



"We have mates where'er we go  
That somehow let us know  
The approach of every foe,  
To the bold Kelly Gang."

Regretting that he, himself, had not much musical ability, and a poor voice, he stated he came of a musical family. Another song related to the Bank robberies; a verse of which I quote.

"With flimsies, gold and silver coin,  
The three pennies and all,  
Amounting to two thousand pounds,  
We made a glorious haul."

He sang several others which didn't come from the same classical source; and as proof, to me at least, that his conduct was not outrageous he stated he had still another, the best of the lot, but as it referred to McIntyre and might hurt his feelings he would refrain from singing it. Whilst we were passing Wallan Wallan he looked out and said; "That is where I was born." And as we came in sight of the ranges beyond Tallarook, it could be plainly seen that, like Byrne, his aspirations were;

"Give us our wildness and our woods,  
Our huts and caves again."

And the emotions which no other part of the country suggested, not even his birth place, seemed to flock upon him now, and he looked long and intently at them. I watched him keenly and it was quite evident that though his eyes were fixed on the rugged scenery before him his mind was reflecting upon scenes and events far beyond the limits of his vision. He sighed and said, "There are the ranges, shall I ever be there again." In passing Glenrowan he said, "One good man fell there." I asked him to which of them he referred, but he shook his head and refused to answer. We understood him to mean Byrne. At another part of our journey he said that Byrne and Hart were two plucky trustworthy fellows. Nearly all criminals are fond of discussing law and raising law points even when the matter does not concern themselves. Kelly talked about the absence of warrants in his case and said he was illegally in custody, but there was no discussion upon this point. I suppose we were of opinion a technicality was not likely to cause the discharge of a man it had taken such infinite pains to arrest. He asserted that he made his own powder in the bush and that it was the best powder he had ever used. Asked how he made it he refused any information on the subject. This was characteristic of him during the journey; he would talk freely enough, but immediately he was asked a question he would cease talking and look at his questioner with a cunning leer, which evidently meant you cannot get anything out of me. Owing to the noise made by the train it was only possible to hear what Kelly said when in direct conversation with him. I extract the following from the "Ovens and Murray Advertiser" 3rd August '80.

Being asked by one of the police how it was he did not shoot Bracken he replied, "There was something about Bracken which I took to. He and McIntyre were two brave men and I did not like to shoot them."

/At one part

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At one part of the journey he was lamenting the low price of horses and cattle and expressed it as his opinion that a good war was necessary to increase their value. We arrived at Beechworth at 3.30 p.m. and found a crowd of people round the railway station anxious to get a look at the most noted of all Australian bushrangers. The prisoner was put into a conveyance and driven rapidly to the jail. On getting there I learned I was to be confined in the jail, until after the trial. I protested against this and wanted to stop at the police station but would not be allowed to do so. As my evidence was of importance to the Crown to obtain a conviction it was thought that I would be assassinated if I were not protected from the numerous sympathisers who had congregated about Beechworth immediately it became known Kelly was to be tried there. I did not think there was any danger of this and I was also of opinion that Kelly's many admissions of his guilt would be sufficient to ensure a conviction against him. There was a bed prepared for me in the cell to which condemned prisoners are removed on the evening or the morning before their execution. This cell is more comfortable than the others and immediately facing the gallows, so that a condemned man has only three or four steps to take to place himself in position for execution. This description of my position is certainly not aesthetic, in fact I think it is rather gruesome, but as one of the warders told me that they generally slept in this cell when their duties necessitated their sleeping in the jail overnight I felt that I had no right to expect anything better. The cell in which the condemned prisoner is confined until a few hours before his execution is on the ground floor, my recollection of it is that it is very small, the door being composed of iron bars through which a good view can be had of every part of the cell by the warder who is constantly stationed outside when the cell has an inmate. Bill Moore one of the finest fellows who ever wore a police jumper also slept in the cell with me. Moore and I acted as a re-inforcement to the warders who were but few in number. The fact of Moore having been reported, by the jail officials, for some remission of duty could not suppress his good nature, and cheerful disposition, although it had a tendency to make both of us unhappy in a not very happy position.

Kelly was confined in one of the lower cells on the other side of the corridor almost directly opposite to me, under the very shadow of the gallows which was literally between us. Was this more than accident that we two men the only survivors of the eight who met in Wombat forest should be thus so peculiarly placed? I recognised that it was not alone Ned Kelly who had to stand his trial but that I also had to stand my trial the charge against me being a moral one. The positions we occupied represented the charges upon which we were to be tried. Kelly was on the ground floor charged with a breach of that secular law as old as the human race; "Thou shalt do no murder." I was in a more elevated position charged, morally, by some of my fellow citizens with want of courage.

