



VICTORIA POLICE
MUSEUM

*A True Narrative of the
Kelly Gang,*

*By
T.N. McINTYRE*

*Sole Survivor of the Police Party
Murderously attacked by those
Bushranger in the Wombat Forest
On the 26th October 1878.*

REMINISCENCES OF A VICTORIAN MOUNTED CONSTABLE.



A NARRATIVE OF THE KELLY GANG AND OTHER BUSHRANGERS.

By T. N. McIntyre

(All Rights Reserved)

VICTORIA POLICE
MUSEUM

The evidence you shall give in this case shall be the truth, the whole truth, and nothing but the truth.

CHAPTER 1.

Extensive horse stealing. Arrest and trial of some of the horse stealers and receivers. Shooting of Constable Fitzpatrick. Search for the Kelly Brothers.

.....

The Kelly Gang of Bushrangers was attracting much public attention throughout the Australian Colonies about this time 24 years ago; indeed their career was observed with some interest throughout the civilized world and the murders and robberies committed by them have been commented upon in verse and prose and formed the basis of many a romance besides having been treated "authentically" by several writers, some of whom knew very little about the facts forming the ground work of their sketches, but who had as is usual in such cases very pronounced opinions.

Amongst those making use, in fiction, of the episodes connected with the Kelly outbreak, may be reckoned in the first rank of writers Rolf Bolderwood, whose Dick Marston is undoubtedly a representation of Ned Kelly.

"My name is Dick Marston, Sydney side native. I am 29 years old, 8ft in my stocking soles and 13 stone weight. Pretty strong and active with it so they say. I don't want to blow etc."
The whole text may be seen in "Robbery Under Arms", and is an accurate description of Ned Kelly as he would have described himself lacking only the modest tone adopted by Dick Marston, and that he Kelly, was a native of Victoria.

I do not undertake to give a full history of the Bushrangers, at the same time I may mention that many facts connected with their career have been related to me by eye witnesses, or come under my own observation, and it will be my endeavour to relate what has thus come to my knowledge in an accurate and unprejudiced manner.

/In reference



In reference to the paragraph which forms the heading I desire to mention that in making this statement I crave an indulgence which would not be allowed me in a court of Justice, in which a distinction is made between what a man knows and what he believes. On this occasion I would like to state what I believe as well as what I know, our actions are so much controlled by what we believe that it is unnecessary for me to comment upon that subject.

A new generation has sprung up since the trial of Ned Kelly and the evidence of the various witnesses were published in the Melbourne press or elsewhere and I having been the principal witness, an eye witness of the murders, am often asked to recount the particulars of that unhappy time. Through the frequency of the subject cropping up in my presence and the various opinions expressed upon the matter it has been exceedingly distasteful to me and I can seldom be brought to speak upon it, but like King Charles' head to "Mr. Dick" it is evidently a subject from which I will never escape, and having a family it has long been my desire to leave on record for their information, if for nothing else, an account of my experience with the Kelly Gang of Bushrangers.

I joined the Victorian Police in '69. Power, the Bushranger escaped from Pentridge, our principal penal establishment, in February of this year and when I was in the Depot at Richmond he had caused quite a flutter amongst the police authorities by some audacious robberies he had just committed with the aid of his double barrelled gun, a weapon which Power is reported to have that much confidence in, and indeed before the universal use of the breach loading rifle his choice of weapons as opposed to a revolver was a very natural one.

Ned Kelly, at this time a youth in his teens, often accompanied Power on his excursions and although his name in connection with Power was not mentioned so early as '69 he was no doubt even then serving his apprenticeship to that occupation in which he became so proficient in after years. Notwithstanding that Power travelled about the colony a good deal his head quarters were known to be the ranges of the North Eastern District and it was to this part of the Colony that additional Constables were sent, those having service and experience being chosen.

I had to ride out with despatches to some of the stations around Melbourne ordering the Constables to proceed to the North East immediately but, being shortly afterwards transferred to the extreme North-West, I had no trouble with Power the Bushranger, except on one occasion when we were apprised by telegram that he was supposed to be making for our district, the information turning out to be incorrect after giving us several days unnecessary riding along the North-west border of Victoria.

/Passing over



Passing over 8 years of my police service, June 1875 found me transferred to the Upper Goulburn Police District, so called from the fact that the stations forming the district were nearly all situated in the ranges where the Goulburn river takes its rise. My first station in this district was Alexandra, a mining township about 40 miles south-west of Mansfield, and here I spent two years, the happiest of my police experience. There was very little crime to occupy our attention upon this station the duties which I had to perform being principally those of a Crown Lands Bailiff. Nearly all the Mounted Constables were crown lands bailiffs, an honorary position which gave us and our horses plenty of exercise in general supervision of Crown Lands and valuing the improvements made by crown tenants who were applying for their lease. During the time I was stationed at Alexandra I got a favourable entry made in my "Record Sheet" for the arrest of a man named Williams who was sentenced to 9 months for larceny and 4 years for horse-stealing.

It was with reluctance that I left here but having to obey I was relieved by Mounted Const. Irvine who is now an Inspector in Melbourne. I proceeded to my new station, Mansfield, which was the head-quarters of the district, the strength of the station being one officer and 4 men. Mr Sadler was the Superintendent and Senior Const. Kennedy non-com. in charge of the station. Mansfield about 130 miles north east of Melbourne is a pastoral and agricultural district, the land being generally of an arable nature. It is pleasantly situated upon the dividing range, the giant form of Mt Buller being within view forms with its snow capped summit, in the winter, a noble back-ground to the picturesque appearance of the township. In the district of Mansfield we had very little crime to deal with but in the districts which lay to the north and north-east of us cases of horse stealing and cattle duffing were reported almost weekly.

