficiently punished, and he can I conceive with safety be set free, upon condition of his leaving the country. If, while entertaining, as I do, these opinions, I were to break faith with the prisoner, and retain him in gaol beyond the time specified for his liberation, I should be doing so, not because I think such a course necessary, but simply in response to clamour, which I believe to be unreasonable and unjust. It is indispensable for the maintenance of prison discipline, that every hope held out to prisoners should be scrupulously fulfilled; that every promise made or implied, should be held sacred, or broken only on grounds the sufficiency of which would be apparent even to prisoners' minds. I can see no such grounds in the present case; and I am convinced that the moral bad effect upon the whole body of prisoners throughout the colony, as well as upon the community generally, which would result from disappointing without sufficient reason an expectation raised by her Majesty's representative, would be infinitely greater than any practical inconvenience which would be likely to result from keeping faith with the prisoner and allowing him to leave the country.

For these reasons I think that Gardiner should receive a conditional pardon at the time when he was led to expect one; and that the Government should at the same time take steps to secure, as far as practicable, the continued absence of the prisoner from the Australian colonies during the unexpired term of his sentence. I am sorry to think that such an exercise of the Royal prerogative of pardon is unfavorably regarded at the present moment by certain sections of the public, but it appears to me that the course which I suggest is the only course now open to the Government consistent with honor and justice, and I confidently anticipate that the fairness of this view will eventually be acknowledged by all impartial and reflecting members of the community.

HERCULES ROBINSON.

Government House, 23rd June, 1874.

The Executive under the circumstances could not do otherwise than agree with his Excellency ; disagreement would have involved stultification ; and hence the clerk received instructions to record the following minute :—“ The Council having duly considered the petitions and minute referred to, are of opinion that sufficient grounds do not exist to warrant them in advising his Excellency to depart from the promise implied in his Excellency's minute of the 5th December, 1872, upon the case of the prisoner Gardiner.”

These documents were published in due course and then those who had exercised the right of petition again raised their voices in protestation and condemnation, chiefly directed against the Governor himself, and not the Government. What right had any man so to insult a community as to declare that their temperately-expressed objections to a proceeding which they considered subversive of the common weal was “unreasonable and unjust clamour.” It was an outrage to which no British community would tamely submit, not even from a Governor. To arrange for the release of a notorious ruffian like Gardiner without taking steps to ascertain the extent of his depredations was about as bad a thing as any Governor could do—to say nothing of the release of a score other prisoners with records nearly so black. That was an offence which might be overlooked, however, seeing that the responsible advisers of his Excellency should have given the requisite information without inquiry. But to call the public protests clamour ! That was an offence which admitted of no palliation. It was adding insult to injury, and indicated more than a desire to rob the people of a dearly-purchased right. Thus they talked, in private and in public, and for the time being the people lost sight of the bushranger while glaring at the Governor.

But this is not the place to enter fully into the quarrel between the populace and the representative of Royalty who was set over them. Suffice it to say that the trouble did not eventuate in anything more serious than words, although the Parkes Government were subsequently made to feel the loss and inconvenience of having assisted in an unpopular act.

Meanwhile Gardiner was making preparations for bidding adieu to the prison walls of Darlinghurst; and every passing hour brought the fulfilment of the lightly-given promise nearer. At last the day of deliverance for him arrived. On the morning of Monday, July 20th, 1874, the doors of the prison which had been closed upon him for ten years were thrown open for him and the other prisoners who had, on his account more than on their own, obtained a remission of their sentences. But it was not to the "bosom of his family" that he was restored. The sisters who had pleaded so hard for him to be released to their arms had to be content with a passing embrace. On the evening of the day that the prison gates swung back to admit of his egress, Gardiner was conducted to a cabin in the steamer Dandnong, then running between Sydney and Newcastle, a few officials and the relatives and friends who had been kept in touch with the movements of the authorities only being present to witness the embarkation. Two detectives accompanied him and on the steamer's arrival at Newcastle he was removed to the lock-up, there to be detained pending the departure of the vessel (the Charlotte Andrews) in which he was to be conveyed into exile, and which was not quite ready to start.

On the afternoon of the 27th the vessel was ready to receive him, and the necessary steps were taken to remove the prisoner from the lock-up to the place on board prepared.

Sub-inspector Thorpe and Detective Elliott were entrusted with the duty of conducting the interesting and distinguished favorite on board, and they accompanied him from the lock-up to the vessel, which was lying in the stream, with the tug alongside, ready for sea. Meanwhile, the news that Gardiner was in course of being "shipped" had leaked out, and the Newcastle people were speedily on the *qui vive*, all being more or less anxious to obtain a last look at the prisoner to whom exile meant freedom. A large crowd had assembled in front of the court house prepared to follow Gardiner and his guardians to the wharf; but the officers did not desire display, and manouvred with the object of deceiving the expectant sightseers, and succeeded in leading them on to an altogether wrong scent. Gardiner was taken out of the lock-up by the back way, and a water police constable, accompanied by a detective with a bulky carpet bag, came out of the front door and proceeded to the wharf by the usual road. The crowd at once concluded that the man with the bag was Gardiner, and they immediately started in full pursuit, escorting the pair of "dummies" to the ordinary landing place at the steamer's wharf, while the real Simon Pure went off to the barque in a boat from another point. As the vessel was towed out to sea the disappointed crowd stood gazing from the water's edge, no doubt comforting themselves with the reflection that if they had not seen the man they had at least seen the vessel which was bearing the man away from the land, the laws of which had been so frequently and flagrantly broken by him, and whose law administrators had shewn him so much mercy.

It was, doubtless, from a desire to prevent Gardiner's sensitive soul from being hurt by any public display of leave-taking that the authorities made such careful preparations for

his quiet exit. Such considerateness was quite in keeping with the regard which they had always manifested for his welfare ; and as the fact that he was to be exiled was the one circumstance that was calculated to at all reconcile the public to his release very few were disposed to make that further act of clemency an additional ground of quarrel. Within a few hours after the vessel had left her moorings and started for China (for that was the port to which she was bound) the whole colony was in possession of the news that the erstwhile King of the Bushrangers had left the colony for good. It is safe to say that very few of the colonists received the news with indifference. There were those who rejoiced from the filial regard they entertained for the "erring child"—these being confined to the narrow circle in which his sisters, the Governor and the Governor's advisers moved, although the joy of the former would doubtless have been greater, had the release been unconditional ; and there were those who were sorry,—the latter extending through the wider circles in which moved the colonists who considered the only means of exit should have been a noose rope hanging from a beam, and not a full-rigged vessel sailing over open seas. Yes, Gardiner had gone ; and his escape from the clutches of the law was more effectual than had been any previous escapes—more effectual even than that from the black custodian at Pentridge, or that from Cockatoo Island, or that from Hosie and Middleton at Bigga, or that from Sir Frederick Pottinger at the Pinnacle, or that from the police on the Lachlan, when Mrs. Brown was his companion.

And here another and final word concerning Mrs. Brown may be said. Four years after Gardiner's capture that erratic lady committed self-murder on the Thames Goldfields (N.Z.), where she had gone immediately after the judge had

passed the sentence of 32 years. The surgeon who attended her supplied the following particulars in a letter to a Sydney paper during the agitation for Gardiner's release :—“ In a fit of remorse, I presume, she placed a revolver (and which she was always supposed to have carried about her) to her mouth and fired it, the bullet knocking out her two lower front teeth, cutting off the apex of her tongue, passing along its under surface, and lodging in the cervical vertebræ. She lingered in great suffering for three or four days, remaining conscious almost to the last. She expressed regret for the rash act ; spoke of Gardiner with feelings of affection, and declared that he had never *shot* anybody.” If she had but known, and been content to wait, who knows but that the kind Government would have provided for her a berth in the “ Charlotte Andrews ” also, as company for the man for whose sake she had given up so much ? She did not choose to live, however, on the chance of his release ; and hence was not able to go with him into exile, or join those who either rejoiced or sorrowed over his departure.

I cannot leave this part of the subject without referring to the method adopted by certain prominent men in the Yass district—which, it will be remembered, was one of Gardiner's resorts—to mark their disapproval of the Governor's acts. From a local paper of the day I take the following account :—

On Friday evening last, a public banquet was held in the premises, in Rossi-street, Yass, lately occupied as a store by Mr. F. Lethart. The attendance was numerous and respectable. Mr. Shipway, of the Globe Hotel, provided the eatables and drinkables, and the result was equal to anything in the cold refection line ever previously turned out in Yass. The rooms were decorated for the occasion, a black banner bearing a death's head and cross-bones occupying the space on the wall immediately above the chairman's head. The

building was illuminated with Chinese lanterns, and the Yass Oddfellow's band discoursed sweet music at intervals throughout the evening.

