

1881.

VICTORIA.

POLICE COMMISSION.

SECOND PROGRESS REPORT

OF THE

ROYAL COMMISSION OF ENQUIRY

INTO THE CIRCUMSTANCES OF

THE KELLY OUTBREAK,

THE PRESENT STATE AND ORGANIZATION OF THE POLICE FORCE, ETC.

PRESENTED TO BOTH HOUSES OF PARLIAMENT BY HIS EXCELLENCY'S COMMAND.

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ROYAL COMMISSION ON POLICE FORCE OF VICTORIA.

SECOND PROGRESS REPORT.

To His Excellency the Most Honorable George Augustus Constantine, Marquis of Normanby, Earl of Mulgrave, Viscount Normanby, and Baron Mulgrave of Mulgrave, all in the County of York, in the Peerage of the United Kingdom; and Baron Mulgrave of New Ross, in the County of Wexford, in the Peerage of Ireland; a Member of Her Majesty's Most Honorable Privy Council; Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George; Governor and Commander-in-Chief in and over the Colony of Victoria and its Dependencies, &c., &c., &c.

MAY IT PLEASE YOUR EXCELLENCY :—

Under date March 7th 1881, Letters Patent were issued by Your Excellency appointing a Royal Commission, whose powers were thus defined, viz. :—

1. To inquire into the circumstances preceding 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 ; and
5. Generally to inquire into and report upon the present state and organization of the police force.

A memorandum, dated 10th May 1881, was subsequently received by your Commissioners from the Honorable Graham Berry, as follows :—“ The Chief Secretary will be glad if the Police Commission will submit separately and at their earliest convenience such of their recommendations as have reference to Mr. Inspector O'Connor and the black trackers under him, as, in the projected re-organization of the police arrangements for the North-Eastern district, it may be found necessary that Mr. O'Connor should be re-appointed.”

In accordance with the powers thus assigned to them, your Commissioners have held 66 meetings, and examined 62 witnesses. In order also to verify, by personal observation, the evidence of witnesses, and glean information on the spot respecting the career of the outlaws, your Commissioners visited several centres of population in the disturbed district, including Benalla, Greta, Glenrowan, Beechworth, Sebastopol and Wangaratta.

Your Commissioners, having taken a large amount of evidence respecting, and carefully considered the case of, Inspector O'Connor, had the honor to submit to Your Excellency, on 6th July last, their First Progress Report, as follows :—

“1. That the evidence before the Commission is not of such a character as to warrant your Commissioners in recommending the Honorable the Chief Secretary to appoint Mr. Stanhope O'Connor to the position of an inspector of police in the Victorian Service.

“2. Your Commissioners are of opinion that the Government should make provision for the permanent employment of black trackers as an auxiliary branch of the police service ; care being taken that they shall be trained to habits of subordination, and made amenable to the general discipline of the force.

“Your Commissioners would also recommend—

“3. That, as far as practicable, a thorough system of police patrol shall be established throughout the colony, more especially in the North-Eastern district.

“4. That immediate steps be taken by the Government to arm the mounted police of the colony with the Regulation Pattern Martini-Henry carbine ; that the entire force shall be instructed in the use of the weapon by means of regular drill and periodical target practice ; and that a reasonable quantity of ammunition shall be served out to each man for such practice.”

Your Commissioners have now the honor to submit their Second Progress Report, as follows :—

1. That immediately prior to the Kelly outbreak, and for some time previously, the administration of the police in the North-Eastern District was not satisfactory, either as regards the numbers and distribution of the constabulary, or the manner in which they were armed and mounted ; and that a grave error was committed in abolishing the police station at Glenmore, and in reducing the number of men stationed at Stanley, Yackandandah, Tallangatta, Eldorado, and Beechworth.

2. That the conduct of Captain Standish, as Chief Commissioner of Police, as disclosed in the evidence brought before the Commissioners, was not characterized either by good judgment, or by that zeal for the interests of the public service which should have distinguished an officer in his position. The Commission attribute much of the bad feeling which existed amongst the officers to the want of impartiality, temper, tact, and judgment evinced by the Chief Commissioner in dealing with his subordinates, and they cannot refrain from remarking that many of the charges made by Captain Standish in his evidence before them were not sustained in his late examination, and were disproved by the evidence of other witnesses.

3. That Mr. Nicolson, Assistant Commissioner, has shown himself in many respects a capable and zealous officer throughout his career in the force, but he labored under great difficulties through undue interference on the part of Captain Standish, and the jealousy occasioned by that officer's favoritism towards Superintendent Hare. The want of unanimity existing between these officers was frequently the means of preventing concerted action on important occasions, and the interests of the colony greatly suffered thereby. In view of these facts, the Commission do not think that the force would be benefited by re-instating Mr. Nicolson in the office of Acting Chief Commissioner of Police. Further, your Commissioners recommend that, in consequence of his impaired constitution, caused by hardships endured in the late Kelly pursuit, Mr. Nicolson be allowed to retire on his superannuation allowance, as though he had attained the age of 55 years.

4. That the charge made by Superintendent Hare in his official report, dated 2nd July 1880—viz., that “Mr. Nicolson, Assistant Commissioner, gave me (Hare) no verbal information whatever when at Benalla”—has been disproved by the evidence.

5. That Superintendent Hare’s services in the police force have been praiseworthy and creditable, but nothing special has been shown in his actions that would warrant the Commission in recommending his retention in the force, more especially when the fact is so patent that the “strained relations” between himself and Mr. Nicolson have had such a damaging influence on the effectiveness of the service. This feeling is not likely to be mitigated after what has transpired in the evidence taken before the Commission; and we would therefore recommend that Superintendent Hare be allowed to retire from the force, as though he had attained the age of 55 years, and that, owing to the wound he sustained at Glenrowan, he receive an additional allowance of £100 per annum, under clause 29 of the Police Statute (No. 476).

6. That the evidence discloses that Superintendent Sadleir was guilty of several errors of judgment while assisting in the pursuit of the Kelly gang; that his conduct of operations against the outlaws at Glenrowan was not judicious or calculated to raise the police force in the estimation of the public. That the Commission are further of opinion that the treatment of Senior-Constables Kelly and Johnson, by Superintendent Sadleir, was harsh and unmerited. Your Commissioners therefore recommend that Superintendent Sadleir be placed at the bottom of the list of superintendents.

7. That a most favorable opportunity of capturing the outlaws at a very early period of their career of crime, namely, on the 4th November 1878, was lost, owing to the indolence and incompetence of Inspector Brook Smith. Your Commissioners consider that Inspector Brook Smith committed a serious blunder in not having started in pursuit of the outlaws immediately upon receiving information of the gang having been seen passing under the bridge at Wangaratta, and also in not having properly followed up the tracks of the outlaws in the Warby Ranges, a proceeding which would have warranted your Commissioners in recommending his dismissal from the force. Your Commissioners, however, having in view his former services, recommend that Inspector Brook Smith be called on to retire on a pension of £100 per annum.

8. That, in the opinion of the Commission, Detective Ward, while he rendered active and efficient service during the pursuit of the gang, was guilty of misleading his superior officers upon several occasions, more especially in connection with Mr. Nicolson’s cave party, Mr. Hare’s hut party, and the telegram forwarded to Senior-Constable Mullane by Mr. Nicolson when the latter was superseded on the 2nd of June 1880. The Commission therefore recommend that Detective Ward be censured and reduced one grade.

9. That in the opinion of your Commissioners the conduct of Sergeant Steele was highly censurable in neglecting to take action when, on his arrival at Wangaratta, on the 4th November 1878, he received reliable information that the outlaws had been observed on the previous morning passing under the One-mile bridge at Wangaratta. There was no reason why, as he had a large body of well-armed troopers under his command, and was then actually engaged in the search for the outlaws, he should not have gone immediately in pursuit. The tracks were plainly discernible; the men observed were undoubtedly the outlaws, and had they been followed they would most probably have been overtaken in the Warby Ranges, inasmuch as their horses and themselves were

exhausted by their journey to and from the Murray. Sergeant Steele had full power to act upon his own discretion, and there can be little doubt that, had he exhibited judgment and promptitude on that occasion, he would have been the means of capturing the gang, and preventing the loss of life and the enormous expenditure of money incurred subsequently in the extermination of the outlaws. Your Commissioners therefore recommend that Sergeant Steele be reduced to the ranks.

10. That the constables who formed the hut party on the night of Aaron Sherritt's murder—viz., Henry Armstrong, William Duross, Thos. Patrick Dowling, and Robert Alexander—were guilty of disobedience of orders and gross cowardice, and that the three latter—Constable Armstrong's resignation having been accepted—be dismissed from the service.

11. That the entries made by Superintendent Sadleir in the record sheets of Senior-Constables Kelly and Johnson be cancelled, and the Commission recommend these members of the force to the favorable consideration of the Government for promotion.

12. That the Commission approve of the action taken by Constable Bracken when imprisoned by the Kelly gang in Mrs. Jones's hotel, at Glenrowan, and recommend him for promotion in the service.

13. That in consequence of the reprehensible conduct of Mr. James Wallace, the State school teacher of Hurdle Creek, during the Kelly pursuit, and his alleged sympathy with the outlaws, together with the unsatisfactory character of his evidence before the Commission, your Commissioners think it very undesirable that Mr. Wallace should be retained in any department of the public service. We therefore recommend his immediate dismissal from the Education Department.

14. That the conduct of Mr. Thos. Curnow, State School teacher, in warning the special train from Benalla to Beechworth on the morning of the 28th of June 1880, whereby a terrible disaster, involving the probable loss of many lives, was averted, deserves the highest praise, and the Commission strongly recommend that his services receive special recognition on the part of the Government.

15. The Commission desire to record their approval of the conduct of Mr. C. H. Rawlings during the attack upon the outlaws, and consider that his services deserve some consideration at the hands of the Government.

16. The Commission desire also to express their approval of the assistance rendered to the police at Glenrowan by the members of the press present.

17. That your Commissioners desire to record their marked appreciation of the courtesy and promptitude displayed by the Queensland Government in forwarding a contingent of native trackers to Victoria to aid in the pursuit of the outlaws. We take this opportunity of expressing our approval of the services of the black trackers as a body, and deeply regret that any misunderstanding amongst the officers in command of operations in the North-Eastern district should have led to unpleasant complications. The Queensland contingent did good service, and your Commissioners trust that the Victorian Government will not fail to accord them proper recognition.

FRANCIS LONGMORE, Chairman ;
WILLIAM ANDERSON,
JAS. GIBB, subject to Protest B,
GEORGE WILSON HALL,
GEORGE RANDALL FINCHAM,
EDWARD JOHN DIXON, subject to Protest A,
GEORGE COLLINS LEVEY, subject to Protest B.

JAMES WILLIAMS,
Secretary.

Your Commissioners, in lieu of the usual *résumé* of the evidence, have the honor to submit to Your Excellency the following sketch of the antecedents, pursuit, and destruction of the Kelly gang of outlaws:—

I.—THE KELLY FAMILY.

Amongst the many predisposing causes which operated to bring about the Kelly outbreak must be included the unchecked aggregation of a large class of criminals in the North-Eastern district of Victoria, all of whom, either by the ties of consanguinity or sympathy, were identified with the outlaws. The origin and settlement in the colony of the Kelly family therefore deserves some passing notice at the hands of your Commissioners. James Quin, the grandfather of Edward and Dan Kelly the outlaws, was a native of the County of Antrim, Ireland. With his wife and family, consisting of six children, he arrived in Victoria in 1839. He, in the first instance, resided in Pascoe Vale, and earned a subsistence by the cartage and sale of firewood in Melbourne. In 1845, he settled in Wallan Wallan, in the Kilmore district, where he rented a small farm, and was enabled in the course of a few years to purchase the freehold of 700 acres of land in that locality. In 1863, by which time his family had increased to ten children, four sons and six daughters, he realized the landed property which he possessed, and with the proceeds, amounting to about £2,000, took up the Glenmore run, situate in a remote part of the North-Eastern district. The precise object of this migration has not been ascertained; but it is believed that Quin, having become notorious as a cattle stealer in the Kilmore district, was desirous of escaping from police surveillance; and, by removing back to the borders of settlement and civilization, to secure for himself and his associates a safer and more extended field of operations. The sons of old Quin were named respectively—Patrick, John, James and William; the daughters were—Mary Anne; Catherine, married to John Lloyd; Ellen, married to John Kelly, the father of the outlaws; Jane, married to Tom Lloyd; Margaret, married to Pat Quin; and Grace. Numerous progeny was the result of the marriages contracted by the children of the elder Quin, which accounts for the Kelly family being described as the most prolific in the district. James, the third son of old Quin, became an object of interest to the police so far back as 1856; and from that date down to 1879, when he was incarcerated under the Felons Apprehension Act as a Kelly sympathizer, there were recorded against him no less than 16 arrests, and ten convictions for various offences, many of them of a serious nature, involving terms of imprisonment amounting to about nine years. John Quin, though frequently before the courts, has escaped conviction, but when residing at Wallan Wallan he was regarded by the authorities as the organizer of many of the depredations in which the members of his family were concerned. John Kelly, who married Ellen, the third daughter of the elder Quin, and who was the father of the outlaws, was a convict, having been transported from Tipperary, Ireland, to Tasmania, in 1841, for an agrarian outrage, stated to have been shooting at a landlord with intent to murder. He worked as a bush carpenter for a time after arriving in Wallan Wallan, and subsequently turned his attention to gold digging, at which he was successful, and was enabled to purchase a small freehold at Beveridge. Here he became notorious as an expert cattle stealer, and his house was known as the rendezvous of thieves and suspected persons. In 1865, he was convicted of cattle stealing, and sentenced to six months' imprisonment in Kilmore gaol. He died shortly after his release. At his death he left seven children, namely, Edward and Dan (the outlaws), James, Mrs. Gunn, Mrs. Skillion, Kate, and Grace. Mrs. Kelly, upon the death of her husband, settled at Eleven-mile Creek, near Greta, where, with the younger portion of her family, she at present resides. Her place was regarded for years as the resort of lawless and desperate characters, including Power, who is said to have given Ned Kelly his first lesson in bushranging. Edward Kelly, the leader of the outlaws, was born in 1854, at Wallan Wallan, and from an early age was regarded by the police as an incorrigible thief. In company with Power the bushranger he, on the 16th of March 1870, robbed Mr. McBean; and on the 25th of April stuck up Mr. John Murray, of Lauriston. Kelly was arrested for the latter offence on the 4th of May following, but escaped conviction owing to want of identification. He was implicated in several outrages; and at Beechworth, in 1871, he received a sentence of three years for receiving a stolen horse. He led a wild and reckless life, and was always associated

Captain Standish,
Q. 2.
Hon. J.H. Graves,
18489.
Insp. Montford,
3237 et seq.

Sen.-Con. Flood,
p. 455.

Authenticated
documents.