There was a stock protection association in Mansfield. That is a number of the leading land owners throughout the shire had combined for the purpose of protecting their stock from being stolen and in furtherance of this object had offered a very handsome reward for the arrest and conviction of any person stealing the stock of any member of the association. The reward thus offered was nominally £100 and although it usually fell short of that amount it was always a very good sum of money.

Senior Constable Kennedy had received several of these rewards and shortly after my arrival at Mansfield he informed me that he had found, in a local store, a number of sheep skins with the brands defaced. Learning from whom they were purchased he took me with him and we together watched the suspected person from the top of a hill which overlooked his dwelling. We used glasses and after watching for several days got the suspected person in the act of killing some sheep which proved to belong to a neighbouring squatter and, a conviction following, a reward of £60 was given by the society. Whether this association had an effect in preventing crime or not, it certainly was the case that there was very little stock reported to us as having been stolen.



A direct line northward from Mansfield would run midway between Benalla and Greta the former being about 40 Miles distant and the latter about 50. There was a good road to Benalla but none to Greta. Mrs. Kelly lived at Eleven Mile Creek 4 miles from Greta she had been married again and had an infant. "Red" Kelly her first husband having died and left a family of 7 children, 3 boys and 4 girls.

At this time there were only 2 boys and 2 girls at home, the two boys being Edward and Daniel. "Red" Kelly had been transported to Tasmania, his offence, it is surmised, having been some agrarian outrage, or manslaughter in a faction fight. Out of this distance of 50 miles between Mansfield and Greta there were fully 20 miles in which there was no settlement and from Strathbogie Ranges on the west of the Benalla Road to Mt Buller on the east thence northward to Bright the distance of unsettled country must have been nearly 100 miles with a breadth varying from 10 to 20 miles. Since the time of which I write this country between Mansfield and Greta has been all settled and nearly all the forest and scrub has disappeared before the necessities and efforts of the selectors. At the time of the Kelly outbreak this country was a no-man's land the principal part of it lying between the upper water-sheds of the Broken and Ovens Rivers consisted of ranges or undulating country with a good soil and heavily timbered besides having a dense undergrowth of scrub and ferns. Full of inextricable hills and valleys with the multiplicity of the minor water courses making it difficult to know whether you were on the fall of the Broken or the Ovens Rivers; the whole formed a hiding place in which an army corps might have searched for the offenders and being within a short distance of them still fail to find them. It is only in mountainous and inaccessible places that the banditti of any country can hope to prolong their career against the officers of the law for any length of time.

Ned Kelly was born at Wallan-Wallan at which place his father died and the family moved to Eleven-mile Creek near Greta about the year '65. He was thus brought up, since his twelfth year, on the northern boundary of the unsettled country described above and knew every twist and turn of the leading spurs which controlled the water fall of the two rivers already mentioned. Inheriting from his father a lawless disposition which was fostered and developed by his association with Power the Bushranger it is no wonder he took to a criminal life and with the love of horses which is a characteristic of the Australian bush native it was no difficult matter to see the direction in which his energies would take him. The difficulty lay in detecting him and as it subsequently turned out a still greater difficulty lay in his arrest.

/It is



It is the duty of a Constable in charge of a station upon a report being made to him of any crime having occurred in his district, to fill in and furnish a form called a "Crime Report" to the adjoining stations, and also one to the Detective Office for the information of the officer compiling the Police Gazette. This of course only refers to cases in which there was no immediate arrest. From the adjoining districts we received these "Crime Reports" of the horse stealing cases which were so rife there, and many of them contained under the heading of "Direction supposed to be taken by offenders." and "In the direction of Mansfield." This was shifting some of the responsibility onto us and used to rile us considerably, as we, in Mansfield, were all convinced that the horses were being taken across the border into New South Wales and such was subsequently found to be the case. In view of these reports we had to make continuous search throughout our district. But the horse stealing still continued and it has been stated that so great was the terror inspired by the horse stealers in the districts of Hedi, Greta and Moyhu that some owners of horses refrained from reporting their losses to the Police, so that the number gazetted does not represent the number stolen. It was universally believed by the Police and Citizens that Ned Kelly was the principal in all these cases of horse stealing, but as he was ostensibly a farmer and no definite charge could be brought against him there could be nothing done. There were some district changes made in the police in July 1878 when the Kilmore, Beechworth and Upper Goulburn districts were amalgamated and Benalla made the head quarters of a very large district called North-eastern Police District which covered eleven thousand square miles of country and had 49 Police Stations with about 80 policemen in it. Sub Inspector Pewtress was sent to Mansfield to assist in the supervision of a district which was much too large for any one officer to supervise. These changes were made by the Government of the day in opposition to the expressed opinion of Captain Standish and Mr. Sadlier, who considered that the Police Districts adjoining Benalla had already too little supervision as they contained many lawless characters and instead of reducing the number of Police and enlarging the districts the reverse should have taken place. The station of Mansfield was reduced by one man.

Towards the end of '77 there was stolen from Messrs Whitty, Farrel and Jeffrey of Moyhu a number of horses which were afterwards found by Constables Bell and Stowe of the Victorian Police in a paddock owned by two German farmers who lived upon the Murray River. These horses had their brands altered in a clumsy manner so that any person seeing them must have suspected that they were stolen. Following on the recovery of the stolen horses there were several arrests made, these were the two German farmers named Baumgarten and two men named Studders and Kennedy. Some time afterwards Detective Brown, who is now head of the Criminal Investigation Department, arrested, as one of the principal thieves, a man named Cook alias Lowry. The arrest of the men was the first step in breaking up a gang of horse thieves whose audacious and wholesale system of horse stealing has seldom been equalled in this or any other country. There were also warrants issued for the arrest of

/Edward and



Edward and Daniel Kelly and John Lloyd. Lloyd was arrested and discharged as there was no evidence against him. The warrant for the arrest of Edward Kelly was dated 20th March and that for the arrest of Daniel Kelly early in April.