The chair was taken by Alderman Remmington, Alderman Sampson occupying the vice-chair. After ample justice had been done to the hospitable spread, the Chairman proposed "Her Most Gracious Majesty the Queen. May God bless her!" The toast was followed with three times three, the band playing "God save the Queen." The Chairman said that the next toast he had to propose was "The Governor, as the representative of the Queen." Before he formally proposed it, he would explain the reason of holding the banquet. There was no political reason at the bottom of it, though, perhaps, the public might draw that inference from it. They were simply met in a spirit of fun and drollery to celebrate the release of their great captain, Frank Gardiner, *alais* Christie, *alias* a dozen names besides. It was on that account that he (the Chairman) felt such great pleasure in proposing the health of his Excellency the Governor, who, as the representative of her Majesty in New South Wales, had gone out of his way to release unto them their noble captain and brother robber, Frank Gardiner. (Loud cheers.) By the band: "Out of the way, Old Dan Tucker."

The Chairman remarked as regards the next toast he had nothing whatever to say. He would simply give "Our Member." Drank in silence.

The Chairman then rose to propose the toast of the evening. He wished to submit this toast, "The health of Frank Gardiner, *alias* Christie, whose release we now celebrate." Their noble captain, the illustrious chief of Australian banditti, though he held brevet from the Horse Guards had earned for himself a more than military title by daring deeds of rapine and robbery. (Cheers.) He had set a never-to-be-forgotten example to the colonial youth—(hear, hear)—an example beyond all feeble praise of his (the speaker's). It must be owned that those bigots who foolishly imagined that virtue and honesty were proper objects of emulation, had received a "backhander," a "floorer" at the hands of the Governor and of those Honorable Hounds who had come forward on this memorable occasion to release their friend and brother from those cruel bonds of captivity with which

humbugging virtue had shackled him. (Cheers.) Long might such "Honorable Hounds" live to enjoy their honors! As each recurring 11th July came round, might there ever be such an honorable pack in existence to release to the people of the colony the Barabbas of their hearts. (Loud cheers.) The band: "Johnny comes marching home."

The Vice Chairman next proposed "Gardiner's associates in crimes, and companions in exile." He could not help thinking that these poor injured innocents had been ill-used in a very harsh way. The condition of exile was wrong, blighting the pleasure which they otherwise would have experienced. If they felt joy for the release of their friends, did they not also feel sorrow for their exile? (Hear, hear.) He felt confident that those present would drink a bumper to Gardiner's pals, his associates in crimes, his companions in exile. (Cheers.) By the band: "For he's a jolly good fellow."

After two or three appropriate songs had been sung, Mr. Shipway proposed "The honorable majority who voted for the release of their brother robber." (Loud cheers.) By the band: "The Rogue's March."

Mr. Harold Stephen rose to propose the bushranging interests. What a glorious, free independent life was that of the bushranger! Riding alone, or may be with some trusty friend, or friends, through the desolate bush—riding into the jaws of death, and bailing up her Majesty's mails! And then how little are the prizes of such a career in comparison with the perils undergone in attaining them. They may certainly pick up a few stray notes, an odd ring, or watch from passengers—but to obtain this poor booty have even to risk their lives. It has been urged that the bushranger robs honest people of their hard earned gains, but he would ask—Who worked harder than the bushranger? His is indeed a life of eternal toil, of never-ceasing anxiety. To compare the trifling troubles of the honest mechanic to his is absurd. (Cries of "Who'd work?") Yet with all these disadvantages there is a charm about the free, wild life of the bushranger, which lifts it far above the sordid money grubbing pursuits of the so-called honest portion of the community. (Cries of "Down with honesty.") I say so-called honest, because the law calls every man honest till his dishonesty has been proved. We know the tricks of every trader, and we are bound to admit

that "honesty" is, after all, but a name. Then let us consider bushranging in its poetical aspect, and its practical result fades into insignificance. Sir Hercules Robinson, whose name has just been so cordially received, has lately shown that he, too, appreciates the noble sport of bushranging; or, at least, that he regards society at large as being no more honest or deserving of support than the much-belied bushranger. We know Sir Hercules Robinson was fond of sport. We know he would neglect almost anything in order to be present at a race. We know he was no less active in the hunting field; but we now learn he is a very prince of sportsmen, appreciating even the hunter of human gains! (Cheers.) Let us then do justice to our noble Governor, and by coupling his name with the toast of bushranging, openly proclaim our admiration of his noble conduct. He begged to propose "Bushranging, coupled with the name of Sir Hercules Robinson." By the band: "The dead march in Saul."

Among the remaining toasts given at this banquet unique was "Mr. Combes, who opposed Gardiner's release," and the toast was received with enthusiastic groans. The Vice-chairman then called for three heavy groans for the Press, "who, with but a few honorable exceptions, had to a man resisted the release of the illustrious Gardiner." The groans were given *con amore*, and just as they were finished three men with masks over their faces rushed into the room and fired at the chairman, who fell back as if shot. When the excitement and laughter occasioned by this incident had subsided, Mr. Shaw replied to the toast. He said he felt that he was in a wrong position. The right person to have represented the Press on such an occasion was the editor of the *Government Gazette*. The snivelling, weak-minded, illogical, milk-and-water journalists who called a spade a spade, and stigmatised firing on defenceless people from behind rocks cowardly, had been taught a lesson by the Government which would not soon be forgotten. Perhaps THE person who should have replied for the Press was the writer of that leading article which, initialed "H.R." and countersigned "Henry Parkes," had opened the gates of Darlinghurst for their friend, Frank Gardiner.

If the Governor had not written his famous minute in which he stigmatised the open and excusably heated expres-

sion of dissent to which the public were given utterance as "clamour," until after the report of this extraordinary banquet had been published, it is only reasonable to conclude that he would have found even a stronger word than "clamour" to put into it. Anyhow, the spirit of decorous ridicule which permeated the banquetters must have served to shew those who sympathised with Gardiner, from the Governor downwards, how deep was the indignation which moved the populace.

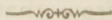
Very little more remains to be said concerning Gardiner. If he landed in China he did not stay there. The free and easy life of San Francisco suited him better than life with the Children of the Sun, and in San Francisco he was shortly afterwards found, snugly located as the proprietor of a "saloon," where in the pursuit of his calling the popping of corks from bottles from which "balls" of whisky were daily fired may have kept alive in his memory the exercises of earlier days, when from behind the rocks of Eugowra or the gum trees on the Lachlan road he delighted in serving out "balls" to travellers from the barrel of a revolver or a rifle. For many years he plied this calling, and—whether from choice or necessity, who shall say?—came to the end of his days an honest man; a free man but an exile, while yet the time of the sentence passed upon him was unexpired. More than one person who saw him in his saloon in America have declared to me that he died a few years ago, and in the absence of any proof to the contrary I see no reason for disputing their testimony. His admirers have claimed for him full credit for repentance, but they have never thought it worth their while to say why he did not make restitution of at least a portion of his heap of ill-gotten gains, although if they know anything of morals they must know that restitution is

one of the chief factors in, as well as one of the strongest proofs of, true repentance. Whether he really was a good citizen of the State which he had made the home of his exile, however, need not trouble us here. It is sufficient for those who knew him as the ruffian he was during many years of his life to know that his years were not extended beyond the period covered by the terms of his warrant of exile—"the remainder of his sentence." And after all, as he could not be either hanged or shot, as were many of the hot-brained, misguided youths who were his dupes, it was, perhaps, the next best thing that could happen, that he should end his days in a land far away from that which had for so long a time been cursed by his presence.

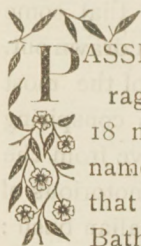
In closing this account of Gardiner and his doings, and his influential friends and their doings, I feel that some apology is needed for the length to which it has been drawn out. My object has been to set before the reader one of the most remarkable instances on record of many forces conspiring successfully to defeat the ends of justice and save from the punishment due to his crimes one of the most notorious of the criminals of later days who ranged the Australian bush; and I have, therefore, been obliged to follow closely many small events in the order of their occurrence, which, in different connection, could have been passed over. The task has not been either a pleasant or an easy one; but I could not evade it or set it aside and make this "Story of Australian Bushranging" complete."



THE CALOOLA ROBBERS.



ALEXANDER ROSS, CHARLES ROSS, AND
WILLIAM O'CONNOR.



PASSING reference has already been made to the outrage committed at Caloola—a small village about 18 miles from Bathurst—by the bushrangers whose names appear above, and the reader will remember that it was to deal specially with their case that the Bathurst people first suggested to the Government the holding of a special assize. It is necessary that I should now pass back, the following of Gardiner to the close of his career having caused me to make a break in the record of bushranging occurrences extending over a period of about twelve years.