Compiled from
official docu-
ments.

with the dangerous characters who infested the neighborhood of Greta until the shooting of Constable Fitzpatrick, on the 15th of April 1878, when he took to the bush. Daniel Kelly was born in 1861, and from the age of 16 years was, with his elder brother Ned, a noted criminal. Joseph Byrne, the third outlaw, was born in 1857, and lived with his parents, who were of Irish extraction and respectable antecedents, at the Woolshed, about seven miles from Beechworth. When 16 years of age he was in trouble, and from the first appears to have developed vicious and cruel propensities. In 1876, along with Aaron Sherritt, who figures so prominently throughout the Kelly campaign, so to speak, and with whom he was on terms of the closest intimacy, he was arrested and sentenced to six months' imprisonment for having stolen meat in his possession; and he was also believed to have been connected with numerous cases of horse stealing in the North-Eastern district, which ultimately led to his joining the Kelly gang. Steve Hart, the fourth member of the gang, was born in 1860, and was the second son of Richard Hart, of Three-mile Creek, near Wangaratta. Stephen, at an early age, became the associate of disreputable persons, and carried on a system of stealing horses and planting them until such time as rewards were offered by the owners for their recovery. He received a sentence of imprisonment in July 1877, and subsequently was sent to gaol for ten months for horse stealing. On his release he returned to Wangaratta, and for a time appeared disposed to lead a more honest and reputable life. One day, however, while at work cutting timber, he suddenly threw down his axe, exclaiming to his mate, "A short life and a merry one." He then rode off, stating that he was going to New South Wales. Nothing further was heard of him until the murders of the police at the Wombat, when it was reported that a man answering to his description was seen near Greta; but it was not until the Euroa bank robbery that his identity was established as one of the accomplices of the murderers, Ned and Dan Kelly.

Compiled from
official docu-
ments.

II.—THE KELLY COUNTRY.

That portion of the North-Eastern district known as the Kelly country may be said to embrace the triangular tract lying between the points formed by the townships of Mansfield, Benalla, and Beechworth, together with the country lying to the west of the line of railway which extends to the Murray, including the vicinity of Lake Rowan, the Warby Ranges, and the neighborhood of the Woolshed. This constitutes a large and diversified extent of territory, measuring about 1,600 square miles. It is in parts well suited for agricultural purposes, and settlement of late years there has been rapid and permanent; but in the main, especially to the north-east, it consists of mountain ranges with innumerable spurs, forming steep ravines and slopes so heavily timbered, covered with scrub, and encumbered with huge boulders, that for the greater part it is almost inaccessible. The country is intersected by numerous creeks and rivers; and recently bush tracks have been cut, and roads capable of vehicular traffic constructed; land has been taken up eagerly, and an intelligent, honest, and hard-working population is steadily settling on the soil. It was, however, evident from the first that the peculiar characteristics of the country afforded special facilities for the operations of such lawless characters as the Quins, the Lloyds, and the Kellys, who, if pursued by the police, could seek refuge in the fastnesses of the mountains and defy all the attempts of the authorities to arrest them. The district lying to the north and north-west of Mansfield, in the vicinity of which Sergeant Kennedy and Constables Lonigan and Scanlan were murdered by the Kelly gang, is exceptionally wild and broken. Here the various branches of the Broken River, the King River, and some smaller streams take their rise, flowing in a northerly direction, while the principal ranges trend in lines nearly parallel with their courses. In this isolated and still sparsely-inhabited spot, not far from the junction of the right and left branches of the King River, and about 40 miles from Mansfield, Glenmore is situated. The homestead of the elder Quin lay directly in the track—the only one existing in the early days—between Mansfield and the Murray. It was principally utilized by cattle stealers, who, owing to the rugged and inhospitable character of the country, were enabled to pass to and fro without risk of being intercepted by the police. The arrest of Power the bushranger pointed to the necessity for a police station at Glenmore. In 1870 one was accordingly erected, and two constables placed in charge, with results highly satisfactory. The proximity of the police became intolerable to the criminals in the neighborhood, and various means were adopted unavailingly to

Compiled from
official docu-
ments.

Insp. Montford,
3:03.

induce the Government to withdraw them, until finally the Quins sold out and left the district. The policy of abolishing the Glenmore police station has been frequently adverted to in the course of the evidence; and, with due regard to all the circumstances, it seems to your Commissioners to have been a grave error of judgment on the part of Captain Standish, the Chief Commissioner of Police, to have consented to its removal. In 1872 Superintendent Barclay strongly recommended the abolition of this station, on the grounds that the place was remote from settled population, that there was no crime in the neighborhood, and that its maintenance was unnecessarily expensive. Acting upon the advice of his subordinate officers, and that of many respectable residents in the locality, the Chief Commissioner declined to accept Superintendent Barclay's suggestion. In 1875 the representations of this superintendent proved more successful. He directed Inspector Brook Smith to report on the subject. The views of the latter coincided with those of his superior officer, and, upon their recommendations, supported by the opinions of certain residents in the district, Captain Standish, in a memo. dated 17th November 1875, approved of the removal of the Glenmore station to the place recommended by Superintendent Barclay, viz., three miles above the Hedi station. The inadvisability of this step should have been apparent to Captain Standish at the time, inasmuch as he must have been aware of the state of the district. For many years anterior to the outbreak offences against the person were of frequent occurrence in the North-Eastern district. It was the scene of the exploits of many notorious criminals and bushrangers, and horse and cattle stealing was carried on systematically by gangs of thieves who acted in concert on both sides of the River Murray. Those engaged in the traffic were associated with the families of the Quins, the Lloyds, and the Kellys, and constituted a "ring" that became a standing menace to the respectable and law-abiding people of the district. A return compiled from official documents shows the extent to which cattle stealing prevailed in the Kelly country for eight years prior to the outbreak. In 1871 the number of cases of cattle stealing reported was 101; 1872, 108; 1873, 97; 1874, 80; 1875, 93; 1876, 130; 1877, 132; and 1878, 101. It is true that a certain percentage of the animals missing, and reported as having been stolen, were subsequently found, but there seems every reason to conclude that in the majority of instances horses disappearing, if not permanently appropriated by the criminal classes, were freely taken and utilized as occasion served, and were then turned adrift into the bush, where they were sometimes recovered by the owner. The plan frequently adopted was to drive mobs of stolen cattle from Victoria across the Murray, where they were impounded by the New South Wales police. In due course they were disposed of, when the thieves attended the sale, and purchased the animals at a nominal price. Fortified against prosecution by possessing the sale note obtained from the pound-keeper, they retraced their steps to their homes, carrying with them the fruits of their criminal enterprise. Cattle stealers across the border pursued a similar system, driving the cattle lifted in New South Wales into Victoria, purchasing them when sold by the poundkeepers, effacing the brands, and taking them back to the districts from which they had been stolen. In 1877, Inspecting Superintendent Nicolson drew attention to the prevalence of this description of crime in the North-Eastern district, which drew forth a strong remonstrance from Captain Standish, addressed to the officers in charge of the North-Eastern district. Numerous witnesses, notably Captain Standish and the Hon. J. H. Graves, have deposed to the almost incredible extent to which for many years cattle stealing was carried on with impunity in the North-Eastern district; nevertheless, not only was the Glenmore station abolished, but the strength of many other police stations in the district was reduced. Further, excellent and experienced members of the force were removed from important centres and replaced by others wholly incompetent and unacquainted with the district.

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Mr. Nicolson,
1041.

1040.

See Constable
McHugh's affi-
davit, Appendix.
Sen.-Con. Flood's
evidence.
Hon. J. H. Graves,
15490-93.

III.—CAUSES OF THE OUTBREAK.

In the opinion of your Commissioners, the abolition of the Glenmore station, the reduction of the numerical strength of the force in the district, and the substitution of inexperienced and inferior constables for those more competent, necessarily weakened that effective and complete police surveillance without which the criminal classes in all countries become more and more restive and defiant of the authorities. The incident, however, which seems to have more immediately precipitated the outbreak was the attempt of Constable Fitzpatrick to arrest Dan Kelly, at his mother's hut, on

12614.
P. 496
P. 457.
Q. 12618.

P. 464. the 15th of April 1878. This constable appears to have borne a very indifferent character in the force, from which he was ultimately discharged. Mr. Fosberry, the Inspector-General of Police, New South Wales, and Captain Standish express in strong terms their adverse opinions of Fitzpatrick, while the present Acting Commissioner of Police, Mr. Chomley, writes a valedictory memo. on his papers, describing him as a liar and larrikin. To this man was entrusted, in April 1878, the temporary charge of Greta, the very focus of crime in the district. He had been stationed at Benalla, and prior to starting for Greta he appears to have had an interview with Sergeant Whelan, the sub-officer in charge, relative to his duties. Whelan, in his evidence, is somewhat contradictory upon the point as to whether Fitzpatrick was justified in attempting to arrest Dan Kelly under the circumstances. In almost the one breath he states that the constable was wrong in going to the Kellys' hut, and then urges that it was his duty to act as he did. The arrest was attempted to be made in consequence of a *Gazette* notice to the effect that a warrant had been issued at Chiltern against Dan Kelly and Jack Lloyd, on a charge of suspected cattle stealing. Sergeant Lynch, at Chiltern, considered that the men alleged to have been seen driving certain horses through the township answered the description of those men, and warrants for their arrest were issued accordingly. Fitzpatrick's efforts to fulfil what he may have considered his duty proved disastrous. He was entrapped by accepting the invitation to accompany Dan Kelly into the hut, where he was attacked by several members of the family, and shot in the wrist by Ned Kelly. Warrants were in due course issued against Fitzpatrick's assailants; and those arrested, including Mrs. Kelly and a relative named Williamson, were sentenced to long terms of imprisonment for the offence of assault with intent to kill. The alleged severity of the punishment inflicted upon the mother of the outlaws has been the subject of comment in the course of the inquiry, and Captain Standish considers that it formed one of the many causes which assisted to bring about the Kelly outrages. One point in this matter should not be overlooked. Jack Lloyd, who was implicated in the alleged case of horse stealing for which Fitzpatrick sought to arrest Dan Kelly, was subsequently taken into custody, and, the charge having been investigated, he was discharged. There can be little doubt that Constable Fitzpatrick's conduct, however justified by the rules of the service, was unfortunate in its results. It may also be mentioned that the charge of persecution of the Kelly family by the members of the police force has been frequently urged in extenuation of the crimes of the outlaws; but, after careful examination, your Commissioners have arrived at the conclusion that the police, in their dealings with the Kellys and their relations, were simply desirous of discharging their duty conscientiously; and that no evidence has been adduced to support the allegation that either the outlaws or their friends were subjected to persecution or unnecessary annoyance at the hands of the police.

Evidence, Sen.-
Con. Flood,
Sergt. Whelan,
Insp. Montford.
Q. 5950-51.

5949.

See Fitzpatrick's
evidence, p. 464
et seq.

Q. 181.

Con. Fitzpatrick's
evidence.

IV.—THE WOMBAT MURDERS.

Supt. Sadleir,
1718.

1723.

1727.

1727.

1741.

In July 1878 a change was effected in the police arrangements of the country districts. Beechworth and Mansfield and a portion of Kilmore were combined, forming the North-Eastern district, and Superintendent Sadleir placed in charge, with his head quarters in Benalla. Mr. Sadleir, upon taking charge, found warrants had been issued against Ned and Dan Kelly for the assault upon Constable Fitzpatrick in the previous April. He at once communicated with the Chief Commissioner, asking for the assistance of a detective to discover the whereabouts of the offenders, and Detective Ward, owing to his previous knowledge of that part of the country, was selected for the purpose. In a communication dated 17th October 1878, Inspector Secretan suggested to Superintendent Sadleir that an organized search should be made about Greta, the Fifteen-mile Creek, and from thence to Mansfield, as it was reported that one, if not the two Kellys had been seen there. This was all the information that Sergeant Kennedy and his party possessed when, on the afternoon of the 25th October, they started from Mansfield charged with the duty of arresting the Kellys. Although early in August an expedition to search the country between Mansfield and Greta had been proposed, various matters had interfered with the project being carried out. In reply to a communication from Superintendent Sadleir, in October, Sergeant Kennedy intimated that the only feasible plan of effecting the arrest was by establishing a depôt at some distance beyond the Wombat, say near Stringy Bark Creek. This, he pointed out, would enable the party to keep up a continuous search between that spot and the

flat country towards the King River, the Fifteen-mile Creek, and Holland's Creek. He urged that, while the Mansfield men would be searching the ranges and creeks in that neighborhood, the men forming the party to be despatched from Greta could co-operate on the flat country. Sergeant Kennedy's suggestion was approved of by his superior officer, and on the 18th of October Superintendent Sadleir issued final orders to guide the search parties. Two parties of police were to start simultaneously—one, consisting of Sergeant Kennedy and Constables Lonigan, Scanlan, and McIntyre, from Mansfield, and the other, in charge of Senior-Constable Shoebridge, from Greta. The spot indicated by Sergeant Kennedy for the purposes of a camp was, therefore, of his own selection, and the arrangements generally were left to himself. On reaching the site of the proposed depôt, at Stringy Bark Creek, measures were adopted by Sergeant Kennedy for camping there for the night. It seems clear that Kennedy had no knowledge of the presence of the Kellys in the locality. He took no precautionary measures against surprise. He seems to have acted with a singular disregard to possible contingencies. He not only divided his party, but allowed McIntyre to fire off his rifle at some birds, thus attracting the Kellys to the spot. The party was armed each with the regulation revolver, having beside a Spencer repeating rifle and a double shot gun. Considering that they anticipated meeting only the two Kellys, and that probably no more than a show of resistance would have been offered, those arms were considered sufficient for every purpose; but the absence of foresight, of proper discipline or precaution, enabled the gang to take the party in detail, and, consequently, at a disadvantage. There seems no reason to suppose that the murders were the result of premeditation; the men were shot down when, with an instinctive sense of duty, they endeavored to repel the attack of their assailants. The cold-blooded despatch of the brave but ill-fated Kennedy when, wounded and hopeless of surviving, he pleaded to be allowed to live to bid farewell to his wife and children, is one of the darkest stains upon the career of the outlaws. It was cruel, wanton, and inhuman, and should of itself, apart from other crimes, brand the name of his murderer, the leader of the gang, with infamy.

Supt. Sadleir's evidence, 1742.

Con. McIntyre's evidence.

14341.

14354.

1747.

14381.

V.—AFTER THE MURDERS.