Mounted Constable Fitzpatrick arrested Dan Kelly at his own residence on the evening of the 15th April. Dan Kelly offered no resistance but requested to be allowed to get something to eat as he had been out in the bush riding all day. Fitzpatrick consented to this but he had no sooner entered the house than Ned Kelly rushed in presenting a revolver at him fired 3 shots, one of which struck him on the left wrist the bullet lodging there, at the same time two other men who were in the house presented revolvers at Fitzpatrick who was surprised and had no time to offer any resistance. He was disarmed but Ned Kelly having extracted the cartridges returned him his revolver. When Kelly had cooled down he seemed very sorry for what he had done and realizing the serious nature of his offence he made Fitzpatrick cut the bullet out of his wrist and begged him to say that he had shot himself accidentally promising him £200 after the Baumgarten's case was over if he did not get him into any trouble. I was at Benalla the day that Fitzpatrick was shot but left to return to Mansfield early that morning. Next day we were apprised of the charge by telegram and also that there were warrants issued for the arrest of the parties concerned.

Sergt. Steele and a party of Police went to the residence of Mrs Kelly and arrested her and the two men who had revolvers at the time Fitzpatrick was shot. These men were named Williamson and Skillion. The Kelly brothers could not be found. We police all knew that Kelly had been associated with Power the Bushranger and also that he had received a sentence of 3 years for receiving a stolen horse, but so far as we in Mansfield could learn Kelly had stolen no horses out of our district. Sergt Kennedy, who had by this time been promoted, Constable Johnson and myself made an excursion to the head of the King River and thence through the Hedi and Greta Police Districts. After leaving Monk's Saw-mill about 12 miles from Mansfield we had nothing to guide us to the head of the King except a blazed tree at intervals and we did not keep altogether to the blazed line. Kennedy was a good bushman and good bushmen are not very common in the Police. I have travelled over many miles with some men, station hands, whose instinctive knowledge of how to proceed to a given point through a wilderness of Australian bush never travelled by them before, seemed to me wonderful.

These men seemed to have again acquired that sixth sense of which ages of civilization has robbed us, and which is still partly preserved by the aboriginals. I always carried a compass and also a map of the Police District in which I happened to be stationed pasted in my Police Memo-book, a book which each Constable has to carry, so that I had no fear that I could not find my way out of or into any place to which my duty might call me.

/We made



We made enquiries of a good many people on this journey and Sergt Kennedy tried to induce a man whom he knew on the King river, and who had served a sentence himself, to give us some information, promising to give him the reward of £100 which was offered for the arrest of Ned Kelly if he told us where he was to be found. Passing close to the place where Power was arrested on the 5th June and which has since been called "Power's Camp", we stopped the first night at the Hedi Police Station upon which station there was only one man. The next day pursuing our enquiries we reached the Greta Police Station and remained there that night, here also we found only one Constable, although prior to the time of our visit and subsequently there were two men upon this station. We succeeded in learning nothing but the difficulties that beset these Constables in the performance of their duties. On our return journey we passed through Samaria, being several days upon this patrol. We had thus gone all round the Kellys who were camped on the Stringy-bark Creek in the ranges at that time.

This was only one of many patrols, always in plain clothes, which we made during the six months that intervened between the time that Fitzpatrick was shot and our fatal expedition. We sought information from every person we thought would know anything about the Kellys. A few miles out of Mansfield upon the Benalla road there was residing a small farmer named Wright. He came from the same part of Ireland that Ned Kelly's mother did "County Armagh" and it was said that he was a ship-mate of hers. He was a quiet, industrious and inoffensive man but his eldest son named Isaaih had got mixed up with what was called the "Greta Mob" and had been in gaol with Ned Kelly, both being convicted for the same offence. Wright was about the same size as Ned Kelly and was married to a relative of his, he was a dare-devil, blustering sort of a fellow, and as by his rowdy conduct he had given a good deal of trouble to the Police from time to time he got nick-named "Wild Wright". He was in the habit of going over to Greta and I occasionally asked him if he had seen Ned Kelly. He told me on one occasion that I mentioned the matter to him that he would not betray Ned Kelly for all the money in Australia. He also several times said to me "Ned Kelly is mad and you will see it one of these days, I tell you McIntyre he is mad." I pressed him to explain what he meant but he only emphatically reiterated his statement. I told Kennedy what Wright had said but neither of us placed much importance upon it, as we looked upon it as merely a confirmation of what we believed ourselves, namely that Kelly would be a dangerous man to arrest. Looking at it by the light of after events I believe that Kelly had in contemplation and apparently made no secret of it amongst his associates the idea of robbing the banks and perhaps of murdering the Police but neither of these eventualities presented itself to us at that time. Had it done so we would have communicated with the Police in the adjoining districts to put them on their guard as it would have been there and not in our district that we would have expected the outbreak to take place. I have been informed by a Beechworth store-keeper to whom Byrne owed money; that Byrne told him that his account

/would be



would be paid if he, Byrne, had to rob a bank to do it; and it was afterwards with the stolen bank-notes that his account was paid. This would indicate that it was not mere accident that associated Byrne with Kelly in the Police murders.