In November, 1862, Mr. Henry Stephens kept an inn and store at Caloola and drove a flourishing trade. With his wife and little ones, and an old man servant, he pursued the agreeable work of taking money over the counter for liquor or solids served to customers, chiefly travellers to and from the Trunkey and Tuena goldfields. His was a convenient

house of call, and the "pull off" from the road for refreshments at his hostelry was quite as much an "event of the road," as any other movement made by those who journeyed along this highway. But the breakfast hour of November 22nd in the year above given was prolific of trouble of a more serious kind than had ever before disturbed the peace of the house or the quiet of the neighborhood. Here is the story:—

Three men in the garb of ordinary travellers alighted at the door, and after spending a short time in conversation with Stephens and his wife, sat down with them to breakfast. During the meal, one of the men, who had previously been through the house to the back, complained that he was unwell, and, begging to be excused, rose from the table and passed out into the yard. Shortly afterwards unusual sounds were heard proceeding from the passage leading into the dining room, and upon looking to ascertain the cause, Mr. Stephens saw the man-servant entering the room, closely attended by the man who had retired. The servant's face betokened fear, and he had cause for fear. His arms were pinioned, and the stranger was holding a revolver to his head, finger on trigger, and a determined look on his face. Almost before the landlord and his wife had realised the situation the two men who were situated at the table with them, sprang to their feet and also drew revolvers. Mr. Stephens at once made an attempt to rise, saying, as he did so, with astonishment not at all feigned, "Hello, what's up now?" when one of the men immediately, and without saying a word, fired point blank at him. The shot went "right home" striking Mr. Stephens in the mouth, and, with a groan, he fell back on the floor in his blood.

Turning then to Mrs. Stephens, who was almost paralysed with horror and fright, they commanded her

to hand over the money in the house, intimating that if she hesitated, they would treat her as they had done her husband, who although not dead, was apparently mortally wounded. The distracted woman had no alternative but to obey their commands, and at once handed over £20 to the murderous crew, at the same time sobbing out that they might have obtained the money without committing murder, if that was all they came for. They threatened to shoot her if she did not keep quiet, and persisting that there must be more money in her possession, one of the ruffians searched her and took from her pocket about 40s in silver. He then proceeded to search for more money in the house, his companions keeping guard, and entering the bedroom he roughly turned over the bedding, causing a young child who had been asleep in the bed to cry out in alarm. This was more than the mother could bear, and, heedless of the revolver that was still pointed at her head, she rushed forward to the rescue of her babe, which had been nearly smothered in the bedclothes. Having searched the house, and appropriated all the valuables upon which they could lay their hands, the three men prepared to leave, but before passing out they took a pair of saddle bags, a box of razors, a bottle of spirits, and other articles. As soon as opportunity offered Mrs. Stephens went to her husband, and finding that he still lived, although terribly wounded, she followed them to the door and begged them to go or send for a doctor, which they promised to do, saying that her husband "would come round all right by-and-bye." They then rode off into the bush.

As soon as the blood thirsty trio had departed, the manservant set off to the nearest neighbor, while Mrs. Stephens sought to assist her husband. A messenger rode post haste

to Rockley, the nearest township, for the police, but as there were none there at the time, he galloped on the longer road to Bathurst, and there gave information to the superintendent of police, who immediately started for Caloola, accompanied by three troopers and a black tracker.

Meanwhile Mr. Larnach, a resident of Caloola, was conveying the wounded man to Bathurst in his vehicle. Arrived in Bathurst, he was placed under the care of Dr. Machattie, who exerted all his skill to save him from the death that seemed imminent. He found that Stephens' wound was a very dangerous one, the ball having passed through the upper jaw on the left side, breaking two teeth, severely lacerating the lower part of the tongue, injuring the palate, and finally lodging in the right side of the neck. The injured man was unable to articulate a single word, and being also very much exhausted from excitement and loss of blood, it was deemed advisable to remove him as speedily as possible to the residence of his brother-in-law, Mr. C. Simmons, of Bathurst. This was accordingly done, and Drs. Machattie and Busby having consulted on the case, such treatment as they deemed necessary was prescribed. As the sufferer was evidently in imminent danger, the Police Magistrate (Dr. Palmer) waited upon him in the afternoon for the purpose of obtaining from him a statement of the circumstances of the outrage; and, being still unable to speak, he was furnished with pencil and paper, and he wrote a statement which, being sworn, he declared to be true. Next morning Dr. Machattie, assisted by Drs. Busby and Palmer, succeeded in extracting the ball from Mr. Stephens' neck, and, as the patient was able to swallow a little nourishment, hopes were entertained of his recovery, although he was by no means out of danger. These hopes were realised, but the recovery was slow and

tedious, and many months elapsed before the injured man was able to move about among his fellow men. That the shot did not prove fatal was a marvel, and Mr. Stephens and those who knew him were always kept in remembrance of the terrible ordeal through which he had passed, and the narrow escape he had experienced, by the terrible disfigurement of his face, which no surgical skill could cure.

The news of the outrage spread through the district rapidly, and it was chiefly owing to the speedy circulation of the facts that the authorities were enabled to pick up the tracks of the murderous trio, who had disappeared from the neighborhood of Caloola long before word of the occurrence had reached the police. As already stated, the Superintendent of the Bathurst Police, with other members of the force, started for Caloola very shortly after the arrival of the messenger in Bathurst with the intelligence; but while they were trying to pick up the tracks of the desperadoes, all in the dark as to the direction they had taken, two civilians on the Fish River side had seen them and taken steps to intercept their flight. On the Sunday morning—the day following the robbery and attempted murder—Mr. William Webb, of Mutton's Falls, observed three suspicious-looking characters near the river crossing, and shortly afterwards Mr. Edward Locke, who had also seen them, suggested that they might be the men concerned in the Caloola outrage. Mr. Webb at once decided to communicate with the police, and hurriedly rode to Diamond Swamp, the nearest police station, and gave information of the proximity of the suspicious-looking strangers. Having secured the services of Constables Woods, Wright, and D'Arcy he returned with them towards the Fish River. When about eight miles from Diamond Swamp, they met one of the three travelling by himself, and

ordering him to pull up they asked him where his mates were. He denied that he had any mates, but afterwards said they had gone towards Bathurst. He was secured and shortly afterwards said that the other two men were on the road, and were not very far distant. Leaving the prisoner in safe custody Mr. Webb and the police galloped onwards, and very soon came upon the other two men, whom they cleverly captured before the villains were able to use their fire-arms. It was very soon ascertained that these were the three men for whom the Superintendent and his troopers were searching in another part of the district; and having been kept in safe custody during the remainder of the day and night, they were on the Monday morning escorted into Bathurst and lodged in durance vile. They were shortly afterwards confronted by Mr. Stephens, who without hesitation identified them as the men who on the Saturday had visited his place, and after shooting him robbed the house. The saddle bags also and some of the other articles found in possession of the men were identified as part of the property that had been stolen. As may be supposed, the rejoicing was general that the reign on the road of these blood-thirsty scoundrels had been so short; and the prompt movements of Mr. Webb and the police who accompanied him were very highly commended by the residents of the district. Had Messrs. Webb and Locke nursed their suspicions until the opportunity came to them of communicating them to the authorities, in all probability the three ruffians would have escaped, if not altogether, for a time sufficient for them to work more mischief. Having himself had some experience of bushrangers (under circumstances which will be narrated hereafter) Mr. Webb knew the value of "heading his men." He made the opportunity instead of waiting for

it, and the result was the speedy arrest and imprisonment of three ruffians who were escaping from justice.

Without delay the three men were brought before the Bathurst Police Court for a preliminary hearing. They gave the names of Alexander Ross, Charles Ross, and William O'Connor. Constables George Wood and James Wright were examined and gave evidence as to the manner in which the prisoners were captured, and described the properties found upon them, and the case was remanded for seven days. The excitement amongst the townspeople in this case was very great, large numbers flocking to the court house to hear the evidence and get a sight of the prisoners. It was at this juncture that the question was first seriously mooted in Bathurst concerning the advisableness of memorialising the Government to appoint a Special Commission for the speedy trial of these men, with others who were at that time in custody on serious charges of bushranging in the Western District.*

The prisoners were again brought up when the period of remand had expired, the charge preferred against them being that of attempting to murder Henry Stephens. The latter had at this time recovered sufficiently to give evidence against them. He deposed to the truth of the statements he had previously made in the case, and positively identifying all the prisoners, stated that Alexander Ross was the man by whom he was shot. The witness further stated that when he was shot he fell to the floor insensible, and when he came to himself he was nearly choked with a quantity of clotted blood in the throat, and while pulling the blood from his mouth to prevent suffocation, one of the prisoners rifled his pockets on

* See "Story of Australian Bushranging," No. 2.

one side and then roughly turned him over on the floor to search his other pockets.

Then Dr. Machattie gave evidence, as follows :—I know the last witness, Henry Stephens ; on Saturday the 22nd November, about noon, he was brought to my surgery in a gig ; he was in a very weak and exhausted state and suffering from a gun-shot wound ; I had him removed as soon as he was able to bear it to his brother-in-law's residence, and called in to my assistance Dr. Busby and Dr. Palmer ; on the following morning early I extracted a bullet from the right side of Mr. Stephens' neck ; the bullet I now produce ; it is very much flattened, and seems to be about the quantity of lead that would be in the ball of a revolver ; the ball entered on the left side of the face about a quarter of an inch from the side of the mouth, breaking several of the teeth, passed through the root of the tongue, across the upper part of the gullet into the right side of the throat, a little behind and close to the carotid artery and jugular vein, where it lodged until I extracted it in the presence of Dr. Busby and Dr. Palmer ; it was a very dangerous wound ; the shot must have been fired in close proximity to the face, which was very much scorched and a quantity of the powder still remaining in it.

The prisoners declined to ask any questions or make any statement in their defence, and were thereupon committed to take their trial at the next Circuit Court on the 5th March, 1863, or at any time and at such court as Her Majesty's Attorney-General might appoint.