To what purpose had Kelly deserted the paths of industry and honesty? Endowed with health and strength beyond that of the ordinary mortal and surrounded by possibilities of acquiring land and wealth which fall to the lot of few, he had chosen the short and hazardous career of a bushranger to the slow and patient drudgery of daily industry,



and allowed his moral feelings to become so dormant that he viewed unconcernedly the death of his fellow beings only regretting that his last venture of wholesale murder, in wrecking the police train, had proven abortive. On coming into the jail he glanced at the gallows and said "What a pity that a fine fellow like Ned Kelly should be strung up there." I heard from the warders one of whom was constantly in Kelly's cell, that he was chatty and not much depressed although he had to keep to his bed most of the time owing to the wound in his foot. He never lost his equanimity except on those occasions upon which he returned from his trial at the police court when he was searched to the skin a proceeding he highly resented, telling the officials they would make a wild beast of him. Beechworth has an elevation of 1,800 ft. above the sea level. The beginning of August is the coldest part of the year, and such icy, penetrating draughts as were in the corridors of that jail I never before experienced. The removal from the comforts of my own home to the chilly atmosphere of the jail gave me a severe attack of pleurisy in which I found it impossible to draw a deep inspiration without suffering acute agony. I was in the jail nearly a week and had upon several occasions to perform sentry duty. I was thus occupied upon the wall of the jail one day when Kelly was allowed out into the exercise yard, he saw me and waving his hand he seemed inclined to enter into conversation. Fearing to infringe the jail regulations by conversing with him I waved my hand to him and walked out of his sight. Returning occasionally to that position on the wall from which I could see him I watched his actions with much interest. He had procured a bucket of water and sitting down on a low seat he after many shiftings about, got it into a favorable light to obtain the best reflection of himself in the water and taking a comb out of his pocket he proceeded to comb his hair and beard and into this improvised mirror he gazed nearly the whole of the time he was in the yard. He also requested his solicitor to tell some of his friends that he wanted a new hat and a bottle of hair oil. Inspector Kennedy had to prepare the case against Kelly for the Crown. I had furnished Mr. Kennedy with my brief without including the conversation which I had with the prisoner in the Benella watch-house; I did not intend to put in this conversation but as Mr. Kennedy instructed me to insert it I did so suppressing that part of it in which Kelly said he would have shot me at once if he had thought there was any chance of my getting away, as I did not wish to press the charge against Kelly with unseemly severity. Mr. Zinke, a solicitor, of Beechworth had been engaged to make some preparation for his defence, but the day before the trial Mr. Gaunson, of Melbourne, was engaged to defend him. The Crown was represented by Messrs. Smythe and Chomley, Crown Law Prosecutors. The trial commenced upon Friday the 5th August, and Kelly was taken down to the court at 8 o'clock this early hour being chosen in order to get him down quietly. The trial commenced at 10 o'clock the court being crowded nearly one half of those present being ladies. Mr. Foster P.M. presided. Mr. Gaunson on behalf of the prisoner applied for a remand. as he had been so recently engaged for the defence that he had not had an opportunity of holding a consultation with the prisoner, consequently was not in a position to proceed with the defence.

After some arguments a remand to 2 o'clock that day was granted. Mr. Smythe acted as prosecutor in the first case which was that of the murder of Thomas Lonigan. The court resuming at 2 o'clock



I was called into the witness box, and was kept there under examination by Mr. Smythe until the court adjourned that evening. It is unnecessary for me to state my evidence as I have already given all the particulars in this narrative.

The following morning I was again in the witness box and my examination and cross examination lasted the whole of this day except a short time at the latter part of it when Dr. Reynolds' evidence was taken. After signing my depositions the police magistrate complimented me upon my evidence; he said that I had given it, "Intelligently and so far as he could judge fairly and honestly." Kelly on his removal from the court expressed his surprise at the completeness of my evidence but qualified this remark immediately afterwards by stating "But the --- has had nothing else to think about during the last two years." In events like those described in my evidence, however, I think that minds of most men are abnormally keen and the incidents connected therewith get indelibly photographed upon the brain. Regarding the conversation with Kelly I had, as stated before taken the fullest note whilst it was still fresh in my memory. Mr. Gaunson subjected me to a severe cross examination, but as the papers stated my "evidence was unshaken." There were nearly a dozen other witnesses examined, one of whom was Sergt. Kelly and he corroborated my evidence of the conversation I had with the prisoner in the Benella watchhouse, besides other evidence he gave relating to the arrest. This trial occupied nearly four days. The magnitude of the labour in taking the depositions may be judged by the fact that my depositions alone covered 77 sheets of closely written matter foolscap and occupied the clerk an hour and a half in reading it. This work was performed principally by the assistant clerk of courts, a young man named Moore, and he did it so expeditiously and accurately that it was worthy of the highest commendation. When it is taken into consideration that I had to undergo a precisely similar experience in the case of the murder of Scanlon and allowing for the cross examination not being so extended, my depositions must have covered 120 sheets of foolscap paper.