The action of the police immediately after the Wombat murders proved the utter unpreparedness of the authorities for so grave an emergency. The constables were found armed with revolvers that, under the circumstances, were comparatively useless. A few rifles were scattered throughout the district, but such was the inadequacy of the armament available that, upon the departure of Kennedy on his fatal expedition, the station at Mansfield was almost completely denuded of weapons. The parties who went out to search for the bodies of the murdered men were wretchedly equipped, and, before starting, the whole township had to be searched in order to obtain arms. The majority of the police were unacquainted with the use of the more modern description of rifle, and were, in many instances, notoriously bad bushmen, and ignorant of the country in which they had to search for the outlaws. Some also were indifferent horsemen. As soon as information reached Melbourne of the Wombat murders, the Hon. Graham Berry, who was then Chief Secretary, gave the Chief Commissioner *carte blanche*, as regarded expense, to enable him to cope with the situation. Some Spencer repeating rifles that were in store were forwarded, and reinforcements were despatched to the scene of operations. Mr. Nicolson, the Assistant Commissioner of Police, who had done good service in the capture of bushrangers in the early days of the gold diggings, was specially selected to take charge of the pursuit. On arriving in Benalla, he found the township in a state of intense excitement, which was shared in more or less by the general community. At this time the mounted police in the North-Eastern district, which embraced an area of 11,000 square miles, numbered only about 50 mounted men, and the reinforcements came to hand slowly. Having visited the more important stations, Mr. Nicolson proceeded to form search parties with whom to scour the country according as information was received as to the supposed whereabouts of the gang. The officers in the district at this time, in addition to Mr. Nicolson and Mr. Sadleir, were Inspector B. Smith and Sub-Inspector Pewtress. Mr. Smith, as subsequent events proved, was quite inefficient for the work, and Mr. Pewtress was wholly unsuited for bush duty. The police parties sent in pursuit in the first instance

Capt. Standish,

q. 6.

Mr. Nicolson,

999.

Det. Ward, 3148.

Con. Meehan,

p. 669.

Hon. J. H. Graves,

15493.

Mr. O'Connor,

1224-28.

Con. Duross, 4074.

Supt. Hare, 1384.

Capt. Standish, 6.

Official documents, capture of O'Connor and Bradley, bush-rangers.

Mr. Nicolson,

332.

1716-18.

15493.

p. 631.

q. 1384.

1727.

Mr. Nicolson,
489-44.

returned to quarters without success, and no reliable information appears to have been obtainable as to the whereabouts of the gang. The Government, it must be said, exhibited a commendable zeal and promptitude in seconding the efforts of the police. The better to facilitate their object, the Felons Apprehension Act was passed through the Legislature at one sitting. The measure was based upon one that in New South Wales was found very effectual in stamping out bushranging. Its provisions were directed against not only the outlaws, but also against all those who wilfully harbored, assisted, or otherwise sympathized with them; and, doubtless, had it been judiciously administered, the object aimed at would soon have been achieved.

VI.—THE SEBASTOPOL RAID.

Q. 11-13.
Q. 361-311.
Q. 1775.
Q. 1776.

One of the earliest combined movements of the police in pursuit of the outlaws was not calculated to favorably impress the mind of the public as regards the capacity of the officers. The "Sebastopol charge" as it has been designated, and which took place on the 7th November 1878, proved an utter fiasco, calculated simply to excite ridicule, and for this Superintendent Sadleir must be held directly responsible. On the 6th November, a splitter, in a state of intoxication, made his way from the Woolshed into Beechworth, where he was heard to boast that three days previously he had seen the gang in the bush near Sebastopol. This individual was conveyed to the lock-up, where he reiterated his statement to Superintendent Sadleir, and indicated where he believed the outlaws were secreted. Mr. Sadleir telegraphed to Mr. Nicolson, at Benalla, the information. Captain Standish happened to be with the Assistant Commissioner of Police at the time, and it was arranged that, taking with them a party of police, they should both proceed immediately by special train to Beechworth and accompany Superintendent Sadleir to the spot where he seemed sanguine of catching the Kellys. The Benalla contingent arrived at Beechworth at 3 a.m., and were met by Mr. Sadleir, who communicated to Captain Standish the information he had obtained, and then all rode off, leaving the Assistant Commissioner behind, searching for a horse, which occupied some time. The cavalcade moved rapidly forward, and as it proceeded, its numbers were gradually increased by parties of troopers who were gathered from various directions, until the force present numbered, according to various computations, from 23 to 50. The noise of so large a body of horsemen, clattering along a hard road in the early hours of the morning and in the clear atmosphere of the ranges, was described by one witness as "just like thunder," and could have been heard a mile off. Indeed, everything was done as though it were desirable to give the gang—supposing that they were in the neighborhood—timely warning of the approach of the police. What followed was perfectly in keeping with the haphazard organization of the party. It was not until the party had arrived opposite the house of Sherritt, senior, that Mr. Sadleir informed the Assistant Commissioner of the precise object of the expedition, whereupon arrangements were made for the attack. While Mr. Nicolson and Mr. Sadleir rushed the hut where the outlaws were supposed to be concealed, the Chief Commissioner took up a position at a distance, in charge of the reserve force. The hut was duly searched, but nothing to excite suspicion was discovered. A second hut adjacent was pounced upon after a similar fashion with a like result. The procession of horsemen then moved on to Mrs. Byrne's house, but here again the police were doomed to disappointment. The entire proceedings of the day were little better than a travesty; and as indicating the extent to which discipline prevailed in the force, it may be mentioned, that not a single witness could positively state which of the officers present was actually in the command of the party.

Q. 1768.
Pp. 108-111.

Q. 1768.

Q. 336.

5728.

1770.

Q. 369.

Q. 5740.

VII.—INSPECTOR BROOK SMITH IN PURSUIT.

Con. Johnson,
p. 445.
Con. Twomy,
p. 658.
B. Smith, p. 663.
Mr. Nicolson,
p. 18.

The conduct of Inspector Brook Smith while in charge at this period cannot be too severely censured. The history of the expedition which started on the 6th November 1878 from Wangaratta to search the Warby Ranges discloses culpable negligence and incapacity on the part of Mr. Smith, who was the officer in command. In the first place, he failed to take the proper steps with a view to the verification of the rumor that, on the morning of the 3rd November, the gang had been observed riding under the One-mile Bridge, at Wangaratta, in the direction of the ranges. Two days were allowed to elapse before starting in pursuit. Then,

when the unmistakable tracks of the outlaws were discovered and Kennedy's horse found, this officer deliberately disobeyed orders by returning with his party to quarters. The following morning, from sheer laziness, he kept his men waiting from 4 a.m. till 7. The next day they had to start without him. With no other apparent object than that of retarding the pursuit, he compelled his men to make unnecessary detours to follow up the tracks; he rode slowly, loitered in the rear, and altogether so conducted the affair that only one conclusion can be arrived at as regards his conduct, namely, that he was determined that his party should not overtake the outlaws. What renders his action all the more reprehensible is the fact that upon no occasion throughout the pursuit, from the murders at the Wombat to the final affray at Glenrowan, was there presented a more favorable prospect of capturing the gang. Sergeant Steele was most blameworthy in this matter. If, as has been frequently urged, the men and more particularly the sub-officers were allowed to act upon their own discretion, upon the receipt of reliable intelligence, then surely it was the clear duty of Sergeant Steele, when informed by Constable Tuomy of the gang's appearance, to have immediately gone in pursuit. When the circumstance was communicated to him, he at once and rightly surmised that the men seen crossing the creek were the gang, and that they were guided by Steve Hart. The tracks were plainly discernible; he had a large body of armed troopers under his command, and was then actually engaged in the search for the outlaws; it was only men flying for their lives that would have attempted the passage of the creek at the time; the murderers and their horses were completely exhausted, owing to the journey to and from the Murray; so that, had this sub-officer acted with vigor and judgment on the occasion, he must have been instrumental in effecting the capture of the gang, and preventing the loss of life and the large expenditure of money which was subsequently incurred in bringing about the extermination of the gang. It would be unjust to lay down as a general principle that an inferior officer may be punished for the *laches* of his superior, but the circumstances of this case are exceptional. No one knew better than Sergeant Steele the personal peculiarities and unsuitability of Mr. Brook Smith for the work, and to have referred his informant to that officer was simply an attempt to evade responsibility.

VIII.—PROVISIONING THE OUTLAWS.

A Pentridge inmate, named Williamson, who had been implicated in the assault upon Constable Fitzpatrick, and sentenced to a long term of imprisonment, imparted some very important information to the authorities shortly after the Wombat murders. His first communication was dated 30th October 1878. In this he gave certain particulars respecting the gang, their haunts, probable whereabouts, and their mode of obtaining supplies of provisions while hiding in the ranges. Attached to the statement was a rough pen-and-ink sketch, or plan, of the position and surroundings of Mrs. Kelly's hut at Eleven-mile Creek and its relation to a large hollow log, not far distant, which was likely to be used as a receptacle of food for the use of the outlaws. Search was made for the log, and it was found by Senior-Constable Flood without much difficulty. It was lying about 400 or 500 yards distant from Mrs. Kelly's hut, and in a spot suitable for secreting provisions. The suggestion made by Williamson—indeed the action that common sense would have dictated—was to watch the log, when discovered, and endeavor to cut off the outlaws' supplies, or possibly trace them to their lair. This course was not adopted. From the appearance of the hollow log, Senior-Constable Flood came to the conclusion that it could not have been utilized as indicated, and so the matter rested. About the same time a secret agent informed Mr. Sadleir that Mrs. Skillion, the sister of Ned and Dan Kelly, was in the habit of preparing large quantities of food which she conveyed into the bush at night, returning in the morning with her horse completely exhausted. She was not, however, interfered with. It was stated in evidence that attempts were made to follow her, but the difficulty of doing so without skilled trackers was thought insurmountable, and all efforts to trace her nightly expeditions to their source were relinquished. The evidence given by Superintendent Sadleir upon this point is unsatisfactory, and favors the hypothesis that the officers depended upon fortuitous circumstances rather than upon any defined plan of operations to bring about the capture of the outlaws.

IX.—THE EUROA BANK ROBBERY.

The authorities received from the prisoner Williamson another important statement, dated 15th November 1878, in which it was intimated that the Kelly gang would probably attack one of the banks at Seymour. This information was communicated to Superintendent Hare on the 26th November, and that officer took immediate steps in his own district to guard against such an eventuality. On the 28th the document reached the hands of the officers in Benalla, and on the following day Mr. Nicolson telegraphed to the Chief Commissioner, suggesting that the police at Seymour should be reinforced. It seems clear that at this time rumors were current that one or other of the banks in the district would be robbed ; and it has not been satisfactorily shown that Mr. Nicolson or Mr. Sadleir took any precautions to frustrate an attempt of that nature if made in the North-Eastern district. Indeed, their action indicates that they were either ignorant of the rumors or attached no importance to them, although the witness Patrick Quin asserts, in the course of his evidence, that some time prior to the robbery he informed the Assistant Commissioner not only as to the locality in which the Kellys were secreted, but that one of the banks at Bright, Avenel, or Euroa would probably be attacked. That the force at the command of the officers in charge of the district was inadequate to resist the threatened raid in every centre of population in the district was apparent. Nevertheless it has not been satisfactorily proved, from the documents or the evidence submitted to your Commissioners, that Mr. Nicolson realized the danger and applied for reinforcements. There is a document, dated some eight or nine months later, written by Mr. Sadleir, in which he alleges that application had been made to the Chief Commissioner for additional police prior to the attack upon Euroa, and Mr. Nicolson, in cross-examination, reiterates the statement, but beyond these mere assertions we have no proof that any special effort was made at this time to protect the banks in the North-Eastern district. Further, at a very critical juncture, and in the teeth of the most emphatic warning, both officers left head quarters at Benalla and proceeded to Albury on the 9th December 1878. The journey thither appears to have been the result of a ruse on the part of the sympathizers of the gang. The precise object of the officers in starting was simply to reconnoitre by daylight the crossing of the Murray, near Albury, where it was stated by a supposed reliable agent that the Kellys were expected to pass. Before starting an incident occurred which might have induced them to pause, if not to forego their intention. Mr. Wyatt, P.M., arrived from Euroa by the evening train, bringing with him incontestable proofs that the telegraph wires in the vicinity of the township had been deliberately cut, and direct communication with Melbourne destroyed. Mr. Wyatt appears to have argued the matter out in his own mind, from all the circumstances which came under his notice, that the cutting of the wires was probably the work of the Kelly gang ; and as soon as he observed Mr. Nicolson on the platform, at Benalla, he at once communicated to him his suspicions. Unfortunately Mr. Wyatt had warned the driver of the engine and others in the train by which he had arrived not to disclose any information they possessed on the subject, so that, when they were interrogated by Superintendent Sadleir as to whether there was anything wrong down the line, they returned a distinct negative. The warning of the police magistrate was disregarded. Turning to him, Mr. Nicolson said, "It will not alter our plans," and, getting into the train, he and Mr. Sadleir took their departure for Albury. When passing Glenrowan station another incident occurred, which appears to have attracted the attention of Mr. Sadleir. When the train arrived at Glenrowan, Mr. Sadleir observed a suspected sympathizer and scout of the gang watching their movements ; and, from his action and the expression of his face, it was evident that something unusual was stirring. This fact flashed through Mr. Sadleir's mind in the train on the journey to Albury, but he neglected to communicate with Sergeant Whelan, at Benalla, so as to place him on the *qui vive*, as he might have done on arriving at Wangaratta or at any of the stations along the line. A strange and unfortunate fatality appears to have attached itself to every phase of this remarkable episode. There was, at the time of the robbery, virtually no police protection in Euroa. The constable, the only one stationed there, had been absent from the township during the day ; and it was not until late in the evening, when doing duty at the railway station, he ascertained that the outrage had been committed, whereupon he leaped into the train and proceeded to Benalla. It seems also clear that

Q. 1245.
Q. 2026.

P. 674.

Q. 483.

Q. 1972.

Q. 1996.

P. 123.

Q. 1998.

Q. 489.

Q. 2153.

Q. 16692.

See evidence,
Mr. Wyatt,
Mr. Nicolson,
Supt. Sadleir.

See Sergeant
Whelan's
evidence.

Q. 3583.

Q. 2214.

Q. 1254.

for some days prior to the raid the outlaws were either in the township or secreted in its neighborhood, and that their scouts gave them full information of its unprotected condition, so that they could push their audacity to any limits without fear of molestation. Mr. Nicolson was at Albury when, at midnight, he received intelligence of the robbery, and he took steps to return immediately by special train. *En route* he issued instructions to the several police stations, in order to ensure co-operation in the pursuit. Some stress has been laid upon the telegrams despatched to Sub-Inspector Pewtress, conveying instructions as to the course he should adopt; but—apart from the fact that if any doubt existed in the mind of Mr. Pewtress as to the propriety of acting upon the orders received he had full power to decide for himself what was best to be done—a careful scrutiny of the telegrams does not bear out the allegation that the Mansfield contingent were instructed to proceed in a direction the opposite to that in which there was a possibility of the gang with their plunder being encountered. The efforts made to follow up the tracks by Mr. Nicolson and his search party on the day following the robbery proved utterly futile, and they were compelled, from sheer exhaustion and inability to trace the outlaws, to return to quarters in the afternoon.

X.—CAPTAIN STANDISH AND SUPERINTENDENT HARE IN CHARGE OF THE PURSUIT.