At the close of the examination Alexander Ross asked the Police Magistrate if he could apply to be tried at any other place than Bathurst ; the Police Magistrate replied that he could, and if he desired to do so Mr. Chippendale (the

gaoler) would furnish him with pen, ink, and paper for that purpose.

Then followed the memorial to the Government by the Bathurst people, which resulted in the appointment of a Special Commission to try, not only the Caloola robbers, but a whole batch of bushrangers from different parts of the district.

The Caloola case was set down for hearing in Sydney on February 2nd, 1863, and it fell to the lot of the Chief Justice, Sir Alfred Stephen, to preside at the trial. The indictment against the three men was that of assaulting, putting in bodily fear, robbing and wounding with intent to murder Henry Stephens; and upon being called upon to plead the following dialogue between one of the prisoners and the judge took place:—

Alexander Ross said that before pleading he would wish the case to be remanded for a few hours, in order that he might have an opportunity of speaking to his attorney relative to his defence.

His Honor: In the first place you must plead to the indictment. You are here charged with a capital crime, and of course, if you have any ground to show, I would not wish to deprive you of any reasonable opportunity of defending yourself. Who is the person you would wish to consult?

Prisoner: The priest who visited the gaol yesterday.

His Honor: I must take leave to remark that it appears to me that you have delayed to the very last, purposely. I have spoken to the Police Magistrate at Bathurst, and I find that you have now been sent down this last fortnight, and that you yourself requested that you might be tried in Sydney. In this fortnight you must have surely had full opportunity for providing for your defence.

Prisoner : That is true ; but it was only last evening that I heard I was to be supplied with counsel.

His Honor : Who is to undertake it ?

Prisoner : I cannot say. The priest who came to the gaol yesterday said I was to be supplied with counsel.

His Honor : But you do not seem to know who is to undertake your case, or in fact if anybody is to do so.

Prisoner : I was told that it would be Mr. Dalley.

His Honor : Do you know anything of this, Mr. Dalley ?

Mr. Dalley : No, your Honor.

His Honor : Prisoner, you have been guilty of very unjustifiable delay, and if anything prejudicial to your case occurs through it, you have only yourself to blame. Some person, a clergyman it appears, visits you in gaol, and perhaps tells you that he will do what he can to provide you with counsel, and on that you ask for an adjournment. You can scarcely expect any good result to follow. Is there any person to whom you can send for assistance ?

Prisoner : Yes. If I only knew the priest who yesterday visited the gaol. I have no doubt the authorities of the gaol know who this was.

His Honor : I have not read the deposition in your case, for I purposely abstain from doing this in all cases that I try ; I am, therefore, not in a position to say whether your trial will occupy a long time or not. I will, however, do this : there is another case with which the Crown is prepared to proceed, and I will postpone your trial until after that case has been disposed of. It will occupy about two hours, and in the meantime you can communicate with the person who is to defend you. Perhaps Mr. Dalley, would not object, as this is a capital charge, to watch the case for you.

Mr. Dalley : I shall be happy to do what I can for the

unfortunate men.

His Honor : Then let the case stand over for the present, and let the prisoners have an opportunity of communicating with their counsel.

Sufficient time having elapsed for the prisoners to make arrangements, the case was again called on, and a second and third count were added to the indictment, the second charging the prisoners with the wounding at the time of the robbery, and the third with the wounding after the robbery.

The case was conducted for the Crown by the Attorney-General, assisted by Mr. Butler. The counsel assigned by the Court for the defence was Mr. Dalley.

The Attorney-General opened the case, and stated the main facts to the jury. The prisoners were charged with stealing, and accompanying the robbery with wounding. The facts of the case were very simple. It appeared that at Caloola in September last, the prisoners were at an inn kept by a Mr. Stephens, and that one of the prisoners having left the room, suddenly returned with a pistol in his hand. Mr. Stephens jumping up and saying, "Hullo, what is this?" he was at once shot through the throat, and afterwards robbed. The evidence was very strong that these were the three persons concerned in the robbery, as would be found when the witnesses came to be examined. He would remind them that if two of the parties were engaged in an unlawful offence, and one of them proceeded to any act of violence, they were, in the eyes of the law, guilty of a complicity in the more criminal act. All the circumstances, and the identity of the prisoners, proved by four witnesses of unimpeachable character, would be found to be so clearly proved, that a conviction was, he thought, inevitable. There might be an attempt made to prove the pistol went off accidentally, but

the truth or even probability of such a thing would, he had every reason to believe, be amply disproved by the evidence.

Henry Stephens, being sworn, stated that he was a publican, residing at Caloola. Witness saw the prisoners at seven o'clock on the morning of the 22nd of September last. Two of them—the two Rosses—came on horseback, and the other man (O'Connor) on foot. Witness did not then know their names, but identified them. They came before the door and O'Connor came in with a bridle in his hand. They asked for nobblers. The prisoner O'Connor said, in answer to a question put to him by the witness, that he had lost his horse the night before, and that he had been nobblerizing on the road. He told witness that his name was Thompson. There was a great deal of talk between them whilst witness was getting breakfast ready. The prisoner, Alexander Ross, said he was not very well, and witness gave him some physic which he had in the house. They subsequently, all three, sat down to breakfast with the witness, Mrs. Stephens, and a man named Young. Whilst they were eating their breakfast Alexander Ross got up and said, putting his hand on his stomach, "You must excuse me, I am not very well," and so retired. Witness saw him come back afterwards with the cook. He pushed the cook in, and said to him, "Go in there, you — wretch." He had something in his hand, and held it out. Witness jumped up, and said, "Hulloa, what is this?" The man, Alexander Ross, then suddenly drew his hand from the back of the cook's neck. Witness had just time to see that he had a pistol in that hand, and to say "Hulloa, what is this?" when the pistol was fired off, and he was hit in the mouth. The man Alexander Ross was about a foot from the witness when he so fired. Witness had only time just to shut his eyes before the pistol

went off. Witness fell, and came to himself, after the shock, a few minutes afterwards. Witness was then lying on his left side, and heard someone in the bedroom say "Come, we must have it all." One of the men then came to him, and turned him over and searched his pockets. Witness was at that time lying in his blood on the floor—he was, in fact, nearly suffocated. There was some money in his pocket when he was thus robbed. Saw some new saddle bags which belonged to him at the Court House at Bathurst. These had been in witness's store at the time that the prisoners came to his house. There was a martingale and two cheques missing from his house after that morning. The saddle bags had a private mark on them. The cheques were in the witness' bedroom. The notes missed witness could not swear to, but he could swear to the cheques. Witness believes the martingale produced to be his, but cannot swear to it. The martingale resembles one which witness had lost out of his house. Witness was taken into Bathurst to Dr. Machattie, and saw the prisoners on the Monday following. Witness could not then speak, but he did recognise them nevertheless. Could not then speak, but wrote down who they were. It was Alexander Ross who shot witness, but witness also saw Charles Ross with a revolver, which he presented at Young. O'Connor rose with Charles Ross, when Alexander Ross came in with the cook. The man Charles Ross pointed the pistol he had in his hand towards Young. After witness came to, Alexander Ross said to the cook "You —— rogue; I have a great mind to shoot you." Young took up a chair and waved it about, and said "For God's sake don't fire." Witness scrambled up and got away, as well as he could, to the sofa, where he fainted. He heard no more. Witness did not hear the cook say anything calculated to exasperate

the prisoners after witness had been shot. Witness was unable to speak distinctly for a long time. It was a few days previous to this trial that he was able once more to speak distinctly. For a long time he could only speak in whispers.

By Mr. Dalley: I did not see any scuffle between the cook and Alexander Ross when they came in. The cook was pushed in by the prisoner Ross by the one hand—not that in which he held the pistol. Witness was sitting in his chair at the breakfast table. The prisoner Ross and the French cook, St. Maur, were not more than a yard apart at the time. The other persons at the breakfast table were on the other side. The seat occupied by witness was in a line with the door. At the very instant that the cook and the man Alexander Ross came in, Ross lowered his hand, and fired. They came in from a passage, by the bar, from the back of the house. The man Ross was using loud language to the Frenchman as they came towards the door. Witness thought that there was some dispute between them, that the cook objected to his being in the kitchen or something of that sort. The prisoners, Charles Ross and O'Connor, rose as the two came in. Witness' wife shrieked, but not until after witness was shot. Witness must have come to soon after being shot, as the men were in the bedroom when he again became sensible. Witness gave evidence shortly afterwards when he was still unable to articulate. He wrote down what he had to say. Witness did say that the prisoner Alexander Ross was the man who had threatened to shoot the cook, as the cause of his having shot witness. Witness thinks that what Alexander Ross said was "I'll shoot you, you —— dog, because you have been the cause of me shooting him." Witness did not mention this in giving his evidence in chief just now,

because it did not occur to him. Witness believes that his wife asked the men to go for a doctor for him after he was shot.