The amount of labourious writing and valuable time thus spent should have had the effect of calling the attention of the Government to the advantages to be derived from the employment of shorthand in the lower courts; but in these matters Governments move slowly and are behind private enterprise. For the murder of Lonigan Kelly was committed to take his trial at the Beechworth Assizes which were to be held on the 14th October. He was then placed upon his trial for the murder of Michael Scanlon, and this trial lasted two days. He was committed also upon this charge to Beechworth Assizes, but the venue was afterwards changed to Melbourne. On my return to Melbourne Capt. Standish sent for me; I went to the Club, where the Chief resided, and he told me he had sent for me to enquire about my health and to compliment me upon my evidence; he said further that "Mr. Smythe (Crown Prosecutor) told me he had never in all his experience examined a witness who gave his evidence so briefly and yet so fully as you did, and that is a very high compliment to pay you, McIntyre, for I need hardly tell you that he has had a vast amount of experience." A special sitting of the Criminal Court was held before his honor, the late Sir Edmond Barry, commencing on the 28th Oct. 1880.

/Kelly, who



Kelly, who at this time had quite recovered from his wounds, was put upon his trial at this court charged with the murder of Thomas Lonigan. I was looking forward to this trial with some disquietude, I had been examined and cross-examined publicly and privately to such an extent, and worried by the suggestions of men, who in a position of safety, and with a knowledge of all the events after they had occurred, could apparently from the tenor of their questions have shown me a dozen ways in which they would have fought or died that I believe I must have been several times upon the brink of insanity.

Mr. Gaunson had finished his cross-examination of me at the preliminary trial by stating that he would leave it to an abler man than himself to "turn me inside out at the higher court." Kelly's relatives were trying to get Mr. Purves to defend him, and I don't intend it offensively when I express it as my opinion that any witness who would undergo a couple of days cross examination by Mr. Gaunson and several hours afterwards by Mr. Purves and escape the painful operation referred to by Mr. Gaunson would have great reason to congratulate himself. Mr. Purves is a Q.C., and one of the leaders of the Victorian bar. He has established a reputation for being very trenchant in his cross examination of a witness; and I had to look forward to the unpleasant possibility of having to "stand down" in the washed out condition that Mr. Nathaniel Winkle did in the celebrated case of Bardell V Pickwick. I had like Mr. Winkle told the truth and possibly like him too much of it. I had also a conviction that one trial would not end the case as there were so many people amongst the public who were swayed by emotional feelings and sympathised with Kelly, believing his statements that he had been persecuted by the police and his female relatives criminally assaulted by them, and also his statement of the manner in which the police had been shot namely that they had fired several shots at him and he "could not help shooting them if they had been his own brothers" that I did not believe that twelve men could be picked out of the jury list in which there would not be at least one man who would hold out against a conviction thus necessitating a new trial, and as there were two charges of murder entered against him, perhaps several.

The efforts to get the services of Mr. Purves failed, for Kelly's friends were his friends only when he had money to distribute amongst them, at this time they confined their sympathy to words abandoning him in his necessity and although he had distributed nearly £5,000 amongst them, they declined to raise as much money as would pay a barristers fee, and even his solicitor was never paid his defence had to be undertaken by the Crown. A young barrister named Bindon being appointed for that purpose. I have refrained from making condemnatory statements and drawing moral conclusions but surely this phase of Kelly's career affords ample material for reflection. A large crowd had gathered around the old Supreme Court buildings in Russell St. where the trial took place and several people requested me to get them in, but this was impossible for I had some difficulty in getting in myself. When I stepped into the witness box Kelly frowned or rather grimaced at me twice. I shook my head and moved lips as if I were saying; "I cannot help it you placed me here" and which I really did say although inaudibly. The evidence which I gave was similar to that which I gave at Beechworth and as related in my narrative. Mr. Bindon, who had a bad case, took a departure from what is said to be the usual course, in such cases,