During this time the 5 men who had been arrested for stealing and receiving stolen horses in connection with the Kellys had stood their trials. The first trial taking place at Beechworth in March 1878. The horse stealers had pursued their nefarious operations with a great amount of cleverness and shrewdness, and whilst the Constable at Greta was reporting that the horses were taken in the direction of Mansfield, no doubt led to this conclusion by some foe in a friendly disguise, they were all being removed across the border. At this trial the five men were arraigned before Judge Bindon. There were 29 Jurymen challenged nine of whom were challenged by the Crown, the panel by this means being exhausted without forming a Jury, in order to make up a Jury the Crown prosecutor permitted the names of the nine Jurors objected to by him to be returned to the box and three drawn from them to complete the Jury. The Jury failed to agree in all the cases and were discharged. Before another Jury the prisoners Cook and Kennedy were again placed upon their trials charged with another case of horse stealing with a second count of receiving. The verdict being guilty against Cook on the first count and not guilty in the case of Kennedy on both counts. Cook was an old criminal having been sentenced three times previously for horse-stealing, and he had completed sentences amounting to nine years. On this occasion he received a sentence of six years. Although Cook had naturally gravitated towards the Greta mob of horse stealers it was the opinion of many that he had been made a tool of by Ned Kelly. The other four were tried again the venue being changed to Melbourne. At this trial Gustave Baumgarten and Studders were found not guilty. The Jury failing to agree in the case of the others. Wm. Baumgarten and Samuel Kennedy were again tried at Beechworth on the 10th October 1878, the Judge being His Honor the late Sir Redmond Barry. I was present at this court being a witness in a case of criminal assault which Sergt. Kennedy had from Mansfield, and which I may dispose of at once by stating that the prisoner was found not guilty. Notwithstanding that there had been a double panel of Jurymen summoned to attend the court, when Baumgarten's case was called on there was some difficulty in obtaining a Jury as the Crown challenged twenty Jurymen and each prisoner sixteen; fifty-two Jurors were thus challenged and the large number challenged by the Crown was suggestive. Mr. Chomley was Crown prosecutor, Mr Purves Q.C. defended Baumgarten, and Mr Brown was for Studders, both instructed by Mr Zincke of Beechworth. The defence in each case was that the horses had been purchased bona fide from a man named Thompson who was described as being nearly 40 years of age, his description otherwise agreeing with that of the chief rogue, and Kelly's photo being shown to the Baumgartens by Sergt Steele it was identified by them as being the man they knew as Thompson. I never saw any photograph that bore much resemblance to Ned Kelly. I notice by the "Argus" that his photo was taken at his own request for his friends the day before his execution, but these could not have been distributed or they would have been copied and circulated.

/Mr Purves



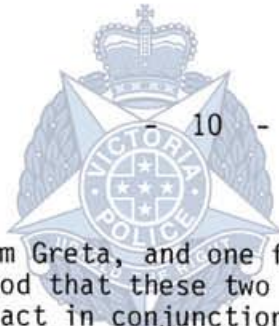
Mr Purves who is the most trenchant cross-examiner that we have at the Victorian bar, wanted to know from each of the Police witnesses why it was that Ned Kelly was not in the dock instead of his unfortunate client, and this question was put in such a way that it was well, scarcely amusing to the Police. Nearly two years elapsed before Kelly stood in the same dock. Baumgarten produced receipts for the purchase of the horses which were wrongly dated and the brands upon the animals were all altered in such a way as would be sufficient proof to any man of common sense that the animals were stolen. The prisoners were found guilty of receiving Baumgarten being sentenced to four years and Kennedy to six years imprisonment. I heard the evidence and how the Juries arrived at their different decisions of some being guilty and some not guilty was incomprehensible to me. This trial showed, which certainly should have been found out before, the manner in which the stolen horses were disposed of. It was here that I first saw any member of the Kelly family, as Mrs Kelly was put upon her trial at this court for her assault upon Fitzpatrick, her two daughters Mrs Skillion and Miss Kate Kelly were also present.

It was not, therefore, solely from description that I recognized the Kelly brothers a little over a fortnight afterwards on the occasion of the Police murders, but also by the strong family likeness which existed.

Mrs Kelly, Williamson and Skillion were found guilty and sentenced the former to three years and the two latter to six years imprisonment each. It is impossible that there can be any friendliness between the Police and the criminal class or those who are inclined to crime, if the Police wish to retain their positions and the criminals to pursue their career in safety. It was freely stated by Ned Kelly, and believed by some, that it was systematic persecution by the Police which drove him into crime. I can find no foundation for this. He was simply the victim of his hereditary and environment and it is apparent from the success of his horse stealing that he could not have been very closely watched nor interfered with by the Police, and yet this is what he constantly complained of. But a good calumny will always bear fruit and he caluminated some of the most respectable men in the force with the result that their names have appeared in print as being guilty of breaches of the secular and moral laws which I have heard from themselves they never committed nor ever contemplated. The severity of the sentence passed upon his mother would have been to most men a grievance against the authorities, considering that he, himself, was the cause of her offence, and he did occasionally refer to this as a grievance but the most of his complaints were centred upon himself as being persecuted because of his once having been convicted.

Superintendent Sadlier after his arrival at Benalla had changed the personnel of the Police upon some of the stations and after the trial of the Baumgartens he determined to have a search made for the Kelly brothers on a greater scale than any that had hitherto taken place. With this object two parties of Police were to be despatched one from

/the north,



the north, starting from Greta, and one from the south starting from Mansfield. I understood that these two parties were to meet at the Hedi Police Station to act in conjunction with each other, or rather that after a consultation the parties would act in concert with each other but not together. It was believed by the Police generally that the Kellys were in concealment close to "Power's Camp" to which Hedi was the nearest Police Station. Sergt. Kennedy was to have charge of the party from Mansfield and he told me that he had informed Mr Sadlier that he only wanted two men with him, these two men's names he mentioned they being Mounted Constable Scanlon (a very old mate of his) who was stationed at Mooroopna and myself; but that Mr Sadlier insisted against his expressed desire in sending another man with the party. Mr Sadlier assigning as a cause for this that as none of us three knew the Kellys it was necessary to send a man with the party who knew them and consequently Mounted Const. Lonigan of Violet Town was instructed to accompany us. There could be no better proof that the Kellys never visited our district than the fact that they were unknown to Kennedy and Scanlon who had been for many years on the Mansfield and adjoining stations.