By the Attorney-General : Is quite sure that the prisoner Alexander Ross had the pistol pointed as he came in. One of the other two men also pointed a pistol at Young. The pistol was lowered down towards me (witness) with both hands by Alexander Ross as witness sat—at about a foot distance from him. The cook was, at the time the shot was fired at witness, past witness. There was no intervening object between the cook and witness.

Caroline Stephens deposed that she remembered the 22nd of September last. She remembered the three prisoners being at her house that day. The man Alexander Ross left the room during breakfast with some excuse, and afterwards returned with the cook. This man pushed in the cook, and a shot was fired and the husband of witness was wounded. The man Alexander Ross had a pistol in his hand. Witness' husband was shot just as he was rising. He fell down and, on attempting to rise, fell down again immediately. Witness said, "My poor husband, you are shot." I saw one of the other prisoners raise a pistol after my husband was shot. This was the prisoner in the middle of the dock—Charles Ross. Witness thinks he was presenting it at the cook. After the pistol was fired witness saw Young raise the chair, and beg them not to fire. Charles Ross, after the shot was fired, went into witness' bedroom. O'Connor ran out of the room when the shot was fired, but he afterwards returned. Charles Ross was in witness' bedroom for some time getting the money. Witness said to him, "If it was money you wanted, why did you not ask for it, and not kill the poor fellow." What witness gave him consisted of cheques and

notes. Witness gave him the money without taking note of what it was. There were notes and cheques. The man Charles Ross searched witness' pockets and took silver from them. Witness gave him the cheques and notes together. Witness then went into the bar. The next time witness saw Charles Ross was at the bar door. Charles Ross did not treat witness with any personal violence. Witness asked Alexander Ross and the two other men to allow her to go for a doctor. They said that Mr. Stephens would not hurt, and that he would be better by-and-by. They said they would go for a doctor as they were going away, and went towards Bathurst. Did not see O'Connor going away with the two Rosses. O'Connor had a bridle in his hand, and was there with them before and after the shot was fired. O'Connor said to witness in the bar that he could not catch a horse that was then in the yard. Witness missed a pair of trousers and a pair of razors. Is quite sure that the prisoners in the dock were the three men. They called out the cook, and tied his hands behind him. Did not hear them threaten him. Young lifted the chair after the shot was fired. He lifted it up as a means of defence between Alexander Ross and the cook. To the best of witness' recollection, the cook put something over the face of Mr. Stephens after he was wounded.

By Mr. Dalley: Saw Alexander Ross pushing the cook into a room. Saw this taking place just before they came in. The pistol went off just after they came to the door. Witness' husband was rising from his chair as he was shot. The cook was then on the other side of witness. Witness was not watching the pistol at the time it went off. Saw witness' husband fall. Saw Alexander Ross pointing the pistol towards my husband. It was of the pistol that Charles Ross had that witness said she did not know where it was pointed.

Witness saw the pistol when Alexander Ross came in pointed at the neck of the cook. Witness did not see any alteration of its direction from the time that witness first saw it until the instant that her husband was shot. Did not see O'Connor do anything but rush out of the room when the pistol was fired. O'Connor did not leave the house with the other two prisoners.

By the Attorney-General: O'Connor left the room after the pistol was fired, but came back afterwards. It was after the husband of witness was shot that O'Connor said he was not able to catch one of the horses in the yard. It was not for the purpose of going for a doctor that he was trying to catch one of the horses.

John Young (a gold digger for twelve years), being sworn, deposed that he knew the three prisoners quite well. Remember the 22nd September; the three men being at breakfast at Mr. Stephens on that day. Witness was there at breakfast. Alexander Ross complained of being unwell, and asked leave to quit the table. Leave was granted, and he left accordingly. He afterwards returned to the room with the cook, holding a pistol at the back of his (the cook's) neck. The cook said "Don't shoot me behind." The direction in which Alexander Ross held the pistol, as he came in with the cook, was not such as could cause Mr. Stephens to be shot where he then sat, unless it was lowered. Witness' opinion is, that after Mr. Stephens was shot the prisoner, Ross, wanted to shoot the cook, saying he had a mind to take his life. The cook was covering himself behind witness with a dish. Witness covered himself with a chair as well as he could. Witness asked them—if they wanted the money they could take it without letting their — pieces off. They made witness no answer. Charles Ross went into the bedroom,

and Mrs. Stephens went to attend to the child, which was near being smothered in the bed. Alexander Ross afterwards came and robbed Mr. Stephens as he lay choking in his blood like a dog. Witness did not see O'Connor do anything in the affair. Witness saw Mr. Stephens get up after he was shot and creep round to the sofa. Witness saw Alexander Ross threaten the cook four or five times after Stephens was shot. Did not hear anything said about horses; nothing about the inability of O'Connor to catch some wild horses in the paddock.

By a juror: Did not see the cook pushed past the landlord just before the pistol went off.

By the Judge: Saw the pistol presented to the master (Mr. Stephens) as he was rising. The pistol was pointed downwards towards the cook—between the cook and the master. Will not swear that the pistol was pointed at the master. Was at the corner of the table just past the master at the time. Alexander Ross was not in the room. The cook was just inside the room, not quite a yard or so from Ross. Witness then saw the pistol. It was then pointed down. Cannot say whether the pistol was pointed at the master or at the cook.

By Mr. Dalley: The cook was about a yard from Mr. Stephens, between the prisoner (Alexander Ross) and Mr. Stephens. Witness was not watching the pistol, but he saw it nevertheless. Saw the direction of the pistol altered when master spoke. Until he spoke it was pointed between the master. After the master was shot and robbed, witness did not hear any of the prisoners say to the cook, "I'll shoot you, ——dog, because you have been the cause of the man being shot." The cook was crouching behind witness, and witness had the bottom part of the chair held towards Alexander

Ross as he threatened to shoot them—either him or the cook. Witness tried to save himself as well as the cook, for he believed the man did not care where he shot. Neither of the prisoners threatened specially to shoot witness. Did not say at his examination at Bathurst that the prisoners had either tried to shoot him or had threatened to shoot him. Was not afraid of himself at the time; his whole concern was for the poor fellow that was choking at the time.

At the desire of the counsel for the prisoner, the deposition of the witness Young at the police court at Bathurst was here put in and read, with a view to showing that the witness had there positively sworn that the prisoner Alexander Ross had threatened to shoot witness, and that witness was in dread that he would do so.

Examination continued: Witness did not ever say that Alexander Ross intended to shoot him. If he did say so, it was a mistake. Never saw any one shot before. Was never present at any robbery with firearms before; was calm and collected, and perfectly aware of what took place. The interval between Alexander Ross entering the room and the explosion was about five seconds, or might have been more. Protected my head and body with the chair. Prisoner worked the pistol to and fro, and I worked the chair. Dodged my head in watching the movements of the pistol. (Witness here explained with a chair this part of his evidence.) Saw O'Connor leave the room directly the shot was fired. He went to the door leading to the front of the house. There is a back door besides. Did not hear O'Connor threaten or say anything. There was a means of exit by the back door through the bar, but not otherwise.

By Mr. Butler: O'Connor could see what was going on from where he stood.

By His Honor: At the moment when the cook was driven in, and Mr. Stephens was about to rise, I rose and saw Charles Ross and O'Connor rise; they rose as Stephens fell; saw the pistol then; it was pointed at one of us; the cook was just coming past as Stephens fell. Did not see O'Connor do anything. He stood at the door near the threshold. Charles Ross went into the storeroom. Cannot say the pistol was touched by any one but the party who held it. Am sure it was pointed towards some of us before it went off. The pistol when I saw it was pointed between the cook and Mr. Stephens. It might have been pointed at him or the cook. It hit Mr. Stephens.

Semond, the cook, deposed: Have been in the colony about a year. Was engaged as cook at Mr. Stephens'. Saw the three men there. The two Rosses I saw first. Saw them all at breakfast with the "missus," Young, and Mr. Stephens. Next saw Alexander Ross in the kitchen; asked him to come in; I was amusing myself, and had the big knife in my hand. He said, "What are you doing with the knife—are you going to kill anyone?" I threw the knife down, and he then drew a revolver from his breast, and said, "Walk in, you ——." I said, "What for?" He said, "March in, and I'll show you what for." He followed me in, holding the pistol close to my head. I could feel it several times against my head. When we reached the room I was shoved in, and Mr. Stephens rose up and said something. The pistol was then fired, and he fell. On reaching the room, Alexander Ross kept presenting the pistol at me, using very bad language and saying, "You'll have to die before I go." I was behind Young, who was protecting himself with a chair. Only one shot was fired. When Stephens was, as I thought, dead on the floor, Alexander Ross went down on his knees and searched his

pockets. I saw him take some silver from Stephens' pockets. Charles Ross, on leaving the room, went into the bar, and took two or three bottles of spirits. Did not see him take any saddles and saddle bags; Charles Ross tied my hands while Alexander pointed the pistol at me. They searched me. Afterwards they went away, one of them having brought round the horses. I next saw the prisoners at Bathurst a week after the occurrence.

By Mr. Dalley: Did not see the pistol go off. Alexander Ross gave me a push into the room, and immediately after the pistol went off. Stephens was beyond me in the direction I was going when the pistol went off. I was between Alexander Ross and Mr. Stephens.

By his Honor: Mr. Stephens was behind me in the room.