Mr. Nicolson was relieved from duty in the North-Eastern district, owing to the state of his health, immediately after the Euroa bank robbery, and Captain Standish and Superintendent Hare took charge of operations. One of their first acts was to enforce the provisions of the Felons Apprehension Act by arresting a large number of the more notorious sympathizers. By the orders of Captain Standish the responsible sub-officers and men in charge of stations who had for any length of time been in the Benalla district were collected. They were asked the names of the persons suspected. Those were taken down by Mr. Hare, and, without any effort to obtain information for the purposes of the prosecution, the necessary legal machinery was put in motion to make the arrests. In making these arrests no proper discretion was exercised. Several persons were taken into custody against whom no evidence could be obtained, while a number of persons known or suspected of being in close and intimate relations with the gang were allowed to remain at large. As a consequence, when the cases were called on, remand after remand was applied for and granted, until finally the magisterial bench at Beechworth discharged the prisoners. Those apparently arbitrary proceedings were not salutary in their effects. They did violence to people's ideas of the liberty of the subject; they irritated and estranged probably many who might have been of service to the police; they failed to allay apprehensions of further outrages on the part of the gang, or to prevent them from obtaining the requisite supplies; they crippled the usefulness of the officers, who had to be called away from active duty in connection with the pursuit to attend the petty sessions at Beechworth, when remands were applied for; and, what was of more significance, the failure of the prosecutions led the public to believe that the conduct of affairs was mismanaged. The original intention of the gang, after the Wombat murders, seems to have been to leave the colony, but this object having been frustrated, owing to the flooding of the Murray, they returned to the vicinity of their homes. Finding that the police were utterly at fault as to their whereabouts, and were receiving no reliable information as to their movements—that they were simply exhausting their energies in dragooning the district on purposeless expeditions—the gang gained confidence, and settled down in the ranges, varying their retreats, as occasion arose, between the neighborhood of the King River, the Woolshed, near Sebastopol, and the Warby Ranges. The first detachment of the Garrison Artillery was forwarded from Melbourne to the North-Eastern district, 15th December 1878, and were distributed in the townships along the line of railways where another raid on the banks was possible. In January reinforcements of the artillery were sent to Beechworth, and in March following it was deemed desirable to place a number also in Shepparton. A considerable accession of strength was thus made to the available police at the disposal of Superintendent Hare, who appears to have attended to field work while Captain Standish transacted office business. The first cave party was formed at this time, and was taken command of by Superintendent Hare in person. It was maintained for a month, during which the party endured considerable hardships, having to remain concealed in the ranges in the neighborhood of the Woolshed during the day, and watch the hut of Mrs. Byrne at night, on the chance of pouncing on one or

other of the outlaws. At the end of 25 days the camp of the police was discovered by Mrs. Byrne, whereupon, without having accomplished anything, Superintendent Hare returned to Benalla. At this period Aaron Sherritt, no doubt in the hope of securing the reward offered for the capture of the outlaws, attached himself to Mr. Hare and his party, and great reliance appears to have been placed upon his fidelity. His acquaintance with the movements of the police in all parts of the district, communicated by bush telegraphs, demonstrated his knowledge of the operations of the sympathizers, and doubtless of the movements of the gang; but he did not enable the authorities to thwart the outlaws' raid upon Jerilderie on the 10th of February 1879. The daring with which this outrage was committed, and the impunity with which the gang were allowed to swoop down upon a township, to bail up the police, to rob one of the banks, and return to their haunts in Victoria, marked this episode as one of the most extraordinary in the whole career of the outlaws. Superintendent Hare conducted many search parties with vigor, and in addition to watching Byrne's house, kept active supervision over the houses of others who were supposed to be sympathizers. He undertook expeditions to the Warby Ranges; he led search parties to Cleary's house, and to the Whorouly races respectively, on the strength of information supplied by agents, but without success. What Captain Standish accomplished by his personal supervision and direction of affairs in the district does not appear manifest. He was supposed to attend at the office during the day and act upon information received from scouts, but beyond having visited Mr. Hare and remained with him one night during the existence of the cave party he seems to have contented himself with rustivating peacefully in Benalla. Evidence has been given by several witnesses that the Chief Commissioner was not an ardent worker in connection with the Kelly business. He has been described as apathetic, and as seeking refuge in a novel when his officers referred to matters relating to the pursuit. Mr. Hare states that the Chief Commissioner was always willing to converse with him upon the subject, but other officers declare that the apathy of the Chief Commissioner was the subject of frequent conversation. As a matter of fact, when in July 1879 Captain Standish and Superintendent Hare returned to Melbourne, owing, as the former alleges, to the business of the head office being in a "frightful muddle," the authorities were uncertain whether the outlaws were actually in the colony or had gone northward, in the direction of Queensland. An analysis of the list of appearances during the time Captain Standish and Superintendent Hare were in charge shows that the number reported was 53. Of these, 23 are stated to have been untrue or unreliable; in five instances the news was considered too stale; in four, no steps were taken; inquiries were simply instituted in several cases, and in 13 alone were active measures adopted, without any practical outcome.

XI.—THE QUEENSLAND TRACKERS.

Early in December 1878 Mr. D. T. Seymour, the Queensland Commissioner, offered to place a number of native trackers at the service of the Victorian Government. The proposal did not meet with acceptance at the hands of Captain Standish. After the Jerilderie raid, however, the necessity for employing skilled trackers became obvious, and the Chief Commissioner's objections were overcome upon the representations of his officers. A telegram, dated 15th February 1879, was accordingly despatched to Mr. Seymour, at Brisbane, asking him to send down a party of eight trackers, under the command of a competent officer. The terms as regards remuneration and mode of working the contingent were soon arranged, and, on the 6th of March ensuing, Inspector O'Connor and his blacks arrived at Albury, where they were met by Captain Standish, who accompanied them the remainder of the journey to Benalla. Mr. O'Connor's instructions were that he was to obey the orders of Captain Standish, and co-operate with the members of the Victorian or New South Wales police, with whom he might be required to serve, while at the same time he was to communicate as opportunity arose with the Commissioner of Police in Brisbane. In fact, however, Inspector O'Connor may have been regarded, he never held the position of an officer in the Victorian police. He stood in the relation of a volunteer, subject to the regulations and discipline of the force for the time being, simply holding the rank of an officer in a foreign service, his commission being recognised as a matter of courtesy by those with whom he was co-operating. In Mr. Seymour's memo. Inspector O'Connor was expressly informed that "he merely went as an assistant, and that the conduct of affairs was entirely in the hands of Captain Standish

Q. 1281.

Q. 1277.

Q. 1285.

Q. 1362.

Q. 493.

Q. 1091-92.

Q. 1692.

Q. 52.

See Mr. Moor's evidence.

Q. 260.

P. 41, see 6th par. Mr. Nicolson's report.

Q. 2035.

Q. 2037.

Q. 1073.

Official documents.

Evidence of Capt. Standish.

Q. 15522.

See Sergt. Whelan's evidence.

Official documents.

and his officers; and that, in obeying orders, he freed himself from responsibility for anything beyond his own acts." Mr. O'Connor was not appointed to any particular position in the Victorian police; he was sworn in and remained exclusively in charge of the Queensland trackers. The arrangement was anomalous, and much of the difficulty and misunderstanding that afterwards arose might have been avoided had Mr. O'Connor been gazetted an officer in the Victorian police. For some months after the arrival of the Queensland trackers cordial relations appear to have subsisted between Captain Standish and Inspector O'Connor. Then dissension arose, and much bitterness of feeling was engendered in consequence of a personal quarrel with one of the officers. On the 11th of March, a week after the arrival of the trackers, they were despatched with Mr. O'Connor in pursuit of the gang. As showing the friendly feeling entertained towards him at this period, it may be mentioned that he was placed in command of the party alluded to, although he was accompanied by Superintendent Sadleir, an officer of higher grade. Mr. O'Connor was desirous of going out with only a few Victorian troopers attached to his party, but the Chief Commissioner, for certain reasons, was averse to this arrangement, and sent a much larger number. This expedition, which was intended to test the powers of the trackers, resulted in demonstrating their usefulness to some extent; but, at the same time, it showed that, being natives of a warmer climate, they were not well adapted, even when supplied with suitable clothing and covering at night, to endure severe weather or the physical hardships incidental to carrying on operations in the ranges. They returned to quarters earlier than was expected, principally owing to this circumstance. Corporal Sambo, one of the contingent, died in a few days afterwards, having succumbed to the effects of congestion of the lungs. On the 16th of April following, Mr. O'Connor and his party again proceeded in pursuit, but on the fifth day out they were recalled by the Chief Commissioner for the purpose of placing the trackers at the disposal of Superintendent Hare, who was supposed to have obtained an important clue to the whereabouts of the gang in the Warby Ranges. This appears to have been the last occasion upon which, during the period Captain Standish remained in charge of the district, Inspector O'Connor went out in command of a party. This, together with the fact that the Chief Commissioner declined to work the trackers in accordance with the views of Mr. O'Connor, no doubt served to bring about the estrangement which arose between those officers. The Chief Commissioner at no time refrained from expressing his disparaging estimate of the value of the Queensland trackers. They had been engaged contrary to his wishes and his judgment. He believed them to be wholly unsuitable for tracking in broken and mountainous country, more especially as they required a considerable quantity of *impedimenta*; could work but slowly, and were therefore the more liable to attract observation. In a district like that in which the pursuit was conducted, and having to cope with men who frequently rode from 60 to 70 miles in one night, it was believed by Captain Standish that the trackers were utterly useless, and that their engagement was an idle expenditure of money. In withholding information from the officer in charge of the trackers, in connection with the search of Cleary's house, a slight was thereby implied; and, by making Superintendent Hare a party to the transaction, the Chief Commissioner adopted the most effectual means of sowing discord amongst the officers. He also deliberately informed Mr. O'Connor that he intended to catch the Kellys without his assistance; and, by his general demeanor, according to the evidence, displayed a want of kindly and generous feeling towards Mr. O'Connor, who as a stranger and a volunteer sent specially by the Government of a neighboring colony to assist the Victorian police, was the more entitled to courtesy and consideration. While Captain Standish entertained this opinion of the trackers, it must be noticed that Mr. Hare, Mr. Sadleir, and other competent authorities who had practical experience of the value of their work, bore favorable testimony to their abilities and usefulness.

Capt. Standish in cross-examination.

Q. 1073.

Q. 1074.

Q. 1075.

Q. 1073.

Q. 1081-5.

Q. 47.

Private letter to Mr. Nicolson, 15 Jan. 1880; Q. 313.

Q. 1235.

Q. 1099.

Mr. O'Connor's letter, asking for an inquiry; also the evidence generally relating to the black trackers.

XII.—MR. NICOLSON RESUMES CHARGE OF THE PURSUIT.

When, in July 1879, Mr. Nicolson resumed charge of the pursuit, the prospect of capturing the outlaws appeared more remote than ever. The alarm caused by the daring outrages of the gang had to some extent subsided, but a strong feeling of indignation prevailed throughout the country at the spectacle presented of four young

P. 41.

men, three of them only about twenty years of age, defying all the resources and powers of the Government, and remaining in almost undisturbed tranquillity in what one of them described as their mountain home. As indicating the condition of the district and the influences at work to shield and assist the gang, it may be mentioned that not even the offer of £8,000 for their capture, to any appreciable degree, facilitated the operations of the police. Weary of the delay in effecting the capture, and concerned at the enormous outlay incidental to the pursuit, pressure appears to have been brought to bear immediately on Mr. Nicolson taking charge to effect reductions. The Garrison Artillery were gradually withdrawn, while the strength of the police in the district was also considerably reduced, as will be seen from the following returns :—

See official returns.

NUMBER of Officers and Police stationed in the North-Eastern district and the extra expenditure incurred during the period Captain Standish and Superintendent Hare were in charge, and for the seven months after Mr. Nicolson resumed command.

UNDER CAPTAIN STANDISH AND SUPERINTENDENT HARE.				UNDER MR. NICOLSON.			
	Men.		Extra Expenditure.		Men.		Extra Expenditure.
December 1878...	217	...	£2,197	July 1879 ...	156	...	£1,049
January 1879 ...	201	...	1,748	August 1879 ...	153	...	1,057
February 1879 ...	213	...	1,856	September 1879	155	...	707
March 1879 ...	196	...	2,296	October 1879 ...	155	...	860
April 1879 ...	198	...	1,433	November 1879	154	...	356
May 1879 ...	191	...	1,342	December 1879	155	...	497
June 1879 ...	174	...	1,180	January 1880 ...	157	...	440

It must be borne in mind that these returns are irrespective of the Garrison Artillery, who were stationed in the district while Captain Standish remained in Benalla, and whose presence and co-operation were no doubt of great importance at that time. Prior to the Euroa bank robbery Mr. Nicolson appears to have lost faith in the utility of search parties exclusively; and his coadjutor, Superintendent Sadleir, emphatically pronounced the system to be mere "fooling." The Assistant Commissioner thus explains the position in which he was placed at this juncture, and the steps which he found it necessary to take. "I set to and reorganized the men on this basis, and adopted the view that, with the materials at my command, my best course to adopt was to secure places from outrage where there was treasure, so that the outlaws would be baffled in any attempt to replenish their coffers. I stationed a small body of men at Wodonga, under Sergeant Harkin, another at Wangaratta, under Sergeant Steele, another at Bright, under Senior-Constable Shoebridge, and the same at Mansfield, under Sub-Inspectors Toohey and Pewtress. At each of these there was barely strength enough for a search party, but they could make up a fair party—seven or eight—by calling in men from neighboring stations. The only place where a complete search party was kept was Benalla. I instructed the police throughout the district to arrange to get quietly from two to four townsmen of the right sort who would turn out and aid them in the case of an attack." Mr. Nicolson adds, that he had not *carte blanche* for expenditure as Captain Standish had. He had no money placed to his credit. He paid the accounts and all other expenses out of his own pocket, which were afterwards refunded. Large economies were also effected as regards the keep and hiring of horses and the expenses attached to the use of buggies by those engaged by the police. At the same time systematic efforts were made throughout the district to induce the well-disposed portion of the population to aid the police by every means in their power, and to afford any information respecting the outlaws that might come to their knowledge. This in time began to bear good fruit. At first the intelligence gleaned would be about a month old, then it was reduced to a fortnight, in time about a week, and sometimes a day only would elapse, before the receipt of news of the appearance of the gang, or the doings of their sympathizers. In fact the Assistant Commissioner appears at this time to have relied almost solely upon secret agents for information, and a reference to the list of reported appearances shows that his plan of operations so far was producing some effect. It was not, however, until he had been six weeks in charge that he obtained positive and reliable information that the Kellys were in the district. Special stress has been laid upon several incidents which mark the administration of affairs by Mr. Nicolson, to which it is desirable notice should be directed. On the 27th September 1879, Superintendent Sadleir, while at Wangaratta, was informed by the agent known as Foote that on the previous night he had seen Ned Kelly and

Q. 2021

Q. 713.

P. 30.

Q. 728-29.

Q. 734.

Q. 741

Q. 724.

Q. 741 et seq.

the other members of the gang in the bush. They were on foot, and of their identity there could not be any doubt. Mr. Nicolson, on being informed of this, at once telegraphed to Mr. Sadleir, from Benalla, instructing him to bring the man down. This order was not complied with, Mr. Sadleir explaining that he had left his informant drinking at a public house, and that he would himself be able to find the precise spot where the outlaws had been seen. Upon being questioned upon this point, Mr. Sadleir's knowledge was found to be vague; and Mr. Nicolson, under the circumstances, took no action. This was the occasion upon which the search party had assembled in the barrack yard at Benalla, with their horses saddled and ready to start, when at the last moment they were ordered back to quarters. In the following memo., dated 30th September 1879, Mr. Nicolson thus explains to the Chief Commissioner his reasons for adopting this course :—

The informant was ———; he stated he saw five men. From conversation with Superintendent Sadleir, upon his return from Wangaratta, it did not appear that "the spot was indicated so that it could be found without difficulty," nor that "it could be taken up by the trackers at daybreak before the people were moving" and had become conscious of the presence of the police among them. The subsequent examination of Mounted-Constable Ryan as to the locality and its approaches did not tend to remove the above impression. It appeared that the neighborhood was settled, and that our party could hardly expect to pass Lloyd's house, even at midnight, without being discovered, and that the trackers might have to search over at least a quarter of a mile before finding the footprints; and considering the precaution said to have been taken by the men seen by ——— in sending a man to dog him home, it seemed likely that they had taken the other precaution of moving off, and, with the fifth man and other friends, each had taken separate directions, so that the trackers pursuing might find themselves running down *one* wrong man. Sub-Inspector O'Connor was of opinion that the chance of success was a bad one. Considering my other improving sources of information, I determined, upon this occasion, not to disturb the false sense of security into which the outlaws have been lulled. Although I decided upon the above course upon *the merits* of the report made to me, yet I may remind the Chief Commissioner that ———, the informant, was the man who tried to induce me to proceed with the Benalla police and meet him at the head of the King River *on the day before the Euroa bank robbery*. p. 33.