of abusing the opposite side, and raised an objection to my evidence because "It was too good to be true it showed signs of deliberation and preparation and should consequently be received with great caution." I can conceive no position in life that requires more deliberation and preparation than that of a witness, especially a witness who is engaged upon a charge of murder. But no amount of preparation can prepare a witness for a course of cross examination in which he will be asked many questions that, not only seem to be but, are irrelevant to the case. The judge commenced his summing up on the second day of the trial at 4.30. p.m. His address to the jury occupied about 40 minutes, and during this address in reference to myself his honor said. Gentlemen you have been asked to receive the evidence of constable McIntyre with very grave caution, but I will go further and ask you to receive the evidence of all the witnesses, who have been examined in this case, with the very greatest caution. Particularly with regard to McIntyre I wish to draw your attention to the address and manner in which that witness gave evidence, and to ask you if he looked like a man who was not telling the truth? I do not think so, gentlemen, and although it does not come within my province to laud McIntyre this much I will say that had he not acted exactly as he did ---exactly as he did, gentlemen, he would not have been here today to give evidence in the case of the murder of Constable Lonigan." The judge had a very impressive manner and he repeated the words "exactly as he did" with emphasis. The jury retired shortly after 5 o'clock and were half an hour in considering their verdict. What Kelly's thoughts were during this half hour it is impossible to say. His conduct throughout the two days trial was quiet and attentive; except an occasional nod or smile of recognition to his relatives and acquaintances in the court, he seemed to take no notice of the crowds of people who had come to see him and hear the trial. He could not have possibly expected the verdict to be otherwise than it was, but he might have thought as I did, that the verdict would not be arrived at so quickly.

Besides the witnesses whose names I have mentioned there were examined at this court; Sergt. Steele. Detective Ward and Constable Day. Kelly smiled several times at the evidence of some of the witnesses and seemed to be more annoyed by the Crown Prosecutor, Mr. Smythe, in his address to the jury describing him as "a mean thief", as he had robbed the murdered men of their money and valuables, than any portion of the evidence.

Several days after the trial I had a conversation with Mr. Lazarus who was the foreman of the jury, and he told me the guilt of the prisoner was not the subject of discussion at all as the jury had made up their minds before leaving the court upon that matter, but there were two of the jurymen who were opposed to the infliction of capital punishment and these men had conscientious scruples against returning a verdict which practically condemned the prisoner to that punishment. It took the foreman and the others of the jury the time they were in retirement to convince the jurymen that they, as a jury, had nothing to do with the sentence which might be inflicted, their duty ending with the return of the verdict which they had sworn to give "according to the evidence." There was no surprise at the verdict and the prisoner received it in the same manner that the spectators in the court did, without any demonstration of feeling; but during the address of the judge, prior to sentencing him he assumed a spirit of bravado and

/repeatedly interrupted



repeatedly interrupted him, smiling and looking round the court apparently for the approval of his friends.

On being asked the usual question by the judges associate if he had anything to say why sentence should not be passed upon him, the prisoner said.

"It is rather late for me to speak I might have spoken before but left my case to be conducted by counsel. From the way the evidence went no jury could have found any other verdict but I feel sorry I did not conduct my own case. I don't fear death but no one understands my case so well as I do myself. Mr. Gaunson has done his best, but Mr. Bindon does not know the case as well as I do myself and I feel sorry I did not take the case into my own hands. But if I had done so people would have said I did it through bravado so I let the case go on." The crier having called for silence judge Barry said, "Edward Kelly; -- The verdict which has just been pronounced by the jury you could not have expected to be otherwise.---

Pris. "According to the evidence which was given I could not."

His honor.-- "No circumstances that I can conceive could have altered the result of your trial."

Pris. "Perhaps not but if you had heard me cross examine the witnesses." His honor. --I will give you credit for all the skill you desire to claim.

Pris. "I don't claim much skill, I am not a great man."

His honor. "The facts are so numerous and so convincing, not only as regards the offence with which you have been charged but also with respect to a long series of crimes that no rational person could come to a different conclusion from that which the jury have arrived at, and indeed under any circumstances the verdict was irresistible. It is painful for me to do my duty and therefore I will not aggravate the present sad and unsettled state of your mind."

Pris. "I declare before you, God and man that my mind is as perfectly easy as that of any man that ever lived."

His honor.-- "It is blasphemous to hear you say so. Do you really think you are entitled to take a man's life as you please."

Pris. -- No, no one abhors murder more than I do. I would be the last one in the world to kill anyone."

His honor.-- "You impute perfidy and perjury to a whole phalanx of respectable witnesses."

Pris. "There is a higher court than this where we will all be judged some day. I regret that my mother will hear that she raised a son who could have altered the verdict against him but did not do so."

His honor paid no attention to Kelly's interruption but proceeded with his address.