By Mr. Dalley: When shot Mr. Stephens fell at my feet. Cannot say where Young sat. I had to come about twenty-five yards from the kitchen to the room. I did not resist or provoke him by word or gesture. He could have shot me as I was coming along if he liked. He said in the room several times "You wretch, it was all through you." This was after the pistol went off. I understood from this that he wished to console the wife, who was crying and excited, by attributing the occurrence to me. He pushed me all the way along from the kitchen. I don't know that the pistol came in collision with my neck or back just before the shot was fired.

By his Honor: There is a passage from the kitchen leading to the bar and to the room. This (diagram produced) gives a tolerably correct idea of the situation of the premises. A man standing at the opening of the passage could guard both the bar and the room.

By Mr. Dalley: Did not see O'Connor after the shot was

fired till I heard him say he could not catch the horses.

George Wood, constable of the mounted patrol, deposed : I and two other constables went in search of the prisoners on the 23rd November. We came up with them on a road leading towards the Fish River. This was thirty miles or more from Stephens'. We came up with O'Connor ; asked him where he came from ; he said from Lambing Flat ; told him he was arrested on suspicion of murder ; gave him to Wright, and went on in pursuit of the others, whom we also arrested ; told them the charge, put them in handcuffs and searched them ; found a revolver on Charles Ross, and a £5-note, a half-sovereign, and some silver. On Alexander Ross found another revolver, five £1-notes, and some silver, a portemonnaie, and a miner's right. On O'Connor, found two cheques and some saddle-bags. Found also a nearly new martingale on Alexander Ross's horse.

By his Honor : The revolver produced was taken from Charles Ross. Saw the other revolver taken from Alexander Ross.

James Wright, trooper in the Western patrol, deposed that he was present at the arrest of the prisoners ; took the revolver from Alexander Ross ; ordered him to dismount. He said he had no revolver ; afterwards he said it was in the valise. Unstrapped the valise and took it out. He said it would have been death between us if he had had it in his hand. Saw the cheques and other property found on the prisoners.

By his Honor : Have been nearly two years in the police, and understand revolvers. This is in good working order, except a small breakage on the head of the lever. (Weapon shown and explained to the jury.)

Dr. Machattie sworn : He attended Mr. Stephens when

injured with a gunshot wound. The ball passed through the cheek, breaking two of the teeth, passing through the root of the tongue, and out at the neck. It was a dangerous wound, and for some time he despaired of his life. The ball just passed the carotid artery, which, if struck, would have caused death. The weapon must have been pointed downwards

By Mr. Dalley: The resistance of the teeth when struck would not account for the downward course which the ball took.

This closed the case for the prosecution.

Mr. Dalley addressed the jury for the defence, requesting in the first place that they would dismiss from their minds all that they might have heard out of doors, not only in connection with the case itself, but also in reference to the cause which had rendered it incumbent on the Government to anticipate the ordinary sittings of the court by the issue of a special commission—a step only taken in extreme cases, and when the state of the country imperatively demanded such a procedure. After reminding the jury in an earnest and emphatic manner of the solemn duty which they had imposed on them, and the necessity which existed (under the circumstances under which the prisoners stood before them) for their giving a most careful and patient consideration to all the facts disclosed in evidence—the learned gentleman proceeded to review the statements made by the various witnesses, pointing out especially what he regarded as an extraordinary discrepancy between the versions given of what took place in the room immediately before and after the pistol was discharged. All the facts, he submitted, went to support the conclusion that the explosion of the revolver was not an intentional but an accidental circum-

stance, and the only witness whose evidence was contrary to this assumption was Mr. Stephens, who swore positively that the pistol was pointed and aimed directly at him. It should be remembered, however, that Mr. Stephens was, according to the bulk of the evidence, shot immediately after the prisoner Alexander Ross entered the room, and that he lay insensible on the floor for some time from the effects of the wound. Therefore the jury must see that he could have had no distinct or clear recollection of what took place—his impressions having been arrived at subsequently when he recovered from a confused idea of the circumstances attending this awful and sudden occurrence. The evidence of Mrs. Stephens did not show that the shooting was intentional, or that the weapon was aimed at her husband. In the evidence of Young, again, it was made pretty clear (although the witness' statements were in points contradictory) that the weapon was pointed not at Stephens, but between him and the cook. The prisoner, in fact, had no intention of shooting either the one or the other, but the firing, as he before said, was an accident, terrible in itself no doubt, but still devoid of criminal intent. Accidents of the kind were of frequent occurrence, even in the case of persons who were familiar with the use of firearms. An officer of the police, not long since, had been twice shot in a like accidental manner. It was not intended that any man should have been shot; and what, it was but fair to ask, had been the behaviour of the accused after this unfortunate shot had been fired? It was proved, he repeated, by the evidence of the principal witness Stephens (and it was the only thing that rather told against that witness, because it did not appear in the evidence-in-chief) that the threat which the prisoner Alexander Ross had used to the cook was by no means of an unqualified nature;

—his alleged threat to shoot that man was one accompanied by a strong compunction and remorse at the unhappy accident which had taken place, and for which, as he thought, the cook was to blame. Except for the fact of the prisoner O'Connor being with the prisoners Ross at the time of the occurrence, there was nothing in any degree to criminate him up to the time that he ran out of the room—unless, as had been suggested, that he was to be supposed to be then standing outside on guard, during the commission of the robbery. As to his being in company with armed men engaged in the commission of a robbery, they were to remember that, in this country, extraordinary engagements were often made as regarded the working classes, by the effect of which innocent men found themselves often associated with persons banded together for the commission of crime. Supposing O'Connor to have been thus innocently connected with the other two men what was he to have done consistently with the hypothesis of his being perfectly innocent? If he had run away immediately and had stayed away, would not that have been construed into a presumption of guilt? And if on the other hand he stayed, might it not have been equally a presumption that he was really guilty. The mere possession of the cheques was far from being a conclusive proof of guilt. Every day it was notorious that perfectly innocent parties, often in the way of business, came into possession of stolen cheques. He felt that he was far from being able to do adequate justice to the merits of the case, having had so short a time to make himself acquainted with its details—not even time to read over the voluminous depositions. Still, he had given it his consideration, and could not but feel that there was no proof that the pistol had not been accidentally discharged; indeed as

he had already submitted, the evidence decidedly pointed to that conclusion. Supposing that the prisoners Ross were the parties that were concerned in the robbery, there was, he contended, no evidence whatever of the complicity of O'Connor. No other theory in the case, except that of accident, would explain the shooting of Stephens, and he submitted that whatever view the jury might be inclined to take as to the counts for robbery, they would, at any rate, not adjudge the prisoners guilty on the capital count of feloniously and wilfully wounding. All the facts of the case, all the circumstances as deposed to by those witnesses who were in a position best to see and hear correctly what transpired, went to support the conclusion that the shooting was accidental; and he left the case in their hands, confident that on a careful and patient consideration of the evidence adduced, this was the view which would be irresistibly forced upon their minds, and which they would endorse by their verdict.

The Attorney-General replied. He urged that the arguments of the learned counsel for the defence as to the supposed accidental discharge of the pistol were not to be relied upon. The pistol fired off was in good order at the time, and therefore not likely to go off in the way that had been assumed. Again, the story of the accidental discharge was altogether rebutted by the circumstances of the case, as disclosed in evidence. There was nothing to show that the pistol had been so discharged, but evidence to contradict it. If the weapon had gone off unexpectedly would it not have been natural for Alexander Ross to have expressed his regret for it? Would not a man under such circumstances be most likely to have thrown away the pistol, and to have said, "I am sorry for that, it was an accident?" The prisoner,

however, was found to do nothing of the kind. Instead of expressing any such contrition, he gave way to further threats of violence, repeatedly declared his intention to take the life of another man, and robbed the bleeding body of the wounded man with a brutal indifference.