The informant was Pat Quin, whose loyalty to the police Mr. Nicolson appears to have always doubted; but there seems every reason to believe that had Mr. Sadleir taken the precaution to bring with him the agent his statement would have been acted upon, and the officer in question have escaped the responsibility of the expedition being abandoned owing to his action. The tactics adopted at this time appear peculiar, and, perhaps, account to some extent for the apparent listlessness of the police. Mr. Nicolson was desirous, he alleges, of lulling the gang into what he terms a false sense of security. He was gradually forming round them a cordon, not of police but of secret spies, and was anxious not to allow them to know of the information he possessed, or of the precise nature of his plans, lest they should leave the district—where he felt assured they would ultimately be taken—and seek refuge in the inaccessible region near Tomgroggin, in New South Wales. The immediate object was not so much to effect the capture as to guard against any renewal of a raid upon the banks. The relative merits of the two systems adopted by the police in connection with operations against the Kelly gang, namely, that of search parties and of secret agents, have been frequently referred to in the course of the evidence. The name of Mr. Hare has been more particularly associated with the former, and that of Mr. Nicolson with the latter. As a matter of fact, however, both systems were employed conjointly as occasion arose, but, from instinct and peculiarity of temperament, Mr. Hare seems to have preferred the more active and military mode of prosecuting the pursuit; while Mr. Nicolson trusted principally to the effects likely to arise from having the outlaws surrounded with spies and informers. One of the most peculiar features of Mr. Nicolson's administration of affairs during the period of his second charge was the nature of his transactions with the Sherritt family. Jack, the youngest brother, appears to have acted faithfully to the police while engaged by them; and there seems no doubt that from time to time he gave them important and reliable information respecting his frequent intercourse with Dan Kelly and Joe Byrne. He was introduced to Mr. Nicolson by Detective Ward, at Wangaratta, on the 12th September 1879, and from the information which he then gave, and the letters which he subsequently brought from the outlaws, it was evident that he was in close communication with, and was implicitly trusted by, them. They were in fact anxious to induce him to join them in an attempt to rob one of the banks in the district. Sherritt seems to have told everything very unreservedly to Mr. Nicolson, who nevertheless decided on each occasion to wait for a more favorable opportunity in the hope of capturing the entire gang at one blow. This policy of procrastination was more especially noticeable Q. 746.

Q. 561, 590, 739.

Q. 738, 1106-7, 1229.

See evidence. Jack Sherritt.

Pp. 540-49.

P. 540 *et seq.*

See list of appearances.

on the occasion of Sherritt's interview, when he informed Mr. Nicolson of Dan Kelly's visit to his place at Sebastopol on the 13th November 1879, leaving word that he would call again about eight o'clock. Both witnesses agree as to the facts, but there is a marked difference as to the precise hour at which the interview occurred, and upon this point the material value of Jack Sherritt's information hinges. According to his evidence, he left the Woolshed in time to interview Mr. Nicolson about half-past seven o'clock, and as the outlaws called at his place at eight, it has been urged that there was ample time for a party of police to have proceeded there, if not to encounter the gang direct, to have at least obtained such a clue to their whereabouts as would probably lead in the end to their capture. As against the evidence of Jack Sherritt, however, there must be taken, not only the denial of its accuracy, as given by Mr. Nicolson, but several other circumstances which deserve consideration in weighing the value of the testimony given *pro* and *con*. Jack Sherritt states that Dan Kelly called at dusk. According to the almanac, the sun, on the 13th November 1879, set at 6.45. The outlaw is said to have searched the house, looking for Jack; he remained, say ten minutes. Sherritt was working in a paddock, half a mile away. It must have taken his sister thirty minutes to have brought him the information. The distance into Beechworth was three or four miles through rough country, which took Senior-Constable Mullane three-quarters of an hour to ride. Ten minutes may be allowed for the recital of the intelligence to Mr. Nicolson. Supposing then that Dan Kelly called at Sherritt's at seven o'clock, these intervals bring up the hour to 8.35 p.m. before Mr. Nicolson was in a position to order out a search party to go in pursuit. It would occupy say ten minutes getting a search party together, saddling the horses, and preparing to start, and, by going by the main road, the ground might be covered in about twenty-five minutes. It would, therefore, be after nine o'clock before the men by any possibility could have reached the spot. But the probabilities are against the entire gang having called according to promise. It was well known and can be easily understood that they never kept an appointment punctually. Again, as comparing oath with oath, there is on the one side a young man not particular as to dates, who, at the time, according to his own admission, was greatly agitated, thinking that the outlaw had called to carry him off, and disposed to make the most of his case, when before the Commission, as against the Assistant Commissioner. On the other, there is a trained official, accustomed to accuracy in matters of detail, who wrote the circumstances of the interview at the time in his memorandum book, and who, some days afterwards, wrote a long letter to the Chief Commissioner, in which he elaborates the narrative, and distinctly declares that it was late when Sherritt called at the station. Again, as indicating that Sherritt may have been mistaken in this as in other points, he alludes to Mr. Nicolson looking up from the desk at the clock and making some remark about the hour. As a matter of fact there was no clock in the room where they were conversing; the only clock in the station was fixed in the verandah and could not be seen from the room. Early in December 1879 Mr. Nicolson organized the second cave party; the secret was revealed by Senior-Constable Johnson to Mr. Hare, at the depôt, and the latter at once informed Captain Standish on the subject. The Chief Commissioner did not approve of those parties, and wrote to Mr. Nicolson to that effect, stating that the cave was known at the depôt. The announcement caused surprise and pain to the Assistant Commissioner, who, however, refused to withdraw the men, believing that their presence in the hut, although known at the depôt, remained a profound secret in the district. There is reason to believe that, during the existence of the cave, the outlaws frequently visited the Woolshed, and that being so it must be inferred either that the gang were in possession of the secret and carefully avoided Mrs. Byrne's house, or they visited the place, as has been asserted, unseen by the police, who were supposed to be on the watch. The testimony of the constables bears out the supposition that the men's presence in the cave was known for a considerable time before they were removed, and the conduct of Detective Ward favors the conclusion that he deliberately deceived Mr. Nicolson upon that point, by the manipulation of the reports sent in by several of the constables. In February 1880, a report was received by the police that a number of mould-boards of ploughs had been stolen from the neighborhood of Greta and Oxley. It was not then known what the object of these depredations was, but a search party and two trackers were sent out, and upon this occasion was discovered the footprints with the "larrikin heel," which, with other information, indicated that the Kelly gang were the thieves. The "diseased stock"

Q. 14915-17.

P. 542.

Mr. Nicolson's evidence.

P. 542 *et seq.*

See evidence, Sen. Con. Mullane and Det. Ward.

See list of appearances.

Q. 839-41.

Q. 859-70.

Q. 16421.

P. 862.

List of appearances.

See Barry's and Falkner's evidence.

P. 208.

P. 283.

Q. 751.

letter, in which the object of the stolen mould-boards was communicated for the first time, was dated 20th May 1880, and this marks an epoch in the history of the pursuit. In that letter it was stated, "a break out may be expected, as feed is getting scarce." It was the receipt of this intelligence that gave Mr. Nicolson hope that the "beginning of end" was approaching. The outlaws were evidently preparing for a raid, and it was only necessary to be prepared to receive them. Doubtless the consciousness of this served to embitter Mr. Nicolson's feelings when he found himself obliged to relinquish the pursuit and yield to another the post of honor when he daily anticipated the fruition and reward of his labors. About the months of May and April the police ascertained that the outlaws were reduced to great straits. Over a year had elapsed since their last—the Jerilderie—raid. Their funds were well-nigh exhausted. With their money, their friends and sympathizers began to fall off too; and more than one, it was stated, had significantly suggested that another bank should be robbed. The outlaws at this time were said to be usually in the vicinity of the Greta Swamp, from which they would move back to the ranges, get across the Ovens River towards Sebastopol, and from thence to the Pilot Range, near Wodonga. They were obliged to travel on foot, and their immediate assistants were reduced to four. Intimation was also received that they were suffering such severe hardships in the ranges that they were obliged to obtain a tent to cover them at night; and the agent who gave all this valuable information led Mr. Nicolson to believe that, in a very short time, he would lead the police to the spot where they would have, to use the language of the Assistant Commissioner, "their hands on the throats of the outlaws without any trouble." Information of this character at the time must have appeared very general, very indistinct, and its reliability very problematical, which may account for the fact that more practical measures were not adopted. When on one occasion, about this time, a search party was despatched to a hut near the Lloyd's house at Lake Rowan, on the strength of somewhat similar intelligence, the police by their efforts simply subjected themselves to badinage, as when the suspected hut was searched, only a well-known sympathizer was found there. It must be added that every precaution seems to have been taken to intercept the gang, should they attempt to pass any of the bridges, or crossings leading to or from their reputed haunts. Sealed orders, with special instructions were issued to every station; constant telegraphic communication was maintained throughout the district; the vigilance was apparently incessant, but was sought by the Assistant Commissioner to be of a masked, unostentatious, character, which it was believed would in time achieve success. An analysis of the list of appearances discloses that during Mr. Nicolson's second charge there were about sixty reports received by the police; of those, sixteen were considered stale or unreliable; inquiries were made as regards five; there is no record of action in reference to six; in several no action whatever; and in twenty-six, action was taken mainly with a view to resisting attacks, the arranging of watch parties, or in endeavoring to induce the outlaws to suppose that the police were not on the alert. There were very few search parties despatched, and in every instance where action was taken of this nature the expeditions proved entirely fruitless.

XIII.—MR. NICOLSON'S RECALL.

The Assistant Commissioner takes no pains to conceal the opinion that his removal in June 1880, although ostensibly the direct act of the Executive, was in reality the result of official intrigue. Whatever may have been the influences at work—whether, as Mr. Ramsay declared, the decision of the Government meant no more than a desire for a change of bowlers, or, as has been insinuated, Captain Standish, for reasons of his own, was responsible for the move—of this there cannot be a doubt, that there was thereby revealed the existence of acrimonious feelings amongst the officers—of jealousy, distrust, and personal rivalry, of which nothing previously had been positively known, although perhaps suspected. There is no gainsaying the fact that the recall of Mr. Nicolson implied dissatisfaction, if not censure; but the fact of his having received a month's grace at a time when, according to his own account, he was in daily anticipation of capturing the Kellys, indicates some consideration for his feelings. Public servants are not always the best judges of the motives which actuate a Government in adopting a particular policy, and unfortunately private interests and individuals must often be sacrificed to public expediency. Mr. Nicolson evidently regarded his case as a

hard one under the circumstances. He states that, for some time prior to his removal, he felt that there was mischief brewing. On the 22nd of April the Assistant Commissioner had an interview with the Chief Secretary, who was then returning from the ceremony at Mansfield of unveiling a monument erected to the memory of the victims of the Wombat tragedy. Mr. Ramsay expressed the greatest pleasure and confidence in Mr. Nicolson when informed of how things were going on. An anonymous letter, which has been frequently adverted to in evidence, was forwarded by the Chief Commissioner to Mr. Nicolson on the 26th April for his explanation, and a week subsequently he received intimation that he was to be superseded. The so-called anonymous letter was signed "Connor," evidently a fictitious name. It criticised unsparingly Mr. Nicolson's character and conduct throughout the pursuit, and from internal evidence it was clearly written or inspired by some member of the force. It had been forwarded in the first instance to the Honorable J. H. Graves, the member for the district, and by that gentleman placed in the hands of the Chief Commissioner. The witness Wallace, a State-school teacher, and an alleged sympathizer with the gang, was the putative writer of the document, but he denies the allegation, and subsequently, in a communication addressed to your Commission, he declares that it was the joint concoction of Jack Sherritt and the outlaws, in order to have Mr. Nicolson removed from the district. But Wallace's *bona fides* and veracity are open to grave suspicion, and his flippancy of manner, when before your Commission, apart from the evidence respecting his equivocal relations with the gang, mark his statements as wholly unreliable. The Assistant Commissioner, when informed of the intention to remove him, sought an interview with the Chief Secretary early in May, when, upon his urgent representations, he obtained a month's extension of his charge of the district. The scenes which occurred between Mr. Nicolson and Captain Standish at this period indicate exacerbation of feeling and defiance on the one hand, and of cold superciliousness on the other, utterly at variance with that *esprit de corps* which is so desirable amongst brother officers. During the last month Mr. Nicolson remained in command he strained every nerve to make the most of the limited time allowed him. His last effort was made on the strength of a report by a secret agent, that Joe Byrne had been seen in the ranges, to the rear of his mother's hut. Mr. Nicolson organized and led a search party to the spot. It was upon this occasion that Aaron Sherritt accompanied the expedition as a guide during daylight—a proceeding that has induced many to attribute the murder of Aaron Sherritt to a want of discretion on the part of the Assistant Commissioner. The fact, however, should not be forgotten, that some time previously Byrne had seen Mrs. Sherritt at Sebastopol, and had threatened to shoot Aaron. At the end of the month, Mr. Nicolson in the interim having failed to effect the capture of the outlaws, Mr. Hare was sent up to supersede him. This latter officer remonstrated with Captain Standish for having selected him for the duty, and appealed to Mr. Ramsay with a view to some other officer being appointed to the post. The only reply that he received was that the Government had determined that he should take charge, and that there was left him no other alternative than to obey orders. The interview between Mr. Nicolson and Superintendent Hare on the 2nd of June 1880, when the latter took over charge, is variously described by the witnesses who were present. Superintendent Hare emphatically declares, and inserted a statement to the same effect in his official report after the affray at Glenrowan, that the interview lasted only ten minutes, and that Mr. Nicolson "gave him no verbal information whatever." Mr. Sadleir speaks of a quarter of an hour or twenty minutes, but, in cross-examination, goes further. Mr. O'Connor thinks that the interview lasted much longer, while Mr. Nicolson insists that Superintendent Hare remained with him in the office nearly an hour; that during that time he gave him all the information he possessed, and, in conclusion, asked Mr. Sadleir if he thought he had omitted anything. Mr. Hare, in support of his allegation, produces his diary, and Mr. Nicolson relies, to a great extent, upon the corroborative fact that the train by which his successor arrived reached Benalla at ten minutes past eleven; that it took him about half-an-hour to reach the police station; and it is admitted upon all hands that the interview did not terminate until one o'clock, when the officers adjourned to their hotel for luncheon. A more serious charge than that levelled by Mr. Hare against Mr. Nicolson it would be difficult to define, amounting as it does to disloyalty to the service and the country, and meanness and treachery to brother officers; and if Mr. Hare at the time considered Mr. Nicolson guilty of such conduct, it was his duty to

P. 656.
Q. 921.

See evidence,
Hon. J. H.
Graves, p. 539.