Scanlon arrived for this duty on Wednesday the 23rd October and Lonigan on the 24th. We had a large Police paddock at Mansfield in which we kept spare horses for remounting the troopers throughout the district and we were privileged to take our pick of the available horses for this expedition. Kennedy who was riding a young, flash mare changed for a steadier horse P 18, which Const. Scanlon led up from Benalla. I took a well bred brown mare not very reliable on her legs but quiet and easily caught. For a couple of days before starting we had been training our horses and also the pack horse to the use of hobbles in a small paddock attached to the Police Station.

In 1878 under the name of "The Vagabond" there was a gentleman contributing articles to the Melbourne "Argus" describing the internal economy of our Police Institutions. These articles having been published in pamphlets, I had purchased the one containing the account of the "Vagabond's visit to the Pentridge prison". During the time "The Vagabond" was in Pentridge, Power the bushranger was an inmate of the prison hospital and a considerable amount of the article upon Pentridge is devoted to the reminiscences of that bushranger. The Vagabond after stating that Power had Ned Kelly with him for some time proceeds to report Power as having said, "I was always for want of a mate, there is young Kelly was with me for a time he was no good and helped to sell me at last. They say that one of the Quinns was dressed up as a black-tracker to deceive me. God will judge them for taking blood money X X X X. Then there was the bank at Stawell I was going to stick that up but could not do it without a mate." I have seen it stated in another place that Kelly refused to hold Power's horse whilst he stuck up the bank at Seymour, and I think the "Vagabond" made a mistake in writing it Stawell. Power also stated that he had on several occasions to restrain Kelly or he would have committed murder.

/Lonigan had



Lonigan had never read these papers and reading some the night of his arrival he asked me if he might take the pamphlet with him the following day, I of course consented and he did so, thus it fell into the hands of Ned Kelly along with the rest of our equipment. Kelly was not the man who accompanied the Police as guide when Power was arrested on the 5th June 1870. It is however worth remarking that Kelly was discharged from custody on Friday 3rd June, two days before Power's arrest. He had been arrested for being an accomplice of Powers and was tried at Benalla on the 12th May, there being two charges against him. The first charge was for a robbery at Kilferd on March 18th in this case identification was incomplete. The second charge was also for being an accomplice in a highway robbery at Seymour on March 25th, in this case the person robbed could not be found. He was then remanded to appear at Kyneton on the 20th May charged with a similar offence committed at Lauriston in that district; he was twice brought up at this court and remanded each time.

The Police producing no evidence against him, he was finally discharged on the 3rd June. Mr Nicholson was the Superintendent in charge of Kyneton, and he was one of the officers who arrested Power. Early on the morning of the 24th October Senior Const. Kelly came down from Woodspoint in charge of a gold escort. He had two Constables with him and also two bank managers accompanied the escort to protect at least £20,000 worth of gold as there were 3,300 ounces obtained from Woodspoint and a considerable amount from Jamieson. The Senior Const. had a Spencer rifle, but at Sergt. Kennedy's request he lent it to him and the escort thus went along the Benalla Road, passing not many miles from Kelly's camp in the ranges protected by five men armed with revolvers only. Here was a chance missed by the Kellys.

On the 25th October 1878 we started at daylight having a pack horse with us to carry our provisions and camp equipment. Just before starting the Sergt told me to get the Spencer rifle, I expressed some surprise at this as it was unusual, but Kennedy said "I do not like the look of that fellow" pointing to a likeness of Kelly which was on the mantlepiece of the barrack room. This likeness of Kelly was taken several years before, when he was being discharged from Pentridge and as he had grown a full beard since his photo was taken it did not resemble him much. The best likeness of Kelly that I have seen was in the "Illustrated Australian News" entitled "Kelly in the dock".

We had also with us a double barrellled breach loading gun which had been lent to us by the Church of England Clergyman and some shot cartridges.

"Assume a virtue if you have it not" is an advice that is followed by a great many men, some of whom under the cloak of religion have kept their honest intentions so prominently before the public that they have been enabled thereby to do more injury to their fellow citizens than any gang of bushrangers that ever existed. Others, men of spirit,

/who are



who are in a place of safety, assume a superabundance of courage, but as their courage is never aggressive and is generally accompanied by a head ache the next morning they get through life without spilling any blood, particularly their own. The most annoying of all men who assume to be what they are not are the wise men. Men who can sit down calmly and being apprised of all the facts of any case that is laid before them can tell you exactly what they would have done had they been similarly circumstanced. I have tried to point out to some of these gentlemen that they had the advantage of knowing events after they had occurred and that they might not be so wise before those events did occur. But, pooh! they would have known what to expect, they would be prepared for every contingency, they always are. It is to be regretted that some of them were not present in Mansfield on that early morning in October in order to give us the benefit of their precience. Our party did not know what was going to occur. We went to search for and if we found them, which was doubtful, arrest two men one of whom was known to be armed with a revolver and was likely to resist arrest by the use of that weapon, the other was an individual who was not looked upon as being dangerous. It was never for a moment suspected by us that these two men had any associates, and I believe there was not a man of our party who intended to shoot Ned Kelly unless in defence of his own life, or as a last resource in effecting his capture.