His Honor, in summing up, said there was no dispute on either side as to the law that should govern their verdict. There were only two questions for them to consider : first, whether all three prisoners had been engaged in the robbery ; and then whether the pistol with which Stephens had been wounded, had been fired by accident or not. There could be no doubt that a robbery had been committed, that the house had been ransacked, and that extreme violence had been used. First let them see whether all three were guilty of robbery. Mr. Stephens, Mrs. Stephens, the cook, and Young, all four declared without doubt that the three men had come together, the Rosses on horseback, O'Connor on foot ; then they were all at breakfast together, and afterwards they all went away together. About the participation of the Rosses there was no doubt, but it had been said that though O'Connor came with them, it did not follow that he had any hand in the robbery. But then he went away with them, and when he was afterwards apprehended part of the stolen property was found on him. Then, in answer to this, it was said that any person might receive a cheque innocently enough from a third person. Now, these were arguments such as he scarcely expected to hear addressed to men having reasoning powers and possessing some knowledge of the world, and he doubted much whether they for one minute held ground in the mind of the jury. Not only did O'Connor come with them, breakfast with them and leave with them, but he it was who stood sentry at the door, at the place by which only intrusion could be expected

whilst the Rosses carried out the concerted plan. Alexander Ross commenced by driving the cook into the room, and at the moment he did so both Charles Ross and O'Connor started up from their seats, put their hands into their breasts and, according to one witness, both drew out revolvers, though it was doubtful whether O'Connor had a revolver with him. At all events the motion of the hand to the breast misled one witness to the belief that he was also armed. Was it likely that all this was done by accident? Was it not more likely that the three were acting in concert in accordance with previous arrangements? Then, again, O'Connor was seen trying to catch a horse in the paddock. It was surely not, innocently that he was endeavouring to possess himself of a horse not his own. The next morning he was found on the same road as the other prisoners, they being only a mile in advance of him, and on his person were found two cheques and a pair of saddle-bags that had been stolen from the place. The next question was, supposing them to say that the robbery was committed by all three, was any of them guilty of wounding, because if found guilty of the robbery and not of the wounding, the jury would have to say so. This would mainly depend upon the one question whether possibly the wound might have been inflicted by accident, and not design. If the pistol had gone off accidentally, or if it had been fired merely to excite terror and with no intention of hitting any one, then the prisoner would be acquitted; but if there had been an intention to hit any one and that one had been shot in the place of another, then they must be found guilty, for though the shot was fired by one all three would be equally guilty. There was no distinction in law, neither did he believe that there was any in morals, between the guilt of any one of the three; for if three men go out to commit an offence,

the greatest interest was manifested by the public. The Court House was crowded to suffocation, and although their Honors were fully three quarters of an hour behind their time, not taking their seats until a quarter to three o'clock, not a man amongst all the spectators budged from his post. The first prisoners put up were the two Rosses and O'Connor, and at a very early part of the Chief Justice's address it became known as was indeed fully understood before, that they were to receive the sentence of death. Alexander Ross was cool, collected, and argumentative. His brother seemed anxious and nervous, and, though standing firm, repeatedly wiped his forehead. O'Connor was eager and restless in asserting his innocence of complicity with the wounding, and when sentence of death was passed, he assumed a resolute air, and turning round to the gallery, said, "good-bye."

After the usual formalities had been observed the three men were called up and sentence of death was passed upon each of them, the judge informing them that he could not hold out any hope of mercy.

A few days after the condemned men had been cast for death, a new story appeared with reference to the outrage of which they had been convicted. The story, which was circulated by the Sydney *Empire*, and which was said to be well substantiated, certainly shewed that Charles Ross had some claim to mercy. The statement was to the effect that after the two Rosses left the house of Mr. Stephens, Alexander Ross wanted to shoot O'Connor, and actually loaded his revolver for that purpose, when Charles Ross struck the weapon up with his hand, and it exploded in the air. Further, it was said that Alexander Ross expressed his intention to return to the house, murder all the inmates, and set fire to the dwelling, in order to destroy all evidence of his

crime, he doubtless supposing that Mr. Stephens had died from his wounds. This intention, so said the story, was with much difficulty frustrated by the firm opposition of Charles Ross. It was strange that nothing of this oozed out at the trial, or when the witnesses were defending themselves; but it was generally believed that O'Connor had communicated the facts to the gaol authorities after the trial and sentence. But it failed to influence the Executive in favor of the condemned men, although for other reasons which do not appear the death sentence passed upon O'Connor was commuted to imprisonment for life.

In due course the two Rosses were executed within the precincts of Darlinghurst gaol. Alexander Ross, the man who fired the shot by which Stephens was wounded, was a Roman Catholic by persuasion, and was attended to the scaffold by the Venerable Archdeacon McEncroe and Fathers Sheridan and Dwyer. Charles Ross, his companion in crime, was a Protestant, and was attended by the Rev. P. P. Agnew. Both men while under condemnation were visited by the Sisters of Charity, whose exertions they received most gratefully, devoting themselves with earnestness to that preparation so necessary for men whose lives were about to cease. The number of persons present at the execution did not exceed thirty or forty, although there was a crowd of about a hundred or more assembled outside the gates of the gaol; but these of course saw nothing of the terrible scene. At six o'clock the criminals had their irons knocked off, and the remainder of the time, up to leaving their cells, was spent in devotion in company with the reverend gentlemen named. At nine o'clock, the Under-Sheriff, who was evidently much affected at the nature of the duty he had to discharge, made his formal demand for the bodies of the criminals, and shortly

afterwards they were pinioned in one of the corridors, and the sad procession moved towards the scaffold erected in the centre of the gaol yard. Both criminals were habited in the gaol dress, and behaved with an amount of decent fortitude which struck the spectators, and left no doubt that the ministrations of religion had not been expended fruitlessly. Arrived at the foot of the gallows, the two wretched men knelt for a few moments in prayer, repeating the responses audibly and with much fervour. They then ascended the ladder, Alexander Ross leading the way, but pausing for a moment on the steps to bid adieu to the Rev. Mr. Dwyer, who was quite overcome, and retired weeping from the grim structure. Charles Ross also mounted the steps without a tremble, followed by the Venerable Archdeacon, the Rev. Mr. Agnew, and the executioner. Once on the platform the dreadful preliminaries were speedily completed; the ropes were placed around the necks of the wretched men, caps were drawn over their faces, the clergymen retired, and at a given signal, the executioner drew the bolt. The platform instantly slid from beneath their feet; a dull heavy jerking followed, and the culprits were suspended. In the case of Charles Ross there was a complete dislocation of the neck, and death was instantaneous. Alexander Ross, however, struggled convulsively for several minutes, the knot of the rope having slipped in the fall. At half-past nine Dr. West, the medical officer of the gaol, having certified that life was extinct, the bodies were lowered into shells, and the two beings who had just shortly before emerged from the cells in all the vigor and health of manhood, were carted away as breathless clods—a terrible example to all evil doers, and one which, for the sake of society and of humanity, it was hoped would not be without its influence on those misguided men who had transformed

many portions of the colony into arenas of robbery and outrage.

The two men who thus ended their lives on the scaffold had each a previous criminal record.

Alexander Ross, who fired the shot that inflicted the wound, was a native of Wolverhampton, and arrived in the colony by the Royal George in 1829. No such name as Ross appeared upon the indent of that ship, but the name of Rogers corresponded with this prisoner's description. Ross or Rogers was supposed to have been on Norfolk Island, at which place he made the first acquaintance of the notorious Ainsworth. This pair of worthies subsequently met in Queensland, but that youthful colony not offering scope enough for the extensive range that their talents demanded, they left for Sydney. On their arrival in Sydney, Ross represented himself as a man of wealth and a stockowner, but before anything in the way of business could be done, Ainsworth, who could not remain quiet, got himself into difficulties in Maitland for passing a cheque that proved to be a forgery, and, being convicted, was imprisoned in Darlinghurst Gaol. This broke up the partnership, and Alexander Ross proceeded to the Lachlan with the evident intention of making gold in the shortest way, since he promised to return in three months and marry a young person, servant in an hotel in Erskine-street, at which he stopped. In her hands he left his portrait, and a quantity of trinkets as a pledge for his return. Only about fourteen days prior to the commission of the offence for which he suffered the death penalty, he met with his namesake, Charles Ross, who, however, was no relative, and whether they committed any robberies in company prior to that of which they have been convicted was not known. O'Connor had only joined the two on the night pre-

vious to the robbery. Alexander Ross was 49 years of age.

Charles Ross, who was aged fifty-one years, was born at Cheltenham. Came to the colony in 1857 in the ship *Lucretia*. Only very shortly after landing at Sydney he indulged in crimes which brought him into trouble. He made the purchase of a large quantity of jewellery at the shop of Mr. Beckman, ordering it to be sent to his lodgings at an hotel, which he named; the jewellery was sent, Mr. Ross received it from the hands of the porter, bidding him wait whilst he went upstairs and wrote a cheque. Instead of going up stairs, however, he got into the street by another door, and was not seen again until some weeks afterwards, when he was apprehended in the interior on a charge of horse-stealing, and was then identified as answering the description of the robber. He was sentenced to six years on the roads, and was sent to Cockatoo Island, from which place he was discharged in June, 1861, after a punishment of less than four years' duration. Between the date of his release and his meeting with the other Ross, it was not known how he occupied himself, but at all events he managed to keep out of sight of the police.

William O'Connor was fifty-two years of age, and a native of Tipperary. He came to the colony in the ship *Equestrian*, in 1851, and had just previous to the outrage been engaged upon stations in the Western districts, there being no crime recorded against him until, in an evil hour, and under the influence of the demon of intemperance, he joined with the Rosses in the attack upon Stephens.

The reign of the three men was short. Their first exploit in company carried disaster with its success, for the money they had taken from the man whom they had wounded almost to death did not serve even to bring indulgence in one single cause, the hand of justice having closed upon

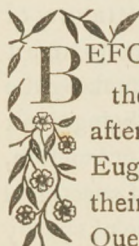


them ere they had well started on the road which they imagined would conduct them to a safe retreat. The gallows for two and the ironed cell for the third was not the end they expected ; but it was the only end that would have satisfied the people whose peace and safety had been so rudely disturbed by the Caloola outrage. Poor Stephens was marked for life, but that was not all. His business was ruined, and with health enfeebled by the shock he was compelled to begin anew the battle of life, as many another man before him, and spend years of toil and trouble where, but for the wrongdoing of others, born of the lust for gold, he might have lived in peace and all the comforts a flourishing business is supposed to bring. Nevertheless, his regrets were tempered by the reflection that his life had not fled before the bushranger's bullet. And life being preserved, the loss of earthly goods—great though that loss was—did not overwhelm the sufferer.

