

And here it will perhaps be convenient that I should interrupt my narrative of more recent events to give a brief account of Gardiner's criminal career. In March, 1854, he was convicted at Goulburn of horse-stealing, and sentenced to fourteen years on the roads. In December, 1859, after five years' imprisonment, he obtained a ticket-of-leave for Carcoar district, which ticket was cancelled in May, 1861, on the grounds of absence from the district, and suspicion of cattle-stealing. A reward was offered for his apprehension, and two constables, Middleton and Hosie, hearing that he was living in an isolated farm hut in the bush, visited the place unexpectedly on the 16th July, 1861, and surprised Gardiner in an obscure inner room, from which there was no outlet except by the door at which they stationed themselves. Gardiner resisted, pistol shots were exchanged, Middleton and Hosie were both wounded, but Gardiner was eventually captured and handcuffed. Middleton then left for the nearest village, which was many miles distant, to obtain assistance, and during his absence Gardiner escaped;—Hosie asserting that he had been rescued by some bushrangers, with whom Gardiner was supposed at that time to be associated, but it is generally believed now that Hosie was bribed, and connived at the escape.

During the twelve months that followed this escape, Gardiner was supposed to be the ringleader of a gang of bushrangers, and to be constantly engaged in depredations of that character. He was a remarkable criminal in many ways, but certainly not for his atrocity as compared with others. It is stated that, through accident rather than design, it so happened that throughout his whole career of bushranging he never took life, and he was always noted for gentleness and respect for women, never allowing them to be insulted or attacked when he was present. He was no doubt a terror to the well-disposed portion of the community, and his example was most pernicious, for, being looked on by many as a sort of hero, in consequence of his activity and feats of daring, he made bush-ranging, as it were, fashionable and attractive, and a number of foolish youths were led to follow in his footsteps. It is supposed that it was Gardiner who planned and directed the gold escort robbery in June, 1862, when the police in charge were fired on and driven into the bush. Some 3,000 ounces of gold were captured, of which about 1,700 ounces were subsequently recovered, the rest remaining with the captors. Immediately after this Gardiner disappeared, and was not heard of for two years, when he was discovered by the police in the interior of Queensland, where he had in the interval been leading, it is asserted, a quiet and industrious life, engaged in occupations which were entirely free from crime. He was brought to Sydney to stand his trial, which took place in July, 1864. It was then found by Sir James Martin, the Attorney-General, that there was no evidence forthcoming to connect Gardiner with the escort robbery, or with any of the serious bush-ranging cases with which he was supposed to have been connected; and he was put on his trial eventually for wounding Middleton and Hosie, with intent to kill (in this colony a capital offence), when they attempted to capture him in July, 1861, on the cancellation of his ticket-of-leave. The jury, however, were not satisfied that Gardiner in defending himself, as it were, against the sudden attack of these men in an almost dark room, knew that they were constables, and acquitted him of the capital charges, finding him guilty of the minor count of wounding Hosie with intent "to do grievous bodily harm." Gardiner was tried at the same time for robbing two travellers, Hessington and Hewett, being armed (an ordinary case of bush-ranging, unaccompanied by any aggravating circumstances), to which he pleaded guilty; and for these convictions he was sentenced by the late Chief Justice to 32 years' imprisonment, the first two years in irons. The condition of the country at the time called perhaps for exceptionally severe sentences, the community being almost paralyzed with fear. But it is impossible, when now reviewing dispassionately all these circumstances, to resist the conviction that Gardiner's cumulative sentences were measured not only with reference to the crimes of which he had been convicted, but in view also of those with which he was supposed to have been connected, and of the charges of which he had been acquitted.

I will now revert to the circumstances connected with the mitigation of the bush-ranging cases, detailing them in the order in which they occurred. Shortly after my decision in Gardiner's case had been communicated to the Sheriff, he proceeded to act on the instruction contained in the Colonial Secretary's Minute of 20th September, 1872, and which he had allowed to remain in abeyance pending a settlement of Gardiner's case. On the 21st January, 1873, the Sheriff addressed to the Colonial Secretary a General Report, marked (D), on the cases of the prisoners serving long sentences for bush-ranging who still remained in gaol, and whose cases he thought called for serious consideration. These sentences, he pointed out, had been imposed at a period when it was thought necessary to deter from the commission of crime of that particular character by severe examples of punishments; but the remarks of the Judges when passing sentence, and the action of the Executive subsequently, had led the prisoners of this class generally to expect that their sentences would not be served in full, but that, when the crime of bush-ranging had been as it were stamped out, the punishment awarded during that period of excitement would be carefully reconsidered. The Sheriff pointed out that, of the bush-ranging cases convicted from 1860 to 1870, no less than forty-seven had been already commuted. In almost all these cases, the favourable report of the Judges had been received—thus showing that the Judges generally looked to a shortening of these bush-ranging sentences by the Executive, and justifying the expectations entertained by the remaining prisoners on the subject.

The desultory manner in which the forty-seven cases referred to had been dealt with had been productive of much harm. They were mostly decided upon applications from the relatives and friends of prisoners, and upon no fixed principle or rule whatever. This will be apparent from a glance at the accompanying return marked (E),* called for by Parliament, showing the particulars of 267 remissions sanctioned during the five years ending 31st December, 1873, and which includes nearly all the forty-seven remissions in bush-ranging cases referred to by the Sheriff. The manner in which these forty-seven cases had been disposed of had created a strong feeling of injustice and unequal treatment amongst the prisoners of the same class that remained in gaol, to the serious prejudice of prison administration. The Sheriff stated to me that he scarcely ever entered the gaols that prisoners did not lay before him their cases, which compared favourably with those of men who had been released whilst they remained in prison.

* Not printed.