It was true that Ned Kelly had shot at Fitzpatrick, but Fitzpatrick was a solitary policeman amongst several armed men and the pitiful manner in which Kelly had begged Fitzpatrick not to get him into any trouble, and promising him £200 after the Baumgarten's trial was over, (together with the fact that Fitzpatrick had told us that if it had not been for Ned Kelly the others present would have murdered him, a suggestion being made to that effect, and it required all Kelly's influence to get him away) did not proclaim Kelly to be the murderous man he turned out to be. It proved that he was passionate and of course we could judge from the attack made on Fitzpatrick that he was capable of committing murder in resisting his own or his brother's arrest, and the charge against him when we went to arrest him was of a more serious nature than it had been when he was only charged with horse stealing.

We left Mansfield at dawn of day. There was one man in the street who witnessed our departure, I did not recognize him. We went down the Benalla road and crossed by the Mill-paddock lane into the Wombat road, thence across the Mount Battery run, fording the Broken River at Carey's farm. We then got into Bridges Creek and going up it for some distance we camped for dinner, after leaving Mansfield the only house we passed on this journey was that of Mr. Martin a selector on Bridges Creek. After we had dinner we packed up and started in a north-easterly direction until we came to Hollands Creek which we crossed and got into a blazed line of trees which took us to the old diggings at the Burnt-hut on the Stringy-bark Creek. The night before had been frosty and the air of the early morning was keen and bracing, but as the sun rose it became warm and genial with a slight breeze scarcely perceptible, carrying with it a faint smell of blossoming nature, making one feel that it was good to be alive.

/Shortly after



Shortly after we had resumed our journey we saw a tiger snake lying sunning himself. Lonigan and I dismounted and there was a playful race between us for who should kill the snake, I got in first with a blow which broke its back, and I said "First blood Lonigan", little did he or I think how soon Lonigan's own blood would be shed. We had a good stock of provisions with us, but no drink, except a small flask of whiskey which I took with me. We were all men from 32 to 38 years of age and each of us had a Police experience of over 10 years, except Lonigan whose service nearly reached that period. May I mention here for the information of a possible English reader that in Australia "a squatter" is a large and generally rich landowner, his land is usually called "a run" and his residence "a station". In contrast to this the Police Station is very frequently called the "Police Camp" and the Watch-house or Lock-up "The logs". In the early days of the colony these terms were universally used by the "diggers" as the Police were encamped in tents and the Lock-up was built with heavy logs.

At Hollands Creek the Sergeant was looking for the crossing place and remarked that he had been shown it a few days previous to this by a man from Tolmie's Dueran Station. Seeing that we were several miles to the west of the blazed line leading to the head of the King river, I asked Kennedy if we were not going over to meet the other party. He replied in a jocular manner: "We don't want to meet them, if we do we will find them out of tucker and they will eat us out". We reached Stringy-bark Creek about 2 p m Kennedy said we were to camp here and whilst we were hobbling the horses and pitching the tent he took the Spencer rifle and went down the creek. He was absent about 2 hours, and I have been informed by a retired Officer of Police, that he was seen on this occasion by the Kellys, who had been informed of our coming the day before and who followed up the Sergeant until they ascertained the position of our camp. After the Sergeant returned he gave me the rifle and told me to see if I could shoot a Kangaroo several of which animals he had seen down the creek. I went down, but failing to see any kangaroos I did not discharge the rifle. This was the only opportunity that ever I had of shooting with one of these rifles although I often carried them upon gold escort. The rifles were only issued to stations upon a line of gold escort and belonged to the station. They had a magazine in the butt which held 7 cartridges these were fed into the breech by means of a lever operated upon by the trigger guard. One of these rifles in the hands of a man who understood it would be a formidable weapon, but we received no training in its use and many of the men were absolutely ignorant of its mechanism. Owing to this ignorance, one Constable deliberately fired a shot from one of these rifles into a number of his comrades at Benalla wounding one so seriously that he had to be invalided. Another incident came under my own observation in 1875. I was one of a party escorting gold from Sale when my mate, a steady man, fired off his rifle in the hotel where we had to stay all night and this accident was also caused by his ignorance of the mechanism of the weapon. He was cautioned to be more careful in future and had to pay 6d for the cartridge expended.

/On one



On one of the stations I served upon I had for a mate a man who had served in a cavalry regiment during the Crimean war and had the English and Turkish medals for that service. He had been formerly stationed at Jamieson where one of these weapons was kept, the same rifle we had with us I believe. He told me that being desirous of trying the rifle he applied for permission to do so, he was informed that he could fire as many shots as he liked at 6d per shot that being the estimated cost of the cartridges to the Government. He fired two shots and paid one shilling for his experience. His opinion of the rifle was not a favourable one. This opinion seems to have been shared by Ned Kelly for he discarded this weapon for others after the Euroa bank robbery. We Mounted Constables were armed with revolvers and swords, we were taught the sword exercise, but received no training in the use of the revolvers. Each man was served out with 12 rounds of revolver ammunition which had to be accounted for, on all occasions of inspection. The Officers generally being satisfied with our efficiency if our equipment or "Kit" was found polished up to its utmost possibility of brightness.

The late Superintendent Nicholson stated to the Police Commission that when he took charge of Benalla in July '79, he found there some Constables, who said that they had never fired a gun in their lives. He formed a class under the instruction of Senior Constable Irvine and had the men taught the practical use of their weapons. The Victorian Police Authorities were not unique in this matter of saving ammunition. I served for nearly three years in the Royal Irish Constabulary and never fired a shot during my service, and this notwithstanding that the Irish Police Force is a military body; we underwent a military training for 5 or 6 months being returned as effective without so much as handling a cartridge. The Royal Irish Constabulary has been described by the "London Times" "as being morally, physically, and intellectually the finest body of men in Her Majesty's Service". Sergt Kennedy had served on the Dublin Metropolitan Police, a fine body of men distinct from the Constabulary. The other two men had no former Police experience. Is it not quite evident that Governments depend too much upon the moral effect of their Constabulary?

