

disappeared, and was not heard of for two years, when he was discovered by the police in the interior of Queensland, where he had in the interval been leading, it is asserted, a quiet and industrious life, engaged in occupations which were entirely free from crime. He was brought to Sydney to stand his trial, which took place in July, 1864. It was then found by Sir James Martin, the Attorney-General, that there was no evidence forthcoming to connect Gardiner with the escort robbery, or with any of the serious bushranging cases with which he was supposed to have been connected; and he was put on his trial eventually for wounding Middleton and Hosie, with intent to kill (in this Colony a capital offence), when they attempted to capture him in July, 1861, on the cancellation of his ticket-of-leave. The jury, however, were not satisfied that Gardiner in defending himself, as it were, against the sudden attack of these men in an almost dark room, knew that they were constables, and acquitted him of the capital charges, finding him guilty of the minor count of wounding Hosie with intent "to do grievous bodily harm." Gardiner was tried at the same time for robbing two travellers, Hessington and Hewett, being armed (an ordinary case of bushranging, unaccompanied by any aggravating circumstances), to which he pleaded guilty; and for these convictions he was sentenced by the late Chief Justice to 32 years imprisonment, the first two years in irons. The condition of the country at the time called perhaps for exceptionally severe sentences—the community being almost paralyzed with fear. But it is impossible when now reviewing dispassionately all these circumstances to resist the conviction that Gardiner's cumulative sentences were measured not only with reference to the crimes of which he had been convicted, but in view also of those with which he was supposed to have been connected, and of the charges of which he had been acquitted.

I will now revert to the circumstances connected with the mitigation of the bushranging cases, detailing them in the order in which they occurred. Shortly after my decision in Gardiner's case had been communicated to the Sheriff he proceeded to act on the instruction contained in the Colonial Secretary's Minute of 20th September, 1872, and which he had allowed to remain in abeyance pending a settlement of Gardiner's case. On the 21st January, 1873, the Sheriff addressed to the Colonial Secretary a General Report, marked D, on the cases of the prisoners serving long sentences for bushranging who still remained in gaol, and whose cases he thought called for serious consideration. These sentences, he pointed out, had been imposed at a period when it was thought necessary to deter from the commission of crime of that particular character by severe examples of punishments, but the remarks of the judges when passing sentence, and the action of the Executive subsequently had led the prisoners of this class generally to expect that their sentences would not be served in full, but that when the crime of bushranging had been as it were stamped out, the punishment awarded during that period of excitement would be carefully reconsidered. The Sheriff pointed out that of the bushranging cases convicted from 1860 to 1870, no less than 47 had been already commuted. In almost all these cases, the favourable report of the Judges had been received—thus showing that the Judges generally looked to a shortening of these bushranging sentences by the Executive, and justifying the expectations entertained by the remaining prisoners on the subject.

The desultory manner in which the 47 cases referred to had been dealt with had been productive of much harm. They were mostly decided upon applications from the relatives and friends of prisoners, and upon no fixed principle or rule whatever. This will be apparent from a glance at the accompanying return, marked E, \* called for by Parliament, showing the particulars of 267 remissions sanctioned during the five years ending 31st December, 1873, and which includes nearly all the 47 remissions in bushranging cases referred to by the Sheriff. The manner in which these 47 cases had been disposed of had created a strong feeling of injustice and unequal treatment amongst the prisoners of the same class that remained in gaol, to the serious prejudice of prison administration. The Sheriff stated to me that he scarcely ever