Needless to say, the residents of the Bathurst and Caloola district experienced intense satisfaction that the career of such ruffians as the three Caloola robbers had proved themselves to be had so speedily been checked, and the bushrangers deprived of doing further harm. They rejoiced the more on account of the many outrages which were at the time being committed in adjoining districts, and the perpetrators of which defied every effort of either civilians or police to arrest them. The doings of the men whose exploits were making the country ring while O'Connor and the Rosses were being dealt with were of such a nature as to make their trial, conviction, and execution appear but an insignificant piece of successful judicial work ; but it was, nevertheless, an instance of speedy punishment following upon crime which was at once a warning to evil doers and a source of deep satisfaction to the peaceful and law-abiding portion of the community. The reign of

these three bushrangers was as remarkable for its shortness as the reigns of other bushrangers hereafter to be described—notably Hall's gang, Morgan, the Clarkes, and the Kellys—were remarkable for their length. Had they succeeded in escaping on this occasion the probabilities are that other residents in the western bush would have fallen victims to their cupidity and blood-thirstiness. It was fortunate for the community that arrest, conviction, and punishment followed so speedily upon the crime in this case, although the fate of the criminals did not appear to have any deterrent effect upon those who were at the time following the same unlawful and dangerous calling. While the two Rosses were being tried and sentenced and hanged, the country was ringing with the exploits of other bushrangers in the West—exploits characterised by a boldness and disregard of human life which had not been excelled by any of the banditti of the olden time.

SHOT DOWN ON THE HIGHWAY.

 BEFORE entering upon the account of the doings of the gang which Gardiner had formed, and which, after leading them into the "baptism of blood" at Eugowra Rocks,* he had left to carry on operations on their own account, himself seeking a hiding-place in Queensland with Mrs. Brown—an account that of necessity must be somewhat lengthy—I shall narrate the particulars of one other case in which punishment ran swift upon

* "Story of Australian Bushranging," No. 3.

the heels of crime—swifter even than in the case of the Caloola robbers.

The case occurred in the Mudgee district, in April, 1863, and caused a great sensation at the time among the residents. A man named Heather, a comparative stranger to the district, whose antecedents were unknown, but who had for some time been working in the neighbourhood of Mudgee as a sawyer, "took to the bush." He evidently adopted the "profession" from a desire to obtain money without the trouble of working for it, and having induced a young man of his acquaintance over whose head 20 summers had not passed to enter into the partnership of the road with him, the pair started out in the direction of Talbragar, each well mounted and equipped with a pair of new revolvers. They had not long to search before they fell in with prey, in the person of Mr. A. Brown, J.P., who, with his servant, had that morning started for Mudgee from a place called Slapdash, driving in a gig. Mr. Brown had not proceeded more than five miles on his journey when he observed two men coming out of the bush some distance ahead, and riding towards him. On coming level with the vehicle, they turned to the occupants, taking up their positions one on each side of the gig, and Heather called upon Mr. Brown to stop and turn off the road. As the order was accompanied by the presentation of two revolvers in close proximity to their heads, both master and servant saw that resistance would be useless, and the command was at once obeyed. Having driven into the bush beyond the line of vision of anyone passing along the road, Mr. Brown and his servant were ordered to alight, and hand over any money they had on their persons, the robbers still keeping the revolvers presented at their heads. That order was also complied with, Mr. Brown promptly emptying his pockets

and giving up four £1 notes and two half-sovereigns. The bushrangers then examined his watch, but declined to take it and told him to replace it in his pocket, which he did with thanks. Heather then ransacked the luggage in the vehicle, his companion keeping guard, and took therefrom a newspaper, two silk handkerchiefs, a railway wrapper, two shirts, a box of matches, and some fruit. Shortly after this they again mounted and rode along the road towards Barney's reef, the way they they had come, leaving Mr. Brown to re-arrange his traps and proceed at his leisure. While preparing to resume his journey, Mr. Brown heard the report of firearms coming from the direction the men had taken, and hurried forward to ascertain the cause of the firing, as he judged from the report being that of a gun that someone had attacked the bushrangers. He had not gone far when he met Mr. Robert Lowe, of Mudgee, driving along the road in a buggy with his servant, and then he learned that the firing which he had heard had been effective as against the men who had robbed him just previously.

It appeared that Heather and his mate had cantered down the road after leaving Mr. Brown, and had met Mr. Lowe driving leisurely along. What then transpired is best told in Mr. Lowe's own words when giving evidence on oath. This was his story:—"This forenoon about ten o'clock I was travelling on the road from the Talbragar towards Mudgee, and at a place known as Barney's Reef, my servant, Hugh McKenzie, who was riding on horseback a few yards in front of me, said: "There are two men riding out of the bush coming in front of us; I don't know whether they are going to stick us up;" a moment or two elapsed, when the two men rode up in front of us, each presenting a revolver, one saying to McKenzie, "Dismount—dismount!" directly keeping his

revolver levelled at me, but a little further away; McKenzie got off at once, but I took up a double barrelled piece I had with me, and fired at the man nearest me as he sat on his horse; they both immediately turned their horses' heads from us and rode off; I saw one fall off his horse in about twenty yards or so in the middle of the road; the second, a young-looking man of middle size looked round, and seeing his companion on the ground, apparently wounded, made off at a brisk pace, the wounded man's horse starting off along the road away from us; I immediately jumped out of my buggy to be in readiness for any further attack, and finding none attempted, in a few minutes went towards the wounded man, whom I found lying on his face on the road in the agonies of death; a foot traveller named Goerge Ross coming up at the time, I demanded his assistance, and before we had examined the body, Mr. Andrew Brown, J.P., with a servant in a gig, came up, and told me he had just been robbed of various articles and four one pound notes, together with two and a half sovereigns, and that the man on the road was one of the robbers; on examining the body of the deceased I found the whole charge of heavy shot had entered in the throat; on his body I found four £1 notes, two and a half sovereigns, two silk handkerchief, some matches; on his horse, which was stopped and brought to me by Ross, a railway rug, two shirts, and various things; deponent requested Mr. A. Brown, J.P., to return with him to McDonald's inn, Slapdish, about five miles, where further assistance might be obtained."

When Mr. Brown came up the man was lying on his face in the road quite dead, and he at once recognised him as the chief of the two bushrangers by whom he had been "stuck up" half an hour before. He also identified the money and property which had been taken from him.

A return was then made to Slapdash, and word was sent to Mr. Warburton, Police Magistrate of Mudgee, apprising him of the occurrence. The police were immediately dispatched to the scene with a conveyance and the body was taken to Mudgee, where an inquest was held on the following Monday. When giving his evidence, Mr. Lowe said, in addition to what has already been quoted, that as soon as he jumped out of the buggy, after firing at the bushranger, he reloaded his gun, but while doing so saw the man he had fired at stagger and fall. He then went towards him, and when about ten yards from the body he picked up a silver-mounted revolver, loaded in four chambers, capped and cocked all ready for firing. Upon reaching the man and finding him in the agonies of death he cut off his belt, which he found to have a pouch and shot belt, the pouch containing several bullets and a gold watch. Mr. Lowe declared that the revolver was deliberately pointed at him when the man told him to dismount, Heather sitting at the time on his horse in the middle of the roadway. He believed his life was in danger and fired his gun very quickly.

Hugh McKenzie, Mr. Lowe's servant, informed the jury that he distinctly heard Heather sob out, after the gun was fired, "O God, I am shot dead."

After hearing the medical evidence, to the effect that death had been caused by internal hemorrhage, the result of a gun-shot wound, the jury returned the following verdict:—"That deceased came to his death from a gunshot wound inflicted by Mr. R. Lowe, in self-defence."

At the conclusion of the inquest Mr. Lowe addressed the jury, stating that however hurtful it was to his feelings as a man and a Christian, a sense of duty not only to himself, but likewise to his country, compelled him to act as he had done.

Mr. Palmer, of Sydney, who acted as foreman, on behalf of himself and brother jurymen, said that Mr. Lowe was deserving of the thanks of the community, not only for saving his own life, but for the important service he had rendered to the community at large.

Subsequently the residents of Mudgee district testified their appreciation of Mr. Lowe's bravery in a substantial manner, and everyone joined in the declaration that if there were a few more men like him in the robber-infested districts the race of the bushrangers would prove both short and unprofitable.

Heather's companion got clean away, and as he was not subsequently brought to account for this or any other act of bushranging, it is more than probable that the tragical ending of his first exploit cured him of any further aspirations in that direction. The death of his companion and leader may have proved a better corrective in his case than any personal chastisement in the shape of imprisonment. It would have been well if other young men, whose cases will be referred to before this Story closes had received a similar check when starting on a career of crime—well for them, well for their victims, well for those related to them, and well for the communities whose peace they disturbed by actions of an exceptionally vicious character.

(End of No. 4.)



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