In large towns where shooting is seldom resorted to by the criminal class it may not be necessary for the Constables to be experienced in the use of firearms, but in sparsely inhabited and new countries where such onerous duties as the escort of gold and arrest of horse stealers and bushrangers fall to their lot it is absolutely necessary that the men should be well armed and have a good practical knowledge of the use of their weapons. How much gold has been escorted along bush roads, and no roads, by men who "never fired a shot in their lives", and certainly by many men who never fired a shot out of the weapons they carried on escort, or any similar weapon.

/CHAPTER 2



Murder of Constable Lonigan. I am taken prisoner.
Murder of Constable Scanlon. My escape and arrival
at Mansfield.

MUSEUM

We retired to rest early that night and having no apprehension of an attack being made upon us, there was no guard kept. We had nothing under us but some oilcloth, and as the ground was rough and it was a frosty night, we were very cold and uncomfortable and slept but little. I was out several times during the night to keep up the fire and warm myself. I turned out at the earliest indication of coming day and putting the billy on to boil the water for the tea, I went down the creek taking the gun with me, after a little while I heard Sergt. Kennedy calling me, on returning, I found that my mare had broken her hobbles and there was a general stampede amongst the horses. Taking my bridle with me I caught my mare and mounting bare-backed I rounded up the horses again, assisted by Lonigan and Scanlon on foot. After breakfast the Sergt told us that he and Scanlon were going on patrol. Kennedy said that it was his intention to remain here a few days and patrol the surrounding country. Before going he instructed Lonigan to look after the horses and me to make the tent comfortable by putting some ferns and long grass into it, and as we had plenty of flour to bake some bread; all the bread we had with us had proven to be sweet and was disagreeable when eaten with the salt meat.

Taking some lunch with them Kennedy and Scanlon then left, going down the creek or nearly due north. The last words that Kennedy said to me were "Mac, don't be uneasy if we are not home to-night". I made the tent comfortable as directed and having cut a large sheet of bark off a white gum tree, out of which I improvised a table and a baking board I proceeded to bake some bread. Lonigan looked after the three horses, and grass being scarce they were inclined to stray, so that he was kept fairly busy, during the time he was not looking after the horses he was reading the "Vagabond papers". About noon I was busy with my baking operations when, Lonigan who was lying down reading, told me that he heard a strange noise down the creek. I had not heard the noise myself, but considering that it might be a kangaroo or a wombat that he had heard I took the shot gun and went down the creek to see. Failing to find any of these animals I fired at some Lory parrots, which together with the Rosella parrots or parakeets, and the white sulphur crested (cacatua galerita) cockatoos were very plentiful upon the creek. I killed a couple of parrots and cooked them for our dinner. I have been much criticized for this shooting, but I thought the Kellys were not within a dozen miles of us, and I had the sanction of the Sergeant to fire the rifle the evening before. Lonigan who had not previous to this carried his revolver, buckled it on, at the same time remarking that as he had to go a considerable distance for the horses he thought it would

/be wise



be wise to take it with him. He evidently placed more importance upon the noise than I did. I was convinced that it was made by a kangaroo or wombat. Now I think differently.

Sergt. Kennedy had selected a clear place near an old burnt hut as the most suitable for our camping ground as it was out of danger of any timber which might fall from the forest trees. Our tent was pitched near the north west corner of this clearing which was partly natural and partly caused by human agency. The entrance to the tent was facing east and also the creek which was about 70 yards distant. Standing at the tent entrance and facing the creek there was upon the left front a felled tree nearly 4 ft in diameter, at the thickest part. It lay nearly east and west. About midway this log was joined by another which lay due north and south and terminated where it joined the other. These two logs thus formed two right angles, the point of junction being about 25 yards from the tent. On your right or the south side of the clearing the ground was free of timber and being of a swampy nature there was a luxuriant growth of rushes and other coarse herbage. These together with a slight declivity in the formation in that direction afforded good cover to within 20 yards of our tent for any party wishing to attack our camp, and it was from this position we were attacked, the south side or up the creek; whilst Kelly's hut was to the north of our camp and in the direction the men had gone on patrol.

From our camp to the head of the King river would be about 15 miles of thick forest country interspersed with an undergrowth of scrub which was very dense in parts. Several days after the murders a party of Police found a hut within a mile and a half of our camp. This hut was strongly built of slabs with open windows which could be used as port holes, and it was ascertained that the two Kellys with Hart and Byrne besides others had been living in this hut, digging for gold on the creek of which they succeeded in obtaining a small quantity. For the purpose of keeping horses for their own use they had about 20 acres of land surrounding the hut fenced in. The fencing was done in an ingenious manner by rails and saplings being carried from one tree or bush to another all round the enclosure. The hut was situated in a small clearing and it was evident that they had a good supply of ammunition for the trees surrounding and at a distance from the hut were riddled with bullets the bullet holes showing signs of the lead having been too precious to waste as it was cut out of the trees again and no doubt re-cast into bullets.