Q. 14831.

See Mr. Bolam's
evidence.
P. 546.

Pp. 44-45.

Q. 735.

Q. 1436.

See Supt. Hare's
official report
and evidence.

Pp. 79, 596.

Q. 1436.
P. 141-143.
Q. 16750.
Q. 1112.
Q. 663.
P. 627.

have at once reported the circumstance. He wrote, it appears, a private letter to Captain Standish informing him of his impressions, but such a course was not calculated to meet a case of such grave significance as Mr. Hare represents in his official report and evidence. The Assistant Commissioner indignantly repudiates the charge under which he had been allowed to labor for over twelve months, and appeals to his long service and the respect entertained towards him by his brother officers and men in refutation, urging that he would be even more criminal than the Kellys themselves if there were the least foundation for the charge. It must be mentioned that Mr. Hare was the first to leave the room in which the interview occurred; that he called again at the office in the afternoon without asking for further information; and that, if the interview were briefer than might have been expected under the circumstances, it was owing to Mr. Hare having asked Mr. Nicolson, in the course of conversation, to come to the last that had been heard of the outlaws. The telegram despatched by Mr. Nicolson to Senior-Constable Mullane prior to his leaving Benalla for Melbourne seems to have strengthened Mr. Hare's suspicion of *mala fides* on the part of the Assistant Commissioner; but, judging from the explanations made, and the tenor of the document itself, there does not seem sufficient grounds for preferring so grave a charge against Mr. Nicolson as having wilfully sought to coerce the agents, and obstruct the efforts of the officer by whom he had been superseded.

Q. 16384.

See section 44, Police Regulations.

Q. 16871.

Q. 16880.

Q. 16862.

Q. 1465.

Q. 16867.

XIV.—SUPERINTENDENT HARE SUPERSEDES MR. NICOLSON.

Superintendent Hare having mastered the documents in the office which had a bearing upon the pursuit, and having also obtained every information and assistance from Superintendent Sadleir, proceeded to make his own arrangements. Reliable residents and constables in charge of stations were interviewed; scouts were despatched; secret agents communicated with, and what has become known as the hut party organized. Four constables under the direction of Detective Ward were secreted in Aaron Sherritt's hut, at Sebastopol, with instructions to remain concealed during the day, and in the evening to proceed to Mrs. Byrne's place and watch it at night, as the cave parties had done previously. From the evidence it is clear that the constables acted very indiscreetly, situated as Aaron Sherritt's hut was, in close proximity to the main road and within view of numerous dwellings in the neighborhood. The first impression of your Commissioners when they visited the scene of the murder was its unsuitability for such a purpose. Again, the constables were known to have gone out to cut wood during the daytime and were, there is every reason to believe, seen by the gang and their sympathizers in the vicinity. Whatever suspicions there may have been engendered in the minds of the outlaws as regards Aaron Sherritt's treachery towards them previously, the fact of his harboring the police in his hut was sufficient to seal his doom. On the evening of the 26th of June 1880, while the police were in the hut, and as they were about to start on their nocturnal watch, a knock was heard at the door, and a neighbor named Anton Wicks, as though he had been bushed, inquired the way to his home. The door was opened by Aaron Sherritt. That moment a shot was fired; a second followed; Aaron stepped back, and fell dead without uttering a word. Three of the constables at the time were in an inner room divided off from the main apartment by a slight partition, which only reached from the floor to the lower edge of the roof, a door composed of flimsy material being in the centre. The front and back doors faced each other. There were two small windows in the hut, one giving light to the bedroom, the other to the kitchen. The hut in reality consisted of only one room with a portion partitioned off for the purposes of a bedroom. Constable Duross was at the fire in the outer room when the knock was heard; he at once sought refuge in the bedroom, where he and his companions remained throughout the night. The murder was perpetrated by Joe Byrne, assisted by Dan Kelly. The outlaws made several inquiries as to the men concealed in the bedroom, but the evidence upon the subject is contradictory and unsatisfactory. The names of the police present were Constables Armstrong (in charge), Duross, Dowling, and Alexander. Never was there a more conspicuous instance of arrant cowardice than was exhibited by those men on the night of the murder. Instead of attacking the outlaws, or at least making some effort out of sheer regard for their manhood, if not for their official responsibility, they sought the protection for themselves which they should have afforded to others. Two of them, Armstrong and Dowling, lay prostrate

Q. 1477.

Q. 5449.

Q. 1447.

Evidence, Mrs. Sherritt, sen.; also of Con. Alexander.

Q. 13932.

Armstrong, 12130

Duross, 3631.

Dowling, 4207.

Alexander, p. 508

Mrs. Sherritt,

sen., 438.

Mrs. Sherritt,

jun., 500.

Mrs. Barry, 499.

Const. Alexander's affidavit, p. 573.

Mrs. Barry, 13781

Q. 1500-1.

on the floor, with their bodies partly concealed beneath a bed, under which they had thrust the wife of the murdered man, with their feet resting against her, so that she could not possibly escape, in the hope that her presence would deter the outlaws from shooting them or attempting, as they had threatened, to set fire to the place. The conduct of those constables throughout the night was characterized by shameful poltroonery, which, in the army, would have been punished by summary expulsion from the service with every accompanying mark of contempt and degradation. It was not until the afternoon of the following day that the authorities in Benalla and Melbourne became aware of the outrage. As soon as information of the murder was received, prompt action was taken. The black trackers, who, with Mr. O'Connor, had been withdrawn from the district, preparatory to returning to Brisbane, were recalled, and despatched the same night by special train from Melbourne to Beechworth, the object being to utilize them in following the tracks of the outlaws from Sherritt's hut, at Sebastopol, to the ranges in the vicinity, where the murderers were supposed to be concealed.

XV.—GLENROWAN.

Supt. Hare,
1480.

Q. 18118.

For accounts of
the Glenrowan
affray, see Supt.
Hare's official
report and
evidence; also
Barry (q. 7365),
Gaseofgne
(q. 9779),
Phillips
(11341),
Sen.-Con. Kelly.

Mr. Reardon
(12526).Mr. Curnow's
evidence.

P. 665.

The murder of Aaron Sherritt was designed as the prelude to the terrible tragedy by means of which the outlaws intended, as they had previously boasted, to astonish not only the Australian colonies but the whole world. It seems manifest that they had carefully thought out and matured their plan of operations. They proposed in the first place to shoot Aaron Sherritt. By this they rightly conjectured that they would not only have wreaked their vengeance upon one who had betrayed them to the police, but would induce the authorities to despatch on the following day—Sunday—when there was no ordinary traffic on the line, a special train to Beechworth with the Queensland trackers and a large body of police. Next, it was determined to wreck this special train, and shoot any constable who might escape the effects of the disaster. Finally, the coast having been thus cleared, the gang were to proceed at once to Benalla or one of the townships in the district, rob one of the banks, and with the spoil retrace their steps to their previous haunts in the ranges. By one of those unforeseen accidents which often defeat the best laid schemes, execution of the latter portion of their programme was frustrated, and their career suddenly brought to a close. The murder was perpetrated by only two of the gang, Joe Byrne and Dan Kelly. Their task accomplished, they rode with all speed across country to Glenrowan, where Ned Kelly and Steve Hart were occupied in preparing for the destruction of the train. The outlaws established themselves in Mrs. Jones's hotel, which stood in an oblique direction, about 400 yards south-west of the local railway station, and between the line and the Warby Ranges. Thither Ned Kelly and Hart conveyed the persons whom they had bailed up during the day, the intention being to keep them in *duress* until the special had passed. At an early hour on Sunday morning the rails were torn up by two men named Reardon and Sullivan, with a threat of being shot by Ned Kelly in case they refused to act as directed. The spot selected for the catastrophe is about 1000 yards north of the Glenrowan station, at a point where the line, after passing through a deep cutting, suddenly makes a sharp curve. Here there is on one side, to the west, a high embankment, which shuts out the view ahead as the point is approached; and on the other a steep declivity, down which it was intended to precipitate the train. The members of the gang were somewhat abstemious during the day. Steve Hart was drunk in the morning, but he soon recovered, and he alone appears to have taken any liquor to excess. They established very friendly relations with their prisoners, of whom, towards evening, there were no less than 62. They joined in outdoor sports, got up a dance during the night, played cards, indulged in some vocal music, and otherwise amused themselves while awaiting the arrival of the train which was expected to pass Glenrowan about midnight. Mr. Curnow, the local State school teacher, who, with his wife and sister-in-law, had been bailed up early in the afternoon, contrived by a show of sympathy to ingratiate himself into the good graces of the gang; and, under Providence, to his tact, coolness, and bravery, must be attributed the rescue of the special train and its occupants from destruction. Constable Bracken, who was stationed in the locality, was taken prisoner and conveyed to the hotel late in the evening. He appears to have acted with prudence throughout the trying circumstances in which he was placed. Mr. Curnow was released about midnight, and immediately took steps to warn the approaching special.

He improvised a danger signal by placing a lighted match behind a scarlet mantle, and with this he set out along the line to meet the train. The special, containing Mr. O'Connor, his wife, and sister-in-law, five trackers, and several representatives of the press, arrived at Benalla at about half-past one o'clock. Here Superintendent Hare and a party of troopers joined them, and having procured a pilot engine to go in advance, a start was made for Beechworth at 2.10 a.m. On arriving within a mile and a half of Glenrowan, the pilot engine was observed to stop, and upon inquiry as to the cause, the information given by Mr. Curnow of the presence of the Kellys at Glenrowan, and of the rails having been torn up, was communicated to Superintendent Hare. After a consultation, it was decided to travel slowly and cautiously, and bring the train up to the Glenrowan station. Under ordinary circumstances, the special would have passed Glenrowan without stopping. When therefore the outlaws heard the whistle, and observed the train draw up at the station, they were at once convinced that Mr. Curnow had conveyed the warning to the police. The prisoners in the hotel having been locked up, the outlaws at once prepared for the fight. They went into a room together and assisted each other to don the iron armour that they had brought with them, and thus equipped they awaited the attack. Superintendent Hare ordered the horses to be taken out as soon as the train drew up at the station. He did not know the precise bearings of the locality, and supposed that the spot where the rails were torn up was about a mile from the station, and that it would be necessary to proceed there on horseback. A volunteer, Mr. Rawlings, undertook to act as guide. Mr. Hare and Mr. Rawlings, followed at a distance by three or four constables, went down the line to the station master's house to make inquiries. At this time everything was still; there was not a sound or a sign to indicate that the gang were so near. Mrs. Stanistreet, the wife of the station master, was found crying in great distress at the loss of her husband, who, she stated, had been taken away by the Kellys, at the same time pointing in the direction of the ranges behind Mrs. Jones's hotel. Thereupon Mr. Hare returned to the platform, and while engaged giving further instructions about the horses Constable Bracken, in a state of excitement, appeared upon the scene and informed Mr. Hare that the outlaws were in Mrs. Jones's hotel, and had a large number of prisoners there bailed up. Thereupon Superintendent Hare told the men to let go the horses and to follow him. Without pausing, he rushed away, in the direction indicated, across the open space formed by the railway reserve, at the corner of which, directly opposite the hotel, is a large swing-gate with a wicket. He was closely followed by Constables Gascoigne, Phillips, and Canny, Inspector O'Connor and some of his black trackers bringing up the rear. On emerging from the wicket, Superintendent Hare and the constables mentioned found themselves on the roadway opposite the south-east corner of the hotel, which, although it was moonlight, stood in the shade, so that it was with difficulty objects could be discerned. When about fifteen paces from the hotel Superintendent Hare saw the figure of a man on the verandah. Then three men came round from the off side of the house and drew up. These were the outlaws, who, trusting to their armour, appeared to regard themselves as invulnerable. A shot was fired from the verandah, followed by a volley. The police at once returned the fire, and several volleys were exchanged, but in the very first Superintendent Hare received a bullet wound in the left wrist, which rendered his arm useless. The ball passed through the limb, shattering the bone and severing the artery. Mr. Hare with his one arm reloaded and fired. Several volleys having been exchanged, the outlaws retired within the house, when the shouts and screams of men, women, and children, imprisoned in the place, called forth the order from Superintendent Hare, and it is said from Mr. O'Connor also, to cease firing. Mr. Hare's wound appears to have become very painful, so, turning to Senior-Constable Kelly, who had reached the spot by making a detour round by the railway crossing, near the station master's house, he directed him to surround the house with the men and not allow the outlaws to escape. He then retired, going in the direction of the station. On his way thither he observed Mr. O'Connor, as he alleges, "running up a drain." He informed him of his accident, at the same time repeating the orders he had already given to Senior-Constable Kelly. Inspector O'Connor warmly resents the statement contained in Mr. Hare's official report that he saw him "running up a drain." Probably, it is the contemptuous form of expression employed to which Mr. O'Connor objects. As a matter of fact, there seems no reason to doubt the accuracy of Mr. Hare's description. Mr. O'Connor, it is clear, did not accompany

Evidence,
Mr. O'Connor.
Mr. Carrington,
q. 10025.
Mr. Melvin,
10153.
Mr. McWhirter,
10001.
Mr. Allen, p. 383.

Mr. Reardon's
evidence.

Supt. Hare's.

Mr. Rawlings.

Mr. O'Connor,
q. 1116.

Supt. Hare's.
Mr. Rawlings'.
Mr. O'Connor's.

Supt. Hare's
official
report and
evidence,
Gascoigne's,
Canny's,
Phillips's,
Arthur Kirk-
ham's.

Q. 5008.

Official report,
2nd July 1880.