"Offences of this kind are of no ordinary character. Murders originate in many sources. Some arise from a sordid desire to acquire the property of others, some from jealousy and some from the baser desire for revenge. But this is a crime differing from others from the enormosity of its consequences for it discloses the spectacle of a party of men banded together and taking up arms against society. Unfortunately in new colonies where the population is so scattered and where the ties of society are not so well closed up as in larger communities there is a class so degraded that they cannot feel the consequences of the examples of such crimes as yours. Such illconditioned, ill educated, unprincipled,

/thoughtless youths



thoughtless youths abound, who unfortunately are too prone to regard such persons as you in some way as heroes and to imitate your bad example. Unless they are made to consider the consequences of such crime, society will never be safe. It is right therefore that they should be asked to consider the consequences and reflect upon what the life of a felon is. A felon who has cut himself off from all the affections, decencies and charities of society, as helpless and degraded as a wild beast of the field, he has no where to lay his head and no one to prepare for him the comforts of life. He suspects his friends and dreads his enemies, he is in constant alarm lest his pursuers should reach him. His only hope is that he may lose his life in what he considers a glorious struggle to maintain it. This is the life of an outlaw who is ready at any moment to sacrifice the lives of his fellow creatures to gratify his unreasonable desires. It would be well for those young men who are so foolish as to consider that it is brave of a man to sacrifice the lives of his fellow creatures in carrying out his own wild ideas to see that it is a life to be avoided by every possible means and to reflect that the unfortunate termination of such a life is a miserable death. Your crimes have held this and the neighbouring colony of N.S.W. in terror and so serious had they become that the two colonies joined to provide ample inducement to persons who were in a position to have you apprehended. By some spirit which I cannot account for there appeared to be a sympathy for you in some parts of this colony where you had committed your crimes.--- There must be great absence of love of country --- Love of law and order --When your crimes were permitted by the people of this district to continue for so long.--For 18 months you have kept the country disturbed, and you have stolen no less than 300 horses.--

Pris. "Who proves that?"

His honor. "It is the testimony of more than one witness?"

Pris. "True, but there is a principle in British Law which says a man is innocent till he is proven guilty."

His honor.-- "You are self accused. - I do not accuse you.-- You and your two companions attacked two banks appropriating large sums of money.-- It appears that an expenditure of no less than £50,000 was rendered necessary by you and your party (Supt. Hare estimated the expenditure at £115,000)

One would think that the fate of former bushrangers would have prevented any person from following their example, and it is to the highest degree deplorable that their fate has not had the desired effect. Your unfortunate and miserable companions died an ignominious death, which perhaps you may envy. --

Pris. "I don't know that it has been an ignominious death it has not been proven."

His honor. "The jury have done their duty and it now remains for me to do mine. I cannot hold out any hope that the Executive will alter the sentence which I am now about to pronounce. I desire to spare you further pain and I absolve myself from having said anything which could intensify the position in which you stand."

His honor then pronounced sentence of death upon the prisoner.

Pris. said "Well I expect to go a little further on and see you there." He also turned to some of his relatives and said "Good bye, you will see me there."



CHAPTER 11

Ineffectual efforts to get a Reprieve.

Kelly's Execution. Police Commission

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During the address of the judge Kelly was inclined to be theatrical, he put on an air of injured innocence which was not consistent with the character of the man who murdered Sergt. Kennedy when he lay wounded. Great criminals excite great public attention, and even such monsters as Deeming and Butler have had their apologists when they took up their abode in the condemned cell. The agitation, amongst a section of the public, created by Kelly's sentence to death, and the efforts made to obtain a commutation of the sentence have never been equalled by that of any other condemned prisoner in Victoria. There were immediate steps taken by his friends, and others of the public, to obtain a reprieve, and there were petitions sent out for signature throughout some of the country districts some were carried round Melbourne, and even outside the church doors on Sunday the people coming from worship were solicited to sign the petition. In this manner the signatures of 32,000 people were obtained soliciting that the death sentence should not be carried out.

The meetings of the executive Council which finally deal with cases of condemned prisoners is usually held, in this colony upon Monday. Believing this course would be followed, and the Executive not meet until Monday 8th, November, a meeting of the prisoners friends was called for Friday 5th. Nov. It was advertised that some of Kelly's relatives and a large number of ladies were to be present and these were to be admitted to the balcony by ticket. The Hippodrome was selected for the place of meeting on account of its capacity. Whilst these efforts to obtain a reprieve were being made by some of the public the entire press of the colony was implacably antagonistic to any commutation of the sentence. An Executive Council meeting was held on Wednesday 3rd Nov., at which it was decided that Kelly should be executed on Thursday 11th, Nov. This forestalled the meeting to be held on Friday, but the meeting was proceeded with and it was variously estimated that there were from 6 to 9 thousand people present at the time appointed for the meeting, many of them belonging to the gentler sex. The result of the meeting was that an appeal was made to the Governor. The Governor declined to interfere. When Kelly was told the date fixed for his execution he expressed himself as not approving of the haste which was shown in his case, but he was orderly and was attended by two clergymen to whom he paid respectful attention. There was a great contrast between the aged and learned judge and the young and unlearned prisoner. Judge Barry was the founder of our University, Museum, Art Gallery and Public Library. His statue is erected before the latter with the inscription. Erected by a grateful public to perpetuate the memory of invaluable services rendered to Victoria by Sir Redmond Barry, Knight. Doctor of Laws and a Judge of the Supreme Court of Victoria.