This hut was originally occupied by three men who were engaged in the illicit distillation of whiskey and as discovered by Dan Kelly shortly before Fitzpatrick was shot. About 5 o'clock I asked Lonigan to assist me in making a large fire to guide the men home should they not arrive until after sundown. We built a fire at the intersection of the two logs already mentioned, Lonigan working on the north or outside and I on the tent or inside. After we had completed the fire Lonigan remained upon the north side of the logs and I proceeded to boil

/the billy



the billy to make the tea. I was standing with my face to the fire and my back to the rushes looking down the creek for the men whose approach I expected. Lonigan was standing on the opposite side of the fire into which he was gazing intently, he had been strangely silent all day, if he had lifted his head he must have seen 4 men who were approaching us from behind the rushes before they challenged us, but he did not do so. Suddenly and without any warning I heard some voices crying out "Bail up, hold up your hands". My first impression was that it was Kennedy and Scanlon who, coming from an unexpected quarter, were jesting; on turning quickly round I saw four men standing in the rushes each of them armed with a gun which they held at their shoulders presented in our direction. I noticed particularly the man upon the right of the attacking party and I knew it was Ned Kelly as soon as I looked at him, seeing that he had me fairly and deadly covered, without the slightest tremor in the rifle I wanted that rifle lowered before I attempted to get my firearms and accordingly threw out my arms horizontally, immediately I did so Ned Kelly shifted the muzzle of his gun to the right and without taking it from his shoulder shot at Lonigan who had started to run partly towards and partly down the creek putting his hand down as if to get his revolver, he had no time to open the case and must have been looking over his right shoulder when he was shot in the right eye by Ned Kelly. I took a hasty glance around when Kelly fired and saw Lonigan fall heavily he said "Oh! Christ I am shot", made several plunges, breathing stentorously, after which he remained quiet. The whole affair occurred so quickly that Lonigan did not run more than 4 or 5 paces before he was shot; had he stooped down he would have been under cover of the logs when no doubt I would have been shot as a preliminary to their shooting him. After shooting Lonigan the 4 men rushed over to me, Ned Kelly with a revolver in his right hand and carrying his rifle in the other. As I had lowered my hands when the shot was fired, they cried out loudly "keep up you hands; keep up your hands".

I was jammed in a corner having a log on either hand and a fire at my back, both my revolver and the shot gun were at the tent about 24 yards distant on my right and about the same distance from some of the attacking party. I had only time to ejaculate "Oh God, my time has come", when the four of them reached me and presenting their firearms at my chest within a distance of 3 feet Kelly demanded to know if I had any firearms. I said "I have not", he asked where was my revolver I replied "at the tent", on hearing this Dan Kelly, whom I easily recognized by the family likeness especially about the eyes, suddenly whisked round and presenting his gun at the tent called out "Come out here you b---b---s". I told him there was nobody there. Ned Kelly asked me where my mates were, I replied "they are out". Ned Kelly and the two strangers were cool and held their weapons steadily. Dan Kelly was nervously excited and was laughing with a short laugh almost hysterical; there was something grotesque about his appearance; all his clothing including his hat was much too large for him and when he turned his back to me to cover the tent there was very little of the inhabitant of the clothing visible. Ned Kelly told his mates to keep me covered and me to hold my hands above

/my head



my head which I had not hitherto done. He searched me very carefully round the body, down the legs and even examined my boots to see if I had a weapon concealed. He then jumped over the log and going to where Lonigan lay, whose struggles in the death agony had ceased, he took possession of Lonigan's revolver. On his return to where we were he said "Dear a dear! what a pity, what made that fellow run?" He then proceeded to the tent and securing the firearms there he told his mates to let me go. I was standing under the cover of their weapons all this time. I was silent and so were they. Judging by the expression made use of by Kelly when he returned from the body of Lonigan it is possible he may not have contemplated murder in the first instance relying upon taking us separately and unprepared but there could be no doubt that after shooting Lonigan he intended to shoot the whole party. For clearly their safety demanded our destruction. On being released I turned to look at Lonigan to see if I could render him any assistance, he was lying on his back, his legs and arms extended, his head thrown back. He was apparently and really quite dead. At this time Dan Kelly who had been to the tent, returned with a pair of handcuffs and said, "here we will put these on the fellow". I may state that the words fellow and man did not seem to be in their vocabulary but I will throughout my narrative, in order not to disfigure it, make use of the word fellow for the word they made use of to denote a man.

Handcuffing was an indignity I was not inclined to submit to, and I did not raise my hands but appealed to Ned Kelly by saying "What is the use of putting these things on me, how can I get away and you all armed as you are?". He said "all right, don't put them on him, this (tapping the butt of his rifle) is better than handcuffs". To me he said "but mind you don't try to get away or we will shoot you if we have to follow you the Police Station to do so". Dan Kelly accepted this order from his brother very sullenly, and in language more forcible than elegant he stated that he would soon find the handcuffs upon himself if our positions were reversed.

From that moment I knew who was most likely to be my executioner when the time came. They all went to the tent and ordered me to accompany them. Byrne brought up our billy of tea and filling out some into a pannikin he handed me a drink. I thought he did it from a kindly motive but Kelly put a different construction upon his act by asking me if there was any poison about the place. During the time Kelly's associates were eating, Kelly was busy loading his own rifle and extracting the shot from the cartridges which we had for the sporting gun he replaced it with bullets of which he seemed to have a plentiful supply. He drew my attention to the rifle with which he had shot Lonigan and said "That is a curious old gun for a man to carry about the country with him". I said "yes, perhaps it is better than it looks." He said "I will back it against any rifle in the country, I can shoot a kangaroo at 100 yards every shot with it". The stock had been fractured and was bound with wire, also the stock and barrel were bound together by similar means. He gave our gun loaded in both barrels to Byrne and took Byrne's himself. Kelly had thus 2 guns one of which he told me was to shoot me if I did not obey him. Byrne had our gun loaded with bullets. Hart had also a

/double barrellled