Mr. Hare and the others who passed through the wicket or crossed the fence surrounding the railway reserve. In the vicinity of the gate the ground is intersected by a number of watercourses, varying in depth from half a foot to seven feet. Those are in places spanned by small foot bridges, and all, more or less, in their sinuous windings communicate with each other. At the moment that the first volley was fired, Inspector O'Connor appears to have reached the culvert within the enclosure, in a direct line with the front of the hotel, or perhaps a little more towards the Wangaratta side of it, and about twenty-five yards distant from the house. Finding the danger of remaining in an exposed position, he at once sought shelter in a depression in the ground, in front of the bridge. To save himself from the bullets, which were flying about in every direction, it was requisite that he should assume a crouching attitude, and if, as Mr. O'Connor asserts, he remained in this position for nearly half an hour after the firing commenced, it was here he must have been observed by Superintendent Hare on his way returning to the platform. Whatever may have been the length of time Mr. O'Connor remained in this spot, it is certain that the position, having been found insecure, owing to the woodwork in front of the culvert having been struck by several bullets, Mr. O'Connor rose, crossed the little bridge, descended into the watercourse, which increases in depth at the other side, proceeded along this until some 15 or 20 yards back he reached a half-moon shaped excavation in the bank, which served him for all the purposes of a rifle pit. Here he took up his position, along with two of his trackers, the distance from the hotel being between 40 and 50 yards. The accounts given are so conflicting, and based, seemingly, upon after occurrences, that it is difficult to pronounce decisively as to the precise point of time at which Superintendent Hare saw Mr. O'Connor on his way back to the station; but as nearly all the witnesses agree that Mr. Hare was not more than from five to ten minutes in the front, it seems probable that he must have sighted Mr. O'Connor in his first position as he describes and before the Queensland Inspector had sought the more secure shelter of the spot where he remained until Mr. Sadleir's arrival. Mr. Hare, on reaching the platform, had his arm bandaged by Mr. Carrington, one of the representatives of the press, and he then left the station with the intention of resuming his position at the front. Great loss of blood, and consequent physical exhaustion, prevented him from doing so. He states that he felt great pain, and as the blood continued dripping from his wrist he became faint. He was clearly apprehensive of bleeding to death, and in this extremity he is said to have called to Mr. Rawlings—"For God's sake, Rawlings, go and get me a horse, or anything that will carry me to Benalla, where I can have my wound dressed properly." He was observed sitting near a log not far from the fence by Constable Kirkham, but finding it necessary to return to the station, Superintendent Hare re-appeared there after an absence the second time of from five to eight minutes, according to the evidence of the reporters. He fainted and fell down on reaching the platform. He was then lifted, placed in a railway carriage along with the ladies, who administered some sherry, under the influence of which he shortly revived. He then arranged to be sent to Benalla by one of the engines, and this was done. Here ends the first phase of the Glenrowan affray. Superintendent Hare, when he took his departure from the scene, appears to have been under the impression that he left Mr. O'Connor in charge of the attack. No doubt such was his intention, but Inspector O'Connor seems throughout the morning to have been animated by but one idea, namely, that by remaining in the deep cutting where he had sought shelter he was guarding the front of the premises, thereby cutting off all chance of escape for the outlaws from that quarter. A little reflection, however, would have led this officer to see that, if the outlaws did attempt an escape, they were not likely to select the front, where they would have had to run the gauntlet between the various parties of police stationed there. If an escape were attempted at all, it was more likely to have been by the rear of the hotel, where the ground was covered with timber and scrub, while the Warby ranges were only a short distance off. Therefore, instead of standing in the cutting, blazing away every time a flash was seen from the hotel, Mr. O'Connor might just as well have been on the platform along with the ladies, the reporters, and other non-combatants. Indeed the appearance of ladies at such a juncture was somewhat incongruous. It was a mistake to have allowed them to accompany the party from Melbourne, and, as a fact, their presence seems to have had the reverse of an inspiring influence upon

Mr. O'Connor's evidence, q. 1121.

Mr. O'Connor, Sen.-Con. Kelly, Con. Kirkham, Con. Phillips.

Mr. O'Connor's letter asking for inquiry; also evidence, q. 1117.

Mr. Carrington, q. 10036.
Mr. Melvin, 10165.
Mr. McWhirter, 10314.
Mr. Allen, q. 10724.

Q. 11729.

See reporters' evidence.

Q. 10171.

See Serz. Steele's evidence.

the officer in charge of the Queensland contingent. He held his position until the arrival of Superintendent Sadleir and the reinforcements from Benalla. About the same time Sergeant Steele arrived from Wangaratta with his contingent, having ridden down with the greater part of them, a few proceeding by train. Mr. Sadleir, on reaching the ground, sought Mr. O'Connor, and consulted with him. After the first volley some of the female prisoners in the hotel escaped; but at the time Sergeant Steele took up his position, close to the rear of the hotel, Mrs. Reardon and some members of her family endeavored to make their escape. Mrs. Reardon, who had a child in her arms covered with a shawl, states distinctly that Sergeant Steele deliberately fired at her, and produced, before the Commission, a shawl perforated apparently by a bullet. Steele denies the allegation; but admits having shot young Reardon, who, it is asserted, neglected, when ordered, to put up his hands. The ball or pellet fired entered his breast, and lodged beneath the ribs, but did not cause death. Indeed, the firing at this time, by all accounts, seems to have been indiscriminate, the blacks particularly being industrious in potting away at the premises. The prisoners, in a state of terror, arranged to hold out a white handkerchief, at which several shots were immediately fired, a proceeding highly reprehensible, as the most untutored savage is supposed to respect the signal of surrender. The order was given to fire high, but not before one of Mrs. Jones' children and a man named Martin Cherry were wounded, the latter fatally. About seven o'clock, Ned Kelly, the leader of the gang, was captured. He had been wounded in the foot during the first brush with the police. He left the hotel by the back shortly after, and selected his own horse, which he led away into the bush at the rear. On the way he seems to have dropped his rifle and the skull cap that he wore inside his iron headpiece, not far from the house. He then seems to have endeavored to disencumber himself of his armor, but, being unable to do so without assistance, he evidently made up his mind to break through the cordon of police, rejoin and die with his companions in the hotel. His capture was effected without much difficulty or danger, as he was wounded in several parts of the body, and was incapacitated from using his revolver with effect. As the tall figure of the outlaw, encased in iron, appeared in the indistinct light of the dawn, the police for a time were somewhat disconcerted. To some it seemed like an apparition; others thought it was a black man who had donned a nail-can for a joke, but as the shots fired from Martini-Henry rifles, at short range, were found to have no effect, the sensation created seemed to have been akin to superstitious awe. One man described it as the "devil," another as the "bunyip." Ned Kelly advanced until within a stone's throw of the hotel, when, in the vernacular of the bush, he defied the police, and called on the other members of the gang to come out of the hotel and assist him. The lower portion of his body being unprotected by armour, the shots soon began to tell. The one that brought him to the ground was fired by Sergeant Steele, who then rushed forward, grappled the outlaw, when both fell to the ground. What followed precisely is confused and indistinct. However, it seems clear that Senior-Constable Kelly, Guard Dowsett, Constable Dwyer, and others, were early in at the capture of Ned Kelly, who, having been overpowered and divested of his armour, was conveyed to the railway station a prisoner, where he remained until the close of the fight. The male prisoners were allowed to escape at ten o'clock. They conveyed the intelligence that Joe Byrne had been shot dead early in the morning, while toasting prosperity to the gang at the bar of the hotel. The other outlaws, Dan Kelly and Steve Hart, had last been seen standing in the passage, both in armour, no doubt in their last extremity, considering as to what should be done. It has been asserted by various witnesses that spasmodic attempts at firing from the hotel were kept up till one o'clock that day; but viewed by the light of surrounding circumstances and subsequent information, it seems probable that there was little, if any, firing on the part of the survivors of the gang after the prisoners left at ten o'clock. In the forenoon, when the police were firing high and firing low, according as they were directed, Superintendent Sadleir appears to have evolved from his own inner consciousness—an idea which he was desirous at first of crediting the reporters and subsequently Dr. Nicholson with, namely, to blow down the hotel. He telegraphed in the forenoon to the Chief Secretary in Melbourne, asking him to send up to assist in the siege a big gun with the necessary ammunition and men to demolish the hut. A cannon and the requisite appliances were despatched by train, but owing to a stoppage on the line were detained, as Captain Standish was, until too late to be of any service. Superintendent

Sup. Sadleir's
evidence.

See evidence,
Phillips,
Arthur,
Mrs. Reardon.

Q. 9190.

Q. 9697.

See evidence,
Steele,
Sen.-Con.
Kelly, Dowsett,
Phillips, Arthur.

See evidence,
Dowsett, Kelly.

See evidence,
Dowsett,
Sen.-Con. Kelly
Con. Dwyer.

Sadleir was seen several times during the day—once talking with Mr. O'Connor, the latter leaning against a tree reading a newspaper ; again going round to some of the men, again talking to Ned Kelly, and on several occasions smoking his pipe at the railway station. He was pressed by several constables to allow them to rush the hotel, but he refused on the ground that not a single man should lose his life if he could help it in capturing the rest of the gang. The Superintendent was very probably influenced by humane motives in arriving at this decision, but a dispassionate observer could not fail to couple this inactivity with a want of capacity, if not courage, to deal with the difficulty. Of course, if an attack were made, as suggested, the officer in charge was in honor bound to take the lead, so that if there were danger in having recourse to such an expedient, the spectators could not be blamed if they thought more of Mr. Sadleir's discretion than any other quality that he displayed on that very trying occasion. The spectators were clearly not impressed with a very elevated opinion of the police proceedings on that day. The Very Revd. Dean Gibney's evidence upon the point is conclusive. Towards four o'clock, that is, after a state of siege had been maintained by three outlaws against nearly fifty police for about fourteen hours, Superintendent Sadleir consented to allow the hotel to be fired. This was accomplished by Senior-Constable Johnson. The Rev. Father Gibney was the first to enter the burning building. He found the bodies of the three outlaws with life extinct, and judging from appearances, Steve Hart and Dan Kelly, having taken off their armour, committed suicide, knowing death to be inevitable. The body of Joe Byrne was taken out before it was reached by the flames. The unfortunate man Cherry, one of the men bailed up by the outlaws, and who was wounded early in the fight, was taken out also, and died in a few minutes. The place was then abandoned to the flames, and these having done their work the charred remains of Dan Kelly and Steve Hart, with the body of Joe Byrne, were subsequently recovered and handed over to relatives for interment, while Ned Kelly was conveyed to Melbourne, and, some months subsequently, tried, convicted of the Wombat murders, and executed.

See Mr. Sadleir's evidence ; also of Sen.-Con. Kelly, Mr. O'Connor.

See Father Gibney's evidence.

Johnson's evidence.

FRANCIS LONGMORE, Chairman ;
 WILLIAM ANDERSON,
 JAMES GIBB,
 GEORGE WILSON HALL,
 GEORGE RANDALL FINCHAM,
 GEORGE COLLINS LEVEY.

JAMES WILLIAMS,
 Secretary.

PROTEST A.

In signing the Second Progress Report of the Police Commission, I beg to enter my protest against the decision of a majority of the Commission in their finding in Clauses three and five.

1. Because, in my opinion, it is in direct contradiction of the evidence taken before the Commission in that portion of clause four in which it states, "But nothing special has been shown in his action that would warrant the Commission in recommending his retention in the force."

2. It is proved in evidence that Mr. Hare, after the murders at the Wombat, was zealously engaged at the depôt in Melbourne in selecting the best men and horses and sending them to the North-Eastern district.

3. When informed by Captain Standish that the outlaws intended sticking up one of the banks, he at once took steps to protect those in his district, viz., Seymour, Avenel, Nagambie. *See Questions Nos. 1244, 1245, and 1246.*

4. After the Euroa bank robbery Mr. Hare was sent to the North-Eastern district with Captain Standish, and Mr. Nicolson, who had been up to that time in charge, returned to Melbourne. He remained there for about seven months, but no reliable information was obtained as to the whereabouts of the outlaws. During the greater part of that time he pursued the same system as that followed on previous occasions in this colony when the police were in search of bushrangers, by keeping search and watch parties continually scouring the country. With these parties he took his full share of the hardships endured, and by so doing ensured the confidence and support of the men under his charge. During this time he was twenty-five days and nights with his cave party watching Mrs. Byrne's house ; the result of all this arduous work told on his constitution, and he broke down under it, and asked to be relieved from duty in that district. This was conceded, and he returned to Melbourne, being relieved by Mr. Nicolson.

5. In April 1880, he was informed by Captain Standish that he would have to again resume charge of the North-Eastern district. Against this he strongly protested, but was told by the Chief Commissioner of Police that he must go ; he then requested an interview with Mr. Ramsay, the then Chief Secretary ; at this interview he again protested, and asked that one of his senior officers should be appointed to undertake this special duty. His appeal was of no avail. Mr. Ramsay told him that the subject had been under the consideration of the Cabinet, that the Ministry had full confidence in his ability, and they thought him the best officer in the force to undertake the duty, and that he must go, and if he should succeed in the capture of the outlaws he would be duly rewarded. *See Question 1434.*

6. Mr. Hare went to Benalla on the 2nd June 1880, and from all the information then obtained, the police were as far off the capture of the outlaws as they were when Mr. Hare left the district eleven months before. After two or three days looking round and interviewing the officers and police stationed in the district, he took steps to stop supplies by friends and relations of the outlaws. *See Question 1477.*

7. He then visited the watch party that had been stationed by Mr. Nicolson at Aaron Sherritt's house, and found it far from satisfactory.

8. On the 27th June 1880 he received information of the murder of Aaron Sherritt. *See* Question 1500.

9. He at once sent telegram to Captain Standish, asking that Mr. O'Connor and his black trackers might be sent back at once. *See* Question 1501.

10. Captain Standish replied that Mr. O'Connor would be sent by first train on the following day, Monday.

11. Mr. Hare was not content with this reply, being thoroughly determined that no chance should be thrown away in his endeavor to secure the capture of the outlaws. And as this was the first reliable information he had obtained of their whereabouts during the whole time he had been in charge of the district, he felt that no time should be lost. He therefore sent another telegram to Captain Standish, "That if Mr. O'Connor and his trackers did not come that night it would be no use their coming on the Monday." To this he received reply that Mr. O'Connor and his men would be sent that night by special train. Mr. Hare then made all necessary arrangements for the police and horses to be ready to go on by the special coming from Melbourne, also providing for a pilot engine. And on the way up from Benalla he took every precaution against surprise from the outlaws, such as sending the pilot engine in front, stationing his men on the engine, and in every way acted as an active, intelligent, and determined officer. When the train was stopped by Mr. Curnow, he appears, if possible, to have taken extra care until their arrival at Glenrowan Station, when, from the statement made by Mr. Curnow to the man on the engine, he expected that the outlaws would be at some distance. He ordered the horses to be taken out of the train, and whilst this was being done a light was seen in the station master's house, to where he proceeded; and from what he heard there he thought the outlaws had taken to the Warby Ranges. On his return to the railway station, Constable Bracken made his appearance, having just escaped from Jones' Hotel, where he had been kept a prisoner by the gang. This was the first information Mr. Hare received that the outlaws were so near. I think his conduct at this time is worthy of all praise, for he at once started direct for the hotel, ordering his men to let the horses go and follow him. When within sixteen yards of the building, they were fired on by the outlaws; the firing was returned by the police, and kept up by them until the gang retired into the hotel. In the first fire he received the wound in his left wrist, but still he stood his ground, and fired several shots. From the evidence there can be no doubt in this first engagement both Ned Kelly and Joe Byrne were wounded.