Obit, 1880."

The career pursued by each of them was bound to bring them face to face



here, no one knows what may happen "there". Kelly was executed on the 11th Nov. '80. Judge Barry died on the 23rd, of the same month. Unless amongst the worshippers of Ned Kelly it will not tend to his apotheosis to state that I was under the impression he added in his prophetic remark to the judge the word "soon", although the press notices do not bear me out it is my opinion his expression was, "I will see you there soon". The agitation for Kelly's reprieve had the effect of hurrying on his execution, he was in fact treated as a dangerous subject on account of the dangerous and emotional class at his back. Besides Executive Council meetings it is usual for executions to take place on Monday and for the Executive to allow a grace of three weeks to the condemned prisoner. In the case of Kelly there was only one week granted and he was executed within a fortnight of his condemnation. Had it not been for his friends precipitating this event by their turbulent efforts to get a reprieve the judge and the prisoner would both have died about the same time. Before his execution Kelly dictated three letters which were written and addressed to the Governor.

His first letter dated 3rd. Nov. dealt with the murder of the police. In this letter he stated. "They sneaked out from Mansfield before daylight disguised as diggers on a prospecting tour." He also stated we went out to shoot him. The description he gave of their life in the Wombat Forest was graphic, and to a man in his position the contrast from the free life of a whisky distiller and gold digger in the wild bush to that of being caged up in a condemned cell must have been exceedingly harassing to his feelings.

His second letter was dated 5th of Nov. in this letter he entered into a full account of his actions and intentions at Glenrowan. Although he had stated both before and after his arrest that his intention was to massacre everybody in the train, he now said his intention in pulling up the line was to stop the train and taking the officers of the police prisoners remove them into the bush to hold as hostages until his mother, Williamson and Skillion were released by the Government. After securing the police he intended to take possession of the train and rob the banks along the line. On the 10th. Nov. he forwarded another letter in which he again asserted his object was not to murder but capture the police and trackers for the purpose of an exchange of prisoners. Kelly had become vacillating and inconsistent. The confinement had tamed him as it does other animals, he had lost his ferocity and was humbly soliciting favors from his audience.

He alternately sung songs and hymns "The sweet by and bye", being an especial favourite of his. The night preceding his execution he was restless and did not sleep until after 2 o'clock when he fell into a sound slumber which lasted until 5 a.m. Before he fell asleep he made an appointment with one of the warders to meet him ~~in~~ the condemned cell the following night at 2 o'clock. The warders kept the appointment in strict accordance with the compact, which was to be alone, but there was no "manifestation". At 10 o'clock the sheriff appeared. Upjohn acted as executioner when he entered the cell Kelly addressing him said "You need not pinion me I will go quietly", but he was fastened as usual. There have been various accounts given of the demeanour of Kelly at his execution, most of the papers stated that he was cool without any sign of bravado, although he was visibly affected by the awful nature of his position. Sergeant Trainor of the Victorian police who was present has given me the following account.

"I was present at the execution of Ned Kelly on Thursday 11th, Nov. 1880. The morning was bright with a blue sky overhead, one of those days which imparts cheerfulness and buoyancy to the ordinary mortal." There was,



however, no appearance of cheerfulness amongst those who had assembled in the corridor near the condemned cell when Kelly, about 10 o'clock, was led out for execution. He came forth pinioned and made an effort to advance steadily but the weakness of his knees caused his legs to bend at each step he took as he walked to the scaffold. When standing upon the drop he was steady. Immediately before the cap was drawn over his head he glanced upwards through the skylight, and muttered something which I think was a reply to a question. He was attended by Deans Donnelly and O'Hea who were still praying when the rope and cap were adjusted, the signal giving to the executioner, the bolt drawn and the execution completed in almost as short a time as it takes to describe it. Except some muscular action after he fell there was not much movement of the body which I walked around, and so far as I can judge if he suffered any pain it was of the shortest duration." Two of the Kelly family exhibited themselves at the Apollo Hall on the evening of the day upon which Kelly was executed and the hall was crowded, the entrance fee being one shilling. The Government prohibited the exhibition and they went to Sydney to exhibit themselves there, but the Government of N.S.W. also prohibited the exhibition. It seems to have been a fact that notwithstanding Kelly's extensive robberies his near relatives were impecunious, which is the best excuse for their unfeeling conduct.