12. The warder at the gaol says that Ned Kelly told him that Joe Byrne received a wound in the first engagement with the police, and this is corroborated in the declaration made by Constable Phillips, where he states, "I heard a conversation between Ned Kelly and Joe Byrne, shortly after taking up my position around the hotel, in which both admitted being wounded." It is known that Ned Kelly had a bullet in his foot, another through his arm, and his thumb badly cut with shot when he was captured.

13. After the outlaw had retired into the hotel Mr. Hare found, from his disabled arm, that he would be compelled to return; he called on his men to cease firing, and ordered Senior-Constable Kelly and Mr. O'Connor to surround the building and not allow the outlaws to escape; he then returned to the railway platform, when his wound was bound up by the reporters. After this was done he again returned to the field and remained some time, but feeling that he was becoming faint from loss of blood, he was compelled to leave the scene of action, and on arrival at the station it was found necessary, to save him from bleeding to death, to at once send him back to Benalla to obtain surgical attendance. His conduct, on arrival at Benalla,

shows clearly that his duty to the public service received his first attention. He first got the railway guard to go and inform Mr. Sadleir what had happened.

14. Then on his way to the telegraph station called on Dr. Nicholson and asked him to follow and dress his wound. He did not stop to have it done, but proceeded to the telegraph office, and telegraphed to Beechworth, Violet Town, Wangaratta, and Melbourne, informing the police what had taken place at Glenrowan, and asked for reinforcements.

15. When Dr. Nicholson arrived at the telegraph station he found him in a low and fainting condition. After his wound was bound up and dressed he was conveyed to his hotel, suffering great pain.

16. He was laid up for months, his left hand maimed for life, and after he had sufficiently recovered he returned to his duty in Melbourne. He did not ask, at that time, for any special recognition for the arduous work he was called upon to perform, and the plucky and determined way in which he had acquitted himself at Glenrowan. He did not ask for any enquiry. He felt that by a fortunate circumstance the gang had come within his grasp. He took advantage of that, which resulted in the capture and destruction of the band of outlaws, who, for nearly two years, set the authorities at defiance; and, for this, it is recommended by the Commission that he should retire from the force.

17. I regret that my brother Commissioners should have made this recommendation, and thereby compelling me to enter this protest against their decision; but I feel that I would be doing violence to my conviction were I not to do all that lays in my power to protect a public officer and a gentleman from an act of great injustice, and the loss of a valuable servant to the public.

18. Believing also that if this portion of the Report of the Commission be acted on it will be attended by disastrous effects on the police force of this colony, for, in future, what officer or men in the force will run the risk of distinguishing themselves in the discharge of their duty if, by so doing, they are subject to be dismissed, or may have brought on themselves the bitter jealousy of some of their fellow officers?

19. I have no desire, in making this protest, to compare the conduct of Mr. Hare with that of any of the other officers in charge of the North-Eastern district during the Kelly outlawry; they have been dealt with in the Report of the Commission, in my opinion, without any more censure than they deserve; and I am, therefore, more at a loss to understand why Mr. Hare should have met with such treatment at their hands.

E. J. DIXON.

12th October 1881.

PROTEST B.

We must decline signing clauses 3 and 5. We should have preferred that the motion recommending Mr. Nicolson's superannuation had not been accompanied by the statement that "the want of unanimity existing between these officers, *i.e.* Mr. Nicolson and Mr. Hare, was frequently the means of preventing concerted action on important occasions, and the interests of the colony greatly suffered thereby," inasmuch as we do not consider that the latter statement is borne out by the evidence, and a resolution to that effect was moved in the course of the deliberations on the report. Nor do we see anything in the evidence to warrant the recommendation that Mr. Hare should be superannuated.

JAMES GIBB.

GEORGE COLLINS LEVEY.

REPLY TO MR. DIXON'S PROTEST.

1. We, the undersigned Commissioners, in submitting a reply to the statement put forward in the form of a protest by Mr. Dixon, cannot refrain from expressing our surprise and regret that the document in question should be found a mere paraphrase of portions of Superintendent Hare's official report, which has been the source of so much mischief, and which we have no hesitation in declaring to be, in its essential features, a mere tissue of egotism and misrepresentation.

2. Your Commissioners have no desire to question Mr. Hare's personal courage or determination ; the decision arrived at respecting this officer, we contend, has been based upon much more important considerations, namely, those of public expediency and the interest of the service.

3. Before proceeding to traverse the allegations contained in the official report and reproduced in the protest, we feel it incumbent upon us to make some reference to Superintendent Hare's conduct in connection with the present demoralized state of the police force of the colony.

4. There seems every reason to believe that Superintendent Hare was throughout in direct collusion with Captain Standish in the petty and dishonorable persecution to which Mr. Nicolson was subjected for many years while endeavoring honestly to discharge his duties to the best of his ability. Superintendent Hare admits that the late Chief Commissioner consulted him upon everything ; one of the witnesses declared that Superintendent Hare was regarded as the actual head of the force ; under such circumstances, how can Superintendent Hare be exonerated from all responsibility for the strained relations that existed amongst the officers ?

5. Captain Standish characterized Mr. Nicolson's reports as twaddle ; Superintendent Hare described them as infernal bosh. This agreement of opinion is significant when upon examination those reports are found to deserve a very different appellation. Had Captain Standish acted properly upon one of those written in 1877, concerning the state of the North-Eastern district, the Kelly outbreak would probably have been prevented.

6. Superintendent Hare exhibited a spirit of insubordination to a superior officer in questioning Mr. Nicolson's dictum regarding Constable Redding, and in the Assistant Commissioner's presence coinciding with Captain Standish when the latter was informed that Constable Gorman was not a suitable man for a particular station. Further, as showing Superintendent Hare's regard for the rules of the service, and the respect due to a superior officer, it may be added that when in the course of the enquiry Mr. Nicolson forwarded, as a matter of courtesy, a communication to Mr. Hare, the reply received, after acknowledging the receipt of the document, was as follows :—"I would suggest to Mr. Nicolson the advisability of his devoting his attentions to answering the serious charges preferred by the witnesses examined before the Commission against himself instead of attempting to find fault with my conduct.—Francis Hare, Supt., 26/9/81."

7. In the personal feuds and jealousies which have marked the relations of the police officers, Superintendent Hare appears to have adroitly sheltered himself behind the late Chief Commissioner. Further, it is notorious that many of the men have taken sides with the officers, and that a spirit of rivalry and dissension exists in the lower ranks of the force.

8. Superintendent Hare's position as officer of the depôt gave him many advantages over his brother officers, which he was not slow to utilize.

9. Your Commissioners cannot too strongly deprecate the action taken by Superintendent Hare to override the decision of the political head of the department, in order to retain his position as officer of the depôt and avoid being sent to Beechworth. With very questionable taste, and contrary to the regulations of the service, he applied personally to Sir George Bowen, the Governor of the colony, whom he met at a coursing meeting, to intercede for him and have the order for his removal cancelled. While Mr. Hare acknowledges to have thus enlisted the highest political influence on his own behalf, his charge against Mr. Nicolson of having employed similar means to obtain promotion utterly broke down, as the Assistant Commissioner appears to have depended solely for advancement upon his rights of seniority.

10. Superintendent Hare's conduct during the Kelly pursuit was marked by anything but a generous or kindly feeling towards Mr. Nicolson. In paragraph 2 of the protest, Mr. Dixon states that after the Wombat murders Mr. Hare was zealously engaged at the depôt in selecting the best men and horses to send to the North-Eastern district. As a matter of fact the reinforcements came to hand slowly, and the district, at the time of the Euroa bank robbery, was unprepared to resist, at all points, the threatened raid, owing to the inadequacy of the police force placed at Mr. Nicolson's disposal.

11. As regards warning the banks at Seymour, Avenel, and Nagambie, Superintendent Hare simply obeyed the instructions given him two days before Mr. Nicolson was apprised of the existence of the prisoner Williamson's communication, in which the information was conveyed regarding the intention of the outlaws to attack the bank at Seymour. Had there been proper concert between the officers at this period, the Euroa bank robbery might have been averted. Captain Standish, while he consulted Mr. Hare, neglected to inform Mr. Nicolson what arrangements had been made to protect Seymour, and made no effort to assist him in repelling any attack that might be made upon the banks in the North-Eastern district.

12. Mr. Dixon, in paragraph 4, states that during the seven months Captain Standish and Superintendent Hare remained in charge of the pursuit no reliable information was obtained respecting the whereabouts of the outlaws. To our minds this fact proves that the officers mentioned were incapable of grappling with the difficulties of the situation, more particularly as they had with them double the number of men, and incurred double the extra expenditure, in prosecuting the pursuit, allowed Mr. Nicolson.

13. As regards Mr. Hare's health having broken down after his seven months' duty, it has been proved in evidence that he was not so incapacitated as to be prevented from attending a series of coursing matches held in the district prior to his return to the depôt.

14. When Mr. Nicolson resumed charge in June 1879, sweeping reductions were insisted upon, despite his repeated protestations ; and when he applied for additional men for ordinary duty to replace those who had been invalided, Superintendent Hare sent him up from the depôt a number of men, described as cripples, who were utterly useless.

15. While Mr. Nicolson was in charge, Superintendent Hare, in a manner highly unbecoming an officer, extracted privately from one of the constables some information respecting the cave party, and immediately informed the Chief

Commissioner, as a piece of current gossip, that all about the cave was known at the Dépôt. Further, while Mr. Nicolson was endeavoring to improve the efficiency of his men by rifle practice, Mr. Hare interfered, and told Captain Standish that the men were simply wasting ammunition. Those points may appear insignificant, but to our minds they indicate a system of tale-bearing undignified and ungracious and calculated to materially obstruct operations against the outlaws.

16. Mr. Dixon's statement in Clause 6, that when Mr. Hare went to Benalla on 2nd June 1880 the police were as far off the capture of the Kelly gang as when he left the district eleven months previously, is a reiteration of Superintendent Hare's assertion, contained in his official report, and is not borne out by the evidence. The allegation also based upon question 1477 is to some extent misleading. There is nothing in the paragraph mentioned to show that the steps taken by Mr. Hare were calculated to prevent supplies being conveyed to the outlaws.

17. Clause 7 of the protest is calculated to convey a false impression. The hut party alluded to had not been stationed at Aaron Sherritt's place by the Assistant Commissioner. During the last week of Mr. Nicolson's command in the North-Eastern district, and while scouring the ranges in the vicinity of Mrs. Byrne's hut, he had placed some men temporarily in Sherritt's house, but withdrew them prior to Mr. Hare's arrival. The organization of the hut party properly speaking is due to Mr. Hare, and it proved a most disastrous failure.

18. We have not been slow to acknowledge Superintendent Hare's energy and promptitude upon receiving intelligence of Aaron Sherritt's murder, but the injudicious zeal of his friends provokes the criticism which he might otherwise be spared. Mr. Dixon gives him credit for extraordinary foresight in providing a pilot engine for the special which left Benalla for Beechworth on the night of the 27th of June, but a reference to Mr. Carrington's evidence shows that, prior to the starting of the train, it was generally known, or at least currently reported at Benalla, that the rails had been taken up. Under such circumstances what was more natural than that a pilot engine should be procured?

19. Mr. Hare, as officer in command, should not have tolerated the presence of ladies in the special train when leaving Benalla, especially as he was aware of the report that the rails had been removed.

20. We consider that this officer cannot be complimented upon his discretion or generalship in the conduct of operations at Glenrowan for the short time that he remained upon the scene. He knew little, apparently, of the precise situation of Glenrowan, notwithstanding that he had been for eight months in command of the district. He was informed during the journey that the Kellys had torn up the line, taken possession of the place, and imprisoned all the people there; yet, on arrival, he seems to have had no correct idea of the peculiarity of the situation. The moment he was informed by Bracken of the presence of the outlaws at the hotel he dashed away, without waiting for some of his men to collect their arms. When he reached the hut he found his onslaught resisted by the gang. He was disabled in the wrist by the first volley, and after an absence of from five to ten minutes from the platform, he returned to have his wound dressed. He left the front without transferring the command to any one. The order to surround the house given to Senior-Constable Kelly and to Inspector O'Connor cannot be regarded as transferring the command. This neglect he might have rectified when he essayed to reach the front on the second occasion, but he failed to do so. Did he propose to rush the place, and at once overpower the outlaws? If that were his intention,

he should not have been deterred by a mere wound in his wrist from doing so. If he had resolved merely to surround the gang and prevent their escape, then he ran unnecessary risk in exposing himself and his men to the fire of the outlaws. If, however, he simply trusted to the chapter of accidents, without any definite idea of what was best to be done, then his management of affairs displayed a decided lack of judgment and forethought. Comparisons may be odious, but it cannot fail to strike one as singular that, while Superintendent Hare felt himself obliged to leave his post and return to Benalla, under the impression that the wound in his wrist would prove fatal, the leader of the outlaws, with a rifle bullet lodged in his foot, and otherwise wounded in the extremities, was enabled to hold his ground, encumbered too by iron armour, until seven o'clock, when, in the effort to rejoin his companions, he fell overpowered by numbers.

21. Superintendent Hare's bill against the Government for surgical attendance amounted to £607, about £480 of which was paid to his relative, Dr. Chas. Ryan. While this officer was being petted and coddled on all sides, and a special surgeon despatched almost daily some thirty miles by train to attend him, the Government questioned the payment of four guineas for the treatment of one of the black trackers who had received a wound in the head at Glenrowan.

22. It is, however, chiefly in relation to Superintendent Hare's official report of the 2nd of June 1880 that we, the undersigned Commissioners, have been led to regard this officer's conduct with suspicion. The document was manifestly written with the design of crushing Mr. Nicolson once and for all; to deprive him of all credit for anything that he had done or suffered in the pursuit, and to brand him as disloyal to the service and his brother officers. The evidence, however, discloses that many of the charges contained in the report were unfounded, the insinuations unjustifiable, and the statements mere assumptions.

23. It must be borne in mind too that Mr. Hare's personal quarrel with Inspector O'Connor led up to the latter officer's unfortunate complications with Captain Standish; the favoritism exhibited towards him by the Chief Commissioner was the cause of jealousy and dissension amongst the officers. And it is only fair to conclude that Superintendent Hare has been for many years a disturbing element in the force, and that his withdrawal from the service has become a matter of public necessity.

24. We have no desire to act unkindly towards Superintendent Hare. We regret deeply that, in justice to ourselves and in explanation of our action, we should be compelled thus to refer to matters that otherwise had better be buried in oblivion. The services rendered, and the injury sustained by Superintendent Hare have not been lost sight of, and, while declaring his immediate retirement from the force as indispensibly necessary, the Commissioners have treated him, we consider, in connection with the recommendation submitted to Your Excellency, with the greatest possible liberality.

FRANCIS LONGMORE,
 GEORGE WILSON HALL,
 GEORGE RANDALL FINCHAM,
 WILLIAM ANDERSON.