"No money is the watchword of extreneradicalism. It is a vulgar ballad which common people sing aloud on the streets, but the more refined only hum between their lips within doors." It was thought by some that the punishment allotted to Mrs. Kelly for her attack upon Fitzpatrick should have been months instead of years of imprisonment. She had one of the most tragical and harrowing experiences that human nature can furnish for she was confined in the jail in which her unhappy son suffered the last punishment of the law.

Nearly all the bushrangers of N.S.W. were escaped prisoners from the jails of that colony. The escape of Power from Pentridge in February 1869, was responsible for the whole of the Kelly outrages.

Had it not been for Power's example, tuition, and subsequent condemnation of him as being cowardly I do not think Ned Kelly would ever have been a bushranger, and in like manner it was Kelly's influence that dragged the other three members of the gang into the position of outlaws. I do not think they would have been good citizens, at least not until after they had served several long sentences for horse or cattle stealing after which they would either have settled down to an industrious upon the land held by their relatives or else have spent their lives in jail.

To say that Ned Kelly was not possessed of courage would be a reflection upon the citizens whom he bailed up in fifties and hundreds and the police whom he defied so long. I cannot understand any man effecting the big robberies he did without having courage or some other quality very much like it; yet the manner in which he shot the police betrayed apprehension and indicated a cruel and a cowardly nature. Joe Byrne was the next in importance in the gang and although he has always been described as a nervous man Kelly seems to have had great confidence in his bravery and devotion to him, and they frequently rode out at night together. Byrne had been convicted for having meat in his possession for which he could not legally account, and he had been



mixed up with the Greta mob of horse and cattle stealers from an early age. There were overtures made to him offering him a reward and a free passage to America if he would betray his mates. These overtures he rejected. He said if he did such a thing people would say he was worse than Sullivan the New Zealand murderer. A relative of Aaron Sherrit's told me that he had seen Byrne after his outlawry and he asked him if McIntyre was not terribly frightened to which Byrne replied "No I do not think so if he was he did not look like it." Dan Kelly and Stephen Hart were two bush larrikins having all the vices of that genus homo and not being possessed of the steadying influence of mature years they were two exceedingly dangerous men, but only so when the power lay upon their side. They had both been convicted and became acquainted in the Beechworth jail.

#### Reward Board.

There was a Board appointed by the government for the distribution of the reward of £8,000 Captain McMahon was the chairman of this Board. The only witnesses examined were the Chief Secretary, the reporters of the three Melbourne daily papers, and Mr. Rawlins. The latter gentleman was a claimant for a share of the reward, the reporters did not submit a claim, and the Board reported that had they and Mr. Carrington, an artist representing one of the illustrated papers, preferred claims, Board would have considered them entitled to participate in the reward, and that these gentlemen deserved the public thanks. There were 92 claimants but 24 of these were disallowed leaving 68 persons who received part of the reward, of these 45 belonged to the Victorian police, who with Lieutenant O'Connor and 7 trackers brought up the number of police to 53. There were 9 railway officials rewarded, and John Sherrit, (I) a brother of Aaron's, who was present received a portion of the reward.

Mr. Curnow was awarded £550 but this amount was, I believe, subsequently increased by a Government grant of £450 more. The individual rewards were from £800 Mr. Hare's share and £400 Sergeant Kelly's share down to £25. The recommendation of the Board was forwarded to the Governor in Council on the 13th April 1881. In which, "The Board regretted that adherence to the terms of the proclamation compelled them to exclude from any share of the reward some meritorious claimants in the service of the Government and strongly recommended them to the heads of their respective departments as worthy of special recognition." These were constable McIntyre, postmasters Cheshire and Saxe and Stationmasters Stevens and Lang and constable Faulkner.

A Royal Commission was appointed on March 7th, 1881.

- 1 --- To inquire into the circumstances proceeding and attending the Kelly outbreak.
  - 2 --- As to the efficiency of the police to deal with such possible occurrences.
  - 3 --- To inquire into the action of the police authorities during the period the Kelly gang were at large.
  - 4 --- The efficiency of the means employed for their capture.
  - 5 --- Generally to inquire into and report upon the present state and organisation of the police force.
- (1) A detective who was not present at the capture received a portion of the reward through his having employed Aaron Sherritt in the interests of the police.



Amongst the many witty and good things that have been written by Messrs. Gilbert and Sullivan there is none that has "caught on" more than the phrase "a policeman's life is not a happy one". If any man doubts the unhappiness of the policeman's life I would recommend him to read the evidence of the various witnesses, members of the Force, who were examined before this Commission and he will probably come to the conclusion that the policeman's life is an unhappy one, and that a great deal of the unhappiness proceeds from within the service. I feel thankful, that owing to my having no complaints to make I got out of the ordeal in a few minutes. Referring to the two original parties sent out: Mr. Sadleir in his evidence stated: "The officers in charge, and the men forming the parties were all good horsemen, good bushmen, and every man a good and reliable man. Constable McIntyre is a respectable and a conscientious man, and acted in a brave manner, he was specially chosen by Sergt. Kennedy to make one of his party Hon. J.H. Graves M.L.A. who was a member of the Commission and a witness said he knew the four men forming our party and four better men could not be picked. On the 22nd Nov. the Commission recommended me to the Government for a reward. One of the first recommendations of the Commission was that the police should be adequately armed and allowed ammunition for practice as well as instruction in the use and mechanism of their weapons, this was done, and many of the constables in the country districts have joined the local rifle clubs, besides the majority of the young men now joining the mounted police are colonials by birth, good riders, and good shots before they join the service, so that another outbreak of crime, such as I have described, would find the police better prepared to suppress it. (I)

My experience during the two years of the Kelly outbreak was not a bed of roses without any thorns to mortify the flesh. I believe I was foolishly sensitive, if I had been wise I would not have lain awake night after night fretting about what I could not help. In October 1878, I was 161 lbs in weight, in October 1880, I was 143 lbs., and spitting blood. I was suffering from incipient phthisis. As I knew my illhealth was caused by the worry of the position I occupied and the future so far as police service was concerned, did not look very promising in an abatement of this worry; as my duty would of necessity compel me to deal with the class which looked upon Ned Kelly as a hero; I determined, if possible, to leave the life which I had not found a happy one, and try some other line. Captain Standish who had promised me his patronage had left the service. The other officers were fighting for supremacy or existence, and were absorbed in their own affairs. I was entitled to a small pension, and as the Reward Board and the Police Commission had both recommended me to the Government for a reward I asked to have this reward take the form of an addition to my pension. This was done and I returned to the ranges where the pure mountain air and change of employment re-established my health.

(I) P.95.

Nearly every contingent of Australian Bushmen, or Mounted Rifles, that left Australia for service in South Africa contained several members of the mounted police of the different colonies. These men in their patriotism throwing up positions with nearly £150 per annum. But many other members of these contingents, who occupied much higher social positions, sacrificed emoluments that none would do in the old country unless to obtain the position of officer, or to join a select and aristocratic corps.



My experience in the police force was out of the common and my experience since I left it has also been a little unique, as I have been frequently told that I am dead.\* One of our leading weeklies conveyed the intelligence to myself in August last (99) that I never recovered from the effects of my adventure, and after doing duty for some time as a railway detective I passed away.

The late Mr. Hare who wrote "The Last of the Bushrangers", was always friendly to me and approved of my actions at the time of the murders. In describing the murders he has depended too much upon his memory with the result that his description is far from accurate. He thus states the murders took place at 2 p.m. I wish once more to assert that the murders took place whilst I was preparing the evening meal, between 5 and 6 p.m. on Saturday the 26th, October 1878. It is clear that he did not have a copy of either the medical testimony or my evidence before him. He incorrectly spells Lonigan's name and Lonergan and describes the number of wounds and manner of death of all the men in a way that shows he did not have a grasp of this part of his narrative. He also stated "McIntyre told him Byrne and Hart were dreadfully cut up at the turn things had taken, especially Byrne who was nervous and downcast." Mr. Hares' memory betrayed him here again. Page 103, "McIntyre told him he was convinced he saw the horse he was riding together with the three others at Tolmie's station. My report written the day after the murders will show that I only saw two horses resembling our troop horses and of these I was doubtful. Page 104, "The bodies were recovered from McIntyre's description of the place." I went with the party as I have described.

I trust I have not fallen into any errors in describing the actions of others, if I have, I have certainly not done it blindfold for I have spared no pains nor research that has been within my power to make my narrative strictly accurate.

Before closing I would like to thank my many friends, especially several gentlemen to whom I am greatly indebted for their support at a critical period of my life, amongst them I would like to mention the name of the Hon. D. Gaunson, Kelly's solicitor, in whom I found a courteous gentleman and a staunch friend. I desire to inform these gentlemen that although they may think me ungrateful I desire to plead to that charge;

NOT GUILTY

Finis.

\* AUSTRALASIA.